EFRAG-Konsultation „European Sustainability Reporting Standards“

Fragebogen

1A. Overall ESRS Exposure Drafts’ relevance – Architecture

VORLÄUFIGER ARBEITSSTAND der BEURTEILUNG der ED ESRS durch das DRSC

1A. Overall ESRS Exposure Drafts' relevance – Architecture

Cross-cutting and topical standards

To facilitate a coherent coverage of the CSRD topics and reporting areas (as per Article 19a paragraph 2 and Article 19b paragraph 2 – see Appendix II) the Exposure Drafts ("EDs") submitted for public consultation are based upon two categories of standards:

- **Cross-cutting ESRS** which:
  - i) Establish the general principles to be followed when preparing sustainability reporting in line with the CSRD provisions;
  - ii) Mandate disclosure requirements ("DRs") aimed at providing an understanding of (a) strategy and business model, (b) governance and organisation, and (c) materiality assessment, covering all topics.
- **Topical ESRS** which, from a sector-agnostic perspective:
  - i) Provide topic-specific application guidance in relation to the cross-cutting DRs on strategy and business model, governance, materiality assessment;
  - ii) Mandate DRs about the undertaking's implementation of its sustainability-related objectives (i.e. on its policies, targets, actions and action plans, and allocation of resources);
  - iii) Mandate performance measurement metrics.

A full list of standards and whether they are cross-cutting standards or topical standards can be found in Appendix I.

Q1: in your opinion, to what extent do the structure and articulation of cross-cutting and topical standards adequately support the coverage of CSRD topics and reporting areas?

1/ Not at all **2/ To a limited extent with strong reservations**, 3/ To a large extent with some reservations 4/ Fully 5/ No opinion

Please explain your reservations or your suggestions for improvement or any other comment you might have

In our opinion, the structure and articulation of cross-cutting and topical standards fully cover the CSRD topics and reporting areas. However, according to the CSRD, the first set of the ESRS should only include sector-agnostic requirements. In contrast, the first set published by EFRAG already covers some topics that are sector specific. We therefore recommend moving sector-specific topics from the sector-agnostic to the sector-specific standards. This will streamline the structure of the standards and counteract information overload. In addition, it will reduce complexity for undertakings as they do not need to formally go through the materiality assessment (incl. the preparation of a non-material list with further explanations).
With regard to governance aspects, we do not find the proposed structure convincing because of the duplication of information considering ESRS 2 GOV 1 on the one side and ESRS G1 on the other side (please refer to our comments to Q15 and Q16 of the Survey 3A).

Alignment and interoperability with international standards and frameworks

CSRD Article 19b paragraph 3a requires that "When adopting delegated acts pursuant to paragraph 1, the Commission shall take account of the work of global standard-setting initiatives for sustainability reporting, and existing standards and frameworks for natural capital accounting, responsible business conduct, corporate social responsibility, and sustainable development."

ESRS EDs were drafted accordingly, with the objective of fostering as much alignment as possible considering the constraints imposed by other provisions included in articles 19a and 19b as per the CSRD proposal. Details of these provisions and how they are covered by the ESRS EDs can be found in Appendix I.

The structure and organisation of the reporting areas was one aspect of alignment to which particular attention was paid. Thus, the two categories of standards are organised to cover the reporting areas in relation to governance, strategy, assessment/management of impacts, risks and opportunities, and targets/metrics (as considered by the TCFD and source of inspiration for the IFRS Sustainability standards). A detailed mapping of the ESRS EDs disclosure requirements with TCFD recommendations and with IFRS Sustainability Exposure Drafts can be found in Appendices 5 and 6.

Q2: in your opinion, to what extent is the TCFD framework of reporting areas (governance, strategy, risk management and metrics/targets) compatible with the structure of the ESRS?

1/ Not at all 2/ To a limited extent with strong reservations, **3/ To a large extent with some reservations** 4/ Fully 5/ No opinion

Please explain your reservations or your suggestions for improvement or any other comment you might have

ESRS seems to be compatible with TCFD. However, ESRS reporting areas (strategy, implementation, performance) differ from TCFD reporting areas (governance, strategy, risk management, metrics and targets). In contrast, both IFRS S1 and IFRS S2 are laid out based on the TCFD structure. We strongly encourage that EFRAG aligns the actual structure and contents of ESRS with the actual structure and contents of IFRS Sustainability Standards.

Q3: in your opinion, to what extent does the approach taken to structure the reporting areas promote interoperability between the ESRS and the IFRS Sustainability Exposure Drafts?

1/ Not at all **2/ To a limited extent with strong reservations**, 3/ To a large extent with some reservations 4/ Fully 5/ No opinion

Please explain your reservations or your suggestions for improvement or any other comment you might have

Apart from the fact that the structure of the reporting areas proposed by the ESRS differs from the structure of the IFRS Sustainability Exposure Drafts (see our comments to Q2 above), it is not possible to conclude interoperability between the ESRS and the IFRS Sustainability Exposure Drafts based on a concurrent structure alone. To give just two examples:

- ESRS and IFRS Sustainability Exposure Drafts have a different understanding of financial materiality. This different understanding alone means that no interoperability is promoted between these two sets of rules. Even if the general materiality concept is different in the two sets of rules, at least the understanding of financial materiality must be the same.
- IFRS S1 allows for an integrated reporting. In contrast, ESRS 1 chapter 6.2 provides three options to present ESRS-disclosures, none of these options allow for an integrated sustainability reporting approach. We note that the integrated approach will not be provided by the final CSRD. We regret it very much and still consider an integrated reporting option to be essential. We again would like to emphasize the importance of an integrated reporting option as an integrated sustainability reporting approach – among others – stands for a connection and equal importance of financial and sustainability reporting.

Consideration given to EU policies and legislation

Article 19b paragraph 3 of the CSRD also requires that "*When adopting delegated acts pursuant to paragraph 1, the Commission shall take account of:*

(a) the information that financial market participants need to comply with their disclosure obligations laid down in Regulation (EU) 2019/2088 and the delegated acts adopted pursuant to that Regulation; **Sustainable Finance Disclosure Requirements;**

(b) the criteria set out in the delegated acts adopted pursuant to Regulation (EU) 2020/852; **Taxonomy Regulation;**

*(c) the disclosure requirements applicable to benchmarks administrators in the benchmark statement and in the benchmark methodology and the minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks in accordance with Commission Delegated Regulations (EU) 2020/1816*8, (EU) 2020/1817 and (EU) 2020/1818;* **Benchmark Regulation;**

(d) the disclosures specified in the implementing acts adopted pursuant to Article 434a of Regulation (EU) No 575/2013; **Prudential requirements for Credit Institutions and Investment Firms;**

(e) Commission Recommendation 2013/179/EU; **European Commission recommendation on the life cycle environmental performance of products and services;**

(f) Directive 2003/87/EC of the European Parliament and of the Council; ***GHG allowance Directive;***

(g) Regulation (EC) No 1221/2009 of the European Parliament and of the Council; **EMAS regulation**.

Q4: in your opinion, have these European legislation and initiatives been considered properly?

1/ Not at all **2/ To a limited extent with strong reservations**, 3/ To a large extent with some reservations 4/ Fully 5/ No opinion

Please explain your reservations or your suggestions for improvement or any other comment you might have

To (a): In our opinion, the disclosure requirements laid down the **Sustainable Finance Disclosure Requirements** have been considered properly.

To (b): Regarding the consideration of the criteria set out in the delegated acts adopted pursuant to Regulation (EU) 2020/852 (**Taxonomy Regulation**) we have the following concerns:

Paragraph AG 35 of the Draft ESRS E1 requires consistency between the disclosures according to the ESRS and the Taxonomy Regulation: "The amounts of OpEx and CapEx disclosed shall be consistent with the key performance indicators and the CapEx plan required by Commission delegated regulation (EU) 2021/2178 under Commission delegated regulation (EU) 2021/2139. The undertaking may structure its action plan by economic activity to accommodate the OpEx and CapEx plan for taxonomy alignment. Potential differences between OpEx and CapEx disclosed under this [draft] Standard and under Regulation (EU) 2020/852 shall be explained. The information fulfilling the requirements of Regulation (EU) 2020/852 shall be identified as such."

There is a lack of consistency, as ESRS apply to all activities, not only to the activities that fulfill the technical screening criteria adopted by the European Commission as governed by the Taxonomy Regulation. That means that applying ESRS, an undertaking shall report CapEx plans that are not required to be reported under the Taxonomy Regulation. In this respect, we do not believe that consistency, as required by paragraph AG 35 of the Draft ESRS E1, can be ensured.

To (c) - (g): We cannot assess the consideration of the initiatives referred in the Article 19b paragraph 3 points (c) to (g) of the CSRD since no analysis have yet been provided by EFRAG in this regard.

Q5: are there any other European policies and legislation you would suggest should be considered more fully?

While existing European legislation is often considered in the ESRS proposals, with regard to governance aspects the overall European legislation on governance has not been sufficiently considered or aligned with ESRS. Governance aspects are therefore not only addressed in several ESRS but in several different European legislations which address parts of the requirements in ESRS. In addition to these partial overlaps the different requirements have a different scope compared to ESRS and often a different assurance level. As a result, ESRS do not contribute to a coherent approach to governance disclosures but add to the manifold existing requirements. Undertakings will not be able to turn to ESRS only in order to fulfill the governance reporting requirements but will have to consider the other European legislations. These include, for example:

Article 20 of the Accounting Directive with which the governance concept within the ESRS is not aligned with. Some disclosures required by Draft ESRS G1 are also required by Article 20 of the Accounting Directive while others are not consistentE.g., according to Article 20 paragraph 1 point (c) a public-interest entity shall include in its corporate governance statement "a description of the main features of the undertaking's internal control and risk management systems in relation to the financial reporting process" [highlight added]. This requirement is not congruent with ESRS and moreover is to be applied by different groups of undertakings (Article 20 is only relevant for public-interest entities). According to ESRS, in contrast, undertakings shall present their internal control process (Draft ESRS G1-8) and risk management system (Draft ESRS G1-7) as a whole. ESRS do not – as Article 20 – limit this information to the aspect of the financial reporting system. In addition, according to paragraph 5 of Draft ESRS G1 public-interest entities may refer to the section of their management report where they provide the disclosures according to Article 20 paragraph 1 point (c). However, it is still unclear whether an undertaking that presents information required by Article 20 paragraph 1 point (c) outside its management report has to double this information within its sustainability report.

Another example within the governance requirements regards the Disclosure Requirement G1-6 – Remuneration policy which – in part – is mirrored in the Directive (EU) 2017/828 (Shareholder Rights Directive). According to Draft ESRS G1-6 "The undertaking shall describe the policy used for the remuneration of its administrative, management and supervisory bodies." The Shareholder Rights Directive also includes detailed provisions regarding the remuneration policy and information to be included in the undertaking's remuneration report. We question whether these two European provisions regarding one topic reasonably interact which each other.

These few examples alone show that the governance concept within different European legislations is not aligned. The European legislation should have been adapted in order to present a concise and coherent governance concept for all undertakings reporting under the CSRD.

Furthermore, the requirements of the ESRS should be aligned with the requirements of the proposal for a Directive on corporate sustainability due diligence (COM(2022) 71 final). It should be further clarified how the CSRD and the proposal for a Directive on corporate sustainability due diligence interact with each other.

Coverage of sustainability topics

Article 19b paragraph 2 of the CSRD proposal defines the sustainability subject matters (referred to as sustainability topics or subtopics in the ESRS) that the sustainability reporting standards shall address when defining the sustainability information required by article 19a paragraphs 1 and 2.

The ESRS architecture was designed to cover all the detailed subject matters listed in article 19b paragraph 2 for environment-, social- and governance-related matters and to ensure that sustainability information is reported in a carefully articulated manner.

In terms of timing of adoption of European sustainability reporting standards, article 19b paragraph 1 of the CSRD requires the Commission to adopt:

- a first set of sustainability standards covering the information required by article 19a and at least specifying information needed by financial market participants subject to the SFDR reporting obligations[1]
- a second set of standards covering information that is specific to the sector in which undertakings operate.

Also, article 19c of the CSRD proposal on sustainability reporting standards for SMEs requires the Commission to adopt SME-proportionate standards in a second set.

As a consequence, as per article 19b paragraph 1, are only included in this first set of ESRS Exposure Drafts:

(i) the two cross-cutting standards on General principles (ESRS 1) and on General, strategy, governance and materiality assessment (ESRS 2)

(ii) the eleven topical (sector-agnostic) standards covering environment- (ESRS E1 to E5), social- (ESRS S1 to S4) and governance-related (ESRS G1 and G2) sustainability topics.

A detailed list of ESRS EDs can be found in Appendix I. And the detailed provisions of the CSRD and how they are covered by the ESRS EDs can be found in Appendix II.

Q6: in your opinion, to what extent does the proposed coverage of set 1 adequately address CSRD sustainability topics?

1/ Not at all **2/ To a limited extent with strong reservations**, 3/ To a large extent with some reservations 4/ Fully 5/ No opinion

Please explain your reservations or your suggestions for improvement or any other comment you might have.

The proposed set 1 of ESRS addresses all the CSRD sustainability topics. However, the proposed coverage of reporting requirements in set 1 goes well beyond the CSRD requirements which we consider to be very critical. First, set 1 addresses not only sector-agnostic but also some sector-specific topics, which is not mandated by the CSRD (please refer to our comment on Q1 above). Second, the CSRD allows for a prioritisation approach within the set 1. We support the prioritisation of certain ESRS, see our answer to Q53 and Q54 of the Survey 2.

Q7: in your opinion, to what extent does the proposed coverage of set 1 (see Appendix I) adequately address SFDR reporting obligations?

1/ Not at all 2/ To a limited extent with strong reservations, 3/ To a large extent with some reservations **4/ Fully** 5/ No opinion

If you think this coverage and its implementation could be improved in any way, please specify how and to what specific SFDR indicator your comment relates

Sustainability statements and the links with other parts of corporate reporting

For clarity and ease of use, standardised sustainability reporting shall be easily identifiable within the management report (MR). To that effect, ESRS 1 – General principles (paragraphs 145 to 152) prescribes how to organise the information required by ESRS. It offers three options (paragraphs 148 and 149) for undertakings to consider when preparing their sustainability reporting:

- a single separately identifiable section of the MR;
- four separately identifiable parts of the MR:
  - (i) General information;
  - (ii) Environment;
  - (iii) Social;
  - (iv) Governance
- one separately identifiable part per ESRS in the MR.

The first option is the preferred option. When applying the other two options the entity shall report a location table to identify where disclosures are presented in the MR.

In order to foster linkage throughout the undertaking's corporate reporting, ESRS 1 also:

- prescribes that the undertaking adopts presentation practices that promote cohesiveness between its sustainability reporting and: (a) the information provided in the other parts of the management report, (b) its financial statements (FS), and (c) other sustainability-related regulated information (paragraphs 131 to 134)
- promotes the incorporation of information by reference to other parts of the corporate reporting in order to avoid redundancy (paragraphs 135 and 136)
- organises connectivity with the financial statements by prescribing how to include monetary amounts or other quantitative data points directly presented in the financial statements (paragraphs 137 to 143).

Q8: Do you agree with the proposed three options?

1/ Yes **2/ No** 3/ No opinion

Q9: would you recommend any other option(s)?

If so, please describe the proposed alternative option(s)

Yes we strongly recommend another option. We note that the integrated approach will not be provided by the final CSRD. We regret it very much and still consider it essential. As already stated in the DRSC's Technical Committee's letter to EFRAG of 29 March 2022, we again would like to emphasize the importance of an integrated reporting option as an integrated sustainability reporting approach stands for a connection and equal importance of financial and sustainability reporting, it stands for integration of sustainability matters throughout the organisation and down to the operational level of the entity; companies and stakeholders alike acknowledge the better understanding of the entity's strengths, weaknesses, opportunities, and threats through integrated reporting.

This request is independent of our agreement with the other specific proposed options in paragraphs 148 and 149 of Draft ESRS 1 for the presentation of sustainability information within the management report. But we believe a fourth option for integrated reporting to be essential.

Q10: in your opinion, to what extent do you believe that connectivity between the sustainability reporting and other parts of the management report has been appropriately addressed?

1/ Not at all **2/ To a limited extent with strong reservations**, 3/ To a large extent with some reservations 4/ Fully 5/ No opinion

Please explain your reservations or your suggestions for improvement or any other comment you might have

There are numerous redundancies with the traditional management report (e.g., Disclosure Requirement 2-SBM 1 – Overview of strategy and business model, Disclosure Requirement 2-GR 2 – Sector(s) of activity, Disclosure Requirement 2-GR 3 – Key features of the value chain, Disclosure Requirement 2-GR 4 – Key drivers of the value creation in Draft ESRS 2). There are also many sustainability risks that have to be described in the management report and in the sustainability report according to ESRS. In order to avoid duplication, the ESRS offer the option of referencing in the sustainability report to the other sections of the management report (Draft ESRS 1 paragraph 135 in conjunction with Draft ESRS 2 paragraph 2). In our view, neither duplication of information nor extensive referencing is a preferable and user-friendly alternative to integrated reporting.

Moreover, in contrast to the management report, paragraph 135 of Draft ESRS 1 explicitly prohibits reference in the sustainability statements to reports other than the management report. The management report explains and supplements the financial statements and can therefore only be considered in conjunction with the financial statements. In this respect, it is questionable why referencing to the other sections of the management report is allowed, while referencing to the financial statement is prohibited. This question would also become superfluous with an integrated reporting approach.

Furthermore, ESRS propose to include consistency statements within the sustainability report. E.g., paragraph AG 77of Draft ESRS E1 contains the following requirement: „The undertaking shall include a statement of consistency illustrating the consistency of data and of assumptions made in sustainability reporting to assess the financial effects from material physical risks with the corresponding data and assumptions used for the financial statements (e.g., impairment of assets, useful life of assets, estimates and provisions).“
The meaning of that requirement seems questionable in the light of the requirement of Article 34 of the Accounting Directive according to which the auditor shall "express an opinion on whether the management report is consistent with the financial statements for the same financial year". Since the sustainability report is proposed to be part of the management report, in our view, ESRS require a consistency for sustainability information in the management report that goes beyond the general consistency requirement for the management report.

Q11: in your opinion, to what extent does the incorporation of information in the Sustainability section by reference to other parts of the management report support cohesiveness throughout corporate reporting?

1/ Not at all **2/ To a limited extent with strong reservations**, 3/ To a large extent with some reservations 4/ Fully 5/ No opinion

Please explain your reservations or your suggestions for improvement or any other comment you might have

Please refer to our comments to question Q10.

Q12: in your opinion, to what extent do the requirements and provisions on how to include monetary amounts and other financial statement-related quantitative data into sustainability reporting support connectivity with the financial statements?

1/ Not at all 2/ To a limited extent with strong reservations, 3/ To a large extent with some reservations **4/ Fully** 5/ No opinion

Please explain your reservations or your suggestions for improvement or any other comment you might have