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: **EuropeanIssuers**

1. General comments

EuropeanIssuers welcomes the opportunity to comment on the Draft Delegated Act on the first Set of European Sustainability Reporting Standards (ESRS). Issuers across Europe support the standardisation of sustainability reporting in the EU, as crucial step forward in the transition to a greener economy, in which many companies are already deeply invested. EuropeanIssuers, having been involved in the elaboration of the ESRS at the EFRAG's Sustainability Reporting Board level, is aware of the challenges and balances embedded in the Draft Standards, and whilst having approved them, wishes to share the position and concerns of listed companies across Europe given their operational realities.

We welcome President von der Leyen's call to reduce reporting obligations for companies by 25 per cent, while considering that more should be achieved in order to allow for a sustainable and feasible reporting process. In light of the above, we contribute with the following general comments on the overall draft ESRS, before detailing more specific features.

1. Support for the European Commission's simplifications, additional phase-ins and reinforced materiality principle

EuropeanIssuers welcomes the reduction and modification of several points operated by the European Commission and the greater emphasis placed on materiality, avoiding a time-consuming and costly compliance exercise that would have overloaded sustainability reports with irrelevant information. EuropeanIssuers strongly supports that only ESRS 1 and ESRS 2 are mandatory and that all other topical standards are subject to the company's materiality assessment.

However, there continues to be a **fundamental lack of clarity about how to apply the concept of double materiality in practice**, especially with respect to locally specific sustainability impacts, risks and opportunities to be consolidated at a global level. EuropeanIssuers believe it is essential to provide further guidance on how to carry out the double materiality assessment. More guidance would be also useful on the methodology for financial materiality. As this is a foundational process for determining the scope and content of the disclosures, it is critical for undertakings to understand and apply the process in a consistent way. Inconsistent application by preparers will result in a lack of comparability in company disclosures, undermining a key goal of the standard.

EuropeanIssuers welcome the phase-in established by the European Commission on the disclosure of financial impact effects of climate change risks and other environmental topics. However, even if some companies are already implementing methodologies to be able to disclose financial effects on sustainability aspects, there are no commonly used indicators acknowledged at international level, making the comparison between reporting entities difficult.

Regarding the referencing of other standards, **we strongly encourage the adoption of self-contained requirements within ESRS rather than incorporating external standards and guidelines by reference**. Many issues arise when cross-referenced materials are used but are not developed using the same conceptual framework, leading to confusing and sometimes conflicting requirements. As these external standards and guidelines change over time, sometimes without the involvement or awareness of the EC, this may lead to further misalignment.

2. The necessary alignment of reporting requirements of financial market participants with ESRS

EuropeanIssuers proposes that Financial Market Participants (FMP) should benefit from the same materiality principle, which implies adapting the legislation to which they are subject. Indeed, the generalization of the materiality principle for all thematic standards and disclosure requirements in the ESRS creates a problematic situation for FMP subject to specific requirements, in particular, under the SFDR, the EBA's standards on Pillar 3 disclosures on ESG risks and the Benchmark Regulation. If the 14 mandatory PAI indicators required by the SFDR are not included in a company's sustainability report, as considered not material for the company, FMP are unable to respect their own reporting obligations. The Commission should therefore clarify that in this case FMP are not required to make estimates or collect data in another manner. The consultation on the SFDR revision scheduled for autumn provides an opportunity to ensure consistency between ESRS and SFDR. While waiting for the necessary revision of SFDR, FMP should be confident that when companies do not disclose certain PAI indicators, this results from a reliable process disclosed according to ESRS 2 Chapter 4.1. Indeed, their materiality assessment is reviewed by an independent assurance provider. FMP should be able to respect their own reporting obligations while taking into account the absence of materiality of several PAI.

3. Alignment with ISSB on financial materiality definition

The definition of financial materiality for ESRSs must be identical to that adopted by IFRS S1, based on that of the international accounting standard IAS 1, to ensure interoperability between the two standards. While the ISSB Standards' definition of financial materiality focuses on the investors' information needs, the ESRS' one is significantly broader and refers to other stakeholders listed as users of information in the ESRS – hence, expressly acknowledging that financial materiality applies to a broader range of stakeholders other than investors. To reduce additional reporting burden due to diverging approaches, ESRS should define their financial materiality test to equate to the ISSB materiality test. The materiality approach utilised by the ISSB Standards is already applied when a company reports based on IFRS Accounting Standards to meet the information needs of investors, so is well established and understood.

4. Environmental Standards

According to the Accounting Directive (2013/34/EU1) as amended by the Corporate Sustainability Reporting Directive (CSRD - 2022/24642), "*the European Sustainability Reporting Standards (ESRS) shall specify the information that undertakings are to report in accordance with Articles 19a and 29a and, where relevant, shall specify the structure to be used to present that information.*"

Hence, **ESRS requirements are not entitled to define the methodologies** to be used to assess the information reporting by the undertakings. Specifically, the **ESRS-E1 (on climate change) should remain neutral** regarding the different methodologies currently available to assess the 1.5°C compatibility of companies and should neither compel nor even recommend the use of one specific approach developed by one specific actor. The definition of climate change mitigation, which is linked to numerous disclosure requirements in ESRS E1 (actions, targets, policies, etc.) should not amount to impose requirements that go beyond the CSRD. In this regard, all paragraphs and application requirements in ESRS E1 about companies' climate transition plans **must systematically and strictly refer to the compatibility** of their business model and strategy in view of the transition to a sustainable economy and the limiting of global warming to 1.5 °C above pre-industrial levels in line with the Paris Agreement, **with no wording change**.

In ESRS E2 related to pollutions, it is essential to state more explicitly that **local pollutants** should not be aggregated as a whole **because the level of risk is assessed at installation level and not at group level** given the quantity of pollutants released locally and the exposure of the local environment and the local people. The publication of consolidated data for local pollutants is meaningless under a risk perspective.

5. Social Standards

The social standard S1 remains very comprehensive and requiring significant additional efforts. EuropeanIssuers appreciates the introduction of the 10% threshold in the disaggregation data and phase-in measures. Nevertheless, further simplifications are needed. For instance, the DR including non-employees could be removed and the adequate wage indicator could be postponed to a later stage to enable the transposition of the recent adequate minimum wage directive. Regarding S2, S3 and S4, we challenge the relevance; they regret that S4 has not been redrafted to cover customers as stated by the Directive.

6. Business Conduct

Confirmed incident of corruption: In this section, companies appreciate the choice of the Commission to introduce a distinction between shall and may. However, the fact that the Delegated Act states that the undertaking may disclose information concerning confirmed incidents of corruption or bribery is denying the risk of self-incrimination for the undertaking. We advocate the deletion of those paragraphs. We see the risk that disclosure of such information may actually oblige third countries' authorities, e.g. the US Department of Justice, to investigate against reporters in scope for EU regulation This may have an influence on competition between "in-scope" and "not in scope" companies who are not subject to similar reporting obligations.

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

3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
ESRS 1	Para 2	Companies welcome the generalization of the materiality principle for all thematic standards and disclosure requirements. However, this **creates a problematic situation for Financial Market Participants** (FMP) subject to specific requirements and highlights the inconsistency of the Sustainable Finance regulatory framework. **Please refer to our general comments above.**
ESRS 1	Para 13	The introduction of the concept of Minimum Disclosure Requirements is not clear and its interaction with the materiality analysis should be described.
ESRS 1	Para 18	Companies consider that the terms "shall consider" should be more strictly restricted to methodologies to avoid uncertainties on the legal effect of requirements drafted with this expression. For instance, its use in paragraph 121 of ESRS 1 or in paragraph AR 47 (b) of ESRS E1 does not meet this objective of clarity.
ESRS 1	Para 29	Paragraph 29 states that irrespective of the outcome of its materiality assessment, the undertaking shall always disclose the information required by ESRS 2 General Disclosures. ESRS 2 refers to the topical standards with which it must jointly be read and applied. **To make sure that the implementation of the materiality principle to ESRS 2 and the topical standards is perfectly clear**, paragraph 29 should explicitly refer to the paragraph 2 of ESRS 2, as it states which topical ESRS 2 requirements are always mandatory and appendix C of ESRS 2 should be completed with the same precision.
ESRS 1	Para 49	Paragraph 49 attributes financial materiality to all other stakeholders listed as users of information required by the ESRS hence expressly acknowledging that **financial materiality applies to a broader range of stakeholders other than investors**. The ISSB only uses a materiality test focussed on investors' information needs. The financial materiality test used in ESRS includes an investor component that is essentially aligned with the ISSB materiality test but, in addition, is expressed as **being explicitly broader than the ISSB test**. To reduce additional reporting burden, the **definition of materiality of the ESRS should be aligned with the definition of the ISSB**. Alternatively, the financial materiality test used in ESRS could expressly acknowledge a component defined as 'investor materiality' aligned with the ISSB definition.
ESRS 1	*Para 54*	ESRS 1 provides for **too granular levels of disaggregation** of information, including country by country reporting, and reporting by significant sites or assets. Such a requirement seems disproportionate and, for certain activities, could raise confidentiality issue as regards the location of sites or assets.
ESRS 1	*Para 63*	According to the definition of Business relationship, direct and indirect supplier are included: "*The relationships the undertaking has with business partners, entities in its value chain, and any other non-State or State entity directly linked to its business operations, products or services. Business relationships are not limited to direct contractual relationships. They include indirect business relationships in the undertaking's value chain beyond the first tier, and shareholding positions in joint ventures or investments*."

		We support the inclusion of information on material impacts, risks and opportunities related to the value chain beyond the first tier. However, since it is very difficult to obtain data further down the value chain, over which the entity has no control or power of influence, further guidance and examples are needed to help companies understand which downstream and upstream value chain actors should be included in their reporting scope.
ESRS 1	Para 67	The scope of reporting under the ESRS differs from the scope of consolidated financial statements and of the disclosure requirements of Article 8 of the Taxonomy Regulation which exclude joint ventures. **Accounting data should be required only on the scope of the financial statements**, namely by excluding companies accounted for under the equity method, as well as companies controlled but not consolidated because not material. When an item involves a combination of financial and sustainability information, the accounting scope must take precedence for the sake of consistency. For the sustainability information relating to the elements of the value chain out of the control of the undertaking, it seems preferable to give nothing rather than to make approximations which can put the issuer at risk.
ESRS 1	Para 118	Paragraph 118 refers to Article 9 of the Prospectus Regulation which is **Regulation (EU) 2017/1129**.
ESRS 1	Para 121	Paragraph 121 requires undertakings to consider the overall cohesiveness of their sustainability statement when incorporating by reference information and to ensure that incorporation by reference does not impair readability. Since information incorporated by reference are not included in the sustainability statement, companies consider that the use of the word readability would eventually prohibit incorporation by reference. They recommend **using instead the word "comprehensibility"** used in the Prospectus Regulation.
ESRS 1	Para 124	Companies consider that it is **inappropriate to introduce the concept of "indirect connectivity."** The ESRS should remain as straightforward as possible to be fit for purpose. Introducing this concept adds complexity without real added value.
ESRS 1	Para 132 (b)	Companies would welcome **clarifications regarding paragraph 132 (b) which seems to imply that the value chain should be taken into account in certain instances to calculate the reporting metrics**. Considering the difficulty to report on value chain, we recommend to establish the 3 years phase-in also for policies, actions, and targets, and not only to metrics. Moreover, available in-house data and already publicly available information may not be sufficiently accurate and meet the requirements on data quality stablished by ESRS.
ESRS 1	Appendix E	**Companies support the idea to have flowchart** to help preparers perform the materiality assessment and consider that Appendix E could be included in the body of ESRS 1 but also needs to **be complemented to cover all scenarios and correct typos**. The key question "is the topic material for the undertaking?" should be addressed in the flowchart as it is the core of the reasoning according to the ESRS. Finally, the consequence of the absence of topical standard must be reviewed as the answer is inconsistent.
ESRS 2	Para 12	EuropeanIssuers supports the new provision allowing undertakings to indicate that forward-looking information is uncertain. **The proposed wording is however too vague** and could result in diverging practices and statements. We recommend **adding the following more prescriptive wording** which could serve as basis for the forward-looking caveat statement: "When disclosing forward-looking information, the undertaking may indicate that it considers such

		information to be uncertain ***and that the impacts, risks and opportunities described can be affected by important factors that could cause the actual results to differ materially."***
ESRS 2	Para 17	An undertaking or group not exceeding on its balance sheet date the average number of 750 employees during the financial year **can omit the information required by ESRS E4, ESRS S1, ESRS S2, ESRS S3 or ESRS S4**. Companies shall however disclose whether some of these topics have been assessed to be material and disclose the list of material matters, a brief description of the targets, policies, actions taken and metrics. In order to really bring relief to companies, **the list of disclosures should be deleted**.
ESRS 2	Para 40	Companies are concerned that the reporting requirement regarding the breakdown of revenue by significant ESRS sectors **will be burdensome and bring little added value** because not consistent with the information provided in the financial statements. They consider that segment reporting should be aligned with IFRS 8.
ESRS 2	Para 45	Companies welcome the reference to the key stakeholders. They consider however that the requirement, under indent b), to disclose a summarised description of the undertaking's understanding of the interests and views of its key stakeholders **goes beyond the requirement of the CSRD and should be removed**.
ESRS 2	*Para 48*	Such forward-looking quantitative information depends on so many uncertain factors, among which many are beyond the company's control, that it will necessarily be subject to errors, exposing EU companies to risks of litigation and liability when forward-looking sustainability information finally turns out to be inaccurate. Making public such information would also raise confidentiality issues.
ESRS 2	§ 45	Companies welcome the reference to key stakeholders. They consider however that the requirement, under indent b), to disclose a summarised description of the undertaking's understanding of the interests and views of its key stakeholders goes beyond the requirement of CSRD and should be removed.
ESRS 2	§ 48	To analyse the anticipated financial effects, the undertaking shall take into consideration "plans the undertaking is not contractually committed to" in § 48 e. It contradicts the well-set key reporting principles and can lead to greenwashing criticisms if the plan were not to occur at the end.
ESRS 2	§ 68	The disclosure regarding resources allocated to action plans have been significantly reinforced in the delegated act (especially §b and c). It can be understood regarding the climate transition plan but would be burdensome fi applicable to all plans settled to tackle material IRO. That is why the beginning of § 68 should be reinforced to focus the requirement on strategic aspects: "Where the implementation of an action plan requires significant OpEx and/or CapEx ***requiring financing beyond investments or expenses usually planned by the undertaking,*** […]." Indeed, significant OpEx or CapEx can be allocated to action plans on a regular basis, without needing specific financing plans.
ESRS E1	Objective 1, b) and AR 1	The terms "past," "in line with the Paris Agreement", and "(or an updated international agreement on climate change)" should be removed for the reasons below. • Requiring information on the compatibility of past efforts with 1.5 is not legally feasible due to the principle of no retroactivity of EU law.

		• Efforts « in line » with the Paris Agreement go beyond the provisions of the CSRD. • The CSRD's references to the Paris Agreement do not include potential future international agreements on climate change. The revised wording of 1b) should be the following: "The undertaking's ~~***past,***~~ current, and future mitigation efforts ~~***in line with the Paris Agreement (or an updated international agreement on climate change) and compatible***~~ ***in view of their compatibility*** with limiting global warming to 1.5°C, in line with the Paris Agreement ~~***(or an updated international agreement on climate change)***~~;"
ESRS E1	Objective 1, c)	The CSRD neither requires undertakings to have plans "in line" with the transition nor to "contribute" to limiting global warming to 1.5°C. Therefore, the wording should stick to CSRD and be the following: "The plans and capacity of the undertaking to adapt its strategy and business model, ~~***in line***~~ ***in view of its compatibility*** with the transition to a sustainable economy and ~~***to contribute to***~~ ***with the*** limiting global warming to1.5°C".
ESRS E1	Para 4	The definition of climate change mitigation, which is linked to numerous disclosure requirements in ESRS E1 (actions, targets, policies, etc.) should not amount to impose requirements that go beyond the CSRD. Both this objective 4 and the definition should include the notion of compatibility, in line with the requirements of the CSRD relating to transition plans. **Therefore, the wording should be the following:** "Climate change mitigation relates to the undertaking's endeavours ***to adapt its business model and strategy in view of their compatibility with the transition to a sustainable economy and with the limiting of global warming*** ~~***the general process of limiting the increase in the global average temperature***~~ to 1.5 °C above pre-industrial levels in line with the Paris Agreement. This Standard covers disclosure requirements related but not limited to the seven Greenhouse gases (GHG) carbon dioxide (CO_2), methane (CH_4), nitrous oxide (N_2O), hydrofluorocarbons (HFCs), perfluorocarbons (PCFs), sulphur hexafluoride (SF_6) and nitrogen trifluoride (NF_3). It also covers Disclosure Requirements on how the undertaking addresses its GHG emissions as well as the associated transition risks."
ESRS E1	Para 15	The reference to "past" efforts should be deleted because requiring information on the compatibility of past efforts with 1.5 is not legally feasible due to the principle of no retroactivity of EU law.
ESRS E1	*Para 20 c*	References to 1.5°C in the CSRD does not include any restriction relating to « with no or limited overshoot », it should be deleted. We suggest the following amendment in the text: *20.c climate-related transition risks and opportunities in own operations and along the value chain, in particular:* *i. the identification of climate-related transition events, considering at least a climate scenario in line with limiting global warming to 1.5°C and* ***at least consistent with reaching net zero greenhouse gas emissions by 2050 or before****.*

ESRS E1	*Para 35 a*	There might be GHG reduction targets that have been defined following a sectorial decarbonization pathway for which its definition is more relevant if expressed in intensity terms rather than with absolute figures. Furthermore, 35.a is not consistent with AR 24 that states that "the undertaking may disclose GHG emissions reduction targets in intensity value. Therefore, we suggest the following amendment in the text: *35.a: GHG emission reduction targets shall be disclosed in absolute value (either in tonnes of CO2eq or as a percentage of the emissions of a base year).* ***Alternatively, intensity value targets are also accepted for those GHG sources whose targets have been defined following a sectorial decarbonization pathway.***
ESRS E1	*Para 35 d*	According to different climate scenarios, including the IE NZ 2050 scenario, some sectors such as power shall reach net zero by 2040 in order to ensure that global economy will reach Net Zero by 2050. Consequently, we suggest to introduce the following amendment to add 2040: *35.d: GHG emission reduction targets shall at least include target values for the year 2030 and, if available, for the year 2050* ***or 2040****. From 2030, target values shall be set after every five-year period thereafter;*
ESRS E1	*Para 35 f*	The quantification of specific decarbonization levers may result difficult. Therefore, we suggest the following amendment: *35.f: the undertaking shall describe the expected decarbonisation levers and,* ***whenever possible,*** *their overall quantitative contributions to achieve the GHG emission reduction targets (e.g., energy or material efficiency and consumption reduction, fuel switching, use of renewable energy, phase out or substitution of product and process).*
ESRS E1	*Para 39 e*	It is currently no possible to track the precise source of the electricity that is consumed in most markets. Some countries have developed mechanisms through which electricity consumers can purchase energy with renewable attributes, but the portion of energy purchased without these mechanisms is composed by a mix of renewable and non-renewable sources that is not possible to differentiate. Therefore, we suggest to remove 39.e and add a new requirement applicable for all sectors, that explicitly requests the consumption of purchased or acquired electricity from renewable sources, instead of the other way around.
ESRS E1	Para 47 and Para 51, and AR 41	For GHG reporting, companies should be entitled to choose the best suited methodology considering their specificities among the following: financial control, operational control or equity share approach.
ESRS E1	Para 51	*We recommend aligning with the GHG Protocol in order to avoid double reporting and to align with globally recognised standards*.
ESRS E1	Para 57, 58, 59 and 60	We consider **it is necessary to include in those paragraphs the option given to companies to disclose their data on avoided emissions** triggered by the companies-activities, independently for scope 1, 2, 3 emissions, and without

		integrating those avoided emissions as a means to reach their climate targets. **If companies choose to use this option, they should release all hypotheses necessary to enable a sound understanding of the calculus**, especially about the baseline scenario used.
ESRS E1	Para 61	The requirement to achieve 90-95% emission reductions **should be deleted** as the **ESRS-E1 should remain neutral** regarding the different methodologies currently available to assess the 1.5°C compatibility of companies and should neither compel nor even recommend the use of one specific approach developed by one specific actor.
ESRS E1	Para 62, b) and c)	ESRS should not be overly prescriptive for the use of GHG neutrality claims; it should focus on asking the undertaking all hypotheses used for claims of climate neutrality and reference of reliance for carbon credits. 62 c) already focuses on requirements about carbon credits credibility and integrity. **Therefore 62 b) should be written as follows:** "b) ***the precise hypotheses on which*** ~~***whether and how***~~ these claims ***are based*** ~~***and the reliance on carbon credits neither impede nor reduce the achievement of its GHG emission reduction targets14, or, if applicable, its net zero target;***~~ »
ESRS E1	AR 2, AR 28, AR 29 and AR 30	According to the Accounting Directive (2013/34/EU1) as amended by the Corporate Sustainability Reporting Directive (CSRD - 2022/24642), "the European Sustainability Reporting Standards (ESRS) **shall specify the information** that undertakings are to report in accordance with Articles 19a and 29a and, where relevant, **shall specify the structure** to be used to present that information." **Hence, ESRS requirements are not entitled to define the methodologies to be used to assess the information reporting by the undertakings.** Specifically, **the ESRS-E1 (on climate change) should remain neutral regarding the different methodologies currently available to assess the 1.5°C compatibility of companies** and should neither compel nor even recommend the use of one specific approach developed by one specific actor, namely the comparison of the undertaking's emission reduction rate between a reference year and a target year with a **reference emission reduction factor** (sectoral or cross-sector). This approach, also referred to as "**fixed reduction rate"** approach, is far from obvious and is **strongly criticized by scientific literature**[1] since it only considers the relative reduction rate between two dates ("the slope of reduction"), and not the absolute performances of the undertaking (the value of the emission intensity) nor the absolute cumulative emissions, the latter approach being explicitly recommended in the IPCC 6th Assessment Report[2]. Consequently,

[1] See for instance the following references :TCFD, Measuring Portfolio Alignment 2021, GFANZ Recommendations 2022 and OECD, Assessing the climate consistency of finance, 2022

[2] Given that reductions in cumulative absolute emissions over time determine climate change, this metric is considered more closely aligned to climate science than a metric based only on the evolution of the carbon intensity of the undertakings.

companies with high baseline emissions are given advantage by this approach and can even be acknowledged 1.5°C compatible without complying with the sectorial performance benchmark[3].

For more information, one can refer to the [TCFD, Measuring Portfolio Alignment]which concludes that : *"Rate of reduction approach introduce the expectation* ***that all counterparties in a given industry reduce their emissions at the same rate****. This means that* ***counterparties that have already taken the most economically efficient decarbonization steps*** *will be expected to achieve the same year over- year reduction rates* ***as less advanced firms that still have "low-hanging fruit" available to them****. In other words,* ***rate of reduction approaches place a relatively heavier burden on high-performing counterparties*** *(with regard to decarbonization), relative to poorly performing counterparties and* ***they should only be used for sectors where no decarbonization pathways can be constructed.****"*

In the perspective of using the fixed reduction rate approach to assess the climate compatibility of an undertaking, **the provisions described in AR30 are questionable to say the least** (the undertakings may "adjust" (sic) their baseline emissions in some situations), very complex to implement (since the baseline emissions will have to be updated every 5 years according to AR26), and inaccurate in some of its part (contrary to what is currently written in AR30, undertakings **with old base year** may "benefit" from higher baseline emission, and not those **with recent base year,** unless one considers that emissions of the undertakings are not decreasing over time).

Therefore, in the absence of scientific consensus, neither SBTi nor the "fixed reduction rate" approach should be promoted by the ESRS.

1/ Hence, we ask to modify AR 2 as such:

AR 2. "Sectoral pathways have not yet been defined by the public policies for all sectors. Hence, the disclosure under paragraph 16(a) on the compatibility of the transition plan with the objective of limiting global warming to 1.5°C should be understood as the disclosure of the undertaking's GHG emissions reduction target. The disclosure under paragraph 16(a) shall be benchmarked in relation to a pathway to 1.5°C. This benchmark should be based on either a sectoral decarbonisation pathway if available for the undertaking's sector or an economy-wide scenario bearing in mind its limitations ~~(i.e., it is a simple translation of emission reduction objectives from the state to undertaking level~~). AR2 should be read also in conjunction with AR 27 and AR 28 and the sectoral decarbonisation pathways they refer to."

2/ And we ask to fully delete Application Requirements 28, 29 and 30 from the ESRS-E1.

[3] Hence a company using coal for electricity production such as EnBW was validated SBTI 1.5°C in 2023, despite a carbon intensity 50% higher than the EU sectorial average.

ESRS E1	*AR 13 c*	The notion of "consistency" in relation to 1.5°C is not mentioned in the CSRD and should be replaced by "compatibility", including in the context of scenario analysis, similarly to what is provided in AR 31, c). We suggest to delete the IEA Sustainable Development Scenario, as it is not leading to 1.5°C (and it has not been updated since 2021) and to specify the scenario for the NGFS. *C. informed the identification of transition events and the assessment of exposure by climate-related scenario analysis, considering at least a scenario consistent with the Paris Agreement and limiting climate change to 1.5°C, for example, based on scenarios of the International Energy Agency (Net Zero Emissions* ***scenario*** ***~~by 2050, Sustainable Development Scenario, etc~~****), or NGFS (Network for Greening the Financial System,* ***Net Zero by 2050 scenario****) climate scenarios.*
ESRS E1	*AR 26 b*	***The GHG protocol states that*** *"If a company sells a company asset, this is classified as a structural change according to the GHG Protocol Corporate Standard and should trigger a recalculation of a company's base year emissions. Emissions are simply transferred from one company to another without any change of emissions released to the atmosphere"*. We recommend to align AR26 to this relevant requirement of GHG protocol in order to prevent companies for having to report different baselines in their GHG inventories to accommodate the standard and the regulation requirements.
ESRS E1	AR 27	The notion of « alignment » with 1.5°C **should be replaced** as it is not mentioned in the CSRD and is inconsistent both with the previous sentence (where, compared to the EFRAG's version, the terms "in line" have been replaced by "compatible").
ESRS E1	AR 33 (j) and AR 46 (e)	**Market-based method for scope 2:** The requirements related to the purchase of green electricity could have been developed under E1-5 on energy or E1-6 on GHG emissions. Linking both may help clarifying the subject. Therefore, AR 33 (j) could be modified as follows: "(j) adopt a conservative approach when splitting the electricity, steam, heat or cooling between renewable and non-renewable sources based on the approach applied to calculate market-based Scope 2 GHG emissions ***(refer to AR46 (e)***). The undertaking shall only consider these energy consumptions as deriving from renewable sources if the origin of the purchased energy is clearly defined in the contractual arrangements with its suppliers (renewable power purchasing agreement, standardised green electricity tariff, market instruments like Guarantee of Origin from renewable sources in Europe or similar instruments like Renewable Energy Certificates in the US and Canada, etc.)." When using market-based approach in AR 46 (e), companies should explain the hypotheses used.
ESRS E1	AR 44 (e)	**Scope 1 GHG emissions based on EU ETS calculation rules:** Scope 1 GHG emissions under EU ETS are usually validated after the disclosure of management report. In addition, the rule under EU ETS related to « transferred CO2 » outside the EU scheme shall not be applied to avoid boundaries issues. **It is proposed to allow the reporting under GHG Protocol and to adapt AR44 (e) as follows**: ***"for activities reporting***

		under the EU ETS, report on Scope 1 emissions following the GHG Protocol or the EU ETS methodology (excluding the transferred CO2 outside EU scheme rule). The EU ETS methodology may also be applied to activities in geographies and sectors that are not covered by the EU ETS;"
ESRS E1	*AR 47 d*	We suggest requesting undertakings to disclose the materiality analysis (methodology, criteria and output) to be performed to determine the Scope 3 categories that are included in the GHG inventory.
ESRS E1	AR 47 (f)	While scope 3 emissions should be reported every year for significant categories, **a complete update for full scope 3 emissions should only be required on the occurrence of significant events or significant change of circumstance**. **Therefore, the wording of f) should be the following:** "f) update Scope 3 GHG emissions in each significant category every year on the basis of current activity data; update the full Scope 3 GHG inventory ~~***at least every three years or***~~ on the occurrence of a significant event or a significant change in circumstances (a significant event or significant change in circumstances can, for example, relate to changes in the undertaking's activities or structure, changes in the activities or structure of its value chain(s), a change in calculation methodology or in the discovery of errors);"
ESRS E1	AR 47 (g)	**Percentage of primary data by Scope 3 category:** A new data point has been introduced, requiring the undertaking to disclose the extent to which Scope 3 GHG emissions use inputs from the value chain. While this addition aligns with the ISSB, it is not needed to disclose the percentage of Scope 3 GHG emissions using primary data for each category (not required by ISSB). **AR 47 (g) should be modified as follows:** "the extent to which the undertaking's Scope 3 GHG emissions are measured using inputs from specific activities within the entity's value chain, and ~~***for each significant Scope 3 GHG category***~~ disclose the percentage of scope 3 emissions calculated using primary data obtained from suppliers or other value chain partners".
ESRS E1	*AR 47 h*	It should be ensured further consistency with GHG Protocol concerning emissions from investees. In particular, GHG protocol does not require companies to report scope 3 emissions from investees but Scope 1 and 2 only. Therefore, we suggest to remove Scope 3 under the following requirement or leave it voluntary: *Scope 1 and 2 GHG emissions from associates, joint ventures, unconsolidated subsidiaries (investment entities) and joint arrangements for which the undertaking does not have operational control and when chain.* ***Scope 3 emissions can also be reported on a voluntary basis.***
ESRS E1	AR 49	**Need to clarify the following expected information, as they will become mandatory ("shall") in the sustainability reporting:** • "comparative"

		• "Annual % target / Base year"
ESRS E1	*AR 68*	Quantifying an exact amount of impact for transition risks might be inaccurate or have a high variation from one company to other, depending on the assumptions. Transition risks are much less tangible and specially their impacts on assets. Also, it is not clean when a transition risk becomes material for the company. Since there are no common frameworks available to measure it data comparability could be distorted
ESRS E1	*AR 69*	As mentioned in the exposure draft itself there are "*currently no commonly agreed methodology to assess or measure how climate-related transition and physical risks and opportunities may affect the future financial position and performance of the undertaking*", therefore disclosures could present a high variation of assumptions and lead to a misinterpretation and mis comparison between undertakings efforts towards climate change.
ESRS E2	Para 23 to 35, AR 35	It should be clarified **how to avoid double reporting for substances already covered by the REACH Regulation which already imposes regular reporting.**
ESRS E2	Para 24	**Ecological thresholds for pollution defined by local authorities:** Targets on pollution in Europe are usually defined by local authorities. Therefore, it should be reflected that "ecological thresholds" **are defined by local authorities** and correspond to the emission limit values that are to be discussed under the Industrial Emissions Directive.
ESRS E2	Par. 26	The Standard seems to require only the reporting of contaminations that occurred in the reporting period. It is unclear whether historical contamination is therefore excluded (for soil and GW receptors). For example, what happens if the contamination occurred some years before, but you only find out in the reporting year? Please clarify
ESRS E2	Par. 28	It is not specified if it is possible to omit substances not relevant for the business. The Annex II referred to includes a list of about a hundred pollutants. It is necessary to significantly reduce the list of pollutants, otherwise there is the risk of greatly complicating the disclosure. If only material types of pollutants must be taken into account this has to be specified. **Pollution of air, water and soil:** Paragraph 28 requires the consolidated amount of each pollutant listed in Annex II of the E-PRTR Regulation. However, it is essential to state more explicitly that pollutants **should not be aggregated as a whole because the level of risk is assessed at installation level and not at group level**. So, companies should indicate in the report how the EPRTR emissions are accessible at installation level within the EU. For companies outside the EU, this data may not be systematically available at installation level and companies should disclose the timing of availability of such information. On a voluntary basis, companies may disclose consolidated emissions by type of pollutants, as the aggregation of pollutants from different nature, such as those pertaining to water, air, or soil, is not meaningful.

		Paragraph 28 should be modified as follows: "The undertaking shall disclose ***the links to information at installations level*** on the ~~consolidated~~ amount***s*** of: ***(a)*** each pollutant listed in Annex II of the E-PRTR Regulation (European Pollutant Release and Transfer Register) emitted to air, water and soil." ***The information will be provided at EU level and the undertaking will explain when this information will be accessible at installation level in areas outside the EU.*** (b) the microplastics generated or used by the undertaking. ***28a) (new) On a voluntary basis, the undertaking shall disclose the amounts of each consolidated pollutant listed in Annex II of the E-PRTR Regulation (European Pollutant Release and Transfer Register) emitted to air, water and soil, and of microplastics generated or used by the undertaking.***
ESRS E2	AR 1 to AR 9	**Exposure towards substances of concern:** The materiality assessment of substances of concern should be explicitly tied to the management of exposure to these substances, rather than solely their use. Overall, the current reporting requirements lack sufficient reference to the concept of exposure, which is vital for effective pollution management. There is an excessive emphasis on the LEAP approach, which is more applicable to Biodiversity and Water issues. The heart of pollution risk assessment lies in factoring severity with exposure and vulnerability, which is not adequately reflected in ESRS E2. AR 6 could be completed as follows: "***the undertaking shall consider the management of exposure to the substances of concern and substances of very high concern in addition to their use, including by assessing severity factored with exposure and vulnerability".***
ESRS E3	Par. 28	Operated boundary as for GHG, energy and pollutions? Please clarify and make it explicit also in this standard
E3-4:	Par. 29	When indexes are required (e.g., E3-4 "29. The undertaking shall provide information on its water intensity: total water consumption in m3 per net revenue on own operations") they should not be linked to a denominator represented by revenues because this could lead to a misleading information (for example if a company consumes the same amount of water in two different years but it obtains more revenues in one year respect to the other). The same reasoning should be applied to every index required in the standards **avoiding the use of revenues at the denominator**. It is totally inappropriate and misleading to compare a physical quantity (total energy consumption, GHG emissions, water consumption, etc.) with a financial quantity.
ESRS E4	ESRS 2 IRO-1 and AR 4 – 10	The approach on requiring site-specific disclosure, which results in providing very specific and detailed information on every site, is not adequate for the inclusion in a management report and should be avoided. Providing this type of information for all the sites of a company could result in an excessive burden for large groups, without adding any real value and leading to extremely long reports that would be less understandable and less useful for the readers.

		The reference to site-specific disclosure should be eliminated. The list of drivers of biodiversity and ecosystems change should reflect the list and descending order established by IPBES: (1) changes in land and sea use, (2) direct exploitation of organisms, (3) climate change, (4) pollution and (5) invasive alien species.
ESRS E4	AR 8 (c)	**Assessment of impacts and dependencies on biodiversity and ecosystems:** When evaluating actual or potential impacts and dependencies on biodiversity and ecosystem-related for relevant sites, it is suggested to consider the timeframe of these impacts. **AR 8 (c) could be reframed as follows:** "indicating the size, scale, frequency of occurrence***,*** ~~and~~ speed ***and timeframe*** of the impacts on biodiversity and ecosystems taking into consideration the disclosures under paragraph 16".
ESRS E5	AR 15	**Methodological references on ecological thresholds related to resources**: The reporting of ecological thresholds for resources is still in an early stage of development and poses challenges in its practical application, even though it is not currently mandatory. **It is suggested to consider incorporating additional references into AR as follows:** "if the undertaking refers to ecological thresholds to set targets, it may refer to the guidance provided by the Science-Based Targets Initiative for Nature (SBTN) in its interim guidance (Initial Guidance for Business, September 2020)***, ISO TC 323, the Platform for Accelerating the Circular Economy (PACE) or*** any other guidance with a scientifically acknowledged methodology (…)".
ESRS S1	S1-16	To calculate the gender pay gap it is asked to use the "gross hourly pay level." For this KPI it would be better to use the total annual compensation (including variable component) which is easier to calculate and more in line with how this type of data is already calculated by companies and the methodology utilized by all the international data providers.
ESRS S1	Para 4 Para 54 and 57	The scope of ESRS S1 is highly problematic as "own workforce" includes both employees and non-employees, like self-employed workers, or workers employed by a third party. First, companies lack a clear understanding of which self-employed persons are included in the scope. Secondly, companies do not have the information requested on self-employed persons and temporary workers. Companies shouldn't be requested to estimate the number of non-employees when the data is not available (§57). Finally, companies take legal risks if they publish the information required for self-employed persons. The precision at the end of §4 of S1 is nevertheless positive.
ESRS S1	Para 67 - 71	This DR remains highly problematic. Firstly, the notion of adequate wages is not clear and is even subjective: "A wage that provides for the satisfaction of the needs of the worker and his / her family in the light of national economic and social conditions." In the AR 73 and 74, reference is made to the directive on adequate minimum wages of 2022 (and not adequate wage); however, this directive has just come into force and will not be transposed for two years in the 27

		Member States. Finally, the objective of the international comparison is not understood, especially as there is no relevant benchmark at international level.
ESRS S1	Para 86 - 90	Quantitative data required by DR S1.14 are vague and do not enable to build an adequate understanding of the undertaking's situation. Furthermore, there is no harmonisation in the definitions of work-related injuries and work-related ill health. As a result, published data would lead to a counterproductive picture: undertakings active in countries with strict legislations will present worse results than those intervening in less requiring environment.
ESRS S2 **ESRS S3** **ESRS S4**	Para 9 Para 7 Para 8	"Workers in the value chain / affected communities/ consumers and end-users are a key stakeholder group." These comments are in contradiction with ESRS 2 paragraph45 a) i) that let the definition of "key stakeholders" undefined which means entity specific or subject to relevance. EFRAG should delete this sentence which obscures the materiality analysis.
ESRS G1-1	§11	It is stated that undertakings subject to national law transposing directive EU 2019/1937 may comply with the disclosure specified in paragraph 10 (d). However, 10 (d) makes reference to the case where the undertaking has no polices on the protection of whistle blowers. **Therefore, we understand that the intention was to refer to (c) instead of (d).**
ESRS G1-2	§ 14	This § requires providing for a description of the policy to prevent late payments, specifically to SMEs. In our view, this provision is redundant with § G1-6 which requires to provide information on payments practices especially regarding to SMEs. **Therefore, this § should be deleted.**
ESRS G1-4	§ 25 (a), (b), (c) (d)	**We ask for the deletion of this information because it represents a risk of self-incrimination for the company.** Even if it has become voluntary, which we welcome, we fear that there will be strong pressure to disclose such information which would give to third countries authorities such as the US Department of Justice an opportunity to investigate against EU companies to the benefit of their major strategic non-EU competitors who are not subject to similar reporting obligations.
ESRS G1-5	§ 29(b)I /AR 10	Reporting on in-kind political contributions **made indirectly may be problematic** because businesses are not necessarily informed about political contributions made by the organisations to which they have made a contribution. **Therefore, we suggest removing "indirectly" or amending as follows:** AR 10. "Indirect political contribution' refers to those political contributions made through an intermediary organisation such as a lobbyist or charity, or support given to an organisation such as a think tank or trade association linked to or supporting particular political parties or causes…": - *"when the contribution is made by the intermediary organisation **in the name of** the undertaking."* *OR* - *"when the undertaking is represented on the management body of the intermediary organisation" (i.e., is able to influence the positions/decisions taken by the organisation)*.

ESRS G1-5	§ 29(b)/AR 9	Loans are included in “financial contributions” under “political contribution”: financial sector financing, such as a banking loan, should be explicitly excluded from the scope when granted in the context of a commercial relationship.
ESRS G1-5	AR 12	Lobbying expenses and management fees: although this is not obligatory it needs to be practicable and to ensure relatively comparable reporting from one company to another. **-Total expenses**: a scope should be defined, e.g., the reporting could target expenses made: - “<u>by the company itself</u> (i.e., not by its subsidiaries/branches). - <u>on the main topics covered by its lobbying activities</u>” (in coherence with para 29c)”. **- Amount paid for membership to lobbying associations** Scope: the term ‘lobbying associations’ should be defined, e.g., “associations representing the interests of the undertakings, i.e., trade associations of the industry it belongs to” + “when the undertaking is represented on its management body.” Membership fees to lobbying associations cover not only expenditures in the area of policy influence but also numerous other activities conducted by these associations: social dialogue, media relations, organisation of trainings and events for their members, economic research, relationships with consumer associations, financial education, publishing activities, etc. **Thus, the amount to report should not be the total amount of the membership fees paid to these organisations but a percentage of it, corresponding to actual lobbying expenditure.**

4. Specific comments on Annex II

Defined term	**Comment**
Climate change mitigation	This definition is linked to many disclosure requirements imposed on companies (e.g., actions, policies). According to the wording of the CSRD, the definition should **include the notion of compatibility** without further requirements. Therefore, the definition should be modified as follows: “The process of reducing GHG emissions ***in order to reach compatibility with the limiting of global warming*** ~~***and holding the increase in the global average temperature***~~ to 1.5°C above pre-industrial levels, in line with the Paris Agreement.”
Net-zero target	According to the CSRD, the transition plan aims to make the strategy and model compatible, not "aligned", with a warming limit of 1.5°C. The definition should avoid any use of the terms "aligned with" or "in line with" (there is no such "line"). In addition, the delegation by the CSRD does not extend to regulating companies’ net-zero targets, such as the level of emission reductions. **The definition should therefore be modified as follows**: “Setting a net-zero target at the level of an undertaking ~~***aligned***~~ ***compatible*** with meeting societal climate goals means (1) achieving a scale of value chain emissions

	reductions ~~***consistent***~~ ***compatible*** with the depth of abatement at the point of reaching global net-zero in 1.5˚C pathways, and (2) neutralizing the impact of any residual emissions ~~***(after approximately 90-95% of GHG emission reduction with the possibility for justified sectoral variations in line with a recognized sectoral pathway)***~~ by permanently removing an equivalent volume of CO_2.”