

COMMENT

| Comment

**of the German Insurance Association (GDV)
ID-number 6437280268-55**

**on the first set of draft European Sustainability
Reporting Standards**

Executive summary We welcome the opportunity to comment on the first set of draft European Sustainability Reporting Standards (ESRS) which EFRAG submitted to the European Commission on 23 November 2022. We acknowledge the **significant improvements achieved** in comparison to the draft versions issued for consultation on 29 April 2022. Especially the revision of the materiality approach and the reduction of sector-agnostic disclosure requirements enhance the practicability and usefulness of sustainability reporting under the Corporate Sustainability Reporting Directive (CSRD). At the same time, the **remaining challenges** for implementation by the insurance industry shall be addressed with this assessment.



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Firstly, regarding **materiality**, it needs to be assessed if all disclosure requirements classified as mandatory and all datapoints included are **truly material for all undertakings**. Otherwise there is a high risk of information overload as sustainability reports would be inflated with information which is of limited use.

In any case, a **complete list of all mandatory datapoints and all datapoints that are subject to a materiality assessment** should be provided. This is a prerequisite for a meaningful preparation by the undertakings and further developments, e. g. in view of the European Single Access Point (ESAP).

With regard to **reporting along the value chain**, taking into consideration the specificities of the insurance industry, **it should at least be clarified that the disclosure requirements of the sector-agnostic ESRS do not require a general look-through for all investments, clients and policyholders for all disclosure requirements**. Clarification is necessary as long as there is no specification given by the sector-specific ESRS for insurance undertakings. This clarification should be provided by EFRAG with the second set of draft ESRS.

In view of the **sector-specific standards** for the insurance industry, it is **essential that they are developed in the third year**, i. e. the last set that is to be developed by EFRAG. To derive the impact of the financial industry on the real economy, the disclosure requirements and data points for the latter have to be defined first. Further, the insurance industry depends on the data provided by the real economy to fulfil its own reporting requirements. Hence, sector-specific standards for the financial industry shall be defined with the last set.

Another aspect where we see the need for additional guidance is **proportionality**. As the CSRD refers to large undertakings according to the EU Accounting Directive (Directive 2013/34/EU), even **insurance undertakings with limited business activities and a limited number of employees** are required to apply the ESRS in full. As these small insurance undertakings are considerably smaller than non-financial undertakings which are defined as large according to the EU Accounting Directive, reporting according to the ESRS represents a major burden. Hence, options to reduce this burden need to be considered.

Finally, we see the need for **further assessment once the IFRS Sustainability Disclosure Standards (SDS) have been finalised**. We strongly welcome that the ESRS have already been amended to improve alignment with the SDS. However, further work needs to be done to ensure that compliance with the ESRS automatically results in compliance with the SDS.

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Introduction

We welcome the opportunity to comment on the first set of draft European Sustainability Reporting Standards (ESRS) which EFRAG submitted to the European Commission on 23 November 2022. Earlier in the year, this first draft set of ESRS was publicly consulted from 29 April to 8 August 2022. GDV participated in this consultation. We welcome the adjustments EFRAG made in the months following the consultation to foster practicability and the sector-agnostic character of this first set of draft ESRS. In this regard, the revised materiality approach and the decreased disclosure requirements are highly welcome. Nonetheless, after assessing the first set of draft ESRS submitted to the European Commission, we would like to highlight the following aspects which should be reassessed in order to provide for more meaningful and usable disclosure requirements on sustainability.

As a prerequisite for meaningful preparation and implementation of the ESRS by undertakings as well as for other developments as ESAP, a complete list of all mandatory data points and all data points that are subject to a materiality assessment needs to be provided.

Key points on the first set of draft ESRS

Materiality assessment

It is highly welcomed that the rebuttable presumption approach, as foreseen in the consulted first draft set of ESRS, has been revised. The final first set of draft ESRS requires an undertaking-specific assessment of materiality of the disclosure requirements. However, there are some disclosure requirements which must always be disclosed:

- ESRS 2 “General disclosures” and ESRS E1 “Climate change”,
- datapoints listed in Appendix C of ESRS 2 that are required by EU law,
- only for undertakings with 250 or more employees: Disclosure requirements ESRS S1-1 to S1-9 in draft ESRS S1 “Own workforce”.

We appreciate that the rebuttable presumption has been replaced by the procedure outlined above. At the same time **the granularity of mandatory datapoints which are not listed in Appendix C of ESRS 2 needs to be carefully considered.** As currently drafted, all datapoints within each of the mandatory disclosure requirements shall be mandatory as well. This can result in sustainability reports being inflated with information which is of limited use. For example, ESRS S1 Disclosure Requirement S1-8 requires to report about collective bargaining coverage and social dialogue with a report by country in the EEA (ESRS S1 para. 61). However, if the collective bargaining coverage is similar in all countries, this country split does not provide additional insights. It would be useful to disclose separately any significant differences. For example, if most countries have comparable collective bargaining coverage but one country deviates significantly. This significant difference should trigger the requirement to report separately on this country. Therefore, clarification regarding materiality of datapoints in ESRS 2, ESRS E1 and ESRS S1-1 to S1-9 (for undertakings with 250 or more employees) is necessary. **We propose that this disclosure requirements remain mandatory and the datapoints within them are subject to the undertaking-specific materiality assessment. Besides this, it**

should be reassessed if the mandatory disclosure requirements and data-points are truly material for all undertakings.

Another example for very granular mandatory datapoints is ESRS S1 Disclosure Requirement S1-6 which requires to report by headcount with breakdowns by regions. As this is a mandatory disclosure requirement, this split by region would need to be done in any case. According to ESRS S1 AR 54, a region can refer to a city as well as to a world region. However, a split, especially at city-level, does not provide valuable information in any case. Hence, it should be left to the discretion of the undertakings to decide whether a split by regions is material as it provides added value. In any case, it should be clarified what is regarded a region. In our view, breakdowns by city should not be required. **Hence, we suggest removing the reference to split by cities in ESRS S1 AR54.**

Concluding from the above, we propose to firstly clarify that data points within mandatory disclosure requirements are subject to an undertaking-specific materiality assessment and are not automatically mandatory in their entirety. Secondly, it should be reassessed if the mandatory disclosure requirements and data points are truly material for all undertakings. Lastly, the undertaking-specific assessment shall not be pre-empted by Application Requirements.

Reporting along the value chain

The first set of draft ESRS still contains a broad sector-agnostic definition of the value chain which includes direct and indirect business relationships in upstream and downstream value chains. This broad definition shall be specified in the sector-specific ESRS, which are to be developed over the next years. The sector-specific ESRS for the insurance industry should be developed in the last set which is planned to be published as part of delegated acts by the EU Commission by June 2026 (for more information, please refer to page 8).

Until the sector-specific standards with the specified definition of the value chain for insurance undertakings are applicable, undertakings need to rely on the sector-agnostic definition. **Hence, for this transitional period, a clarification is necessary to explain how insurance undertakings shall report along the value chain.** This clarification is necessary as for the insurance industry direct impact is very limited, and value chains can be very extensive, i.e. there are significant differences to value chains in the real economy. **In any case, it needs to be avoided that a general look-through for all investments, clients and policyholders is required for all disclosure requirements. To ensure that the developed clarification is useful in practice, we propose to involve industry and other relevant stakeholders early on, i.e. before public consultation. For this, a sectorial expert group could be established.**

Proportionality

The final text of the CSRD refers to the definition of large undertakings by Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings. According to Article 3 of this directive, an undertaking is considered as large if it exceeds at least two of the three criteria mentioned below:

- balance sheet total of 20 Mio. EUR,
- net turnover of 40 Mio. EUR,
- average number of employees during the financial year: 250.

Based on this definition, even smaller insurance undertakings are considered as large and thereby obliged to full disclosure under the CSRD. This is due to the specificities of insurance activities which create steadily high revenues and reserves and result in large balance sheet totals, even if the undertaking is very small compared to other insurance undertakings. Therefore, EFRAG did not develop any proportional measures for sustainability reporting according to the ESRS by small insurance companies. A first step to allow for proportionate reporting by small insurers is to allow undertakings which are defined as low-risk profile undertakings (LRPUs) according to the proposals made in the review of the Solvency II Directive, to report according to simplified ESRS for small and medium-sized undertakings. However, the Solvency II Review still needs to be completed, and there would still be small insurance undertakings which are not considered LRPUs. Following from this, **measures by EFRAG and the European Commission are necessary to support small insurance undertakings. Especially simplifications would be useful to relieve the burden of sustainability reporting for smaller undertakings. Another option could be the development of standardised templates which could be used by undertakings without being mandatory. Such standardised templates would also provide valuable guidance for smaller companies.**

Alignment with the IFRS Sustainability Disclosure Standards

The ESRS have been adapted to better align with the IFRS SDS developed by the International Sustainability Standards Board (ISSB). For example, the requirements regarding time horizons have been amended to provide for more flexibility and the structure of ESRS 2 has been amended to better reflect the four pillars of the TCFD and ISSB. We strongly support these amendments and acknowledge the effort both by EFRAG and the ISSB to reach closer alignment between the ESRS and IFRS SDS. At the same time, the IFRS SDS are currently being finalised and therefore are not available yet. Hence, it has yet to be finally assessed whether the ESRS and the IFRS SDS are sufficiently aligned once the latter are published.

To ensure that compliance with the ESRS automatically leads to compliance with the IFRS SDS, EFRAG should continue to cooperate closely with the ISSB on the basis of its final advice and influence the final IFRS SDS accordingly.

Besides this, as the work on the IFRS SDS is still ongoing, **the European Commission should allow for changes to be made to the ESRS to take account of decisions made by the ISSB on the IFRS SDS. Should those adjustments to the ESRS be necessary to achieve maximum interoperability with the IFRS SDS, it is essential that they are made in time so they can be incorporated into the delegated acts to be published by the European Commission by 30 June 2023. For any remaining discrepancies, EFRAG should propose necessary refinements to ESRS Set 1 when delivering Set 2.**

Additional comments

ESRS 1 – Entity-specific disclosures

According to ESRS 1 chapter 1.4, an undertaking shall provide additional entity-specific disclosures when it concludes that a material impact, risk or opportunity is not or not sufficiently granular covered by an ESRS. We support the approach chosen by EFRAG to allow for entity-specific additional disclosures as this helps undertakings to provide stakeholders equally with transparent and comparable information as well as information specifically relevant for the reporting undertaking. At the same time, we see a risk that it becomes factually obligatory to establish additional entity-specific disclosures going beyond the already extensive ESRS as this could be seen as “good practice”. This would be a significant burden, especially for smaller undertakings which are fully engaged with implementing the sector-agnostic and later sector-specific ESRS.

Therefore, we propose a twofold strategy regarding the establishment of additional entity-specific disclosures. Firstly, it should be clarified that an impact, risk or opportunity which is not or not sufficiently granular covered by the ESRS is material due to its specific facts and circumstances if it is relevant for steering the undertaking. Secondly, there should be a phase-in for additional entity-specific disclosures to allow undertakings to implement the ESRS before having to develop additional entity-specific disclosures.

ESRS 1 – Incorporation by reference

We welcome the extension of the documents which can be used to include information by reference. This allows for meaningful sustainability disclosures without unnecessary duplications. At the same time, the requirements that need to be fulfilled for incorporation by reference as stated in ESRS 1 para. 121 will likely prevent incorporation by reference in practice. The requirements – to publish the referred document at the same time and to conduct at least the same level of assurance as the sustainability statement while also following the same technical digitalisation requirements and providing the information in a separate element of information which is clearly identified as addressing the relevant Disclosure Requirement – will significantly reduce the number of reports an undertaking will be able to use for incorporation by reference. **Therefore, we propose to reassess the requirements for incorporation by reference to create a truly workable system for incorporation by reference.**

ESRS E1 – Reporting on Insurance Associated Emissions

Clarification is necessary regarding reporting on Insurance Associated Emissions. According to ESRS E1, undertakings are required to report on their scope 1-3 GHG emissions. Thereby, the “GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standard (GHG Standard)” shall be taken into account which currently determines scope 3 emissions with 15 categories. Equally, the „Accounting and Reporting Standards“ developed by the „Partnership for Carbon Accounting Financial (PCAF)“ shall be considered. Insurance activities currently are not covered by the 15 categories of scope 3 emissions identified by the GHG Standard. However, in November 2022, PCAF published a first version of a standard for reporting on “Insurance Associated Emissions (IAE)“. This includes a proposal to report IAE as optional information in category 15 “Investments”. Hence, it needs to be clarified if and how changes to the standards referred to shall be considered. In our view, **IAE should only be addressed via the sector-specific ESRS for the insurance industry.** In any case, the issue outlined above illustrates that **EFRAG needs to actively monitor changes in frameworks it refers to or asks to comply with and assess whether or not changes to those frameworks can be adopted without further actions (e. g. consultation / stakeholder involvement) or not.** Otherwise, there is a risk that reporting requirements are indirectly and unintentionally established by future adjustments to the GHG Standard.

In any case, enough lead time for implementation must be given when new reporting requirements are established. This is all the more important when reporting requirements involve reporting along the value chain.

ESRS E1 – Disclosure on Scope 1 and Scope 2 emissions

According to ESRS E1 para. 47 (b), for Scope 1 and Scope 2 emissions undertakings have to separately disclose emissions from *“associates, joint ventures, unconsolidated subsidiaries and jointly controlled operations and assets that are not subject to full consolidation in the group financial statements but for which the undertaking has operational control (i.e., the ability to control the operational activities and relationships).”* This requirement is seen critical in numerous ways. Firstly from a methodological view it is questionable to differentiate between financial and operational control. Besides this, it would also lead to a situation where joint ventures and associated undertakings have to be reported in Scope 1 and Scope 2 instead of Scope 3. And thirdly, from a procedural view, it is critical that this separate split was not part of the consultation. It has been raised as a question by the ISSB in its consultation on IFRS SDS S1 and triggered a significant number of responses. This illustrates the need to further discussions, involving relevant stakeholders. **Hence, to ensure an appropriate due process, this requirement should not be included at this stage.**

Development of sector-specific ESRS

EFRAG plans to develop sector-specific ESRS in three different sets in the upcoming years, starting in 2023 and ending in 2025 with final approval of the last set by the European Commission in 2026. It has yet to be decided if the insurance industry will be covered in the second or third set of sector-specific ESRS.

The insurance industry depends on the data provided by other industries to comply with its own reporting requirements. Besides this, to assess the impact of the financial industry on the real economy, the disclosure requirements and data points for the non-financial industries need to be defined first.

Following from the above, we believe that EFRAG should develop the sector-specific ESRS consecutively and that EFRAG should define the sector-specific standards for the insurance industry in the last set to allow consideration of all other sector-specific standards on which the disclosure of the insurance industry has to rely.

Berlin, 03 January 2023