

BDA-COMMENTS TO THE EFRAG PUBLIC CONSULTATION ON ESRS IMPLEMENTATION GUIDANCE

- The current state of the implementation guidance documents leads to **confusion and complexity**. To ensure optimal use and understanding, it is essential to refine and streamline the documents, making them clearer and more user-friendly. In particular, adequate guidance on the implementation of social standards is fundamental, which require mostly elaborate narrative reporting rather than enumerations. More comprehensive support and clear instructions are vital for successful implementation.
- The guidance would benefit from further clarity on **the inclusion of value chain information**. While paragraph 2 of IG1 – like elsewhere throughout the IG1 and IG2 – states that companies should report across the “entire value chain,” it is important to emphasize the existence of the legal “**LSME cap**”. This cap sets limits on the information that can be requested from small companies, as outlined in paragraphs 67 and 68 of chapter 2.8 in the Implementation guidance 2.
- To ensure effective implementation, it is recommended that the implementation guidance includes a dedicated section providing clarifications on the **distinction between “non-employees” as an integral part of the “own workforce”** (ESRS S1) and **“workers in the value chain”** (ESRS S2). This clarification will enable reporting entities to accurately identify and categorize individuals involved in their operations, enhancing their understanding of the reporting requirements within the ESRS framework. By providing explicit guidance on this distinction, companies can effectively report on their workforce and value chain engagements.
- Regarding paragraph 4 of IG1, which states that “Disclosure Requirements in ESRS 2 addressing cross-cutting matters are to be reported **irrespective of** the outcome of the materiality assessment,” it raises a question about the necessity of conducting a materiality assessment in this case. Clarity on this matter would be beneficial for reporting entities to ensure compliance.
- In paragraph 72 of IG1, it is stated that “Currently, until the sector standards are issued, sector sustainability matters shall be identified and assessed as entity-specific matters.” Additional guidance is necessary to clarify the extent to which “entity-specific disclosures” are required in cases where there is a lack of or insufficient Disclosure Requirements (DR), as mentioned in ESRS 1 paragraph 11. **It is disproportionate to expect sector sustainability matters to be identified and assessed as entity-specific in the implementation of sector-agnostic standards. Providing this as an optional requirement would be a more balanced approach.** Clarity on this issue would be helpful for reporting entities navigating the reporting process.
- In paragraph 102 of IG1, it is stated that Member States must ensure that undertakings inform **workers’ representatives** about sustainability reporting and engage in discussions regarding relevant information and the methods of obtaining and verifying it. To provide clarity, it would be beneficial to define the term “workers’ representatives”. Specifically, it would be helpful to understand whether this includes, for example, the requirement for consultation with European Works Councils (EWC) **at all times** or if there are other forms of representation that should be considered. Further guidance in this regard would aid in understanding the scope and obligations related to engaging workers’ representatives in sustainability reporting discussions.
- In paragraph 108 of IG1, it is mentioned that the conclusions of the ESRS financial materiality assessment should be supported by evidence, which can include the views and interests of users. However, it is important to clarify the **rationale for considering external users’** views. It is essential to maintain the objectivity of the report by primarily relying on objective internal facts. While external users’ views can provide valuable insights, they

should not overshadow the **importance of presenting accurate and unbiased information**.

- In paragraph 176 of IG1 – like elsewhere throughout the IG1 and IG2, it is highlighted that the ESRS do not prescribe **specific documentation** requirements. However, it is reasonable to anticipate that a certain level of documentation would be necessary for internal purposes. To provide clarity and assist reporting companies, **additional guidance** on the documentation process would be beneficial.
- Ensuring consistency in wording is crucial. In paragraph 66 of IG1, the term “**key** affected stakeholders” is used, while later on, only “affected stakeholders” is referenced. To prevent any potential confusion, it is important to avoid misleading wording throughout the document.
- In line with the inclusion of the question regarding the relationship between taxonomy eligible activities and materiality in Art. 8, it is also necessary to include a question in the FAQ on Art 18 of the EU taxonomy. The question to be addressed should focus on clarifying the **relationship between the minimum social safeguards and materiality**.
- In paragraph 130 of IG2, it is acknowledged that the effort placed on actors in the value chain (VC) should be **proportionate**. For example, undertakings are not required to query all direct suppliers and may exclude those that provide insignificant products or services (e.g., a small bakery delivering pastries occasionally for company events). This prevents undue burden on both the reporting company and the supplier, who may face similar requests from multiple customers. It is important to note that not every value chain actor needs to be reported on.

To clarify what is considered proportionate and provide further guidance to reporting entities, **additional examples, in particular, related to ESRS S1-S4 would be valuable**. Expanding the range of instances **that are deemed immaterial** would enhance understanding and facilitate compliance. Clear and comprehensive guidance will aid in determining what information is necessary for reporting and what can be considered as not material.

- Paragraph 149 of IG2 mentions that the **Wage Indicator** as one of the potential sources for calculating adequate wage benchmarks outside of the European Economic Area (EEA). However, it should be noted that it is a private initiative with its own limitations like any other benchmark that meet to some extent the criteria set out by the Sustainable Trade Initiative (IDH) (Roadmap on Living Wages, A Platform to Secure Living Wages in Supply Chains), including benchmarks aligned with the Anker methodology, or provided by the Fair Wage Network.