

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.

Name of respondent/responding organisation:

Deutsches Rechnungslegungs Standards Committee / DRSC

1. General comments

[Please note: This is the same text as posted into the input box on the EU website for this consultation.]

The DRSC welcomes the European Commission's (COM) improvements of the ESRS in terms of practicability, clarity, and proportionality. This will increase acceptance of the ESRS as an important milestone of the sustainable transition. Arguments supporting this assessment and comments on other topics can be found in the section "Specific comments on Annex I" of the file uploaded in addition.

Nevertheless, we would like to highlight some major concerns here:

Materiality: Interoperability with IFRS / Missing link to SFDR:

The DRSC agrees with making disclosures subject to materiality assessment. We argue that corporate reporting based on material information, similar to the current regulatory regime in financial reporting, will not only be beneficial to both the quality and relevance of sustainability-related disclosures for all stakeholders, but also trigger changes in observed company behaviour, which is essential for achieving the EU's policy goals in that area. Therefore, we also believe that the implementation guidance on materiality analysis (currently being developed by EFRAG) is of critical importance.

We also welcome the COMs aim to achieve interoperability with global standards, especially to get fully aligned with the ISSB on "financial materiality" as this is crucial to avoid double reporting for undertakings in scope of the CSRD and additionally disclosing sustainability information according to ISSB standards. As already stated in earlier submissions, we are concerned that the wording in ESRS 1 is not sufficiently clear in this respect, and, therefore, urge the COM to continue working on further clarification in order to align the wording of "financial materiality" with that of IFRS S1.

A further issue is the missing link between ESRS reporting under a materiality-based approach on the one hand and SFDR requirements for financial market participants (FMP) on the other, given that FMPs' reporting obligations are currently not subject to a materiality threshold. If materiality is now to qualify as a precondition for disclosures according to ESRS, the COM must consistently consider the impact on other regulations, in particular on the SFDR.

Transitional provisions, Minimum CSRD requirements:

The DRSC supports incorporating transitional reliefs and exemptions for undertakings that do not exceed the threshold of 750 employees. Back in January, the DRSC had asked the Commission for more relief for companies that are just above the employee threshold of 250. In Germany, it is estimated that about 70 percent of reporting entities could benefit from this transitional relief. Nevertheless, the DRSC

urges the COM to clarify the concept of minimum disclosures which would be required despite the phase-in exceptions. While we acknowledge that CSRD provisions require the application of the directive and therefore disclosures from year one, we are concerned that the requirements of ESRS 2.17 are ambiguous and lack clarity (e.g., *relevant* metrics). In our view it is necessary to provide clear guidance on the use of these transitional reliefs and the respective specific minimum disclosures required for the transition period.

Measurement of anticipated financial effects according to ESRS E1:

The DRSC strongly disagrees with the requirement to measure anticipated financial effects from climate-related risks before considering corresponding countermeasures. Such a requirement does not reflect current reporting practice. Furthermore, a compulsory gross presentation will result in information that is inconsistent to financial reporting and, thus, hampers connectivity to financial statements. Lastly, the requirement proposed appears inconsistent with the standards of the ISSB. The DRSC urges to grant a policy choice as to whether anticipated effects can be disclosed before or after considering countermeasures, with a requirement to explain those measures in the latter approach.

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

n/a

3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
ESRS 1	Chapter 3 / Appendix A	<p>We note that the materiality assessment of the undertaking is now proposed to be the main trigger for reporting under ESRS, according to the draft delegated act. More precisely, except for the requirements of ESRS 2, disclosures on a certain sustainability matter have to be made if the matter is considered material following the undertaking’s materiality assessment.</p> <p>In principle, the DRSC sees clear advantages with this conceptual change with regard to lowering the immediate reporting burden for reporting entities. However, the DRSC also acknowledges the lively political debate around requesting obligatory reporting emphasising the importance of particular information from a wider societal perspective, be it the environmental or the social aspect. The materiality assessment as such is a fundamental process in identifying disclosures in corporate reporting. In general, it (1) forms a robust instrument to disclose relevant, meaningful, and material information, and (2) will also be beneficial to the quality and relevance of sustainability reporting in a regulated environment. In addition, we note that with the requirement to audit sustainability information, the audit of the underlying process and its results will also become subject of the audit. Moreover, we would like to point to the fact that strengthening the role of undertakings’ materiality assessment for reporting purposes will further promote embedding of sustainability aspects in corporate decision-making processes and structures. To reap the actual benefits of materiality assessments, we believe that meaningful and robust implementation guidance on materiality analysis (currently being developed by EFRAG) is of critical importance and should form a prerequisite for a wider application of materiality assessments.</p> <p>From a wider systemic point of view, the DRSC would like to point to the missing conceptual interlinkage between ESRS reporting under a materiality-based approach on the one hand and the SFDR requirements for financial market participants (FMP) on the other. Currently, FMPs’ reporting obligations are not subject to a materiality threshold. Hence, in order to achieve sufficient alignment of ESRS and SFDR, the latter will likewise need a materiality filter. Otherwise, FMPs would have to estimate the corresponding data at great expense (or obtain them from commercial vendors), whereas the quality of the data might be severely limited, hence, hampering the policy goals of the European Sustainable Finance Initiative.</p>
ESRS 1	Chapter 3.5	<p>The DRSC welcomes the COM’s efforts to achieve interoperability with global standards. In particular, we note the intention of the COM to get fully aligned with the ISSB on financial materiality, as expressed by COM representatives at the meeting of EFRAG’s Sustainability Reporting Board. In our view, this is crucial in order to avoid double reporting for undertakings in scope of the CSRD and additionally disclosing sustainability information according to ISSB standards.</p>

		<p>However, the DRSC is concerned as to whether the wording in ESRS 1 (paragraphs 47 - 49) is sufficiently clear to express that the same concept as in IFRS S1 is meant. Therefore, we believe the COM should clarify explicitly that the definition of financial materiality in ESRS 1 is consistent to the understanding in IFRS S1 or, even better, align the wording of ESRS 1 with IFRS S1 in this respect.</p>
ESRS 1	Chapter 10.4 / Appendix C	<p>The DRSC agrees with incorporating into the ESRS transitional provisions for undertakings within the scope of the CSRD that do not exceed the threshold of 750 employees. Our reasoning is based on the fact that, even within the group of “large” undertakings, there is significant variation in terms of size and capabilities. In particular, we argue that the perspective of mid-tier undertakings needs to be taken into account in order to follow the principle of proportionality laid out in the CSRD. By incorporating transitional provisions, the COM has taken an important step in this direction. In our view, phasing-in certain disclosure requirements in the first years of application represents a considerable relief that should help these entities to better prepare for more detailed, high-quality reporting at a later stage.</p> <p>However, the wording in chapter 10.4 as well in Appendix C of ESRS 1 remains silent on whether undertakings that are not within the scope of ESRS Set 1 for 2024 but fall under that scope at a later point in time without exceeding the threshold of 750 employees, can also make use of the transitional reliefs. Example: A non-listed SME becomes a large undertaking in 2029 according to article 10 para 10 of the Accounting Directive but has less than 750 employees. In our view the COM should address this situation as well because it could help the easy uptake of ESRS by new entrants in later years.</p> <p>In addition, we would like to address some further concerns on the conditions for using these transitional provisions; please see our comments on ESRS 2 para 17.</p>
ESRS 2	Para 17	<p>The DRSC is concerned about the design of the "use of phase-in provisions" addressing certain minimum disclosure requirements for undertakings that make use of the transitional provisions outlined in chapter 10.4 of ESRS 1. We note that the provisions in the CSRD require certain information on sustainability aspects if these are considered material by the undertaking. Therefore, in light of the proposed transitional provisions, we understand and acknowledge the need to clarify this in para 17 of ESRS 2.</p> <p>However, the content of para 17 of ESRS 2 reverts to the significantly less precise wording of the CSRD, and it remains unclear what specific information undertakings are ultimately required to disclose in order to meet these minimum disclosure requirements. In other words, the very generic wording used in para 17 of ESRS 2 results in a high degree of uncertainty among preparers, auditors, and users of sustainability statements. Thereby it contradicts the purpose of the transitional provisions (relief). To address this issue, the DRSC recommends providing clear guidance on the use of these transitional provisions and the required minimum disclosures.</p>
ESRS G1	Para 25	<p>In general, the DRSC welcomes the amendments proposed for ESRS G1. However, we argue that confirmed cases of corruption and bribery as well as legal risks (e.g., based on pending legal proceedings) should also always be reported if they are part of the undertaking’s financial risk reporting.</p>

<p>ESRS E2 ESRS E3 ESRS E4 ESRS E5</p>	<p>Paras AR1 and AR6 (ESRS E4)</p>	<p>The DRSC agrees with the proposed amendments on how undertakings perform their materiality assessment. In particular, while pointing to the LEAP approach is of significant help for preparers, we believe the COM is right in not mandating undertakings to apply this approach. Instead, the technical discussion on the LEAP approach might be rather useful as part of the implementation guidance.</p>
<p>ESRS E1</p>	<p>Para 47</p>	<p>The DRSC believes that corporate reporting (be it financial or sustainability reporting) should be aligned as much as possible with international reporting conventions, including the Greenhouse Gas Protocol (GHGP), in order to foster consistency in application and a level-playing field in an international corporate environment. In addition, ESRS 1.62 states that “the sustainability statement shall be for the same reporting undertaking as the financial statements. For example, if the reporting undertaking is a group and if the parent company is required to prepare consolidated financial statements, the consolidated financial and sustainability statements will be for the parent and its subsidiaries.” Furthermore, also ESRS 2.5 requires the confirmation by the reporting undertaking that the scope for the consolidated sustainability statement is the same as for the financial statements.</p> <p>Consequently, the DRSC disagrees with the COM in restricting the policy choices granted by the GHGP in ESRS E1-6. Right from the outset, the application requirement on E1-6 states that the GHGP should be seen as the origin for the respective disclosures as matter of a basic principle. In light of this, it is surprising that the rules of the GHGP are nevertheless significantly restricted by the subsequent specifications in ESRS E1.</p> <p>Limiting the approaches to considering GHG-Emissions in an undertaking’s sustainability reporting to the operational control approach creates the risk that the reporting undertaking is ringfenced differently for financial reporting and GHG emissions reporting. The DRSC further observes that the term operational control is not defined with sufficient precision either in the GHGP or the ESRS and is also understood very differently in practice. The lack of clear criteria to distinguish financial control from operational control results in a high degree of uncertainty on preparers’ side, followed by inconsistent application and limited comparability of information.</p> <p>Therefore, the DRSC repeatedly urges to fully align the ESRS reporting requirements on GHG-emissions with the widely applied and accepted rules of the GHGP. Furthermore, we believe that a more profound definition on operational control is necessary.</p>
<p>ESRS E1</p>	<p>Paras 67 and 68</p>	<p>The DRSC disagrees with the proposal to measure anticipated financial effects from material physical risks or transition risks before considering corresponding countermeasures (i.e., climate change adaptation and climate change mitigation actions). A requirement to exclusively report gross effects contradicts common reporting practice, where both types (i.e., net reporting and gross reporting) are prevalent. In financial reporting, especially in the financial statements, the presentation of financial risks is regularly based on a net basis, given the fact that financially relevant risks are net effects from an economic point of view. For example, IFRS 7 (“Financial Instruments: Disclosures”) – a standard that requires disclosure of information about the significance of financial instruments to an undertaking, and the nature and extent of</p>

		<p>risks arising from those financial instruments – consistently refers to “risks to which the entity is exposed”. This wording clearly implies a net perspective to financial risk.</p> <p>A rigid requirement to disclose gross risks in sustainability reporting would, therefore, result in information that is inconsistent with financial reporting. As a result, the comprehensive perspective on financial- and sustainability-related aspects in corporate management would be jeopardised, just like the connectivity of financial and sustainability reporting. In addition, the requirement proposed appears inconsistent with the standards of the ISSB, where IFRS S2 refrains from prescribing one method or the other.</p> <p>In conclusion, the DRSC urges to grant a policy choice as to whether anticipated financial effects can be disclosed before or after the consideration of an undertaking’s countermeasures. We would like to point to the requirement in the German Accounting Standard GAS 20 (“Group management report”) that requires disclosure of countermeasures if an undertaking chooses net presentation, so that no information will get lost in the end. We recommend the COM to consider such a solution as well.</p>
ESRS 1 ESRS E1	Chapter 10.4 / Appendix C Para 54	<p>The DRSC asks the COM to clarify how an undertaking is expected to deal with the requirement to disclose “GHG Intensity based on net revenue” if that undertaking makes use of the transitional provision to omit the datapoints on scope-3 emissions and total GHG emissions for the first year of application.</p> <p>We argue that such an undertaking should also be allowed to omit intensity metrics as addressed in para 54 of ESRS E1.</p>
Editorial: ESRS 1	Appendix C	<p>The references to ESRS 2 regarding SBM-1 (first row of the table on appendix C) should point to paragraphs 40(b) and 40(c) instead of 38(b) and 38(c), respectively. Also, the reference to ESRS E2 regarding E2-6 (fourth row) should point to paragraph 40(b) instead of 38(b).</p>
ESRS 1	Para 62-67	<p>There is a lack of clarity regarding the reporting boundaries, especially regarding the scope of consolidation (e.g., how to treat unconsolidated subsidiaries), the consideration of joint ventures and associates accounted for under the equity method or proportionally consolidated (part of an undertaking’s value chain vs. own operations), consideration of joint operations and specific reporting boundaries of “own operations” for selected topical metrics (e.g., ESRS E4 Para 22 (a)).</p>
ESRS E2 ESRS E3 ESRS E4 ESRS E5	e.g., ESRS E2 para 39 (a)	<p>A number of disclosure requirements are subject to the condition of undue cost or effort, for example, the disclosures on anticipated financial effects. We recommend including more information on the "undue cost or effort" notion and guidance on how to assess “undue cost or effort”.</p>
ESRS S1	n/a	<p>It should be clarified which national legislation an undertaking should consider when a DR or datapoint refers to national legislation, e.g., for the definition of an employee in the “Terms defined in ESRS” (Annex II of the draft delegated act). In many cases, it is not specified whether the requirements refer to the national legislation of the country of registration for the reporting undertaking, the country of registration for the entity that has the employment relationship or the country where the employee is (physically) based. However, in some cases, e.g., AR 56, it is specified (“the national laws of the countries where the employees are based”).</p>

		Therefore, consistent reference should be made to the legislation to which the requirement relates.
ESRS S1	n/a	With regard to some disclosure requirements, it is indicated that the collection of data is subject to legal restrictions (e.g. collection of data on ill health in paragraph 88 (d)). However, there may be other areas of S1, such as gender, where national legislation can prevent the collection and/or disclosure of certain information. Therefore, we recommend adding a general principle in ESRS 1 or in the social standards specifying that “a disclosure is only required if it is legal to disclose this information”. This principle should further specify how to proceed if data is not available due to legal restrictions.
General		The DRSC agrees with considering elements of proportionality in the ESRS (phasing-in provisions for undertakings with less than 750 employees). We further note that the ESRS subject to the Draft Delegated act as well as the reporting requirements of the CSRD have not been field tested prior to their application with regard to applicability and proportionality. Therefore, we believe the COM, when reviewing the CSRD in accordance with Article 6 of the CSRD, should reconsider whether scaled reporting requirements, beyond phasing-in provisions, for undertakings with less than 750 employees are generally reasonable and appropriate.

4. Specific comments on Annex II

Defined term	Comment
n/a	