

**EFRAG CONSULTATION ON DRAFT ESRS IMPLEMENTATION GUIDANCE DOCUMENTS**

EuropeanIssuers' Response

02 February 2024

**I. GENERAL COMMENTS**

EuropeanIssuers firmly believes that sustainability reporting stands as a valuable tool for companies seeking to measure and manage their risks and impacts, to attract green investments and thus play a constructive role in achieving the objectives of the Green Deal. The new European Sustainability Reporting Standards (ESRS) need to be perfectly well understood by companies to be able to realise these objectives, and to avoid the perception of sustainability reporting as a compliance exercise. In this context, we welcome EFRAG's efforts in developing and publishing implementation guidance to support companies in their sustainability reporting journey and the implementation of ESRS.

Overall, we suggest to simplify the wording of the guidance, and improve its accessibility, especially for those preparing sustainability reports for the first time. This emphasis is critical, given that certain passages in the draft guidance might lead to confusion due to a lack of clear explanations or potential contradictions within the text. We therefore suggest some adjustments to further align guidance with the overarching goals of readability and consistency.

The numerous new reporting requirements introduced by the Corporate Sustainability Reporting Directive (CSRD), coupled with highly challenging concepts such as double materiality and value chain, give rise to a considerable sense of uncertainty within the market. We therefore respectfully suggest additional adjustments to be made to enhance the practical orientation of the guidance, and to make it more accessible and comprehensible. In particular, we advocate for the use of simpler terminology to explain new concepts. By adopting clearer language, we believe the documents will become easier to read, thus making them more accessible and useful for preparers, auditors, and users and, equally important, helping to ensure a uniform interpretation of ESRS within the EU.

The detailed comments here below reflect the feedback received by our constituents.

## II. SPECIFIC COMMENTS

### Draft EFRAG IG 1: Materiality Assessment Implementation Guidance (MAIG)

- **Clarifications on the disclosure of non-material matters**

The draft IG1 (2. *The ESRS approach to materiality*, paragraph 25) states that “By definition, the reporting excludes matters that are not material”. This statement seems to contradict the wording under the Act, ESRS 1 (8.2 *Content and structure of the sustainability statement*, paragraph 141) that refers to the inclusion of additional disclosures:

*“114. When the undertaking includes in its sustainability statement additional disclosures stemming from (i) other legislation which requires the undertaking to disclose sustainability information, or (ii) generally accepted sustainability reporting standards and frameworks, including non-mandatory guidance and sector-specific guidance, published by other standard-setting bodies (such as technical material issued by the International Sustainability Standards Board or the Global Reporting Initiative), such disclosures shall:*

*(a) be clearly identified with an appropriate reference to the related legislation, standard or framework (see ESRS 2 BP-2, paragraph 15);*

*(b) meet the requirements for qualitative characteristics of information specified in chapter 2 and Appendix B of this standard.”*

We therefore suggest removing the sentence “By definition, the reporting excludes matters that are not material” as it is more restrictive than the ESRS.

- **Scope of application of the materiality of information [Chapter 2.4]**

We believe that it would be useful to receive further guidance, including through examples, with reference to the definition of the materiality of the various datapoints; in fact in the standards and in the guideline there is a paragraph that clarifies that individual datapoints are not necessarily material even though the topic is material, but without making explicit criteria for making this judgment, nor examples.

We think this is an extremely relevant point since the preparation of the sustainability statement should not be an exercise of mere compliance but, rather an opportunity to elaborate useful information for the reader on impacts risks, opportunities and in this regard, it should not be watered down by ineffective disclosures. On the other hand, in the absence of uniform criteria for all

companies, in our opinion there is the risk could be that the principle of comparability and adequate representation of information could not be met. Therefore, it would be useful to be able to have practical examples to reason about here as well. To give an example, for certain industrial sectors, water and related consumption may be a material topic but the single indicator related to water intensity may not be very relevant in an industry operating with high volatility in commodity prices since the indicator is constructed using net revenues as the denominator. Even though such information would be easily available for publication it would not be useful for the user. On this aspect, we believe that further discussion in the guidelines considering such cases is necessary.

- **Deep dive on financial materiality: Setting thresholds [Chapter 3.7, Par. 124]**

It could be useful to provide some examples on the financial effects associated with dependencies on natural and social resources that do not meet (or do not yet meet) the criteria for accounting recognition and also on the process of setting adequate thresholds.

- **May the undertaking consider only the sustainability matters in ESRS 1 AR 16? [FAQ 8]**

Considering EFRAG's current work in developing the new sector standards, we would have liked to have more clarity in the guideline in terms of the materiality process to be followed until the sector standards are finalized or at least a reference to the methodology that will be presented in the sector standards. We would expect that with the emission of sector standards some topics would be considered material by definition.

- **Is a multi-sector group required to include metrics for the entire group or only data related to the material IRO? [FAQ 22, Par. 210]**

*“Once metrics have been assessed for materiality and determined to be material, the data for the entire group shall be included in the metrics”.* This sentence should be accompanied by another one specifying, that when the topic is material for only part of the group, there should be no disclosure of any related metrics for the whole group. Moreover, Paragraph 103 of ESRS 1 states:

*“Where the undertaking identifies significant differences between material impacts, risks or opportunities at group level and material impacts, risks or opportunities of one or more of its subsidiaries, the undertaking shall provide an adequate description of the impacts, risks and opportunities, as appropriate, of the subsidiary or subsidiaries concerned.”*

- **Clarification around gross approach when assessing IROs [FAQ 23]**

Clarification is welcome and the proposed IG1 point ensures greater consistency with the risk approach in financial statements where reflecting the current level of risk is expected. Still, the relevance of mitigation actions in assessing impacts for the materiality assessment could be further clarified.

As a general statement, gross impact could be defined as the current level of impact (current reporting period), not considering controls/actions that may be identified by the company to reduce the impact going forward but that are still not fully effective (e.g. due to uncertainties on technical, economic feasibility or other reasons...).

More specifically, 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.

Paragraph 215 in response to FAQ 23 states, "*As a general principle, environmental impacts are considered gross (i.e. before any mitigating actions) in the materiality assessment.*" But this sweeping proposition is almost immediately contradicted in the paragraphs below:

First, for 'Actual impacts' in paragraph 217, both explicitly in (a) ("*...mitigation activities...that were put in place before the incident are considered when assessing the severity of the actual impact*") and implicitly in (b) given the above statement must also apply to the past impacts referred to here. IG 1 FAQ 23, para. 217: "*Any remediation or rehabilitation activities put in place after the event but in the same period is not taken into account in the materiality assessment.*" In light of this sentence, it should be made clear that any remediation or activities already put in place for a dedicated topic in the past periods and not in the current reporting period shall be taken into account in the materiality assessment when determining whether or not the topic is material.

Second, for 'Potential impacts' in paragraph 218 where it clearly states, "*The materiality assessment of potential impacts can also consider the effect of...measures for avoiding or mitigating impacts in the future.*"

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 is accurately described).

We therefore ask EFRAG to review the IG in this area.

**Draft EFRAG IG 2: Value Chain Implementation Guidance (VCIG)**

- **Clarification on value chain impacts in terms of proportionality**

In line with GHG protocol approach on emissions, and with the scientific approach embedded in life cycle assessment - mentioned as a relevant / best practice source of information for materiality assessment purposes - environmental impacts related to the undertaking within its value chain should be limited to the share attributable/that can be associated to its product / activities. For example, an undertaking purchasing paper as office commodity (stationary) should not consider the potential impact on deforestation as its purchased volumes are minor compared to overall volumes produced by the paper industry.

- **Clarification and consistency across regulations in terms of value chain coverage [Par. 32]**

We recommend that the guidance documents also ensure coherence in terms of value chain coverage, especially with regards to the already applicable due diligence legislation but also with the forthcoming EU Corporate Sustainability Due Diligence Directive (hereafter “CS3D”).

The draft EFRAG IG 2 “Value Chain” - Paragraph 32 reads that “*CSRD and ESRS require that the sustainability statement include information about the upstream and downstream VC*”, whereas at the same time, the newly agreed European Directive on Corporate Due Diligence (CS3D) limits the downstream disclosure, with the notion of ‘chain of activity’, to the distribution, transport, storage and disposal of the product and does not include any due diligence on customers, sale or use of the product. Therefore, it is recommended that the IG 2 limits itself within the scope of the value chain in coherence with other due diligence legislation, including with the forthcoming CS3D.

This coherence would furthermore support the EU Commission approach to reduce companies’ administrative burden related to reporting obligations of 25 percent whilst providing the relevant level of information to the users of the sustainability statements in a consistent way.

- **Why does VC matter? [Par. 33]**

The example stops in identifying the “hotspot” in the VC but does not explain the next step, meaning what you need to disclose. For example, having identified working conditions as material which type of information do I have to ask to my counterparts (e.g., suppliers)? Is it enough to identify that I have the impacts, risks or opportunities or do I have to do more at the disclosure level as well? This aspect should be clarified.

- **From own operations to value chain [Chapter 2.3, Par. 36]**

More clarification should be provided on the consideration for subsidiaries that are excluded from the financial perimeter because they are not considered material from a consolidation point of view. The implementation guidance is just referring to the materiality guidelines without giving specific explanation on how to treat this typology for data collection. On this matter, we suggest to give companies the possibility to keep the reporting boundaries aligned and report in a separate note all the additional sustainability impacts referred to companies that are not relevant from a financial point of view (but that are relevant for specific sustainability aspects); this information should be focused only on those matters that are relevant for sustainability purposes avoiding the presentation of a full set of information/datapoints that would otherwise represent a mere compliance information.

**From own operations to value chain – Mapping of financial reporting concepts to sustainability reporting, [Table, Chapter 2.3, Par. 52]**

GHG emissions should be separated from other metrics (pollution, biodiversity) and a specific column should be added on how to treat the different cases for GHG and other topics. Moreover, it would also be useful to separate GHG scope 1,2 and scope 3.

It would be better to:

- make a specific reference, in the table, to incorporated and un-incorporated JOs and clearly state that they (both) must be tested for operational control (same as for the JOs);
- Clarify that the test for operational control should be conducted for JOs that are not structured through an entity (please see next comment for further explanation); this would help to treat similar cases (JO incorporated vs JO not incorporated) in the same way.

**From own operations to value chain – Mapping of financial reporting concepts to sustainability reporting, [Graph, Chapter 2.3, Par. 53]**

(Paragraph 52 and 53): In our view the guide does not clarify the treatment of Joint Operations in sustainability Reporting, i.e. when they should be included in the “own operations” metrics and when part of the value chain. In particular, table at par. 52 indicates for Joint Operations “same as for associates except for joint operations where the assets/liabilities belong to the reporting undertaking and so form part of own operations.”

Similarly, the flow chart included in para. 53 indicates that “Reporting undertaking” is defined as Parent plus subsidiaries (including leased assets and own assets/liabilities used in Joint Operations).

The guidance seems to suggest that the data related to JO's are part of the "Group" and therefore reported in the metrics related to "own operations".

However, this is in contrast with the ESRS E1 para. 46 indicating "when disclosing the information on GHG emissions... for contractual arrangements that are joint arrangement not structured through an entity the undertaking shall include the GHG emissions in accordance with the extent of the undertaking operational control over them"; This seems to indicate that according to the ESRS E1 DR6 if the enterprise holds operational control over the joint arrangement not structured through an entity it must consolidate GHG emissions in the operational control boundary (100% scope 1 and scope 2), otherwise it must report them in scope 3 on the basis of the business relationships maintained.

Therefore, we believe that this issue should be clarified in the guidelines, in order to give precise indications to the undertakings.

### Scope 3 emissions

There is a need to make more explicit the calculation methodologies of Scope 3 emissions and the recap of the emissions that must be included within scope 3; moreover it should be clarified that the information on JV/JO (incorporated and unincorporated)/associates not under the operation control but part of the undertaking's value chain should be presented on an equity basis. It might be useful to provide an ad hoc FAQ for this matter (calculation of scope 3 emissions).

This will be especially useful to understand how to avoid cases of double counting that could be particularly relevant when disclosing scope 3 emissions.

- **Clarification: Are financial assets (loans, equity and debt investments) considered business relationships that trigger VC information? [FAQ 2]**

The guidance provided under this FAQ implies in practice an enormous burden in an area where companies have very limited or no control - this is in contradiction with the 'reasonable administrative burden' principle that has been acknowledged during the development of the ESRS.

Indeed, as per point 58 under this FAQ, currently there are no additional guidelines or standards for financial institutions. Considerations made by non-financial companies at this stage might diverge and undermine the comparability principle.



In any case, it is recommended to limit this point to investments (acquisitions or equity stakes) in companies directly made by the preparer (reporting company), excluding investments through 'investment vehicles'.

Suggested alternative to be considered would be to include a governance requirement covering the description of how investments take into account sustainability elements/criteria.

- **How to assess and quantify the impacts of the VC resulting from business relationships?**  
**[FAQ 7, Par. 130]**

More emphasis should be placed on the link to the core activities of the undertaking and the relevance of the information represented, excluding less relevant information. In general, the effort imposed with respect to the consideration of Value Chain actors must be proportionate. The undertaking does not need to collect data from all the actors in its Value Chain and could exclude those who provide not relevant products or services; for example, for a manufacture entity, service contracts for legal or tax assistance could be considered, in general, less "risky" and relevant compared to those contracts strictly related to the production processes. As such, more emphasis should be placed on the link with the undertaking's core activities ("Prevailing Value-Chain") and the relevance of the data represented, clearly excluding less relevant information. On this aspect more examples could result very useful especially distinguishing between smaller and larger companies.

- **VC map – Table VC coverage map of Set 1 ESRS**

In E5-5 only Own Operations are considered and not the Value Chain.

### **Draft EFRAG IG 3: Detailed ESRS datapoints implementation guidance and accompanying explanatory note**

#### **Main comments**

- What shall be the total number of potential DPs? A number of 1,170 DPs circulated but we are unable to reconcile with this figure. For comparable analyses, we would suggest EFRAG to clearly indicate what is the total number of DPs and their breakdown / reconciliation table.
- On the Index sheet, it would be useful to recap the number of data points for each ESRS.



- The list does not appear sufficient to support a gap analysis. In particular, the following recommendations may be useful:
  - add a column after F to recap the data type according to the breakdown provided in Appendix B of the explanatory note, i.e. narrative / Semi-narrative / numerical.
  - while the ESRS requires the Company to assess the double materiality based on the topics / sub-topics / sub-sub-topics listed in ESRS 1 AR 16, the list of the data points does not provide the mapping between these topics and the data points. The consequence is that it is not possible to identify which data points are to be considered material following the double materiality analysis.
- It appears difficult to understand how to process the DPs relating to the tables. They seem to be excluded from the count of the "shall subject to double materiality", neither to the narrative/semi-narrative / numerical count. It may be useful for EFRAG to provide clarification on how to use these DPs, especially, as it seems to prevent reconciling the number of DP relating to S1.
- In our opinion, the MDR are processed as they should. Instead of considering that the batch MDR-P (for instance) counts as 1 DP for a considered topical ESRS, it should instead be counted as 6 DPs. We believe this approach would provide a more fair view of the total number of DPs that could be reported by an undertaking.
- A further suggestion would be to provide guidance on how to process MDR-M, as they are not considered in the topical ESRS.
- Regarding Appendix B - §3 and §8 - ESRS 2, we have noticed that the 7 DPs that are phased-in only apply to undertakings with less than 750 employees. Thus, we believe it would provide a fairer view to count  $134+7 = 141$  DP as "shall" in the tables presented in §3 and §8 and, then, to consider these 7 DPs as part of §12 (with the related table currently disclosed under §11).

#### **Inconsistencies**

- List - ESRS S1 - Voluntary data points: there are 60 "V" in column J while the explanatory notes states, in its Appendix B, that there are 58 voluntary data points associated with S1. How to reconcile both?
- ESRS S3 and S4 sheets, row 20 and 21: why is it written S1 in column A? Shall it not be S3 or S4 instead?

#### **Typos**

- Appendix B - §11: the paragraph seems to apply to all undertakings, while the table specifically refers to the undertakings with <750 employees. Is there any confusion between §11 and §12?
- Appendix B - §12: the paragraph seems to apply to undertakings with <750 employees, while the table specifically refers to all undertakings. Is there any confusion between §11 and §12?
- List - ESRS E2 - Line 10 - AR12: the "V" in column J is not of the same type as the other "V", preventing from using automated calculations such as COUNTIF formula to count the voluntary data points.
- List - ESRS S2 - Line 40: the S2 reference is missing in column A, preventing from using automated formulas to count the DPs
- Lastly, we have noticed some inconsistencies with regards to the DR naming. More specifically, in the sheets ESRS E1 and E2, IRO-1 is referred to as "E1.IRO-1" and "E2.IRO-1" respectively, while in E3 / E4 / E5 it is referred to as "IRO-1" (without the topical reference in front). Therefore, this inconsistency would prevent the possibility of automating the count and the breakdown of the DPs across all the sheets.