



AUSTRIAN FINANCIAL REPORTING AND AUDITING COMMITTEE

Template for comments on draft ESRS Delegated Act

The draft delegated on European Sustainability Reporting Standards (ESRS) comprises: the main text of the legal act; twelve draft standards (annex I); and a glossary of abbreviations and defined terms (annex II).

The twelve draft standards in Annex I are:

Group	Number	Subject
Cross-cutting	ESRS1	General Requirements
Cross-cutting	ESRS2	General Disclosures
Environment	ESRS E1	Climate
Environment	ESRS E2	Pollution
Environment	ESRS E3	Water and marine resources
Environment	ESRS E4	Biodiversity and ecosystems
Environment	ESRS E5	Resource use and circular economy
Social	ESRS S1	Own workforce
Social	ESRS S2	Workers in the value chain
Social	ESRS S3	Affected communities
Social	ESRS S4	Consumers and end users
Governance	ESRS G1	Business conduct

Each standard is divided into numbered paragraphs. Each standard also has an appendix A containing “application requirements” which are numbered as AR 1, AR 2 etc. Some standards also contain additional appendices.

To facilitate analysis of comments, respondents are kindly requested to use the simple template below when sending their comments.

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1. General comments

AFRAC is pleased to provide feedback to the European Commission's (EC) draft Delegated Acts. We congratulate the EC for issuing the draft DAs with the ESRS and reiterate our congratulations to EFRAG for delivering their Technical Advice concerning the draft ESRS to the EC. We very much welcomed the first set of ESRS, which had been developed by EFRAG under extremely challenging deadlines as a basis for the EC to develop the ESRS.

We recognise that these ESRS represent considerable improvement in comparison with the last call for public consultation as Exposure Draft (ED): they are now better organised, clearer, more concise, more streamlined, and better aligned with international standards.

AFRAC has always supported European Sustainability Reporting Standards (ESRS) as a much-needed step toward to the harmonisation of reporting practices and as a accelerator for providing relevant, comparable and verifiable sustainability-related information.

Although we appreciate the adoption of the technical advice provided by EFRAG in November 2022 into the Draft Delegated Act with the aim to assist preparers to implement sustainability reporting, however, we are still concerned about the remaining tight timeline due to the huge implementation challenges (for example human resources, IT/data processes, consultancy capacities). There ist still a remaining lack of clarity for many datapoints or for the process of materiality analysis and ESG risk assessment.

We have always supported principle-based standards, which are underpinned by materiality. We welcome the European Commission's (EC) ESRS approach and the other reliefs in the draft Delegated Act (DA). However, we reiterate our call for guidance, particularly concerning double materiality, especially on financial materiality and the ESG risk assessment.

In addition, we suggest that the EC ensures that the ESRS are clear, robust, consistent and proportionate and as a result:

- a) improves, clarifies and provides definitions of all terminology (we list several detailed suggestions below);

- b) makes sure that the contents of the standards meet their objectives (e.g., ESRS are quite inconsistent in prescribing or providing all together "financial effects" metrics, which makes it hard to meet the objective of understanding "*the financial effects [...] of risks and opportunities arising from the undertaking's impacts and dependencies*").

We also support the additional phase-in provisions for companies with less than 750 employees. However, it is unclear for us how the EC arrived at the new arbitrary limit of 750 employees, as this will create two categories of PIEs. There is no coherence with NFRD, PIEs will be divided in two groups, which will make the application even more complex.

We question the change in materiality assessment that all standards and all disclosure requirements and data points within each standard will be subject to materiality assessment by the undertaking, with the exception of the requirements of ESRS 2. Moreover, in the interest of clarity and due to the specifics of the financial sector we strongly suggest that value-chain related KPIs should be required as part of the sector specific-standards (except for scope 3 emissions).

Following ESRS 2 para 28, 33 and 36 a reporting entity may decide that datapoints that derive from other EU legislation listed in Appendix B of ESRS 2 are not material from its own perspective. The materiality assessment does not necessarily include the needs of the addressees of the non-financial reporting like banks or insurance undertakings, which need this information in order to meet their own reporting requirements. Some constituents question whether the materiality assessment should apply to the reporting requirements required by European law as listed in Appendix B of ESRS, while other constituents understand that those reporting requirements shall be deemed to be material in any case when considering the stakeholder's perspective. We address this issue in order to clarify whether the reporting requirements in Appendix B are mandatory or subject to individual materiality assessment. This issue could be further clarified in the guidance document for "materiality assessment".

Some further important issues remain and should be addressed in the final ESRS; in particular,

- The extension of materiality assessment to data points needed for SFDR Principal Adverse Impact (PAI) reporting creates an inconsistency, which has to be addressed by the EU-Commission (EC), because, at present, no such materiality assessment is allowed within SFDR. This issue could be solved in the following ways, in order of preference:
 - o Requirement that SFDR PAI datapoints deemed immaterial by investee companies are reported as "qualified 0". This would allow FMPs to easily collect and consolidate investees' data, and the responsibility for reporting a "qualified 0" would be born by investee companies.
 - o Clarification that, if SFDR PAI information is deemed immaterial by investee companies and is, therefore, not included in their sustainability reports, FMPs can treat this lack of data as a "qualified 0" and are not required to seek data in another manner.
- The ESRS remain very ambitious in covering all aspects of sustainability (environment, social and governance matters) extensively. Companies will face a significant implementation challenge when applying the standards for the first time and it is, therefore, vital that application guidance



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is provided in time to assist companies during their implementation efforts and in order to provide clarity about the way the new standards should be applied. We ask the EC to determine a clear timeline for the provision of (or for mandating EFRAG to provide) this much needed guidance.

- Quantitative metrics should be limited to companies' own operations in a first step, at least until there is further guidance on how financial institutions shall report on their value chain. It does not only require a certain implementation period to implement or extend reporting to value chain counterparts, but there are also data availability issues as well as the lack of mature aggregation methodologies, which would not allow meaningful and comparable reporting upon first implementation (except for Scope 3 GHG emissions). We support most quantitative metrics to be currently limited to own operations. However, there still remain datapoints to which this limitation does not apply, either explicitly (e.g. ESRS E4 AR 25, which additionally contradicts the main body) or implicitly (e.g. ESRS E4 para. 17c, due to the lack of a reference to own operations). To make sure that value chain-related reporting is feasible and also meaningful for users, this issue should be resolved by sector-specific ESRS. This would avoid legal uncertainty, would be in line with the overall objective to reduce the reporting burden and would facilitate first implementation. By starting with reporting on own operations, companies may build up resources and advanced training on the broad range of ESG topics, which can subsequently be utilized for reporting quantitative metrics on the value chain also beyond Scope 3 GHG emissions.

Furthermore, while we appreciate the fact that the EC has reduced the number of mandatory datapoints and has introduced additional phase in to bring some level of proportionality to the implementation effort, we are still concerned about the application of the extensive ESRS.

The fact that not all information required by the financial sector is classified as material and thus mandatory undermines the concept of vertical alignment. There is the problem for the recipients who need this information due to legal regulations that an additional effort and an automated data exchange will not be guaranteed. There is also the problem that the corresponding individually requested information is not subject to auditing if it is not voluntarily included in the sustainability report.

We want to reiterate that the coherence to the EU legal framework (e.g., upcoming CSDDD) is of utmost importance to avoid inconsistencies within EU regulations.

We believe, that stakeholders in the reporting ecosystem will need more support. We applaud the EC for setting up an interpretations and guidance committee jointly with EFRAG.

2. Specific comments on the main text of the draft delegated act

3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
ESRS 1	Para 18	We welcome that the EC has changed some of the reporting requirements from "shall consider disclosing" to "may disclose" in the ESRS, clarifying that such disclosures are voluntary. However, there are areas for which the term "shall consider" is still used (e.g., as regards the use of the PCAF framework for financed and insured scope 3 GHG emissions in ESRS E1-6 AR47(b)). The EC should clarify in the description of "shall consider" requirements under ESRS 1 para. 18 that it does not constitute a formal requirement.
ESRS 1	Para 27-30	Performing the materiality assessment requires undertakings to identify and assess the materiality of sustainability matters and to disclose information according to the DRs related to that specific sustainability matter in the corresponding topical ESRS. As there is no link between the DRs and the sustainability matters we recommend to provide a respective overview linking sustainability matters with disclosure requirements.
ESRS 1 ESRS S2	Para AR 16 Para 2	Whereas the sustainability matters related to ESRS S1 cover the aspects of working conditions, equal treatment and other work-related rights the DRs of S2 mainly focus on human rights, and health and safety. Further information as required by S2 Para 2 will be difficult to obtain and assessments can only be performed on the basis of publicly available information that probably cannot be assured (i.e. adequate wages, equal pay, training, harassment, etc). We recommend to redefine the sustainability matters in ESRS 1 para AR 16 and ESRS 2 para 2 and link them to the DR.
ESRS 1	Appendix E	The flowchart of determining disclosures under ESRS seems to be incomplete as the section regarding omissions of DRs and the explanation why a topic is not material (ESRS 1 para 31) needs an additional decision layer – "Is the topic material?" – which is currently not included. If the topic is material, the next applicable layer should be "Is the topic covered by a topical standard?". In case the topic is not covered by a topical standard, there should be a reference to ESRS 1 para 30b ("disclose additional entity-specific disclosures (see paragraph 11 and AR 1 to AR 5 of this standard) when the material sustainability matter is not covered by an ESRS or is covered with insufficient granularity."), which is also currently not included. (For a suggested amended flowchart see appendix at the bottom)
ESRS 1	Appendix E	The middle box: "Has the undertaking established policies, taken" seems to be incomplete, as the meaning is not clear.
ESRS 2	SBM 3 Para 46-49	DR SBM 3 seems to require the disclosure of the financial effects of all IROs in total. In ESRS 1 Appendix C, the quantification of the financial effects (e.g. E1-9, E2-6, E3-5, E4-6, E5-6) during the first 3 years is not required (given the respective phase-ins). Since the financial effects from SBM3 would result from the individual phase-in elements, this

		would imply that the phase-ins could actually not be exploited. SBM 3 should be clarified. Therefore, SBM 3 should be clarified.
ESRS 2	AR 48(d)	We welcome the modification to align the materiality requirements with financial materiality. However, we are not sure what the term “significant” means: “material impacts, risks and opportunities for which there is a <u>significant</u> risk of a material adjustment within the next annual reporting period”. We are not aware that the term “significant” is used in financial reporting (e.g. in IAS 37 there is “virtually certain” regarding the recognition of contingent assets or “highly probable”).
ESRS 2	Appendix C	Regarding SBM-3 ESRS E4 should have been included as well.
ESRS E1	Para 38	When disclosing energy consumption from different sources, nuclear is now presented as a separate category, no longer as part of “non-renewable” together with fossil sources. Disclosing the share of nuclear energy separately is an additional effort for companies, especially since the benefit is not clearly evident. Therefore, we recommend to make disclosing the share of nuclear energy separately voluntarily.
ESRS E1	AR47(b) and AR13(c)	The EC should clarify that the use of external references is voluntary as regards: <ul style="list-style-type: none"> • The PCAF standard in ESRS E1-6 AR47(b): the use of PCAF should remain voluntary and therefore the EC could solve this matter by replacing the term “shall consider” by “may consider” in AR47(b). • The International Energy Agency in ESRS E1-AR13(c): while EFRAG's advice was clear on the voluntary nature of the use of IEA's scenarios, changes introduced by the EC to AR13(c) bring confusion as to whether this advice is still valid. In general, the EC should clarify in the description of “shall consider”-requirements under ESRS 1 para 18 that it does not constitute a formal requirement.
ESRS E1	AR-40	The references to ISO in the following AR are not consistent (see highlighted figures). <p>(a) consider the principles, requirements and guidance provided by the GHG Protocol Corporate Standard (version 2004).. The undertaking may consider Commission Recommendation (EU) 2021/2279 or the requirements stipulated by ISO 140641:2018. If the undertaking already applies the GHG accounting methodology of ISO 14064- 1: 2018, it shall nevertheless comply with the requirements of this standard (e.g., regarding reporting boundaries and the disclosure of market-based Scope 2 GHG emissions);</p> <p>Remark: Scope and reporting boundaries and disclosure of marked-based Scope 2 GHG emissions are requirements in the ISO 14064-1:2018 standard.</p>

		Correct quotation: ISO 14064-1:2018 Greenhouse gases — Part 1: Specification with guidance at the organization level for quantification and reporting of greenhouse gas emissions and removals
ESRS E1	AR 46 (a) See also AR 47 (a) AR 47 (c) AR 51	<p>The references to ISO in the following AR are not consistent (see highlighted figures).</p> <p>consider the principles and requirements of the GHG Protocol Scope 2 Guidance (version 2015, in particular the Scope 2 quality criteria in chapter 7.1 relating to contractual instruments); it may also consider Commission Recommendation (EU) 2021/2279 or the relevant requirements for the quantification of indirect GHG emissions from imported energy in EN ISO 14064-1:2018</p> <p>(c) screen its total Scope 3 GHG emissions based on the 15 Scope 3 categories identified by the GHG Protocol Corporate Standard and GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard (Version 2011) using appropriate estimates. Alternatively, it may screen its indirect GHG emissions based on the categories provided by EN ISO 14064-1:2018 clause 5.2.4 (excluding indirect GHG emissions from imported energy);</p> <p>→ Incorrect quotation of the ISO standard</p>
ESRS E2	Para 26	It should be made clear that the provision refers to microplastics that is intentionally manufactured and intentionally included in products (such as cosmetics and cleaning products).
ESRS E2	Para 29	The undertaking shall disclose the consolidated amount of each pollutant listed in Annex II of the: E-PRTR Regulation. As this reporting is already legal statutory, there is a risk of double reporting.
ESRS E4	Para 17(c)	The lack of clear guidance concerning the scope of the materiality assessment for negative impacts with regards to land degradation, desertification or soil sealing might lead to different interpretation. Therefore, the comparability of results across undertakings would not be achieved. Moreover, the application scope of the disclosure requirements in the same chapter E4 para. 17 a), b) and d) is clearly stating scope of disclosure for own operations. This should be also the case for para. 17(c).
ESRS E4	Para 35	In contrast to what was proposed by EFRAG in the ESRS draft standards, there is no specification concerning the sectors, which must comply with this disclosure requirement. This leads to the fact that financial institutions should comply with this requirement. However, land-use change analysis based on life cycle assessment is not applicable to financial institutions as LCA is used to quantify the impacts of the production chain for physical products, where land-use is a material topic in the supply chain. Financial institutions' supply chains mainly include professional services. We recommend the addition of an exception for financial institutions.



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ESRS E4	AR 25 (b) ii.	This AR contradicts ESRS E4 para. 36 which states that “for datapoints specified in paragraphs 37 to 40, the undertaking shall consider its own operations.” AR 25 should be corrected to reflect E4 para. 36 i.e. comprising own operations only.
ESRS E5	Para 20(e)	ESRS E5 para 20(e) requires actions that involves the undertaking's upstream and downstream value chain while AR 14 states that “The actions may cover the undertaking's own operations and/or the value chain”. This “and/or” is ambiguous and should be replaced by "and".
ESRS S1	Para 10	A number of "may disclose" in the draft DA has been included in the disclosure requirements, for example in S1-10. DRs only should include requirements and "may disclose" items should be moved to the AR section.
ESRS S1	Para 39	Para 39 (a) is empty, there might be something missing.
ESRS S3	Para 15	In para 15 between impact and on a space is missing “...preventing and addressing impacts on indigenous peoples.”
ESRS G1	Para 31	We still oppose the DRs addressing payment behaviour because they are not suitable to give proper information on the relationship towards suppliers. They should therefore be eliminated at all.

4. Specific comments on Annex II

Defined term	Comment
Carbon Credits	It seems that this term is not aligned with the definition in IFRS S2

Appendix E: Flowchart of determining disclosures under ESRS

