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MANAGEMENT CONSULTING

ANALYSIS OF THE FEEDBACK RECEIVED IN RESPONSE TO THE PUBLIC CONSULTATION ON EXPOSURE DRAFTS OF THE FIRST SET OF DRAFT ESRS ADDITIONAL POSITION PAPERS

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Description	**Analysis of the additional position papers, i.e., position papers which were received in addition to those submitted together with the survey responses**

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1. Introduction

EFRAG launched a public consultation with its stakeholders to gather their views on the Exposure Drafts of the first set of draft ESRS. The consultation was open for 100 days and closed on 8 August 2022. It contained two online surveys, and stakeholders could submit position papers alongside or separately from their survey contributions. There were 298 unique position papers received either uploaded with the survey questionnaires or emailed separately to EFRAG.

This report presents the results of the analysis of the additional position papers, i.e., the position papers which were received in addition to those submitted together with the survey responses to the Public Consultation on exposure drafts of the first set of draft ESRS. Additional position papers were received from 34[1] different stakeholders. Four of these stakeholders responded to both Survey 1 on the overall relevance of the ESRS and their implementation prioritisation / phasing-in and Survey 2 on the adequacy of the disclosure requirements. Seven other stakeholders who submitted additional position papers responded only to Survey 1. The position papers submitted along with the survey responses were not analysed. This report contains the qualitative analysis of all the main points and general comments and suggestions included in the position papers. The analysis of Surveys 1 and 2 are presented in separate reports.

[1] There was one duplicate in the sample of 35 additional responses received by EFRAG and supplied to the contractor.

2. Methodological approach

The analysis of the position papers was performed using the Qualitative Data Analysis (QDA) software package NVivo which allows to categorise, sort, and interpret qualitative data. The first step in the analysis was to develop a set of core categories or themes based on the review of a subset of answers. The three main categories for each question were: 1) Reservations; 2) Suggestions for improvement; and 3) Support. First, the analyst read a random sample of position papers to identify the most commonly cited themes. Sub-categories were created based on the occurrence of identifiable issues and concerns raised by various stakeholders. Then, the analyst read the full text of all the position papers and coded/sorted the answers into the identified sub-categories. Once the analyst read through all the position papers, they went back and assessed if any of the sub-categories needed to be merged, further separated, and/or grouped together. As a last step, the analyst wrote a short description for each sub-category which summarises the main points emerging from the position papers as per sub-category.

The advantage of this approach is that all text provided by stakeholders in the position papers is analysed in a structured, systematic manner, without the analyst being prejudiced by who the stakeholder is and, in case they answered the survey questions, by how they answered. Another advantage is that the sub-categories for each question emerged organically from the text of the position papers, and therefore they reflect the feedback provided by stakeholders, including the language (e.g., terminology, connotations) used by stakeholders. The limitation of this approach is that it results in a different number of categories for each section, which makes comparisons across sections difficult.

Section 3 below presents the results of the qualitative analysis of the position papers. For each category (Reservations, Suggestions for improvement, and Support), there is a number of sub-categories reflecting the identified issues listed in a descending order, starting from the ones most frequently reported by stakeholders. The results are presented in a table format requested by EFRAG. The first column of the table shows the sub-category into which the responses were coded/sorted; the second column provides a brief description/summary of the sub-category; and the last column shows the corresponding number of stakeholders who reported the issue at hand. Some position papers provided more than one reservation and/or suggestion for improvement, and were thus coded into more than one sub-categories.

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3. Results

Name	Description	Number of stakeholders
I. Reservations		
01. Duplication and misalignment with international and EU standards and legislation	The CSRD was not finalised when the ESRS EDs were issued to provide the rationale for many disclosure requirements which should also be aligned with other EU legislation (Regulation (EU) No 1025/2012, CSDD, Taxonomy, Accounting and Shareholder Directive) and EU standards. The ESRD should not duplicate the ISSB and GRI standards to prevent expensive reporting obligations on European issuers thus placing them at a competitive disadvantage. The ESRD definitions do not align with the international standards.	Some
02. Lack of impact assessment and due process	Impact assessment and digitalisation guidance, essential for cost-benefit analysis, are missing. They should be part of the consultation to ensure due process of adopting legally binding standards. Moreover, the ambitious timeline does not allow for field-testing, an important step for standard setting, and the complexity of the proposals did not allow less equipped stakeholders such as SMEs/SMPs to properly evaluate them.	Few
03. Complex structure and overlaps between ESRS	The ESRS EDs have an inconsistent internal structure (some include objectives, some principles, some both or none of these) and long sentences which impairs consistency and understandability. Many EDs (e.g., on cross-cutting requirements) duplicate content. The requirements are too granular and the guidance provides further requirements which may impair effective reporting and obscure relevant information while providing no added value for users.	Few
04. Due diligence, capacity of SMEs and SMPs, and proportionality	SMEs lack the capacity to become sustainable and should be given sufficient time, resources and access to the tools (benchmarking data, systems and personnel) to build such capacity. The accelerated procedure in which the standards were produced did not allow for an adequate due diligence process and time to respond to the drafts which contain novel and untested approaches to corporate reporting.	Few

Name	Description	Number of stakeholders
05. No legal basis and data protection implications	Some requirements mandate reporting of non-legislated topics and many of the reporting obligations lack legal basis completely (Own workforce part of standard proposals). Part of the reporting obligations require information that is subject to data protection/GDPR rules (e.g., reporting on annual salaries or employees with disabilities in the ESRS S1).	Few
06. Broad scope of interpretation	Disclosure Requirement 1 has a very broad scope of interpretation as it presupposes a common understanding of the metrics and role of a single company with regard to 'no net loss', 'net gain', and 'full recovery by 2050' and the format of the transition plan is unclear. It should also be made clear that the FPIC concept only applies to indigenous people and not local communities. More alignment with TNFD and concrete instructions on how to define the scope and area of reporting would be beneficial.	Few
07. Mandatory disclosure	The draft ESRS borrowed many of the optional reporting from the GRI standards and made them mandatory. The disclosure requirements should not be made mandatory as it makes non-financial reporting complex and expensive; it does not highlight priorities; it does not distinguish the different value of various elements for stakeholders on the basis of materiality; and it does not consider the burden that may arise for organisations (especially SMEs).	Few
08. Unrealistic timeline	The delegated act on the first set of the ESRS is expected to be adopted in June 2023, be applicable for the financial year 2024 with reporting in 2025. Such a short time period is not sufficient to implement the new disclosure requirements and to gather the required data and information which will also require adapting existing and setting up new IT system. Where data is unavailable/incomplete, the application of the ESRS becomes unrealistic. This can lead to inaccurate data in the management report.	Few
09. Materiality assessment process	There is a need for considerable simplification of materiality and its application in the ESRS as currently it is too complex even for undertakings experienced in sustainability reporting. Materiality assessment should be performed at the topic or sub-topic level, rather than at the level of individual impacts. The concepts underlying impact reporting in the EDs are too vague and challenging to reconcile	Few

Name	Description	Number of stakeholders
	with IFRS and U.S. GAAP. It is not clear how double materiality relates to basic financial statements.	
10. Financial estimations	The suggested financial estimations would require many assumptions that would likely differ between companies and would thus not provide comparable and useful data. Making such estimations would also require a lot of resources in the companies.	Few
11. Lack of definitions	Essential definitions of terms are missing. For instance, under the heading 'Resources use and circular economy' (ESRS E5), definitions of 'sustainable' and 'regenerative' material source, and 'circular business models' are not provided nor clearly explained,	Few
12. Lack of operability and internal control	The proposed mandates do not adequately consider operability and internal control. This does not allow for the development of robust systems of data collection, analysis, summarisation, and oversight, even for the most experienced entities. This undermines confidence in the legal and regulatory system.	Few
13. Reporting commercially sensitive data	The ESRS require entities to report commercially sensitive information in certain cases which may put them at a competitive disadvantage in the market.	Few
14. Sector agnosticism	Disclosure Requirement 4 seems to be based on PPS 6 of the World Bank which was developed for construction impact-based industries such as oil, gas, and mining with the assumption of activities having a location choice. Biodiversity and ecosystem considerations should be integrated directly in the asset management planning and operations and therefore Disclosure Requirement 9 should be removed and Requirement 41, Section 4, is more appropriate as an operational disclosure requirement instead of offsets.	Few
15. Shortcomings in requiring relevant information	The draft ESRS fall short of requiring relevant information to understand organisations' impacts on the economy, the environment and people, e.g., information on total water withdrawal, discharge, and consumption. Additional information is necessary to understand the impact the water has in sensitive	Few

Name	Description	Number of stakeholders
	locations, and on the availability of freshwater for use by ecosystems and local communities.	
II. Suggestions for improvement		
01. Alignment with international and EU standards and EU legislation	International alignment, including of concepts, disclosure requirements objectives, structure and definitions with the ISSB, TCFD and GRI should be of paramount priority. The consistency and coherence with the European legal framework, and OECD MNE Guidelines, UN Guiding Principles on Business and Human Rights, GRI, Sustainability Accounting Standards Board, UN Global Compact, and ILO tripartite is also crucial.	Majority
02. Assessment of materiality and removal of the concept of rebuttable presumption	The use of the concept 'rebuttable presumption' is strongly as it undermines materiality judgements; is not stipulated in the CSRD; results in unnecessary costs in documenting and justifying what has been rebutted; raises debates with auditors and regulators on what was rebutted and why; and causes information overload. Instead, ESRS should provide more application guidance and examples on how to execute materiality judgements.	Majority
03. Definition of key concepts and simple structure	Whenever possible and desirable, alignment of definitions is to be considered for all major concepts, to achieve maximum consistency with other popular frameworks (GRI, ISSB, among others) and to reduce potential inconsistencies in the reports. Sustainability disclosures must be simple, clear, uncluttered, and decision useful to achieve their intended purpose of allowing stakeholders to readily understand and compare relevant, high-quality information between companies and across borders.	Some
04. Reporting boundaries and information from value chains	Boundaries of the value chain should be defined to set the scope for preparers. A broad definition of the term ‘value chain’ will create difficulties in reporting data outside the control of an undertaking (problems of availability and verifiability, data access, quality and control of the data in multi-tier value chains). Some stakeholders suggest leaving it for undertakings themselves to determine how best to get information from their value chain, whether by direct request, approximations, etc.	Some

Name	Description	Number of stakeholders
05. Prioritisation and phasing-in	Critical disclosure requirements for each ESRS that capture the transformations or progress towards more sustainable business models should be prioritised. Over time, add to those requirements the necessary disclosures that stem from and are needed to comply with EU legislation; sector-specific disclosure requirements; require the disclosure of own company data points, and gradually expand to value chain disclosures as per the CSRD. Climate change is the most urgent topic which should be prioritised.	Some
06. Information quality and data availability	Contradictory sustainability reporting should be avoided, and the emphasis should be on quality and not quantity of information. EFRAG should carry out a thorough cost-benefit analysis, especially weighing the very granular disclosure requirements against data availability, data quality, costs of data collection and aggregation/consolidation. It would also be helpful to add 'timelines' to the characteristics of information quality and have activity-focused metrics.	Some
07. Content of the sustainability statements	Additional disclosures should be clearly identified with an appropriate reference to the relevant documents. Entity's revenue should differentiate between essential and non-essential products and services. Methane emissions are reported separately and not as aggregated CO_2e; pension schemes should be part of non-financial reporting; and it should be recognised that different types of living organisms can have both positive and negative effects on ecosystems, on humans, and on their economic activities.	Some
08. Sector-specific focus	The proportion of sector-agnostic rules should be shifted in favour of sector-specific requirements. This would provide the stakeholders with considerably better insight and companies would be able to focus more strongly on material information. This can be done, among other things, through a sector specific KPI catalogue, which can be used to qualify and quantify corporate sustainability performance.	Few
09. Need for uniformity and comparability of corporate sustainability disclosures	A common reporting framework, which is mindful of avoiding duplications and recurring disclosures, is key to increasing coherence, consistency, and comparability of sustainability reports. Moreover, to attain only relevant information for users/ investors as well as to maintain legitimacy among the business community, a	Few

Name	Description	Number of stakeholders
	proportionate and hands on reporting framework is crucial to achieve the end goal of a responsible approach to business.	
10. Removing inconsistencies and 'obligatory' guidance	The Application Guidance in the ESRS should not include additional disclosure requirements and the focus should be on providing "guidance" on how to implement KPIs. Moreover, the concept of a 'disclosure principle' is confusing and unnecessary and it should be made clear that reporting on policies, targets, and actions is required for all entity-specific material matters.	Few
11. Supporting implementation	Governance structures, due process and resources should be put in place to support the implementation and long-term development of ESRS, bearing in mind the significant demands likely to be placed on the system not only during the initial phase of application but also beyond.	Few
12. Considering the use of technology	When drafting and exposing standards, it is important to consider not only how professional humans will interpret the language but also how it will be translated into machine language (especially in relation to mandatory standards). Moreover, automated data acquisition should improve reporting and it should be possible to use the increasingly available AI solutions for determining minimum reporting values. Technology can help standardize reporting, because the tools are less subject to human error,	Few
13. Distinguishing between mandatory and voluntary disclosure requirements	Disclosure requirements should be distinguished based on their mandatory or optional nature. The obligation of complete reporting without exception can lead, among other things, to significant costs, which can affect the competitiveness of the organization towards organizations in other markets where there are no comparable obligations. Optional reporting inspired by the GRI Standards should not and the ERSR application guidance should be non-mandatory to reduce the level of prescription.	Few
14. Consolidation of reporting requirements	It is necessary to consolidate the differing underlying concepts of the ESRS with the international standards that are being developed by the ISSB. All generic requirements (General, Strategy, Governance and Materiality Assessment and on Policies, targets, action plans and resources) should be consolidated in the cross-	Few

Name	Description	Number of stakeholders
	cutting standards. The reporting requirements should be further streamlined especially from a cost-benefit perspective.	
15. Omission of data in lieu of financial estimations	Opinions concerning the use of financial estimations differ amongst stakeholders. Some claim that effort can be reduced by pragmatically using estimation procedures/standard values below certain thresholds instead of foregoing information. Other say that such estimations would not provide the markets with comparable and useful information and recommend the use of qualitative description instead and omission of data in legitimate cases. I's not good practice to encourage organizations to approximate data.	Few
16. Balanced reporting in management reports	Disclosure requirements in the management report should be proportionate and a similar way of disclosing detailed information should be applied as in financial reporting. Reporting entities should be given the flexibility to choose whether to include all their sustainability-related financial disclosure within the annual report and accounts, or to publish it in a standalone document(s) provided the core information is still required to be included within the annual report.	Few
17. Integrated reports for sustainability disclosure	Support for integrated reporting that promotes the preparation of connected information, including consistency with data and assumptions used in the financial statements and overall cohesiveness between sustainability reporting and other public reports.	Few
18. Sustainability reporting standards for SMEs	For some stakeholders, the reporting obligations should not depend on the size of the company as even small companies can have a significant impact. For others, it's important to have sustainability reporting standards for SMEs but their issuance in 2023 is too late. EFRAG may need to develop two separate standards – a mandatory one for listed SME and a voluntary for other SMEs – or else a modular standard with a 'core' module applicable to all SMEs. It's essential to ensure proportionality in reporting.	Few
19. Clarification of disclosure principles	There are differences in stakeholder views when it comes to the provision of high-level guidance v a clear template to follow with respect to the approach to monitor and review the effectiveness of the policies and to update it (if required); a	Few

Name	Description	Number of stakeholders
	commitment to fulfil legal and other requirements; and a commitment for responsible business conduct, including due diligence.	
20. Broadening the scope	The scope of eligible entities must ensure that the level playing field is achieved for non-EU companies and prevent circumventing the rules by closing the EU subsidiary or branch and managing operations in the EU from a non-EU country (e.g. the UK). Particular attention should also be paid to the digital sector where operations in one territory can be managed from outside of the territory. Moreover, the ESG topics beyond climate included in the ESRS drafts are less mature or non-existent.	Few
21. Application of commercial exemption	Preparers should never be obliged to report on sensitive and confidential information that could be used by competitors to reverse engineer strategic decisions, get deep insights into the company's strategy or gain a direct competitive advantage. Suggestion to remove sensitive forward-looking information and/or competitive information from the ESRS.	Few
22. Providing guidance	The stakeholders recommend providing sufficient guidance on all requirements to ensure that preparers know what they must do to comply with the disclosure requirements. Requesting preparers to apply their own approach based on their own interpretation of the requirement will lead to a high level of uncertainty, significant room for interpretation and result in disclosures that will not be comparable. Where it's not possible to find a common methodology, those disclosure requirements should be deprioritised.	Few
23. Setting up a communication tool	Recommendation to set up a communication tool for committed companies that is close to the end customer and based on the European Single Access Point. The aim is to simultaneously create a European public sphere in the course of broader reporting that strengthens conscious consumption and awareness of sustainable consumption and production patterns. It should also be considered to what extent there can be a quality seal for companies based on a taxonomy-based methodology.	Few

Name	Description	Number of stakeholders
24. Timely adoption	The structure, concerns and content of reporting must in any case be defined as soon as possible to enable the desired effectiveness by January 2025 when the extended reporting obligation is expected to come into force.	Few
25. Uniform carbon accounting system	Recommendation to develop a uniform carbon accounting system. Companies along the value chain, by including the carbon emissions related to a product or a service on the invoices to their customers, would provide a higher degree of precision in the carbon footprint measured at all stages of the value chain, along with simplifying the data collection process for all actors.	Few
III. Support		
01. Alignment with international and EU instruments	Global alignment of the ESRS with international sustainability reporting standards (TCFD, GHG Protocol, IFRS) and other instruments (UN Guiding Principles, OECD Guidelines) and cooperation with the ISSB is widely supported. The consistency with other EU legislation (SFDR, Taxonomy Regulation) is welcome. Companies would benefit from clear minimum baseline requirements to avoid duplicating and contradicting reporting obligations.	Some
02. Use of double materiality	The stakeholders support a corporate sustainability regime based on the double materiality principle (i.e. impact by the company and impact on the company) with the assessment of impact materiality (the definition of which is aligned with the GRI definition) being the starting point. Impacts on people and the environment, actual or potential, often impact enterprise value and translate into financial effects in the short-, medium-, or long-term.	Some
03. Broader scope of corporate reporting	The stakeholders support the EU's aim to broaden the scope of companies reporting on material ESG-related aspects. They welcome the ambitious approach of the ESRS which compared to the ISSB standards which currently limit their coverage to climate issues and do not include such a wide scope of qualitative and quantitative reporting. There is a need for need for Scope 3 accounting wherever possible.	Few
04. Overall architecture of ESRS	The stakeholders support the overall proposed architecture of cross-cutting topical and sectoral standards which is in line with the GRI's approach, and the inclusion of	Few

Name	Description	Number of stakeholders
	additional topics not yet covered in the GRI Standards, such as working hours, work stoppages or beneficial ownership.	
05. Extension of ESG reporting to value chains	The stakeholders support the extension of the boundaries of ESG reporting from the legal entity to the value chains. The requirement to disclose Scope 1, 2 and 3 emissions including upstream, downstream, financial investments and value chain emissions allows companies, investors and stakeholders to understand the negative externalities of the business model in its entirety.	Few
06. Mandatory nature of reporting	There is a support for reporting on sustainability to become more concrete in terms of content and obligatory for a significantly larger group of companies. Mandatory sustainability reporting aimed at achieving the transformation goals is a minimum requirement to achieving social sustainability goals.	Few
07. Reporting on the impact on different stakeholder groups	Core strengths to the current proposed disclosures are the inclusion of community voices in decision making to understand existing health equity needs; double materiality; emphasis of workforce across value chains; initiatives including fair remuneration, addressing the gender pay gap and employing people with disabilities; health and safety; and impact on end-users.	Few
08. Description of characteristics of information quality	The ESRS make a good-faith and generally well-executed effort to ensure that the companies covered by the CSRD issue disclosures that meet certain degrees of relevance, faithful representation, comparability, verifiability, and understandability.	Few
09. Granularity of GHG emissions reporting	Support for the proposals as regards alignment with a 1.5°C pathway, mandatory scope of 1, 2 and 3 GHG emissions reporting, as well as mandatory reporting on climate-related targets and progress achievement.	Few
10. Use of approximations	Support for the possibility of undertakings making widespread use of approximations to avoid overburdening unlisted SMEs with requests for information that will prove costly for them to provide.	Few