

Comment on the DRAFT EFRAG Implementation Guidance – IG 2 Value Chain

General comments on EFRAG ESRS Implementation Guidance 2 Value Chain

We appreciate that EFRAG is supporting preparer's ESRS application with its non-authoritative implementation guidance. To our understanding the disclaimer that "if anything in this guidance appears to contradict any requirement or explanation in ESRS, ESRS takes precedence." forms an integral part of the guidance paper. For the finalization of the document, it might be worthwhile to make that intention even more clear and to consider the following recommendations to not being understood to go beyond the ESRS requirements. In general, GDV considers that the draft Materiality Assessment Implementation Guidance (MAIG) and draft Value Chain Implementation Guidance (VCIG) do not need any major amendments at this stage. It is reaffirmed that the specificities of the insurance sector need to be taken into account for the development of sector specific guidance.

Differentiation between recommendations and requirements

Several passages in the documents from our perspective go beyond the ESRS requirements. For consistent application an alignment with the ESRS with regards to the terms "shall" and "may" would be useful.

Examples:

- §33c: The reference to the Carbon Disclosure Project (CDP) paper goes beyond the ESRS, as the standards do not mandate a consideration of CDP publications. Moreover, the materiality of scope 3 emissions has to be determined by each reporting undertaking. Therefore, we suggest deleting the footnote and to align the text with the ESRS.
- §39: From our understanding, the wording of §39 does not correctly reflect the ESRS requirements. As stated below, the term operational control is only mentioned in E1, E2 and E4 and is only applicable to those paragraphs where explicitly stated. Suggesting the application of this concept to more than the mentioned cases goes beyond the ESRS requirements. Going beyond the requirements should clearly be avoided.

- §45: As stated above, going beyond the requirements should clearly be avoided. Using "should" creates the impression that reporting undertakings have to comply with this requirement in order to be ESRS compliant. Since this is not the case, the wording should be adapted.

Providing contextual information

We recommend reviewing the interpretation guidance for misleading statements which are lacking contextual information. If relevant information is left out or requirements with regards to content, application or disclosures are mixed up, preparers might be misled.

Example:

- §33 c): While ESRS E1 §45c) states that "For many undertakings, Scope 3 GHG emissions may be the main component of their GHG inventory", VCIG 2.3 §33 c) formulates an expectation with regards to materiality of scope 3 emissions for many or most undertakings.

ESRS alignment of definitions and requirements

To serve its purpose it is crucial that the implementation guidance is aligned with the ESRS requirements, esp. with regards to the terms used or the illustrations that are developed. Therefore, the IG should use precise wordings and illustrations in line with ESRS. For instance, the following statements are deemed to being contradictory to the ESRS requirements or do not clearly align.

Examples:

- §47: The implementation guidance seems to go beyond the ESRS Standards when defining reporting boundaries, e.g., the operational control concept is additionally introduced for the S-standards to determine whether workers meet the definition of own workforce and workers in the value chain. Moreover, we would like to address that the reference to the concept of operational control for the S-standards does not clarify how to distinguish non-employee workers (as part of the concept of own workforce) from value chain workers. It would be helpful if the IG on VC included more information on the differentiation between the two types of external workers, as in practice the different types of workers mentioned in the ESRS are very hard to identify, esp. regarding the very limited data availability. Introducing the aspect of operational control in the IG in this context, however, does not give more guidance and should therefore be amended in the VC IG from our perspective.
- According to ESRS 1.62, the sustainability statement shall be for the same reporting undertaking as the financial statements. Art. 22 of the Accounting Directive clearly defines what constitutes a group of undertakings consolidated by a parent undertaking. The characteristics outlined there are also understood as the financial control concept. I.e., financial control is the guiding principle for the definition of the reporting undertaking. We acknowledge that, based on the guidance stemming from the GHG Protocol, there are some exceptions from this principle in relation to ESRS E1, E2, E4 (as per Level 2); however, the ESRS do not provide for such exemptions in relation to other ESRS, including the S ESRS. In summary, we have strong concerns as to

whether the content of §45 and §47 is consistent with the ESRS. We therefore urge to clarify in the VCIG that operational control is relevant for the aforementioned ESRS only, but not the S ESRS. An expansion of this concept to other ESRS can only be achieved by amending the ESRS themselves.

- FAQ #1 §72 (a): It should be considered that the draft CSDDD uses the term ‘established business relationship’, which is meant to be a business relationship, whether direct or indirect, which is, or which is expected to be lasting, in view of its intensity or duration and which does not represent a negligible or merely ancillary part of the value chain. This shows that the future CSDDD aims to limit the due diligence obligations to relationships where a certain connection is given and does not foresee a general principle to go beyond tier 1 business partners.
- FAQ #6: We strongly disagree with the statement made in §122. The FAQ states that an undertaking is required to provide entity-specific value chain metrics or to integrate value chain data into their metrics when, according to the outcome of its materiality assessment, this is necessary from an entity-specific perspective. To support this statement, reference is made to ESRS 1.11, ESRS 1.AR 1 to 5 and to ESRS 1.65. We do not agree that this conclusion can be drawn from the ESRS. The first part of the statement is true – the ESRS require the provision of additional entity-specific information, incl. metrics, if needed and if the qualitative information are fulfilled, which can include value chain information and/or metrics. However, we see no requirement to a) include value chain information in metrics defined by the ESRS as applying to own operations nor to b) include value chain information in the value chain metrics defined by the ESRS beyond what is prescribed by the underlying methodology. The entity-specific disclosure needs to complement the disclosures as required per the ESRS, however, the latter doesn’t need not be changed.
- FAQ #7 §130: While we acknowledge the proportional principle of applying effort when obtaining information of value chain components, the statement that not all direct suppliers need to be queried can potentially be misinterpreted, i.e., it could imply that in any case – and irrespective of the severity of materiality of the supply chain for the reporting undertaking – certain suppliers need to be queried. This in our opinion is not only reaching beyond any of the requirements set forth in the ESRS, it is also unrealistic given the magnitude of supplier relationships, especially for international corporations. We would therefore suggest deleting this paragraph, as following a best effort approach in obtaining VC information is anyway applicable and there is no need to further elaborate on this aspect.