Deutsches Rechnungslegungs Standards Committee e.V.

Accounting Standards Committee of Germany

DRSC

DRSC e. V. • Joachimsthaler Str. 34 • 10719 Berlin

Präsident
Telefon: +49 (0)30 206412-11
E-Mail: lanfermann@drsc.de

Berlin, 16. Januar 2026

Bundesministerium für Justiz und Verbraucherschutz
BMJV
Dr. Jan Techert

11015 Berlin

Per E-Mail: esrs@bmjv.bund.de

Beteiligung zu einer überarbeiteten Delegierten Verordnung betreffend Standards für die Nachhaltigkeitsberichterstattung nach der CSRD

Sehr geehrter Herr Dr. Techert,

gerne nehmen wir die Gelegenheit wahr, zu den Draft Simplified ESRS Stellung zu nehmen, die EFRAG am 3. Dezember 2025 als Technical Advice an die EU-Kommission übergeben hat.

Das DRSC hat die Aktivitäten der EFRAG zur Überarbeitung der ESRS Set 1 auch im vergangenen Jahr eng begleitet. Dies geschah zum einen durch unsere Mitwirkung in den Fachgremien der EFRAG. Zum anderen haben wir unsere Ansichten zu den notwendigen Vereinfachungen in Form von öffentlichen Stellungnahmen und Positionspapieren regelmäßig und während des gesamten Prozesses an EFRAG übermittelt. Dazu gehörten u.a. die Teilnahme an der öffentlichen Konsultation zu den im Juni 2025 veröffentlichten EFRAG-Entwürfen und Rückmeldungen zu späteren Arbeitsständen und zu weiteren Erläuterungen (z.B. Basis for Conclusions). Für diese Einschätzungen konnte das DRSC auf die Diskussionen des Fachausschusses für Nachhaltigkeitsberichterstattung (FA NB), auf darüberhinausgehende Austausche mit Unternehmen und Wirtschaftsprüfern und Diskussionen mit der breiten Öffentlichkeit zurückgreifen.

Der Technical Advice der EFRAG stellt in vielerlei Hinsicht eine Verbesserung und Vereinfachung der ESRS (aktueller Delegierter Rechtsakt) dar, indem beispielsweise die Struktur angepasst und gestrafft wurde, konzeptionelle Grundlagen (bspw. Fair Presentation, materiality of information) geschärft, konkrete Datenanforderungen reduziert und insbesondere auch für die Unternehmen wichtige Erleichterungen (z.B. ESRS 1.66 f. bzgl. des „use of estimates“ oder ESRS 1.75 f. bezüglich „acquisitions and disposals“) aufgenommen wurden. Diese Ergebnisse stellen eine gute Basis dar, die es auch im Verlauf der weiteren Befassung mit den ESRS zu erhalten gilt.

Nichtsdestotrotz sieht das DRSC insbesondere in drei Bereichen weiteren Überarbeitungsbedarf. Dabei handelt es sich um solche Anforderungen, bei denen die nun an die EU-Kommission übergebenen ESRS:

(1) über die bisherigen Anforderungen des ESRS Set 1 (2023) hinausgehen,
(2) Regelungen enthalten, die (weiterhin) ungeeignet oder unklar sind oder
(3) Regelungen enthalten, deren Ausgestaltung nicht durch EFRAG, sondern auf Ebene der EU-Kommission festzulegen ist.

Im beigefügten englischsprachigen Appendix sind diese Bereiche jeweils ausgeführt.

Wir hoffen, damit zur weiteren Verbesserung der ESRS beitragen zu können und stehen Ihnen für Rückfragen gerne zur Verfügung.

Mit freundlichen Grüßen

Georg Lanfermann

Präsident

Appendix

Content

1 Extensions of requirements as compared to the current delegated act on ESRS

a) ESRS 1/ESRS E1

Suggestion: Delete exemption from phase-in for ESRS E1-11, retain phase-in for all disclosures on anticipated financial effects (AFE).

The Technical Advice (TA) on ESRS 1.125 contains transitional provisions. Among other things, undertakings are generally exempt from reporting anticipated financial effects until 2027 and from quantifying anticipated financial effects until 2030. However, certain disclosures governed in ESRS E1-11 *Anticipated financial effects from material physical and transition risks and potential climate-related opportunities* (TA) are explicitly excluded from this phase-in "as they relate to carrying amounts recognised on the balance sheet at the reporting date, subject to forward looking events" (BfC.321 (TA)). In the current Delegated Act (DA) on ESRS 1 transitional reliefs were consistent for all disclosures on anticipated financial effects (AFE) and did not exclude certain detailed disclosures. Furthermore, the DRSC believes that requirements to quantify AFE should be subject to further discussion and standard setting before mandating such information (see section 2 c) ESRS 2: Anticipated financial effects on p. 8 of this Appendix for further information).

b) ESRS 2: GDR-M

Suggestion: Reduce significantly the granularity of information for *each* metric by deleting ESRS 2.49 (c) and (d) (TA) or limiting those requirements to metrics used in targets.

The set of mandatory disclosures to *each* metric has been significantly expanded by ESRS 2.49 (c) and (d) (TA) requiring contextual information about the metric and information about significant changes in performance including the progress made in achieving the targets. The DRSC considers this level of granularity as not sufficiently justified, especially since most requirements on metrics are allocated to specific disclosure blocks, for which the context is clear. Multiplying this information for *each* metric does not provide additional value in most cases. Only few metrics disclosed in the sustainability statement are linked to a target. The DRSC therefore suggests to either delete the requirement on ESRS 2.49 (c) or to limit this requirement to metrics used in targets.

c) ESRS E2: Full REACH disclosures

Suggestion: Delete ESRS E2.19 and AR 8 (TA) with regard to the publication of an exhaustive REACH list (in order to avoid duplication).

ESRS E2.19 (TA) requires an undertaking to disclose the names of the substances of very high concern that are present in a concentration above 0.1% weight by weight, as per Article 33 of REACH (Regulation (EC) No 1907/2006). The information may refer to information the undertaking is already required to report under other legislation according to ESRS E2.AR 8 (TA), including the Industrial Emissions Directive (IED, Directive 2010/75/EU) and the European Pollutant Release and Transfer Register (E-PRTR, Regulation (EC) No 166/2006)

On an editorial/technical note, the meaning of ESRS E2.AR 8 (TA) remains unclear. At a first glance, it suggests allowing incorporating by reference the information required by the IED and other legal acts; however, chapter 9.3 of ESRS 1 (TA) contains a conclusive list of public information an undertaking may refer to when it incorporates information by reference.

Moreover, the requirement proposed in ESRS E2.19 and AR 8 (TA) constitute significant extension of reporting requirements as compared to the current DA, as ESRS E2-5 (DA) does not contain a requirement to disclose the exhaustive REACH lists. In addition, reporting requirements for the management report should not result in disclosures that are available to the public from other sources. The DRSC recommends the European Commission to consider the information publicly available from ECHA CHEM database, launched in 2024. Furthermore, the aforementioned disclosure requirements should be amended in order to avoid double reporting by undertakings. The same issue arises with the disclosure requirement ESRS E2-4 (TA) as the disclosures might be provided in alignment with the E-PRTR (Regulation (EC) 166/2006) and the Industry Emissions Regulation (IEPR, Regulation (EU) 2024/1244). However, these legal acts contain reporting requirements for an undertaking or “operator of an installation”, as referred to in the IEPR, that result in information publicly available from in the European Pollutant Release and Transfer Register (E-PRT) or – in future – the Industrial Emissions Portal (IEP).

d) ESRS E5: Additional disaggregation on Resource inflows

Suggestion: Delete ESRS E5.13(c) and AR 1 (TA) with regard to breakdown of all key materials as well as role and relevance of key materials used.

ESRS E5 (TA) contains the requirement to disclose a “breakdown of each key material, expressed in weight or as a percentage of the total weight of all key materials” (ESRS E5.13 (c) (TA)) as well as its “role and relevance in the context of the undertaking’s operations” (ESRS E5.AR 1 (TA)). This requirement constitutes an extension of the requirements in the current DA of ESRS E5.28 to E5.32 and E5.AR 21 to E5.AR 25, because they do not contain such requirements. Furthermore, we think this requirement is much too granular and, in addition, often related to sensitive and anti-trust-relevant data. It will force undertakings to use the relief from making sensitive information public. However, this also means that the type of information that is not disclosed due to the exemption proposed in section 7.7 of ESRS 1 (TA) must be identified, which in many cases

is also sensitive information. Therefore, this requirement, i.e. “breakdown of each key material …” and “role and relevance …” as mentioned above, should be deleted.

The DRSC believes, that instead of providing a breakdown of each key material the disclosure requirement should focus on the breakdown in technical and biological materials as already indirectly required by the current DA (see ESRS E5.31) which turned out to be a metric that is relevant for users, in particular investors.

e) ESRS S1: Mandatory use of ILO principles on estimating a living wage

Suggestion: Delete the requirement to refer to ILO principles for estimating a living wage, in order to retain the flexibility available in the current DA.

Contrary to the simplification requests of the European Commission (letter of 27 March 2025 and letter of 1 July 2025), ESRS S1 (TA) introduces the new and complex concept of living wage estimates in accordance with the ILO principles on estimating a living wage as a new benchmark to assess whether or not an undertaking’s employees outside the EU are paid an adequate wage. We reject his amendment. In particular, the European Commission stated in its letter of 1 July 2025 that “new concepts […] should only be considered if they indeed lead to simpler and clearer standards. The advantage of introducing any new terms and concepts should always be weighed against the possible adjustment costs for companies that are already reporting against the existing ESRS.”

ESRS S1-9 (TA) requires undertakings to disclose whether or not its employees are paid an adequate wage and to disclose the benchmarks it uses to determine adequate wages with country-level context. If employees are not paid an adequate wage, the undertaking shall disclose the countries and the percentage of employees concerned (ESRS S1.28 (TA)). To do this, the undertaking shall calculate a benchmark for what constitutes an adequate wage in a country or at sub-national level. The undertaking must then compare its lowest wage with this benchmark separately for each country in which the undertaking has operations. Such requirements are already part of the current DA.

However, the problem arises due to the requirement proposed on the benchmark to be used. The benchmark used for comparison with the lowest wage for countries outside of the EU shall not be lower than the adequate minimum wage (established by legislation or collective bargaining) or any living wage estimate. Both, the adequate minimum wage or the living wage estimate shall be line with the ILO principles on estimating a living wage (ESRS S1.AR 28 (TA), see page 68 of the comparative table for the detailed amendments). The ILO principles on estimating a living wage were issued in March 2024 (BfC.476 (TA)), whereas ESRS Set 1 was already adopted by the European Commission in July 2023 and Delegated Regulation (EU) 2023/2772 was published in the Official Journal of the European Union in December 2023). Therefore, ESRS S1 (current DA)

does not contain a reference to the ILO principles on estimating a living wage, and the introduction of these ILO principles represents a new concept.

According to EFRAG, the method for assessing the wage adequacy was changed to improve comparability, verifiability and understandability (BfC.476 (TA)). In the public consultation of the technical advice, overall, a third of respondents agreed with the proposed amendments, a third partially agreed and a third disagreed which demonstrates the split views for the amended Reporting Requirement S1-9 (BfC.478 (TA)). Specific concerns included the ILO principles. Most preparers requested a publicly available database to ensure the feasibility of this disclosure. Such databases are currently made available by certain commercial data providers (BfC.478 (TA)).

The DRSC has performed several outreaches with preparers and other stakeholders. We received the feedback that the introduction of the new concept of living wage estimates in accordance with the ILO principles on estimating a living wage will increase uncertainty and result in the need for extensive discussions with auditors about the calculation of the benchmark. The vast majority of our constituents perceive these amendments of ESRS S1-9 (TA) as an increase in burden for preparers as compared to the current DA.

Therefore, we note that the inclusion of living wage estimates in accordance with the ILO principles on estimating a living wage is not in line with the objectives of the European Commission's omnibus project.

2 Aspects that have not been sufficiently resolved

a) Alignment with other EU requirements: SFDR

Suggestion: Align ESRS to those SFDR indicators which have been updated and reviewed.

ESRS (DA) currently include disclosure requirements which result from the current SFDR. Even when changes were deemed adequate for some indicators, they remained largely unchanged in the process of simplification of the ESRS to allow for alignment to the SFDR. However, the SFDR is currently subject to a revision itself. The European Commission should ensure that requirements in the SFDR (new) are adequate and irrespective of current ESRS requirements. Changes to the SFDR indicators should afterwards be reflected in the simplified ESRS (new DA).

It seems counterintuitive to postpone necessary adaptations to the SFDR indicators with reference to existing requirements (circular references between ESRS and SFDR). The European Commission should reassess the SFDR indicators keeping in mind the clear intention to break the circular reasoning and the circular referencing between ESRS and SFDR.

b) ESRS 1 General Requirements

The general requirements in ESRS 1 mark the basis of the sustainability statement in accordance with ESRS. All the more important that these core principles are clearly defined and thereby contributing to better sustainability statements. The basis of preparing meaningful sustainability statements is to know who this information is directed at.

Suggestion: Delete the reference to “informed assessment” in ESRS 1.23 (b) (TA).

One of these principles which EFRAG rightly emphasised in the ESRS simplification process is the concept of **materiality of information**. For undertakings to decide whether information is material they will have to differentiate between primary users of general-purpose financial reports (ESRS 1.23 (a) (TA)) and other users of general-purpose sustainability statements (ESRS 1.23 (b) (TA)). For the first group of users the information is supposed to be decision useful. For the second group information could reasonably be expected to influence decisions, but – this time – should include “informed assessment” (ESRS 1.23 (b)).

EFRAG states that “informed assessment” is included as “other users” do not make buying/selling decisions (BfC.185 (b) (TA)). In our view, the decision usefulness, however, is not limited to capital allocation decisions, e.g. to buy or sell an undertaking’s shares, but extends to all decisions (incl. entering into an employment or supply contract, product purchase etc.). The decision-usefulness concept is important for undertakings to be able to narrow down and define the information that is material for users. A general requirement to allow an “informed assessment” for “other users” (ESRS 1.23 (b) (TA)) contradicts this concept as it does not foster more focused reporting but removes the limitation to information requests. The concept of decision usefulness becomes less clear. Vague requirements will result in undertaking reporting more than needed to be sure that “informed assessment” requests will be met. Last year’s discussion at EFRAG’s SR TEG and SRB suggested that there is no difference in the understanding of providing information to make decisions on the one side and “decisions, including informed assessment” on the other side. If this is the case, the wording should reflect this and be aligned for all users alike. This will ensure the effectiveness of the materiality of information concept.

Suggestion: Narrow the focus of which “users” (user groups) the sustainability information is directed at.

ESRS 1.4 (TA) defines **users** of general-purpose sustainability statements as (a) primary users of general-purpose financial reports and (b) other users of general-purpose sustainability statements. ESRS 1.4 (TA) gives examples for both groups (“such as”). In order to determine the scope of reported information it is necessary to know who the users of sustainability information are and what the purpose of that information is (see “decision usefulness” above).

The DRSC acknowledges that the CSRD provides for two primary user groups of sustainability statements (investors and civil society actors, see Recital (9) of the CSRD) and states that other stakeholders might also make use of sustainability information (such as business partners). While all of them might use sustainability information in one way or another, standard setting and the resulting sustainability reporting will be most meaningful if it has a clear focus with regard to users and the purpose of the information to be provided, i.e. when user (groups) and their information needs are clearly circumscribed.

Currently, neither the users nor the purpose of sustainability information are effectively circumscribed in ESRS. For users, ESRS 1.4 refers to an exemplary list ("such as"). On the purpose, ESRS 1.23 contains different concepts by introducing "decision-usefulness" (23 (a)) and decision-usefulness, including "informed assessment" (23 (b)). Thereby, neither are effectively limited. As a result, undertakings cannot with sufficient certainty conclude that their sustainability statement includes all information it must include. Therefore, reporting might even have to be extended instead of focused due to the lack of clarity in the purpose and the users of sustainability information.

While acknowledging the various stakeholders, e.g. for the process of the DMA, the ESRS should nevertheless be as focused as possible on specific users and on the specific purpose of providing decision-useful information. Limiting the list of examples in ESRS 1.4 (TA) and explaining that general-purpose statements address users with reasonable knowledge and consider the needs of "groups of users" were important steps towards a more focused approach to user needs. Nevertheless, ESRS should provide an even clearer focus on which users (user groups) the sustainability information is directed at.

Suggestion: Review the concept for the materiality assessment of potential negative impacts to resolve the inappropriate mix up between materiality of matter and materiality of information.

Another important principle to determine the scope of sustainability information in the sustainability statements is the materiality of a matter. It relates to the **assessment of financial and impact materiality (DMA)**. This concept was heavily debated throughout the process to simplify ESRS. While clarity on this aspect is very much needed, the current concept still lacks maturity. Although actual impacts can sufficiently be determined based on the description in ESRS 1.41 et seq. (TA) there is a lack of clarity for determining potential impacts. The conceptual break in ESRS 1.44 (c) (TA) cannot currently be solved: instead of emphasising the management's analysis and management processes in the undertaking to evaluate the need to report potential impacts ESRS 1.44 (c) (TA) refers back to information that "may be decision-useful to users". Instead of focusing the reporting on those potential impacts that resulted from the materiality analysis of the undertaking the wording in ESRS 1.44 (c) (TA) opens up the reporting requirement beyond the findings of the DMA. The criteria to determine the scope of reporting is that it "may be decision-useful to

users". This reverses the principle of DMA (first step) and materiality of information (second step following the DMA) to the materiality of information (user needs) predetermining the reporting about potential impacts. It is highly important to clarify the concept of the impact materiality analysis in chapter 3.2.1 of ESRS 1 (TA).

Suggestion: Clarify that the consideration of geographies is subject to the undertaking's DMA and to whether information at that level are material. However, undertakings are not required to include geographies in their DMA or to report at a certain level in their sustainability statements.

An important aspect of simplifying the ESRS was to reduce the complexity of the DMA process as well as to reduce the level of granularity of reporting. For both, the DMA process as well as the reporting the **geographic environment** of the undertaking's activities are pivotal. Nevertheless, it is important that ESRS clarify that for the DMA as well as for reporting purposes the level at which geographic aspects are included depends on the undertaking's processes (DMA) and the materiality of the information (reporting). The level of consideration of geography cannot be predetermined by ESRS as it is entity specific. The current wording in ESRS 1 (TA) raises the expectation of DMA and reporting including granular levels of geographies, which is not appropriate in the DRSC's view.

c) ESRS 2: Anticipated financial effects

Suggestion: Delete the requirement on quantitative AFE.

ESRS 2.SBM-3 (TA) governs the provisions on AFE. The DRSC does not support the requirement to disclose quantifications of AFE, for conceptual, and for practical reasons. However, these problems must be solved for corporate reporting as a whole, i.e., with a holistic view of the requirements on financial reporting and the requirements on sustainability reporting. As this is currently not the case, the DRSC suggests deleting the requirement on quantitative AFE.

Conceptual problem

First, it should be noted that even the explanations of the term 'anticipated financial effects' contained in the TA do not provide clarity on the concept of AFE. Economic transactions recorded in the line items of the financial statements in the form of book values (or carrying amounts) always reflect – albeit not exclusively – financial events that occur after the balance sheet date. For example, the carrying amount of an asset tested for impairment is measured by taking into account cashflows that are expected – or anticipated – to flow to the undertaking in future periods. In other words, AFE are reflected in current statement of financial position. If an impairment is recorded, such effects are also reflected in the statement of financial performance.

Furthermore, the notes are an integral part of the financial statements, like the statement of financial position, the statement of financial performance, the statement of changes in equity, and the cashflow statement. As the notes provide a comprehensive set of complementary information, they contain information about such anticipated effects if these constitute key assumptions for the measurement of the carrying amounts recorded in the statement of financial position. Furthermore, IFRS Accounting Standards require disclosures on AFE in the notes. More precisely and as an example, IAS 37 distinguishes between provisions and contingent liabilities. Contingent liabilities are either possible obligations whose existence will be confirmed only by the occurrence or non-occurrence of one or more uncertain future events not wholly within the control of the entity, or present obligations for which either an outflow of resources is not possible, or the amount of that obligation cannot be measured with sufficient reliability. Contingent liabilities are, therefore, not recognised in the statement of financial position. However, in accordance with IAS 37.86, disclosures about contingent liabilities are required in the notes unless the probability of an outflow of resources is remote. (These disclosures include, for example, an estimate of their financial effects.)

This question become even more prevalent in the EU: In accordance with EU legislation governing the entities' annual financial reporting in the EU, in the management report – as one specific element of corporate reporting governed by that legislation – entities provide disclosures to ensure a suitable understanding of the entity's likely future development, and the material opportunities and risks associated with this development.

According to German Accounting Standard 20 Management reporting (GAS 20), information on an entity's likely future development comprises, for example, disclosures on the continuation of significant investment projects as part of the disclosures on capital expenditures. In addition, if an entity considers capital expenditures as being relevant financial key performance indicators for the management, those KPIs are required to be forecasted in the context of the disclosures on the entity's likely future developments. Furthermore, the information on material risks and opportunities associated with an entity's likely future development are typical information disclosed in the so-called risk report, a section of the management report addressing risks that the entity faces. The main source for the underlying information from which disclosures on the entity's likely future development are derived are the entity's internal financial planning and the internal risk management which comprise both, quantitative and qualitative forward-looking elements. These disclosures also provide information on financial effects that are "anticipated" effects.

To summarise, the conceptual challenge lies in the fact that it is unclear how AFE for the sustainability report should be distinguished from AFE in the context of financial reporting including both, financial statements and management report.

Practical problem: Separate identifiability not possible in the very most cases

ESRS 2.28 (TA) contains a relief from providing quantified disclosures on current and AFE in case the effects are not separately identifiable. Although this simplification appears reasonable at first glance, in almost all cases known to us, it results in undertakings not providing quantitative information. Practice shows that even if certain financial effects can be quantified for short term forecasts, it is hardly possible to clearly assign them to the issue of sustainability or even to individual sustainability aspects. This is because although many undertakings also draw up their internal financial planning in a fully integrated and holistic manner, thereby drafting future statements of financial position, statements of financial performance and statements of cashflows, they do not allocate the planned financial effects to financial or sustainability aspects as this is not possible in the very most cases. For example, planned investment projects are – in most cases – motivated by both sustainability aspects and other aspects.

d) ESRS 2 – Concepts of Policies, Actions and Targets (GDR-P, GDR-A, GDR-T)

Suggestion: Clarification regarding ESRS 2.GDR-P, GDR-A and GDR-T (TA) by either explicitly re-integrating the disclosure requirement on standard management processes in the policy-related disclosures or by adjustments of the definitions for policies, actions and targets that are laid out in the glossary.

The phrasing of the ESRS (TA) in relation to policies, actions and targets both in the main body of the standard but also in the Annex II (Definitions) has substantially changed. Amendments to definitions consequently lead to changes in the concepts themselves. In the ESRS (TA), the policies, formal documents laying down the general management principles of the related topics, are defined as being implemented through actions or action plans. The definition of actions, however, is linked with targets rather than with policies. With these definitions, it remains unclear how to report on the established management practices for topics that undertakings have not set targets for (e.g. Health & Safety Management System, R&D Processes regarding circularity, Human Rights Due Diligence Systems).

e) ESRS E1 Climate: Resilience-Analysis

Suggestion: Redesign this Disclosure Requirement (DR) on resilience and resilience analysis as a topical agnostic DR and move to ESRS 2.

ESRS E1 (TA) provides guidance on an undertaking's resilience to changes in environmental conditions and changes resulting from transitional/political/legislative measures, particularly in relation to climate change and measures to mitigate climate change (ESRS E1.17 to AR10 (TA)). The DRSC is of the opinion that, in general, topic-specific resilience analysis is not yet sufficiently developed in practice to justify topic-specific reporting requirements. However, we acknowledge

that such disclosures are particularly useful for investors and other capital providers when making sustainability-related investment decisions. The DRSC therefore proposes that the relevant provisions in the ESRS should not be topic-specific but topic-agnostic. In addition, these provisions should be moved to ESRS 2 *General disclosures* and, at the same time, deleted from ESRS E1.

In detail, the proposed reporting requirement in ESRS E1.18(a) (TA) is also conceptually unclear. Undertakings shall describe the results of their climate resilience analysis (sentence 1). Further disclosures are described in sentence 2. However, it remains unclear whether these disclosures are intended to specify the requirement in sentence 1 or whether they are disclosures that are to be viewed independently of the requirement in sentence 1 and are therefore additional.

f) ESRS E1 Climate change: Interaction of ESRS and Greenhouse Gas Protocol

Suggestion: Clarify interaction of ESRS and GHG regarding own operations

Section 5.1 of ESRS 1 (TA) contains the clarification that the definition of own operations is based on the allocation of assets, liabilities, income and expenses relevant for financial reporting and, accordingly, also includes the parent undertaking and subsidiaries in the case of groups. With some exceptions, this should also apply to the classification and presentation of greenhouse gas emissions in accordance with ESRS E1-8 (TA, see ESRS E1.AR 19 (TA)). In this regard, ESRS E1.AR 19 (TA) draws an analogy to the 'financial control approach' of the Greenhouse Gas Protocol (2004). Conversely, the definition of the term 'financial control' contained in the Greenhouse Gas Protocol (2004) also ties in with the conventions of financial reporting:: „*This criterion is consistent with international financial accounting standards; therefore, a company has financial control over an operation for GHG accounting purposes if the operation is considered as a group company or subsidiary for the purpose of financial consolidation, i.e., if the operation is fully consolidated in financial accounts.*" (The Greenhouse Gas Protocol, A Corporate Accounting and Reporting Standard, March 2004, p. 17 et seq).

ESRS 1.72 (TA) also states that the lessee of an asset shall report the impacts connected with the use of the asset in its own operation, whereas from the lessor's perspective, these impacts are related to its value chain. Applied to greenhouse gas emissions reporting, this means that the lessee reports emissions from the use of the asset in Scope 1, while the lessor reports them in Scope 3. However, the Greenhouse Gas Protocol (here Appendix F to the GHG Protocol Corporate Standard) refers, in addition, to the type of lease for the attribution and categorisation of emissions: Applying the financial control approach would lead to the same results as per ESRS (TA) in the case of a finance lease, but not in the case of an operate lease. Rather, in the case of an operate lease, the emissions would have to be reported as Scope 3 for the lessee and as Scope 1 for the lessor.

The reference in ESRS E1 (TA) to the Greenhouse Gas Protocol regarding the reporting boundary and the above clarification in ESRS 1.72 (TA) are therefore misleading. We believe it is necessary, however, to either remove the discussion of the reporting boundary from ESRS E1 or to clarify whether the type of lease is relevant for the classification and presentation of greenhouse gas emissions in accordance with ESRS E1 and, if so, how.

g) ESRS E1 Climate change: Operational control

Suggestion: Delete the requirement on operational control.

The provisions in ESRS E1 (TA) on the reporting boundary will lead to a further problem. ESRS E1.AR 19 (TA, second subparagraph) requires greenhouse gas emissions to be additionally classified and presented using the operational control approach if the financial control approach is "insufficient to portray the emissions resulting from operated assets that are outside the reporting boundary".

The DRSC believes that the additional disclosure of greenhouse gas emissions in accordance with the operational control approach is part of the entity-specific disclosures governed in section 1.1 of ESRS 1 (TA). This view is supported by the analogy of the conditions that apply to entity-specific disclosures in ESRS 1.11 (TA, 'If the undertaking concludes that a topic related to material impact, risk or opportunity is not covered, or not covered with sufficient granularity, by an ESRS, it shall provide entity-specific disclosures [...]') and in ESRS E1.AR 19 (TA, 'insufficient to portray the emissions'). It should also be noted that applying the financial control approach or the operational control approach will merely lead to a different classification of greenhouse gas emissions into scopes, whereas the total of scopes 1 to 3 will remain unchanged. For these reasons, the explicit requirement for additional disclosure of emissions in accordance with the operational control approach should be deleted.

In addition, we would like to point out that the condition 'insufficient to portray' always requires the undertaking to provide appropriate evidence that the application of the financial control approach results in a sufficient presentation of GHG emissions. Therefore, this does not reduce the reporting effort but contradicts the mandate of the European Commission and the objectives associated with the ESRS revision.

h) ESRS E1 Climate change: Anticipated financial effects

Suggestion: Streamline the disclosure requirements on AFE.

ESRS E1.37 to AR32 (TA) contain detailed requirements for AFE disclosures in the context of climate change. Compared to the current DA, these requirements remain very granular and do not represent a significant simplification, even though individual datapoints have been removed

from the requirements. For example, the datapoint “proportion (percentage) of net revenue from its business activities at material physical risk over the short-, medium- and long-term” is among those affected by the deletion. However, the practical challenge for this datapoint lies in determining the basis for calculating this percentage, i.e., the absolute values. However, the disclosure of absolute values is still required (“the monetary amount of net revenue from its business activities at material physical risk, including the relevant time horizons”).

i) ESRS E2: Insufficient alignment with other EU legislation

Suggestion: Enhance alignment with other EU legislation.

ESRS E2-4 (TA) contains the requirement to disclose an undertaking’s emissions of pollutants to air, water and soil, and of its manufacturing, use, and release into the environment of microplastics. According to ESRS E2.AR 2 (TA), the undertaking may use as an input for the disclosures the pollutants listed in Annex II of the E-PRTR and the Industry Emissions Regulation, IEPR. For assessing the materiality of pollutants the undertaking shall, however, only refer to Annex II of the IEPR.

Firstly, it should be noted that, pursuant to Article 20 of the IEPR, the IEPR will replace the E-PRTR with effect from 1 January 2028. Therefore, it is questionable that for assessing the materiality of pollutants the standard refers to the IEPR only.

Secondly, the reporting obligation for an undertaking (or the “operator of an installation”) pursuant to Article 5 of the E-PRTR and Article 6 of the IEPR does not only apply to those pollutants for which the thresholds specified in Annex II of the E-PRTR and Annex II or the IEPR are exceeded. The activities and capacity thresholds for facilities and installations specified in Annex I of both legal acts are also relevant for the reporting obligation. However, there is no such reference in ESRS E2 (TA). As a result, undertakings subject to ESRS reporting requirements would face a significant additional burden in determining the data, as they cannot rely on the procedure regulated by the E-PRTR, and, in future by the IEPR. For example, for the sustainability reporting in accordance with ESRS E2 (TA), all operating facilities/installations that are not subject to reporting requirements under the E-PRTR, or the IEPR, must also be analysed. To better align the reporting requirements under ESRS and the other EU legal framework, ESRS E2 (TA) should be amended accordingly. Specifically, the disclosure requirement under ESRS E2-4 (TA) should also be based on the activities and capacity thresholds for operating facilities or installations specified in the E-PRTR and IEPR.

j) ESRS E2: Inappropriate provision

Suggestion: Delete ESRS E2.AR 3 (TA).

ESRS E2.AR 3 (TA) explains that the transfer of pollutants to external treatment plans qualify as pollution in the undertaking's value chain. This is not appropriate, as the transfer to such service providers is generally carried out to avoid pollution, since the service provider has the necessary capacity for wastewater treatment and proper disposal. Pollution in the value chain can only be assumed if the service provider does not adequately fulfil its obligations, pollutants are actually released, and this is related to the activities of the undertaking.

k) ESRS E2: Sector specific disclosure requirements

Suggestion: Design the DR as sector agnostic in line with ESRS concept by deleting sector specific requirements and references.

EFRAG proposes in its TA to incorporate sector-specific disclosure requirements. According to ESRS E2.AR 5 (TA), the certain disclosures on substances of concern and on substances of very high concern are only required by undertakings operating in the chemical sector as defined by reference to the NACE regulation (e.g. NACE Rev.2.1 C20, C21, NACE Rev.2.1 C20.3, C20.4, C20.5 and others).

Even though the DRSC assumes that the rationale behind this proposal is to avoid extending reporting requirements to certain undertakings, we nevertheless see this as inconsistent with the revision of the Accounting Directive, from which sector-specific reporting requirements are being removed.

l) ESRS E4: Pre-determining the results of the materiality analysis

Suggestion: Delete the first sentence of ESRS E4.AR 5 (TA).

ESRS E4.AR 5 (TA) contains a clarification that an undertaking's activities can be related to material negative impacts on a biodiversity-sensitive area if the undertaking operates a site in or near this biodiversity-sensitive area. The DRSC understands this sentence to predetermine the results of the materiality analysis as it suggests that such a site can only have negative effects, if any. As the materiality analysis is considered the main prerequisite of ESRS disclosures, we believe that ESRS should not contain a provision like this. On the other hand, if this sentence is not intended to predetermine the materiality analysis, the question remains whether this statement is needed at all.

3 Specifications in ESRS that are subject to the decision of the European Commission

a) ESRS 1: First time application of the Transitional Provisions

Suggestion: Delete ESRS 1.122 and 123 (TA) as this is subject to the decision of the European Commission. Suggestion to clarify that period of transitional provisions depends on national transposition of CSRD.

ESRS 1.122 (TA) states that “the transitional provisions […] apply from the first financial year the undertaking is subject to the preparation and publication of a sustainability statement as required by Directive 2013/34/EU” (Accounting Directive). It further states that earlier voluntary application of ESRS does not limit the use of the reliefs nor trigger the start of the phase-in provisions.

ESRS 1.123 (TA) defines ‘Wave-one’ undertakings as being those that were scheduled to report on sustainability for the first time for financial year 2024, irrespective of whether the corresponding Member State transposed the Directive (EU) 2022/2464 (CSRD).

The requirements for the preparation and publication of a sustainability statement under the Accounting Directive are subject to the transposition of European law by the respective Member State. Therefore, the first financial year that undertakings are subject to the Accounting Directive regarding the preparation and publication of sustainability statements depends on that transposition in member states. Transitional Provisions in ESRS should therefore, at most, refer to the first financial year of ESRS requirements in the respective member states or, more precisely, should refer to the first financial year that undertakings are subject to the ESRS requirements based on their national legislation.

For the reporting year 2024 German undertakings have not been legally required to prepare ESRS sustainability statements. Many of them have voluntarily applied ESRS; however, there has not been (and still is not) a legal obligation. Therefore, German undertakings understand the ESRS as such that the start of phase-in-provisions has not been triggered by their voluntary application of ESRS (DA). ESRS 1.122 and 123 (TA) could be understood differently, i.e. triggering the start of phase-in provisions independently of the actual start of the legal requirement and linking it to the Accounting Directive.

The start of the phase-in provisions should consider the need for transposition of the CSRD. Linking the phase-in provisions to the Accounting Directive does not consider the need for transposition into national legislation.

Furthermore, the European Commission should provide clarity about the first-time application of the ESRS (new DA) and clarify whether an early application will be allowed, i.e. for the reporting period of 2026. For the legislator to conclude that an early application (for the reporting period of

2026) is possible, it should be of utmost importance that the underlying ESRS are providing a robust reporting framework and are publicly available early enough to adopt the amended set of ESRS. The stability of the requirements is crucial for preparers. While additional material, such as Implementation Guidances or explanations might be helpful, they should nevertheless, be published in time for undertakings to be able to implement those in the reporting processes. Late announcements published only in Q3 or Q4 of the reporting year need to be avoided. Even though these additional materials are typically non mandatory they nevertheless tend to entail further adjustments to the reporting processes or reporting.

b) ESRS 1: First time application of ESRS (new DA)

Suggestion: Adress question of transition from current ESRS (DA) to the application of simplified ESRS (new DA) in the light of the requirement to provide comparative information.

ESRS (TA) are currently silent on the first-time application of the simplified ESRS with regard to the requirement to present comparative information. Typically, Wave-one undertakings will change from the application of ESRS (DA) to ESRS (new DA). Among many other aspects, this is likely to result in changes in metrics. ESRS (new DA) should therefore address the question of the transition from current to new ESRS.

c) ESRS 1.AR 23 for para. 43

Suggestion: Delete ESRS 1.AR 23 (TA) as this requirement mandates behaviour.

ESRS 1.AR 23 for para. 43 (TA) rightly points to the Accounting Directive according to which the management of the undertaking shall inform worker's representatives at the appropriate level and discuss with them the relevant information and the means of obtaining and verifying sustainability information. This requirement, however, mandates behaviour and is therefore not subject to the ESRS. An important principle of ESRS is to not mandate behaviour (see ESRS 1.6 (TA)).