Comment

of the German Insurance Association (GDV)
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on the Draft Delegated Act on European Sustainability Reporting Standards

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Introduction

The German Insurance Association highly welcomes the first set of European Sustainability Reporting Standards ("ESRS"). We appreciate the extensive effort by the European Commission to ensure practicability and usefulness of the sustainability reporting according to the ESRS. Especially strengthening the materiality approach, the decision to make some disclosures voluntary and additional phase-in schemes provide much-needed flexibility for undertakings to provide meaningful and useful information.

Nonetheless, we see room for further improvements to achieve the aim of the European Commission to simplify and to reduce the reporting burden by 25 %. To this end, we would like to point out key issues as well as more specific comments to the ESRS.

Key issues

While we welcome the first set of ESRS, some important issues remain and should be addresses by the EC. They are therefore addressed as Key Issues. Moreover, we would like to raise awareness that the complex structure of the ESRS with Disclosure Requirements and Application Requirements as well as numerous references across standards makes it very burdensome for preparers to work with the ESRS.

Consistency between SFDR and CSRD

The extension of materiality assessment to data points needed for SFDR Principal Adverse Impact (PAI) reporting creates an inconsistency which the Commission must address because there is currently no such materiality assessment allowed under SFDR. If no data is reported by an investee company, Financial Market Participants (FMPs) according to the SFDR are obliged to undertake "best efforts" and carry out additional research or make reasonable assumptions. This issue can be solved in the following ways, in order of preference:

1. Require that SFDR PAI datapoints deemed immaterial by investee companies are reported as "qualified 0". This would allow Financial Market Participants (FMPs) to easily collect and consolidate investees' data, and the responsibility for reporting a "qualified 0" would be borne by investee companies. It would be very helpful, to require investee companies to report their SFDR PAI datapoints in a separate table (datapoints that are deemed immaterial to be reported 0).

2. Clarify that, if SFDR PAI information is deemed immaterial by investee companies and is therefore not included in their sustainability reports, FMPs can treat this lack of data as a "qualified 0" and are not required to seek data in another manner. In this case, it needs to be clearly identifiable for users of sustainability reports which PAI-relevant information has been omitted as the materiality assessment revealed it is not material. Otherwise, FMPs will not be able to differentiate between data which has been identified as not material and therefore can be treated as zero and data which was not reported and FMPs are required to seek data to fulfill their "best effort-obligation" under the SFDR.

More flexibility in use of external standards

We remain concerned about the wording "shall consider" used for references to voluntary external sources, e.g. in ESRS E1 Appendix A para. AR 47. According to ESRS 1 para. 18 "…ESRS use the term 'shall consider' when referring to issues, resources, or methodologies that the undertaking is expected to take into account or to use in the preparation of a given disclosure if applicable." Following statements from EFRAG and the EU Commission to date, "shall consider" is not intended to create an obligation to apply external standards. To provide legal certainty, a corresponding clarification should be anchored in the ESRS.

The need for clarification exists in particular for standards that refer to metrics for the value chain without having a sectoral definition thereof, for example, the PCAF standard Part C on insurance-associated emissions which is referred to in ESRS E1 Appendix A para. AR 47 lit. (b). The PCAF approach prejudges the definition of the value chain of insurance undertakings which is still in process. Given that the upcoming insurance-specific ESRS has yet to be published, we are concerned about this pre-emptive approach to the insurance-specific reporting requirements. The standard was designed as voluntary and developed by a limited group of insurance companies for very specific insurance products. This is not aligned with the holistic approach of the ESRS to identify and assess impacts, risks and opportunities in the value chain. Additionally, the standard refers to its own database (PCAF-Standard Part C p. 39 and 49) that supposedly will provide needed input parameters for preparers which, however, do not exist yet. So, it is not clear how undertakings can use the standard in their preparation.

Due to these concerns we want to encourage a certain level of flexibility regarding the approaches used to comply with the reporting requirements that allow for alternative and proportionate methods. Therefore, the preferred solution is to delete references to external sources such as the voluntary PCAF standard. The second-best solution is to use the term "may consider" when referencing to external sources as mentioned in ESRS E1 Appendix A para. AR 47 instead of "shall consider". In general, the EC should clarify in the description of "shall consider" requirements under ESRS 1 para. 18 that it does not constitute a formal requirement.

Adequate and manageable reporting along the value chain

The expectations on disclosure requirements along the value chain are at least partly unrealistic and potentially not aligned with the future Directive on Corporate Sustainability Due Diligence. Though the establishment of a management system addressing due diligence requirements for human rights and environmental risks makes sense, it is hardly possible to provide detailed reports on potentially thousands of suppliers and customers. It would be more in line with the principles of proportionality and materiality to describe the general approach how undertakings tackle these issues instead of overloading the financial statements with a massive amount of granular information and data.

The urgent need for adequate and manageable reporting along the value chain is also evident from the following chapters.

Application guidance

The ESRS remain very ambitious by covering all aspects of sustainability (Environment, Social and Governance) extensively. Companies face a significant implementation challenge applying the standards for the first time and it is therefore vital that application guidance is provided in time to assist companies in their implementation efforts and provide clarity on how they are expected to apply the new standards. We ask the EC to commit to a clear timeline in providing (or mandating EFRAG to provide) this much needed guidance.

Especially guidance on reporting along the value chain for financial institutions remains urgent and should be prioritized by EFRAG still during 2023. This is the more crucial, as the ESRS are in many instances inconsistent between the scope of analysis required in relation to ESRS 2 IRO-1 and other Disclosure Requirements of topical standards (see our table below for examples). Moreover, it needs to be considered that even if the reporting obligation does not take effect until a certain year, it must already be clear in the year before which data must be generated and "collected" in what way. Before reporting is required, the guidance on the ESRS and, ideally, the sector-specific standards should at least be available in good time (presumably about two years before the reporting obligation takes effect).

The sector-specific guidance should also focus on clarification instead of adding requirements. For example, it should be clarified which DRs also relate to investments. In this regard, concerning investments the information to be required should not go beyond the requirements of Regulation (EU) 2019/2088 and Regulation (EU) 2020/852.

Quantitative metrics

Quantitative metrics should be limited to companies' own operations in a first step, at least until there is further guidance on how financial institutions shall report on their value chain. Not only is a certain implementation period required to implement or extend reporting to value chain counterparts, but also data availability issues as well as the lack of mature aggregation methodologies would not allow for meaningful and comparable reporting upon first implementation. While we support that most quantitative metrics are currently limited to own operations, there remain datapoints to which this applies, explicitly (e.g. ESRS E4 AR 25, which additionally contradicts the main body) or implicitly (e.g. ESRS E4 para. 17c, due to the lack of a reference to own operations). To make sure that value chain-related reporting is feasible (i.e. clarity on the methodology, similar to Scope 3 emissions for investments) and meaningful for users, this should be tackled by sector-specific ESRS. This would avoid legal uncertainty and be in line with the overall objective to reduce the reporting burden and facilitate first implementation. Starting with reporting on own operations allows companies to build up resources and up-skill on the broad range of ESG topics, which can subsequently be leveraged for reporting quantitative metrics on the value chain.

Proportionality

While we appreciate the fact that the EC has reduced the number of mandatory datapoints and introduced additional phase in to bring some level of proportionality, we are still concerned about the application of the extensive ESRS to smaller insurance entities. This is because the SME definition used in the CSRD does not work for insurers. 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, proportionality should be strengthened. The CSRD contains a provision according to which small and medium-sized undertakings (as defined by the Accounting Directive) shall report using specific reporting standards, the simplified standards. To alleviate the reporting burden for small and medium sized insurance undertakings with less than 250 employees, they should be allowed to use the simplified reporting standards as well.

Interoperability

Regarding interoperability with the standards developed by the International Sustainability Standards Board (ISSB), the definition of financial materiality under the ESRS should be further aligned with the ISSB definition. In particular, the current requirement under the financial materiality provisions of the ESRS to assess the financial effects needed by investors, employees, academics and others should be removed.

Besides this, joint guidance by EFRAG and the ISSB is necessary. It also needs to be clarified how interoperability will be ensured in the future, namely, where ISSB standards are developed for topics already covered by EFRAG. To ensure interoperability, ESRS compliance has to translate into ISSB compliance. This would prevent double effort from the perspective of an EU preparer. Further, when financial institutions use ESRS and ISSB reports from their value chain counterparts worldwide, data points covered by both need to be 1:1 equally understood in each and every case (e.g. Scope 3 ESRS equals Scope 3 ISSB).

Specific comments on Annex I (ESRS)

Standard	Paragraph or AR number or appendix	Comment
ESRS 1	Para. 18	We welcome that the EC has changed some of the reporting requirements from "shall consider disclosing" to "may consider" in the ESRS, clarifying that such disclosures are voluntary. However, there are areas for which the term "shall consider" is still used (e.g. as regards the use of the PCAF framework for financed and insured scope 3 GHG emissions in ESRS E1-6 AR47(b)). The EC should clarify in the description of "shall consider" requirements under ESRS 1 para. 18 that it does not constitute a formal requirement.
ESRS 1	Section 3.5	The text should clarify that the current requirement under the financial materiality provisions of the ESRS to assess the financial effects needed by investors, employees, academics and others isn't obligatory, to further align with the ISSB definition of financial materiality.
ESRS 1	Para. 129-130 (Chapter 10.1)	The chapter refers to ESRS 1 chapter 1.4 which does not exist anymore. The information which used to be in chapter 1.4 seems to be included in ESRS 1 AR 1 - AR 5.
ESRS 1	Appendix C	- Regarding the phase in for the DR on GHG emissions: Disclosure of GHG Emissions can be challenging. Therefore, it would be preferrable if this phase in was not limited to undertakings with up to 750 employees and was extended to two years.

		- Regarding the phase in for the DR on Characteristics of non-employee workers in the undertaking's own workforce it would be preferable if this was applicable for all undertakings. Besides this, the phase in should be extended to three years as time is needed to gather the data and establish the respective reporting processes.
ESRS 1	Appendix E	The flowchart for determining disclosures under the ESRS is confusing with regard to the following aspects: - In the second step it should be determined if the topic is covered by a topical standard. If this is not the case ("No") the illustration leads to the following instruction: "The undertaking can omit all disclosure requirements of the topical standard and may disclose a brief explanation of why the topic is not material (ESRS1 31)". To our understanding of ESRS 1 para. 11, if a topic is assessed as material and is not covered by a topical standard or not covered with sufficient granularity, the undertaking shall provide entity-specific disclosures. In our view ESRS 1 para. 31, as referenced in the flowchart, relates to the situation of a topic being covered by an ESRS but being not material. - In the fourth step regarding metrics the undertaking shall assess whether the Disclosure Requirement is material. However, the flowchart does not contain the option to answer "No". Instead, it only refers to the answer "Yes" which leads to the question if the individual data point is material. This gives the impression that Disclosure Requirements relating to metrics are always material which contradicts the wording of le ESRS 1 para. 36. Hence, we propose to include the answer "No" following the question "Is the Disclosure Requirement (DR) material?" in the flowchart, leading to the instruction "The undertaking does not have to disclose the DRs or related Data Points (DP)".
ESRS 2	Para. 17	Detailed requirements for DRs in ESRS E4, ESRS S1, ESRS S2, ESRS S3 and ESRS S4 omitted due to phase in are made. For example, a materiality assessment for the respective DRs which are omitted due to the phase in shall be conducted. If a matter is assessed to be material, those matters shall be disclosed and numerous descriptions relating to those matters. Moreover, relevant metrics relevant to the matters shall be disclosed. Those requirements are seen very critical as the respective phase in periods might be necessary to build reporting processes and collect relevant data. Those would be necessary to conduct the required materiality assessment. Therefore, the requirements of para. 17 would reduce or even eliminate the benefits of the phase in scheme. We propose to delete para. 17.

ESRS 2	SBM 3	DR SBM 3 seems to require the disclosure of the financial effects of all IROs in total. In ESRS 1 Appendix C, the quantification of the financial effects (e.g. E1-9, E2-6, E3-5, E4-6, E5-6) during the first 3 years is not required (given the respective phase-ins). Since the financial effects from SBM3 would result from the individual phase-in elements, this would imply that the phase-ins could actually not be exploited.
ESRS E1	AR47(b) and AR13(c)	The EC should clarify that the use of external references is voluntary as regards (cf. our key issue on more flexibility in use of external standards): - The PCAF standard in ESRS E1-6 AR47(b): the use of PCAF should remain voluntary and therefore EC should delete the reference to PCAF. The second-best solution would be to replace the term "shall consider" by "may consider" in AR47(b). - The International Energy Agency in ESRS E1-AR13(c): while EFRAG advice was clear on the voluntary nature of the use of IEA's scenarios, changes introduced by the EC to AR13(c) bring confusion as to whether it remains the case. In general, the EC should clarify in the description of "shall consider" requirements under ESRS 1 para. 18 that it does not constitute a formal requirement.
ESRS E2	Para. 11 and 26ff.	There is an inconsistency between the scope of analysis required in relation to ESRS 2 IRO-1 (para. 11) and other Disclosure Requirements of ESRS E2 (para. 26 ff.).
ESRS E3	Para. 8 and 26ff	There is an inconsistency between the scope of analysis required in relation to ESRS 2 IRO-1 (para. 8) and other Disclosure Requirements of ESRS E3 (para. 26 ff.).
ESRS E4	Para. 17(c)	Lack of clear guidance on the scope for the materiality assessment for negative impacts with regards to land degradation, desertification or soil sealing might lead to different interpretation. Therefore, the comparability of results across

		undertakings would not be achieved. Moreover, application scope of disclosure requirements in same chapter E4 para. 17 a), b) and d) are clearly stating scope of disclosure for own operations. This should be also the case for para. 17(c).
ESRS E4	Para. 35	In contrast to what was proposed by EFRAG in the ESRS draft standards, no specification on which sectors must comply with this disclosure requirement leads to the fact that financial institutions should comply with this requirement. However, land-use change analysis based on life cycle assessment is not applicable to financial institutions as LCA is used to quantify the impacts of production chain for physical products, where land-use is a material topic in the supply chain. Financial institutions supply chain mainly include professional services. In this regard it needs to be emphasized that it is essential that the sector agnostic ESRS only contain requirements that are indeed relevant across sectors or that, at least, the reporting of a "qualified 0" is possible (see above our key issue regarding consistency between SFDR and CSRD).
ESRS E4	AR25 (b) ii.	This AR contradicts ESRS E4 para. 36 which states that "*for datapoints specified in paragraphs 37 to 40, the undertaking shall consider its own operations*." AR 25 must be corrected to reflect E4 para. 36 ie. scoping own operations only.
ESRS E5	Para. 20(e)	ESRS E5 para. 20(e) requires actions that involves the undertaking upstream and downstream value chain while the AR14 states that "*The actions may cover the undertaking's own operations* ***and/or*** *the value chain*". There is contradictory information introduced by "and/or" of the AR.
ESRS S1	Para. 10	The para. requires consistency with reporting on the undertaking's own workforce under ESRS S2. But ESRS S2 concerns workforce in the value chain.
ESRS S2	General	It is quite ambitious to cover the entire value chain. Insures are likely to face serious challenges to capture all workers of their customers and investees. It should be clarified that the principle of materiality also applies to the scope and depth of the value chain. Moreover, it should be borne in mind that granular information is usually only available with regard to the own workforce.
ESRS S3	General	This standard offers a lot of room for interpretation. Currently, it is still very unclear how far-reaching reporting on the affected communities has to be. The interaction of ESRS S3 with various other standards also complicates the requirements. It

		is therefore of great importance that practicability and proportionality are kept in mind in the context of reporting on affected communities.
ESRS S4	General	It is quite ambitious to cover all social effects on consumers and/or end users. There is a vast amount of social effects and by nature they are difficult to quantify. Insures are likely to face serious challenges identifying and covering all potential impacts on consumers and/or end-users. It should be clarified that the principle of materiality also applies to the scope and depth of the value chain. Moreover, it should be borne in mind that granular information is very often not available with regard to social effects.
ESRS G1	General	ESRS G1 is based on a very broad concept of sustainability in the context of Governance. It is indeed the case that the CSRD takes up the aspects of corruption and bribery. Moreover, it should be critically reassessed if it is desirable to widen the scope of sustainability matters regarding Governance indirectly through the DRs. In particular, it is questionable whether Governance should be understood in a very general way, without specific reference to Environmental and Social aspects.
ESRS G1	G1-5	In any case regarding DR G1-5 “Political influence and lobbying activities” it should be sufficient for companies to refer to their EU transparency registers ID and to corresponding registers of member states where they are required to register and disclose. The requirements of ESRS G1-5 should not go beyond these requirements.

Berlin, 07.07.2023