

Eu Commission

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KKO/TIAG

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

Dear Sir/Madame

First of all, the Danish National Funding Mechanism (NFM)¹ 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.

The NFM appreciates and supports 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.

The NFM supports in principle the efforts done to align the ESRS-requirements to the general purpose of sustainability reporting as outlined in the CSRD, that is to enable the primary groups of users to better understand the impacts, risks and opportunities related to sustainability matters. In doing so, undertakings shall do an effort of not overloading the sustainability reporting with information that would not affect the users' decision-making or dialogue with the undertaking. For the NFM 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. Please see the details in appendix 1.

Unlike reporting according to ESRS, financial institutions' reporting according to SFDR, CRR/CRD, Pillar 3 and the Benchmark Regulation is to some extent statistical and not based on a materiality principle. If this data infrastructure is not ensured, the financial institutions will have no other choice than to require the ESRS reporting entities – within their lending and investments portfolio – to provide additional information through other

¹ The Danish National Funding Mechanism (NFM) consists of The Confederation of Danish Industry, Danish Chamber of Commerce, Finance Denmark, Insurance and Pension Denmark and FSR – Danish Auditors

channels for the institution 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 like to stress the fact that undertakings regardless of the materiality assessment expectedly will have to collect and record more data than disclosed for the recurring assessment of the level of impacts, risks, and opportunities, and to provide documentation for the auditors of those datapoints that may be deemed as not-material for disclosure.

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

Given the need to ensure the infrastructure, the NFM suggests the following solutions, with full reintroduction of the reporting requirements in the ESRS directly linked to SFDR, CRR/CRD Pillar 3 etc. as mandatory being the fall back alternative and the last resort only:

Option 1: Ensuring the sustainability data infrastructure while respecting the extended materiality principle in ESRS

The financial sector needs to be able to base its reporting on the data reported according to ESRS. 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 or not existing.

Hence, the financial institutions shall be able to base their reporting on the following crucial precondition:

“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 data 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 consequential materiality principle when reporting according to SFDR, Taxonomy, CRD/CRR, Pillar 3 etc. Thus, when an undertaking does not report on an ESG impact under ESRS because it is not considered material by the undertaking and the assurance statement is not modified, then the financial institutions shall not be required to include these assumed 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: Ensuring the sustainability data infrastructure by introducing a “tick-the-box” reporting of needed datapoints while respecting the extended materiality principle to the greatest extent possible

If it, on the contrary, is concluded that some datapoints linked to SFDR, Taxonomy, CRD/CRR, Pillar 3 etc. are 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 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.” Please refer to appendix 2 for at suggested “tick-the-box” model.

Option 3 (fallback alternative): Ensuring the sustainability data infrastructure by partially limiting the extended materiality principle by reintroducing mandatory reporting requirements 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 requirements to the financial sector are again made mandatory. 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.” Please refer to appendix 3 for suggested consequential changes.

Phase-in measures

The NFM supports the phase-in measures proposed by the EU-Commission. The NFM acknowledges the complexities in designing the phase-in measures and balancing the pro’s and con’s. The NFM believes 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, the NFM would suggest the following, additional measure:

Additional phase-in measure – Permanent phase-in options for new entities to report under the CSRD in the future

The NFM finds the phase-in options helpful for entities that must report according to the CSRD for the first time, and that these would also be helpful for undertakings entering to the reporting regime in the future, e.g., through organic growth or mergers and acquisitions. The NFM therefore suggests, that the phase-in options are made permanent and thereby also apply for first-time reporting undertakings in the future. It should be noted that first-time adaption regulation is already well-known from the financial reporting under IFRS.

Kind regards,
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Appendix 1 – CSRD requirements in terms of securing the infrastructure 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 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.”

Appendix 2 – Option 2 (best alternative): Ensuring the sustainability data infrastructure by introducing a “tick-the-box” reporting of needed datapoints while respecting the extended materiality principle to the greatest extent possible

If a “tick-the-box” reporting is introduced to facilitate the needed information under SFDR, Taxonomy, CRD/CRR, Pillar 3, we suggest the reporting requirement to be under the heading “statistical reporting of non-material information related to financial institutions’ reporting obligations according to SFDR, Taxonomy, CRD/CRR, Pillar 3 etc.”

The format of the disclosure should not require any further contextual information 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

Appendix 3 - Option 3 (fallback alternative): Ensuring the sustainability data infrastructure by partially limiting the extended materiality principle by reintroducing mandatory reporting requirements linked to the mandatory (and not optional) requirements of the financial sector

As a fallback alternative, we suggest consequential changes to the European Commission's draft delegated act to reintroduce limited, but mandatory ESRS disclosure requirements directly linked to mandatory SFDR, CRR/CRD, Pillar 3 etc.

Pursuing this alternative 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 of 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 2, Appendix B List of datapoints in cross cutting and topical standards that are required by EU law.**”.