

OPINION TO THE EUROPEAN COMMISSION ON EFRAG'S TECHNICAL ADVICE ON EUROPEAN SUSTAINABILITY REPORTING STANDARDS

EIOPA-BoS-23-016

26 January 2023



Opinion to the European Commission on EFRAG's technical advice on European Sustainability Reporting Standards

1. LEGAL BASIS

- 1.1. On 25 November 2022, the European Insurance and Occupational Pensions Authority (EIOPA) received the request from the European Commission¹ (Commission) to provide an opinion on the technical advice on the first set of European Sustainability Reporting Standards (ESRS), which the European Financial Reporting Advisory Group (EFRAG) submitted to the Commission on 22 November 2022.²
- 1.2. According to Article 49(3b) of Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings (the Accounting Directive³) as amended by the Corporate Sustainability Reporting Directive (CSRD⁴), the Commission shall request the opinion of EIOPA – as well as the opinions of the European Banking Authority (the EBA) and the European Securities and Markets Authority (ESMA) – on the technical advice from EFRAG on European Sustainability Reporting Standards, in particular with regard to its consistency with Regulation (EU) 2019/2088 (also referred to a Sustainable Finance Disclosure Regulation, SFDR) and its delegated acts. EIOPA, ESMA and EBA shall provide their opinions within two months from receiving the Commission's request.
- 1.3. EIOPA provides this Opinion to the Commission on the basis of Article 16a of Regulation (EU) No 1094/2010⁵ (EIOPA Regulation). This article mandates EIOPA to provide opinions to the European Parliament, the Council, and the Commission on all issues related to its area of competence.
- 1.4. According to Article 1(3) of the EIOPA Regulation, EIOPA pays particular attention to auditing and financial reporting, taking into account sustainable business models and the integration of environmental, social and governance related factors. To this end, in

¹ [Letter from DG FISMA requesting EIOPA's opinion on EFRAG's technical advice as regards the European Sustainability Reporting Standards \(ESRS\)](#).

² [First Set of draft ESRS - EFRAG](#)

³ Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

⁴ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting. References to Articles of the Accounting Directive in this Opinion are to the Accounting Directive as amended by the CSRD.

⁵ Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/79/EC (OJ L 331, 15.12.2010, p. 48).

accordance with Article 29(1)(c), EIOPA contributes to developing high quality and uniform supervisory standards, including reporting standards, and international accounting standards. In addition, in accordance with Article 9(1)(d), EIOPA promotes transparency, simplicity and fairness in the market for consumer financial products or services across the internal market, including by contributing to the development of common disclosure rules.

1.5. The Board of Supervisors has adopted this Opinion in accordance with Article 2(8) of its Rules of Procedure.⁶

2. CONTEXT AND OBJECTIVE

2.1. The CSRD requires all large companies and all companies with securities listed on EU regulated markets (except micro-companies), including insurers and pension funds, to regularly disclose information on societal, governance and environmental risks, opportunities and impacts. This includes, for example, the disclosure of transition plans for climate change mitigation, policies on climate change mitigation and adaptation, or potential financial effects from material physical and transition risk.

2.2. Large companies are defined in the CSRD as EU companies exceeding at least two of the following three criteria: more than 250 employees on average during the financial year; a balance sheet total in excess of 20 million euros; a net turnover of more than 40 million euros. Subject to the derogations for captive undertakings, it is expected that almost all insurance companies under Solvency II and an important number of pension funds will qualify for reporting, including pension funds with a limited number of employees.

2.3. The CSRD requires that the Commission takes into consideration technical advice from EFRAG when adopting delegated acts.⁷ EFRAG issued exposure drafts of 13 standards for public consultation on 29 April 2022. EIOPA commented on exposure drafts ESRS 1 and ESRS 2.⁸ In its comment letter to the exposure drafts, EIOPA encouraged EFRAG to seek a closer cooperation with the ISSB during the finalization of their standards, to review the rebuttable presumption accompanying the financial materiality definition, and review the definition of the value chain and use of approximations.

2.4. EFRAG submitted its technical advice on a first set of standards to the Commission on 22 November.⁹ This first set of 12 standards covers 2 standards of cross-cutting nature (ESRS 1 and ESRS 2), and 10 topical standards covering environmental (ESRS E1- E5), social (ESRS

⁶ Decision adopting the Rules of Procedure of EIOPA's Board of Supervisors, available at: https://www.eiopa.europa.eu/sites/default/files/publications/administrative/bos-rules_of_procedure.pdf.

⁷ Article 49(3b) of the Accounting Directive as amended by the CSRD.

⁸ [EIOPA letter to EFRAG regarding the consultation on European Sustainability Reporting Standards](#)

⁹ [First Set of draft ESRS - EFRAG](#)

- S1-S4) and governance (ESRS G1) aspects of general application across sectors ('sector agnostic'), addressing the requirements of Article 29b(1) of the CSRD.
- 2.5. This Opinion focuses on assessing whether the ESRS (a) promote disclosure of material sustainability information of high quality, (b) are consistent and interoperable with other EU legislation, (c) are consistent and interoperable with global standard setting initiatives and (d) are conducive to a consistent and proportionate application by undertakings.
- 2.6. The Opinion focuses on ESRS1 and ESRS2, as well as ESRS E1 (Environment – Climate Change), reflecting the areas where a prudential and supervisory opinion would be most relevant at this stage having regard to the insurance and pension sectors. Where specific points of attention exist, the Opinion also covers Social ESRS and Governance ESRS.
- 2.7. Where relevant, the Opinion identifies potential areas for the Commission to consider in the adoption of the first set of standards, or potentially as part of further development of (sectoral) standards or application guidance.

3. ANALYSIS OF EFRAG'S TECHNICAL ADVICE TO THE COMMISSION ON EUROPEAN SUSTAINABILITY REPORTING STANDARDS

Whether the standards promote disclosure of material sustainability information of high quality

- 3.1. The definition of materiality is critical to ensure that European companies report all the information that is relevant to their stakeholders. Such a definition should be both principle-based in order to accommodate the specific circumstances of all European businesses and clear in order to facilitate consistent enforcement by supervisors and auditors. To report material information, the reporting entity needs to have access to the relevant information without undue administrative burden.
- 3.2. EIOPA welcomes the approach regarding materiality assessment and the fact that the ESRS do not require a reporting entity to provide justifications for each disclosure omitted in the management report (initially known as the 'rebuttable presumption').
- 3.3. EIOPA supports the approach to require reporting based on the undertaking's own materiality assessment and the introduction of a list of mandatory items to be reported. In particular, EIOPA supports ESRS E1 Climate Change being applicable irrespective of the outcome of the undertaking's materiality assessment as it includes critical disclosures that will help financial institutions in assessing how their investments contribute to the transition towards a carbon-neutral economy.
- 3.4. EIOPA welcomes the mandatory disclosure requirements that serve as datapoints for financial market participants to calculate and report the Principal Adverse Impact Indicators listed in the Sustainable Finance Disclosure Regulation (SFDR) Delegated Regulation 2022/1288 (Annex I - Tables 1, 2 and 3) irrespective of the outcome of the materiality assessment of the reporting entity. This will ensure that financial market

participants, such as insurers and pension funds, have the necessary data to fulfil their disclosure obligations under the SFDR. This is consistent with Article 29b(1) of the CSRD requiring that the future delegated acts *'shall at least include the information that financial market participants subject to the disclosure obligations of Regulation (EU) 2019/2088 need in order to comply with those obligations'*.

- 3.5. EIOPA notes that the CSRD provides an option for Member States to allow companies to omit information when disclosing it would be seriously prejudicial to the commercial position of the group.¹⁰ Depending on the conditions that Member States may set out in the transposition of the CSRD, EIOPA notes that the use of this option by companies could be widespread. EIOPA understands ESRS 1 Section 7.7 as narrowing down the scope of the information that may be omitted to information on *'intellectual property, know-how or results of innovation'*. EIOPA cautions against the possible wide application of ESRS 1 paragraphs 108-110, reinforced by the fact that ESRS 2 does not require an undertaking to disclose the extent of the information omitted where the Member State has implemented the option foreseen by Article 19a of the Accounting Directive as amended by the CSRD. In this respect, EIOPA advises the Commission to clarify further what is meant by "information that would be seriously prejudicial to the commercial position of the undertaking if disclosed", and how to identify such information (for example by setting criteria). Furthermore, in view of the hierarchy of norms according to which delegated acts may only supplement or amend certain non-essential elements of the legislative act, narrowing the application of the CSRD through the ESRS may not be possible.
- 3.6. EIOPA welcomes that the definition of financial materiality converges towards the definition set out in the Exposure Draft of the IFRS S1 General requirements for Disclosure of Sustainability-related Financial Information¹¹ issued by the ISSB, for instance by removing the reference to the concept of enterprise value. EIOPA notes however the different measures for materiality that are being introduced throughout paragraphs ESRS1 51-53. EIOPA advises the Commission to review these paragraphs, streamlining the definition based on the IFRS S1 paragraph 56, defining that 'information is considered material if omitting, misstating or obscuring that information could reasonably be expected to influence decisions that primary users of general purpose financial reporting make on the basis of [the undertaking's sustainability statements]'. This would also ensure consistency with the prudential financial materiality assessment of climate-related risks that insurance companies shall carry out as part of their own risk and solvency assessment

¹⁰ Article 19a paragraph 3 of the Accounting Directive as amended by the CSRD: "Member States may allow information relating to impending developments or matters in the course of negotiation to be omitted in exceptional cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced understanding of the undertaking's development, performance, position and impact of its activity."

¹¹ [Exposure Draft on IFRS S1 General Requirements for Disclosure of Sustainability-related Financial Information](#)

(ORSA). EIOPA therefore expects that its non-binding application guidance on running climate change materiality assessment and using climate change scenarios in the ORSA¹² will help insurance undertakings to comply with their disclosure requirements in European Sustainability Reporting Standards.

3.7. Finally, as regards the definition of value chain, EIOPA welcomes the alignment of the definition of the value chain in the ESRs framework with the ISSB's definition. Furthermore, EIOPA supports the clarification in ESRs 1 paragraph 68 that the entity does not have to report on all actors in the value chain: only material value chain information of actors of the value chain should be included. EIOPA also supports the clarification that when joint ventures and associates are part of the value chain, material value chain information is disclosed consistent with the approach adopted for the other business relationships¹³.

3.8. EIOPA is of the opinion that further clarity on the boundaries of the value chain is needed to enable financial market participants to report on relevant material sustainability impacts across the value chain in a proportionate and risk-based manner. Such guidance should ideally be available the latest as part of the second set of ESRs. Guidance should include, among others, clarification on the following:

3.8.1. The definition of the value chain in ESRs 1 includes *“all relationships related to the undertaking’s business model”* and *“relationships the undertaking uses and rely on to create its product or services”*.¹⁴ ESRs 1 paragraph 67 states that *“information about the reporting undertaking in the sustainability statements shall be extended to include information on the material impacts, risks and opportunities connected to the undertaking through its direct and indirect business relationships [...] in the value chain”*. ESRs 1 paragraph 26a states that *“affected stakeholders”* are *“individuals or groups whose interests are affected or could be affected – positively or negatively – by the undertaking’s activities and its direct and indirect business relationships across its value chain”*. Furthermore, ESRs S2 paragraph 1 reads that the objective of the standard is to *“specify disclosure requirements which will enable users of the sustainability statements to understand material impacts on value chain workers*

¹² [Application guidance on climate change materiality assessments and climate change scenarios in ORSA | Eioipa \(europa.eu\)](#)

¹³ The ESRs 1 Exposure Draft from April 2022 stated: “Associates and joint ventures accounted for under the equity method are considered as part of the upstream or downstream value chain. Entities accounted for under proportional consolidation are considered as part of the boundary for the consolidated proportion.” The ESRs technical advice states from November 2022 has changed as follows: “**When** associates or joint ventures, accounted for under the equity method or proportionally consolidated in the financial statements, are part of the undertaking’s value chain, the undertaking shall include information related to those undertakings, following paragraph 67, consistent with the approach adopted for the other business relationships in the value chain.”

¹⁴ ESRS E1 Appendix A - Defined terms - Value chain: Value chain is the full range of activities, resources and relationships related to the undertaking’s business model(s) and the external environment in which it operates. A value chain encompasses the activities, resources and relationships the undertaking uses and relies on to create its products or services from conception to delivery, consumption and end-of-life. Relevant activities, resources and relationships include: a) those in the undertaking’s operations, such as human resource; b) those along its supply, marketing and distribution channels, such as materials and service sourcing and product and service sale and delivery; and c) the financing, geographical, geopolitical and regulatory environments in which the undertaking operates <...>.

caused or contributed to by the undertaking, as well as material impacts which are directly linked to the undertaking's own operations, products or services through its business relationships and its related material risks and opportunities [...] (underlined added). The main direct business relationships in the value chain of insurers and pensions funds include their investee companies and their policyholders or members and beneficiaries. The question arises whether insurers or pension funds can report without undue cost or effort on impacts on third parties that are linked to the entity via these direct business relationships, such as workers in the value chain.

3.8.2. For example, insurance undertakings and pension funds' investment decisions may "affect" indirectly the stakeholders of the companies they invest in. Insurers or pension funds usually hold non-controlling interests in their investee companies and may therefore not be in a position to influence or take part in the investees' decision-making process. Hence it might also be onerous for insurance undertakings and pension funds to identify third parties linked to them via their investees. Further guidance would be needed to understand whether holding a non-controlling interest in an investee company in itself is sufficient to conclude that the investor could be part of negative impacts on third parties such as workers in the value chain.

3.8.3. As to the impact of insurers' underwriting activities, considering that policyholders are part of the value chain as defined in ESRS 1 Appendix A¹⁵, and insurers should report against the relevant requirements of ESRS S4 ('Consumers and end-users'), the extent to which the underwriting decisions of insurance undertakings "affect" indirectly the stakeholders of the entities they insure requires clarification. For example, considering the definition of 'indirect emissions'¹⁶, which reads that indirect GHG emissions are a consequence of the operations of the undertaking, clarification would be required as to whether GHG emissions from policyholders should be considered a consequence of the insurance contract and be reported on. The question arises whether this would require the insurer to report on GHG emissions for policyholders covered by car or household appliance insurance contracts. Such a requirement could have significant implications on the costs incurred by insurers to perform their insurance service.

3.8.4. The requirement to include information on the material impacts, risks and opportunities connected to the undertaking through its direct and indirect business relationships in the value chain may also raise operational challenges for financial

¹⁵ "Actors in the value chain are individuals or entities in the upstream or downstream value chain. The entity is considered downstream from the undertaking (e.g., distributors, customers) when it receives products or services from the undertaking; it is considered upstream from the undertaking (e.g., suppliers) when it provides products or services that are used in the development of the undertaking's own products or services." (underlining added)

¹⁶ ESRS E1 Appendix A: Indirect GHG emissions are a consequence of the operations of the undertaking but occur at sources owned or controlled by another company. Scope 3 GHG emissions are all indirect emissions (not included in scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions.

institutions to collect comparable and reliable information about their investee companies at reasonable cost and effort. Against this background, EIOPA agrees with the requirement in ESRS 1 paragraph 73 that an undertaking estimates the information to be reported about its upstream and downstream value chain by using all reasonable and supportable information, such as sector-average data and other proxies. However, EIOPA is concerned that the use of proxies may have a negative impact on the comparability of the disclosures along the value chain. It is therefore critical that ESRS include disclosures about the significant judgments that an entity uses to estimate the information that it cannot collect from its value chain partners. In that regard, EIOPA welcomes the decision to require an undertaking to disclose the emission factors and methodologies used when estimating greenhouse gases emissions¹⁷ that occur within its value chain. As practice develops, EIOPA recommends that European Sustainability Reporting Standards consider introducing a hierarchy of emission factors that would guide companies to select the most relevant emission factors depending on the data that are reasonably available to them.

3.9. Following areas would also require further clarification:

- 3.9.1. ESRS 2 paragraph 56 requires a brief explanation when an entity considers disclosures in a whole topical ESRS as not material. The standard does not further specify the expected content. EIOPA suggests that reference could be made, for example, to the explanation as required in ESRS 2 paragraph 51 (d), identifying potential thresholds the entity has applied or parameters it has used to support the conclusion that the topic is not material for reporting purposes.
- 3.9.2. Definition of impact materiality: EIOPA acknowledges that the list of requirements that are to be reported irrespective of the outcome of the materiality assessment ('mandatory requirements') in ESRS 2 Appendix C covers the needs of insurers and pension providers and circumvents the risk of omissions. Further guidance may be needed to help companies in determining the "severity" and "the likelihood"¹⁸ of their impacts as referred to in ESRS 1 paragraph 48.
- 3.9.3. The statement in ESRS 1 paragraph 77 that *"one way through which the undertaking can demonstrate reasonable effort in collecting data from actors in its value chain(s), is by using or increasing leverage over them, e.g., through collaboration with other companies and stakeholders that could help to do so"* may imply a form of conduct requirements that are not suited for a reporting framework, and therefore the inclusion of this provision should be reviewed.

¹⁷ ESRS E1 Climate change – paragraph AR39 (b)

¹⁸ EFRAG defines the severity of a negative impacts as determined by its *"scale: how grave the impact is, (ii) scope: how widespread the impact is, and (iii) its irremediable character: whether and to what extent the negative impacts could be remediated, i.e., restoring the environmental or affected people to their prior state"*.

Whether the standards are interoperable with EU sectoral standards

- 3.10. It is of importance that the standards are consistent with sectoral requirements, to ensure that financial market participants have access to relevant data to perform their reporting obligations, including under the Taxonomy Regulation and the Sustainable Finance Disclosure Regulation, as well as Pillar III prudential and conduct regulation.
- 3.11. The adoption of European Sustainability Reporting Standards is instrumental to support the consistent implementation of the SFDR PAI disclosures and provide financial market participants with reliable and comparable data about the negative impacts arising from their investee companies. As highlighted above in the section on materiality, EIOPA welcomes the disclosure requirement to disclose all datapoints to serve SFDR-related disclosures regardless of the reporting entity's materiality assessment.
- 3.12. In that regard, EIOPA would like to emphasize that the indicators in table 2 and 3 of Annex 1 to the Delegated Regulation 2022/1288 (also known as "opt-in" indicators) are not optional as financial market participants have to report information on one or more additional environmental indicator (from table 2) and one or more additional social indicator (from table 3).¹⁹ Moreover, financial market participants have to explain the methodologies used to select the indicators and identify the principal adverse impacts of their investment decisions.²⁰ As a consequence, it is critical that investee companies report on all the relevant datapoints mapped to those indicators to ensure that financial market participants can report on all the PAI indicators that are relevant to their investments.
- 3.13. Further guidance may be needed to foster the comparability with SFDR-related indicators in certain areas, and continued exchange between EFRAG and the ESAs should be upheld to ensure further alignment with SFDR.

Whether the standards are interoperable with international standards

- 3.14. It is of importance that standards limit the risk of inconsistent reporting or administrative burden due to double reporting requirements for undertakings that operate globally. In the future, European undertakings listed in foreign jurisdictions may be subject to the reporting requirements set out by the International Sustainability Standards Board (ISSB), building on disclosure standards from the Task Force on Climate-Related Financial Disclosures (TCFD). In order to avoid the international fragmentation of sustainability reporting requirements across jurisdictions, EIOPA considers that ESRS standards should ensure that European companies that report under ESRS are automatically considered as complying with the IFRS sustainability reporting framework.

¹⁹ Article 6(1)(a) and Article 6(1)(b) of Delegated Regulation 2022/1288.

²⁰ Article 7(1)(c) of Delegated Regulation 2022/1288

- 3.15. EIOPA is of the view that the ESRS are well aligned with the ISSB's IFRS sustainability reporting standards. EIOPA welcomes the alignment of the ESRS with certain key concepts under the ISSB, for instance with regard to the definitions of value chain and financial materiality, as referred to above. Regarding the definition of materiality, ESRS 1 has incorporated IFRS S1 definition of financial materiality and has sought to bring its definition of impact materiality closer to GRI's.
- 3.16. EIOPA notes that ISSB deliberations are ongoing. EIOPA welcomes the discussion taking place in the ISSB on this matter²¹, and stresses the value and logic for double materiality.
- 3.17. Based on latest information available at the time of drafting of this Opinion, EIOPA has noted developments in ISSB that would not be covered by the current EFRAG technical advice:
- a) ISSB Staff paper number 4B of December 2022 encourages the ISSB Board to introduce new disclosure requirements related to the percentage of total scope 3 GHG emissions that is estimated using inputs that are verified (paragraph 53 (b)) of the paper).
 - b) ISSB Staff paper number 4A of December encourages the ISSB Board to introduce new disclosure requirements related to activity data, whether the activity data is based on economic or physical output and what the data represents (for example, for Scope 3 GHG emissions category 1, this could be quantities or units of goods or services purchased by the entity) (paragraph 42 of the paper).
- 3.18. EIOPA notes that the fact that ISSB's standards are not yet finalized represents a challenge to ensure the interoperability of the standards. It is important that all parties continue to strive for international interoperability and that EFRAG and the Commission continue monitoring ISSB's developments.
- 3.19. Appendix V - Comparison of IFRS and ESRS 1 & 2 provides a helpful overview of the consistency between ESRS and ISSB and a starting point to monitor developments under the respective frameworks. EIOPA encourages EFRAG and the ISSB to adopt a commonly agreed reconciliation table based on their respective digital taxonomy of disclosure requirements in order to provide clarity to companies, to allow the Commission to monitor the changes made by the ISSB and to assess the potential need to make targeted adjustments to align ESRS with the final IFRS Sustainability standard.

²¹ ISSB Staff Paper on 'Fundamental concepts', discussed at the ISSB meeting of 13 - 15 December 2022, <https://www.ifrs.org/content/dam/ifrs/meetings/2022/december/issb/ap3a-general-sustainability-related-disclosures-fundamental-concepts.pdf>

Whether the standards support a consistent and proportionate application of sustainability reporting

- 3.20. To support undertakings in their reporting duty and promote consistent and convergent practices at an early stage of implementation, it is important to secure a single source of guidance on the interpretation and application of the EU sustainability reporting standards. This will raise the quality of the reporting and ease supervisory review.
- 3.21. The ESAs will be addressing questions of convergent application of the SFDR requirements via their regular convergence tools, including via the questions and answers process. EIOPA would support a streamlined process for guidance across all pieces of the European sustainability reporting framework involving all relevant actors going forward, to ensure efficiency and coherency of the implementation.
- 3.22. Considering the ongoing mandate of the Joint Committee of the European Supervisory Authorities to review and amend regulation 2022/1288²², the further development of the SFDR indicators may create new data needs for financial market participants and therefore lead to require additional disclosures in ESRS. In order to ensure consistency across European sustainability reporting requirements, it is critical that amendments to the SFDR can be taken into account in adaptations to the ESRS and an expedient review process for adapting the Delegated Regulation implementing the CSRD is put in place.
- 3.23. As referred to above, considering the potential broad implications of the implementation of the ESRS throughout the value chain of insurance companies and pension funds, a timely adoption of sector-specific European sustainability standards for the insurance industry should clarify the boundaries of the value chain and affected stakeholders for financial institutions. EIOPA is of the opinion that further clarity on the boundaries of the value chain is needed to enable financial market participants to report on relevant material sustainability impacts across the value chain in a proportionate and risk-based manner. Such guidance should ideally be available the latest as part of the second set of ESRS.
- 3.24. EIOPA welcomes that the structure of the sustainability statement and the requirement in ESRS 2 to disclose an index of the disclosure requirements will facilitate the

²² Commission Delegated Regulation (EU) 2022/1288 of 6 April 2022 supplementing Regulation (EU) 2019/2088 of the European Parliament and of the Council with regard to regulatory technical standards specifying the details of the content and presentation of the information in relation to the principle of 'do no significant harm', specifying the content, methodologies and presentation of information in relation to sustainability indicators and adverse sustainability impacts, and the content and presentation of the information in relation to the promotion of environmental or social characteristics and sustainable investment objectives in pre-contractual documents, on websites and in periodic reports. The Joint Committee is required to provide advice to streamline and develop further the regulatory framework, to consider extending the lists of universal indicators for PAI, as well as other indicators, and to refine the content of all the indicators for adverse impacts and their respective definitions, applicable methodologies, metrics, and presentation. [Mandate to the ESAs to develop SFDR regulatory standards on principal adverse indicators](#)

identification of SFDR-related disclosures in the management report.²³ However, it may still be burdensome for financial market participants to identify the relevant disclosures to comply with the SFDR delegated regulation. Hence, the importance of specifying the marking up of sustainability reporting in accordance with the electronic reporting format as specified in Delegated Regulation (EU) 2019/815. In addition, until SFDR-related data points are made available on the European Single Access Point in 2027, EIOPA suggests that all undertakings subject to the CSRD be required to prepare a summarized statement within their management report outlining all SFDR-related data points. Such a requirement would significantly enhance the accessibility to information otherwise scattered within the management report.

3.25. In order to ease the accessibility of information for market participants, it is crucial that the disclosure requirements that support SFDR disclosures are tagged clearly. EIOPA encourages the Commission to swiftly adopt the necessary measures to specify the marking up of sustainability reporting in accordance with the electronic reporting format as specified in Delegated Regulation (EU) 2019/815 ('digital taxonomy for the Union sustainability reporting').²⁴

3.26. EIOPA notes the possibility for small and non-complex credit institutions and investment firms as defined in Regulation (EU) No 575/2013 (Capital Requirements Regulation, CRR) to apply simplified sustainability reporting standards as defined for small and medium-sized undertakings.²⁵ While the Solvency II Directive and, with it, the definition of low-risk-profile undertakings is still under review, in order to ensure a level playing field with the banking sector, low-risk-profile undertakings should be allowed to apply simplified sustainability reporting standards under the CSRD.

Other comments

3.27. EIOPA notes that ESRS 1 General requirements paragraph 7 (b) stipulates that "shall consider" indicates that the provision is prescribed by a Disclosure Requirement or datapoint. Applied to E1 Climate Change AR39, which indicates that "When preparing the information for reporting GHG emissions as required by paragraph 41, the undertaking shall consider the principles, requirements and guidance provided by the GHG Protocol Corporate Standard (version 2004 or the latest one) and GRI 305 (version 2016 which is directly based on the requirements of the GHG Protocol)", it may need to be clarified whether the undertaking has to use the GHG Protocol Corporate Standard or the GRI 305,

²³ ESRS 2 IRO-2 paragraph 55.

²⁴ As referred to in recital 55 of the CSRD.

²⁵ See Article 29c of the Accounting Directive as amended by the CSRD.

or if the use of these methodologies can be considered, but other standards can be used if justified.

3.28. EIOPA notes that from 2025 onwards, the CSRD will impose a mandatory audit requirement based on a limited assurance opinion for all disclosures in the sustainability statements including the disclosures pursuant to article 8 of the Taxonomy Regulation.²⁶ The CSRD empowers the Commission to adopt audit standards until October 2026. EIOPA considers that robust audit opinions are instrumental to ensure consistent application of the European standards and to safeguard the trust of the public in companies' sustainability reporting. Furthermore, EIOPA notes that the mandatory audit in the CSRD will enhance the reliability of the disclosures pursuant to the SFDR Regulation which entered in force in March 2021. As a consequence, EIOPA recommends that the Commission clarifies the extent of the expected assurance ahead of the first publications under the CSRD.

3.29. Further, EIOPA welcomes the clarification in paragraph 71 of ESRS 1 about how associates and joint ventures should be included within the sustainability statements. However, EIOPA notes that the term "joint venture" is not defined in the Accounting Directive 2013/34/EU. Furthermore, the accounting directive refers to "associated undertaking" instead of "associates". Considering that the CSRD will amend the Accounting Directive, EIOPA understands that European undertakings will apply the consolidation rules outlined in chapter 6 of the Accounting Directive to report their consolidated management report, the Commission may therefore consider a closer alignment between the terminology used in the Accounting Directive and in ESRS 1.

3.30. EIOPA also notes that the definition of corruption in ESRS G1 may not be fully aligned with the definitions set out in Article 2 of the Council Framework decision 2003/568/JHA and Article 4 of Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law. In order to avoid legal uncertainty about which definition financial market participants shall apply to report the SFDR principal adverse impact indicators, EIOPA recommends clarifying which definition should prevail in the context of sustainability reporting requirements.

3.31. Finally, EIOPA notes that the definition of an employee in appendix A and paragraph 53 of ESRS S1 "Own Workforce" reads that "an employee is an individual who is in an employment relationship with the undertaking according to national law or practice." Furthermore the definition of "own workforce/ own workers" in appendix A draws a distinction between

- "workers who are in an employment relationship with the undertaking ("employees")" and

²⁶ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088.

- “non-employee workers who are either individual contractors supplying labour to the undertaking (‘self-employed workers’) or workers provided by undertakings primarily engaged in “employment activities” (NACE Code N78).”

However, paragraph 57 of ESR S1 highlights that an undertaking may have an employment relationship with a non-employee²⁷. EIOPA recommends removing this inconsistency and clarifying explicitly in ESRS S1 the definition of an “employment relationship”.

4. OPINION

EIOPA is of the Opinion that:

- 4.1. the draft European Sustainability Reporting Standards as submitted by EFRAG in its technical advice to the Commission broadly promote disclosure of material sustainability information of high quality and support sectoral and international interoperability;
- 4.2. the mandatory disclosure requirements that serve as datapoints for financial market participants to calculate and report the Principal Adverse Impact Indicators listed in the Sustainable Finance Disclosure Regulation (SFDR) Delegated Regulation 2022/1288 (Annex I - Tables 1, 2 and 3) irrespective of the outcome of the materiality assessment of the reporting entity, will support financial market participants in their reporting obligations;
- 4.3. guidance would be needed to ensure reporting of relevant material sustainability impacts across the value chain of financial institutions in a risk-based manner especially with regards to the information that insurance undertakings and pension funds should report about the impacts arising from their investee companies and policyholders. Ideally, such guidance on the definition of the value chain and its boundaries should be available the latest as part of the second set of ESRS;
- 4.4. in order to avoid the international fragmentation of sustainability reporting requirements across jurisdictions, ESRS standards should ensure that European companies that report under ESRS are automatically considered as complying with the IFRS sustainability reporting framework. In that regard, EIOPA appreciates the efforts made by EFRAG to ensure close alignment between ESRS and IFRS sustainability standards but notes that amendments may need to be considered in the coming months to ensure that European standards are consistent with ISSB requirements that are expected to be finalised in the first half of 2023;

²⁷ “When reporting its employment relationship with the most common types of non-employee workers in its own workforce, the undertaking shall provide a general description as to whether it engages them directly (as self-employed contractors) or indirectly through a third party.”

- 4.5. a streamlined process for guidance across all pieces of the European sustainability reporting framework involving all relevant actors going forward, should be put in place to ensure efficiency and coherency of the implementation;
- 4.6. in order to ensure consistency across European sustainability reporting requirements, it is critical that amendments to the SFDR can be taken into account adaptations to the ESRS and an expedient review process for adapting the Delegated Regulation implementing the CSRD is put in place; sector-specific standards for the financial sector should ideally be for adoption by the Commission already in 2025 to support first reporting by the financial industry;
- 4.7. In order to ensure a level playing field with the banking sector, low-risk-profile undertakings (as defined in the Solvency II review) should be allowed to apply simplified sustainability reporting standards under the CSRD.

EIOPA

Westhafen Tower, Westhafenplatz 1

60327 Frankfurt – Germany

Tel. + 49 69-951119-20

info@eiopa.europa.eu

<https://www.eiopa.europa.eu>