

## 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:

Institute for Energy Economics and Financial Analysis (IEEFA)

### 1. General comments

The standards recommended by EFRAG have been, in IEEFA's view, significantly watered down since November 2022. The overarching concern is around the fact that the **materiality assessments** conducted by the undertakings become highly determinant to the level of disclosure requirements. IEEFA is concerned that the conclusion of whether a **sustainability matter** is material seems to be non-binary and the bar seems not defined in a clear and mechanical manner, which may cause biases and inconsistencies.

Although the Delegated Act outlines fairly rigorous steps such as the LEAP approach to carry out **materiality assessments**, the complexity and nuances of **double materiality** considerations with all stakeholders may lead to various levels of **severity** characteristics – hence materiality scale. For a more comparable conclusion, a more systematic and unified approach and framework with clear thresholds both from the financial and impact materiality perspectives – including a forward-looking lens e.g. the anticipated locations of prospective assets/operations – may be needed, but this can be incredibly difficult to implement. The lack of clear standards of **materiality assessment** tends to skew towards only highly material **sustainability matters** and increases the possibility of neglecting relatively low to moderate levels of material **sustainability matters**, of which full disclosure requirements would still be appreciated.

Besides, some material **sustainability matters** can be highly sector-driven (e.g. biodiversity is usually broadly material across mining companies) and hence company-level **materiality assessments** are therefore counterproductive at times. While the ongoing work regarding sector-specific ESRS standards is acknowledged, IEEFA recognises the high importance of widely adopting a guiding sector materiality mapping, because absence of it, together with the (over)-flexibility of undertakings to consider 'sector-agnostic' individual circumstances, may lower consistencies.

Furthermore, IEEFA believes that the modification of the disclosure, 'explanation of why the undertaking may consider a particular sustainability topic not to be material' being made voluntary is particularly not helpful in this instance. It would create asymmetry of information if the Act allowed leeway for undertakings to consider mitigants to some extent of impacts re. a **sustainability matter**. They

might then deem the matter as immaterial if they assess that they have been sufficiently mitigating their impacts. There may be wide-ranging views taken by stakeholders different from those of undertakings. Therefore, IEEFA believes that a wider expansion of mandatory disclosure requirements would be appropriate.

While the Act defines some cross-cutting standards, the Commission should revisit all topical **sustainability matters** because there may be more occasions where the consideration of stakeholders' vulnerability in outlining the characteristics of **severity** (AR 12, AR 13) can outweigh individual undertakings' circumstances, and hence the cross-cutting standards should be broadened.

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

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## 3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
ESRS 1	31	Concerns around voluntary nature of the disclosure of 'conclusion of materiality assessment' – this should be mandatory
ESRS 1	32	Concerns around voluntary nature of the disclosure of 'a timeframe in which it aims to have the respective policies/actions/targets in place' – this should be mandatory
ESRS 2	24-26 (GOV-2)	Suggest to include if/how the undertaking evaluates the board's functioning and performance over sustainability issues
ESRS 2	29 (a) (GOV-3)	Suggest to specify the short-term vs long-term nature of the incentive schemes
ESRS 2	AR 5 (related to SBM-3)	Suggest to include metrics disclosure requirements of breakdown of tax paid, tax expense, sale, profit, number of employees by country of operations to increase transparency in relation to 'aggressive strategies to minimise taxation, particularly with respect to operations in developing countries'
ESRS 2	68 (MDR-A)	The definition of 'significant' operational expenditures (Opex) and/or capital expenditures (Capex) the undertaking is unclear

ESRS 2	80 (a) (MDR-T)	In the paragraph, it is unclear whether 'the reasons why the undertaking does not plan to set such targets' is mandatory – it appears voluntary, contrary to paragraph 71
ESRS S1	Appendix A.1	The 'non-exhaustive list of factors to consider in Materiality Assessment' may cause confusion as some items in the list seem to address the results of how well the undertakings manage their performance around workforce issues, as opposed to address materiality. Based on International and EU reference text around human rights and labour rights, it is difficult to argue for non-materiality based on that 'non-exhaustive list' for any undertakings.
ESRS S1	AR88	Suggest to include metrics specifically related to stress/mental illness due to work
ESRS S1-S4	-	Potential financial effects may be material e.g. loss of businesses due to safety-related incidents, loss of productivity, project delay, consumers' reputational risk, compensations etc.

#### 4. Specific comments on Annex II

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