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Mr Patrick de Cambourg (SRB Chair)  
35 Square de Meeûs  
1000 Brussels (fifth floor)  
Belgium

Düsseldorf, February 2nd, 2024

Dear Mr de Cambourg,

We would like to thank you for the opportunity to comment on EFRAG's draft implementation guidance documents. Overall, we welcome EFRAG's efforts to provide more support to companies affected by ESRS reporting. Please refer to the completed surveys for our comments on the individual implementation guidance documents published for consultation.

We look forward to our suggestions being taken into account in the further process and will, of course, be happy to answer any questions you may have.

Best regards

Daniel Siegel

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## Survey on (draft) IG 1 MAIG

Please provide your comments on Chapter 1 of the MAIG

Please provide your comments on Chapter 2 of the MAIG

- Chapter 2 paragraph 25 states „The identification of the material matters is the starting point to determine the material information to be disclosed in the sustainability statement on material **IROs related to those matters.**“ (emphasis added). The phrase „IROs related to (a) sustainability matter“ is used multiple times in the MAIG (paragraphs 3, 4, 6, 64, 71 and 222), but there is no explanation as to how to identify the IROs that are related to a certain sustainability matter. It would be helpful to add guidance in regard to this identification.

Please provide your comments on Chapter 3 of the MAIG

### Chapter 3.2 Step B: Identification of the actual and potential IROs related to sustainability matters

- Paragraph 71 states „In this step, the undertaking identifies the **material** IROs relating to environmental, social and governance matters across its own operations and in its upstream and downstream value chain.“ (emphasis added). Since the assessment of impact and financial materiality is made only subsequently in Step C, the term „material IROs“ should not be used in Step B. From our understanding the outcome of Step B is a „long“ list of all actual and potential IROs identified (see also paragraph 71 „The outcome will be a ‘long’ list of impacts, risks and opportunities...“).

### Chapter 3.4 Step D: Reporting

- Paragraph 97 (c) states „...The undertaking shall also disclose how it has determined the material information to be disclosed, **including thresholds** and criteria used to assess such information (ESRS 2 paragraph 59).“ (emphasis added) This wording could be (mis)understood as meaning that the actual thresholds have to be reported. From our understanding ESRS 2.59 only requires an undertaking to report if thresholds have been used („...the use of thresholds...“) but does not mandate disclosure of the actual thresholds themselves. Clarifications would be helpful.

### Chapter 3.5 Role and approach to stakeholders in the materiality assessment process

- Paragraph 109 describes that stakeholders other than investors should also be considered , but the last part of the sentence does not seem to fit properly, as the materiality assessment concerns the way the undertaking manages material IROs. We assume that the meaning of the sentence might be that the undertaking should consider stakeholders other than investors when assessing material impacts, since it

## Survey on (draft) IG 1 MAIG

is they who may use sustainability-related financial information in their own assessment of how the undertaking manages its material impacts.

Please provide your comments on Chapter 4 of the MAIG

Please provide your comments on Chapter 5.1 of the MAIG

(Only editorial) The numeration of the FAQs in the text (page 33) does not correspond to the table of contents:

- FAQ addressed in paragraph 150: this should read FAQ 3 instead of FAQ 1.
- The other FAQ numbers should be corrected accordingly.

FAQ 2: What is meant by the undertaking being “connected” with an impact?

- Paragraph 146: The example of the undertaking contributing to a negative impact on the air quality in a local community suggests that an undertaking must take into account the impacts caused by other undertakings in assessing its own impacts, without taking into account the extent of its own contribution. If this is what is meant by this example, it would be helpful if the MAIG could clarify that the impacts to be considered in the materiality assessment extend beyond an undertaking's own influence without considering any thresholds that its own activities must exceed. We are also concerned as to the practicality of this interpretation, in particular, the undertaking may not be in a position to determine the emissions of all such other undertakings in a geographical area in a reliable manner.
- Paragraph 147: the MAIG states concerning the term “contributed to” that “Another example is when the undertaking **facilitates or incentivises** another party to **cause or contribute** to the impact” (emphasis added). From our understanding the concept of the undertaking contributing to an impact is based on the OECD Due Diligence Guidance for Responsible Business Conduct (ESRS 1.BC88). This guidance says on page 70, Q29: “An enterprise “contributes to” an impact if its activities, in combination with the activities of other entities cause the impact, or if the activities of the enterprise **cause, facilitate or incentivise** another entity **to cause** an adverse impact” (emphasis added). These definitions differ with regard to the highlighted wording: “cause, facilitate or incentivize” and “cause or contribute”. From our point of view, aligning the definitions and not using slightly different wording would enhance the interoperability of different frameworks. If alignment is not aimed for, the MAIG should illustrate the consequences to be considered from the different definitions.
- Paragraph 147: The underlying OECD Due Diligence Guidance for Responsible Business Conduct includes the following materiality threshold concerning undertakings contributing to an impact (page 70, Q29 of the respective guidance): “Contribution **must be substantial, meaning that it does not include minor or trivial contributions**” (emphasis added) and includes further explanations. This concept of a threshold is not included in the ESRS nor in the MAIG. If this concept is

## Survey on (draft) IG 1 MAIG

also deemed applicable for ESRS, it would be helpful if the MAIG included this characteristic and included an example of a substantial contribution in the context of the example of the undertaking contributing to a negative impact on the air quality in a local community presented in paragraph 146.

### FAQ 2: Can positive impacts be netted against negative impacts?

- It would be helpful to establish a connection between FAQ 2 and FAQ 23, see comment on FAQ 23 below. It would be helpful if the connecting explanations include the differentiation between an action (as relevant for FAQ 23) and a positive impact (as relevant für FAQ 2) and corresponding illustrative examples.
- Paragraph 153 states that compensation/offsetting is not to be confused with netting. While netting negative with positive impacts is to be avoided, the guidance seems to suggest that measures to compensate negative impacts (like carbon credits) might be netted against negative impacts in the materiality assessment. However, this would contradict FAQ 23, which states as a general principle that impacts should be assessed on a gross basis. It would be helpful if the guidance could elaborate further how to understand that compensation is not to be confused with netting.

Please provide your comments on Chapter 5.2 of the MAIG

### FAQ 3: Is the material information for financial statements the same as for the sustainability statement?

- In FAQ 3, paragraph 155 the last sentence states „As a result, when defining the thresholds for financial materiality used in the preparation of the sustainability statement, inspiration **could be drawn** from criteria and thresholds used in the preparation of the financial statements.“ (emphasis added). In our opinion, it is questionable how drawing inspiration is to be understood and handled in practice.

### FAQ 4: Is financial materiality for sustainability reporting limited to effects presented in financial statements?

- This FAQ states in paragraph 158 on the one hand that reporting certain financial effects associated with material sustainability matters goes beyond what is included in the primary financial statements and disclosed in the notes, but on the other hand that “financial effects that arise from risks and opportunities are to be reported irrespective of their accounting treatment”, when they meet the criteria for financial materiality. This wording (especially the sentence quoted above) implies that risks and opportunities connected to a sustainability matter that are already completely included in the primary financial statements still need to be assessed in the materiality assessment and included in the reporting on sustainability matters, if material. This contradicts ESRS 1.BC73, BC75 and ESRS 1.AR14b, which state as a result that information included in the financial statements is not meant to be assessed and reported again in the sustainability statement. It does not become clear in the MAIG whether the sentence quoted above is just meant to be an example to illustrate that accounting rules themselves are not to be understood as

## Survey on (draft) IG 1 MAIG

boundaries in identifying risks and opportunities, or, if it implies a requirement for the same risks and opportunities to be covered in both the financial statements and the sustainability statement.

It would be helpful if examples for risks and opportunities could be illustrated in the MAIG, e.g. risks and opportunities related to cost of capital or access to finance.

Please provide your comments on Chapter 5.3 of the MAIG

### FAQ 13: Doing the materiality assessment when the undertaking operates in **different** sectors

- It would be helpful to clarify whether material impacts resulting from only a specific part of the group at the level of a single subsidiary are expected to be also material from a group perspective or not. Alternatively, it would be helpful to explain how to assess whether the material impacts of a subsidiary are also material from the group's perspective. This is also linked to the question of whether impacts are assessed in absolute terms or relative to other impacts within a group (please refer to the "additional comments" section of this document).
- Example: subsidiary A identifies a material impact concerning pollution. The other subsidiaries of the group are not relevant for any IROs concerning pollution. When the group consolidates the material IROs resulting from its subsidiaries to form a group materiality assessment, does it automatically assess pollution as a material impact for the group?
  - Alternative A: Impacts should be assessed in absolute terms and not relative to other impacts within the group. Impacts reflect the inside-out perspective and, according to paragraph 113 of the MAIG, are assessed from the perspective of the affected people or the environment. This implies that the severity and likelihood of an impact is the same regardless of whether it has been assessed at subsidiary or group level. Considering the example, this would result in the pollution-related impact assessed as material at the subsidiary would also be material at group level and therefore triggering pollution-related disclosures for the whole group (and in addition disaggregated information in accordance with ESRS 1.54-57). We agree to the principle illustrated in the example in chapter 3.6.2 that the scale and irremediable character of an impact does not change simply because the undertaking is acquired by a larger group. However, the guidance is silent on whether this means that the matter is also deemed to be material for the whole group. The example in the green box of FAQ 22 "Is a multi-sector group required to include metrics for the entire group or only data related to the material IRO?" illustrates that the whole group needs to report on matters assessed as material for the group even if only some of the subsidiaries are relevant to the impact. However, as the example assumes that the IRO is assessed to be material at group level it does not illustrate how to come to the conclusion whether the impacts that are material at subsidiary level are also considered material at the group level or not.

## Survey on (draft) IG 1 MAIG

- Alternative B: Impacts should be assessed relative to other impacts within the group. This means that concerning the example, the group collects the material impacts from subsidiary A with impacts from other subsidiaries and then considers which impacts are the most material (in terms of severity and likelihood) and are therefore selected to be included in the sustainability reporting (by applying appropriate thresholds in accordance with ESRS 1. AR 9 (c)). This could lead to the result that the pollution-related impact is assessed to be immaterial from the group's perspective when there are other impacts in the group which are considered to be even more material than the pollution-related impact from subsidiary A.
- Paragraph 181 hints at a trade-off an undertaking could face in performing its materiality assessment at group level. The example provided could be understood as meaning that the impacts from subsidiaries should be aggregated by weighting them in relation to revenues. This seems to contradict the example in 3.6.2 which illustrates that impacts are not less material simply because the subsidiary is less material from a financial perspective. Furthermore, and, as a general note, it would be helpful to clarify whether the thresholds are meant to be the thresholds relevant for the categorisation of scale, scope, irremediability and likelihood (e.g. low vs. medium vs. high) or the thresholds relevant for selecting the matters to be reported on (material vs. immaterial IRO).
- When addressing the question of whether impacts should be assessed in absolute or relative terms, it might also be useful to describe whether impacts should be or should not be assessed:
  - Relative to all impacts of the world: undertaking B compares its GHG emissions to all GHG emissions emitted in the reporting period. B only adds about 0,001% of all GHG emissions.
  - Relative to other undertakings within the same sector: undertaking B compares its GHG emissions to other undertakings in the same sector and finds out that its emissions are 50% below the average. Does B consider this in its materiality assessment and, if so, how?

Relative to other undertakings within different sectors: undertaking B is active in IT services. It compares its GHG emissions to other sectors, e.g. oil and gas, whose GHG emissions are clearly higher than those of B and/or than the average of the sector of B. Does B consider this in its materiality assessment and, if so, how?

Please provide your comments on Chapter 5.4 of the MAIG

With regard to the questions and guidance on stakeholder engagement, it would be helpful to clearly define and differentiate between stakeholder engagement, consultation and dialogue. E.g., paragraph 107 seems to imply that consultation of a scientific source is a form of stakeholder engagement and/or consultation whereas ESRS 2.53 (g) implies that the use of a source is not part of stakeholder engagement.

Please provide your comments on Chapter 5.5 of the MAIG

Please provide your comments on Chapter 5.6 of the MAIG

FAQ 23: When an undertaking has actions in place to avoid, minimise, restore or compensate environmental impacts, shall it report on the impacts before those actions?

- We welcome the clarification of the general principle that impacts are always to be considered “gross”. However, the explanations and examples provided in paragraph 215 – 219 appear to contradict this general principle due to a lack of clarity and inconsistencies.
- Paragraph 215 sentence 1 generally states for both actual and potential impacts: “As a general principle, environmental impacts are considered **gross** (i.e. before any mitigating actions) in the materiality assessment” (emphasis added). We interpret this principle that any mitigating measures **CANNOT be taken into account** in the materiality assessment. In contrast, paragraph 218 sentence 2, states that the “materiality assessment of potential impacts **can** also **consider the effect** of technical or other management **measures for avoiding or mitigating impacts**” (emphasis added) indicating that avoiding or mitigating measure **CAN be taken into account** in the materiality assessment. Paragraph 218 lit. a) sentence 2 states: “However, if a treatment technique is available and the undertaking plans to install it, it may disclose this as part of its management of the material impact but **CANNOT be taken into account** in the materiality assessment” (emphasis added).
- From the guidance presented in paragraph 215 and 218 with regard to potential impacts, we would interpret that
  - remediation and restoration activities CANNOT be considered in the materiality assessment because they will only be implemented after the impact will have occurred (paragraph 218 lit b)).
  - assumed but not yet available mitigation measures CANNOT be considered in the materiality assessment (paragraph 218 lit a) sentence 1).
- However, it remains unclear whether
  - planned and available mitigation measures meeting the criteria in paragraph 218 sentence 2 – 4 CAN or CANNOT be considered in the materiality assessment (paragraph 215 vs. paragraph 218 sentence 2 – 4 vs. paragraph 218 lit a) sentence 2).
  - Existing mitigation measures CAN OR CANNOT be considered in the materiality assessment (paragraph 215 vs. paragraph 218 sentence 2 and due to lack of an explicit statement/example).
  - Compensating measures CAN or CANNOT be considered in the materiality assessment (paragraph 215 vs. FAQ 4 and due to lack of an explicit statement / example).
- We welcome the definitions provided in paragraph 219 for the different nature of actions taken to address impacts. However, the guidance in paragraph 215 – 218 does not seem to use these terms consistently, which creates further confusion. For example, the general principle in paragraph 215 uses the term “before any *mitigating* actions” implying that “mitigation” seems to include “avoidance” and “minimization”,

## Survey on (draft) IG 1 MAIG

whereas paragraph 218 sentence 2 uses the term “for avoiding or mitigation” which could imply that the general principle does not apply to actions to avoid, restore or compensate impacts. Whereas the question includes the consideration of actions to compensate impacts, the guidance does not explicitly address these kinds of actions. We strongly recommend using clear and precise wording and definitions throughout the guidance in FAQ 23.

- Although the guidance still includes some inconsistencies, we interpret the cutting line between measures which can and which cannot be considered in the materiality assessment as being drawn between existing and planned mitigation measures. In this case, the differentiation between existing and planned measures will be relevant and clear definitions of these terms will be needed. While the installation of a filter or a wastewater treatment technique seems to be a quite straightforward example for an existing mitigation measure that will reduce the potential impacts in the future, it is questionable whether an existing management process implementing the need for a continuous behaviour or for continuous actions is also an “existing” measure to reduce future potential impacts. This is due to the fact that there is also a need to ensure that the management process will also be implemented and operating effectively in the future. Accordingly, maintaining a management process in the future could be classified as a planned mitigation measure rather than as an existing mitigation measure.
- Furthermore, it could be helpful to establish the connection to FAQ 4 (Can positive impacts be netted against negative impacts) handling with “netting” and “offsetting”.
- Draft EFRAG IG 1 FAQ 23 is only addressing environmental impacts.
- With regards to social impacts it is unclear if the comment in paragraph 220 is intended to indicate whether
  - the general principle stated in para 215 (“environmental impacts shall be assessed gross”) as well as the guidance for actual and potential impacts shall be applied to social impacts by analogy and that future guidance will only add illustrative examples for social matters or
  - there might be differences in the assessment of social impacts that could result in a different principle having to be applied for social impacts.

FAQ 23 provides some detail on the questions concerning whether IROs are to be assessed and reported on a gross or on a net basis, but it only covers environmental impacts. We suggest extending the scope of FAQ 23, as it would be helpful to get further guidance with respect to risks and opportunities, as it remains unclear if risks and opportunities are to be assessed and reported on gross or on a net basis and how the likelihood of a risk is taken into account in this assessment. Furthermore, the differentiation between assessment and reporting should be clarified. In addition, FAQ 23 should be extended to cover social and governance aspects.

Please provide your comments on Chapter 5.7 of the MAIG

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Additional comments

- In the „Summary in 13 key points“ paragraph 6 states ”As illustration, a materiality assessment that would meet the requirements of the ESRS **could** include the following steps:...“ (emphasis added). As the steps a) to c), which are listed afterwards are the same as in ESRS 1.AR9, a reference to ESRS 1.AR9 should be included. Furthermore, clarification that steps a) to c) of ESRS 1.AR9 are not optional („shall consider“) is needed.
  
- **Missing guidance for negative impacts in the past:** How should the example in paragraph 217 lit. b) be understood concerning impacts from the past? Example: an undertaking emitted pollution into soil while constructing its sites 100 years ago. The pollution can still be scientifically proven.
  - Consideration in the materiality assessment:
    - Negative impacts from the past shall be considered in the materiality assessment, therefore the undertaking shall assess whether the impacts from pollution are still material. This gives rise to additional questions: How far back in time should the undertaking generally go in this consideration? Should the impacts in the example, which arose 100 years ago, still be considered?
    - What should be considered when assessing the severity and likelihood of impacts from the past, e.g. should the impact be assessed on a gross basis (the original impact excluding any mitigation actions) or on a net basis (the remaining impact after mitigation actions in the past)?
  - Consideration while reporting on metrics: Shall the undertaking also report on those impacts from the past, e.g. report cumulative impacts from the start of the impact (which might be multiple decades ago) until the end of the reporting period? Concerning the example, this could mean that the undertaking reports the current pollution of its sites, which arose 100 years ago.
  - Considering both the materiality assessment and metrics: how should an undertaking fulfill these requirements if impacts from the past that are still present today were not calculated or assessed in the past and can no longer be assessed today, e.g. GHG emissions from the past?

## Survey on (draft) IG 2 VCIG

Please provide your comments on Chapter 1 of the VCIG

Please provide your comments on Chapter 2 of the VCIG

### Chapter 2.1 What is the VC?

- The extent to which downstream impacts needs to be taken into account is not yet clear and needs guidance. In particular because – unlike upstream impacts – it is not possible for the undertaking to directly influence its customers' use of the undertaking's products and services and therefore there is a lack of influence and information of any resulting IROs. How should e.g. the following aspects related to downstream IROs be considered and what consequences might arise in different constellations?
  - The use of the undertaking's products and services: Does the undertaking need to include in its materiality assessment and reporting any improper use through its consumers and/or end-users?
  - Example: If an undertaking A rents property from an undertaking B and A causes severe impacts on using this rented property (e.g. child labor), should the undertaking B be held accountable for those impacts and include them in its materiality assessment? Is there any other consideration if the products or services are designed for a very specific purpose?
  - Example: If undertaking A grants a loan to undertaking B, should A be held accountable for the impacts that B causes with the use of the loan? Is there a difference when the loan has an agreed purpose and this purpose leads to impacts?

### Chapter 2.3 From own operations to value chain

- Paragraph 36 refers to the MAIG chapter 5.2 FAQs on financial materiality for considerations of subsidiaries that are excluded from the financial reporting consolidation on the basis of materiality for the sustainability statement. From our point of view MAIG chapter 5.2 does not contain any explicit references to the treatment of such subsidiaries. Furthermore, MAIG chapter 5.2 only considers the perspective of financial materiality and not the perspective of impact materiality. Therefore, further and clearer guidance would be helpful as to the treatment of subsidiaries that are excluded from the financial reporting consolidation on the basis of materiality for the sustainability statement.
- This chapter refers to the concept of operational control. In practice, there are still material uncertainties regarding this concept, therefore a more detailed explanation would be helpful as to how to implement this concept in practice. Questions arise e.g. concerning how operational control can be defined in detail, for example:

## Survey on (draft) IG 2 VCIG

- At what level does operational control need to be assessed: at entity level, site or facility? Is it possible that the unit of account is different for ESRS E1, E2 and E4?
- What are operational activities in contrast to relevant activities under IFRS 10? Are operational activities those that significantly affect the specific environmental impact under consideration in E1, E2 and E4 (by analogy to relevant activities defined as those that significantly affect the investee's return under IFRS 10)? Could this lead to a situation that an asset might be under operational control for E2 but not for E4, because the reporting entity has only the ability to direct the operational activities that significantly affect the pollution-related impacts?
- Is the "ability to direct" based on (legal or contractual) rights or can "ability" also be a de-facto ability?
- Does the concept of operational control only have consequences for the reporting on impact metrics, or is this also relevant for the reporting on risks and opportunities? Example: an undertaking operationally controls a site and therefore reports the site's pollution-related impacts according to ESRS E2. Shall the undertaking also assess the risks and opportunities of the operationally controlled site in its materiality assessment? Shall the undertaking also report on the identified material risks and opportunities of the operationally controlled site, e.g. related to anticipated financial effects?

### The reporting group as starting point

- The definition of the beginning and the end of the own operations and the value chain needs more explanation, for it to be implemented in practice. E.g. in the sector of service providers or financial services, where the line between the undertaking's own operations and its value chain should be drawn remains partly unclear. In order to clarify such uncertainties, the difference between an undertaking's own operations and its value chain should be explained through further examples.
- The reference in paragraph 36 states that the MAIG explains the case where subsidiaries are excluded from consolidation for financial reporting purposes on the basis of materiality, but the relevant chapter in the MAIG does not include this piece of information. Furthermore, this reference only refers to financial materiality, but not to the impact materiality perspective which might give even more justification for the inclusion of financially immaterial subsidiaries.

### Operational control – E standards

- Paragraph 45 states that ESRS E3 should also apply the concept of operational control, if certain circumstances are met
  - ESRS E3 does not include any indication about the application of the concept of operational control and neither is this concept explained in the cross-cutting standards ESRS 1 or ESRS 2. Concerning ESRS E3 the application goes beyond the ESRS. We consider it difficult to apply the operational control concept by any analogy.

### Operational control – S standards

## Survey on (draft) IG 2 VCIG

- Paragraph 47, own workforce: The VCIG states that undertakings should consider if any workers related to assets, sites or operations operationally controlled by the undertaking meet the definition of the own workforce or workers in the value chain. To be included in the own workforce a worker should be an employee (Annex II: individual who is in an employment relationship with the undertaking according to national law or practice) or a non-employee (Annex II: self-employed people or people provided by undertakings primarily engaged in “employment activities”). A worker of an operationally controlled site/asset/operation is, in most cases, not in an employment relationship with the controlling undertaking but with the undertaking with whom he/she is legally contracted. This worker is, in most cases, not a self-employed individual from the view of the operationally controlling undertaking. He/she also does not meet the definition of a worker provided by undertakings primarily engaged in employment activities. Therefore, the consequences of paragraph 47 do not become clear. What are examples of where a worker would meet the criteria of the own workforce? It also does not become clear whether this paragraph leads to a different treatment than that applying the concepts originally developed by the ESRS.
- Paragraph 47, worker in the value chain: To be included in the definition of a worker in the value chain a worker is an individual performing work in the value chain of the undertaking (Annex II). As the undertaking operationally controlling the asset/site/operations is expected to have a business relationship with this site, any workers at the site etc. would already meet the definition of a worker in the value chain. Furthermore, the idea behind the concept of operational control is that an asset/site/operations controlled by an undertaking should be reported as the own operation. A worker in the value chain is per definition not included in the own operation. Therefore, the consequences of paragraph 47 remain unclear.

### Associates and joint arrangements

- The VCIG implies that assets of a joint operation which are fully controlled by the reporting entity should be considered as being part of the own operations. The guidance is silent on how to treat those assets of a joint operation, which are held jointly.
- Even more relevant for undertakings applying local GAAP (where the concept of joint operation is not known and joint ventures might be proportionately consolidated), it would be helpful to provide guidance on how to treat joint ventures in the sustainability statement.

### Chapter 2.5 How do the transitional requirements work?

- Chapter 2.5 gives guidance on the transitional requirements. From our point of view, it would be helpful to add guidance with regard to ESRS 1.133 a). ESRS 1.133 a) states “when disclosing information on policies, actions and targets in accordance with ESRS2 and other ESRS, the undertaking may limit upstream and downstream value chain information to information **available in-house**, such as data already available to the undertaking and publicly available information” (emphasis added).

## Survey on (draft) IG 2 VCIG

Our understanding is that the requirements to disclose information on policies, actions and targets (PAT) in the first set of ESRS is limited to the reporting undertakings own PAT and does not include the PAT of the actors in the value chain. Therefore, guidance would be helpful as to how to interpret the provision of ESRS 1.133 a).

- ESRS 1.133 b) states “when disclosing metrics, the undertaking is not required to include upstream and downstream value chain information, except for datapoints derived from other EU legislation, as listed in ESRS 2 Appendix B.” It would be helpful to add guidance on how this rule relates to the reporting requirements of ESRS 1.132.

Please provide your comments on Chapter 3 FAQ 1 of the VCIG

Please provide your comments on Chapter 3 FAQ 2 of the VCIG

Please provide your comments on Chapter 3 FAQ 3 of the VCIG

### FAQ 3: How should the MA process be organised to properly capture material IROs in the VC?

Step B. and Step C: Identification of actual and potential IROs as well as assessment and determination of the material IROs

- Paragraph 88 states that the undertaking might not be able to trace its materials and products and points out that the disclosure in ESRS 2.5c asks for the extent to which the disclosures cover the VC. This wording might indicate that in case the undertaking is not able to trace their products and materials concerning the VC, it is permitted to only include smaller parts of the VC and disclose this under ESRS 2.5c. This aspect is described again in paragraph 105: “As per ESRS 2 BP-1, the undertaking should describe the extent of any limitations on the materiality assessment process with respect to the VC.” From our point of view, ESRS 2.5c relates to overriding disclosures related to the basis of the materiality assessment, but it does not imply there are any limitations that constitute any kind of relief to the materiality assessment process.
- The guidance lacks specific advice on how to assess the severity of impacts in the value chain. Especially with regard to impacts that are widespread across entities with a small own scope due to a very distant relationship to the own operations but that may have a large scale and/or irremediable character. For example, this might be the case with raw materials used in computers that entities use.

## Survey on (draft) IG 2 VCIG

Please provide your comments on Chapter 3 FAQ 4 of the VCIG

FAQ 4: How should information about the VC be disclosed in the context of the materiality assessment?

- Paragraph 110 indicates that the disclosure under ESRS 2 SBM-3, based on ESRS 2.48b, requires information about the discussions of IROs taken place at the undertaking, whereas ESRS 2.48e only asks for effects of the IROs on business model etc. We do not see that there is any obligation to report on internal discussions based on ESRS 2.

Please provide your comments on Chapter 3 FAQ 5 of the VCIG

Please provide your comments on Chapter 3 FAQ 6 of the VCIG

FAQ 6: Should VC information be included for Metrics Disclosure Requirements?

- Paragraph 121, among others, provides that when an undertaking is reporting on ESRS S2, S3 and S4, it should consider disclosing entity-specific metrics. It would be helpful to clearly state that an undertaking should assess entity-specific metrics as shown in the examples in paragraph 122, even if it does not yet collect any data and therefore does not “use” (see ESRS 2.75: “metrics that it uses”) any metrics.

Please provide your comments on Chapter 3 FAQ 7 of the VCIG

Please provide your comments on Chapter 3 FAQ 8 of the VCIG

Please provide your comments on Chapter 3 FAQ 9 of the VCIG

FAQ 9: How can estimates be developed when primary data cannot be collected from VC counterparties?

- Paragraph 147 contains an example illustrating relevant and not relevant information. The example is illustrated as a quite general example. It lacks any rationale and explanations of why the information of the pollution-related impact from the upstream value chain is assessed as not relevant and therefore does not need to be disclosed. From our understanding, the assessment of relevance should be made during the materiality assessment process and not during the reporting on metrics. If the assessment of the materiality of information is addressed with this example,

## Survey on (draft) IG 2 VCIG

questions arise as to why, in this case, the pollution-related metrics are not considered relevant, but the metrics related to circular economy are relevant.

Please provide your comments on Chapter 3 FAQ 10 of the VCIG

Please provide your comments on Chapter 4 of the VCIG

### Chapter 4: VC map

- According to the “VC coverage map of Set 1 ESRS” point 4 the undertaking shall reflect whether and how policies, actions or targets (PAT) cover the VC.
- What does “shall reflect” mean? Does it refer to the terms of “shall disclose” or “shall consider disclosing” that are normally used within the ESRS? To be aligned with the ESRS, the wording should be “shall disclose”, as those reporting requirements result from ESRS 2 MDR-P (ESRS 2.65b), MDR-A (ESRS 2.68b) and MDR-T (ESRS 2.80c)

Additional comments

## Survey on (draft) IG datapoints

Please provide your comments on the explanatory note

### Appendix B:

- Datapoints subject to phasing-in provisions applicable to all undertakings and Datapoints subject to phasing-in provisions applicable to undertakings with less than 750 employees (pages 12 + 13). The two tables presented do not correspond to the text and headline, as should be switched.
- The explanatory note related to the datapoint list includes a comparison between the EFRAG IG3 and the ESRS XBRL taxonomy in Appendix A. In the table in paragraph 2, it explains under data type C [Text block] that “No item for each Level 1 (representing a DR as a whole)” is included in IG3, whereas the XBRL taxonomy intends to include such a disclosure. Is this intended to state that: a) the reporting undertaking is expected, in addition to reporting on the disclosures specified in the paragraphs under the DR as a whole highlighted in bold in the ESRS, to also report disclosures that directly answer the DRs as a whole or b) that the undertaking is only expected to report on the disclosures specified in the paragraphs below a DR highlighted in bold? Example, ESRS E3-4 Water consumption: Should the undertaking only disclose the information of ESRS E3.28a “water consumption” and the following paragraphs or is any overriding information based on the DR as a whole (which is highlighted in bold) in ESRS E3.26: “The undertaking shall disclose information on its water consumption performance related to its material impacts, risks and opportunities” also necessary?

Please provide your comments on the ESRS 2 sheet, indicating also the relevant row and column

- Row 3: From our understanding ESRS 2.3 presents the DR as a whole. The datapoints that need to be disclosed, from our understanding, are included in the paragraphs 5ff. Therefore, we assume that ESRS 2.3 is not a datapoint itself and should be deleted from the datapoint list.
- E75: The datapoint list includes a datapoint based on ESRS 2.40: “Disclosure of information about key elements of general strategy that relate to or affect sustainability matters”. The underlying paragraph in ESRS 2.40 states: “The undertaking shall disclose the following information about the key elements of its general strategy that relate to or affect sustainability matters [...]”. From our understanding, the datapoints to be disclosed are included in ESRS 2.40 a – g, but not in ESRS 2.40 itself. Row 75 should therefore be deleted in the datapoint list.

Please provide your comments on the ESRS 2 MDR sheet, indicating also the relevant row and column

- A1 Instructions: This cell includes a list of Disclosure Requirements related to the Minimum Disclosure Requirements MDR-P, MDR-A and MDR-T.
  - According to the datapoint list, ESRS G1-4 is related to MDR-A, Actions. From our understanding, the content of this Disclosure Requirement is not



## Survey on (draft) IG datapoints

related to any actions but includes metrics to be reported. This is also supported by the fact that this DR is included in the ESRS chapter “metrics and targets” in ESRS G1. We assume that ESRS G1-3 is related to actions and G1-4 to related to metrics, and thus that this should be corrected in the datapoint list.

- According to the datapoint list there is no DR in ESRS G1 that is related to MDR-T. Can we assume that an undertaking is not required to report on targets concerning governance matters?
- E15 and E16: The underlying paragraph in ESRS 2.69b says: “provide the amount of current financial resources [...]”. Furthermore, ESRS 2.69a includes, in relation to financial and other resources,: “describe the type of current and future financial and other resources allocated to the action plan, including if applicable, the relevant terms of **sustainable finance instruments, such as green bonds, social bonds and green loans**” (emphasis added). The breakdown for OpEx and CapEx is only a voluntary breakdown (ESRS 2.AR23). The datapoint list only includes the following disclosures: “Current financial resources allocated to action plan (**Capex**)” (emphasis added) and “Current financial resources allocated to action plan (**Opex**)” (emphasis added). The datapoint list should be aligned with the disclosures in ESRS. The same issues arise in regard to ESRS 2.69c, which is included in the cells E17 and E18 in the datapoint list.
- E15 – E18: The voluntary breakdown of the current and future financial resources based on ESRS 2.AR23 is not included in the datapoint list: “Information on resource allocation may be presented in the form of a table and **broken down** between capital expenditure and operating expenditure, and across the relevant time horizons, and between resources applied in the current reporting year and the planned allocation of resources over specific time horizons” (emphasis added).
- E23 and E24: The descriptions in the list (“Measurable target” and “nature of the target”) do not fit the ESRS paragraph (“the defined target level to be achieved, including, where applicable, whether the target is absolute or relative and in which unit it is measured”) and should be corrected to e.g., “for each target related to each material sustainability matter: the defined target level to be achieved” and “for each target related to each material sustainability matter: whether the target is absolute or relative and in which unit it is measured”. If this correction weremade, a row for disclosing any measurable time-bound and outcome-oriented targets might be needed, based on ESRS 2.80, as this requirement is no longer covered by the entries in the datapoint list.
- E32: The description of the datapoint (“Disclosure of **how** stakeholders have been involved in target setting” (emphasis added)) should be aligned with the ESRS paragraph: “**whether and how** stakeholders have been involved in target setting for each material sustainability matter” (emphasis added).
- E8: The disclosure from ESRS 2.65f includes “whether and how”, whereas the datapoint list only includes “how”.
- E42: The disclosure from ESRS 2.81a is a voluntary disclosure, according to our understanding: “If the undertaking has not set any measurable outcome-oriented targets: (a) it **may disclose** whether such targets will be set and the timeframe for setting them, or the reasons why the undertaking does not plan to set such targets”

## Survey on (draft) IG datapoints

(emphasis added). In the datapoint list this is not yet marked as a voluntary datapoint. Furthermore, the datapoint “whether” is not yet included in the list.

- E45: The datapoint in the list seems to address two different disclosures: “Description of defined level of ambition to be achieved and of any qualitative or quantitative indicators used to evaluate progress”. It might be misleading, if those were included in only one row and they should therefore be shown in two separate rows.
- MDR-P: The voluntary disclosures under ESRS 2.AR 21 are not included in the datapoint-list: “The description of the scope of the policy **may explain** which activities and/or segments of the undertaking’s own operations or upstream and downstream value chain it concerns. The description **may also explain** further boundaries relevant to the specific topic or the undertaking’s circumstances, which may include geographies, life cycles, etc. In certain cases, such as if the policy does not cover the full value chain, the undertaking **may provide** clear information regarding the extent of the value chain covered by the policy” (emphasis added).
- MDR-P, MDR-A, MDR-T: ESRS 2.62 also includes the requirement to disclose a statement that the undertaking has not adopted policies, which is not yet included in the datapoint list: “If the undertaking cannot disclose the information on policies and actions required under relevant ESRS, because it has not adopted policies and/or actions with reference to the specific sustainability matter concerned, **it shall disclose this to be the case**” (emphasis added). This datapoint is repeated under **MDR-A and MDR-T** and thus should be corrected accordingly.
- MDR-A: The disclosure based on ESRS 2.69b states: “explain how they relate to the most relevant amounts presented in the financial statements”. This datapoint is not yet included in the datapoint list.
- MDR-T: ESRS 2.AR26 includes another voluntary datapoint that is not yet included in the datapoint list: “[...] it **may specify** a baseline against which the progress is considered” (emphasis added).
- MDR-M: The disclosure based on ESRS 2.77c “label and **define** the metric using meaningful, clear and precise names and **descriptions**” (emphasis added) is not yet included in the datapoint list. According to the wording “define” and “descriptions” in the paragraph this should be added as a separate disclosure in the list.

Please provide your comments on the ESRS E1 sheet, indicating also the relevant row and column

- INSTRUCTIONS 1): It would be helpful to add the requirement of ESRS 2.57: “If the undertaking concludes that climate change is not material and therefore omits all disclosure requirements in ESRS E1 Climate change, it shall disclose a detailed explanation of the conclusions of its materiality assessment”.
- C112: From our understanding of the underlying ESRS E1.AR50, this datapoint is voluntary: “The Scope 3 GHG emissions **may also be presented** by according to the indirect emission categories defined in EN ISO 14064-1:2018” (emphasis added). The datapoint list does not mark this as a voluntary disclosure.
- C113: From our understanding of the underlying ESRS E1.AR52, this datapoint is voluntary: “The total GHG emissions disaggregated by Scope 1, 2 and 3 GHG

## Survey on (draft) IG datapoints

emissions **may be graphically presented** in the sustainability statement (e.g., as a bar or pie chart) showing the **split of GHG emissions across the value chain** (emphasis added), in the datapoint list it is not marked as voluntary.

Please provide your comments on the ESRS E2 sheet, indicating also the relevant row and column

- E51 and 52: According to ESRS E2.34 the amounts shall be “split into main hazard classes of substances of concern”. The datapoint list does not include this split. The similar datapoints based on ESRS E2.35 relating to SVHCs include the additional text “by main hazard classes of substances of concern” in cells E57 and E58. As the breakdowns based on ESRS E2 should be the same, the wording in the list should be aligned.
- E56: The addition “by main hazard classes of substances of concern” is missing in this cell, while it is included in the datapoints above. According to our understanding, this breakdown relates to all datapoints in ESRS E2.34. The split based on ESRS E2.34 by main hazard classes of substances of concern should therefore be added to cell E56.

Please provide your comments on the ESRS E3 sheet, indicating also the relevant row and column

- Row 42: ESRS E3.AR29 includes additional datapoints that are not yet included in the datapoint list: “When disclosing contextual information on water consumption performance required by paragraph 26, the undertaking **shall explain the calculation methodologies** and more specifically the **share of the measure** obtained from **direct measurement, from sampling and extrapolation, or from best estimates**” (emphasis added).

Please provide your comments on the ESRS E4 sheet, indicating also the relevant row and column

- ESRS E4.AR18 includes six (three datapoints for CapEx and three for OpEx) voluntary datapoints that are not yet included in the datapoint list: “The undertaking **may relate** significant monetary amounts of **CapEx and OpEx** required to implement the actions taken or planned to: (a) the relevant line items or notes in the financial statements; (b) the key performance indicators required under article 8 of Regulation (EU) 2020/852 and under Commission Delegated Regulation (EU) 2021/2178; and (c) if applicable, the CapEx plan required by Commission Delegated Regulation (EU) 2021/2178” (emphasis added).

Please provide your comments on the ESRS E5 sheet, indicating also the relevant row and column

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## Survey on (draft) IG datapoints

Please provide your comments on the ESRS S1 sheet, indicating also the relevant row and column

- E97: ESRS S1.50a includes the following datapoints: “the undertaking shall disclose: (a) the total number of employees by head count, and breakdowns by gender and by country for countries in which the undertaking has 50 or more employees representing at least 10% of its total number of employees”. The undertaking shall furthermore disclose the methodologies used (ESRS S1.50d iii). The necessity to disclose the average number of employees as mentioned in E97 in the datapoint table does not seem to be aligned with the paragraph in the ESRS. The cited ESRS S1.AR57 in cell D97 only explains the pros and cons of each method, but, according to our understanding, does not lead to a disclosure. The same question arises in regard to ESRS S1.50b, as included in the datapoint list in cell E104.
- E116 and E117: the disclosure of the number of non-employees by the categories “self-employed people” and “people provided by undertakings primarily engaged in employment activities” is not aligned with ESRS S1.55a, which includes those categories as examples for a non-employee, but not as a separate disclosure: “a disclosure of the total number of non-employees in the undertaking’s own workforce, i.e., either people with contracts with the undertaking to supply labour (“self-employed people”) or people provided by undertakings primarily engaged in “employment activities” (NACE Code N78)”. This view is supported by ESRS S1.AR61, which explains that these two categories are meant to be examples of non-employees.
- E132 and E133: The underlying ESRS S1.66a states: “The undertaking shall disclose: (a) the gender distribution in number and percentage at top management level”. The datapoint list states: “Number of employees” and “Percentage of employees at top management level”. These paragraphs should be aligned, resulting e.g. in the following datapoints:
  - gender distribution at top management level in number by gender, and
  - gender distribution at top management level in percentage by gender,
- The voluntary disclosures resulting from ESRS S1.76 are not included in the list: “The undertaking may also disclose the information specified in this disclosure requirement with regard to non-employees in its workforce”.

Please provide your comments on the ESRS S2 sheet, indicating also the relevant row and column

- E7: The disclosure as specified in the datapoint list is shortened to the extent that it no longer represents the detailed disclosure as shown in ESRS S2.11c.
- E8: The disclosure includes a voluntary disclosure that should be listed separately: “the undertaking **may also disclose** whether the positive impacts occur in specific countries or regions” (emphasis added).
- E18: The disclosure according to the ESRS relates to a statement “whether its policies in relation to value chain workers explicitly address trafficking in human beings [etc.]” (ESRS S2.18). The disclosure in the datapoint list does not clearly indicate that a statement is needed to fulfill this requirement: “Policies explicitly address trafficking in human beings [etc.]”. The same applies to cell E19

## Survey on (draft) IG datapoints

- From our understanding, ESRS S2.AR14 is a voluntary disclosure but it is not included in the datapoint list: “the undertaking **may disclose** its alignment with these instruments” (emphasis added). This datapoint might already be included in the disclosure under ESRS S2.19, but due to the fact that AR14 is a voluntary disclosure and S2.19 is not, it should be included separately in the datapoint list.
- The disclosure in ESRS S2.AR15 is not included in the datapoint list: “the summary shall indicate whether they include provisions [...]and whether such provisions are fully in line [...]”. The datapoint list only includes the statement of whether a supplier code of conduct exists (cell E19).
- The following voluntary disclosures from ESRS S2.AR 16 are not included in the list:
  - “It may disclose communication tools and channels [...] aimed at ensuring that the policy is accessible and that different audiences understand its implications”.
  - “how it identifies and removes potential barriers for dissemination [...]”.
- ESRS S2.20 includes a DR (marked in bold in the ESRS). The requirements below this DR describe in a more specific way the necessary information to be provided, but, from our understanding, any information based on S2.20 might not be covered by only listing the paragraphs 21ff. The information the undertaking assesses to be relevant when looking at S2.20 might include more aspects than just the paragraphs 21ff. Therefore, we suggest also including S2.20 in the datapoint list, even if it is a DR as a whole.
- E25: The disclosure is as follows: “The undertaking shall disclose **whether and how** the perspectives[...]”(emphasis added), whereas the datapoint list only includes: “Disclosure of **how** perspectives” (emphasis added). The aspect “Whether” should be added to the datapoint list.
- E38: The disclosure in ESRS S2.28 states: “The undertaking shall disclose **whether and how** it assesses [...]”(emphasis added). The datapoint list only includes “Disclosure of how it is assessed [...]”(emphasis added). The disclosure of “whether” should be added to the datapoint list.
- ESRS S2.AR22 is not included in the datapoint list (voluntary disclosure): “Where the undertaking is relying solely on information about the existence of such channels provided by its business relationships to answer this requirement, it may state that”.
- E42: ESRS S2.AR23 states: “the undertaking may explain **whether and how** value chain workers that may be affected are able to access channels at the level of the undertaking they are employed by, or contracted to work for, in relation to each material impact” (emphasis added), the datapoint list only states: “Disclosure of how value chain workers are able to access channels at level of undertaking they are employed by or contracted to work for”. The statement of “whether” should be added.
- E45: ESRS S2.AR 25 states: “whether the mechanisms **allow for workers** to use them anonymously (for example, through representation by a third party)” (emphasis added), whereas the datapoint list includes: “Value chain workers **are allowed** to use anonymously channels to raise concerns or needs” (emphasis added). The wording “are allowed” in the datapoint list seems to change the meaning of the disclosure. The issue is not that the workers should be allowed, but that the mechanisms should be suitable for an anonymous message.

## Survey on (draft) IG datapoints

- ESRS S2.AR26 is not included in the datapoint list (voluntary disclosure): “the undertaking may provide relevant and reliable data about the effectiveness of these channels from the perspective of value chain workers themselves”.
- ESRS S2.29 requires not only a statement concerning the absence of channels in the workplace of value chain workers and the timeframe (voluntary), but also a statement concerning the support of the availability of such channels and the corresponding timeframe (voluntary): “If the undertaking cannot disclose the above required information because it has not adopted a **channel** for raising concerns **and/or does not support the availability** of such a channel in the workplace of value chain workers, it shall disclose this to be the case. It may disclose a timeframe in which it aims to have such a **channel or processes** in place” (emphasis added).

Please provide your comments on the ESRS S3 sheet, indicating also the relevant row and column

- ESRS S3.AR22 includes the following: “When disclosing processes related to providing and enabling remedy for indigenous peoples, relevant information includes whether and how the undertaking has considered their customs, traditions, rules and legal systems”. The wording is different to other voluntary datapoints, but, from the objective of this paragraph, we assume that this is a voluntary datapoint. It is not yet mentioned in the datapoint list.
- ESRS S3.AR23 includes a voluntary disclosure that is not yet mentioned in the datapoint list: “the undertaking may provide relevant and reliable data about the effectiveness of these channels from the perspective of affected communities themselves”.
- E67: The datapoint list includes the following disclosure: “Description of internal functions that are involved in managing impacts and types of action taken by internal functions to address negative and advance positive impacts”, which seem to be two different explanations to be disclosed. Therefore, the two datapoints should be shown separately in the datapoint list.

Please provide your comments on the ESRS S4 sheet, indicating also the relevant row and column

Please provide your comments on the ESRS G1 sheet, indicating also the relevant row and column

- Name of datapoint ESRS G1 para 7 (MDR-P) should relate to business conduct policies and corporate culture instead of climate change.
- ESRS G1.6 requires disclosures in connection to ESRS 2 IRO-1. Why does the list of datapoints not include a corresponding datapoint?
- Datapoint G1-1 para 11. Looking at the ESRS G1, how is it possible to identify that this datapoint is voluntary?

## Survey on (draft) IG datapoints

### Additional comments

- It would be very helpful, if the list of sub-topics and sub sub-topics (ESRS 1. AR 16) could be mapped to the disclosure requirements and datapoints as well.
- Sheet "Index", Row 26 Column C: The reference to ESRS E1 rows 36-50 as an example for blue-highlighting is not correct, those disclosures are not highlighted in blue.
- If any of the voluntary disclosures that are noted as missing in the datapoint list in this document are not meant to be disclosures, but just examples, it would be helpful to clearly state, under which circumstances a paragraph in the ESRS is a disclosure. E.g. whether the wording "may explain" might introduces a disclosure or is just an example.