

## 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:** Deutsche Industrie- und Handelskammer (DIHK)/German Chamber of Commerce and Industry (DIHK)

**1. General comments**

We recognize that the EU Commission has made changes to the ESRS. Some of these adaptations may have a relieving effect with regard to the reporting requirements. But we miss the announced reduction of bureaucracy by 25 percent. Against this background, the Commission should made further efforts with the streamlining and de-bureaucratization process of the ESRS drafts. There is a need for practicable and proportionate ESRS to fulfil the CSRD requirements.

The expansion of the materiality test is the central change in the ESRS drafts. Understanding the specific implementation of materiality testing is therefore the key question. Only with detailed information on how to conduct the testing, a reliable judgement of this standards is possible. Since EFRAG has not provided these guidelines during this consultation, there should be a public consultation of the guidelines as early as possible.

With this caveat, we have the following comments:

- In general, we maintain our fundamental remarks and criticism in our statement of January 25 on the ESRS drafted by EFRAG. Please see: <https://www.dihk.de/resource/blob/96300/5cd1a4cf0e8fbd2e3aa18cf4aa98ef2a/dihk-stellungnahme-csrd-data.pdf>
- There are undertakings seeing the extended reporting obligation and the high number of data points and reporting requirements from a different, more positive perspective. However, critical voices of companies continue to predominate. Even very large, internationally active companies with experience in sustainability reporting take a critical view of the draft ESRS with regard to their very high granularity of the reporting requirements and the associated effort required to collect the data points. The informative value and relevance of many of the required data points are doubted.
- Many provisions are still incompatible with EU and German Law, e.g. S1-12 "Persons with disabilities". Asking employees for this type of personal information is prohibited by law and considered an unlawful invasion of privacy.
- Other provisions, for example ESRS 1-10/11 "Adequate wages"/"Social protection", require reporting on national legislation with which companies must comply. Therefore, reporting on compliance would be redundant.
- The consistency between the requirements of the Directive and the Commission's draft is not guaranteed: For example, the draft

standards require companies to report on workers' housing, social security and the improvement of their general living conditions, whereas the CSRD does not. Companies are even required to report retrospectively. The requirements for forward-looking quantitative information are also disproportionate and need a more lenient approach.

- The extension of the phasing-in regulation is to be seen as positive. Businesses see it as positive, that flexibility was increased in regard to some disclosure requirements in the first year of reporting (pollution, water, biodiversity and use of resources) and for companies with less than 750 employees (first year: no disclosure of emissions and standards for employees, first two years: no disclosure necessary regarding biodiversity, staff in the value chain, consumers and affected communities). It is good to see that the European Commission did not follow all EFRAG recommendations for mandatory requirements and granted some leeway with the disclosure requirements regarding financial consequences of sustainability risks and regarding the involvement of stakeholders and the methodology of the materiality assessment. The threshold of 750 employees will provide some relief for the companies concerned. However, this only applies to the phasing-in. Further substantial relief is needed by concentrating on the information actually required to assess sustainability.
- Affected businesses also criticised the intransparency and limited predictability of when proposals for the ESRS would be published. If institutions do not abide by the original schedule, it becomes rather difficult for businesses to keep track of the legislation. Sector standards should be published early, so that businesses have time to prepare.
- Businesses also advised that once the standards are in force a legislative freeze should be implemented, which means that no short-term changes are implemented as these interrupt the adaptation process.
- Consulted businesses also asked for a transition period for implementation until 2030 to enable them to properly apply the legislation and build up the necessary resources.
- The involvement of many companies affected by sustainability reporting according to ESRS was significantly complicated by the fact that the ESRS drafts were only presented in English and the short consultation period of only 4 weeks. Such short consultation periods make constructive feedback by businesses and their associations extremely difficult.

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

Performing the dual materiality test will be challenging for undertakings. Therefore, the guidelines on how to conduct the double materiality test are of great importance for companies (see draft of the delegated regulation, page 7). The guidelines must be practicable and proportionate. A large company with characteristics of a medium-sized company must be able to carry them out in a legally compliant

manner. The importance of the guidelines on dual materiality leads to the need of a sincere consultation of reporting companies. To enable companies to prepare duly, the guidelines should be made available promptly.

The general approach of applying the materiality concept in reducing the mandatory information and datapoints is general welcome of undertakings of real economy but is partly critical scrutinized by the financial sector.

### 3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
<b>ESRS 1</b>		
ESRS 1	Para 11	Uncertainty on which topics undertaking shall report. To reduce uncertainty the mentioned part of ESRS 1/11 should use “may” instead of “shall”. Application requirements in Appendix A, AR 1ff. should respect the uncertainty too. Proposed Wording: “In addition to the disclosure requirements laid down in the three categories of ESRS, when an undertaking concludes that an impact, risk or opportunity is not covered or not covered with sufficient granularity by an ESRS but is material due to its specific facts and circumstances, it <del>may shall</del> provide additional entity-specific disclosures to enable users to understand the undertaking’s sustainability-related impacts, risks or opportunities. Application requirements AR 1 to AR 5 provide further guidance regarding entity-specific disclosures.”
ESRS 1	Para 21ff.	Performing the dual materiality test will be challenging for companies. Therefore, the guidelines on how to conduct the double materiality test are of great importance for companies. The guidelines must be practicable and proportionate. A large company with characteristics of a medium-sized company must be able to carry them out in a legally compliant manner. To enable companies to prepare duly, the guidelines should be made available promptly. The importance of the guidelines on dual materiality leads to the need of a sincere consultation of reporting companies.
ESRS 1	Para 29	There are discussions on the meaning if ESRS 2 Appendix B with the list of datapoints in cross-cutting and topical standards that are required by EU law is mandatory for the companies in the scope of the CSRD or not.
ESRS 1	Para 31	When an undertaking omits only some disclosure requirements of a topical ESRS – this should be treated equal. Proposed Wording: “If the undertaking concludes that a topic is not material and therefore it omits <u>one, some or</u> all the Disclosure Requirements in a topical ESRS, it may briefly explain the conclusions of its materiality assessment for that topic (see ESRS 2 IRO-2 Disclosure Requirements in ESRS covered by the undertaking’s sustainability statement).”
ESRS 1	Para 42	The undertaking shall use appropriate quantitative and/or qualitative thresholds. In the perspective of the reporting undertakings, it is unclear how the company should set its thresholds in a legally compliant manner.
ESRS 1	Para 69	When collecting sustainability data, especially environmental data, estimates, projections, proxies and industry averages

		<p>are often used. The susceptibility to error in data collection from suppliers is extremely high and thus no more accurate than the industry average collected by a scientific study. In addition, the deletion of would also remove the uncertainty as to what constitutes a "reasonable effort".</p> <p>Proposed wording: "There are circumstances where the undertaking cannot collect the information about its upstream and downstream value chain as required by paragraph 63 <del>after making reasonable efforts to do so</del>. In these circumstances, the undertaking shall estimate the information to be reported about its upstream and downstream value chain, by using all reasonable and supportable information, such as sector-average data and other proxies."</p>
ESRS 1	Para 71	<p>To respect proportionality and to limit the trickle-down-effect, wording should be changed.</p> <p>Proposed Wording: "With reference to policies, actions and targets, the undertaking's reporting shall include value chain information to the extent that those policies, actions and targets involve actors in the value chain. With reference to metrics, in <b>certain</b> cases, especially regarding SMEs, <b>and when justified by impact</b>, in particular for environmental matters for which proxies are available, the undertaking may be able to comply with the reporting requirements without collecting data from the actors in its value chain, for example, when <b>estimating</b> the undertaking's GHG Scope 3 emissions."</p>
ESRS 1	Para 83	<p>The requirement to include comparable information across the board for all key figures disclosed in the current period is a unnecessary burden. The exemption rule in paragraph 85 cannot sufficiently mitigate the expected effort either; consequently, the requirement in paragraph 83 et seq. should be reviewed again or only made binding for a few selected key figures.</p>
ESRS 1	Para 95ff.	<p>The requirement to correct the figures in accordance with the guidelines in paragraph 96 et seq. must be critically questioned. Facts known in the meantime would already be apparent from the respective current sustainability statement. A presentation on the basis of the criteria specified in paragraph 96 et seq. is not necessary; this should be dispensed with.</p> <p>It is unclear in which cases "impracticability" exists.</p>
ESRS 1	Para 120	<p>The reference is unclear. The reference should be only 119 (not 118).</p> <p>Proposed Wording: "Provided that <b>the</b> conditions <b>of 119</b> are met, information prescribed by a Disclosure Requirement of an ESRS, including a specific datapoint prescribed by a Disclosure Requirement, may be incorporated in the sustainability statement."</p> <p>The provisions in para 119 should be reduced if the undertaking referenced to the EMAS report. The assurance of the EMAS report and the management report is regulated differently in Member States. These discrepancies in regulation must not prevent the reference to the EMAS report in the sustainability statement.</p> <p>Furthermore, there is a need to reference to reports on other reporting standards, e. g. GRI.</p>
ESRS 1	Para 131	<p>The new formulations on the value chain are also unclear. In the first three years, information that is not available can be estimated or derived. The company only has to show its efforts here. However, explanations as to when such efforts are sufficient to comply in a legally compliant manner are not available.</p>

ESRS 1	Para 133	Reference is wrong. Wording is misleading. Proposed Wording: “Paragraphs 131 and 132 apply irrespective of whether the relevant actor in the value chain is an SME or not.”
ESRS 1	Para 134	Reference is wrong. There should be consistency with point 13.3 of the Commission Recommendation on facilitating finance for the transition to a sustainable economy (13 June 2023). Proposed Wording: “Starting from the fourth year of its reporting under the ESRS, the undertaking shall include value chain information according to paragraph 63. In this context, the information required by ESRS to be obtained from SME undertakings in the undertaking’s value chain will not exceed the content of the future ESRS for listed SMEs. If the information required by ESRS to be obtained from non-listed SME undertakings in the undertaking’s value chain, which is using the voluntary reporting standard, currently under development by EFRAG, that is tailored to SMEs, the requested information should be limited to this standard.
ESRS 1	AR 9	In AR 9 (b) the “relevant” stakeholder is mentioned. There is no definition of “relevant” stakeholder. ESRS 1 refers to “affected” stakeholder in Para 22ff. and in ESRS 2, Para 45 to “key stakeholder”. Wording should be consistent. Instead of “relevant” stakeholder it should be used “key stakeholder”.
ESRS 1	Appendix C	Additional AR is required. The List of phased-in should be applicable as well if undertakings exceed the thresholds of the Accounting Directive and become large undertakings and have to report on ESRS. To avoid any discussion on the interpretation the application requirements (“first year of preparation of their sustainability statement”) should mention this particular situation.  The phase-in-regulation is unfortunately only intended to apply temporarily and not permanently - if the specifications remain the same, the companies belonging to the scope with more than 250 employees will still be hit by the burdens later on. In view of the threshold in the temporary regulation, which is apparently acceptable to the Commission, the question arises as to whether it would not be better to raise the employee criterion generally and permanently from 250 to 500 or 750 employees in the CSRD itself. The required level of detail in reporting will still overburden numerous – so called - large companies with only 250 employees in terms of personnel and finances in two years' time, despite the adjustments that have already been made. A general increase to 750 employees therefore seems reasonable. If the threshold is to be changed only for a phase-in-period of time, this time limit should be extended to a longer period than the first two years.
<b>ESRS 2</b>		
ESRS 2	Para 17	Using phase-in provisions should not imply the materiality assessment. To reduce the burden starting the sustainability disclosure the mentioned companies should omit the materiality assessment on these topics too.
ESRS 2	Para 21	Disproportionality of information. The European legislature recognized so far that information on diversity and independence of board members is only needed for large listed undertakings (Directive 2013/34/EU and recommendation

		in 2005). Information requirements for all large undertakings – irrespective of their listing – seems to be disproportionate in respect to art. 29b para 2 CSRD.
ESRS 2	Para 27	Disproportionality of information. The European legislature recognized so far that information on incentive schemes is only needed for listed undertakings. Information requirement for all large undertakings – irrespective of their listing – seems to be disproportionate in respect to art. 29b para 2 CSRD.
ESRS 2	Para 50	Please see remarks in General comments and in Specific comments on the main text of the draft delegated act. There is a need to give more information and support undertakings in on how to conduct the double materiality test and process in a practical and proportionate way.
ESRS 2	Para 76	Disproportionality of information – the proposal is asking too much of businesses (for each metric, the undertaking shall disclose the methodologies and significant assumptions behind the metric).
<b>ESRS G1</b>		
ESRS G1	Para 7ff	Disproportionality of information. The European legislature recognized so far that information on business conduct policies and corporate culture is only needed for listed undertakings (art. 20 Directive 2013/34/EU). Information requirement for all large undertakings – irrespective of their listing – seems to be disproportionate in respect to art. 29b para 2 CSRD.
ESRS G1	Para 25d	It is not clear what “details” of public legal cases would be: "details of public legal cases regarding corruption or bribery brought against the undertaking and its own workers during the reporting period and the outcome of such cases."
ESRS G1	Para 26	Consistency with Para 25 requires a more precise wording. Para 26 should refer on “confirmed” incidents.
<b>ESRS S1</b>		
ESRS S1	Para 4	E.g., temporary employment agencies have to disclosure all the needed information to the company which is for both a lot of bureaucracy. Often large companies hire from different temporary employment agencies. It should be just people with direct contracts with the company. Proposed Wording: “This Standard covers an undertaking’s own workforce, which is understood to include both people who are in an employment relationship with the undertaking (“employees”) and non- employees who are <del>either</del> people with contracts with the undertaking to supply labour (“self- employed people”) <del>or people provided by undertakings primarily engaged in “employment activities” (NACE Code N78)</del> . See Application Requirement 3 for examples of who falls under own workforce. The information required to be disclosed with regard to non-employees shall not affect their status pursuant to applicable labour law.”
ESRS S1	Para 6	<b>“key characteristics of the employees and non-employees”</b> : The CSRD does not require a description of the workforce “information necessary to understand the undertaking’s impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking’s development, performance and position.” The information required goes beyond what is required by law. This interpretation is also supported by recital 29 of the CSRD: “Those Articles therefore require undertakings to report both on the impacts of the activities of the undertaking on people and

		the environment, and on how sustainability matters affect the undertaking.” The reporting obligation focuses on the undertaking and not on the characteristics of employees and non-employees.
ESRS S1	Para 24 (d)	“ <b>specific procedures</b> ”: It is unclear how this requirement differs from S1-2 (“processes to engage”) and S1-3 (“processes to remediate”) as well as the requirements from S1-17 (“work-related complaints”). Redundant reporting requirements need to be removed.
ESRS S1	Para 28, AR 28	<b>Delete “business relationships”</b> : Information collected from indirect business relationships should be reserved for the ESRS S2 and should be deleted from here.
ESRS S1	Para 53	„ <b>key characteristics of non-employees</b> “ should be deleted. The CSRD does not provide a basis for this requirement, which requires information on specific contractual arrangements used by companies.
ESRS S1	Para 67 - 71	The requirements should take into account the national legislation with which the companies must comply. The national legislation ensures the compliance of the companies with the requirements. Thus, reporting on compliance would become redundant.
ESRS S1	Para 72-76	The requirements should take into account the national legislation with which the companies must comply. The national legislation ensures the compliance of the companies with the requirements. Thus, reporting on compliance would become redundant. The potential usefulness of this requirement does not justify the associated reporting burden while also exceeding the CSRD and should therefore be removed.
ESRS S1	Para 88	“ <b>value chain workers</b> ”: The last sentence “The information for (b) shall also be reported for other workers working on the undertaking’s sites, such as value chain workers if they are working on the undertaking’s sites.” should be deleted. The information required related to value chain workers should be reserved to ESRS S2, as also indicated in the definition provided in Annex II.
ESRS S1	A.1-A.4	To ensure legal certainty, a variety of terms and definitions need to be further specified, e.g. “business relationship”, “ill-health”, “affected communities”. The examples of policies, actions and targets for the selected social and human rights factors in the Appendices A.1-A.4 of S1 are confusing and unworkable to define the terms precisely.
<b>ESRS S 2</b>		
ESRS S 2	Para 7	Reference is probably wrong. The S2 standard mentioned is “Workers in the value chain” and not “own workforce”. Either the reference is wrong or the title is wrong. Proposed Wording: “The reporting under this Standard shall be consistent, coherent and where relevant clearly linked with reporting on the undertaking’s <b>workers in the value chain under ESRS S2</b> , in order to ensure effective reporting.”
ESRS S2	Para 20-24	This disclosure requires a deep level of engagement with workers from suppliers when it might be impossible to do that in the entire supply chain. Also, the granularity of the disclosure is very challenging. We suggest the introduction of a prioritisation element and a risk-based approach. In addition, the scope of the value chain to be covered in this disclosure needs to be clarified.
ESRS S2	Para 39-42	There are different EU and extra-EU regulations that apply to value chain workers, which makes this disclosure



		requirement challenging. A double reporting obligation within EU law must be prevented.
ESRS S2	AR 27	AR 27 requires an assessment of the effectiveness of channels for value chain workers to raise concerns, and specifically asks for relevant and reliable data on whether these groups are aware of and trust these structures or processes. In practice, it is impossible to collect this (reliable) data for all workers in the supply chain. Therefore, if at all, the standards should allow for more flexibility in supply chain reporting. More reporting or participation channels would not lead to harmony at the operational level and more value creation. On the contrary, additional channels only create more bureaucracy.

#### 4. Specific comments on Annex II

Defined term	Comment
Adequate wage	The notion of adequate wages needs to be consistent with the definition in ESRS S1 Appendix A ('EU, national or local legal definitions of adequate wages, fair wages, and minimum wages') taking into account that companies are respecting the legal requirements and customs that apply within the national context of their economic activities, reporting on compliance thus would become redundant.