

## **Eingabe des IDW zur ESRS-Konsultation der Europäischen Kommission über das vorgegebene digitale Template vom 07.07.2023**

The Institut der Wirtschaftsprüfer in Deutschland e.V. [Institute of Public Auditors in Germany, Incorporated Association] (IDW) thanks the EU Commission for the opportunity to comment on the first set of the ESRS and welcomes the general approach of introducing relief for reporting companies. However, we see the need for further clarifications and adjustments, which we have compiled in the attached file.

In summary, we would like to point out the following:

1. The target picture for reporting (at the end of the phase-in periods) is still very large and it includes a high level of details and a large number of complex requirements.
2. Particularly against the background of the increased importance of the materiality analysis, we consider a need for a leading principle for sustainability reporting.
3. Harmonization of ESRS with the rest of EU law is crucial. Especially, clear rules in the SFDR are required for financial market participants on how to report under the SFDR in case that the reporting of non-material information is omitted.
4. Not allowing companies sufficient time to establish and implement the processes, systems, internal controls and governance necessary to comply with the demanding requirements may lead to assurance providers issuing higher numbers of qualified audit opinions.
5. We support the strongest possible alignment with the ISSB standards.
6. Clarification is required that sustainability reporting under the CRSD and ESRS is “general purpose”, rather than “special purpose” reporting.

Zugriff auf die Website der EU-Kommission über:

[Feedback from: Institut der Wirtschaftsprüfer in Deutschland e.V. \(IDW\) \(europa.eu\)](https://european-commission.eu/feedback-from-idw)

## 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: Institut der Wirtschaftsprüfer in Deutschland e.V.  
[Institute of Public Auditors in Germany, Incorporated Association] (IDW)**

**1. General comments**

The following comments are based on an initial review of the ESRS drafts.

We thank the EU Commission for the opportunity to comment on the first set of the ESRS and welcome the general approach of introducing relief for reporting companies (e.g. in the form of phase-ins). However, the target picture for reporting (at the end of the phase-in periods) is still very large and it includes a high level of details and a large number of complex requirements. Ultimately, however, the actual scope of reporting will depend on the individual and very complex materiality assessment by the undertakings. This increases the burden on the reporting companies and represents a shift of problems into practice. This will likely result in a great diversity in practice, especially in the first years of reporting. More guidance on materiality analysis should therefore be provided in order to reduce the scope for discretion and to standardize reporting, e.g. how to assess the materiality of a sustainability matter in the value chain. This is particularly necessary against the background of the very broad stakeholder definition of the ESRS and is urgently needed in order to avoid creating an expectation gap regarding reporting on the part of the report's addressees. The guidance that we understand EFRAG is currently developing should reflect this challenge, particularly with regard to the enforceability of the reporting rules by ESMA. In this context we also refer to the need for a leading principle for sustainability reporting (see our comments to ESRS 1 Chapter 2 below). In connection with the increased importance of the materiality analysis, a high-quality external audit is also becoming even more important to counteract the omission of material information.

Harmonization of ESRS with the rest of EU law is crucial. The removal of the mandatory disclosures (ESRS 2 Appendix C) may lead to a situation where information required by financial market participants for reporting under the SFDR is not reported by companies because companies have classified it as non-material in their materiality analysis. This is in contradiction to Art. 29b para. 1 subpara. 2 Directive (EU) 2013/34/EU (“[...] which shall at least include the information that financial market participants subject to the disclosure obligations of Regulation (EU) 2019/2088 need in order to comply with those obligations”). Therefore, clear rules in the SFDR are required for financial market participants on how to report under the SFDR in case that reporting of non-material information is omitted. Furthermore, we encourage the European Commission to publish a comparison of the data points required under the SFDR within the disclosure requirements, similar to EFRAG's November document "Appendix III - Datapoints in accordance with EU laws in the ESRS". Without such a comparison, ensuring the completeness of the information becomes more complex and challenging.

Certain clarifications are necessary to specify the application of the new rules, e.g. the relationship and interaction between company-specific individual disclosures, voluntary disclosures and disclosures that are subject to phase-in requirements. Several disclosure requirements and datapoints which were previously mandatory under ESRS and are still mandatory under other regulatory frameworks (such as Pillar III or SFDR) have now been identified as voluntary under ESRS. However, the interrelation between mandatory and voluntary datapoints is not clear. While mandatory datapoints shall be

reported when identified as material, we ask for clarification whether voluntary datapoints can turn into mandatory requirements if they are deemed material from an entity-specific point of view.

Not allowing companies sufficient time to establish and implement the processes, systems, internal controls and governance necessary to comply with the demanding requirements may lead to assurance providers issuing higher numbers of qualified audit.

We support the strongest possible alignment with the ISSB standards, or at least, if alignment is not possible, a statement of mutual recognition that “compliance with ISSB standards meet [applicable] EU requirements”. We also support clear cross-referencing between ISSB & ESRS.

Furthermore, it should also be clarified whether a comprehensive recourse to the regulations of the Global Reporting Initiative is possible or whether it is limited to the regulations that have been explicitly adopted in the ESRS.

#### About the IDW

The Institut der Wirtschaftsprüfer in Deutschland e.V. [Institute of Public Auditors in Germany, Incorporated Association] (IDW) is a privately run organisation established to serve the interests of its members who comprise both individual Wirtschaftsprüfer [German Public Auditors] and Wirtschaftsprüfungsgesellschaften [German Public Audit firms].

The IDW represents over 12,000 German Public Auditors and German Public Audit firms, which is about 80 % of all Public Auditors in Germany. Our members are from the only profession in Germany to have been entrusted with the performance of statutory audits of the financial statements of all entities that are legally required to have their financial statements subject to audit in Germany, including the larger publicly listed companies that are presently required to publish non-financial information (NFI).

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

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## 3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
ESRS 1	Chapter 2	<p>Although ESRS 1 includes requirements for qualitative characteristics of information, ESRS lack a leading principle as a deduction basis. For example, the IFRS framework contains the leading principle of the "true and fair view" and the statutory auditors report is required to contain an audit opinion to reflect whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework (Article 28 of Directive 2006/43/EC).</p> <p>In the context of sustainability reporting under the CRSD and ESRS, no such leading principle has yet been set. This is also reflected by the fact that in relation to sustainability reporting the auditor is required to express an opinion as regards the compliance of the sustainability reporting with the requirements of the Accounting Directive (Article 28 of Directive 2006/43/EC and Article 34 of the Accounting Directive).</p>
ESRS 1	Chapter 3	<p>It should be clarified which approach is to be applied when determining the sustainability matters that have to be reported, otherwise multiple variants are to be expected in practice. For example, should a relative approach (like the Global Reporting Initiative) be applied, according to which the most material sustainability matters (in comparison to the other sustainability matters of a company) always have to be reported, in which case there will never be a situation that there is no material matter to report?</p>
ESRS 1	Chapter 3.1	<p>We are very concerned that the last sentence in EFRAGs ESRS 1 BC45 can be interpreted as requiring sustainability reports under the CSRD and ESRS to meet the <u>specific needs</u> of <u>every individual stakeholder</u> and <u>every stakeholder group</u>, which is completely impracticable – particularly when seeking to identify the information to be reported using the materiality process. Therefore, clarification is required that sustainability reporting under the CSRD and ESRS is “general purpose”, rather than “special purpose” reporting and consequently, as general purpose reporting, sustainability reports under the CSRD and ESRS are designed to meet the <u>common sustainability information needs of the key groups of affected</u></p>

		<u>stakeholders and the common sustainability information needs of users of sustainability reports as a group</u> . Such common information needs do not extend to the needs of individual stakeholders or groups of stakeholders within the key groups of affected stakeholders or within the users of sustainability reports.
<i>ESRS 1</i>	<i>Chapter 3.2</i>	When performing a materiality assessment, it is necessary for the undertaking to identify the material impacts, risks and opportunities (IROs) to be reported and to assess their materiality. It should be clarified whether the materiality analysis of an IRO needs to be performed on a gross or net basis. A lack of clarification may lead to heterogeneity in reporting.
<i>ESRS 1</i>	<i>Chapter 3.5</i>	“Financial materiality” is, among others, defined in ESRS 1.48: “The financial materiality assessment described in paragraph 37 includes, but is not limited to, the identification of information that is considered material for primary users of general-purpose financial reporting in making decisions relating to providing resources to the entity. In particular, information is considered material for primary users of general-purpose financial reporting if omitting, misstating or obscuring that information could reasonably be expected to influence decisions that they make on the basis of the undertaking’s sustainability statement.” We note that the definition is still not fully aligned with the definition of “financial materiality” in IFRS S1. Particularly the terminology “but is not limited to” in ESRS 1.48 suggests that the ISSB’s financial materiality might be a sub-set of the financial materiality to be applied under ESRS. We urge the Commission to use the same definition as the ISSB to establish a full alignment of the definitions of both ESRS and IFRS SDS.
<i>ESRS 1</i>	<i>Chapter 4</i>	The ESRS contain various references to documents outside the EU law (e.g. the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises). It should be clarified whether these are static or dynamic references. In the case of dynamic references, it needs to ensure that changes in the documents on which the reference is based are subject to a due process that meets the requirements for amendments to EU law.
<i>ESRS 1</i>	<i>Chapter 5</i>	Although the ESRS currently contain regulations on how to identify a sustainability matter in the value chain, there is no connecting factor which allows to derive how sustainability matters in the value chain, and how deep into the value chain, are to be assessed. It should therefore be clarified how the assessment of a sustainability matter from the value chain is to be carried out. This is necessary not only to offer more guidance to the reporting companies, but also to make the procedure and expected report contents clear to the addressees of the report.
<i>ESRS 1</i>	<i>Para. 67</i>	It should be clarified whether ESRS 1.67 implies that joint arrangement and associates are ever considered to be part of an undertaking’s own operations. In case that there is a difference between a joint arrangement that is a joint operation (consolidated proportionately) and one that is a joint venture (accounted for under the equity method) this should be clarified in the standard. In making this decision please note that – contrary to IFRS – several national GAAPs allow proportionate consolidation also for joint ventures which puts even more weight on this issue. In case a joint arrangement

		that is proportionally consolidated for financial statement purposes, i.e. assets, liabilities, revenues are consolidated on a pro rata basis, to not include the proportionate share also in the sustainability-related KPIs referring to own operations would create a mismatch between financial and sustainability reporting. Further guidance should be given on the implications for metrics and targets covering the undertaking's own operations.
<i>ESRS 1</i>	<i>Para. 136 Appendix C</i>	It should be clarified that the phase-ins of the disclosure requirements do not only apply to the first-time application of the ESRS as a whole, but that the phase-ins relate to the first year of application for each individual company. For example, if a company becomes subject to reporting requirements for the first time in fiscal year 2025, the phase-ins should count from fiscal year 2025 onwards.
<i>ESRS 1</i>	<i>Para. 118</i>	The possibility of incorporation by reference should again be critically questioned. CSRD demands sustainability reporting to be clearly identifiable within the management report through a dedicated section in the management report. This is justified by the possibility of publishing a separate report hindering the availability of information that connects financial information and information on sustainability matters and the findability and accessibility of information for users, especially investors, who are interested in both financial and sustainability information (recital 58 CSRD). Furthermore, the sustainability reporting standards should promote a more <u>integrated</u> view of all the information that undertakings publish in the management report in order to provide users of that information with a better understanding of the development, performance, position and impact of the undertaking (recital 51 CSRD).
<i>ESRS 1</i>	<i>Para. 135</i>	It should be clarified that the transitional provision of para. 135 (according to which an undertaking is not required to disclose comparative information required by section 7.1 in the first-time application of ESRS 1) also applies to the information according to Art. 8 Taxonomy Regulation for those companies, that become subject to reporting requirements under the CSRD and also under the Taxonomy Regulation for the first time (e.g. companies with reporting periods starting 2025). Further, a clarification in the Taxonomy Disclosure Delegated Act would be needed.
<i>ESRS 1</i>	<i>AR 9</i>	In assessing impact materiality and determining the material matters to be reported, as one of the four steps the undertaking shall consider the identification of actual and potential impacts (both negative and positive), including through engaging with relevant stakeholders and experts. The term "relevant stakeholders" is not used elsewhere in the ESRS. Therefore, the terminology in ESRS 1.AR 9 should be aligned with the concept of "key stakeholders" used in ESRS 2 para. 45.
<i>ESRS 1 ESRS 2</i>	<i>Para. 62, 101 Para. 5 b) i)</i>	ESRS 1.101 states that the reporting at a consolidated level is for the entire consolidated group while ESRS 1.62 states that the group sustainability statement will be for the parent and its subsidiaries.

		<p>Phrasing of the paragraphs leaves it unclear how subsidiaries immaterial to the group financial statements are to be considered in the group sustainability statements. On the one hand, it could be inferred that those entities are not within the scope. On the other hand, this procedure could potentially leave subsidiaries outside of the scope that bear material impacts, risks or opportunities.</p> <p>We would therefore propose clarifying that entities that are immaterial to the financial statements also need to be considered in the materiality assessment.</p>
ESRS 2	Para. 17	It should be clarified what the requirements are for a "brief description" (letters b), c) and d)). Furthermore, it should be clarified how exactly the requirement of letter e) can be fulfilled (Which metrics are meant here? Is it sufficient to just name the metrics or do they have to be stated in full? When is a metric considered relevant in this context?)
ESRS E1 ESRS E2	Para. 47	Although the definition of operational control has been included in Annex II, the definition still lacks precision, there is little guidance on the determination of operational control and the concept is understood differently in practice. The concept is derived from the GHG protocol, but no reference is made to this. More guidance on operational control is needed to ensure consistent and comparable scoping for reporting on GHG emissions.
ESRS E1	Para. 52	<p>Paragraph 52 states that "the disclosure of gross scope 3 emissions (...) shall include GHG emissions (...) from each significant Scope 3 category (i.e., each Scope 3 category that is a priority for the undertaking)". For the identification of significant Scope 3 categories, AR 47 (d) refers to the criteria provided by the GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard ("such as financial spend, influence, related transition risks and opportunities or stakeholder views"). Firstly, "significant" allows a broad range of interpretation, even considering the guidance of the GHG Protocol. More guidance is needed on how to evaluate the level of "significance" of each Scope 3 category.</p> <p>Secondly, the limitation on categories "that is a priority for the undertaking" allows companies to perform cherry picking, e.g. include those Scope 3 categories they can influence (e.g. emissions from travel) and leave out great parts of scope 3 or focus on categories with minor relevance. Therefore, we suggest adding the following: "The undertaking shall explain why the significant Scope 3 categories are a priority and explain why the left-out categories are not a priority."</p>
ESRS E1	E1-4; AR 28	The reference to SBTi or any other guidance with a scientifically acknowledged methodology has been deleted for target setting in E1 (draft ESRS E1, November 2022: AR 27), but ESRS E2, ESRS E3 and ESRS E5 still include a reference to SBTN when setting targets (see e.g. ESRS E2, AR 16). The inclusion of references to private sources of information and possible guidance should be consistent throughout the standards.



ESRS S1	-	<p>The definition of own workforce in S1 should be specified as the distinction between employees and non-employees is not always clear. Examples for employees and non-employees should be included to provide more guidance. Due to heterogeneous definitions of employees in different national laws (labour law, social security law etc.) the definition of employee remains unclear and could lead to ambiguous interpretation in practice (e.g. it is unclear whether interns are covered by the definition of employees). In addition, it is unclear if there is a threshold for the number of working hours per month for a non-employee to consider the person part of the undertaking's own workforce.</p>
ESRS S1	-	<p>Several datapoints, application requirements and definitions in S1 refer to "national legislation", e.g. the definition of employee, AR 56 and AR 85. It should be clarified whether the requirements refer to the national legislation of the reporting undertaking's country of registration, the country of registration of the entity with the employment relationship or the country where the employee is (physically) based.</p> <p>AR 56 (relating to definition of contract types) specifies that it is "the national laws of the countries where the employees are based that shall be used to calculate country-level data [which] shall then be added up to calculate the total numbers, disregarding differences in national legal definitions". Based on this, it is our understanding that any reference to national legislation in ESRS S1 relates to the legislation where the employee is based and that no modification should be made to consolidate reporting on employees by using one uniform definition.</p> <p>Understanding the basis of the definitions to be applied in the reporting is fundamental and should not be derived from a single Application Requirement.</p>
ESRS S1	Par. 12 / AR 5	<p>The Application Requirement requires the undertaking to "consider the views of workers' representatives when applicable to fulfil (this) disclosure".</p> <p>This wording can be misinterpreted to the extent that workers' representatives' views are required to be considered for the disclosure of information. Comparing the wording with the wordings in previous standards and in other topical standards, it seems likely that some crucial words are missing in the sentence.</p> <p>It should be clarified that the requirement relates to disclosure of such views. The Disclosure Requirements should be adapted to be consistent with the Application Requirements.</p>
ESRS S4	Par. 4	<p>The unlawful use or misuse of the undertaking's products and services by consumers and end-users are no longer within the scope of this standard. However, "misuse" has not been defined.</p> <p>The requirements that relate to impact materiality in the cross-cutting standards as well as in the topical standards have been updated from "impacts caused by or contributed to by the undertakings" to "impacts connected to the</p>

		<p>undertakings". Misuse of an undertaking's products is in our opinion an impact connected to the undertaking, albeit one the undertaking has less control over. That does not mean the undertaking should not assess the potential impacts related to misuse of products.</p> <p>Furthermore, there is a risk that undertakings will apply biased assessments of the use vs. misuse of their products to exclude negative impacts on consumers and/or end-users.</p>
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**4. Specific comments on Annex II**

Defined term	Comment
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