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**1<sup>st</sup> DRSC Submission regarding requirements according to ESRS**

Dear Patrick,

I would like to thank EFRAG for the opportunity to submit via its recently set-up Q&A platform a number of application issues arising from the requirements laid down in the European Sustainability Reporting Standards (ESRS). Subsequent clarifications by EFRAG or the European Commission are needed to support the successful implementation of the ESRS. Today, I am happy to inform you that the ASCG has submitted a first batch of issues via the Q&A platform.

The content of this first batch is also reflected in the document “European Sustainability Reporting Standards (ESRS) Application Issues: Questions & Answers” in the appendix to this letter for your convenience.

I would like to point out that the content of this submission stems from several ‘user fora’ particularly organised by the DRSC to collect and discuss issues on this matter. In this way, the elaboration of the submission did not involve a formal consultation or approval process. Moreover, these solutions proposed do not necessarily reflect the view of the German constituency in its entirety. At this stage, the tentative solutions proposed do not reflect the official position of the DRSC’s technical committees. Potential future positions of the DRSC, if any, may differ from the solutions expressed in this submission. Please be aware that companies may nevertheless use this document as a point of reference for their implementation practice. Accordingly, a swift follow-up by EFRAG’s technical bodies would be very welcome in order to provide the necessary clarity to practice.

If you want to discuss any of these issues further, please do not hesitate to contact me.

Kind regards

Georg Lanfermann  
*President*

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## Appendix

### **European Sustainability Reporting Standards (ESRS)**

#### **Application Issues: Questions & Answers**

*This document focuses on several important yet unsolved issues concerning the application of the ESRS. The issues outlined in this document stem from discussions at a number of user fora organised by the Accounting Standards Committee of Germany (ASCG) on this subject matter. This is a living document which has not been revised by the ASCG's technical committees, and it may be complemented by further materials at a later stage.*

*The tentative solutions/answers to the issues shall not be considered as the view of German constituency as a whole. In addition, the tentative answers neither do reflect the position of the ASCG's technical committees nor the views of the ASCG secretariat. Potential future positions of the ASCG, if any, may differ from the tentative answers presented in this document.*

*This document is intended to help EFRAG to issue further guidance; in absence of such guidance this document may provide a reference point for companies applying the ESRS.*

**Status as of November 2023**

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## Background to this document

With the Corporate Sustainability Reporting Directive (CSRD, Directive (EU) 2022/2464 amending, in particular, the Accounting Directive, Directive 2013/34/EU), another key component of the EU Sustainable Finance Initiative was implemented. The basis for this directive was laid down in the "Action Plan: Financing Sustainable Growth" (COM(2018) 97 final) of 2018, which was continued with the "European Green Deal" (COM(2019) 640 final) of 2019. One of the aims is to transform the European Union into a low-carbon, more resource-efficient and circular economy. To achieve this, capital flows are to be redirected towards sustainable investments. A prerequisite for this is the disclosure of relevant, reliable, and comparable sustainability information.

The new disclosure requirements of the Accounting Directive on sustainability aspects are specified in the European Sustainability Reporting Standards (ESRS). According to the Accounting Directive, the European Commission has issued a delegated act (Commission Delegated Regulation (EU) C/2023/5303 final) adopting the first set of the ESRS. This delegated act contains twelve ESRS addressing general requirements and disclosures as well as topical requirements on environmental, social and governance matters. The ESRS must be applied by the undertakings within the scope of the CSRD in accordance with the respective date of first application.

The issues presented below concern the interpretation of the ESRS disclosure requirements and have been derived from discussions among ASCG member organisations at the occasion of a series of user fora over the past months. These issues are presented according to the structure foreseen by the EFRAG Q&A platform released in October 2023, i.e., in a questions and answers format also giving an indication and a reasoning for a potential solution to them. Further fora will complement this first set of Q&As and may result into updates of this document. **It should be noted** that the content of this document (from the following page) is a copy of what the ASCG has submitted through the aforementioned Q&A platform.

The ASCG published additional briefing papers as support (only in German):

- [Briefing Paper](#): CSRD (June 2022)
- [Briefing Paper](#): ESRS (March 2023)
- [Briefing Paper](#): Sector-specific ESRS (April 2023)
- [Briefing Paper](#): ESRS for third-country undertakings (October 2023)

# 1 Cross-cutting ESRS

1.1 ESRS 1, ESRS 2: What level of certainty should be applied for calculating metrics on a material aspect that is not material for the whole group?

<b>ESRS most connected with the question</b>
ESRS 1, ESRS 2
<b>Detailed ESRS reference(s)</b>
ESRS 1 Section 7.2, ESRS 2 paragraph 77
<b>Question</b>
When calculating metrics for sustainability matters that are material for a group, do the data of all subsidiaries have to be taken into account with the same level of certainty, even if the matter is not material for some subsidiaries of the group?
<b>Relevant background and fact pattern</b>
<p>The scope of consolidation for sustainability reporting generally corresponds to the scope of consolidation for financial reporting (ESRS 2 paragraph 5 point (b)). Therefore, consolidated subsidiaries must be included in consolidated sustainability reporting. Consequently, sustainability-related data, including metrics, need to be calculated taking into account all subsidiaries of the consolidated group.</p> <p>The following example refers to metrics in the context of water and marine resources; however, it should be noted that the question discussed similarly applies to all sustainability matters and metrics and that the sub-topic “water” was chosen for illustration purposes only. Please note the term “matter” is considered including “topic”, “sub-topic” etc.</p> <p>Example: The main business of a group is manufacturing and selling a specific product which is produced in a water-intensive production process in various own facilities. The group further owns and operates several small sales corporations abroad with a small number of employees working in offices not involved in production related activities. The group determines that all topics and sub-topics mentioned in ESRS 1 and ESRS E3 on Water and marine resources are material and concludes that all metrics governed by ESRS E3 need to be disclosed. Furthermore, based on a preliminary estimate, the group notes that its production facilities will bear the vast majority of the amounts of all metric data on this topic, whereas the sales corporations account for a marginal portion that the group considers not material. However, the group is aware of the requirement to calculate the metrics on the basis of all undertakings of the group. Therefore, it has established processes and procedures to measure directly and with high precision the part of the metrics attributable to the group’s production facilities, whereas it continues to determine the part of the metrics attributable to its sales corporations based on estimations, such as average per capita figures. The total metrics disclosed is, therefore, the total of the portion directly measured and a respective estimate.</p> <p>Do ESRSs allow metrics for an aspect that is material from a group perspective to be determined with less certainty for some sub-activities or subsidiaries given that (1) these sub-activities or subsidiaries are associated with no or only immaterial IROs regarding the respective sustainability matter, and (2) the IROs that are material from a group perspective result from other parts of the group?</p>
<b>Answer</b>
Yes, disclosing metrics on a sustainability matter that is material from a group perspective may include a portion that is determined with less certainty compared to the other portion, as long as the portion determined with less certainty is attributable to sub-activities or subsidiaries that do not or only insignificantly contribute to the fact that the matter is material from a group perspective.

<p><b>Reason leading to that answer</b></p> <p>The ESRS seek to ensure that the scope of consolidation for sustainability reporting is the same as for financial reporting. Therefore, metrics disclosures shall consider all subsidiaries in general. However, in many cases, the actual figures reported for the metrics cannot always be fully determined in the same precise way with reasonable effort compared to the value of the information. In the example, the precision and certainty of the total figures would be very high, although not 100% because the remaining minority portion is based on an estimation of higher uncertainty, which would not result in the disclosure as a whole failing the qualitative characteristics of information as set out in ESRS 1 chapter 2. The use of reasonable assumptions and estimates is an essential part of preparing sustainability-related information and does not undermine the usefulness of that information, provided that the assumptions and estimates are accurately described and explained (ESRS 1 paragraph 89).</p> <p>On metrics ESRS 1 paragraph 36 requires an undertaking to establish “how it applies criteria, including appropriate thresholds, to determine [...] the information it discloses on metrics for a material sustainability matter”, hence implicitly leaving to the undertaking a certain extent of discretion in terms of how metrics are determined and calculated. In addition, ESRS 2 paragraph 77 requires an undertaking for metrics disclosures to “disclose the methodologies and significant assumptions behind the metric, including the limitations of the methodologies used” which also gives rise to the aforementioned conclusion.</p> <p>One might argue that, also as a matter of principle, any metric shall be the sum of the portions which are determined based on the very same method and determined with the same level of (un)certainty. However, this does not hold because even the standardised metric “Total GHG emissions” (DR E1-6) may involve different levels of measurement uncertainties.</p>
<p><b>Alternative views</b></p> <p>The ESRS do not provide room for judgement as to whether a metric may involve different levels of uncertainties, with “Total GHG Emissions” as an exception. For many standardised metrics ESRS provide binding guidance on how to calculate them.</p>
<p><b>Why and how the issue covered by the question is expected to be relevant for a wide group of preparers and/or other stakeholders</b></p> <p>The case is widespread because in most undertakings the impacts, risks, and opportunities are not evenly spread across all subsidiaries. The metrics disclosure requirements of ESRS have to be complied with by all undertakings.</p>

## 2 Environmental ESRS

- 2.1 ESRS E1: How is "associated with activities in high climate impact sectors" to be understood - does it refer exclusively to the sectors in which the reporting undertaking itself is active?

<b>ESRS most connected with the question</b>
ESRS E1
<b>Detailed ESRS reference(s)</b>
ESRS E1 paragraph 40
<b>Question</b>
How is "associated with activities in high climate impact sectors" to be understood - does it refer exclusively to the sectors in which the reporting undertaking itself is active?
<b>Relevant background and fact pattern</b>
<p>The undertaking shall provide information on the energy intensity (total energy consumption per net revenue) associated with activities in high climate impact sectors (ESRS E1 paragraph 40). Is this disclosure requirement about the sectors in which the reporting undertaking itself is active or is it about the net revenue that the reporting undertaking generates with customers active in "high climate impact sectors" and the energy consumption that it incurs in meeting its performance obligation towards such customers?</p> <p>Example: Undertaking A is not itself active in a high climate impact sector but has many customers who are active in high climate impact sectors. In the reporting year, undertaking A generates a net revenue of 100 million euros and consumes 100 MWh for this. If only the company's own activities are relevant for the abovementioned DR in ESRS E1 net revenue and the energy consumption from activities in high climate impact sectors would be 0, hence the disclosure on energy intensity. If, in turn, the customers are relevant, the energy intensity would be 100 MWh/100 million euros net revenue.</p>
<b>Answer</b>
The disclosure requirement is based on activities of the undertaking subject to the sustainability report. Therefore, the notion "high climate impact sectors" refer to the sectors in which the reporting undertaking itself is active.
<b>Reason leading to that answer</b>
The requirement is located in ESRS E1 as an additional requirement within DR E1-5 (Energy consumption and mix) which governs disclosures on the reporting entity's own energy consumption. Based on the context of the additional requirement it seems logic to assume that the energy intensity refers to the same basis, i.e., the activities of the reporting entity.
<b>Alternative views</b>
The disclosure requirement is about the net revenue that the reporting undertaking generates with customers from high climate impact sectors and the energy consumption that it has for such customers. There is a change in the wording within this disclosure requirement in comparison to other requirements. Other requirements within this disclosure requirement explicitly refer to "undertakings <u>with operations</u> in high climate impact sectors" (ESRS E1 paragraph 38). This requirement explicitly refers to " <u>associated with</u> activities in high climate impact sectors".
<b>Why and how the issue covered by the question is expected to be relevant for a wide group of preparers and/or other stakeholders</b>
This disclosure requirement has to be complied with for all undertakings for which "energy" is a material sub-topic.

### 3 Social ESRS

#### 3.1 ESRS S1: May estimates or secondary data also be used for social topics if they concern social protection on own workforce?

<b>ESRS most connected with the question</b>
ESRS S1
<b>Detailed ESRS reference(s)</b>
ESRS S1 paragraph 72, 74 and 75
<b>Question</b>
May estimates or secondary data also be used for social topics if they concern social protection on own workforce?
<b>Relevant background and fact pattern</b>
Undertakings shall disclose whether all their employees are covered by social protection against loss of income due to major life events, and, if not, the countries where this is not the case (ESRS S1 paragraph 72 and 75). Social protection includes protection through public programs or through benefits offered by the undertaking (ESRS S1 paragraph 74).
Many undertakings have established own protection schemes for a number of several life events. However, in many cases undertakings are not in the position to determine conclusively what protection schemes are offered by public programs and whether all employees make use of these. Therefore, the question arises whether undertakings may use estimates or external data, including those of third data providers, to meet the disclosure requirement.
<b>Answer</b>
Undertakings may use estimates or secondary data to meet the disclosure requirement. Undertakings could, for example, refer a country list provided by the U.S. Social Security Administrations („Social Security Programs Throughout the World”: <a href="https://www.ssa.gov/policy/docs/progdesc/ssptw/">https://www.ssa.gov/policy/docs/progdesc/ssptw/</a> , updated until 2019).
<b>Reason leading to that answer</b>
When quantitative metrics cannot be measured directly and can only be estimated, measurement uncertainty may arise (ESRS 1 paragraph 87). The use of reasonable assumptions and estimates is an essential part of preparing sustainability-related information and does not undermine the usefulness of that information, provided that the assumptions and estimates are accurately described and explained (ESRS 1 paragraph 89).
Making use of data sources such as the country list provided by the U.S. Social Security Administrations („Social Security Programs Throughout the World”) is therefore possible under the ESRS as long as this is made transparent in the sustainability report (ESRS 1 section 7.2). Furthermore, if those data sources are used consistently across the undertakings comparability of sustainability data will improve. In addition, the efforts for preparing the information could be significantly reduced.
A future standardised EU list would reduce the costs of applying the provisions, as not every reporting undertaking would have to determine the countries with social protection itself.
<b>Alternative views</b>
Data must be collected on a decentralised basis for each individual country in which the reporting undertaking is active.
<b>Why and how the issue covered by the question is expected to be relevant for a wide group of preparers and/or other stakeholders</b>
This disclosure requirement has to be complied with for all undertakings for which “working conditions” is a material sub-topic.



### 3.2 ESRS S1: How is the metric “family-related leave” defined?

<b>ESRS most connected with the question</b>
ESRS S1
<b>Detailed ESRS reference(s)</b>
DR S1-15 – Work -life-balance metrics
<b>Question</b>
Does the metric “family-related leave” presume that an employee is entitled to every concept of family-related leave?
<b>Relevant background and fact pattern</b>
Undertakings shall disclose the extent to which employees are entitled to and make use of family-related leave (ESRS S1 paragraph 91). This disclosure shall include the percentage of employees entitled to take family-related leave and the percentage of entitled employees that took family-related leave, and a breakdown by gender (ESRS S1 paragraph 93).
Family-related leave include maternity leave, paternity leave, parental leave, and carers’ leave that is available under national law or collective agreements (ESRS S1 paragraph AR96). However, it is unclear whether an employee needs to be entitled to all concepts of family-related leave (as defined in paragraphs AR96 and AR97 of ESRS S1) in order to count as “entitled to family-related leave” or whether an entitlement to only one of these is sufficient.
<b>Answer</b>
An employee is considered to be entitled to family-related leave as long as this person is entitled to at least one of the concepts defined in paragraph AR16 of ESRS S1.
<b>Reason leading to that answer</b>
An employee cannot be entitled to all concepts of family-related leaves at the same time as this would otherwise mean that the person is entitled to both maternity and paternity leave which does not seem realistic. Also, ESRS S1 does neither require disclosing a breakdown of employees entitled to family-related leave by the different concepts nor to disclose a breakdown of employees having taken family-related leave by the different concepts.
<b>Alternative views</b>
An employee is considered to be entitled to family-related leave as long this person is entitled to all leave-concepts mentioned in ESRS 1 paragraph AR96 points (a), (c), and (d) or to all leave-concepts mentioned in ESRS 1 paragraph AR96 points (b), (c), and (d). For example, if an employee is entitled to the leave-concept (c) but not to (d) this employee is not considered entitled to family-related leave.
<b>Why and how the issue covered by the question is expected to be relevant for a wide group of preparers and/or other stakeholders</b>
This disclosure requirement has to be complied with by all undertakings for which “work-life balance” is a material sub-sub-topic.

### 3.3 ESRS S1: Under what conditions is an employee entitled to family-related leave in the meaning of ESRS S1?

<b>ESRS most connected with the question</b>
ESRS S1
<b>Detailed ESRS reference(s)</b>
DR S1-15 – Work life balance metrics
<b>Question</b>
What conditions must be met in order to consider an employee entitled to maternity- or paternity- or parental leave in the meaning of ESRS S1?
<b>Relevant background and fact pattern</b>
<p>Undertakings shall disclose the extent to which employees are entitled to and make use of family-related leave (ESRS S1 paragraph 91). The concepts of family-related leave are defined in ESRS S1 paragraph AR96 of ESRS 1. Furthermore, maternity-, paternity-, and parental leave are defined in paragraph AR96 including detailed descriptions which might be understood as “triggering conditions”, i.e., “directly around the time of childbirth (or [...] adoption)” (point a), “on the occasion of the birth or adoption of a child” (point b), and “on the grounds of the birth or adoption of a child” (point c).</p> <p>The employees of an undertaking are granted the right to leave work for a certain period of time when one of these triggering conditions occur. Are these triggering conditions relevant for concluding whether an employee is entitled to family-related leave in the meaning of ESRS S1, or are the triggering conditions merely intended to better describe the terms, i.e., they do not constitute actual conditions?</p> <p>As an example, an undertaking operates in a jurisdiction where every employee has the right to family-related leave in case of the birth or adoption of a child. Assuming two employees where employee 1 is expecting the birth of their child in the near future, and employee 2 does neither expect birth or adoption of a child. Can both employees be considered entitled to family-related leave in the meaning of ESRS S1?</p>
<b>Answer</b>
For the conclusion whether an employee is entitled to family-related leave the undertaking considers what national law or collective agreements provide in the event that the conditions are met which are attached to the definition of concepts of family-related leave in ESRS 1 paragraph AR96. The occurrence of these triggering conditions is not relevant for the conclusion whether or not an employee is entitled to family-related leave. Therefore, both employees in the example are considered entitled to family-related leave in the meaning of ESRS S1.
<b>Reason leading to that answer</b>
The conditions attached to the description of the concepts of family-related leave in ESRS 1 paragraph AR96 are not meant to set real additional conditions; rather, they form additional guidance to better describe the concepts, i.e., they do not constitute actual conditions?
<b>Alternative views</b>
The concepts mentioned in ESRS 1 paragraph AR96 points (a) to (c) include further triggering conditions to be met in order to conclude on the entitlement to family-related leave. In the example, employee 1 is considered entitlement to family-related leave, whereas employee 2 is not.
<b>Why and how the issue covered by the question is expected to be relevant for a wide group of preparers and/or other stakeholders</b>
This disclosure requirement has to be complied with for all undertakings for which “work-life balance” is a material sub-sub-topic.