

Feedback on EFRAG's draft ESRS Implementation Guidance documents

We welcome the opportunity to provide feedback on the ongoing EFRAG consultation regarding the three Implementation Guidance (IG) documents. You will find herewith Cefic's feedback on the IG published by EFRAG in December.

We appreciate the efforts put into the development of the Implementation Guidance documents, supporting the implementation of the European Sustainability Reporting Standards.

For future consultations, EFRAG should consider both the timing and duration in such a way that an adequate response can be provided. Given the current stage at which most entities are preparing their reports and given the scope of the draft implementation guidance, a consultation period of one month (vacation season) seems inappropriate to us.

IG 1: Materiality Assessment Implementation Guidance

There continues to be a lack of clarity about how to apply the concept of double materiality in practice, especially with respect to criteria and thresholds for and aggregation of locally specific sustainability impacts, risks and opportunities to be consolidated at a global level. As this is a foundational process for determining the scope and content of the disclosures, it is critical for undertakings to understand and apply the process in a consistent way. Inconsistent application by preparers risks resulting in a lack of comparability in company disclosures, undermining a key goal of the ESRS.

We recommend more clarifications and deep diving on the definition of double materiality to ensure a common understanding as there are still ambiguities in its application. We suggest the simplification of the concept of double materiality and clear indications on which disclosure requirements are mandatory (shall) and which are recommended (may).

Double materiality principles as described in existing reporting standards, such as GRI, IFRS, etc, need to be integrated in the ESRS. As the data points of disclosure deriving from double materiality are theoretical at this stage, this alignment will enhance (i) a real harmonization across EU Member States in the implementation of the CSRD requirements; and (ii) the adoption process for the companies that fall within the scope of the Directive and the reporting requirements referenced therein.

We would appreciate having more practical guidance on stakeholder engagement specifically dedicated to double materiality. This could include best practices (timeline, numbers, qualitative and quantitative ...), case studies, illustrative examples, or, if possible, a toolkit to assist organizations identifying material Impacts, Risks and Opportunities (IROs) during this exercise.

Chapter 1: Introduction

The impact materiality assessments will depend more on individual judgement than the assessment of materiality for financial reporting, at least in the first years of ESRS application. The IG 1 aims at helping undertakings in implementing materiality assessment processes, in order to foster consistent application and to address the issue of subjectivity. As an example: Chapter 3 of IG 1 contains guidance on assessing the materiality of actual impacts and presents an example on classifying impacts' severity into a range of five values, from low to high. This example suggests that severity and all the underlying factors (hence, impact materiality) is consistently scalable. However, each of the components (1) scalability, (2) the range of single intervals, and (3) assignment of an impact to one of the intervals depend on individual judgement, making the impact materiality assessment a combination of three individual assessments.

The high degree of judgement in the not yet developed consistency in undertakings' practice and impact materiality analysis will lead to divergent reporting results in the first few years of ESRS application – even in case of the same industry sector, similar sustainability topics or similar economic activities.

Chapter 5.3: FAQs on the materiality assessment process

As provided for in the Accounting Directive and recognised in paragraph 62 of ESRS 1, a reporting undertaking can prepare consolidated sustainability reporting without a matching financial consolidation and, in this instance, the materiality assessment should cover the entities in the consolidated sustainability reporting. Therefore, we propose the revision of paragraph 179 to recognise this.

Chapter 5.6: FAQs on reporting

As provided for in the Accounting Directive and recognised in paragraph 62 of ESRS 1, a reporting undertaking can prepare consolidated sustainability reporting without a matching financial consolidation and, in this instance, the materiality assessment should cover the entities in the consolidated sustainability reporting. Therefore, we propose the revision of paragraph 211 to recognise this.

We agree with EFRAG that the identification of impacts should be based on a gross assessment. However, the qualitative characteristics of information as set out in Appendix B of ESRS 1 should guide the decision whether to report on a gross or a net basis. We believe that a complete set of disclosures on impacts on a gross basis is neither relevant nor faithful if the probability of those impacts is very low. For example, a sustainability report that contains numerous topics that are not actually associated with any risks or impacts after considering avoidance measures might not meet the characteristic of faithful representation because it could obscure relevant information from the users of sustainability reports. Reporting would not provide any additional information for stakeholders if measures already implemented to avoid impacts were not considered when disclosing impacts or potential impacts. In such cases, the disclosures should be limited to cover brief information on the avoidance measures. However, this is not clear enough from the IG 1.

Additional questions to be considered

- How should the value chain be disclosed? Should the undertaking report for each served market?
- Is it mandatory to define irremediability axis or can the undertaking include that in scale and/or scope thresholds?
- What is the minimum number of material IRO required to classify the topic (or sub topic, or sub-sub topic) material according to the double materiality assessment?

IG 2: Value Chain Implementation Guidance

A clear and consistent method for consolidating sustainability data is missing from all disclosures. ESRS 1 should state which entities are included within the reporting boundary and how data should be consolidated from these entities. These provisions should be untangled from the issue of value chain reporting because this architecture applies whether the data being consolidated are value chain data or not. Content concerning consolidation could then be removed from the topical standards.

The summary of the VCIG

Under key point 7, the reference to ESRS E1 can be misleading, since the ESRS clarifies that operational control is also relevant for ESRS E2 and E4. We propose the wording “...which is relevant for some E standards.” instead of “...which is relevant for ESRS E1 Climate change.”

We propose the same clarification to be done under paragraphs 39, 46, 47 and 52.

Chapter 2: Navigating value chain under CSRD and ESRS

As provided for in the Accounting Directive and recognised in paragraph 62 of ESRS 1, a reporting undertaking can prepare consolidated sustainability reporting without a matching financial consolidation. Therefore, we propose the revision of paragraph 34 to recognise this.

As it stands, the draft IG 2 suggests that data from the parent and its subsidiaries must be consolidated in all cases, while data from additional entities over which the reporting undertaking has operational control must be reported in some cases and may be reported in other cases. This will lead to confusion and major inconsistencies in how data are presented between disclosures and companies. The root of the problem is that the ESRS only explicitly mention operational control in relation to E1-6, E2-4, and E4-SBM3 and only in the context of E1-6 is it explained in detail with the requirement to report additional information separately to the data from the parent and its subsidiaries.

The problem is compounded by paragraph 67 of ESRS 1 that mentions joint arrangements and associates exclusively in the context of value chain reporting, treating them as third parties, which conflicts with the idea of treating them as part of the reporting undertaking's own operations based on operational control.

Clarity in the guidance is very important for the undertakings. Therefore, we propose to strictly cluster the impact section under paragraph 52, as followed:

- a) Operational control: e.g. GHG
- b) Actors in the value chain
- c) Other relationships

It would also increase clarity to separate the impact section for Joint Ventures and Joint Operations.

Chapter 3: FAQ 7

We welcome the explanations on how to obtain VC related information stated in the IG 2. However, we believe that the FAQ 7 lacks reference to risk analysis with regard to impacts. Risk analysis is key to identify and assess/categorize impacts in the value chain. Categories include country risks, industry risks, and product risks, among other things. This should also be mentioned in FAQ7.

Additionally, we think that EFRAG should reformulate the statement in paragraph 130 of the IG 2 which indicates that, for an impact to be assessed material, the significance of products obtained from a certain supplier is of relevance. However, we believe it does not play the leading role because even insignificant products may be associated with material impacts. Finally, it is stated that the undertaking should aim to gather reliable data from its VC and that the reliability of information directly obtained from the VC may improve over time. In this regard, it could be better explained to which extent is the undertaking accountable for VC data and information.

Chapter 3: FAQ 8

It is stated that a reporting entity collects information about its upstream and downstream VC only to the extent that this is compatible with a reasonable effort. As the concept of “reasonable effort” is an entity-specific basis, additional examples of data and industries could be provided, in order to further explain this concept.

IG 3: List of ESRS datapoints

For each environmental ESRS, from E1 to E5, the Excel table should show clearly which DP are subject to MA and which DP are irrespective of MA.

In addition, the number of mandatory datapoints mentioned in the draft accompanying explanatory note of IG 3 and in the Excel table are not consistent. The colour code used in the Excel table and in the accompanying explanatory note of IG 3 should be the same to facilitate the understanding (e.g. colour codes for “Shall” and “May”). Red colour in Excel table is not in the legend.

The accompanying explanatory note of IG 3 should mention clearly the difference between “may” and “subject to MA”.

Regarding the table on page 8 of the accompanying explanatory text of IG 3, Data points are defined as mandatory disclosures which, according to the guidance, are to be applied irrespective of the materiality analysis (column 1) and only for environmental matters (IRO 1 requirements). According to the previous understanding, however, only requirements from ESRS 2 and the disclosure requirements from topic standards related to ESRS 2 that are subject to the materiality principle are mandatory. We propose the removal of the topic-specific datapoints marked as mandatory irrespective of the MA in column 1 including adjustment in the datapoint list if necessary.

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About Cefic

Cefic, the European Chemical Industry Council, founded in 1972, is the voice of large, medium and small chemical companies across Europe, which provide 1.2 million jobs and account for 14% of world chemicals production.