

## Eurocommerce reply to EFRAG’s public consultation on draft European Sustainability Reporting Standards (ESRS) Implementation Guidance documents: Materiality assessment implementation guidance (IG1), Value chain implementation guidance (IG2) and detailed ESRS datapoints implementation guidance (IG3)

This contribution is divided into two parts: (1) general/horizontal comments and (2) concrete proposals for modification of the Materiality Assessment Implementation Guidance (IG1), Value chain implementation guidance (IG2) and ESRS datapoints implementation guidance (IG3) referring to specific chapters of the documents.

### General/horizontal comments

1. We welcome EFRAG’s investment into providing useful and valuable implementation guidance.

We consider that this first set of draft IG provides useful and valuable additional support to companies for implementing the ESRS. Implementation of the CSRD and the ESRS is a complex exercise for many companies.

- For example, the IG1 provides useful guidance stating that the approach to impact materiality under GRI and ESRS is the same.

- Similarly, the IG2 provides helpful support by explaining the difference between a value chain worker vs a non-employee.
2. We urge EFRAG to reconcile the inconsistency with the ESRS, in particular on stakeholder engagement, type of data and value chain information.

We welcome the fact that EFRAG expressly acknowledges that it cannot develop concepts and reporting requirements that go beyond the content of the ESRS as published in the Official Journal of the EU on 22 December 2023 or interpret Union law. The guidance should support the application of sector-agnostic ESRS and not introduce inconsistencies. As stated in the IG, *“new provisions can only result from future standard setting activities (e.g., future possible amendments to draft ESRS), if applicable in accordance with the EFRAG due process”*.

In that context, we urge EFRAG to reconcile the inconsistency with the ESRS. Both IG1 and IG2 contain several instances where their current drafts go beyond what is contained the ESRS Delegated act:

- **Stakeholder engagement:** As stated in the draft IG1 explicitly (and by EFRAG representatives publicly), neither CSRD nor ESRS mandate a specific form of engagement with stakeholders (page 5, para 7) As stated in AR 8 ESRS 1: *“Materiality assessment is informed by dialogue with affected stakeholders. The undertaking may engage with affected stakeholders or their representatives (such as employees or trade unions), along with users of sustainability reporting and other experts, to provide inputs or feedback on its conclusions regarding its material impacts, risks and opportunities.”* AR 9 ESRS 1 lit b) further provides *“identification of actual and potential impacts (both negative and positive), including through engaging with stakeholders and experts. In this step, the undertaking may rely on scientific and analytical research on impacts on sustainability matters”*. We are therefore concerned to see the confusing language on stakeholder engagement in the IG (IG1 – Chapter 3.5). In practice, the value of direct stakeholder engagement is dependent on the business of individual companies, and, in certain circumstances, can be limited as counterparts do not have the insight of specific Impacts, Risks and Opportunities (IRO) of individual companies. In addition to the question of reliability and usefulness of direct engagement methods such as questionnaires, they create a burden on both the private and non-governmental sectors, which should not be underestimated. Companies are best placed to decide which form of stakeholder engagement is most suitable in the individual case.
- **Value of types of information:** The ESRS place quantitative and qualitative information on equal footing. We are therefore very concerned that the drafts of IG1 and IG2 introduce a hierarchy of information that places quantitative over qualitative information (IG1 - Chapter 5.3., FAQ 10 – page 37, para 168; IG2 FAQ 7, para 125). The ESRS correctly do not make such a distinction as the value of quantitative or qualitative information depends heavily on the circumstances. Disclosing a metric just because it is quantitative while it is not actually relevant to impact provides less transparency than providing a more detailed qualitative assessment.

- Value chain information:** The draft IG2 introduces an additional requirement on information in the supply chain and assumes that companies have the ability to always directly request information from “major tier 1 suppliers”. By directly referring to “major tier 1 suppliers” the IG2 indicates that with regard to these suppliers, companies are required to always obtain direct information from these suppliers. This is neither in line with the ESRS (ESRS 1 para 68) nor realistic. A direct relationship even with tier 1 suppliers does not necessarily mean better access to information. In fact, an undertaking may have greater difficulty to impose contractual clauses in this regard as this could jeopardize the business relationship. We also note that the concept of “major tier 1 supplier” is neither defined in the ESRS nor in the IG. We ask EFRAG to align the IG2 with ESRS 1 and delete this new concept (FAQ 7, para 127).
- Additional administrative burden:** We have concerns that the draft IG 1 and IG 2 introduce additional administrative burden by going beyond what is prescribed in the ESRS. For example, IG1 states that companies have to report on the materiality assessment process and the outcome of this process (IG 1 pg.9, para 29, pg 23 para 97 pg.39, para 186). However, according to para 32 ESRS 1, reporting on the outcomes of the materiality assessment process is only required with regard to the topic 'climate change', to the extent that climate change is not considered a material topic. For all other topics, reporting on the outcome of the materiality assessment is voluntary in the context of a finding of non-materiality. Similarly, neither the CSRD nor the ESRS set out any specific documentation obligations and thus the decision on how companies document the DMA process is left up to the companies and cannot be regulated by IG 1 (FAQ 12 - pg.38, para 176 / 177 and pg.42, para 206. Similarly, the draft IG2 (FAQ 8 - Page 28, para 141), refers to the documenting of the “reporting process”. While companies may document the material decisions related to the “reporting process”, there is no requirement in the ESRS to do so.

We highly recommend to EFRAG to bring the drafts in line with the ESRS on the above-raised points. Finally, and to support consistency between ESRS and the IG, the guidance should use the same terms with the ESRS and within the guidance to ensure clarity and avoid the creation of new concepts (e.g. in IG1 – Chapter 3.5. – page 25, para 106; or in IG2 – Summary in 7 key points, Chapter 2.3 – page 4, para 7 and page 12, para 50). We noted that the drafts introduce some uncertainty by not using the exact same terms of the ESRS or by not applying terms consistently throughout the guidance.

### 3. [We ask EFRAG to review the IG on how to measure the impact of mitigation actions and regarding the list of topics to consider.](#)

**Net vs. gross assessment of impacts:** As phrased currently, the draft IG1 (FAQ 23) includes conflicting guidance on how to measure the impact of mitigation actions, as well as conflicting examples. In one case, the example states that a technology can be considered as a part of the management of the material impact but cannot be taken into account in the materiality assessment. This is inconsistent with the statement that mitigation actions can be taken into consideration for the materiality assessment (as long as technical and economic feasibility is met and accurately described). We therefore ask EFRAG to review the IG in this area.

**List of topics to consider:** The guides indicate that the starting point of the materiality analysis is the list of topics, sub-topics and sub-sub-topics of the ESRS and any other breakdown that applies to the preparer due to its specific characteristics. For the purposes of presenting the results and, given that it is not mandatory to explain (except for Climate) why certain breakdowns are not material, it is at the discretion of the company how to present the results. The concept of a short-list, an aggregation of the previous list, had been discussed, but in the end, no reference was made to this concept. We believe that there are many doubts about how to present the results of the materiality analysis so that they are understandable by users and regulators and therefore a list of topics to consider should be added to the final Implementation Guidance.

#### 4. We ask EFRAG to provide further guidance on financial materiality.

**Financial materiality and time horizons:** The fact that assessing the financial materiality of impacts that will occur in different time horizons, in some cases, long term, implies that the concept of financial materiality differs from that considered for the purposes of the financial statements, which is intended for past events and a period of 12 months. In the case of financial materiality, although IFRS does not say how it should be calculated, due to audit practice, it is calculated as a % of BAI. In the case of financial information, there is no guidance in this regard. This point should be addressed in the final Implementation Guidance.

**Aggregation of impact and financial materiality:** In both cases, evaluation of financial and impact materiality, the assessment can be quantitative or qualitative (some impacts are very difficult to quantify), which implies that rules must be established to homogenise both ratings and add them. Once the evaluations are added, it is at the discretion of each preparer to define the threshold of what is considered material or not (for example, above 4 is material), this can lead to a lack of homogeneity between companies.

**Clarification on the absence of links to stakeholder engagement:** Some parts of the draft IG suggest that financial materiality is linked to stakeholder engagement. This is not in line with the ESRS and we ask EFRAG to correct this.

#### 5. We encourage EFRAG to ensure that companies are guided to use independent quality sources of external data.

The draft IG2 (FAQ 9 - Page 28, para 144 – 145) explicitly lists “non-profit organisations such as the World Justice Project, or other NGOs” as an example for external data sources. From our perspective, only independent sources shall be used as external sources. We also note that there is no legal basis for explicitly mentioning a specific NGO – in this case, the World Justice Project – so this reference should be deleted. We therefore suggest replacing the phrase “non/profit organisations such as the World Justice Project or other NGO” with “other independent report”.

## Suggested edits to the Materiality Assessment Implementation Guidance (IG1)

Chapter and Subchapter	Page number and reference	What is the concern?	What are we proposing?
Chapter 3.4.	pg 18 para 62	<p>This paragraph states that “an undertaking shall consider the full scope of environmental, social and governance matters as listed in ESRS 1 paragraph AR16) as well as in relation to any other matter that is material from an entity-specific perspective.” By referring to “the full scope of environmental, social and governance matters” the terminology used by the guidance is broader than the ESRS that use the term 'sustainability matters' as defined in Annex 2. However, we do not want the guidance to potentially expand the scope of sustainability matters that companies must report on.</p>	<p>Replace 'the full scope of environmental, social and governance matters' with the term 'sustainability matters'.</p>
Chapter 3.5	pg 25, para 1085	<p>Assessing the financial materiality of impacts that will occur in different time horizons, in some cases, long term, implies that the concept of financial materiality differs from that considered for the purposes of financial statements, which cover past events and a period of 12 months. In the case of financial materiality, although IFRS does not say how it should be calculated, due to audit practice, it is calculated as a % of BAI. In the case of financial information, there is no guide in this regard.</p> <p>This paragraph also indicates that the financial materiality assessment is also linked to engagement with users [of the sustainability statement] which is not the case under the ESRS. Users of the sustainability statements are defined in para 22(b) ESRS 1 by reference to a wide range of stakeholders (both economic and otherwise) that may use sustainability information on an undertaking. AR13 of ESRS 1 (financial materiality) does not refer to stakeholder engagement, whether that be all stakeholders, or the subset of stakeholders described as “users of the sustainability statement”. In addition,</p>	<p>Clarify how financial materiality is different from financial statements and provide guidance for companies on this point.</p> <p>Ensure that language does not imply that financial materiality assessment is linked to stakeholder engagement.</p>

		financial materiality is defined as information that is material for primary users of financial information, and the definition of “users of the sustainability statement” is considerably broader than primary users of financial information.	
Chapter 3.5.	pg 25, para 106	The paragraph uses confusing language regarding stakeholder engagement. It says that when "consultation" (which implies a direct, 2-way conversation) with stakeholders is not possible, only then should companies resort to other alternatives to understand the stakeholder perspective. This hierarchy does not exist in the ESRS's - there are no gating mechanisms or preferential methods of engagement defined.	We recommend EFRAG to use consistent language by only referring to 'stakeholder engagement/engagement of stakeholders' rather than using different terms such as 'consultation, input, feedback' etc. For the avoidance of doubt, the language used by EFRAG should in any event not indicate that there is a hierarchy between different types of stakeholder engagement, in particular not between engaging with stakeholders directly and engaging with their representatives.
Chapter 5.3., FAQ 10	pg 37, para 168	FAQ 10 implies that a quantitative IRO assessment methodology should be pursued first if “possible”. The ESRS do not explicitly designate a preference between quantitative or qualitative assessment approaches.	Remove the preferential/gating language around quantitative assessment approaches.
FAQ 12	pg.38, para 176 / 177	This FAQ states that even though the ESRS do not prescribe specific documentation, it is reasonable to expect a certain level of documentation to be needed for internal purposes. However, this goes beyond the requirements set out by the CSRD and ESRS. It is ultimately left up to the in-scope companies to determine if and to what extent they document the DMA process.	The answer to this FAQ should be limited to the information that neither the CSRD nor the ESRS set out any documentation obligations and thus the decision on how companies document the DMA process is left up to the companies.
FAQ23	P 44-45	This FAQ states that mitigation can be considered for actual impacts if it occurs before the incident; however, the example provided in para 217 notes 'mitigation activities, such as pollution containment or immediate stop of operations that were put in place before the incident are considered when	Include 'before and during the incident' within paragraph 217.a. when discussing how mitigation measures can be considered within the assessment of severity.

		<p>assessing the severity of the actual impact'. This statement includes examples of mitigation activities that we would expect to occur during the incident, not before.</p>	
		<p>The FAQ states that technical or other management measures for avoiding or mitigating potential impacts can be considered within the materiality assessment only when the assumptions around the adoption of such measures can be proven to be technically feasible, economically viable and accurately described in the report. However, the example provided in para 218.a. explains that a treatment technique is available, and the company plans to install this technology to mitigate a new production process with a hazardous substance. The example further states that this technology can be considered as a part of the management of the material impact but cannot be taken into account in the materiality assessment. This is inconsistent with the statement that mitigation actions can be taken into consideration for the materiality assessment (as long as technical and economic feasibility is met and is accurately described). It is not clear in this example whether, if there was sufficient management/leadership documentation of the plans for this technology to be implemented (to mitigate the potential impact), it could then have been considered within the materiality assessment.</p>	<p>Include an example as to where technical or other management measures to avoid or mitigate potential impacts in the future could be included within the materiality assessment. This would ideally include a use-case where 'standard operating practice' i.e., operating within existing environmental permitting requirements could be considered.</p>

### Suggested edits to the Value Chain Implementation Guidance (IG2)

Chapter and Subchapter	Page number and reference	What is the concern?	What are we proposing?
Summary in 7 key points	page 4, NB page 4, para 1	The IG2 only refers to a company's upstream and downstream value chain. Therefore, the definition of value chain used in the IG doesn't fully correspond to	We recommend clarifying this fact to avoid confusion. A clarification is included on p. 6 para 16 – but we suggest

		the definition of value chain set out in Annex 2 to the ESRS.	introducing the definition earlier, e.g. in the NB on p. 3.
Summary in 7 key points, Chapter 2.3.	page 4, para 7 page 12, para 50	This paragraph refers to “associates and other investees” included in the consolidated financial statements. This does not correspond with the ESRS (in particular para 67 ESRS 1) which refers to 'associates and JVs'. The term 'investee' is broader than 'associates and JVs' and is only used in para 50 ESRS E1.	We recommend sticking to the official terminology used in the ESRS and only referring to “associates and JVs” when making general recommendations.
Chapter 2	page 6, para 20d page 7, para 21a FAQ 4, para 94, 106 et seq.	According to this paragraph, the ESRS requires disclosures concerning the process and outcomes of the materiality assessment. Please see our comments above with regard to IG1 regarding the reporting on the outcome of the materiality assessment.	As stated in our comment on IG1, the reference to the outcome should be deleted.
Chapter 2.1.	page 9, para 28	We welcome this clarification but recommend citing the whole paragraph 64 ESRS for completeness.	Cite the whole paragraph 64 ESRS for completeness.
Chapter 2.2.	page 10, para 33(c)	The statement that "Scope 3 GHG emissions are expected to be material for many or most undertakings" is a conclusive statement on materiality but is sitting in the IG2.	We consider that this line is an overstep from what "guidance" should be and is making a conclusion. At least, this line should be referred to in IG1 as it is quite impactful to the double materiality assessment.
Chapter 2.3.	page 13, para 52	The current wording (“the following table illustrates specifically how to treat impacts arising from investments of the undertaking depending on their accounting treatment in the financial statements”) indicates that using the thresholds is mandatory.	Rephrasing the wording to 'shall indicate' is recommended.
FAQ 3	page 18, para 80	It is not clear which due diligence process is referred here.	We recommend citing the whole paragraph 45 ESRS 1 to clarify which due diligence process is referred to.
FAQ 3	FAQ 3	In some parts, the language used in this paragraph indicates that the proposed materiality process is mandatory.	First, it shall be expressly stated that the proposed DMA process set out in the guidance and the IG1 is a mere suggestion and that neither the CSRD nor the ESRS oblige companies to carry out

			the DMA in a specific way. Secondly, the overall wording should be rephrased to make this clear, i.e. by using 'may' or 'can' etc.
FAQ 7	FAQ 7, para 125	This para states quantitative measures of the impact are the most objective. However, the ESRS do not provide for a hierarchy of qualitative and quantitative information.	We are very concerned that para introduces a hierarchy on the value of quantitative over qualitative information where the ESRS treats them equally.
FAQ 7	FAQ 7, para 127	By directly referring to 'major tier 1 suppliers' the guidance indicates that with regard to these suppliers, companies are required to always obtain direct information from these suppliers. However, this is not stated in the ESRS and is also not manageable in practice.	This para should be aligned with para 68 ESRS 1 which states: "The undertaking's ability to obtain the necessary upstream and downstream value chain information may vary depending on various factors, such as the undertaking's contractual arrangements, the level of control that it exercises on the operations outside the consolidation scope and its buying power. When the undertaking does not have the ability to control the activities of its upstream and/or downstream value chain and its business relationships, obtaining value chain information may be more challenging". Just because a supplier is considered a 'major tier 1 supplier' doesn't mean that the requirements set out above are fulfilled.
FAQ 7	Page 26, para 131		Rephrase to "examples may include".
FAQ 8	Page 28, para 141	This paragraph states that companies shall document their efforts, the outcomes and how the information has been incorporated into the reporting process for the company's own	Delete this paragraph.  If not deleted, the paragraph should at least be more generalized, e.g.

		governance and for auditors. However, neither the CSRD nor the ESRS oblige companies to document the reporting process. If and how companies document the process shall be left up to the companies. Further, in practice especially documenting all efforts is not feasible because this would mean that every call, meeting etc. would need to be documented. This would be an unbearable burden for companies. In addition, by explicitly referring to the auditing process, it is likely that auditors - who will use this guidance in practice - will expect companies to provide documentation even though companies are generally not obliged to provide such documentation.	by only stating that “Companies may document the reporting process” or “Companies may document the material decisions related to the reporting process.”
FAQ 9	Page 28, para 144 - 145	This paragraph explicitly lists “non-profit organisations such as the World Justice Project, or other NGOs” as an example of external data sources. However, only independent sources shall be used as external sources. Further, there is no legal basis for explicitly mentioning the World Justice Project.	We welcome the clarification that companies are not required to use fee-based external sources.  We suggest deleting the example “non/profit organisations such as the World Justice Project or other NGO” and replace with “other independent reports”. In any event, the explicit reference to the WJP shall be deleted.

**Suggested edits to ESRS datapoints implementation guidance IG 3**

Overall, our members reported that they found the draft useful.

Improvements that could be made:

- Appendix B, Section 1: General context on pages 8 and 9 (paragraphs 5-6) provides the breakdown between mandatory irrespective of MA and data points subject to MA. This is not found in the corresponding Excel sheet provided by EFRAG and would be a valuable addition.
- Spelling out abbreviations and clearer headings would further facilitate use of the application.

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