7 July 2023
KKO/TIAG

EU Commission

Dansk Industri
Confederation of Danish Industry

EU Commission consultation on draft delegated acts implementing the European Sustainability Reporting Standards (ESRS)

Dear Sir/Madame

First of all, DI – The Confederation of Danish Industry – would like to congratulate the EU Commission for the amount of work done in order to convert the reporting standards from the EFRAG advise to the delegated act.

DI appreciate and support the efforts to keep the package together, delivering a comprehensive set of standards, while at the same time working on securing the competitiveness of Europe without compromising the aim of the directive and the standards.

DI supports the efforts done to improve the relevance of the reporting by broadening the scope for materiality assessments in the reporting, thus making the sustainability report more relevant similar to the long-lasting efforts of financial reporting. For DI it is however of *utmost importance* that the proposed extended use of materiality assessment leads to consequential changes in the reporting requirements under SFDR, CRR/CRD, Pillar 3 etc. to ensure the sustainability data infrastructure which is embedded in the CSRD and proposed delegated acts.

The reporting requirements introduced are complex even with the proposed changes and phase-ins and will require the use of all the available resources in the market. For DI it is important that the reporting entities have the time to ensure a robust implementation ensuring that the materiality assessment and the reporting is being embedded into the strategy making the reporting the outcome of the strategy and transition, not the aim in itself. We believe the delegated act supports this.

We acknowledge the efforts made by the EC to enhance the interoperability with ISSB. This is key to reducing the reporting burden for entities, and aligns with the ambition of the EC. We strongly support the principle of a global baseline, as established by the ISSB.

Preparers are still looking for increased clarity and guidance on the interoperability of ESRS with ISSB.

We would like to comment on the above-mentioned key areas in particular – the changed approach to materiality and the phase-in efforts – and propose way forward in securing the infrastructure to support the use materiality.

Materiality and sustainable finance infrastructure

We believe that the structure and safeguards instituted around the materiality assessment and underlying process in combination with the new assurance requirements and the embedding of the reporting in the annual report leads to a paradigm shift in the reporting. Thus, we believe that there is significant value in the outcome of the materiality assessment and the areas and datapoints not being reported due to them not being material.

It is, however, a key element that the infrastructure to the reporting requirements for the Financial Sector is ensured. If the infrastructure is not ensured, then the financial institutions will have no other choice than to require all ESRS reporting entities – within their lending and investments portfolio – to provide additional information through other channels for the institutions to meet their reporting requirements Such a process would be inefficient, and the information could potentially be of lower quality as there would be no requirements for it to be assured or audited. It will undermine a significant part of the concept of the ESRS if the financial sector ends up demanding separate reporting and additional information from undertakings reporting according to ESRS.

We would also highlight that the infrastructure is embedded in the CSRD, but the CSRD does not preclude changes in the reporting requirements under SFDR/CRR/CRD Pillar 3. Please se the details in appendix 1

Securing the infrastructure

The draft delegated act does not address the consequences on the reporting requirements for the financial sector enacted by other EU-legislation with the change to make all the reporting requirements in the ESRS's except for ESRS 1 and 2 subject to materiality.

While we support the approach to materiality, the infrastructure must be ensured, preferable by resolving the linkages in the mandatory reporting requirements for the financial institutions where possible and ensuring the legal certainty for the financial institutions while relying on the ESRS-reports and the robust materiality assessment. We believe this require the EU-Commission and the ESAs to work together to find solutions, supporting the approach taken in draft delegated act as this will be most beneficial approach for Europe and will lead to the best reporting outcome supporting the sustainable transition.

Given the need to ensure the infrastructure, we suggest the following solutions, with the fallback of making the reporting requirements in the ESRS directly linked to SFDR, CRR/CRD Pillar 3 etc. mandatory being the last and resort only:

Option 1 (preferred): Ensuring the infrastructure while respecting the full materiality principle

Under the full materiality principle introduced, the financial institutions see a risk of undertakings not reporting all necessary information, resulting in not meeting their needs.

Unlike reporting according to ESRS, financial institutions' reporting according to SFDR, CRR/CRD, Pillar 3 and the Benchmark Regulation is statistical and not based on a materiality principle. Rather, the financial institutions shall under the current regime include all required ESG impacts related to their investing – and financing activities, whether these impacts are immaterial or not seen from the individual undertaking's perspective. Furthermore, while the reporting under Pillar 3 does include a materiality concept, the information requirements here are also impacted. Therefore, the financial sector needs to be able to base its reporting on the data reported according to ESRS. It would undermine the whole concept of the ESRS if the financial sector ends up demanding separate reporting and additional information from undertakings reporting after the ESRS. Hence the financial institutions need to be able to base their reporting on the following crucial precondition.

The calculation and reporting requirements and/or enforcement guidance for the financial institutions should be adjusted to acknowledge the information value encapsulated in the materiality assessment and the fact that not reporting implies that a topic is not material is included or not existing. We would suggest the following guidance to support this as this would allow for the infrastructure to be maintained while safeguarding the full materiality principle:

> *"If an undertaking provides no reporting in the ESRS on a specific disclosure requirement this equals as a qualified zero or a non-existence. The financial institutions may therefore base their reporting according to SFDR, CRR/CRD Pillar 3 etc. on the information being a qualified zero/neutral non-detrimental value."*

While it is clear that the intention of the European Commission is to ensure the needed infrastructure in line with the description above, we, nevertheless, strongly recommend the European Commission to include a clear and unambiguous statement in the ESRS delegated act stating that the data reported under ESRS is the relevant data financial institutions need to incorporate into their reporting regarding undertakings in scope of CSRD, in order to fulfill their obligations under SFDR, CRR/CRD Pillar 3 etc. This would remove any remaining doubt that the data infrastructure is retained.

Further, we call on the EU Commission to issue a clear and unambiguous statement to the ESAs and to the national supervisory authorities stating that they must accept that financial institutions apply a materiality principle when reporting according to SFDR, Taxonomy, CRD/CRR, Pillar 3 etc. Thus, when a non-financial undertaking does not report on an ESG impact under ESRS because it is not considered material by the undertaking and its assurance provider and the assurance statement is not modified, the financial institutions shall not be required to include these immaterial impacts when

reporting on their financing- and investing activities according to SFDR, CRR/CRD, Pillar 3, etc. If needed, the European Commission should as well initiate any necessary legislative actions to clarify this treatment immediately.

Option 2 (best alternative): Ensuring the infrastructure while respecting the full materiality principle combined with a very limited "tick-the-box" reporting.

If it, on the contrary, is concluded that some datapoints linked to mandatory SFDR, Taxonomy, CRD/CRR, Pillar 3 etc. are strictly needed even when considered not material by the ESRS-reporting undertaking and the information value of a non-reporting is not enough, we would suggest that these datapoints are included in ESRS 2 as a "tick-the-box" reporting. The reporting requirement would be under the heading called "Statistical reporting requirement of non-material information related to financial institutions' mandatory reporting obligations according to SFDR, Taxonomy, CRD/CRR, Pillar 3 etc."

The format of the disclosure should not require any further contextual information, should be limited to the mandatory indicators, and should not trigger any other reporting requirements in the standards. For illustrative purposes, we would suggest a table with the following format:

#	Datapoint	Specific indicator	DR tick the box proposal (when not material)
xx	Exclusions for EU Paris-aligned Benchmarks (CDR)	Less than 1% of the revenue is derived from exploration, mining, extraction, distribution or refining of **hard coal and lignite**; (CDR 12.1(d))	Yes/No
		Less than 10% of the revenue is derived from the exploration, extraction, distribution or refining of **oil fuels** (CDR 12.1(e))	Yes/No
		Less than 50% of the revenue is derived from the exploration, extraction, manufacturing or distribution of **gaseous fuels;** (CDR 12.1(f))	Yes/No
		Less than 50% of the revenue is derived from electricity generation with a **GHG intensity of more than 100 g CO2 e/kWh**. (CDR 12.1(g))	Yes/No

For illustrative purposes the analysis of CDR 12.2, where our analysis would conclude that no additional disclosure requirement is necessary, is as follows:

> <u>CDR-disclosure requirement:</u>
> Administrators of EU Paris-aligned Benchmarks shall exclude from those benchmarks any companies that are found or estimated by them or by external data providers to significantly harm one or more of the environmental objectives referred to in Article 9 of Regulation (EU)

2020/852 of the European Parliament and of the Council (8), in accordance with the rules on estimations laid down in Article 13(2) of this Regulation **(CDR 12.2)**

ESRS/Art 8 reporting requirements:

- For Eligible and aligned – this is reported (taxonomy reporting – Art.8 reporting format).

- For eligible, not aligned – no reporting requirement today in the art. 8 reporting format since it is not aligned and detailed analyses on activity level of all DNSH will not lead to different conclusion. Significant matters on entity level will be covered by the materiality assessment (below).

- For non-eligible activities – materiality principle should meet the criteria of providing information on "significant harm" on entity level, ensuring data availability

Conclusion:
No additional data is needed, as materiality approach combined with art 8 disclosures provide the necessary information

Option 3 (fall-back alternative): Ensuring the infrastructure by partially limiting the full materiality principle by introducing mandatory reporting requirement for the limited indicators directly linked to the mandatory (and not optional) requirements of the financial sector.
As a fallback alternative, we recommend the European Commission to change the draft delegated act, so ESRS disclosure requirements that are directly linked to mandatory (and not optional) requirements to the financial sector are once again made mandatory (please see consequential changes of this alternative below). In this regard, we notice that these requirements are only a subset of all the mandatory requirements in EFRAG's draft ESRS. The European Commission would still deliver a reduction of the administrative burdens even when pursuing this alternative.

This reporting requirement should as well be under a separate heading called "Statistical reporting of non-material information related to financial institutions' reporting obligations according to SFDR, Taxonomy, CRD/CRR, Pillar 3 etc." unless material and hence reported as part of the normal disclosures.

ESRS 1, para 28, shall be changed as follows: (deletion with strike-through, additions with bold)

> *"28. A sustainability matter is "material" when it meets the criteria defined for impact materiality (see section 3.4 og this Standard) or financial materiality (see section 3.5 of this Standard) or both. Irrespective of the outcome of its materiality assessment, the undertaking shall always disclose the information required by ESRS 2 General Disclosures (i.e. all the Disclosure Requirements and data points specified in ESRS 2)* ***and datapoints prescribed in topical ESRS that are listed in ESRS Appendix B List of datapoints in cross cutting and topical standards that are required by EU law."****.*

Phase-in measures
DI supports the phase-in measures proposed by the EU-Commission and acknowledge the complexities in designing the phase-in measures and balancing the pro's and con's. We believe that the proposal – on balance – strike a fine balance in terms of clarity and in terms of supporting a good implementation especially for the entities with less than 750 employees. Having said this, we would suggest the following, additional measures

Additional phase-in measure A - Replacing the limited assurance opinion with an opinion without assurance (assistance) for year 1 for reporting of non-listed undertaking with less than 5.000 employees
The reasoning for the additional phase-in measure is both to support the implementation in the undertakings and to allow for the competence-building within the audit and assurance profession as well as for the profession to provide a broader range of assistance to the undertakings during the first year of reporting. We currently see a significant shortage of qualified assurance providers as well as a shortage in the consultancy advisory capacity. This is going to negatively impact the quality of the reporting. By replacing the audit requirement for year-1 reporting, we ensure both the capacity building as well as ensuring the assistance to the reporting entities.

It is our belief that replacing the audit requirement for year-1 reporting will support better implementation and thus lead to better data-quality, and at the same time providing some level of assurance to the financial sector.

The phase-in should be supported by guidance for the financial sector stating that the opinion without assurance (assistance) opinion for the first year is sufficient for the sector to include the information in their reporting without adding requirements to validate data nor increase the liabilities for the sector compared to that of the following years where a limited assurance opinion will be provided.

Additional phase-in measure B- increase the phase-in threshold from 750 to 5.000 employees (non listed)
The increase is intended to ensure better implementation as the effort to perform and embed the materiality approach into the strategy and business processes is both significant, but also crucial in order to drive better reporting quality and more important to drive the sustainable transition and incorporating this into the business processes and DNA of the undertakings. Forcing this may result in short-term data but may undermine long-term data quality and transition efforts.

Additional phase-in measure C – Permanent phase-in options for new entities to report under the CSRD in the future
The NFM find the phase-in options for helpful for entities that have to report according to the CSRD for the first time, and that these would also be helpful for undertaking entering to the reporting regime in the future, e.g., though organic growth or mergers and acquisitions. The NFM therefore suggest, that the phase-in options are made permanent

and thereby also apply for first-time reporting entities in the future. It should be noted that first-time adaption regulation is already know from the financial reporting under IFRS.

Kind regards

The Confederation of Danish Industry

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Appendix 1 – CSRD requirements in terms of securing the instrastruce and original EFRAG approach

Securing the infrastructure between the ESRS-reporting (sustainability reporting) and the reporting under SFDR, CRR/CRD Pillar 3 for the financial sector is a key element in the CSRD. This is highlighted in recital 9, 21, 41 and especially 54 pointing out that the needed sustainability data infrastructure must be provided. The EFRAG draft ESRS outlined and underlined this link and ensured the establishment of the needed infrastructure between requirements to the financial sector in SFDR, CRR/CRD Pillar 3 etc. and disclosure requirements to the non-financial undertakings in ESRS as it was not within the mandate of EFRAG to change or propose changes to SFDR, CRR/CRD Pillar 3 requirements or interpretations. This was done by ensuring a core of mandatory disclosure points directly linked to the existing EU regulation.

The approach in EFRAG's draft ESRS was fully aligned with the CSRD recital 54 stating that:

> *"To meet the information needs of users in a timely manner, and in particular given the urgency to meet the information needs of financial market participants subject to the requirements laid down in the delegated acts adopted pursuant to Article 4(6) and (7) of Regulation (EU) 2019/2088, the Commission should adopt a first set of sustainability reporting standards by means of delegated acts by 30 June 2023. That set of sustainability reporting standards should specify the information that undertakings should disclose with regard to all reporting areas and sustainability matters, and that financial market participants need to comply with the disclosure obligations laid down in Regulation (EU) 2019/2088."*

and recital 41 stating that:

> *"Sustainability reporting standards should be coherent with other Union law. Those standards should in particular be aligned with the disclosure requirements laid down in Regulation (EU) 2019/2088, and they should take account of underlying indicators and methodologies set out in the various delegated acts adopted pursuant to Regulation (EU) 2020/852, disclosure requirements applicable to benchmark administrators pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council (25), the minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, and of any work carried out by the EBA in the implementation of the Pillar III disclosure requirements of Regulation (EU) No 575/2013."*