EU transparency register number: 10405322962-08

# Name of respondent/responding organisation: Austrian Federal Economic Chamber (WKÖ)

## Comments on the consultation on: European Sustainability Reporting Standards – First set

### 1. General comments

We acknowledge that the standards have now been comprehensively revised. However, from the point of view of the business community the disclosure requirements continue to be extremely **far-reaching**, **detailed** and **complex**, which will not only make it considerably more difficult for the companies concerned to implement and comply with the standards, but will also have a negative impact on the quality, clarity and comprehensibility of the information and reports. A balance between effort and benefit is still not apparent to us in the present drafts, which continue to be too extensive, and a disproportionate administrative burden for companies is foreseeable.

In the interest of a more manageable, proportionate, and practicable reporting system as well as easier usability (especially also for affected SMEs), but above all with a view to maintaining the competitiveness of EU companies, the disclosure requirements should be **further simplified and reduced** to the absolute minimum necessary for understanding and comprehensibility of companies' sustainability efforts.

Even for companies already reporting e.g. under GRI-standard, ESRS compliant non-financial reporting is and will be demanding and a non-paralleled effort. In particular, we are still concerned about the **tight timeline** in the light of the considerable implementation challenges (for example human resources, IT/data processes, consultancy capacities). There are remaining unclarities for many datapoints or the process of materiality analysis.

Sustainability reporting standards need to be clear, fit for purpose, simple to implement and interoperable among each other so companies report in a meaningful way that will create lasting change.

Below you will find a presentation of the most important opportunities for improvement that have not been assigned to a specific paragraph of the ESRS:

**Guidance**

- The ESRS remain overly ambitious by covering all aspects of sustainability (Environment, Social and Governance) extensively. Companies face a significant implementation challenge applying the standards for the first time and it is therefore vital that application guidance is provided in time to assist companies in their implementation efforts and provide clarity on how they are expected to apply the new standards. There are still **ambiguities in the interpretation** of certain terms. These supporting documents must be published alongside the Standards rather than at a later point in time. We ask the Commission to **commit to a clear timeline in providing** (or mandating EFRAG to provide) **this much needed guidance**.

- We support the efforts to provide guidance and develop targeted and streamlined future sector-specific standards. We understand that EFRAG is working on guidance on conducting the double materiality assessment and we urge swift sharing of this material to all stakeholders. Furthermore, we call on EFRAG and the Commission to accelerate the timetable and transparency with respect to the proposed work plan against the set of sector-specific standards initially identified by EFRAG and/or provide for a phased-in approach to implementation for in-scope entities and the third-country standard. Considering the large amount of data already requested, the development of sectoral standards should be restricted to a limited set of necessary alternatives or additional data points, which are needed to translate reporting requirements to these specific sectors. Any such alternative or additional data points should be justified either because a more appropriate industry-specific metric already exists elsewhere or because the horizontal standards turn out to be not entirely suitable for certain sectors.
- We welcome the extended possibilities to omit certain data and information and the option for a "comply or explain"-approach for some disclosure requirements. However, we would appreciate further clarifications on the scope of these alleviations and would welcome an overview on mandatory reporting requirements and potentials for omissions or a "comply or explain"-approach.

**Sufficient time for implementation (Phasing-in)**

- The phasing-in process (year 2 of application) for financial impacts of non-climate issues and datapoints regarding direct workforce (year 2 of application) and external workforce (year 3 of application) are welcomed updates. We also welcome the further expanded scope on the phasing in to cover the anticipated financial effects related to non-climate environmental issues (pollution, water, biodiversity and resource use) and certain social indicators for the first year of reporting. We suggest further phasing in of additional reporting topics (in particular, related to value chain, affected communities and the substances of very high concern) to ensure that the whole supply/value chain is ready to report valuable and purposeful data.
- The current timetable gives companies only a very limited period of time to carry out the necessary implementation of new reporting standards. Not all this information is readily available in the required detail within companies. Entirely new processes need to be established to identify and assess this new sustainability information. If the timetable for the drafting and publication of the standards is delayed even slightly at EU level, this must also apply to the reporting obligations of companies.
- We support the additional phase-ins for companies with less than 750 employees. However, a very high number of preparers cannot benefit from this phase-in, including SMEs – namely those being part of an affiliated group. Even though such small companies do not have to prepare a report on their own, they must fully implement all the processes in order to be able to report to the parent company. In our opinion this would be discrimination and therefore, **we suggest extending the phase-ins to all companies of all sizes.**

**SMEs and Trickle Down Effect**

- The impact on SMEs must be considered and properly addressed in the ESRS.
- To mitigate the trickle-down effect, it should be stipulated that companies covered by sustainability reporting fully comply with their obligations if they require their SME partners to provide the information that the SMEs are also required to collect under the SME standards (i.e. SME standards as a safe harbor and shield).
- The draft Delegated Act states in the Explanatory Memorandum on page 2 that the sustainability reporting standards must also meet the requirement to *"(vii) not*

*specify disclosures that would require undertakings to obtain information from SMEs in their value chain that exceeds the information to be disclosed pursuant to the sustainability reporting standards for SMEs*", as required by Article 29b(4) Accounting Directive as amended by the Corporate Sustainability Reporting Directive. As the draft ESRS do not explicitly cover this point yet, we suggest that this requirement should also be anchored in the text of the Delegated Act and in the ESRSs in the Annex as a secondary condition to be complied with to ensure that SMEs are not overburdened. This is also relevant because the specific standards for SMEs will be developed and adopted later.

**Materiality assessment**

- We expressly welcome the fact that all data points are now subject to the materiality assessment (since apart from the disclosure requirements of ESRS 2 "General disclosures" no mandatory disclosures are envisaged). All other reporting requirements are derived from the result of the materiality assessment. However, **it should not be overlooked that carrying out the materiality assessment itself also involves considerable administrative, time and cost effort.** After all, in order to be able to make a serious assessment, it is necessary to collect data in detail.
- The guidance on conducting this assessment (ESRS1 Chapter 3) is somewhat vague and can result in peer companies using separate stakeholder engagement methods, leading to separate ESRSs being scoped in.
- Despite a general move to materiality, the new draft ESRS contains certain targeted deletions of the term "material" across several ESRS. For example, in ESRS S2, para 22 (a); in ESRS S3, paras 18, 20, 32; and ESRS S4: paras 18 and 20. We ask the Commission to reinstate EFRAG's wording and/or clarify that only material information needs to be disclosed in these areas.

**Harmonization with global standards, existing EU legal frameworks and other relevant sets of rules**

- **International alignment** should be a priority. Every possible effort should be made to ensure the standards under development are interoperable with one another. Further convergence between the standard-setting efforts of for example the International Sustainability Standards Board (ISSB), EFRAG at the EU level and the Securities and Exchange Commission (SEC) in the United States. IFRS S 1 and S 2 were released on 26 June 2023. We understand that the Commission and the ISSB have worked together to ensure coherence and alignment between the relevant ESRS as far as possible (in the areas where there is direct overlap). We urge the Commission and ISSB to publish a correspondence and alignment table as soon as possible and for the Commission to carry out any further adjustments to take into account the version published on 26 June. Any inconsistencies remaining after adoption of ESRS Set 1 by the EU Commission should be resolved upon delivery of Set 2.
- **Close and constructive coordination** is required to avoid duplicate reporting and ensure that entities applying ESRS also comply with IFRS SDS. The Commission and EFRAG should continue to work with the ISSB to better coordinate the final standards. As the ISSB finalizes its deliberations on its own sustainability reporting standards, the Commission could allow amendments to reflect ISSB decisions. It is essential that such changes to the ESRS are made in time for the adoption of the delegated acts in order to achieve the best possible interoperability.
- **Compliance with the disclosure requirements as set by the ESRS should always lead to full compliance with the IFRS (ISSB SDS).** There should be no additional disclosure requirements for European undertakings going beyond ESRS. **Compliance with ESRS should automatically lead to compliance with IFRS ("automatic compliance").**

- The extension of materiality assessment to data points needed for SFDR Principal Adverse Impact (PAI) reporting creates an inconsistency which the Commission must address because there is currently no such materiality assessment allowed under SFDR. This issue could be solved in the following ways, in order of preference:
    - Require that SFDR PAI datapoints deemed immaterial by investee companies are reported as "qualified 0". This would allow FMPs to easily collect and consolidate investees' data, and the responsibility for reporting a "qualified 0" would be born by investee companies.
    - Clarify that, if SFDR PAI information is deemed immaterial by investee companies and is therefore not included in their sustainability reports, FMPs can treat this lack of data as a "qualified 0" and are not required to seek data in another manner.
- It is important to ensure that reporting obligations that already arise from other EU legislation (e.g. Wage Transparency Directive) do not arise in duplicate.
- ESRS requirements must be compatible with legal requirements in other EU areas (e.g., MAR, **Market Abuse Regulation**).
- The ESRS requirements should be aligned with the **EU Taxonomy**.
- We consider the clear referencing of ISO standards to be useful. **ISO standards** form an international consensus on the state of the art and management ISO standards are already taken into account in the EU and at national level in legislative acts (e.g., implementation of the Energy Efficiency Directive). Via the management approach, which is anchored in the Management-ISO Standards, the structures, responsibilities, processes, and procedures are created that enable efficient and credible monitoring. More use should be made of these empirical values in order to make better use of synergies.

**Effective protection of confidential business information and personal data**

- Several ESRS require disclosure of forward-looking or confidential business information (e.g. description of investment plans, information on raw material costs and respective sales). Companies should not be required to disclose **sensitive and confidential business information** that could give competitors a competitive advantage. Therefore, the possibility to omit sensitive information should be extended and appropriate safeguards for commercially sensitive information should be provided.
- We recommend providing additional safeguards regarding disclosures that could risk company security or require exposure of commercially sensitive or valuable information. We believe that disclosing sustainability information under the ESRS should not come at the expense of compromising company security or with requirements to disclose commercially sensitive and/or confidential information. For example, certain proposed biodiversity disclosures could divulge the exact locations of critical infrastructure, which are highly confidential and, if public, could lead to security risks. Requirements to disaggregate data by location and include electricity use, and other, will expose details of R&D centres, quantum centres, and other confidential business information and create a risk to site security. As such, we recommend reporting site data in the aggregate, as opposed to listing specific site locations.
- ESRS S1 and ESRS S2 in general require information that could be considered sensitive and, therefore, difficult to report due to the rules under GDPR. We call on the Commission to take the GDPR sensitivities into consideration before the publication of the final ESRS.

**Value Chain**

- Value chain information should include significant impacts, risks and opportunities of companies linked by business relationships in the upstream and downstream

value chain. Calculating upstream and downstream (Scope 3) emissions involves a massive amount of work and is almost impossible to implement in practice. Determining data from smaller suppliers is difficult. The **restriction to direct and indirect emissions (Scope 1 and Scope 2)** would be a great relief for the companies. To ease the burden on the companies, the EU should provide a database with empirical values (CO2 emissions).

- **Value chain in the financial sector: I**n the interest of clarity and the specifics of the financial sector we strongly suggest that **value-chain related KPIs should be required as part of the sector specific standards** (excepting scope 3 emissions). We therefore welcome a more feasible approach to proxies and sector metrics made by the Commission in 5.2 pf ESRS 1 GR- however, there could still be room for improvement. In addition, quantitative metrics should be limited to companies' own operations in a first step, at least until there is further guidance on how financial institutions shall report on their value chain. Not only is a certain implementation period required to implement or extend reporting to value chain counterparts, but also data availability issues as well as the lack of mature aggregation methodologies would not allow for meaningful and comparable reporting upon first implementation (except for Scope 3 GHG emissions). While we support that most quantitative metrics are currently limited to own operations, there remains datapoints to which this applies, explicitly (eg. ESRS E4 AR 25, which additionally contradicts the main body) or implicitly (eg. ESRS E4 para. 17c, due to the lack of a reference to own operations). To make sure that value chain-related reporting is both feasible, but also meaningful for users, this should be tackled by sector-specific ESRS. This would avoid legal uncertainty and be in line with the overall objective to reduce the reporting burden and facilitate first implementation. Starting with reporting on own operations allows companies to build up resources and up-skill on the broad range of ESG topics, which can subsequently be leveraged for reporting quantitative metrics on the value chain.

**Basis of calculation**

- The specific disclosure metrics should not be described in terms of "net revenue" but in terms of the quantity produced. Net Revenue is not used as a KPI in any industry, but calculations are always per unit or quantity produced.

**Scope of application for smaller insurance entities**

- Furthermore, while we appreciate the fact that the Commission has reduced the number of mandatory datapoints and introduced additional phase in to bring some level of proportionality, we are still concerned about the application of the extensive ESRS to smaller insurance entities. This is because the SME definition used in the CSRD does not work for insurers. I**nsurers defined as Low-Risk Profile Undertakings (LRPU) under Solvency II should be allowed to use the simplified reporting requirements (SME standards)**. It is therefore key that the LRPU definition be included in the Solvency II review with an amendment being made to the CSRD explicitly allowing LRPUs to limit their sustainability reporting according to the simplified SME standards, in line with the existing CSRD provisions for small non-complex banks.

**Cross referencing or digital tagging**

- We want to highlight the importance of ensuring that ESRS include provisions to ensure that cross referencing or digital tagging is available to reduce the risk of duplicative reporting. This is important for within ESRS itself – e.g. Information related to GHG Emissions from scope 1,2, and 3 is requested multiple times in slightly different formats. The ISSB is developing their own "digital tagging". A coherent, coordinated and interoperable approach is not only important for less

administrative burden but for accurate and easily accessible information for all stakeholders.

**Uncertainty of forward-looking information**

- We welcome the recognition that **forward-looking information** is uncertain. We appreciate that forward-looking sustainability reporting is an essential aspect of the CSRD disclosure process but forward-looking statements by their very nature are subject to change, and reporting companies need legal certainty on the disclosure expectations that may apply to such statements. In support of this, we previously proposed a safe harbor to ensure that undertakings do not incur inappropriate obligations as a result of restating or revisiting information in light of new information becoming available. In that context, we welcome the fact that draft ESRS 2 paragraph 12 now states: "When disclosing forward-looking information, the undertaking may indicate that it considers such information to be uncertain." This can help mitigate companies' potential liability for forward-looking information that does not come to fruition as anticipated due to unforeseen developments or expected developments not materializing.

**Entity-specific reporting requirements**.

- We ask the Commission to simplify **entity-specific reporting requirements**. Requiring a huge level of granularity, particularly in entity-specific disclosures and geographic location/geocode datapoints poses an excessively onerous burden for reporting entities. Several datapoints require an unnecessary level of disaggregation of specific geographic locations or geocodes (far beyond requirements of financial disclosures) and should be removed. Disaggregating information by geography would also provide limited value for integrating this information into other reporting formats, where information is often provided at a consolidated level. For example, the draft ESRS (continue to) require for undertakings to disclose whether they have considered geospatial coordinates when assessing climate-related physical risks (ESRS E1 - AR 12 and AR 14) nor have the disaggregation requirements when disclosing locations of significant assets at material risk been reduced or when listing locations where pollution is material to operations and the value chain. Generally, we consider that the flexibility to report on an aggregated basis and/or to utilize estimations should be afforded against all of the standards, where appropriate, taking into account the quality and nature of information reasonably available to the undertaking.

**ISO Standards**

- We consider referencing to ISO standards to be useful. Specifically consideration should be given to reference
    - "ISO 14001:2015 (Environmental management systems - Requirements with guidance for use)" in the context of ESRS E1 to E5, as e.g., the EMAS Regulation also refers to the full integration of ISO 14001:2015 in Annex II.
    - "ISO 50001 (Energy management systems - Requirements with guidance for use)" in the context of ESRS E1 on the topic of energy efficiency, especially as this standard is recognized nationally in all EU standards in the implementation of the Energy Efficiency Directive.
    - "ISO 14040:2006 (Environmental management - Life cycle assessment - Principles and framework)" and "ISO 14044:2006 (Environmental management - Life cycle assessment - Requirements and guidelines)" in the context of ESRS E5.
    - "ISO 45001:2018 Occupational health and safety management systems – Requirements with guidance for use" within the scope of ESRS S1 and S2.

- "ISO 9001: 2015 (Quality management systems - Requirements)" in the context of ESRS S4.
- "ISO 37001:2016 (Anti-bribery management systems - Requirements with guidance for use)" in the context of ESRS G1.

EU transparency register number: 10405322962-08

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

---

## 3. Specific comments on Annex I

| Standard | Paragraph or AR number or appendix | Comment |
|---|---|---|
| Cross-cutting ESRS1 General Requirements | | |
| ESRS 1 | ESRS 1 | While ESRS 1 provides grounds for an undertaking to omit certain information based on the designation that such information is secret, the criteria should also include information deemed "commercially sensitive or valuable." While ESRS 1 mentions "commercial value", the definitions of confidential and security-relevant information should be expanded to also apply to commercially sensitive or valuable information. |
| ESRS 1 | AR 9 (d) | "*the undertaking shall adopt thresholds*" is very unclear and should be better defined. |
| ESRS 1 | (former para 77- deleted) | We believe the deletion of former para 77 (applying leverage to SMEs to demonstrate reasonable effort in collecting data and therefore be able to use proxies) is a good start in order to make the ESRS more feasible. However, missing data from SMEs is not the exception, but the rule.<br>While the use of proxies is considered, this should generally be possible regarding SMEs in the value chain. To be precise: in order to not overburden both SMEs and financial institutions, it should in our opinion always be possible to use proxies and/or sector values. |
| ESRS 1 | para. 18 | We welcome that the Commission has changed some of the reporting requirements from "shall consider disclosing" to "may consider" in the ESRS, clarifying that such disclosures are voluntary. However, there are areas for which the term "shall consider" is still used (e.g. as regards the use of the PCAF framework for financed and insured scope 3 GHG emissions in ESRS E1-6 AR47(b)). The Commission should clarify in the description of "shall consider" requirements under ESRS 1 para. 18 that it does not constitute a formal requirement. |
| ESRS 1 | para.32 | ESRS 1 still includes the obligation to disclose whether or not an undertaking has adopted policies, actions, metrics and targets. We believe an undertaking should not be required to disclose the absence of information. If a policy is not in place or not applicable, companies should have the option to provide more details on reasoning but should also have the ability to stay silent. |
| ESRS 1 | para. 4; AR 12 | These sections of the draft include changes of the concept of "impact materiality" which have been implemented throughout the whole ESRS. We disagree with the change to "connected to/with" from the previous term "applicable to" and "impacts directly |

| | | |
|---|---|---|
| | | linked to" (for para 43 and AR 12, respectively); and the addition of "and value chain, including through its products and services, as well as through its business relationships." This is overly broad and creates vagueness on causation. |
| ESRS 1 | para. 47,48 and 50, 51 | These sections of the draft include changes of the concept of "financial materiality". The current definition of "financial materiality" included in the ESRS glossary of terms needs to be amended, consistent with the prior version of the definition which read as follows: "Sustainability matter is material from a financial perspective if it triggers or may trigger material financial effects on the undertaking." Alternatively, the definition should be aligned with the definition of materiality in the ISSB, i.e. information that if omitted could reasonably be expected to influence decisions that primary users of general purpose financial reports make on the basis of those reports. |
| ESRS 1 | para. 48 and 49 | We suggest adding back in the "useful to investors" language in para 48 and revert back from "or are likely" to "could reasonably be expected" in para 49. |
| ESRS 1 | para. 63. | "*direct and indirect business relationships in the upstream and/or downstream value chain*": this requirement is far too extensive and should be limited to direct business relationships. |
| ESRS 1 | para. 74 | Linking past, present and future: a past analysis must suffice. Everything else is corporate strategy and therefore confidential. |
| ESRS 1 | para. 77 | Definition of short-, medium- and long-term for reporting purposes: as far as the time intervals are concerned, only a short-term time horizon is reliable and therefore appropriate; any further time horizons (medium, long term) open the door to speculation. |
| ESRS 1 | QC 10 | Comparability: Especially in the industrial sector, each plant is tailor-made and therefore the framework conditions are never 100% comparable. |
| ESRS 1 | QC 14 | We reject the disclosure of confidential metadata. |
| ESRS 1 | para. 125 | While we welcome the addition of the word "significant" to this provision, undertakings should be given option to reasonably tie back to financials vs providing this level of prescriptive data. We propose the following amendment: "In the case of information not covered by paragraphs 123 and 124, the undertaking may explain, based on a threshold of materiality and if relevant or helpful to understand the disclosure), the consistency of significant data…." |
| ESRS 1, | Para. 104-107 | The definition the types of information described under ESRS 1, 7.7 need further clarification in order to sufficiently protect confidential information, including commercially sensitive or valuable information, in line with the protections offered by other regulations such as the EU Trade Secret Directive, which was already referenced in the EU CSRD preamble (34) which states |

| | | |
|---|---|---|
| | | that reporting requirements should 'be without prejudice to Directive (EU) 2016/943'.<br><br>We, therefore, think ESRS 1, 7.7 should not be limited to omissions of "information corresponding to intellectual property, know-how or results of innovation" only. By listing only these types of information, the scope is defined more narrowly and might be interpreted to exclude other commercially sensitive information, including that protected by the EU Trade Secret Directive. We suggest further clarification by adding to ESRS 1, 7.7 that "the undertaking may as a consequence omit information that qualifies as a trade secret under the Directive 2016/943 or that is otherwise considered commercially sensitive." |

| **Standard** | **Paragraph or AR number or appendix** | **Comment** |
|---|---|---|
| Cross-cutting ESRS 2 General Disclosures | | |
| ESRS 2 | para. 46 ff | DR SBM 3 seems to require the disclosure of the financial effects of all IROs in total. In ESRS 1 Appendix C, the quantification of the financial effects (e.g. E1-9, E2-6, E3-5, E4-6, E5-6) during the first 3 years is not required (given the respective phase-ins). Since the financial effects from SBM3 would result from the individual phase-in elements, this would imply that the phase-ins could actually not be exploited. |
| ESRS 2 | para. 58 | The new draft ESRS requires companies to disclose how the materiality assessment was performed. This information is superfluous and could create confusion since the process of materiality assessment is described in the ESRS themselves. A similar requirement does not exist in financial reporting. |
| ESRS 2 | AR 22 | The disclosure requirements which resources are used in detail might lead to overreporting. |

| **Standard** | **Paragraph or AR number or appendix** | **Comment** |
|---|---|---|
| Environment ESRS E1 Climate | | |
| ESRS E1 | E1-2<br>Para. 23 | The draft states that "The undertaking shall undertake whether and how its policies address the following areas:<br>(a) climate change mitigation;<br>(b) climate change adaptation;<br>(c) energy efficiency;<br>(d) renewable energy deployment; and<br>(e ) other"<br><br>'Other' is quite vague here and should be better defined. |

| | | |
|---|---|---|
| ESRS E1 | E1-3<br>Para. 27 | granularity of defined action is unclear. Clarification is needed. Would e.g. "switches to renewable energy for production" be sufficient or would all the single measures as building of PV plant, buying biomass plant etc. be needed. |
| ESRS E1 | E1-7<br>para.57 (a) | • Providing and obtaining downstream information is not possible for a lot of companies.<br>• Since there is no existing (finished) international framework for removals, there is then no added value of the disclosure |
| ESRS E1 | para. 4 | Reporting should be limited to the seven Greenhouse gases: "*This Standard covers disclosure requirements related but not limited to the seven Greenhouse gases (GHG) carbon dioxide (CO2), methane (CH4), nitrous oxide (N2O), hydrofluorocarbons (HFCs), perfluorocarbons (PCFs), sulphur hexafluoride(SF6) and nitrogen trifluoride (NF3).*" |
| ESRS E1 | AR 4 | the term "the green revenue" should be deleted from the associated AR4 appendix B, as the term is not defined in the taxonomy. |
| ESRS E1 | AR 47(b) and AR 13(c) | The Commission should clarify that the use of external references is voluntary as regards:<br>• The PCAF standard in ESRS E1-6 AR47(b): the use of PCAF should remain voluntary and therefore the Commission could solve this by replacing the term "shall consider" by "may consider" in AR47(b).<br>• The International Energy Agency in ESRS E1-AR13(c): while EFRAG advice was clear on the voluntary nature of the use of IEA's scenarios, changes introduced by the Commission to AR13(c) bring confusion as to whether it remains the case.<br>In general, the Commission should clarify in the description of "shall consider" requirements under ESRS 1 para. 18 that it does not constitute a formal requirement. |
| ESRS E1 | AR 49 (table, p. 97) | Use of sold products information: in many cases it is not possible to get information about sold products and to track that. This requirement should be deleted. |
| ESRS E 1 | E1-1<br>para. 16 (a); 19 (b); 20 (bi) etc. | such assessments are of a scientific nature. It is not reasonable for a company to provide such analyses. This also applies to the preparation of development forecasts or scenarios in the climate field, especially for a long-term period and for global activities. |
| ESRS E 1 | E1-1<br>para. 16 (b), (c) | We absolutely reject the publication of planned measures as they are part of a companies´ confidential strategy. |
| ESRS E 1 | E1-1<br>para. 16 (d) | There is no international method of calculation, therefore guidance is needed. |
| ESRS E 1 | E1-3<br>para. 30 (a) | The requirement of the "nature-based solutions" should be deleted. |
| ESRS E 1 | E1-6<br>para. 53 | We reject the distinction between location-based and market-based methods. |
| ESRS E 1 | E1-7 | Storage is not permissible in all MS. |

| | | |
|---|---|---|
| | para. 57ff | |
| ESRS E 1 | E1-9<br>para. 65 ff | All information on financial effects is confidential and can therefore only be reported on a voluntary basis. |

| Standard | Paragraph or AR number or appendix | Comment |
|---|---|---|
| Environment ESRS E2 Pollution | | |
| ESRS E2 | E2-2<br>Para 19(b) | Some uncertainty on retail and wholesale relevant criteria due to the limited scope of the EU Taxonomy. |
| ESRS E2 | E2<br>AR 9 | Several of the data points requires an unnecessary level of disaggregation of specific geographic locations or geocode – these should be removed. Proposed amendment: Delete the following language "a list of site locations where pollution is a material issue for the undertaking's operations and its value chain;". |
| ESRS E2 | AR 15; AR 18 | Several of the data points requires an unnecessary level of disaggregation of specific geographic locations or geocode – these should be removed. Proposed amendment: Delete reference to "site-level". |
| ESRS E2 | E2-4 – Pollution of air, water and soil | Key figures on the pollutants (air, water and soil) that arise in the supply chains are very difficult to obtain for a retail or wholesale company with several thousand suppliers. One of the reasons for this is that companies work with a large number of small and medium-sized suppliers who do not have this data. General analyses of pollutants (air, water and soil) cannot be transferred into a performance measurement over time.<br>The definition of a strategy, measures and targets as well as performance measurement should therefore be given a transition period/more time. |

| Standard | Paragraph or AR number or appendix | Comment |
|---|---|---|
| Environment ESRS E4 Biodiversity and ecosystems | | |
| ESRS E4 | para. 17(c) | Lack of clear guidance on the scope for the materiality assessment for negative impacts with regards to land degradation, desertification or soil sealing might lead to different interpretation. Therefore, the comparability of results across undertakings would not be achieved. Moreover, application scope of disclosure requirements in same chapter E4 para. 17 a), b) and d) are clearly stating scope of disclosure for own operations. This should be also the case for para. 17(c). |
| ESRS E4 | para. 35 | In contrast to what was proposed by EFRAG in the ESRS draft standards, no specification on which sectors must comply with this disclosure requirement leads to the fact that financial institutions should |

| | | |
|---|---|---|
| | | comply with this requirement. However, land-use change analysis based on life cycle assessment is not applicable to financial institutions as LCA is used to quantify the impacts of production chain for physical products, where land-use is a material topic in the supply chain. Financial institutions supply chain mainly includes professional services. |
| ESRS E4 | AR 25 (b) ii. | This AR contradicts ESRS E4 para. 36 which states that "*for datapoints specified in paragraphs 37 to 40, the undertaking shall consider its own operations*." AR 25 must be corrected to reflect E4 para. 36 i.e.. scoping own operations only. |
| ESRS E4 | E4-4 – Targets related to biodiversity and ecosystems; Disclosure Requirement E4-5 – Impact metrics related to biodiversity and ecosystems change, | • There is little to no knowledge of how to calculate indicators/comprehensive reporting on biodiversity and ecosystems. The ESRS standard does not provide much help on how to calculate impact indicators on the main impacts on species (extinction risk) and ecosystems.<br>• The lack of a definition of biodiversity indicators means that many of the required statements are difficult to make, e.g. without indicators, it is difficult to measure the achievement of targets.<br>Without indicators on biodiversity, the consideration of ecological thresholds in accordance with the "Post-2020 Global Biodiversity Framework", the EU Biodiversity Strategy 2030 and other policies and regulations are not feasible. |

| **Standard** | **Paragraph or AR number or appendix** | **Comment** |
|---|---|---|
| Environment ESRS E5 Resource use and circular economy | | |
| ESRS E5 | para. 20(e) | ESRS E5 para. 20(e) requires actions that involves the undertaking upstream and downstream value chain while the AR14 states that "*The actions may cover the undertaking's own operations* ***and/or*** *the value chain*". There is contradictory information introduced by "and/or" of the AR. |

| **Standard** | **Paragraph or AR number or appendix** | **Comment** |
|---|---|---|
| Social ESRS S1 Own workforce | | |
| ESRS S 1 | ESRS S1 Own workforce | • Many terms used in the ESRS S1 are not unambiguously and clearly defined. For example: "Annual total remuneration" includes the "total fair value of all annual long-term incentives" [ESRS S1-16: AR.103] – the definition of fair value varies by country and tax law.<br>• The entire ESRS S1 disclosure requirements that include data on temporary workers are difficult to comply with as the data is not available at the level of the undertaking. Under the EU data protection regulation, the data is only available to |

| | | |
|---|---|---|
| | | the main employer, which is the temporary workers agency, not the undertaking. Furthermore, the data cannot be disclosed due to the EU data protection rules and the “need to know” principle of information sharing. The only option would be to ask the temporary workers agencies for the data. As not all countries companies operate in have the same data privacy laws, companies are not able to ask for example the gender of each employee in all countries.<br>• In addition, the definition of the different segments of workforce differs from country to country – the data is not comparable. |
| ESRS S1 | S1-6<br>para. 49 | This disclosure requirement is out of proportion and would cause unjustified, excessive administrative burden for companies. The CSRD does not entail any legal basis for this requirement demanding information about specific contractual arrangements used by companies. The requirement should therefore be deleted. |
| | S1-6<br>para. 50 (b) | In terms of the concept of “gender”, requiring employees to provide this kind of personal information may become delicate in certain cultural settings and could be considered an invasion of privacy. The requirement should therefore be deleted. |
| ESRS S1 | S1-7<br>para.53, 55 (b) | This contradicts our legal understanding that a self-employed person, who owes the success but not the working time, is to be classified according to full or part time. This speaks against the inclusion of self-employed persons in the definition of "own workforce". |
| ESRS 1 | S 1-10<br>AR 72 | Lowest wage: It is not clear why the particular “lowest wage” needs to be calculated and reported. The term “pay category” may also create confusions when dealing with salary bands, e.g., base salary for employee department x is 5 – 10 monetary units, base salary for employee department y is 4 – 11 monetary units. In this case it remains unclear whether the lower range or the lowest end would determine which employee category would qualify as the “lowest pay category”.<br>Revealing the remuneration of the lowest earning employee cannot be justified under data protection law. In most cases, the remuneration can be traced back to a specific person, especially the lowest (same as the highest) paid individual, in the company and thus constitutes personal data. The processing of personal data is subject to legal requirements under the General Data Protection Regulation. A legal basis for the processing and disclosure of the remuneration is not provided for in the GDPR. |
| ESRS S1 | S1-11<br>para. 72 | This requirement has no basis in the directive which does not even mention the term “social security”. |

| | | |
|---|---|---|
| | | Moreover, the term “social protection against loss of income” does not clearly define if statutory and/or privately arranged protection is covered by the reporting requirement.<br>We therefore see a clear breach of the “*non-essential elements*”-principle in accordance with Art. 290 TFEU. The requirement should therefore be deleted. |
| ESRS S1 | S1-12<br>para. 79 | Disabilities: We consider this disclosure requirement disproportionate. The different national legislations, including the different definitions within and outside the EU, make it virtually impossible to meet this requirement.<br>On top of it, requiring employees to provide this kind of personal information is often prohibited by law and an invasion of privacy. Companies are already compliant with the legal requirements and customs that apply within the national context of their economic activities, despite the restricted access to verifiable information, reporting on compliance thus would become redundant.<br>The requirement should therefore be deleted. |
| ESRS S1 | S1-14 – Health and safety indicators | In some cases, there are different definitions of occupational accidents in different European countries. For example, in Austria, the separation into occupational and commuting accidents is not prescribed by law. The data that companies are allowed to receive from health insurers and enter into their systems are also regulated differently in European countries. The ESRS should take this into account.<br>It is very difficult for companies to report which of the illnesses and deaths (due to long illness) are caused by work ("work-related injuries...") because this information/diagnosis is not available or can hardly be collected.<br>In principle, it should be possible to use the definition of the indicator “accidents per 1,000 FTE” to help companies to implement this disclosure requirement. |
| ESRS S1 | S1-14<br>para. 88 | All the terms, require more clarification and clear-cut definitions and put in line with international state-of-the-art definitions (ESRS/SFDR vs. GRI/OSHA). |
| ESRS S1 | S1-14 – Health and safety indicators<br>AR 85 (b) | Examples for non-work-related incidents:<br>• This definition could cause serious confusion and legal uncertainty in terms of insurance. In general, commuting accidents are considered as work-related from a social security perspective and coverage by the statutory accident insurance.<br>• The disclosure should moreover respect the difference between a work accident (typically defined as a sudden incident resulting in an injury immediately or within a few days) and |

| | | |
|---|---|---|
| | | work-related illness (which is a result of a long-time impact from the work conditions).<br>• It furthermore has to take national definitions into considerations, i.e., in some countries transportation to/from work is considered part of the work hours while in other countries it is considered to be outside work hours.<br>• In addition, there will be country specific differences as to which occupational diseases are (or can be) recognised at all. Companies are already compliant with the legal requirements and customs that apply within the national context of their economic activities, reporting on compliance thus would become redundant.<br>• Corporate reporting with regard to occupational safety and health is superfluous and would cause unjustified excessive, administrative burden. A multitude of differences exists across the occupational health and safety standards between the different countries, especially outside the EU. It is important to have a clear distinction between the safety and health system provided by the government and the company. The coverage would be considered as a minimum per law or above the legal requirements, depending on the definition.<br>• Some Member States have very strict occupational health and safety laws and regulations, which are also regularly monitored by the accident insurance and state supervisory authorities; these standards cannot be applied internationally. Companies are already compliant with the legal requirements and customs that apply within the national context of their economic activities, reporting on compliance thus would become redundant. The requirement should therefore be deleted. |
| ESRS S1 | ESRS S1-14 para. 88 (d) | "work-related ill-health": The specifics of this standards are disproportionate and exceed the basis provided by the directive; in general, the practicability and significance of this reporting obligation remains questionable, for example, information required under paragraph 88 (d) is not available to companies, as the exact reason for sick leaves are often not openly stated by doctors.<br>In some Member States, companies are legally prohibited to demand the disclosure of such sensitive information from their employees.<br>Furthermore, the undertaking is usually not capable of providing this information for non-employee workers. |

| | | |
|---|---|---|
| | | The mere indication of numbers and quotas will not provide any meaningful insights in this regard. They must be put into context considering, in particular, what accident rates and occupational diseases are common in the respective countries and in the corresponding sector. The applicable timeframe plays a vital role as well, as to whether the figures are counted, for example, within a calendar year, quarterly, or since the company was founded. Requiring this high level of detail is simply disproportionate. Again, there are strong concerns that this more complex classification will hardly be possible, especially, for smaller enterprises. Since the information provided by foreign suppliers will hardly be verifiable, short checklists based on trust without bureaucratic hurdles must be sufficient – if at all. The requirement should therefore be deleted. |
| ESRS S 1 | ESRS S1-15 para. 91 | We consider this requirement disproportionate, in particular, in terms of cost-benefit evaluation. Work-life balance indicators should not be limited to family-related leaves and should instead have a stronger focus on material topics like flexible work options and part time work options. Companies should be able to provide other eligible content as well, e.g., workplace health promotion programmes, corporate leadership culture, and childcare facilities. Family-related leaves are regulated by law. Differences in national law reflecting cultural and societal preferences would not allow for meaningful comparability. Companies are already compliant with the legal requirements and customs that apply within the national context of their economic activities, reporting on compliance thus would become redundant. In this context, data access and availability remain a contentious issue as well. Requesting employees this kind of personal information is often prohibited by law and considered an invasion of privacy. Reporting companies will be dependent on the employees' readiness to share information on their entitlement to take family-relates leaves in order to report exact figures in percentage, as required. |
| ESRS S 1 | ESRS S1-15 AR 98 (d) | Family-related leave: It is important to clarify that "person who lives in the same household" still refers to a family member. |

| | | |
|---|---|---|
| ESRS S1 | ESRS S1-16 para. 95 ff | • Disclosing the remuneration of the highest-earning employee can usually not be justified under data protection law. In most cases, the remuneration can be traced back to a specific person, especially the highest paid individual, in the company and thus constitutes personal data. The processing of personal data is subject to legal requirements under the General Data Protection Regulation. A legal basis for the processing and disclosure of the remuneration is not provided for in the GDPR. This disclosure requirement is not justified, as there is no basis for it within the framework of the draft CSRD. We therefore see a clear breach of the "non-essential elements"-principle in accordance with Art. 290 TFEU. Disclosing the required information could be even considered illegal across the EU.<br>• Para. 97 (b): In our view, it is not permissible to draw conclusions about salary inequality within the company by comparing the highest salary (e.g. of a manager) with the median.<br>It is important to recognise that the usage of the unadjusted total compensation ratio is misleading because it does not take compensation ratio drivers like country or industry into account. Unlike the other remuneration-related disclosure obligation, this standard does not ask for country-specific distinctions. Given that the geographic makeup of the workforce has a significant impact on this metric, this does not seem consistent. Explaining the country-specific or industry-specific impact on the pay gap may alleviate the distorted reporting, however with little impact on underlying targeted problem. Mandating a pay ratio annually for every country would be an immense, administrative burden for reporting undertakings confronted particularly with comparability issues. |
| ESRS S 1 | ESRS S1-17 para. 102 | It must be made clear that complaints where it turns out that there was no substance should not be included. It would be even more helpful for the sake of comparability if it were clearly stated that only well-founded and justified complaints and incidents must be counted. |
| ESRS S 1 | AR 103 | remuneration policies:<br>• There remains some uncertainty as to how employees who have been with the company for less than a year and thus not eligible for certain allowances (e.g. Christmas bonus) or bonus payments should be treated in the data collection and calculations. This also applies to employees in companies (M&A) purchased or sold in the middle of the year.<br>• In practice, it is also necessary to determine which exchange rate should be used to convert |

| | | |
|---|---|---|
| | | the wage, in cases where employees are not remunerated in euros.<br>• Likewise, there is some clarification needed as to which figures should be considered in terms of variable payments because variable incentives are usually paid out in the subsequent year.<br>• Most companies do not have reportability on many of the requested data at the required level of granularity, e.g., currently payroll systems are not apt to deliver data as required, such as compiling different kinds of wages into one wage category to differentiate information. Substantial implementation effort will be required to comply with this new regulation, this is especially very difficult for global cooperations. Employees are based on different countries, languages; likewise, on pay bands. It is difficult to report a meaningful KPI as different currencies need to be consolidated in addition to different types of compensation elements in different markets referring to different countries. |

| **Standard** | **Paragraph or AR number or appendix** | **Comment** |
|---|---|---|
| Governance ESRS G1 Business conduct | | |
| ESRS G1 | para. 25 | The reporting on the total number and nature of confirmed incidents of corruption or bribery has to be rejected based on the legal principle of “nemo tenetur se ipsum accusare” ("no person is to be compelled to accuse himself"). |

## 4. Specific comments on Annex II

| **Defined term** | **Comment** |
|---|---|
| **Value Chain worker: … Own workforce/own workers**<br>Employees who are in an employment relationship with the undertaking (‘employees’) and nonemployees who are either individual contractors supplying labour to the undertaking (‘self-employed people’) or people provided by undertakings primarily engaged in ‘employment activities’. (NACE Code N78) | Self-employed business partners should not be counted as part of the own workforce.<br><br>**temporary workers**: The disclosure requirements that include data on temporary workers are difficult to comply with as the data is not available at the level of the undertaking. Under the EU data protection regulation, the data is only available to the main employer, which is the temporary workers agency, not the undertaking. Furthermore, the data cannot be disclosed due to the EU data protection rules and the “need to know” principle of information sharing. The only option would be to ask the temporary workers agencies for the data. As not all countries companies operate in have the same data privacy laws, companies are not able to ask for example the gender of each employee in all countries. In addition, the definition of the different segments of workforce differs from country to country – the data is not comparable. |

EU transparency register number: 10405322962-08

| | |
|---|---|
| **Stakeholders** | This definition is very wide and thus provides no legal certainty to reporting entities. |

For any question please contact:

**Dr. Rosemarie Schön**
Head of Department Legal Policy
Department
Austrian Federal Economic Chamber
T +43 (0)5 90 900-4293
E rp@wko.at | W https://news.wko.at/rp

**Dr. Agnes Balthasar-Wach**
Legal Policy Department
Austrian Federal Economic Chamber
T 05 90 900-4075
E agnes.balthasar-wach@wko.at

**Mag. Laura Sanjath BA, LLM**
Legal Policy Department
Austrian Federal Economic Chamber
T +43 (0)5 90 900-4236
E laura.sanjath@wko.at