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Annex to the Danish Government response to the consultation of MSEG and ARC regarding the draft European Sustainability Reporting Standards

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Cross cutting standards

ESRS 1 - General requirements

There is a typo in the ESRS 1 paragraph 120, where “121” is listed twice in a row and in paragraph 121 (a), where “120” is listed twice in a row.

Materiality assessment

In the ESRS, there is a general need to clarify the definition of materiality. It is encouraged that already known concepts from international standards are used and that materiality assessments are clarified so that they do not go beyond the framework of the CSRD. Additionally, the application requirements (ARs) of the ESRS 1 should explain the steps of the materiality process.

The ESRS 1, Chapter 2 establishes an overarching requirement for undertakings to apply the qualitative characteristics of information set out in the ESRS 1, Appendix C when preparing their sustainability statements. There is a need to clarify that the disclosures pursuant to Article 8 of the Taxonomy Regulation are not intended to be subject to the qualitative characteristics of information. If the qualitative characteristics are applied to the disclosures under Article 8 of the Taxonomy Regulation, this would imply the application of the materiality test to these disclosures. However, Article 8 statements has no materiality tests. This could lead to a scenario in which the Article 8 disclosures would have to be left out of the sustainability statements if they were to not meet the materiality threshold. This approach would not be in line with the delegated act under Article 8.

In relation to financial materiality, the “usefulness”, as mentioned in the ESRS 1, paragraph 51, is not a precise criterion. It should therefore be deleted, and the draft amended to retain only the second criterion to build interoperability with international standards.

The ESRS 1, paragraphs 108-110, allow undertakings to omit information on intellectual property, know-how or the results of innovation corresponding to ‘trade secrets’. There is a possible interaction between these draft provisions and Article 19a (3), fourth paragraph of the Accounting Directive, which permits Member States to allow for the omission in exceptional circumstances of commercially sensitive information, on impending developments and matters under negotiation, under specific conditions. It

is unclear whether, in some cases, the trade secrets addressed in paragraphs 108-110 of the ESRS 1 could also constitute “impending developments or matters under negotiation” under Article 19a (3), fourth paragraph of the Accounting Directive. The Commission should assess whether this provision in ESRS 1 needs to be reformulated so that it is consistent with the specific DRs of Article 19a (3) of the CRSD.

Finally, we recommend a clearer marking in the topical standards of the mandatory metrics and other disclosures in the ESRS 2, Appendix E.

Value Chain Reporting

Both the CSRD and the associated ESRS standards extend undertakings' reporting to include the entire value chain. This means that the new standards will not only affect undertakings that are directly covered by the CSRD, but also a broad number of undertakings in the value chains. It will therefore have a significant impact on the scope and quantity of the sustainability-related information that undertakings must collect and disclose.

As it can be challenging for undertakings to obtain information from the entire value chain, it is important to improve the way in which the standards explain how the information requirements must be applied. In this regard, it would be advantageous to add further guidance and explanations supplementing disclosure requirements (DRs) on value chain reporting elaborating on the practical use of different types of estimates.

Furthermore, we have noted discrepancies between the ESRS 1 and the CRSD in relation to providing information regarding the value chain.

Following the CSRD, for the first three years after the application of the CSRD, and if not all the necessary information regarding the value chain is available, the undertaking shall explain the efforts made to obtain the necessary information about its value chain, the reasons why not all the necessary information could be obtained, and its plans to obtain the necessary information in the future. This means that the CSRD, in relation to value chain reporting, provides a transitional measure entailing flexibility in the first three years of the CSRD, where undertakings are allowed to leave out information on their value chain if not all the required information is available. The ESRS 1, on the contrary, do not include this flexibility in the respective DRs.

The ESRS 1 paragraph 133, repeats the transitional provision set out in the CSRD while adding that even though the undertakings cannot obtain the necessary information on their value chain, the undertakings are expected to use available in-house information on their value chain, to meet the DRs in this regard in ESRS 1. This leads to mandatory reporting on some value chain information, despite not all necessary information can be obtained by the undertaking. The second section in ESRS 1 paragraph 133, must be removed if compliance with the CSRD is to be ensured.

Further, Article 19a, paragraph 2, litra a, (ii) in the CSRD requires a brief description of the undertaking's business model and strategy, including the opportunities for the undertaking related to sustainability matters. This is the only provision in the CSRD requiring reporting on opportunities or positive impacts of the undertaking's activities.

The ESRS 1 paragraph 67, in its current wording, extends the scope of information to be reported to also include information on opportunities connected to the undertaking through its direct and indirect business relationships in the upstream and/or downstream value chain.

We therefore propose specifying the ESRS 1 paragraph 67, with an elaborative explanation underlining that information on opportunities connected to business relationships in the value chain shall be limited to disclosures on opportunities made use of in the undertakings business model and strategy.

In case the undertaking provides information about opportunities through its business relationships in the value chain, which the undertaking does not pursue in its business model and strategy, either because it has chosen not to, or resources or funding is insufficient, such information should be provided separately.

Regarding data on Scope 3 reporting (not just on CO₂-emissions, but on all areas) some elaboration and guidance on the extend of the value chain in this regard must be provided. We agree on the need to look beyond just the reporting undertakings, but in areas such as biodiversity and pollution there are practical challenges on how the undertakings should account for Scope 3 and where the correlating value chains start. For instance, when reporting on farming, the question arises of whether the starting point of the value

chain is the field or where the seed was produced etc. This ambiguity causes the risk of a circular result regarding the undertakings value chains. Therefore, some limitation or definition is needed to ensure that the value chains does not end up circular but solely are related to matters which the undertakings can directly (or indirectly) impact, ensuring operational and comparable reporting.

Finally, we emphasize the need for a clarification regarding the scope of the value-chain for undertakings in the financial sector.

Due diligence

The requirement to provide a statement on due diligence is very useful to provide users of financial statements and supervisory authorities with an overview of the undertaking's activities related to sustainability due diligence. This is key to enforcement of the proposed Corporate Sustainability Due Diligence Directive (CSDDD) because the due diligence activities are scattered across different topical DRs. However, the statement is based on 5 "core elements" of due diligence, which are not aligned with the conduct requirements outlined in the CSDDD proposal, nor with the UNGPs or OECD Guidelines.

We therefore suggest adding the following underlined text to the core elements a), b) and d):

- a) embedding due diligence in governance, policies, strategy and business model (in relation to this, the overview in ESRS 1 paragraph 65 (a) should also reference the ESRS 2 DC-P regarding policies)
- b) engaging with affected key stakeholders in all key steps of due diligence, including through channels to raise concerns
- d) Taking actions to address those adverse impacts, including providing or contributing to remedy where relevant

Incorporation by reference

The ESRS 1, paragraph 120 suggests that disclosures according to the ESRS's may be incorporated by reference giving the conditions in paragraph 121 are met. Some of the suggested reports to refer to are usually located outside the annual report e.g., the remuneration report (litra d).

The condition in the ESRS 1, paragraph 121 d) requires, that the disclosures incorporated by reference “are available with the same technical digitalisation requirements as the sustainability statements.”

It must be ensured that the possibility to incorporate by reference is in accordance with the CSRD article 1, nr. 9 regarding the single electronic reporting format (new article 29 d in the Accounting Directive). In accordance with that it is not clear how it relates to article 1, nr. 4 (1) (amendment to article 19 a In the Accounting Directive) requiring that the information shall be clearly identifiable within the management report and marked up in XHTML format, through a dedicated section of the management report.

Format

There are many cross-references between the standards, which makes the standards difficult to read and interpret. Additionally, the quality and interpretation value of the ARs varies significantly between topics and between DRs. It can be difficult to navigate, not only between the standards but also at the level of the DRs. We suggest developing a separate navigation guide on the Commission’s website, as a road map to initiate the reading and application of the standards.

The DRs and the ARs should be located next to each other or in one text to minimize the risk of misinterpretation. With the Application Guidance being amended to ARs, we also suggest giving the ARs the same status as the DRs and put them in the same place as the DRs.

The headline of each DR (in bold) in some cases seems to be only an overall description of the requirement as the headline paragraph is covered by several datapoints in the paragraphs below the headline paragraph (e.g., the ESRS E1, paragraph 28, and the ESRS 2, paragraph 6). It is unclear if any additional and independent information should be disclosed for the headline paragraph in bold. In other cases, the headline paragraph is a distinct datapoint in itself which is not covered by the following datapoints within the DR (e.g., the ESRS E1, paragraph 53). An illustrative example of how this is a challenge to interpret is the ESRS E3, paragraph 8, which is classified as mandatory according to the ESRS 2, Appendix E, even though it seems like an overall description and covered by the following datapoint in this DR with no clear independent disclosure content. A clarification on how the bolded paragraphs interact with other datapoints in a DR is recom-

mended. In the ESRS 1, paragraph 7 clarifies the meaning of “shall disclose”, “shall consider”, “may disclose” and “shall consider disclosing” across the entire ESRS set 1. We suggest that “shall consider” is not used in relation to DRs, as it creates confusion on whether the DR is mandatory or optional. Furthermore, the terms are giving rise to different interpretations and different practices. It will create more legal certainty to have additional clarity about, what the requirements "shall consider disclosing" imposes on undertakings, or alternatively to replace this term with “may disclose”.

Additionally, rather than using “topic” and “sustainability matter” interchangeably, we suggest using one term consistently. For example, “topic” could be used consistently with an explanation in the ESRS 1 that “topic” in the standards refer to what the CSRD call “sustainability matter”. The ESRS 2, paragraph 39(c), refers to “key suppliers”, yet this term is not defined in Appendix VI, Glossary and Acronyms, nor anywhere else in the ESRS. We suggest adding a definition on how to define “key”, to minimize the risk of the undertaking and its auditor having different interpretations, and that different undertakings make inconsistent interpretations of what constitutes a “key” supplier. The same applies to “key value chains.” The latter is particularly difficult to interpret in large groups with many subsidiaries and value chains.

According to the ESRS 1, paragraph 66, the reporting undertaking for the sustainability statements shall be the one retained for the financial statements. As the “reporting undertaking” will be the one publishing the annual report, it will obviously always be the same for both statements. Therefore, this paragraph does not provide any instructions on how a parent shall consolidate sustainability data for the group (“group” as defined in the Accounting directive, Article 2(11)).

We suggest adding “meaningful” to “stakeholder engagement” in the definition of the term “stakeholder engagement” throughout the standards to ensure alignment with the UNGPs and OECD Guidelines’ provisions, referring to ongoing engagement with stakeholders that is two-way, conducted in good faith and responsive.

Further, we suggest using the terminology “adverse impact” rather than “negative impact” throughout the standards. This would ensure alignment

with the terminology used in the CSRD, UNGPs and OECD Guidelines, as well as from the CSDDD.

ESRS 2- General disclosures

Alignment to CSRD is needed for DRs on Strategy and Business Model (SBM) and, Impacts, Risks and Opportunities (IRO). The CSRD clearly states that a “brief description” is expected, while the ESRS 2 requires a much more detailed reporting. Therefore, the DRs regarding matters on SBM and IRO are going further than the directive. Wording like “brief” needs to be included in the DRs and it should be clearly stated that reporting on IRO matters is to be addressed on a holistic level and not on (sub)topical level. It must be clearly stated that the DRs on topical level in this respect should be seen as guidance, but not a requirement to be performed on the specific standard level.

ESRS 2 paragraph 56 should be amended from “the undertaking shall *report* a brief explanation of the conclusions of its materiality assessment for the topic.” to “the undertaking shall *provide* a brief explanation of the conclusions of its materiality assessment for the topic *to the assurance provider*”.

Some editorial changes should be performed in Appendices C and E in ESRS 2 to ensure references to the correct paragraphs. E.g., according to E, the datapoint in ESRS E5, paragraph 39(d) and paragraph 41, are mandatory, but there is no paragraph 39(d) in ESRS E5 and the reference to paragraph 41 seems to be incorrect.

Appendix C states that ESRS E5-5 “Non-recycled waste paragraph 39 (d)” is mandatory, though the correlating datapoint appears to be ESRS E5, paragraph 38(d). Further, Appendix C states that ESRS E5-5 “Hazardous waste and radioactive waste paragraph 41” is mandatory, while the datapoint correlates with paragraph 40.

Appendix B – Application Requirements

In AR 1 (a), a definition of the term “nature” is unclear and should be included in Appendix A.

Environmental standards

E1- Climate change

In ESRS E1 two paragraphs are numbered 44 which has an impact on the subsequent numbering in ESRS E1.

The Danish Government supports the designation of the GHG protocol as the primary method for calculating climate footprints with GRI and ISO as supplements.

Avoided emissions are exclusively mentioned in DR4 on targets related to climate change mitigation and adaptation, paragraph 32 (b). The term is not however clarified in Appendix A or described in any other way. Nor is it clarified or described how companies should otherwise relate to it.

Regarding paragraph 32 (f) we suggest that “estimated” is added: “the undertaking shall describe the expected decarbonisation levers and their **estimated** overall quantitative...”

Regarding paragraph 33-36 we suggest that the standard only requires information on the undertaking’s energy consumption and that information about energy mix is being taken out of paragraph 33-36. Energy mix is already a central part of the disclosure on the undertakings Scope 2 emission, and furthermore we note that a requirement of a separate reporting on energy mix can lead to undesired incentives for consumption of energy.

Subsidiaries can be exempted from financial consolidation in IFRS, the Accounting Directive and non-EU GAAPs for various reasons. One exemption is in IFRS 10, paragraphs 27-33, where consolidation of subsidiaries is exempted for investment entities. According to paragraph 44 (a), “unconsolidated subsidiaries (investment entities)” shall be consolidated in full for the sustainability statements if the reporting undertaking has operational control. Subsidiaries can be exempted for other reasons. We find the paragraph unclear and would like the text to clarify if the rule in paragraph 44 (a) shall be applied only to unconsolidated subsidiaries held by investment entities in accordance with IFRS 10.

We suggest that ESRS 2 paragraph 55 “and broken down by removal activity” is postponed for 1-3 years. Alternatively, we suggest limiting the disclosure requirement on removal activity to significant removal activities, for the first 1 year.

Appendix B – Application Requirements

In some areas the ESRS are still very granular, requiring disaggregated information on sites, entities and countries that are considerably more detailed than in the financial reporting as well as detailed information, including considering the financial effect, on opportunities. For instance, in AR 12 information on detailed geographical location at the detail level of the EU Nomenclature of Territorial Units of Statistics (NUTS for the EU territory) is requested. The current NUTS 2021 classification lists 1.166 regions at NUTS 3 level. For Denmark – a relatively small country – there is alone 11 regions at NUTS3 level. We believe that this is a too detailed requirement and should be limited to NUTS level 1.

In AR 20 (c), “with disaggregation by decarbonization levers” must be deleted or postponed for 5-8 years. Alternatively, we suggest limiting the disclosure requirement on decarbonization levers to significant levers, for the first 5 years.

Regarding paragraph AR 30 we note that the undertaking shall quantify decarbonization levels in scenarios with reference to the undertakings GHG emission targets. We would like to emphasize that this is a resource demanding process.

AR 27 on targets related to climate change and mitigation and adaptation refers to two methods for setting targets:

- The One earth model
- Science-based target initiatives.

It is noted that SBTi typically appears on the global standard, and it should be considered whether two methods should be mentioned.

AR39 (b) and AR39 (e) are identical and AR39 (e) should be deleted. According to AR43 (e) the undertaking shall calculate and disclose the biogenic part of the emissions. We emphasize that the countries’ electricity declarations are not necessarily being calculated accordingly. Thus, AR43 (e) can lead to non-transparent overall results and weaken the possibility of comparison. If the methods are different, it should be considered to delete this paragraph.

AR43 (h) stipulates that the undertaking shall disclose uptakes and emission from ILUC (indirect land use). We emphasize that this a resource demanding process. Furthermore, the existing data is not considered sufficient for the purpose of disclosing uptakes and emissions from ILUC, and AR43 (h) can therefore lead to incomparable reports.

AR 70 (c), i states that “Significant assets located in the EU territory shall be aggregated by NUTS codes 3, level digits. For significant assets located outside EU territory, the breakdown by NUTS code will only be provided where applicable.” This seems to go further than what is required in pillar 3 and should be amended accordingly to reflect the appropriate level. In relation to potential financial effects from material physical and transition risks and potential climate-related opportunities, AR 73 (e) states that companies may consider to and disclose "potential future liabilities", but only in relation to Scope 1 and 2 and the total GHG emission. Previously, the total GHG-emissions were described as including all three scopes, which is why it creates a false picture if Scope 3 is not included in this.

E2- Pollution

We note that the term “microplastic” is not applied in the REACH regulation in relation to the use in mixtures. We suggest the term be adjusted in accordance with the REACH regulation.

In the objective paragraph 1 (d), a definition is needed regarding “dependencies” and how this is to be reported on.

In DR 4 paragraph 29, litra (d) and (e) should be deleted as they are a subset of litra (a) and (b) and risk creating confusion in relation to environmental legislation.

Emissions to air, water and soil is considered the scope of this standard. However, the identified substances leaving the undertaking via waste and products (both solid articles and chemical mixtures) should be reported to get a full understanding of the mass balance.

The ESRS E2 refers to the ESRS E5 regarding pollution in/from waste but without the necessary update of the ESRS 5 as regard chemicals of concern and most harmful substances. Thus, the requirements in the ESRS E2 should also apply to (hazardous) waste.

Non-financial sustainability reporting on manufacturing of chemicals should include the PFAS that are not yet restricted. Currently, Germany, the Netherlands, Norway, Sweden, and Denmark are preparing a proposal for restricting PFAS under the REACH regulation. However, not all applications of PFAS will be restricted. Furthermore, despite the very problematic properties of PFAS, not all PFAS have harmonized classification. As environmental pollution with PFAS has recently shown to be widespread, and in all media, and the sources of pollution are plentiful and within a wide range of productions, environmental reporting on the use of this substances can be key to the future effort of reducing the negative impact of PFAS.

Denmark does not support applying the Essential Use concept in relation to exemption of the identified substances from non-financial sustainability reporting. If for other reasons the Essential Use concept would be applied, a reference should be made to a (coming) legal definition of the concept to avoid arbitrary reference to the concept as a loophole.

There are several references, where a destination link should be introduced for the online version. These include:

- “ESRS 2 chapter 4 *Impact, risk and opportunity management*” on page 5
- “ESRS 2 DC-P *Policies adopted to manage material sustainability matters*” on page 5
- “ESRS 2 DC-A *Actions and resources in relation to material sustainability matters*” on page 6
- “ESRS 2 DC-T *Tracking effectiveness of policies and actions through targets*” on page 6
- “ESRS 1 Appendix C *Qualitative characteristics of information*” on page 8
- “LEAP approach, proposed by the Taskforce on Nature-Related Financial Disclosure” on page 13
- “TNFD Nature-Related Risk & Opportunity Management and Disclosure Framework”

Appendix A – Defined terms

Definitions in relation to chemicals are missing for the following words: “substance”, “mixture”, “article”, “material”, “product” and “micro-plastic”. The definitions in the REACH regulation ((EC) No 1907/2006), should be applied as far as possible.

The definition of the abbreviation “BAT-AEL” and “BAT-AEPL” should be amended in accordance with the definitions in the Industrial Emissions Directive (IED).

In the definition of “Substances of concern” *litra c*, a clarification is needed regarding the term “any other substance that are set out in applicable EU legislation”.

Appendix B – Application Requirements

In the ARs for E2 to E5 it is a general DR in relation to impact, risk, and opportunity management that the undertakings when conducting a materiality assessment on environmental subtopics should consider a LEAP approach.

We would suggest describing “the LEAP approach” clearer with capital letters in AR1. In the description LOCATE, EVALUATE and ASSESS are addressed, but not PREPARE. A short remark about PREPARE would help the undertakings in complying with the DR.

Additionally, the following abbreviations should be explained:

- IRO-1, -2
- DC-A, -P, -T

In AR 9, we suggest deleting or postponing the application of (a) for 5-8 years.

In AR14, reference should be made to the Safe and Sustainable by Design principles, as set forth in the Commission recommendation establishing a European assessment framework for “safe and sustainable by design” chemicals and materials, Brussels 8.12.2022 C 2022(8854) final.

In AR 15 and AR 18, “at the level of the site location” must be deleted or the application thereof postponed for 5-8 years.

In the ARs relating to DR4, reference should be made to E-PRTR Annex II and the threshold values should be aligned accordingly.

In AR26, a lower threshold should be introduced. The same should be applied for AR35. This will allow for compliance surveillance of the regulation.

In AR 31, when an inferior methodology compared to direct measurement of emissions is chosen to quantify emissions, the reasons for choosing this inferior methodology shall be outlined by the undertaking. If the undertaking uses estimates, it shall disclose the standard, sectoral study or sources,

which form the basis of its estimates, as well as the possible degree of uncertainty and the range of estimates reflecting the measurement uncertainty. If the emissions are reported under PRTR the same methodologies should be applied.

E3- Water and marine resources

The E3 standard is quite comprehensive, and proportionality should be considered, especially as regard facilities outside water stress areas.

According to this standard, the undertakings have to consider how they impact water resources with their (treated) waste-water and/or their water consumption.

To make it operational, the ESRS should refer to the river basin management plans that Member States are already required to prepare, as these plans set ecological and chemical targets/limits for lakes, rivers, coastal areas etc. These targets are set by each Member State and should be used in the ESRS as the reference points and borders for the reporting in this area within the EU.

In the objective paragraph 1 (c), reference should be made to the Industrial Emissions Directive 2010/75/EU and the Urban Waste Water Directive 91/271/EEC.

Regarding paragraph 27 (c), undertakings should only be obligated to provide contextual information publicly available regarding the local basins' water quality and quantity. Thus, "how the data have been compiled, such as any standards, methodologies, and assumptions used, including whether the information is calculated, estimated, modelled, or sourced from direct measurements, and the approach taken for this, such as the use of any sector-specific factors." should be deleted.

In paragraph 28 (a) the definition of "total water recycled/reused" should be aligned with the definition in the IE directive, and or Regulation No 852/2004.

Appendix A – Defined terms

The definition of the term "discharge" should refer to the definition established by the European Environment Agency. In this regard, we also note

that the term “water discharge” conflicts with the definition given for “discharge” as discharge is defined as discharge of waste water.

Regarding the term “recycled/reused water”, the definition differs between “recycled water” and “reused water”. We note that there is no consensus about different meaning of recycled and reused water.

The definition of the terms “wastewater” and “water withdrawal” should align with already established definitions e.g., in the OECD Glossary of Statistical Terms to ensure alignment.

Appendix B – Application Requirements

Regarding AR7, it is unclear how the undertakings can fulfil this requirement.

E4- Biodiversity and ecosystems

While recognizing that we are faced with a global biodiversity crisis, adhering to the proposed sector-agnostic requirements for biodiversity will be a daunting task for most undertakings. Although the ESRS have a lot of references to TNFD, TNFD is not published yet (currently still in beta) and consequently much less established as a de facto standard/framework used by undertakings in general.

Additionally, the maturity of the measurement and reporting areas should be considered. The ESRS cover areas where there currently is either a lack of, or very immature measurement principles and methods available. This also implies that biodiversity and ecosystems are areas with very sparse regulation in place to guide the undertakings when evaluating whether the reporting undertaking have a significant impact on nature and the biodiversity when for instance entering supply chains of natural resources.

To guide the undertakings, we suggest that undertakings within EU could make use of the EU NATURA2000-network to lean on and for instance consider whether they are impacting the network of the core breeding and resting sites for rare and threatened species and/or some of the rare natural habitat types which are protected in their own right. Reference to this should ensure that there is a common approach to the reporting and more legal certainty for the reporting undertakings.

When looking beyond the borders of the EU, the Commission could include a reference to the recently adopted regulation on deforestation and the previous EU Timber Regulation to ensure that there is a common point of reference.

It would also be relevant to consider the connection to the proposed Nature Restoration Law.

The effective dates for (some of) the detailed DRs should be delayed ensuring that an appropriate methodology is developed and that the undertakings covered by the ESRS have the resources and knowledge available to provide high quality reporting. This allows priority to be given to the most important areas and to support this by the targeted development of measurement and reporting methods.

In paragraph 16 on transition plan on biodiversity and ecosystems, undertakings are asked to explain how their transition plan will ensure compatibility with various targets set for and by States. This is a lot to ask from undertakings, given that very little is in place in terms of standards or frameworks on biodiversity metrics. Undertakings need to have these targets translated into a company-level framework, as has been the case with SBTi on climate change.

We propose to leave paragraph 16 (a) out for the time being.

The requirements in paragraph 19 leaves it very open to undertakings to determine what the relevant metrics are, and what the scope of the analysis and reporting should be. Consequently, there is a clear risk, that the prepared reports will be very hard to compare across undertakings. Undertakings should be helped with non-binding guidance documents to help their analysis and reporting.

In paragraph 21, the definition of the term “circularity measures” is unclear. A definition should be added to Appendix A in this regard.

In paragraph 22 undertakings are asked to disclose whether they have sites located in or near biodiversity-sensitive areas and whether activities related to these sites negatively affect these areas. It should be clarified whether "it has sites" refers to the undertakings' own sites only, or also sites up-stream in the value chain. As a side note to this, the Commission should work to

ensure easy and free access to data on metrics, e.g., on biodiversity-sensitive areas for undertakings. These are data expected to come from nature monitoring programs, probably often public ones. The EC should work on data accessibility also with third countries.

In paragraph 22 (d), we suggest adding the possibility of aggregating sites with similar types of impact.

In paragraph 25 (a), the definition of the term “circular design” is unclear. A definition should be added to Appendix A, suggestively with reference to the 10 Rs of Circular Economy.

In paragraph 32 (b), the definition of the term “regenerative sources” is unclear. A definition should be added to Appendix A, suggestively with reference to the regulation on deforestation.

We propose to delete “/ or aligned with” in paragraph 35 (d) cf. comment to paragraph 16.

In relation to paragraph 41-45 we consider it a good starting point to focus the sector-agnostic disclosure on the undertakings own operations for now, given the current lack of common methodology on performance measurement (as acknowledged in paragraph 40). The scope could be widened to up-stream operations where relevant in the planned sector standards.

Regarding paragraph 44 *we would like to ask* whether undertakings are expected to set up their own private biodiversity and ecosystems monitoring programs?

Appendix A – Defined terms

A definition of “forest” should be included in Annex A.

Furthermore, we agree that the definition of “deforestation” should be aligned as much as possible with the definition in EU's new regulation on deforestation. However, it is important to keep the broader perspective in ESRS E4 and thus, the definition of deforestation should not only cover the conversion of forest to agricultural use but also other human-induced conversion.

ESRS E5- Resource use and circular economy

In paragraph 3 the last sentence should be deleted as it is not a part of the definition of circular economy.

In paragraph 4 E-PRTR Regulation No. 166/2006 should be added to the list of EU legislative frameworks as the regulation is highly relevant in this regard.

We noted a typo in paragraph 20 (b) where an “and” should be inserted between “Remanufacture” and “Repurpose” and the parenthesis should be deleted.

In relation to paragraph 33 a common methodology on how undertakings are to calculate the data on resource inflows should be provided to ensure alignment and comparability.

Further, “composting, or anaerobic digestion” should be added to the recovery operation types the undertakings are to report on in paragraph 38 (b), ii. This would ensure that recycling of organic and biological waste is covered, as it is also needed to define the circular material use rate.

Appendix A – Defined terms

It should be emphasized that “by-product” is a legal definition by making a reference to Art. 5 in the Waste Framework Directive (2008/98/EC).

The first part of the definition of “circular material use rate” specifies circular material use. The definition should be split into two separate definitions, one for “circular material use” and one for “circular material use rate”.

The definition of “circular material use” should be “Recirculation of materials, components and products in practice after first use employing the following strategies (in order of preference):

- (i) maintenance/prolonged use;
- (ii) reuse/redistribution;
- (iii) refurbishment/remanufacturing;
- (iv) recycling, composting, or anaerobic digestion.”

The definition of “circular material use rate should solely be “The use rate is defined as the ratio of circular use of materials to overall use of materials.”

The definition “Incineration with (without) energy recovery” is unclear and risks creating confusion. The definition should be split into separate definitions, one for “Incineration with energy recovery” and one for “Incineration without energy recovery”. In this regard, we encourage that a reference to the Waste Framework Directive (2008/98/EC) is included.

A reference to the Waste Framework Directive (2008/98/EC) art. 3(17) should be added to the definition of “recycling”.

The terms “circular economy”, “circular economy principles”, “regeneration” and “regenerative production” are no established legal definitions. References for the basis of these definitions should be included, to ensure that the undertakings are sufficiently informed on, what they must report on.

The last sentence in the definition of “reuse” should be isolated into a separate defined term, “preparing for reuse”. The distinction between the two definitions is important and would be in alignment with the Waste Framework Directive (2008/98/EC) art. 3(13) and (16).

Appendix B – Application Requirements

In AR10 the list a-f should not be seen as an exclusive list to which "the undertaking may refer to". This should be stated clearly.

In AR 15 (a) we suggest to also mention “collaboration on sharing of product data” as a circular action.

The explanation of “circular material use rate” in AR 19 is not very clear and could be expanded to give further clarification.

Furthermore, it is not clear why smart waste collection systems is a good example of a way to prevent waste in AR31(a).

There seems to be a typo in AR 9 – a missing capital P in “Product”.

Social standards

General remarks

Information concerning disabilities and ethnicity is protected by the General Data Protection Regulation (GDPR).

There is a general lack in the social standards of explicit mention of the GDPR regarding the legal restrictions on the collection of data. We stress that while information concerning disabilities and ethnicity can be legally retrieved with consent from the employee, the DRs the social standards pose a concern regarding whether such consent with certainty can be considered as freely given, in accordance with art. 7 (4) of the GDPR, as the employees may be giving consent under the influence of their employer.

In ESRS S2-3, S3-3, and S4-3 the general approach to remediation is included in the same DR as channels to raise concerns. We suggest removing remediation from these DRs, and instead add it to S2-4, S3-4 and S4-4, respectively, where remediation is already mentioned (e.g., in paragraph 33(c) in ESRS S2-4).

The ESRS S2-4 paragraph 33, S3-4 paragraph 32, and S4-4 paragraph 30, refer to the DRs in its entirety (both impacts, risks and opportunities), although those paragraphs only concern material impacts. We therefore suggest introducing those paragraphs with “In relation to material impacts, the undertaking shall describe its approaches to:”.

ESRS S1- Own workforce

In paragraph 16 (c), “including their geographic location” must be deleted or the application thereof postponed for 5-8 years.

According to paragraph 33(c), the undertaking shall describe the processes in place to cover the matters defined within paragraph 2 of the Objective section by disclosing the lack of grievance/complaints handling mechanisms related to employee matters. We suggest clarifying how this should be interpreted.

According to paragraph 12(a), the DR S1-6 is mandatory for undertakings with more than 250 employees. Thus, we suggest amending paragraph 52, from “An undertaking *may* report” to “An undertaking *shall* report”.

We suggest adding details on the version of ILO List of Occupational Diseases in the, ESRS S1, AR94, as it has been revised. The reference to paragraph 63 in AR96 also needs an update.

An example of a mandatory granular DR is paragraph 51(a), which requires undertakings to disclose the total number of employees, and breakdowns by gender and by country for countries in which the undertaking has 50 or more employees. Even though this DR is only mandatory for undertakings above the specified threshold it could lead to very extensive disclosures for undertakings with operations in many countries, risking obscuring material information to the detriment of users.

According to the ESRS S1, Appendix A, an employee is an individual who is in an employment relationship with the undertaking according to national law or practice. We suggest elaborating the definition of an employee to clarify whether it includes people having a short-term employment relationship with the undertaking, such as day labor, trainees, students, and whether inactive employees, such as employees on sick, maternity, military, or other leave, shall be included when not receiving any compensation during the leave. Many undertakings have employment relationship with employees lend to affiliated undertakings or borrow employees that are in an employment relationship with an affiliated undertaking. We suggest clarifying if and how such employees shall be included.

ESRS S2- Workers in the value chain

In paragraph 11 (d), “including their geographic location” must be deleted or the application thereof postponed for 5-8 years.

In paragraph 17 the OECD Guidelines and UN Global Compact principles are mentioned. The UNGPs should also be mentioned in this context, as they – together with the OECD Guidelines – constitute the internationally recognized standards for responsible business conduct, whereas the UN Global Compact are voluntary principles.

ESRS S3- Affected communities

In paragraph 9 (c), “including their geographic location” must be deleted or the application thereof postponed for 5-8 years.

ESRS S4- Consumers and end-users

In paragraph 9 (c), “including their geographic location” must be deleted or the application thereof postponed for 5-8 years.

Closing remarks

A formal interpretation process must be instituted, where EFRAG recognized as a European center of expertise on corporate reporting (EFRAG SR Board supported by the EFRAG SR TEG) could be the organization potentially with the Commission as the body to publish the interpretations. As the standards are going to be adopted as regulations, a formal process is important to consider, and this process must deliver timely interpretations as reporting entities should be able to receive answers before having to report.

Further, we propose that the Commission considers ways to help companies adopt the requirements, e.g., by initiating pilots with volunteer companies with the purpose of doing a full reporting exercise and subsequently publish case studies on the pilot. This can help and inspire other reporting undertakings in their efforts.