

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: Finnwatch ry. (transparency registry ID 076979218638-77)

1. General comments

The adoption of the Corporate Sustainability Reporting Directive and the introduction of European Sustainability Reporting Standards therein was a much welcomed step that by the Commission's own admission, sought to address the many shortcomings in the Non-Financial Reporting Directive which rendered the data companies reported under the NFRD often irrelevant, incomparable, unreliable and difficult to access and use.

Now the Commission is, however, proposing to subject all the disclosure requirements in the ESRS to materiality assessments (with only the exception of general disclosure requirements in ESRS 2). This risks undermining the goals of the CSRD, and creating policy incoherence with e.g. the Sustainable Finance Disclosure Regulation. The stated reasoning behind this deviation from EFRAG's draft standards and technical advice is to reduce burden on companies. This, however, is questionable as conducting materiality assessments on all disclosure requirements also takes up companies resources. At a minimum, if nearly all disclosure requirements are made subject to companies' materiality assessment, then it should at least remain mandatory for companies to disclose why they have concluded that certain issues are not material for them to report on.

The same applies to other aspects of the Commission's proposal, such as making certain disclosure requirements voluntary. These include making reporting on biodiversity transition plans and "non-employees" in companies' own workforce voluntary. Considering that non-employees (such as posted workers, agency workers) are often in a more vulnerable position compared with own employees, making disclosures on issues pertaining to them voluntary is questionable from the human rights perspective. Biodiversity loss, on the other hand, can have significant adverse impacts on the economy and on human health and livelihoods. As such, by making reporting on biodiversity transition plans voluntary even for companies to which biodiversity is material, the Commission misses an opportunity in a meaningful way to nudge companies towards developing such plans, and to prevent greenwashing and whitewashing.

We also find the additional phase-ins that the Commission is proposing unnecessary, as companies already have significant time to adjust and get ready before the disclosure requirements are expanded to them.

In sum, the deviations that the Commission is proposing to EFRAG’s draft standards and technical advice represent a step in the wrong direction that the Commission should not take. Instead, the Commission should seek to maintain the ambition of the draft ESRS. In any case, the Commission should refrain from any new changes that would even further dilute EFRAG’s draft standards.

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

As stated in response to Q1, we do not support the Commission proposal to subject reporting on climate and own workforce to materiality assessment. These topics are material to all companies and as such, disclosure requirements pertaining to these topics should be mandatory to all companies and not subject to materiality assessment. Subjecting these to materiality assessment does not add value nor does it reduce burden on companies but it does open doors for omitting crucial information that is needed for the green transition – thus also creating policy incoherence and confusion compared with e.g. the SFRD.

Also, similarly to the above, we do not support the Commission proposal to make certain disclosure requirements voluntary instead of mandatory, including the requirement to report on biodiversity transition plans or non-employees in the companies’ own workforce, even when these issues are material to them. Making disclosure requirements on these issues voluntary would effectively create a safe harbour for companies not to comply with reporting obligations – if they do not want to. This is not acceptable considering that a mandatory disclosure requirement e.g. on biodiversity transitional plans does create a significant burden on companies: companies that report that they do not have such a plan would still be fully in compliance with their reporting obligation in this regard.

We also oppose the additional phase-ins that the Commission proposes as simply unnecessary. The reporting duties are already phased-in for companies and they are not applied to most companies for several years to come. At the same time, the data required to comply for example with the disclosure requirements pertaining to e.g. own workforce should be easy for companies to gather from the get-go.

3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
----------	------------------------------------	---------

ESRS 1	para 29	According to EFRAG draft ESRS 1, irrespective of the outcome of materiality assessment, undertakings were required to always report on disclosure requirements in ESRS 2 (general disclosures), ESRS E1 (climate) and parts of ESRS S1 (own workforce), and on datapoints that stem from other EU legislation. This has now been reduced to only refer to ESRS 2 General Disclosures. As discussed in response to Qs 1 & 2 in greater detail, this undermines the goals of the directive on the whole. As such, we recommend diverting back to the EFRAG draft in this regard.
ESRS 1 and ESRS 2	para 31 (ESRS 1) para 57 (ESRS 2)	According to paras 31 in ESRS 1 and 57 in ESRS 2, undertakings “may provide” an explanation of the conclusion of their materiality assessment on the topic(s) they conclude are not material for them to report on. Especially considering that the Commission is proposing to subject all disclosure requirements to the materiality assessment (with the exception of ESRS 2 General Disclosures), undertakings should be required to provide such explanation. Suggest changing “may” to “shall”, as in the EFRAG draft ESRSs.
ESRS 2	para 17	As stated in response to Q1, we do not support the Commission proposal to introduce additional phase-ins and therefore, para 17 should be deleted.
ESRS E1	para 15	This disclosure requirement should be clearer in the sense that the strategy and business model should be compatible with the global or the EU goal of climate neutrality by 2050, which means that target must be sooner for companies in certain, easier to abate industries. Suggestion: “...Paris Agreement and with the objective of achieving (ADD: global) climate neutrality by 2050...” or “...Paris Agreement and with the objective of achieving climate neutrality (ADD: in the EU) by 2050...”
ESRS E1	para 45	The reporting should make a distinction between fossil and biogenic emissions and require reporting both separately.
ESRS E1	para 52	All scope 3 emissions should be disclosed as required in the GHG Protocol. Thus, the word “significant” and the words in parentheses should be removed. Alternatively, the words “significant” and “priority” need definitions i.e. threshold values to assess possibility to exclude those categories. For example, EU guidance on OEF refers to a threshold of three percent for processes that may be excluded.
ESRS E1	para 57	We would like to point out that phrases like "outside its value chain" are misleading from the perspective of human rights due diligence. When a company engages with a mitigation project whether with a direct investment or via carbon markets, that project becomes part of the company's value chain. We suggest removing the words “outside its value chain” here and from subsequent paragraphs.
ESRS E1	AR 63	The required details for the carbon credits used should include vintages of the used credits and identifying details of each project (e.g. project name, host country and the project id number in a certification registry).
ESRS E4	para 15	Disclosure of biodiversity transition plans should be a mandatory requirement, not voluntary (“shall disclose” instead of “may”).
ESRS E4	paras 38–40	Similarly to the above, reporting on impact metrics when a company directly contributes to introduction of invasive alien species, or when it has identified that it has material impacts to the state of species or to ecosystems, should be mandatory, not voluntary (replace “may” with “shall” in all these three).

ESRS S1	paras 71 and 76	Make reporting on adequate wage and social protection issues pertaining to non-employees in own workforce mandatory in line with the technical advice by EFRAG in draft ESRS S1 (replace “may” with “shall”).
---------	-----------------	---

4. Specific comments on Annex II

Defined term	Comment