

ESRS for non-EU Groups

Stakeholder engagement
webinar

19 and 20 November 2024



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AGENDA

Welcome – Patrick de Cambourg, EFRAG SRB Chair

CSRD and Article 40: The legal context for non-EU Groups - Giulia Bottazzi, Legal Officer at the European Commission (DG FISMA)

- Q&A session facilitated by Chiara Del Prete, EFRAG SR TEG Chairwoman

Standard-setting approach and timing - Fredré Ferreira, Governance lead at EFRAG; Alexandra Veidner, Senior Technical Manager

- Q&A session facilitated by Chiara Del Prete



ESRS for non-EU groups

Articles 40a - 40d Accounting Directive

EFRAG Webinars
Brussels, 19-20 November 2024

Companies in scope (Art. 40a(1))

- **Non-EU** companies;
- **not listed** on an EU regulated market;
- with **net turnover generated in the Union > EUR 150 million** in each of the last two consecutive financial years; and
 - a) that are **ultimate parent of EU subsidiaries** that are either **large undertakings** or **listed SMEs**; or
 - b) that have **EU branches** with **net turnover > EUR 40 million** in the preceding financial year.

Content of sustainability report (Art. 40a(1))

❑ Information specified in Art. 29a(2):

- Points (a)(iii) to (a)(v) > the **plans** of the group, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the **transition to a sustainable economy** and with the limiting of global warming to 1,5 °C in line with the Paris Agreement and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 and where relevant, the exposure of the group to coal-, oil- and gas-related activities; how the group's **business model and strategy** take account of the interests of the group's stakeholders and of the impacts of the group on sustainability matters; how the group's strategy has been implemented with regard to **sustainability matters**;
- Points (b) to (f) > **time-bound targets** related to sustainability matters set by the group; role and **expertise of administrative, management and supervisory bodies** with regard to sustainability matters; group's **policies**; existence of **incentive schemes**; description of due **diligence process** implemented by the group; principal **actual or potential adverse impacts** connected with the group's own operations and with its value chain; **actions** taken to **identify and monitor** those impacts, and other adverse impacts; any actions taken by the group to **prevent, mitigate, remediate or bring an end** to actual or potential adverse impacts, and the **result** of such actions; and
- where appropriate, point (h) > relevant **indicators**.

❑ Information at the **(group) level** of that (ultimate) non-EU (parent) company

❑ NO Art. 8 Taxonomy Regulation disclosures

Requirements for EU subsidiaries/branches

- ❑ **Publish and make accessible** the sustainability report (Art. 40a(1) 1st and 3rd subparagraph) accompanied by an **assurance opinion** (Art. 40a(3) 1st subparagraph) and, where applicable, the **statement that the non-EU company did not make the necessary information available** (Art. 40a(2) 4th subparagraph)
- ❑ Where the information is not available, **request non-EU company to provide all necessary information** (Art. 40a(2) 3rd subparagraph)
- ❑ If not all required information is provided, **draw up, publish and make accessible** the sustainability report containing all information in its possession and **issue a statement indicating that non-EU company did not make the necessary information available** (Art. 40a(2) 4th subparagraph)
- ❑ If non-EU company does not provide the assurance opinion, **issue a statement indicating that the non-EU company did not make the necessary assurance opinion available** (Art. 40a(3) 2nd subparagraph)
- ❑ If required by national law, **send information to the relevant Member State about net turnover** generated in that Member State and in the Union by the non-EU company (Art. 40a(1) 6th subparagraph)

ESRS to be used

- ❑ Sustainability report to be drawn up in accordance with:
 - a) ESRS for certain non-EU companies (default) (Art. 40a(2) 1st subparagraph); or
 - b) ESRS full or equivalent (optional) (Art. 40a(2) 2nd subparagraph).

Digitalisation

- ❑ No digital format required
- ❑ Empowerment to require machine-readability for purposes of accessibility on European Single Access Point for companies' public financial and sustainability information (ESAP) (Art. 33a)
- ❑ Sustainability report and statements accessible on ESAP from January 2028

Assurance of sustainability reports (Art. 40a(3))

- ❑ Assurance opinion expressed by **one or more person(s) or firm(s) authorised to give an opinion on the assurance of sustainability reporting** under the national law of the non-EU company or of a Member State
- ❑ If the non-EU company does not provide the assurance opinion, the EU subsidiary or branch shall issue a **statement indicating that the non-EU company did not make the necessary assurance opinion available**

Publication requirements

- ❑ The EU subsidiary or branch shall publish the sustainability report together with the assurance opinion (and, where applicable, the statement indicating that non-EU company did not make the necessary information available) **within 12 months of the balance sheet date of the financial year for which the report is drawn up**, as provided for by national law in accordance with the Company Law Directive (Art. 40d(1))
- ❑ Where these documents are not made accessible, free of charge, to the public on the website of the national business register, they must be made **accessible to the public in at least one of the official languages of the Union, free of charge**, no later than 12 months after the balance sheet date of the financial year for which the report is drawn up, on the **website of the EU subsidiary or branch** (Art. 40d(2))
- ❑ **Requirements applicable from financial year 2028** (first publication in 2029) (Art. 5(2) 2nd subparagraph CSRD)

Responsibility for compliance

- ❑ Branches are responsible for **ensuring, to the best of their knowledge and ability**, that their **sustainability report is drawn up** in accordance with Article 40a, and that that report is **published and made accessible** in accordance with Article 40d (Art. 40c 1st subparagraph)
- ❑ Members of the **administrative, management and supervisory bodies of the EU subsidiary** have **collective responsibility** for **ensuring, to the best of their knowledge and ability**, that their sustainability report is **drawn up** in accordance with Article 40a, and that that report is **published and made accessible** in accordance with Article 40d (Art. 40c 2nd subparagraph)

Requirements for EU Commission

- ❑ Adopt ESRS for certain non-EU companies by **30 June 2026** (Art. 40b)
- ❑ Make publicly **available on its website a list of the non-EU companies that publish a sustainability report** (Art. 40a(4) 2nd sentence)
 - Member States may inform the Commission on an annual basis of the EU subsidiaries or branches that published a sustainability report and of the cases where a report was published but where the EU subsidiary or branch has issued a statement indicating that non-EU company did not make the necessary information available (Art. 40a(4) 1st sentence)

Thank you



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ESRS for Non-EU groups (NESRS)

ESRS for non-EU Group (NESRS)



Required by art 40(a) of CSRD



The delivery to EC is required by end of 2025



The consultation period to start in Q1 2025 at the latest



Meetings agendas and documents available [here](#)
(with links to on-demand or live discussions)



Project timeline

Date	Who	Objective
7 Nov	SR TEG	First discussion on working papers
18 Nov	SR TEG	Preparation for vote
21 Nov	SR TEG	Recommendation to SRB
4 Dec	SRB	Initiation of approval
12 Dec	SRB	Approval for issuance
18 Dec	SRB	Approval for issuance (if required)
Jan 2025		ED for consultation (120 days)



Disclosure content of non-EU ESRS

Article 40a says: “[...] a sustainability report covering the information specified in points (a)(iii) to (a)(v), points (b) to (f) and, where appropriate, point (h) of Article 29a(2), at the group level, or, if not applicable, the individual level, of the third-country undertaking.”

Excludes the following points in article 29a:

2. The information referred to in paragraph 1 shall contain:

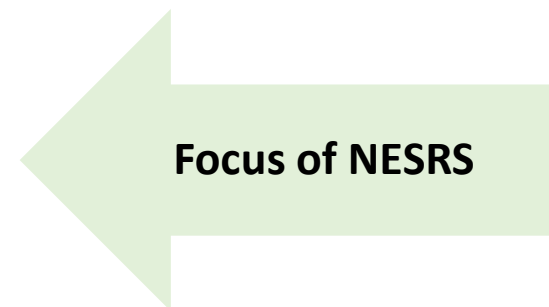
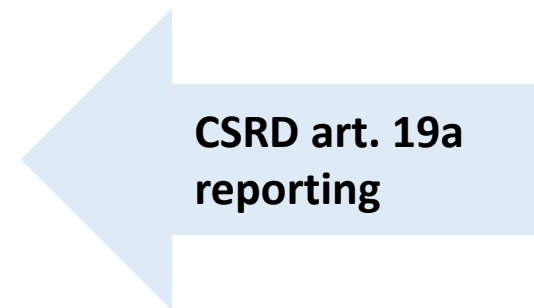
a) a brief description of the group’s business model and strategy, including:

- (i) the resilience of the group’s business model and strategy in relation to risks related to sustainability matters;
- (ii) the opportunities for the group related to sustainability matters;

g) a description of the principal risks to the group related to sustainability matters, including the group’s principal dependencies on those matters, and how the group manages those risks;

Relevant impacts

- Impacts related to activities of EU companies and branches
- Impacts related to sales of products and provision to services to natural and legal persons in the EU



Perimeter of disclosures

- **Global scope:** all activities by the consolidated group
- **EU scope:** impacts related to sales of products and provision to services to natural and legal persons in the EU

Given focus on impacts, no carving out of subsidiaries or branches – perimeter remains the same for both options

18A - The sustainability report at the group level of its ultimate third-country parent undertaking under NESRS shall be for the group of the ultimate third-country parent. As detailed in paragraph 62 below, the sustainability report under NESRS is for the same reporting undertaking i.e., the group financial statements of its ultimate parent undertaking governed by the law of a third country.

Global

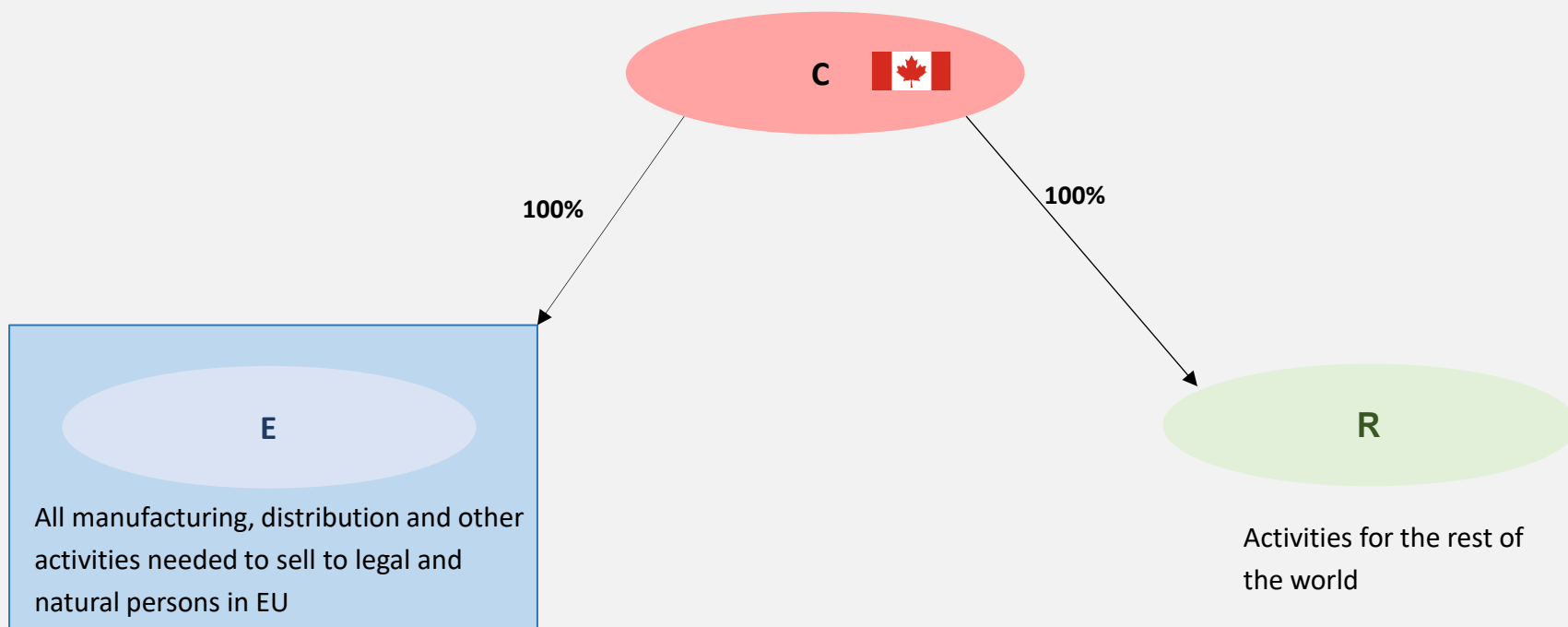
18B Regardless of the provisions of paragraph 18A, the undertaking has the option to prepare the NESRS sustainability report and exclude information about the impacts of sales of goods or provision of services to natural and legal persons outside the European Union. This only relates to reporting pursuant to the disclosure requirements in the topical standards other than NESRS E1 *Climate change*. If the undertaking makes such a decision, it shall state this clearly as required in NESRS 2 BP 2 – *Disclosures in relation to specific circumstances*.

Mixed:

- Global for ESRS 2 and E1
- Exclude impacts related to non-EU for other topical standards

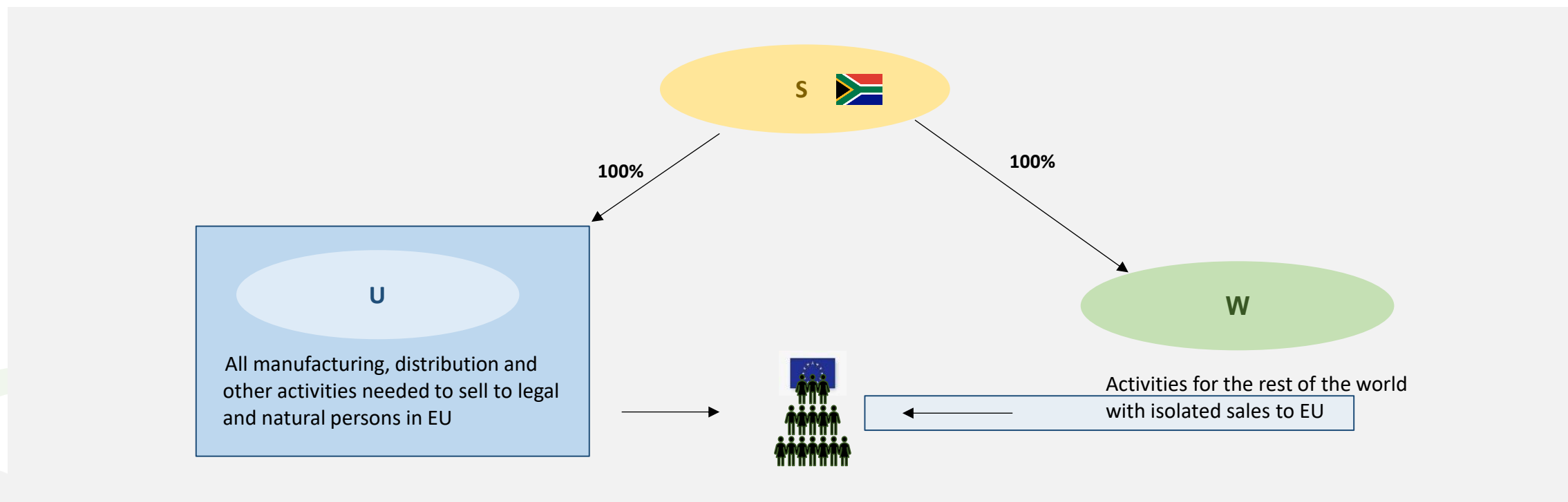
Perimeter of disclosures: Example (a)

A Canadian headquartered group, named C, with such activity in the EU that an EU subsidiary has to report under article 40a for the group. Also assume that the Canadian parent has two intermediate holding companies: One for production and distribution of sales of products to the EU, called E and one for the rest of the world, called R.



Perimeter of disclosures: Example (b)

A South African headquartered group, S, with such activity in the EU that an EU subsidiary undertaking has to report under article 40a for the group. S has manufacturing plant and distribution units in Europe for its sales to EU customers under a European subsidiary – U. There are also some isolated transactions with some EU clients directly from South Africa via an intermediate holding company called W. The NESRS sustainability report using paragraph 18 B would also capture the impacts related to these isolated transactions (on the assumption that the related sustainability matters are material).



Perimeter of disclosures: Example (c)

A third example is that of an **integrated manufacturing and distribution system** which does not differentiate in their value chain and operations between the location of customers during the manufacturing phase.

In this case, preparers using **option 18B** would have to perform a **materiality assessment for topics beyond climate designed to capture impacts (also arising outside Europe) when they are connected with EU sales of goods or provision of services**. This would also mean for example a **quantification of the metrics for impacts, wherever they emerge, when connected with sales/services to the EU**.

Comparison of main characteristics

ESRS Set 1	NESRS
12 standards: 2 cross-cutting + 10 topical	12 standards: 2 cross-cutting + 10 topical
Double materiality	Impact materiality only (as per CSRD: risks, opportunities and resilience excluded)
Perimeter of disclosure: Global	Perimeter of disclosure: Global or Mixed approach; or undertaking can decide to apply full set of ESRS Set 1
Includes Value Chain	Includes Value Chain
Incorporation by reference	Removed
Transitional provisions, phased-in disclosures to ease reporting	Transitional provisions apply for undertakings who will surpass the qualifying criteria of article 40a of the Account Directive for reporting periods commencing on or after 1 January 2029.
EU Taxonomy related disclosures	Removed

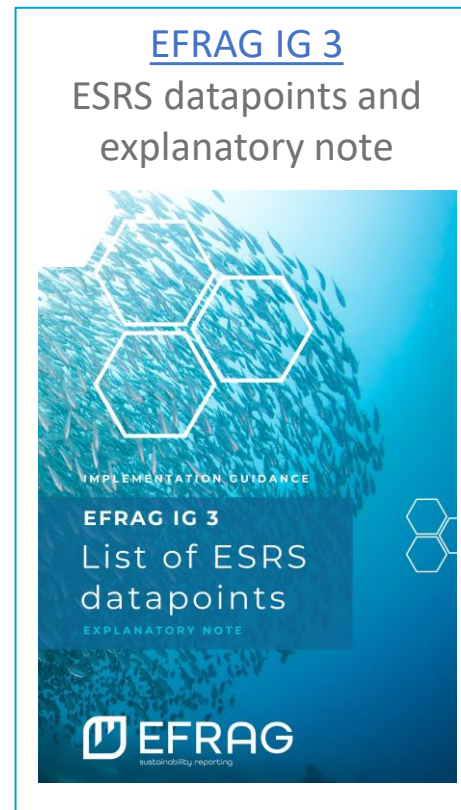


Appendix: further sources of information

- *EFRAG NESRS webpage:* <https://www.efrag.org/en/projects/noneu-groups-standard-setting/research-phase>
- *European Commission's FAQ's:* https://finance.ec.europa.eu/document/download/c4e40e92-8633-4bda-97cf-0af13e70bc3f_en?filename=240807-faqs-corporate-sustainability-reporting_en.pdf
- For questions on legal interpretation of article 40a to d: FISMA-CSR@ec.europa.eu
- EFRAG Secretariat: NESRS@efrag.org

Implementation support: IG's

The first three ESRS IG's were published on 31 May 2024.



- IG is developed on EFRAG SRB initiative or in responses to question on Q&A platform.
- **Non-authoritative:** supports understanding of ESRS and illustrates the content with examples and FAQs but **cannot go beyond content** of issued ESRS nor include new provisions.
- Any approach or methodology illustrated is a **possible way to implement the standard.** Determination of implementation approaches stays in the responsibility of the preparer
- Location: <https://www.efrag.org/en/projects/esrs-implementation-guidance-documents>
- Working on IG's for transition plan



EFRAG ESRS Q&A Platform.

The ESRS Q&A Platform aims to collect and answer technical questions that remain unresolved after thorough analysis by stakeholders to support the implementation of [European Sustainability Reporting Standards \(ESRS\)](#).

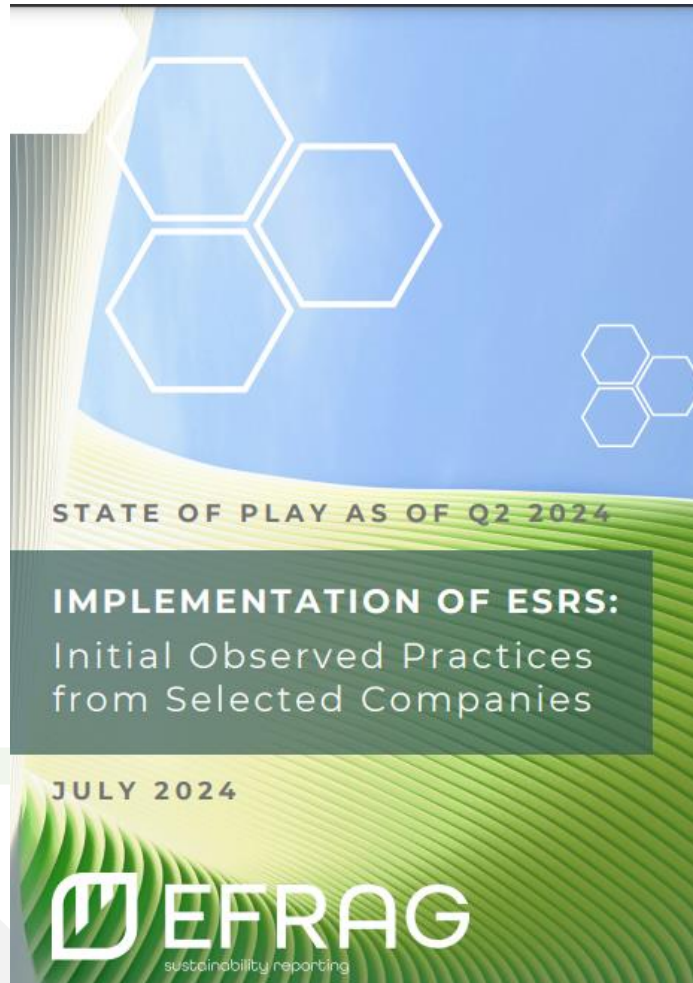
To ask a question on ESRS, please complete the electronic form through this website providing your contact details, your question(s) and relevant information that will help us to get the correct understanding of your question(s). In case insufficient information is provided by the submitter to support the assessment of the question, for instance by not including a suggested answer to the question raised, EFRAG may have to reject it. EFRAG will not address questions that relate to individual facts and circumstances. For this reason, you are also requested to explain why the issue covered by your inquiry is expected to be relevant for a wide group of preparers and/or other stakeholders.

- Questions can be submitted [here](#)
- Log of questions [here](#)
- Compilation [here](#)

More than 650 questions asked



Initial observed practices from selected companies

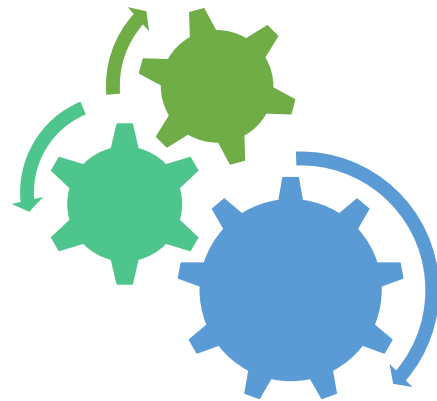


- [Educational material](#) (no public feedback)
- It illustrates preliminary practices of ESRS implementation
- Based on interviews of 28 large EU-headquartered undertakings across eight sectors split between financial and non-financial enterprises.
- The emerging practices were analysed against four focus areas particularly relevant to the implementation of ESRS: Materiality assessment, Value Chain, Gap analysis on datapoints, ESG reporting organisational approach.
- The study intentionally focuses on larger undertakings and thus is not representative of the diverse mix of companies that will apply the ESRS.

Interoperability workstreams

Objective: To avoid double reporting

- Financial materiality definition aligned with IFRS Foundation
- Impact materiality definition aligned with GRI
- Implementation support material issued jointly
- Paving the way to digital interoperability



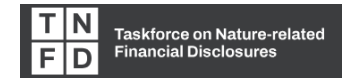
- EFRAG and IFRS Foundation [interoperability guidance](#) (ESRS and IFRS S standards)



- GRI-ESRS interoperability [index](#)



- Mapping with the [TNFD](#)



- MoUs with CDP; CEN-CENELEC



- New MoU's signed: TISFD



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Entities can support EFRAG's mission and activities in the development of draft ESRS!

ADVANTAGES

- Visibility on website
- Private meetings with the EFRAG high-level representatives
- Mention in Annual report
- Reserved seats at physical events
- A possible EFRAG representation in the entities' events
- Use of “**Friend of EFRAG**” logo



[Brochure](#)

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