

## Template for comments on draft ESRS Delegated Act

The draft delegated on European Sustainability Reporting Standards (ESRS) comprises: the main text of the legal act; twelve draft standards (annex I); and a glossary of abbreviations and defined terms (annex II).

The twelve draft standards in Annex I are:

Group	Number	Subject
Cross-cutting	ESRS1	General Requirements
Cross-cutting	ESRS2	General Disclosures
Environment	ESRS E1	Climate
Environment	ESRS E2	Pollution
Environment	ESRS E3	Water and marine resources
Environment	ESRS E4	Biodiversity and ecosystems
Environment	ESRS E5	Resource use and circular economy
Social	ESRS S1	Own workforce
Social	ESRS S2	Workers in the value chain
Social	ESRS S3	Affected communities
Social	ESRS S4	Consumers and end users
Governance	ESRS G1	Business conduct

Each standard is divided into numbered paragraphs. Each standard also has an appendix A containing “application requirements” which are numbered as AR 1, AR 2 etc. Some standards also contain additional appendices.

To facilitate analysis of comments, respondents are kindly requested to use the simple template below when sending their comments.

## Name of respondent/responding organisation: The Danish Government

### 1. General comments

The Danish Government would like to thank the Commission for its extensive work regarding the amendment of EFRAG's draft proposal on European Sustainability Reporting Standards. We commend the Commission for the changes made to the standards and consider these as significant improvements with regards to proportionality and value-creation.

The Danish Government supports an ambitious approach to sustainability reporting as an effective tool to ensure transparency and comparability of undertakings' sustainability and thereby support the transition to a sustainable economy.

As pointed out by Minister Bødskov during the Competitiveness Council meeting in May 2023, the Danish Government finds it necessary to continue working with supportive measures that can help undertakings to digitize, standardize and automate their reporting, for example by structuring data in standardized data formats and ensuring a European open data exchange infrastructure. Please find attached a technical paper with more elaborate ideas and proposals on how to move forward on this. We hope these can serve as basis for further discussion between the Commission and other Member States.

Furthermore, Denmark proposes that reporting requirements are compatible with the needs for information from the financial market participants in relation to the reporting requirements under other EU financial legislation, e.g., Sustainable Finance Disclosure Regulation (SFDR).

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

Regarding the modifications made to the role of the materiality assessment, we emphasize the importance that the amendments should be in alignment with the information required from the financial market participants.

The Danish Government supports the approach to the materiality assessment proposed by the Commission in the revised standards, as minimizing irrelevant reporting obligations promotes the aim of balanced and reliable reporting. However, we would like to highlight a potential challenge arising from the proposed amendments to the role of the materiality assessment process.

As opposed to the materiality assessment following EFRAG's draft proposal on the standards, according to which all the reporting undertakings were obliged to disclose the negative impact of their activities on approximately 45 principle adverse impact indicators (PAI-indicators), the revised approach to the materiality assessment may cause significant challenges for the financial market participants to fulfil their obligations with respect to the Sustainable Finance Disclosure Regulation (SFDR).

Financial market participants are required to disclose certain PAI-indicators as well as to include aggregated information, in relation to all PAI-indicators, on all undertakings in the portfolio of a financial product and therefore, the financial market participants may face challenges when assessing their sustainability performance under the SFDR, if needed information from an undertaking reporting under CSRD may be missing due to the information being assessed as not material by the reporting undertaking.

Thus, the proposed role of the materiality assessment process may reduce the data quality and comprehensiveness of the sustainability reporting under SFDR. In this regard, it may be considered whether reintroducing PAI-indicators as mandatory disclosure requirements for undertakings reporting under CSRD.

The Danish Government notices that ESRS includes references to external standards, protocols, guidelines etc. that are part of the legal binding requirements for undertakings in the delegated act. This includes e.g., the GHG protocol, ISO 14064-1:2018 and the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises. Since these external standards etc. form part of the legal binding requirements for undertakings in the delegated act, the Danish Government expects the Commission to provide for translations of such external standards and guidelines to ensure that undertakings can familiarize themselves with the rules in their own language.

We are pleased that the Commission decided to include phase-ins for certain reporting requirements. However, we request a clarification regarding the threshold of 750 employees. It is not clear whether the undertaking is to make the assessment of the number of employees at the start of a new financial year or on the balance sheet date. If the assessment is to be made on the balance sheet date, this could be problematic for the undertakings that exceed the threshold during the financial year, as they would be required to report on sustainability information for the part of the financial year when they have not been above the threshold. This would pose significant challenges for these undertakings regarding data collection on those sustainability matters.

Additionally, the Danish Government would like to highlight that it is of great importance that the standards do not entail high administrative burdens on the reporting undertakings. The Commission could e.g. consider to clarify that the Disclosure Requirement GOV-4 - *Statement on due diligence* in ESRS 2, paragraph 33, applies to all the standards in general: "This disclosure requirement does not oblige any specific behavioral requirements with regard to due diligence *actions* and does not extend or modify the role of *administrative, management and*

*supervisory bodies* as mandated by other legislation or regulation”. This would help to clarify that e.g. “Disclosure Requirement SBM-2 – Interests and views of stakeholders” means that stakeholders have the right to define a “undertaking’s strategy and business model(s)”.

In addition, some disclosure requirements have a widened scope compared to CSRD. For example, Disclosure Requirement GOV-3 – *Integration of sustainability-related performance in incentive schemes* in ESRS 2, applies to both listed and non-listed undertakings, whereas the requirements in the remuneration policy in Shareholder Rights Directive II only applies to listed companies. As the mandate in the CSRD only related to “information about the *existence* of incentive schemes”, this disclosure requirement should not introduce new requirements for undertakings that are not within the scope the Shareholder Rights Directive II.

Finally, the Danish Government is pleased with the amendments made regarding the phase-ins of certain reporting requirements, and overall welcomes the Commission’s ESRS draft proposal.

### 3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
ESRS E1	AR 44(b) and AR 47(e)	The term “Suitable emission factors” is up for interpretation and creates questions of how a suitable emission factor is defined. It could be considered adding a small clarification stating that the chosen emission factors should seek to improve data quality and that engaging with suppliers to retrieve high quality supplier specific emissions will provide the most suitable emission factors. CSRD should seek to avoid ambiguity and unclear wording to minimize the burdens for the undertakings.
ESRS E1	AR 51	It could be considered to highlight the GHG protocols 15 categories as examples as well as the ISO-standard.
ESRS E1	Paragraph 35(b)	The sentence: “The undertaking shall specify, in case of combined <b>GHG emission reduction targets</b> , which GHG emission Scopes (1, 2 and/or 3) are covered by the target, the share related to each respective GHG emission Scope and which GHGs are covered.” indicates that scope 3 does not have to be included in the reduction target. We suggest a clarification by deleting “or” or clarifying that reduction targets could be set for example scope 1 + 2 and individually for scope 3.
ESRS E1	Paragraph 57(b)	The phrase “intends to finance” has been added to this paragraph after the revision of the standards, which opens for the opportunity for undertakings to receive good will for intentions, and not actions.

ESRS E1	Paragraph 58(b)	In connection to the comment related to paragraph 57(b), it could be considered to reintroduce the phrase "Cancelled in the reporting period" and remove the phrase "intends to purchase".
ESRS E1	AR 5	AR 5 has been deleted in the revised standards. Keeping AR 5 from the previous version of the standards could ensure transparency about investments in the oil and gas industry, however, if AR 5 has intentionally been deleted, the numbers should be corrected.
ESRS E1	AR 47 (c)	There is mistake in reference to the ISO-Standard: EN ISO 14064-1:2018
ESRS E2	Paragraph 32-35 and AR 33-35	Regarding substances of concern or substances of very high concern, there is no threshold regarding when the substances are not considered material. There should be clear guidance on how the undertakings are to make this assessment. Such guidance has been requested by several stakeholders.
ESRS E2 and E5	Paragraph 26 (E2) and paragraph 38 (E5)	Paragraph 26 (E2) concerns the disclosure of pollutants emitted through the undertaking's own operations. Paragraph 38 (E5) includes specifications regarding the disclosure of the composition of waste. However, we cannot see any disclosure requirement which directly requires the undertakings to disclose the composition of the waste. We suggest this is clarified.

#### 4. Specific comments on Annex II

Defined term	Comment