

European Sustainability Reporting Standards (Draft, Nov. 2022)

Comments by

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After a thorough analysis of various ESRS, we come to the following conclusions:

The complexity remains high (in relation to the first draft) and difficult to manage for SMEs. This is especially true for requirements that are not very precise, questions about activities outside one's own area of activity in the value chain or the assessment of ecological impact thresholds. Many descriptions of disclosures and targets are circuitous, diffuse, and imprecise – a lot of wording. It is to be feared that most companies will be overwhelmed with this reporting and either waste time and resources on the report or get bogged down in generalities.

Once the directive has been adopted and transposed into national law, the ESRS will become very relevant. It is therefore all the more important that they are scientifically sound, consistent with the regulatory framework and understandable for the companies concerned.

We appreciate very much the effort of EFRAG to frame and monitor the reporting on SDGs. The drafts in general seem to be a good instrument for this aim. However, we think that the political and reporting ambition might be too high in the first years, especially for SMEs. **Therefore, we suggest that on critical issues, especially on reporting on the value chain, on double materiality and on the undertakings strategy, its impacts, risks and opportunities, a staggered approach could be used; as well in terms of content reported and also moment of reporting.**

We expect that most companies will consider the obliged reporting as imposition rather than a chance for change.

Comments to ESRS 1

ESRS 1 “General requirements” serves the general understanding of this reporting standard.

Entity-specific disclosures: According to para 17, the entities shall analyse the metrics used for their disclosures. This will not be practicable due to missing experience and knowledge in the undertakings. Please drop!

Double materiality: The text in para 40 should refer to the distinction between "impact" and "risk and opportunities" (1.1.3.)

Para 45: What are “appropriate thresholds”? Appropriate to a person, a regulation...?

In para 46, sustainability matters are described. From our view, sustainability means system thinking – very useful for undertakings. But this does not include “everything everywhere” as it can be taken from the text in para 46.

Value chain: It is not clear how companies should work with respect to para 46: This will create some problems in the practise of reporting - how to distinguish between material and non-material value chain information?

Para 77: Very good approach, could be enhanced by networks, NGOs etc.

Transitional provisions: The enormous problems that are to be expected in reporting on the value chain are mitigated by the transitional provision (para 133). However, if the outcome of the reporting of value chain issues remains non-material, there should remain an exception to the rule. For example, for SME in the service sector (consultants): the reporting on their value chain will be "small".

Appendix A: These broad definitions, especially in the case of "impact materiality", lead to a completely oversized aspect of reporting. The cost and efforts to report "impact materiality" will be huge. Companies will have trouble with that and will thus try to minimize reporting.

Appendix B: Comment on AR6 - the aim of this "regulation" is very important, However, it might be difficult to know and reveal this kind of information. It might be an approach to allow "probability reporting", i.e. there might be a certain probability of child labour, because it is often very difficult to prove these practices.

Comments to ESRS 2

"General disclosures" are related to cross-cutting sustainability issues to be disclosed.

Governance: Para 25 might lead to conflicts with personal privacy rights, especially in SME's that only have a limited number of persons in those bodies.

Strategies: Due to the very open and unclear wording ("key elements", "general strategy", "relate to or affect") there will be a **high ambiguity about the content of reporting**. Since the core of the business is affected, there will be **no reliable and measurable outcome**- The disclosures required in this section might contain important trade secrets. In any case, this reporting is of interest for foreign competitors. (This is certainly not intended by the COM.) "Significant ESRS sectors" (para 38) - there is no explanation to this wording. What is "significant", what is an "ESRS-sector"? In the next passage "additional ESRS sectors" are reflected – which ones? There is no definition of "resilience" (para 46).

Targets: According to para 77, the undertaking is obliged to "track the effectiveness of its actions..." This implies a straight, predictable and describable relationship between actions und results. However, there might be no such relation or there might be other circumstances that interfere and that are not addressed or known.

Comments to ESRS E2

ESRS E2 "Pollution" is the basis for the disclosure of data on the emission of (potentially) hazardous substances during production as well as in the form of components of products.

Objective: There will be no "toxic-free environment" and no "zero pollution". The EU Action Plan "Towards a Zero Pollution for Air, Water and Soil" aims at minimisation of pollutants including the ban of specific hazardous compounds. This should be made clear to avoid misunderstandings among reporting companies.

Disclosure – Targets related to pollution: This is an extremely complicated task, in particular with respect to para 23 which will overburden most of the companies which are subjected to the CSRD. Ecological thresholds can be assessed by scientists, but there are large

uncertainties depending on the flora / fauna / ecosystem in question. Threshold may also vary because of local climate conditions etc. At the very least, a comply-or-explain clause should be explicitly inserted.

Disclosure – Substances of concern...: It should be made clear in para 31 that these disclosure requirements do not cover waste, because reporting requirements for waste are described in E5.

Appendix A: Pollutant – Is this a legal definition? This definition is very broad. What about the vibrations from a turbine in a power station? What about the illumination of this power station to avoid risks for aircrafts? Moreover, **there should be a reasonable suspicion of harmful impacts instead of a mere possibility, because this cannot be judged** by the accountants. **Pollution of soils** – this should be specified: N and P compounds are used as fertilizers (no pollutants!) and may lead to harmful impacts in case of over-fertilization. There are (eco)toxic compounds like N₂O which should be mentioned explicitly.

Appendix B: AR7 obliges reporting companies to identify risks and opportunities also along the value chain. It is very difficult for a company which is working in a specific part of the value chain to assess technology and market driven changes for other parts of the value chain. These requirements should be dropped.

Comments to ESRS E5

ESRS E5 „Resource use and circular economy“ describes a special part of the disclosure requirements focusing on the use of renewable and non-renewable resources and the circular economy strategy. In our comments on the draft, we criticised the partly contradictory definitions and scientifically unsound formulations. Thanks to EFRAG for taking most of our comments into account! We would like to point out the following points that still need to be changed:

Disclosure requirements – measurable targets: In para 25 “circular material” is mentioned. There is no definition of a circular material in E5. Generally, **the term “circular material” should be avoided**, because it has no scientific evidence, is misleading and can be used for green-washing.

Disclosure requirement – waste: In para 38-41, reporting requirements for waste are described. According to the Waste Framework Directive (WFD), a Municipal Solid Waste Incinerator (MSWI) can be classified as either a recovery operation (Waste Framework Directive: “R1 - Use principally as a fuel or other means to generate energy”) or a disposal operation (D10 - Incineration on land). Operation of an MSWI can be classified as R1 only when its energy efficiency (calculated by a formula given in the Appendix of the WFD) is equal to or above 0.60 for installations in operation and permitted in accordance with applicable Community legislation before 1st January 2009 and 0.65 for installations permitted after 31st December 2008, respectively. **It is therefore necessary, to make clear that “III. other recovery operations” include waste-to-energy operations if the R1 criterion is met and that “IV incineration” is valid if the MSWI does not fulfil this specification.** The wording otherwise contradicts applicable law.

Disclosure requirements – potential financial effects: Para 45 is not clear – an interpretation is necessary.

Appendix A: Circular Economy principles - Is there a legal definition of C.E. principles? If not, this should be dropped, because there is no common opinion in the scientific literature. (And EFRAG should therefore wait until scientists have reached an unanimous view on C.E.)

According to our critical remarks, the term "elimination of waste" has been dropped in ESRS E5 with the exception of the Appendix. It is not possible to eliminate waste completely. This leads to misunderstandings among reporting companies. **Incineration with (without) energy recovery:** As mentioned above, both processes should be clearly differentiated according to the R1 formula in the WFD.

Concluding remark to E5: It is recommended to focus on the sustainable management of resources in the sense of the Taxonomy, because "circular economy" is not an objective in itself from an ecological point of view. It can be a tool to decrease resource consumption, but system thinking is necessary to check if "circularity" leads to ecological performance.

Comments to ESRS S3

ESRS S3 "Affected Communities" refers to management activities which focus on "communities' economic, social and cultural rights... communities' civil and political rights... and particular rights of indigenous communities..." This suggests that ESRS S3 focuses on activities of European companies in other parts of the world, e.g. in case of mining. This should be made clear in the introduction.

Comments to ESRS G1

It is not quite clear why there is a need für the Standard. It could be included in ESRS 2 as well.

Disclosure – Corporate culture...: In spite of the definition in Appendix A, the term "corporate culture" used in para 7 is highly disputable and not clear. It is supposed that the culture should be "developed", however, there might also be a negative development.

Disclosure – Suppliers: The requirements under para 14 are completely unclear and are not executable for lack of good definitions. This is also applicable to some subjective wordings like "fair" or "vulnerable"

Appendix A: Corporate culture (see also above) - hard to define, hard to measure, hard to describe.

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