



POLISH CHAMBER OF COMMERCE

**To: European Financial Reporting Advisory
Group (EFRAG) (IVZW/AISBL)
35 Square de Meeûs
1000 Brussels
Belgium**

**From: Polish Chamber of Commerce
(Krajowa Izba Gospodarcza)
Trębacka 4 Street
00-074 Warsaw**

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1. INTRODUCTION

Hereby, in the course of the public consultations regarding the European Sustainability Reporting Standards (“ESRS”) Exposure Drafts (“ESRS EDs”) developed by the European Financial Reporting Advisory Group (“EFRAG”) PTF-ESRS, I present a position paper prepared by the Members of the ESG Committee at the Polish Chamber of Commerce (“PCC”). The PCC is the largest independent business organisation in Poland. It was established in 1990. It represents a significant number of entrepreneurs, joining 160 business organisations, 70 chambers and trade unions, 61 regional chambers, 21 bilateral chambers and 8 other organisations (associations, foundations).

The following members of the PCC’s ESG Committee were in particular involved in preparation of the current position paper:

- Jolanta Okońska-Kubica, ESG advisor, Chairwoman of the ESG Committee;
- Agnieszka Skorupińska, Partner at CMS law firm, Head of the Environmental Law Practice in CEE and Poland, Coordinator of the ESG Team in CEE and Poland, Vice Chairwoman of the ESG Committee, coordinator of the online survey input from the ESG Committee;
- Borys Sawicki, Attorney-at-law, SK&S law firm, coordinator of the online survey input from the ESG Committee;
- Magdalena Bohusz-Boguszewska, Corporate governance strategic advisor, The National Centre for Research and Development (NCBR) ;
- Jan Bondaruk, PhD, Deputy Director of Environmental Engineering, Central Mining Institute;
- Wojciech Konecki, CEO, APPLiA Polska – home appliances association;

- Joanna Kulczycka, Prof. PhD, Head of the Strategic Research Division, Mineral and Energy Economy Research Institute, Polish Academy of Sciences;
- Igor Mitroczuk PhD, Koźmiński University;
- Anna Papka, Public Policy Manager, Amazon;
- Arkadiusz Pączka, Vicepresident of the Board, Federation of Polish Entrepreneurs;
- Beata Staszaków, Chairwoman of the Board of Polish Copper Employers' Association,
- Aleksander Szalecki, CEO, Stratego.

This position paper is submitted as a part of the online survey completed by the Members of the ESG Committee.

2. GENERAL COMMENTS CONCERNING ESRS EDs

In general, the PCC's ESG Committee welcomes the ESRS EDs and appreciates all the hard work that has been put into their development. Based on the analysis performed by the PCC's ESG Committee it seems apparent that the content of ESRS EDs is very detailed, hence once adopted by the Commission as binding, it will result in the unification of sustainability reporting standards in the European Union for the undertakings covered by them. We appreciate the positive impact this may have on reaching the sustainability aims in general and in particular the climate change related reductions including the Net Zero target.

3. APPLYING ESRS WILL CONSTITUTE A SIGNIFICANT CHALLENGE TO THE POLISH UNDERTAKINGS

Having said this, we are of the general opinion that the ESRS EDs are very demanding due to the scope of issues covered as well as the depth of coverage. Meeting the requirements of ESRS will constitute a significant challenge for all undertakings subject to ESRS under the respective laws (currently Non-Financial Reporting Directive ("NFRD") to be modified by Corporate Sustainability Reporting Directive ("CSRD")).

In the first place, this concerns the undertakings that have already been reporting under the NFRD. From the Polish perspective, the ESRS EDs contain massively extended requirements as compared to the Polish law which currently requires only the following non-financial information:

- A brief description of the entity's business model,
- Key non-financial performance indicators related to the entity's operations,
- A description of the entity's policies with regard to social issues, employment issues, environmental issues, respect of human rights and anti-corruption issues, as well as a description of the results of applying these policies,
- A description of the due diligence procedures - if the entity applies them as part of the policies,
- A description of significant risks related to the entity's operations that may have an adverse impact on ESG issues, including risks related to the entity's products or its relations with the

external environment, including counterparties, as well as a description of the management of these risks.

This means that the requirements presently imposed on the reporting undertakings under Polish law are of general nature and the implementation of ESRS will significantly change this. Moreover, based on our analysis ESRS EDs are much more demanding than for example the reporting standards of the Global Reporting Initiative (“GRI”), which is currently the preferred reporting benchmark for many EU undertakings, including the Polish ones. Although the use of GRI is voluntary, GRI was recommended in Poland among others by the Warsaw Stock Exchange in May 2021 in the document titled “ESG Reporting Guidelines”. Also, other reporting standards are much more general than ESRS EDs. For example, the Task Force on Climate-Related Financial Disclosures (“TCFD”) recommendations cover only four main topics: governance, strategy, risk management, indicators and targets. However, these are still only recommendations and not binding regulations. This means that undertakings currently reporting will have to significantly adjust and supplement their up-to-date approach to reporting in order to meet the requirements of ESRS. Therefore, for Polish entrepreneurs the introduction of such detailed ESG reporting requirements as prescribed in ESRS EDs will be a huge challenge.

Reporting under the ESRS would constitute an even bigger challenge for undertakings that are currently not subject to NFRD, but will be required to report under CSRD. The challenge will result from two factors:

- (i) these entities mostly do not report currently so they will have to learn a completely new skill and approach,
- (ii) these entities simply have less resources than the undertakings currently subject to NFRD, hence the same process which will already be painful for entities reporting under NFRD will be much more demanding for the entities covered by CSRD.

For both these groups, i.e. undertakings reporting under NFRD and those reporting under CSRD, adjusting to ESRS as prescribed in ESRS EDs will result in the need to bear very high costs including:

- costs of multidisciplinary consultancy services (it is not possible to adjust to ESRS without professional support especially for smaller entities),
- IT costs,
- R&D and other related costs,
- internal administration costs and
- cost of changing the business model in order to meet the demanding requirements (e.g. costs of meeting the climate change targets).

The necessity to incur large expenditures relates in particular to the lack of ESG experts on the Polish market. Currently, the usually implemented sustainable solutions relate to climate issues, certain employment matters and selected corporate governance issues. Also, more and more companies are implementing circular economy solutions. Therefore bridge the gap to between issues that the companies are currently focused on and the ones demanded under the ESRS is significant. Thus, it is difficult to talk about a reasonable balance of costs and benefits. It should also be realized that in the case of Poland, the costs of implementing the new requirements will not be low because there are no sufficient experts supporting IT programs and tools in Polish (e.g. for calculating the carbon footprint, LCA), and

companies lack many necessary data and reporting systems of these data. Thus, it is clear that the Polish undertakings will incur material costs. All this in the context of the post-pandemic crisis, very high inflation and the difficult geopolitical situation resulting from Russian aggression in Ukraine. These additional costs may drive some of the undertakings to significant deterioration of their financial situation.

Having the above in mind, we are of the opinion that ESRS EDs should be significantly reduced in scope or at least in the depth of the required approach. In the online survey we have indicated areas where such a modified approach can be contemplated.

4. BACK DOOR INTRODUCTION OF VERY STRICT REQUIREMENTS IN THE ESRS EDs

Having reviewed ESRS EDs in detail we note that on many occasions they contain requirements of a particular action (e.g. reduction / resignation from something etc.). We read these parts of ESRS EDs in such a manner that if a particular issue is material for a particular undertaking, it has to take a particular action (indicated by common use in ESRS EDs of the phrase “shall” instead of “may”). In the respective instances, EU law, and consequently Polish law, does not impose such requirements. This means that through these back door ESRS will introduce very demanding requirements that have not been processed by means of regular legislative procedure to which, e.g., a draft directive would be subject. This situation is not acceptable for the undertakings we represent. Many of them are very active in the EU regular legislative process when it concerns imposing of new obligations. Taking into account the procedure in which ESRS will be adopted, we have the impression that undertakings will be denied the opportunity to actively take part in the legislative process. Having the above in mind, we are of the opinion that number of new binding obligations imposed on undertakings via ESRS EDs should be significantly reduced.

5. REQUIREMENTS CONCERNING VALUE CHAIN AND BUSINESS RELATIONSHIPS ARE TOO FAR-REACHING

As for merits we have identified and presented in the questionnaires many issues which Polish entities will find difficult to implement. However, the most crucial among them is the approach to the value chain and business relationships. We are of the opinion that these requirements are too far-reaching especially since they apply through the ESRS with respect to various types of requirements. From the Polish perspective, obtaining reliable information on the value chain will be very difficult and will not happen immediately. Thus, we are of the opinion that these requirements should be crossed out from the ESRS or at least significantly phased in to allow for the preparation of the value chain and the business relationships for meeting the respective requests.

6. NECESSITY TO RESPECT CONFIDENTIALITY AND NOT IMPACT FAIR COMPETITION

We have noticed that in many cases ESRS requires information which is subject to confidentiality, including contractual confidentiality (e.g. DR 2-GR 3, AG 14; DR E1-13, par. 58 (b)) but also confidentiality in the relation between employer and employee (DR S1-1). There are also many instances where the requested information, in our opinion, is revealing too much of the undertaking’s strategy and

it bears as such a risk of distortion of fair competition (e.g. DR 2-GR4 AG 19). In the online survey, we have indicated these areas and we are of the opinion that they should be crossed out from the ESRS or substantially altered.

7. MORE PHASING-IN IS NECESSARY

Since ESRS EDs are complex and demanding documents, adjustment to their requirements will be time consuming. In our opinion adjusting to ESRS and reporting in accordance with it, under the current wording of ESRS EDs, is not possible without professional (most probably external) assistance. We do believe that such a situation is not optimal and distorts competition. As of today, the formal sustainability manager education track is almost non-existent. Against this background, companies will have to prepare the reports not only using people who are not formally educated but also people who simply did not have enough time to learn the specific approach required by ESRS. One reporting period for such a complex exercise is definitely too short.

Moreover, when analyzing the ESRS EDs it is clear that some of the requirements are sequential, i.e. some of them may only be done once some other requirements are met first. In a situation where many undertakings will be literally starting from scratch requiring that they comply with all the requirements simultaneously is unjustified.

Thus, we strongly believe that ESRS should be phased in to a great extent after careful consideration of the sequential order of particular requirements and in alignment with the environmental permits, decisions and obligations demanded by Polish law already. We have provided more details and our proposals in the online survey.

In addition, please note that we are of the opinion that a company should be exempted from reporting comparative data with respect to the data for the first reporting period. At the same time, we are in favor of implementing transitional measures regarding specific disclosures to a given entity, which consist in allowing the entity to continue to use for 2 years the disclosures it has consistently used in the past, provided that certain conditions are met.

8. SUPPORT PACKAGE IS NECESSARY

We understand that the goals of ESRS EDs are important. However, they should not be achieved at the expense of entrepreneurs. Therefore, we strongly believe that if companies are required to report their ESG impact under ESRS, then entrepreneurs should receive a support package in the form of access to free tools, training, external consulting schemes, subsidizing the preparation of strategies in accordance with EU requirements and subsidizing the whole adaptation processes. In our opinion, some form of tax relief should be considered, which should encourage entrepreneurs to make the essential changes in the company. This may not be in a grant form but a widely available tax mechanism.

Moreover, the support package should include an information campaign on the ESRS. Many of the companies will be included in the reporting process for the first time as subject to the obligation - raising awareness in this area will improve the efficiency of the process and will help in achieving the given goals.

We hope that you will find our comments helpful and that together we will be able to make ESRS work also for business, without endangering the latter.

In case of any questions as to the above, please contact the coordinators of the online survey input from the ESG Committee: Agnieszka Skorupińska (agnieszka.skorupinska@cms-cmno.com, +48 693 545 183) and Borys Sawicki (Borys.Sawicki@skslegal.pl, +48 604 197 848).



Karolina Opielewicz

Member of the Management Board

Polish Chamber of Commerce