

Mr Patrick de Cambourg
Chair
Sustainability Reporting Board
EFRAG
35 Square de Meeûs
1000 Brussels
Belgium

Ref: EFRAG's consultation on its Exposure Draft on the revised European Sustainability Reporting Standards (ESRS)

Dear Mr de Cambourg,

The European Securities and Markets Authority (ESMA) thanks you for the opportunity to contribute to the EFRAG public consultation on the Exposure Draft (ED) on the revised European Sustainability Reporting Standards (ESRS). ESMA's participation to EFRAG's due process on the revised ESRS does not pre-empt the conclusions of any future opinion which ESMA may be requested to deliver to the European Commission on the draft revised ESRS.

ESMA's mandate on corporate sustainability reporting includes contributing to the standard setting process for the ESRS and delivering an opinion to the EC on the draft ESRS prior to their adoption as delegated acts as required by Article 49 of the Accounting Directive.

ESMA has assessed the proposed requirements in the ED taking into account whether they are conducive to investor protection based on the criteria in ESMA's opinion framework on ESRS¹, duly adjusted to reflect proportionality considerations. Under the principle of proportionality, reporting requirements should be adapted to the nature, scale and complexity of the undertakings concerned by these requirements. The proportionality assessment may be impacted by the outcome of the ongoing Omnibus legislative process which may amend the scope of the sustainability reporting obligations. At this stage, ESMA's assessment of the quality and proportionality of the proposed amendments to the ESRS is based on the current scope of the sustainability reporting obligations.

In its capacity as official observer of both EFRAG's Sustainability Reporting Technical Expert Group (SR-TEG) and Board (SRB), ESMA has actively contributed to the discussions leading to the finalisation of the ED. While strongly supporting the objective of the simplification and

¹ [ESMA32-334-589](#) - Opinion of the European Securities and Markets Authority of 26 January 2023 on the technical advice by the European Financial Reporting Advisory Group on European Sustainability Reporting S

burden reduction exercise, we have also flagged the risks associated with performing an extensive overhaul of the ESRS under significant time pressure and based on limited experience with the new standards. In this context, EFRAG has adopted ad-hoc procedures which resulted in a large part of the standard-setting process being conducted mostly through closed sessions of the respective groups and sub-groups, with only a few public sessions. Although this approach may have been necessary to expedite the process, ESMA recommends that, in finalising the proposed amended ESRS, EFRAG considers the importance of holding its technical discussions in public sessions whenever feasible, as this provides transparency and accountability over this critical revision process.

ESMA acknowledges that the ED proposals envisage a number of improvements in readability, language and format of the standards, as well as in the volume of the requirements. ESMA generally welcomes these changes as they contribute to the important objective of simplification and burden reduction. We have also assessed the way in which EFRAG has proposed to address proportionality concerns with regards to the EU datapoints, notably in relation to SFDR² and we consider that the proposals have generally preserved the data availability, however the burden associated with those datapoints may, in some cases, be shifted from preparers to users of the information. As the sustainability information framework will further evolve, it will be important to preserve a fair balance between the burden imposed on preparers as well as on users of the disclosures.

ESMA has also identified a few areas where it recommends EFRAG to pay particular attention when finalising its advice to the European Commission.

Firstly, regarding the principle of 'Materiality of information', the ED differentiates between two notions of materiality, respectively for primary users of general purpose financial reporting and for other users of general purpose sustainability statements. This differentiation risks creating divergence in practice and application issues. ESMA therefore suggests revisiting this proposal. A possible alternative is included in the detailed response in the Annex to this letter.

Secondly, ESMA is concerned that, in several instances, the ED proposes to change the focus of the disclosures from the Impacts, Risks and Opportunities (IROs) to the sustainability topics related to those IROs. While ESMA welcomes the proposal for more flexibility in the way the information is presented, there should be no loss of material information regarding what the undertaking's material IROs are and how they are being managed. As the sustainability topics are not a perfect substitute for the IROs, the ESRS should make it clear that any aggregation of IROs should not result in obscuring information as to whether and how the material IROs are managed.

Thirdly, ESMA stresses the importance that the ESRS continue to require sufficient transparency on an undertaking's transition efforts both in the area of climate change mitigation and biodiversity, thus enabling users to assess whether a transition strategy and its implementation are credible. To do so, it is necessary that the ESRS clearly establish what constitutes a transition plan as opposed to a less strategic *action* plan, and which minimum disclosures are expected in the respective environmental areas. ESMA highlights that the

² ESMA's assessment is based on the currently in-force text of the SFDR and related delegated acts.

increased flexibilities regarding disclosures on climate targets will make it more difficult for investors to compare the ambition of the transition plans. Further, ESMA also regrets that the definition of 'net-zero' targets has been removed from the standard.

Fourthly, the ED envisages a wide spectrum of reliefs to address concerns raised by undertakings and to reflect the issues that have occurred in the first year of application of the ESRS. While it is understandable that, as part of a simplification and burden reduction exercise EFRAG has proposed a number of reliefs, ESMA notes that these measures should not undermine the ultimate objective of increasing disclosure quality over time and encourage opportunistic behaviour. In this respect, ESMA recommends that EFRAG reviews the proposed reliefs and carefully considers including reasonable time and scope limitations to their applicability (e.g., to avoid that undertakings are granted a perpetual relief from producing metrics concerning their own operations). Preserving the reliefs in a more balanced, time-limited and targeted way is necessary to stimulate a 'race to the top' in terms of disclosure quality rather than a 'race to the bottom'.

Lastly, in relation to the impact of the ED on the interoperability with ISSB standards, ESMA supports the steps made to introduce further alignment, but we are concerned that other parts of the proposed revision would result in decreasing the level of interoperability. One area that deserves particular attention is the proposed amendment to make the disclosures on anticipated financial effects only qualitative which constitutes a significant departure from ISSB standards. ESMA notes that decreasing the interoperability with ISSB standards by envisaging less stringent or detailed requirements may not constitute an actual burden reduction measure, as the resulting divergence between ESRS and ISSB requirements is likely to pose other challenges for companies aiming at leveraging on their ESRS-compliant reporting to meet sustainability reporting requirements in international markets. ESMA therefore recommends not pursuing amendments that would decrease the level of interoperability with ISSB standards with the risk of increasing operational uncertainty and costs for companies and investors.

ESMA's detailed comments on the ED are included in the Annex to this letter. To support EFRAG's analysis of the consultation feedback, ESMA has included its feedback into EFRAG's online questionnaire, either by reproducing the entire text of its response or by cross-referring to the relevant paragraphs of the Annex due to space limitations in the online form.

In case you have any questions or comments, please do not hesitate to contact me or Isabelle Grauer-Gaynor, Head of the Corporate Finance and Reporting Unit (Isabelle.Grauer-Gaynor@esma.europa.eu).

Yours sincerely,

[signed]

Verena Ross

Annex

Question 11. Clarifications and simplification of the Double Materiality Assessment (DMA) (Chapter 3) as the basis for sustainability reporting

Do you agree that the proposed amendments have sufficiently simplified the DMA process, reinforced the information materiality filter and ultimately have succeeded in striking an acceptable balance between simplification and robustness of the DMA? Do you agree that the wording of chapter 3 of ESRS 1 is sufficiently simplified?

1. **ESMA disagrees** with the proposed amendment to the notion of materiality of information. Due to conceptual and drafting issues which are further explained in paragraphs 3-8 of ESMA's detailed response, the proposed amendment is unlikely to lead to simplification in practice, and it will undermine the disclosure of relevant information. ESMA also cautions against the inclusion of a new definition of "general-purpose sustainability reporting" in the way it has been proposed in the ED and without sufficient explanations as to what this notion is meant to achieve in practice. This latter aspect is further addressed in par. 9 of ESMA's detailed response.
2. ESMA generally supports EFRAG's proposal to give more prominence to the concept of materiality of information as a way to ensure the provision of more relevant information and to ensure a more proportionate application of the standards. However, ESMA does not support the proposed re-drafting of the principle of materiality of information which consists of one part (par. 21.a) that is aligned with the concept of materiality in IFRS S-standards and another part (par. 21.b) that reflects a notion applicable generally to all users of 'general purpose sustainability statements'. This latter part of the definition has given rise to concerns as further explained in the rest of our response.

Dual notion of materiality of information (par. 21 of ESRS 1)

3. The proposed amendments introduce a differentiation of what qualifies as material information in a sustainability statement, on the one hand, for "*primary users of financial reports*" and, on the other hand, for "*users of general purpose sustainability statements*". It is unclear, however, why for the "*primary users*", the sustainability information should be regarded as material when it is capable of influencing their decisions, while for "*users of general purpose sustainability reporting*" the information would qualify as material when it merely enables an understanding of the material IROs. (ESMA also notes that the proposed par. 21(b) should refer to "other" users of general purpose sustainability reporting rather than only to "users" in order to be consistent with the definition of "users of general purpose sustainability statements" in the proposed par. 4 of the Amended ESRS 1 and with the proposed definition of "Users" in the Amended Glossary.)
4. Furthermore, the drafting technique of the proposed par. 21 leads to confusion and possible divergence in application. In fact, par. 21(a) identifies as material for primary users of general purpose financial reports the information that, when omitted, misstated or obscured could influence these users' decisions. For the broader group of users of

general purpose sustainability statements addressed in par. 21(b), however, this condition is absent.

5. From a conceptual perspective, the “*Qualitative Characteristics of information*” (as set out in the current ESRS Set 1 and which are proposed to be carried over unchanged in the proposed amendments) identify materiality as an “*an entity-specific aspect of relevance based on the nature or magnitude or both of the items*”. The same qualitative characteristics define information as relevant “*when it may make a difference in the decisions of users under a double materiality approach*”. It derives that information included in the sustainability statement should not merely enable (or not impair) an understanding of the material IROs by a given user (or group of users), but that, in order for this information to be material, it should always be capable of making a difference in the decisions that these users would typically make on the basis of that information.
6. ESMA acknowledges that the notion of “*decisions*” is potentially different between “*primary users*” – typically investors and/or creditors – and “*other users*” of sustainability reporting, such as civil society, NGOs, trade unions. For example, investors would typically make decisions to buy, hold or sell certain assets and creditors would decide whether to provide, renew or withdraw a financing facility. Other users, instead, may use the sustainability information to decide whether to engage in further dialogue with issuers or groups of issuers, promote observed good practices, publicly denounce negative practices or take action otherwise to protect their own interests or the interests of the groups they represent, which may or may not be linked to financial considerations. In some cases, primary users and other users may be pursuing similar objectives, for example, decisions on engagement with undertakings may be taken by both groups of users (although potentially with different goals).
7. ESMA is therefore concerned that the proposed amendment in par. 21 sets a differential threshold which risks making the identification of material information unnecessarily burdensome and potentially unclear. ESMA considers that by departing from the notion of relevance of the information, the proposed amendments in par. 21(b) of ESRS 1 may result in application issues.
8. ESMA suggests that EFRAG reconsiders the proposed amendment, for example by foreseeing an amended single notion of materiality of information addressing both “*primary*” and “*other users*” of sustainability statements. This notion could then be complemented by application requirements explaining how the notion of “*influencing decisions*” may need to be understood differently between primary users and other users of sustainability statements. Alternatively, par. 21 could retain a distinction between “*primary users*” and “*other users*” which should however be built in both cases on the notion of “*influencing decisions*”. These alternative approaches would avoid creating an artificial and rather complex distinction between two different layers of materiality of information, as well as avoid a conceptual conflict between the notion of materiality of information and the notion of relevance in the qualitative characteristics of information. ESMA stresses that pursuing one of these approaches for the “*materiality of information*” step, would (and should) not undermine the assessment of the materiality of

sustainability-related impacts which would continue to be performed based on the assessment of severity (and likelihood for potential impacts).

Notion of general-purpose sustainability reporting

9. The term “general purpose” seems to mirror the notion of “*general purpose financial reporting*”. However, in the proposed amendments, this notion is not sufficiently clear as it is simply meant to refer to “*interests and viewpoints assessed based on groups of users*”. ESMA notes that in the financial reporting domain the notion of “general purpose” is accompanied by extensive literature and explanations, notably in the IFRS Conceptual Framework for Financial Reporting. The proposed reference to groups of users seems to be directed at preventing that multiple, individually small requests by *any* possible stakeholder result in the obligation for issuers to address any such request which may especially relate to the impact-side of the double materiality assessment. However, the notion of determining materiality of information based on “*groups of users*” rather than on individual users is arbitrary and open to manipulation and/or misinterpretation. If retained, ESMA therefore recommends accompanying this notion with more extensive and clearer guidance which could explain what limitations the reference to “general purpose” entail for the information that users of sustainability statements shall expect. Furthermore, in a double-materiality context, such as the ESRS, introducing a notion of “*general purpose sustainability statement*” would imply combining two notions: information for users of “*general purpose financial reports*” (for the financial materiality *leg* of the ESRS) and information for other users of sustainability statements. This combination of viewpoints which should both be satisfied within an ESRS sustainability statement under the label “general purpose”, would require more guidance than is currently proposed. It should however be assessed whether the addition of this label would on balance result in any net benefits for the usability of the ESRS by preparers and the use of the sustainability statements by various stakeholders. ESMA therefore would recommend caution in introducing this notion without having properly assessed its conceptual and practical consequences.

Question 12. New guidance in ESRS 1 on how to consider remediation, mitigation and prevention actions in assessing materiality of negative impacts

Do you agree that the new guidelines clarify how to consider remediation, mitigation and prevention implemented actions in the DMA, contributing to more relevant and comparable reporting?

10. **ESMA disagrees** with the draft guidance provided in the proposed Amended ESRS 1 and the related appendix. ESMA believes that EFRAG should be clear in setting a core principle based on the gross approach and deal with any exceptions, application aspects, through specific guidance. As currently drafted, the guidance is too complex, which questions its value as part of the simplification exercise and may lead to confusion and unintended consequences as, for example, it remains unclear in which cases chronic impacts will be assessed as material even though they benefit from mitigation measures that reduce such impacts within an acceptable range. ESMA also stresses that the proposed guidance should take into account the implications of potentially significantly

changing the required assessment methodology considering the efforts put in place by issuers who have conducted their double materiality assessment for the first reporting period. ESMA's detailed comments are available in its detailed response (paras 11-14).

11. In relation to the proposed par. 34 and 35 of amended ESRS 1, ESMA cautions against introducing a guidance that is difficult to understand and may hence create burden for preparers.
12. The proposed approach relies on a categorisation of impacts as current or potential which, although it could be valid from a theoretical standpoint, is not sufficiently concrete for preparers and other stakeholders to gain a full understanding of the different situations which are meant to be addressed. While the associated guidance in Appendix C provides a very complete overview of the different cases, ESMA thinks that, should this approach be included in the revised ESRS, further explanations are needed to assist undertakings in their determination of where and how they should include prevention or mitigation measures in their materiality assessment. This additional guidance could take the form of explaining how the proposed approach applies to acute impacts, chronic impacts and cumulative impacts, as well as clarifying the link between current impacts when considered on a gross basis, and potential impacts resulting from a failure of the measures in place when considered on a net basis.
13. In particular, the approach raises the question as to whether a negative impact such as chronic air emissions could be considered as immaterial – and therefore not disclosed – when an undertaking which is involved in a heavily emitting business, manages to keep its emissions under control thanks to ad-hoc measures. ESMA notes that in this case the users of the sustainability statement would still benefit from understanding the fact that the undertaking is potentially a heavy emitter, but that thanks to mitigation measures it manages to limit its impacts.
14. This case seems to be captured by the provision in par. 35 that says, “*if the undertaking needs to maintain significant ongoing mitigation and/or prevention actions, to contain the severity and/or likelihood of occurrence of the potential impact below a materiality level, the impact shall be assessed without considering the mitigation and/or prevention actions*”. ESMA however notes that these requirements are likely to create interpretation issues in practice as the notion of “*significant*” prevention and mitigation actions is not defined. In the example above, some of the emission reduction measures which are not particularly costly or technologically advanced, but key to prevent severe impacts could be considered as not significant by some preparers and significant by others. On the same line, ESMA suggests clarifying what “*ongoing mitigation and/or prevention actions*” mean, for instance, whether the actions need to be systematically needed at each reporting period or whether there can be variations from period to period.

Question 13. Improved readability, conciseness and connectivity of ESRS Sustainability Statements

Do you agree that these proposed Amendments, when combined with the other changes in the ED, provide an appropriate level of flexibility to support more relevant and concise reporting, as well as to promote better connectivity with corporate reporting as a whole?

15. **ESMA partially agrees and partially disagrees** with the proposed amendments, we provide detailed comments in relation to the presentation and structure of the sustainability statement in paras. 17-20 of ESMA's detailed response.
16. ESMA notes that one of the areas flagged by stakeholders with regards to the complexity in the application of ESRS related to the seemingly unnecessary granularity required by the standards in some areas of the reporting on sustainability information. Particularly, a wide divergence could be observed with regards to the level of disclosures provided by undertakings between some undertakings focusing on a granular list of IROs throughout the sustainability statement and others remaining at a higher level of aggregation, i.e. topic/sub-sub-topic level or sustainability matter. ESMA notes that the ESRS should be clear throughout the text that, in line with the CSRD, the information provided needs to enable an understanding of the IROs linked to sustainability matters and how an undertaking manages them. The *preparation* of the information should pursue and not compromise this ultimate objective. This does not mean the *presentation* of the information in the sustainability statement should necessarily be as granular as each individual IRO. The ESRS should therefore provide clear guidance both at horizontal level as well as, where necessary, at disclosure requirement-level as to how companies shall apply the aggregation and disaggregation principle in a way that balances conciseness and understandability with users' ability to understand the IROs and how undertakings manage them. See also the responses to questions 15 and 33 on this issue.

Optional executive summary

17. While seeing merit in the idea of undertakings disclosing a concise introductory text to provide users with an unbiased summary of the main aspects disclosed in the sustainability statements, ESMA notes that the ED proposal as currently put forward in relation to the option to include an executive summary is too generic. In particular, the reference in the new par. 109 of the proposed Amended ESRS 1 that the executive summary shall meet the qualitative characteristics of information seems quite difficult to implement in practice without specific guidance or examples provided in the ESRS as to what this summary should achieve and what safeguards it should satisfy to prevent misleading disclosures. ESMA would suggest that EFRAG provides such guidance. Furthermore, it is unclear what is meant by saying that: "[the executive summary] *may also incorporate information by reference to an executive summary placed outside its sustainability statement, such as in another section of the management report, provided that it meets the conditions for incorporation by reference*". In ESMA's view, the inclusion of an executive summary, even if only on an optional basis, would require some guidance

to ensure that the information provided in the summary is prepared on the basis of a consistent logic across undertakings. The inclusion of the executive summary through incorporation by reference is also rather unclear because for an optional disclosure there would be no need to strictly incorporate the summary by reference into the sustainability statement.

Appendices in the sustainability statement

18. ESMA also notes that par. 110 of the proposed Amended ESRS 1 refers to possible appendices “in” the sustainability statement. ESMA stresses that the ESRS should clarify that any appendices created with information required by the ESRS are to be intended as integral parts of the sustainability statement. The ESRS should also be clear that the use of appendices is primarily expected for any non-material information or for information required by other laws and regulations.

Connectivity

19. The ED proposes a voluntary application of requirements concerning direct and indirect connectivity between sustainability statements and financial statements (paras. 114 and 115 of the proposed ESRS 1). ESMA disagrees with this proposed amendment and stresses the importance of providing transparency on any relevant connections between material information disclosed in the sustainability statement and the financial statements. This level of connectivity is critical to support investors’ decision-making and for the proper interoperability with IFRS S-standards. ESMA therefore recommends retaining the mandatory nature of the information about such connections as, for example, it would be relevant for an issuer to highlight the link between the annual total remuneration ratio required by ESRS S1, para 44b and the corresponding disclosure concerning key management personnel compensation required by IAS 24, para 17.

References to ESRS requirements within the sustainability statement

20. Finally, ESMA suggests that the increased flexibility proposed in the ED with regards to the structure of the sustainability statement (e.g. with the possibility that several datapoints from ESRS 2 being addressed directly in topical disclosures), be accompanied in the Amended ESRS by the requirement to include a reference to the DRs addressed in the text of the sustainability statement and not only in content tables/index. There could be several options to do so, e.g. in the title, subtitles, in the text of the paragraphs themselves. This level of clarity would strike a better balance between a more flexible structure and comparability/readability of the sustainability statement.

Question 15. Improved understandability, clarity and accessibility of the Standards

Do you agree that these proposed amendments achieve the desired level of clarity and accessibility?

21. **ESMA partially agrees and partially disagrees** with some of the proposed amendments aiming at improving the understandability, clarity and accessibility of the ESRS. ESMA generally supports the increased clarity between mandatory and non-

mandatory requirements and the removal of most of the “may” requirements. These steps contribute to improving the overall usability of the ESRS. However, we have also identified some practical issues relating to the clarity/understandability of the proposed amendments. These issues are further explained in our detailed response (paras 22-40) and relate to: the use of the terms “*shall consider*”, the use of reminders in topical standards relating to cross-cutting principles set out in ESRS 1, the proposed location of Application Requirements, aspects relating to the ease of navigation across the standards, clarity on the articulation between IROs and topics/sub-topics in ESRS 1 and ESRS 2 and the clarity of ESRS 1 requirements relating to group reporting vs. subsidiary reporting.

Use of the term “*shall consider*”

22. The proposed amendments make more careful use than the in-force standards of the expression “*shall consider*” by limiting its use to instances in which the ESRS would provide methodological indications for the preparation of the disclosures. However, in a few instances this expression is still used in a way that leaves room for ambiguity as to whether it implies a requirement to disclose one or more datapoints. When such ambiguity exists, diversity in practice may arise. A notable example of this is par. AR 23 of proposed Amended ESRS 1 in relation to the criteria for disaggregation: the requirement in this case is to consider disaggregation of information by location when IROs depend highly on the local context. It is unclear whether the undertaking shall disclose by location in those cases or only consider it, with the possibility of ultimately disregarding this possibility. Another example is par. AR16 of the proposed Amended ESRS 2 in relation to anticipated financial effects. There, the ESRS require undertakings, in preparing the disclosures, to consider a number of factors which are specific datapoints in the currently in-force ESRS; therefore, it is not clear whether these factors are to be treated as specific datapoints. ESMA also suggests clarifying the wording “In conducting its double materiality assessment, the undertaking is expected to...” in ESRS 1, para 45 as this diverges from other wording in the standard and is subject to interpretation and therefore divergence.

Use of reminders in the ESRS

23. In the application requirements of S1-6 (*Characteristics of non-employees in the undertaking’s own workforce*), ESMA questions whether it is helpful to include paragraph AR 15 which reminds companies to use the ESRS 1 provisions regarding estimates if they are not able to report exact figures on their non-employees. The question of whether it is necessary to remind companies to use the mandatory requirements in ESRS 1 applies across the application of all ESRS requirements (another example is S1-16 (*Incidents of discrimination and other human rights incidents*), par. AR 39, second subparagraph). For the avoidance of doubt the Non-Mandatory Implementation Guidance (NMIG) could include a mapping of examples where the transversal ESRS provisions apply to specific topical examples.

Placement of application requirements

24. EFRAG's proposal to place the application requirements immediately after the paragraphs they refer to and therefore directly in the body of the standards has the benefit of making it possible for readers to promptly refer to the relevant application material without having to search elsewhere into the document. However, based on the experience observed in the financial reporting domain, the application guidance may over time become more voluminous and therefore potentially detract from the readability of the main body of requirements. ESMA therefore suggests that EFRAG considers whether this proposed structure is future-proof or whether an alternative would be to keep the application requirements separate from the main body of the standards and improve the connectivity by publishing an interactive version of the revised ESRS with hyperlinks.

Ease of navigation through the standards

25. To avoid redundancies, EFRAG has reduced datapoints relating to the basis for preparations in ESRS 2 and it now cross-refers to the need for undertakings to disclose any departures from reporting obligations set out in ESRS 1. While this reduces the volume of ESRS 2, undertakings will less easily identify the concepts and methodologies in ESRS 1 which they will have to declare departure from. For instance, the proposed Amended ESRS 2 would require disclosing information related to the use of any relief for acquisitions and disposals for which the related datapoints are set out in the proposed Amended ESRS 1 (par. 74). ESMA suggests that ESRS 2 or an appendix/AR thereof highlights the detailed datapoints which undertakings have to disclose to capture all the possible departures from ESRS 1 requirements.
26. Presentation requirements are scattered throughout ESRS 1 and therefore a section in the Non-Mandatory Implementation Guidance could well provide a summary table that lists/explains all these rules in one single location. ESMA notes that such a table would improve the usability of the ESRS.
27. With regards to the topics listed under Appendix A of ESRS 1, ESMA notes that the regrouping of sub-sub-topics from ESRS G1 under "*Corporate culture*" seems inappropriate, we suggest keeping the topics relating to "*Corporate culture*", "*Corruption and bribery*", "*Whistleblower protection*" and "*Animal welfare*" as separate sub-topics. With regards to sub-topics linked to ESRS S1 and ESRS S2 which have been merged, ESMA suggests keeping these separate as they refer to two specific standards and their aggregation does not enhance the usability of the standards.
28. The clarification in par. AR 28 of the proposed Amended ESRS 1 that metrics in topical ESRS do not require inclusion of upstream and downstream value chain data, with the exception of GHG emissions Scope 3, seems to be inconsistent with the metric required by Disclosure Requirement S1-13 (i.e., "*the number of fatalities from work-related injuries among everybody in the undertaking's own workforce as well as other workers that work on its sites*"). ESMA therefore encourages EFRAG to address this apparent inconsistency to support the interplay between ESRS 1 and ESRS S1.

Clarity on the articulation between IROs and topics/sub-topics

29. ESMA notes that in multiple places of the ED (e.g. par. 1, 10, 20, 22 of proposed Amended ESRS 1) EFRAG has proposed to amend the ESRS in a way that would give more prominence to the information about “*topics*” than directly to information about IROs related to those matters. The expression that the ED uses is “*topics related to material impacts, risk and opportunities*”. ESMA believes this expression may be a source of confusion and divergence in application of the ESRS when used to replace a reference to IROs.
30. ESMA highlights that according to Article 29b of the Accounting Directive, the ESRS “*shall specify the information that undertakings are to report in accordance with Articles 19a and 29a*”. In accordance with Article 19a and 29a, this information is referred to as (emphasis added) “*information necessary to understand the undertaking’s [or group’s] impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking’s [or group’s] development, performance and position*”. Information about sustainability-related IROs is therefore at the heart of EU legislation.
31. EFRAG seems to propose this change to ensure that the level of granularity of the materiality assessments, of the related reporting processes and external assurance procedures, as well as the granularity of the resulting disclosures are kept within a reasonable range.
32. For example, the proposed amendment to the requirement to disclose entity-specific information is linked to the conclusion by an undertaking that a “*topic related to one or more material impacts, risks or opportunities is not covered, or not covered with sufficient granularity by an ESRS*” (par. 10). ESMA notes that the additional disclosures should specifically address the IROs which are not sufficiently covered by the ESRS rather than generically refer to additional information on the topic.
33. Another example of the unclear interplay between IROs and “topics” is the proposed par. 22 of ESRS 1 which indicates that “*information shall be presented either at topical level or at impacts, risks and opportunities level, depending on what provides the most relevant information, such as reflecting their nature or the way they are managed*”. This proposed amendment would see the disclosure of topics or IROs as interchangeable based on a non-better specified reference to the “relevance” of the information.
34. ESMA notes that practical considerations relating to setting the correct level of granularity should not compromise basic principles of high-quality reporting, notably the fact that sustainability reporting should provide insights into material IROs and how they are managed by the undertaking. ESMA notes that, in order for the sustainability reporting practice to evolve, the ESRS should be as clear as possible and any attempt to address practical issues by introducing more ambiguity into the wording of the ESRS would ultimately result in higher costs, lower reporting quality and more uncertainty for both undertakings and users.

35. This is because the objective of the sustainability statement is not to report on a sustainability topic related to material IROs, but rather to provide material information on the material IROs which pertain to different topical areas. ESMA therefore recommends that EFRAG carefully revises the proposed amendments to unambiguously refer to the objective of depicting the IROs and how undertakings address them.
36. Nevertheless, ESMA supports clear aggregation/disaggregation principles aimed at ensuring that, in disclosing the information, undertakings can determine the level of aggregation that does not obscure material information. See also the responses to questions 13 and 33 on this issue.

Requirements on group vs. subsidiary reporting

37. ESMA considers that the guidance provided in the proposed Amended ESRS 1 is also not sufficiently clear on the interplay between group-level assessment of IROs and the identification of IROs that are material for one or more subsidiaries within the group. Par. 51 of the proposed Amended ESRS 1 indicates that the undertaking shall aggregate or disaggregate the reported information to reflect the level at which significant variations of material IROs arise, for example at topic, sector, subsidiary-level.
38. Par. AR 24 of the proposed Amended ESRS 1 also foresees that where the undertaking identifies significant differences between material IROs at group level and material IROs of one or more of its subsidiaries, it shall disaggregate and present information in a way that allows an adequate understanding of the IROs. The combined reading of par. 51 and par. AR 24 seems to suggest that material IROs should be identified and reported at group level as well as at the level of the subsidiaries (when IROs are different).
39. However, par. 53 requires that, when an undertaking is reporting at a consolidated level, it shall perform its assessment of material IROs for the entire consolidated group regardless of its group's legal structure, it shall ensure that all subsidiaries are covered in a way that allows for the unbiased identification of material IROs at group level. We understand that the IROs are to be identified at group level and not at individual subsidiary level. Therefore, it seems that par. 53 might be in contradiction with paras. 51 and AR 24. Some of this confusion may be due to the fact that paras. 51-53 and AR 24 deal with both presentation and preparation of the information while these two aspects should be kept distinct. We would encourage EFRAG to clarify what issuers reporting at consolidated level are required to disclose when some material IROs are different at group compared to individual subsidiary level.
40. In addition, in the case that material IROs should be reported at the subsidiary level, EFRAG should clarify the case of parent companies with subsidiaries that publish their own sustainability statements (specifically for holding companies that do not adopt the consolidation exemption in IFRS 10). In this case, it should be clarified that the parent company is allowed to briefly describe these IROs and refer for further information to the disclosures included in the sustainability statement of the relevant subsidiaries.

Question 16. Usefulness and status of “Non-Mandatory Illustrative Guidance” (NMIG)

You are invited to provide your comments on the purpose of NMIG, if any.

41. **ESMA partially agrees and partially disagrees** with the purpose of the NMIG as, on the one hand, it has the potential to convey helpful material, but it also contains text that may be more suitable for the body of the ESRS. ESMA notes that the practical relevance of this accompanying material should not be underestimated. Corporate reporting requirements are living systems which are based on a core set of strictly mandatory requirements often accompanied by guidance materials which crystallise the experience arising from the application of the core principles-based requirements. As such, the NMIG will be a critical element of the consistent application of the requirements and this fact should be clearly acknowledged by EFRAG.
42. ESMA notes that, in some cases, the draft NMIG provides clarifications on the reading of certain ESRS and points at methodologies. These indications seem quite critical and not suitable for merely optional material. The test that the NMIG’s content should pass to conclude that it should not be included in the body of the ESRS is understanding whether an undertaking can still produce disclosures that are compliant with the ESRS requirements, including the qualitative characteristics of information (and fair presentation), should that undertaking decide to ignore or apply inconsistent methodologies than those set out in the NMIG.
43. In this respect, ESMA has identified cases in the NMIG which relate to content that does not seem to pass the above-mentioned test and which should therefore be included in the body of the ESRS. For example, guidance on group reporting and subsidiary-level IROs (NMIG for ESRS 1 Par. 5 for para. 52), on the treatment of leased assets (NMIG for ESRS 1 par. NMIG 7 for para. 71) or on the different types of impacts (NMIG for ESRS 2 par. NMIG 12 para 28(a)).

Question 17. Burden reliefs and other suggested clarifications

Do you agree that these proposed Amendments provide sufficient relief and strike an acceptable balance between (a) responding to the stakeholders’ demands for burden reliefs and (b) preserving the transparency needed to achieve the objectives of the EU Green Deal, as well as interoperability with the ISSB’s IFRS S1 and S2?

44. **ESMA disagrees** with the proposed reliefs as currently drafted as they are unlimited in time, affect own operations and do not encourage the improvement of disclosures over time. ESMA sets out arguments supporting its position and proposes possible ways to improve the proposed reliefs in its detailed response (paras. 45-53). ESMA also stands ready to discuss with EFRAG possible additional reliefs which may address burden reduction concerns while preserving investor protection and supporting the improvement of data quality and disclosure quality in the medium term.
45. In relation to par. 87 of the proposed Amended ESRS 1, ESMA generally supports the alignment of the ESRS with the provisions on undue cost and efforts and the notion of reasonable and supportable information as set out in the IFRS S1 requirements.

46. However, ESMA is concerned by the proposal to indefinitely extend the application of this principle to all metrics. ESMA acknowledges that the preparation of the first sustainability statements requires an adjustment period during which the data infrastructure is being built and other processes and internal controls are established. The ESRS should support this learning curve without compromising the quality of sustainability reporting in the long run. In ESMA's view, this support would be lacking if the ESRS created no incentives to achieve high-quality reporting within a reasonable timeframe. If EFRAG considers that there may be circumstances in which undertakings will not have reasonable and supportable information available without undue cost or effort to develop certain metrics, it should identify the concerned metrics and provide targeted and time-bound reliefs or, if this is not possible, it should amend or entirely delete the relevant disclosure requirements.
47. Against that background, ESMA recommends that EFRAG limits the use of the relief related to reasonable and supportable information and undue cost or effort to the materiality assessment, to identify material IROs across the value chain and to the disclosures relating to anticipated financial effects. This would also result in better alignment with the ISSB requirements thus reducing any unnecessary divergence.
48. In line with the comments above, ESMA neither supports the relief in par. 91 of the proposed Amended ESRS 1 which would provide the possibility for undertakings to limit the disclosure of metrics to parts of the reporting boundary for which it is able to collect reliable data without undue cost and effort (this relief is excluded for disclosure requirement E1-6). ESMA notes that the proposed relief would discourage undertakings from building the necessary data infrastructure within its own operations, provide incentives for structuring opportunities, and discourage companies from making every effort to improve their disclosures over time. ESMA therefore does not support this proposed relief, but it stresses the importance of EFRAG identifying more targeted and time-bound reliefs to ensure that any lack of information does not affect users of sustainability statements for a prolonged period of time.
49. ESMA has also assessed the relief proposed in par. 90 of the Amended ESRS 1 which refers to the exclusion of activities within the undertaking or within the group which are not expected to be a significant driver of IROs a metric is meant to represent. It is unclear from the ED how this relief should operate in practice and which metrics it is supposed to address. In ESMA's view, the identification of IROs should drive the measurement scope of the related metrics and therefore if a given activity or entity does not give rise to a material IRO that is associated to a given metric, that activity or entity should not be included in the scope of the related measurement. This is a different concept though than establishing an additional threshold of "significance" as proposed in par. 91. Furthermore, ESMA notes that the ESRS should clarify how this relief would interplay with the provision in the proposed par. AR 24 of the Amended ESRS 1 whereby *"if a material impact, risk or opportunity determined at group level is not relevant for all subsidiaries or activities in a group, the information can be provided at a disaggregated level reflecting only the activities for which the impact, risk or opportunity is relevant"*. In this latter requirement, the ESRS refer to "relevance" rather than "significance" of an IRO for one or more subsidiaries.

50. ESMA therefore suggests that rather than treating this proposed provision as a relief it includes it, duly reworded and made consistent with par. AR 24, as part of the mandatory guidance to apply the principle of materiality of information. This solution would also avoid treating as a relief – i.e. a departure from a provision grounded on proportionality – what is rather the correct identification of measurement perimeters based on the materiality assessment. Furthermore, it would be important to provide relevant examples that EFRAG has been made aware of on the application of this principle in the NMIG. ESMA also recommends that, when the perimeter selected for metrics measurement based on this principle differs from the consolidation perimeter, users are duly informed as part of the General Disclosure Requirements for Metrics as per the Amended ESRS 2.
51. With regards to the amendments relating to resilience disclosures in par. 24 of the proposed Amended ESRS 2, the ED proposes to depart from the IFRS S1 requirements by envisaging only qualitative disclosures and therefore removing the requirement in the current ESRS to disclose quantitative information *when applicable*. ESMA does not support this amendment which would deprive investors and other stakeholders of material information about an undertaking's current and future ability to withstand sustainability-related risks with implications to their strategy and business model thereby increasing uncertainty for investors and cost of capital for undertakings.
52. The relief in par. 74 of the proposed Amended ESRS 1 relates to acquisitions and disposals to avoid situations in which the inclusion of information about recently acquired entities or adjustments to the reporting scope for recent disposals. ESMA notes that these reliefs are not conditional upon any specific circumstance (e.g. the availability of necessary information or the time available to make the necessary adjustments to the reporting), with the result that the sustainability-related effects of acquisitions and disposals performed during the reporting year can be deliberately excluded from the reporting (with the exception of providing information on “significant events” which could result in exposure to material IROs). ESMA considers that this relief does not strike a fair balance between the need to provide relevant and timely information to users of sustainability statements and limiting/reducing the burden of reporting entities. ESMA therefore recommends making this relief subject to the condition that the undertaking concludes that it is not possible without undue cost or effort to reflect the sustainability-related information for the newly acquired entities or to make the necessary adjustments for the entities it has disposed of.
53. Finally, ESMA recommends that there is an overall mapping of the reliefs in the NMIG and that EFRAG considers the interplay between any proposed reliefs and the reliefs envisaged for value chain and comparative information.

Question 18. Relief for lack of data quality on metrics (ESRS 1 paragraph 92)

Do you agree that the proposed relief for lack of data quality on metrics strikes an acceptable balance between providing the necessary flexibility for preparers and avoiding undue loss of information?

54. **ESMA disagrees** with the relief in par. 92 of the proposed Amended ESRS 1. This relief would exclude joint operations for which the undertaking has no operational control from the calculation of metrics required by ESRS standards E2, E3, E4 and E5. ESMA notes that should an undertaking be exposed or give rise to material IROs through joint operations over which it has no operational control, the application of this relief should result in the sustainability statement not providing material information and a fair presentation. This would also create a disconnect compared to the reporting boundary for financial reporting. Furthermore, also in this case, this reliefs risks providing incentives for structuring opportunities. ESMA therefore does not support this proposed relief and rather suggests that EFRAG considers providing a phase-in period for undertakings to establish the necessary data collection mechanisms to enable it within a given period of time to be able to collect the necessary information.

Question 19. Relief for anticipated financial effects

Please select from the alternatives below the one that represents your view: I agree with Option 1, I agree with Option 2, I disagree with both options.

55. **ESMA agrees** with the first option for the enhancement of the disclosures on anticipated financial effects (i.e. disclosure of quantitative information unless specific conditions are met) due to the critical importance that information on anticipated financial effects plays in decision making by investors. ESMA also notes that Option 2 would be contrary to the need – as per the Commission’s mandate to EFRAG – to enhance rather than undermine the interoperability with international standards, most notably in this case the ISSB standards. ESMA notes that some of the aspects in the definition of the reliefs under Option 1 raise doubts, notably the reference to a high level of measurement uncertainty as a factor preventing an estimate from providing a faithful representation, as long as the nature of the uncertainty, the expected range, and the methodology used are disclosed. It could be argued that this provision is inconsistent with par. AR 30 of the proposed Amended ESRS 1 whereas it is stated that “a *high level of measurement uncertainty would not prevent*” an assumption or estimate from providing useful information or meeting the qualitative characteristics of information. ESMA acknowledges that such provision in the ED mirrors the ISSB’s IFRS S1 relief, however it recommends that if such relief is ultimately retained, EFRAG provides some guidance or examples on what should be considered a ‘high’ level of measurement uncertainty. We provide additional comments in our reply in par. 56.
56. ESMA acknowledges that it can be expected that the disclosure of anticipated financial effects as currently required in ESRS Set 1 (i.e. quantitative information) may pose practical challenges, especially for topics beyond climate change. As the preparation of this information may be complex and involve specific assessments, ESMA stresses that

these disclosures already benefit from phase-in provisions which have been further prolonged and extended in scope by the recently adopted “Quick-fix” delegated act. These additional time serves as preparation time for undertakings and ESMA considers that, if deemed necessary, such phase-in provisions could be extended within a reasonable timeframe for topics other than climate change. In ESMA’s view, this would be a more balanced solution rather than foreseeing only qualitative disclosures on financial effects. Furthermore, a number of reliefs on undue cost and efforts and measurement uncertainty are applicable to this disclosure. Finally, ESMA notes that information on anticipated financial effects provides critical information especially for primary users of financial reports and this is also why such information was originally foreseen in the TCFD recommendations whose first publication dates back to 2017.

Question 21. Enhanced interoperability with the ISSB’s standards IFRS S1 and S2

Do you agree that these proposed Amendments achieve an appropriate balance between increasing interoperability and meeting the simplification objectives?

57. **ESMA disagrees** that the proposed amendments achieve an appropriate balance between increasing interoperability and meeting the simplification objectives. While the ED increased interoperability with IFRS S-standards in some respects, ESMA believes that the areas of possible departure from the ISSB standards are so severe that they would undermine the overall interoperability for reasons that are unrelated to the specificities of EU policy objectives and which are likely to result in additional costs for undertakings. We provide additional comments in our reply in paras. 58-60.
58. ESMA has identified the following critical areas of departure from ISSB S-standards. Firstly, the amendments to the disclosures on anticipated financial effects. ESMA has already indicated in response to Question 19 the reasons for rejecting Option 2 which would constitute a significant departure from the ISSB requirements. Secondly, while some of the proposed reliefs are a step towards better interoperability, they contradict this objective when they go beyond the reliefs available in the ISSB standards, notably due to the more extensive use of “*undue cost or effort*” and “*reasonable and supportable information*”. Our response to Question 17 provides the reasons underlying ESMA’s concern and possible alternatives. Thirdly, as also referred to in our response to Question 13, ESMA notes that the ED proposes a voluntary application of requirements concerning connectivity between sustainability statements and financial statements (paras. 114 and 115 of the proposed Amended ESRS 1). This approach contrasts with par. 124 of ESRS Set 1 which required connectivity when a disclosure in the sustainability statement referred to amounts disclosed either directly or indirectly in the financial statements. Connectivity is also required by par. 21(b) of IFRS S1. ESMA stresses the importance of providing transparency on any relevant connections between material information disclosed in the sustainability statement and the financial statements. This level of connectivity is critical to support investors’ decision-making and for the proper interoperability with IFRS S-standards. ESMA therefore recommends retaining the mandatory nature of the information about such connections.

59. Furthermore, with regards to the disclosures on anticipated financial effects linked to climate change, ESMA strongly disagrees with the explanation provided in par. 272 of the Basis for Conclusions indicating that the datapoints allowing connectivity with financial statements have been removed on the grounds that *“such reconciliations can be drawn by the data users and when needed they will be produced in accordance with the general requirement on connectivity in ESRS 1 General requirements”*. ESMA notes that the general requirement regarding connectivity in ESRS 1 has been watered down to make direct and indirect connections with financial statements merely voluntary, thereby making it more difficult, if not impossible for users of the information to retrieve the necessary information.
60. ESMA welcomes the enhanced interoperability between the amended ESRS E1 and IFRS S2 brought by clarifications and closer alignment of the terminology. Regarding E1-1, ESMA recommends that EFRAG broadens the scope of information regarding dependencies in par 14 c) to cover all assumptions, including dependencies, for full alignment with IFRS S2.

Question 25. Emphasis on ESRS being a “fair presentation” reporting framework

Do you agree that explicitly requiring to adopt fair presentation in preparing ESRS sustainability statements will support a more effective functioning of the materiality filter, therefore supporting more relevant reporting and reducing the risk of excessive reported information?

61. **ESMA agrees** with the proposed inclusion of the fair presentation principle but recommends that EFRAG considers supporting the application of this principle during a transitional period to cater for any application issues that may arise, especially in connection with the impact materiality assessment. ESMA's detailed response (paras. 62-70) provide the specific arguments underlying ESMA's position and its proposed approach.
62. ESMA notes that the introduction of the concept of fair presentation would enhance the interoperability with international standards, specifically the ISSB requirements, and that it is consistent with the requirement in Article 29b of the Accounting Directive which requires the ESRS to *“ensure the quality of the reported information, by requiring that it is understandable, relevant, verifiable, comparable and represented in a faithful manner”*.
63. ESMA notes that introducing an explicit reference to fair presentation would require preparers to assess whether the disclosures in the sustainability statement are globally suitable to convey a fair presentation of the undertaking's material sustainability-related IROs and how they are assessed and managed. This assessment and the associated assurance procedures would further ensure that the sustainability statement focuses on material information. From a practical perspective, the same approach is common practice in the financial reporting domain.
64. ESMA stresses that, should a fair presentation principle not be included in the ESRS, undertakings would still be required to comply with all the main features of what is usually referred to as a fair presentation framework, i.e. the qualitative characteristics of

information and the requirement to complement the mandatory disclosures with entity-specific information when necessary.

65. The fact that the first set of ESRS require undertakings to comply with all the elements of the fair presentation principle without making the principle itself explicit has led to divergence and uncertainty across the Union in the application of the first set of ESRS and, in particular, on the assurance of the resulting information³.
66. ESMA believes that should the revised ESRS clarify that the concept of fair presentation applies to the sustainability statements, this would also help clarifying the role of assurance providers. Leaving unaddressed the continued uncertainty on this matter would not support the burden reduction agenda.
67. In sum, ESMA understands that the concerns associated with the notion of fair presentation are of two broad types: (i) possible unknown application issues linked to fair presentation for impact materiality; and (ii) possible additional costs linked to the more extensive assurance work.
68. ESMA notes that by clarifying that the ESRS are a fair presentation framework, the role of the qualitative characteristics of information would be emphasised thus moving away from what is perceived a 'blind' approach to compliance which is one of the main sources of criticism raised by issuers upon the first application of the standards. A fair presentation framework is also typically better suited to support the users of the sustainability statement by ensuring that the preparer and the assurance provider have assessed that the statement globally aims at conveying a fair presentation of the sustainability-related IROs and how they are managed.
69. From the perspective of investor protection, a framework that better serves investors and other users of the sustainability statements is to be preferred compared to a framework that does not include such a feature or that – even worse – leaves room for ambiguity as to its nature. From a proportionality perspective, the application issues should not be underestimated and given due consideration.
70. On balance, ESMA therefore supports that the principle of fair presentation is made explicit in the ESRS, but that a transitional period is envisaged to enable sufficient time for the various actors of the sustainability reporting ecosystem to address any possible application issues. During this period, it may be necessary to: (i) assess any issues in the implementation during the preparation of the sustainability statement; and (ii) establish a transition resource group with all relevant actors, aimed at discussing any issues that may arise from the application of this principle to ensure that they are addressed on a timely basis. If established, such a transition resource group could also discuss other issues in relation to the revised ESRS.

³ The question has arisen as to whether the opinion given by assurance providers on the sustainability statements should be based on a fair presentation framework or a compliance framework. Notwithstanding the Commission's clarification in its [2024 FAQs](#) that a fair presentation framework should be applied, national practices have varied.

Question 26. Exception for Financial Institutions' absolute climate reduction targets

Please select from the alternatives below the one that represents your view: I agree that financial institutions should be exempted from disclosing climate absolute GHG emission values targets when they have only set intensity targets / I disagree that financial institutions should be exempted from disclosing climate absolute GHG emission values targets when they have only set intensity targets

71. **ESMA disagrees** that financial institutions (insurance, banking and asset management sectors) should be exempted from disclosing climate absolute GHG emission values targets when they have only set intensity targets.
72. Regarding the argument that high emission sectors are in need of transition financing, ESMA's view is that absolute values would not be disclosed in isolation but together with the intensity targets the financial institution has set, leaving full possibility to explain its strategy and demonstrate how it steers its portfolio towards the actors of the real economy having made credible commitments.
73. Regarding the multiple assumptions and high uncertainty attached to translating intensity targets into absolute values, ESMA acknowledges that the financial data necessary for financial institutions to calculate their share of emissions may evolve in ways that are unrelated to the GHG emissions of their counterparties, and that projecting multiple financial ratios is a challenge, especially for banks. It can be argued however that such projections are at the core of their overall risk management processes.

Question 29. SFDR and other EU datapoints in Appendix B of Amended ESRS 2

Do you agree with the way the SFDR PAI have been incorporated in the Amended ESRS?

74. **ESMA partially agrees and partially disagrees** with the proposed amendments to datapoints in ESRS related to EU legislation. ESMA, in particular, has assessed the datapoints relating to the SFDR PAI and the indicators relating to the Benchmark Regulation (BMR). In general, we found that most of the proposed amendments preserve the data collected to fulfil SFDR PAI and BMR indicators, however it can be noted that in some cases the burden is shifted from undertakings to users of the information who will then have to compute some of the KPIs or retrieve them based on other datapoints or in other cases the level of detail on the disclosures is reduced.
75. One notable exception to this overall prudent approach that EFRAG has taken is the proposed amendment to the transition plan disclosures in ESRS E1-1 to no longer include a datapoint about whether the undertaking is excluded from Paris-aligned Benchmarks (PABs). In the Basis for Conclusions to the ED, EFRAG provides a somewhat contradictory explanation for this deletion indicating that issuers found it difficult to produce this information, but that users can retrieve it elsewhere from published information of the issuer. ESMA disagrees with the conclusion that individual issuers do not have all the information necessary to conclude whether or not they meet the exclusion criteria from PABs and that, on the contrary, users of the sustainability

statement would be in a position to make this assessment. In addition, ESMA notes that this datapoint is currently required in the Commission recommendation on the VSME (disclosure requirement C8). Consequently, it seems incoherent to not require large companies in the ESRS to provide this information, while SMEs would be required to do so, if they use the VSME standard. ESMA therefore recommends that EFRAG carefully assesses whether to retain this datapoint.

Question 33. Overall feedback per standard

Do you agree that the proposed Amended ESRS strikes an appropriate balance between the need for significant simplification and meeting the core objectives of the European Green Deal?

Proposed Amended ESRS 1

76. **ESMA partially agrees and partially disagrees** that the proposed revisions to ESRS 1 strike the right balance between the need for significant simplification and meeting the core objectives of the EU Green Deal. Throughout our response in specific questions, we have indicated areas of the standard that would require further attention, in addition to those comments we also provide some additional critical comments at disclosure requirement or paragraph level, which will be reflected in the Section 3 of the EFRAG questionnaire.
77. Regarding **transition plans**, ESMA suggests to include in ESRS 1 clarifications on the concept of transition plan as it is used in the ESRS (E1 and E4), including a definition, a clarification of the differences between a transition plan and an action plan, an explanation of how the related disclosures fit into the logic of the overarching structure of the ESRS (description of the IROs and of how they are managed through policies, actions and targets) and elements regarding the minimum level of information expected (acknowledging that this will depend on the maturity of the topic covered).
78. In this respect, ESMA cautions against the inclusion of ambiguous wording to the effect that undertakings would not be required to “*disclose all internal information used to manage the transition plan*” (AR 2 of proposed Amended ESRS E1). The reporting standards should be more specific as to what information is not expected to be provided. ESMA also questions the limitations introduced in par. 12 of Amended ESRS E4 (“*when it has in place and has made public a biodiversity and ecosystems transition plan*”). While agreeing that the level of details in the disclosures should be lower for biodiversity, owing to the lower level of maturity for this topic, the circumstances for making the disclosure should not be different. Additional comments are provided on E1-1 in response to Question 33 (regarding ESRS E1).
79. Par. 10 of ESRS 1: The first part of the amended notion of entity-specific disclosures in par. 10 of ESRS 1 refers to the need for an undertaking to provide additional disclosures when “*a topic related to one or more material*” IROs is not covered sufficiently or with sufficient granularity by an ESRS. This proposed change does not seem to fit well, as an undertaking shall limit the entity-specific disclosures to cases where one or more material IROs are not properly or fully depicted by applying an ESRS rather than referring

generically to topic which may be perceived as requiring an undertaking to address a sustainability topic in its entirety rather than the specific concerned IROs. ESMA therefore recommends retaining the wording of ESRS Set 1.

80. This requirement should also be complemented by a clarification that, where due to the specificities of the undertaking's business, it is necessary to extend the information required by ESRS beyond the undertaking's own operations, this additional information is required as an entity-specific integration, for example for mandatory ESRS metrics. This clarification may be relevant for financial institutions.
81. Par. 18 of ESRS 1: This paragraph defines fair presentation based on the qualitative characteristics of information. However, another key element of a fair presentation framework is the mandatory integration of entity-specific information when this is necessary to provide material information. The revised ESRS 1 should reflect this fact.
82. Appendix A of ESRS 1: ESMA suggests to specifically address marine resources in one of the opening paragraphs of Appendix A. ESMA concurs with the ED's approach to clarify the topical scope of E3 as covering water (including marine water) only, also noting that the objectives of E2, E3, E4 and E5 all include references to the specific aspects of the marine environment the respective topic covers. This approach sustains a clearer structure and reduces duplication of disclosures. As the CSRD however explicitly includes marine resources in the environmental factors to be covered by the ESRS (Article 29b par. 2 a), an explanation of how the different related aspects are covered in the environmental standards would be relevant.
83. In addition, analysis of the 2025 reporting exercise showed that cybersecurity was often included in the sustainability statements as an entity-specific topic. ESMA suggests that the opportunity to include cybersecurity as a specific sub-topic to G1 in Appendix A of ESRS 1 could be explored. As explained in par. 461 of the Basis for Conclusions to the ED, cybersecurity is not addressed by the CSRD, nevertheless the inclusion of this sub-topic in the ESRS would not seem inconsistent with the CSRD requirements. In addition, or as an alternative, guidance on how cybersecurity, or more broadly, data and use of AI issues should be reported in the existing framework (also noting the S4 subtopic on privacy) could be included in NMIG to foster common reporting practice and increase comparability.

Proposed Amended ESRS 2

84. **ESMA partially agrees and partially disagrees** that the proposed revisions to ESRS 2 strike the right balance between the need for significant simplification and meeting the core objectives of the EU Green Deal. Throughout our response in specific questions, we have indicated areas of the standard that would require further attention, in addition to those comments we also provide some additional critical comments at disclosure requirement or paragraph level, which will be reflected in the Section 3 of the EFRAG questionnaire.
85. BP-1: The obligation to provide the list of exempted subsidiaries covered in the consolidated statement has been removed from the standard. As this is a requirement

from the CSRD, as well as relevant information for investors, ESMA recommends this datapoint to be re-instated.

86. BP-2 and IRO-1: In line with the other instances where more flexibility on presentation was introduced in the revised ESRS, ESMA suggests allowing disclosure in the relevant topical sections, rather than in the *General information* section for the relevant BP-2 and IRO-1 datapoints. Such increased flexibility should be accompanied with the same requirement used elsewhere to disclose a summary statement in ESRS 2.
87. SBM-1 par. 17 a ii): Considering that all datapoints of ESRS 2 have been made subject to materiality, the mention of “*where applicable and material*” does not seem necessary.
88. SBM-3 par. 23 a): Regarding current financial effects, it is unclear in the amended draft whether disclosure of aggregated financial effects (potentially for all material IROs) is allowed. This should be clarified, also in relation to AR 17 a) which mentions overlapping situations. In addition, ESMA recommends including guidance on how to calculate current financial effects in the standard. It should be clarified in the Application Requirements that the current financial effects are to be determined with consideration of the mitigation measures implemented (“net” basis).
89. IRO-1 par. 26 and AR 20: ESMA agrees that the IRO-1 topical disclosures in ESRS Set 1 were overly detailed and caused implementation challenges. Further simplification could be achieved by turning some datapoints into Application Requirements for par. 26 a). This approach could be relevant for par. 26 c) and par. 26 e). In addition, while AR 20 establishes that the disclosures under par. 26 b) to g) specify rather than expand the disclosures outlined in par. 26 a), it does not describe the links between the different datapoints, which would be helpful for undertakings to better understand the disclosure requirements. ESMA welcomes the focus on information that reflects the specificities of the individual undertakings for reporting on the materiality assessment process as included in AR 20.
90. IRO-1 AR 19: Reference to “*key inputs*” at the end of the paragraph does not provide meaningful guidance and should be supplemented with more concrete examples of what these inputs may consist of, which differ from the categories already mentioned in the paragraph. The term “*parameter*” also lacks clarity in this context. In addition, as the amended ESRS 1 par. 27 refers to scientific data, scientific information should be explicitly mentioned in AR 19 of ESRS 2 as well.
91. IRO-1 AR 21: AR 21 merely describes the disclosure requirements on stakeholders’ consultation in the different standards. For simplification and increased readability of the sustainability statement, ESMA’s view is that AR 21 could further explain how the disclosures under IRO-1 can complement the ones under SBM-2 to avoid duplication or lack of specificity.
92. IRO-1 AR 22: ESMA thinks that the drafting of AR 22 “*the approach to such screening is a relevant aspect of disclosures addressed in (a) to (e)*” is unclear about whether this information is required to be included in the referenced datapoints (where applicable), and on the type of information that is expected. ESMA considers this information

important, and that, while simplification should be achieved through covering it in one datapoint only, the current approach creates too much ambiguity.

93. IRO-2 par. 28 and AR 23: ESMA concurs with moving the description of the IROs to IRO-2 (par. 28), so that this Disclosure Requirement now includes all resulting elements from the materiality assessment process. ESMA however cautions against the flexibility in the proposed AR 23 to describe the IROs at the appropriate level of aggregation. While the intention is to avoid the disclosure of long lists of very granular IROs as has been the case for some wave 1 undertakings, it may create situations where both the IROs, their interaction with the business model and strategy (SBM-3 AR 12) and the related disclosures regarding policies, actions, targets and metrics (for which similar flexibilities have been introduced in ESRS 2 par 29.) are disclosed at an aggregated level, making it impossible for the user to have access to the actual IROs and how they are specifically managed.
94. There is inherent flexibility in the materiality assessment process on the granularity and the setting of thresholds and ESMA sees the resulting granularity of IROs as a matter of practice which will most likely converge in the medium term. Having an additional flexibility on the description of the IROs risks undermining the transparency of the materiality assessment process and could lead to inconsistencies with the objective of sustainability reporting as expressed in ESRS 1 par. 6 *“to present fairly the undertaking’s material impacts on people and environment, as well as the material sustainability risks and opportunities”*. As a consequence, ESMA recommends having clear limitations to the level of aggregation allowed in par. 28 related disclosures.
95. In addition, considering the increased flexibilities in grouping of IROs and presentation, ESMA thinks that the IROs should be clearly disclosed as related to one or several ESRS sub-topics, where relevant, or topics or signposted as related to entity-specific disclosures as part of their description. This could be part of the table proposed in AR 25. ESMA would be in favour of this table being a mandatory requirement rather than a voluntary one. See also the responses to questions 13 and 15 on this issue.
96. IRO-2 par. 28 e: Regarding the table of EU datapoints, an option to refer to the datapoint as *“non applicable”* in addition to *“non material”* could be introduced, as it would fit better with some of the disclosures (e.g., SBM-1 par 17 c) and was used by some Wave 1 undertakings in their 2025 disclosures. The circumstances in which these different notions should be used could be clarified in an Application Requirement.
97. GDR par. 29: The formerly called *“Minimum Disclosure Requirements - MDR”* in ESRS 2 have been streamlined and renamed as *“General Disclosure Requirements – GDR”*. The change in name seems to reflect the fact that the filter of information materiality also applies to information required by these provisions, however EFRAG rightly proposes to stress in the new par. AR 20 of ESRS 1 that GDR provisions *“are fundamental in nature and therefore likely to result in material information for all undertakings”*.
98. ESMA however notes that the text proposed in par. 29 of ESRS 2 is unclear where it states: *“In instances where the undertaking has adopted policies or put in place actions or set targets for certain aspects only, this shall be reflected in the way the disclosure is*

prepared and presented, enabling an understanding of how the covered aspects relate to the corresponding material impacts, risks and opportunities". ESMA supports a requirement to explain how a given policy, action or target (or combination thereof) address one or more IROs. However, the proposed wording is not explicit in this regard and may be open to interpretation.

99. GDR par. 31: Similarly, the objective of the proposed requirements set out in the proposed par. 31 of ESRS 2 is unclear, which foresees that: *"If the undertaking categorises its material impacts, risks and opportunities in accordance with a set of management priorities, reflecting their relevance to the undertaking's strategy and business model, the way disclosures are structured and presented may reflect this approach"*. This proposed requirement seems to address the presentation of policies actions and targets in a way that provides more prominence to certain disclosures of material IROs than to others. ESMA notes that the driving principle to prepare and present information in the sustainability statement is the double materiality approach. The general clause preventing the fact that material information shall not be obscured would, in fact, also apply if more prominence is arbitrarily given to some material IROs than others.
100. GDR par. 32: Furthermore, the proposed par. 32 of ESRS 2 is also rather cryptic when it specifies that the policies, actions, targets and metrics are related to IROs *"either individually or at a higher level (i.e. groups of impacts, risks, opportunities or related topics)"*. This specification, which appears multiple times across ESRS 2, seems to justify an approach whereby, for example, a policy would broadly address a topic without necessarily specifying how it addresses material IROs identified in a given topical area. The proposed wording risks leading to more boilerplate disclosures thus requiring a reporting effort from undertakings, for limited or no benefit to users of the information.
101. Finally, ESMA stresses the fact that the disclosures on policies, actions, targets and metrics should enable users of the sustainability statements to understand whether and, if so, how IROs were managed and any associated targets/metrics and which actions have been taken, planned (or not taken) and their effectiveness to address the pre-defined policy objectives. Whenever an undertaking has only partially addressed one or more of these information elements, the user of the sustainability statement should be able to understand this fact and be able to determine how well the material IROs are being managed by the undertaking. ESMA therefore recommends that the general requirements proposed in paragraphs 29-32 are clarified in this spirit to specify that the objective of policies, actions, targets and metrics remains to shed light on the material IROs and their management and that this objective can be fulfilled based on the aggregation and disaggregation requirements in ESRS 1.

Proposed Amended ESRS E1

102. **ESMA partially agrees and partially disagrees** that the proposed revisions to ESRS E1 strike the right balance between the need for significant simplification and meeting the core objectives of the EU Green Deal. We provide critical comments at disclosure requirement or paragraph level below, especially regarding transition plan and targets

disclosures. These comments will be reflected in the Section 3 of the EFRAG questionnaire.

103. E1-1: the Disclosure Requirement related to the Transition plan for climate mitigation (E1-1) has seen a significant reduction in the number of datapoints through merging them in a single datapoint (par. 14 a). AR 2 clarifies that the expected disclosure is not a duplication of the information provided elsewhere on targets, decarbonisation levers or actions and resources, as these elements should be found under the other E1 disclosure requirements, but the narrative explanation of how these elements are tied together and embedded in the undertaking's strategy and business model.
104. While AR 2 helpfully focuses on the necessary coherence between these elements, and the term "*key features*" stresses their significance, it is unclear whether, in the absence of one or more of these elements, the information disclosed can still be labelled a transition plan. This is especially important as par. 15 requires the disclosure of the absence of transition plan. ESMA also cautions against the inclusion of ambiguous wording to the effect that undertakings would not be required to "*disclose all internal information used to manage the transition plan*" (Par. AR 2). The reporting standards should be more specific as to what information is not expected to be provided. ESMA views the completeness of the transition plans as key to limit greenwashing and ensure that users, including investors, can rely on this disclosure as providing insight in the undertaking's strategic plans regarding climate mitigation.
105. Par 14 a. also addresses the compatibility with the limiting global warming to 1.5°C in line with the Paris Agreement and objectives of EU Law. ESMA understands that as clarifications are expected on this point as an outcome of Level 1 negotiations, the drafting has not evolved from set 1. ESMA notes that beyond a definition of compatibility, clarity will need to be brought in the drafting to ensure consistency between par. 13 ("*ensure that its strategy and business model are compatible*") and AR 2 on whether it is in relation to the target (AR 2 a) or to the overall strategy and business model (par 14. a) that compatibility should be explained.
106. ESMA also finds unclear the addition in AR 2 a) "*and/or by providing validation through an independent third party*". Although enhanced alignment with the IFRS S2 terminology is positive, this could suggest that any validation from an independent third-party would be acceptable, which would not be in line with the provisions of E1-6. More generally, further opportunities for streamlining and clarifying the disclosures expected under respectively AR2 a) and E1-6 par. 26 c) will have to be explored once the "*compatibility*" notion is clarified.
107. ESMA welcomes the introduction of a reference to the dependencies on which the transition plan relies in par. 14 c, as well as maintaining disclosures on locked-in emissions. These disclosures should not be specified as only qualitative, as undertakings who wish to disclose quantitative information on their locked-in emissions should be allowed to do so.
108. ESMA also notes that the reference to the objective or plans the undertaking has defined for aligning its economic activities with the EU Taxonomy criteria have been removed

and only appears in the Non-Mandatory Illustrative Guidance. Par 11 of the revised E1 mentions the EU Taxonomy as one of the EU legislations and regulations which are considered in the standard but there is no longer any reference to the EU Taxonomy in the standard or in the related application requirements.

109. E1-6: ESMA notes the point made in the Basis for Conclusions (par. 255) regarding the increased flexibility in reporting targets, that may result in less comparability and information of users (see also our comments in Question 33 in relation to ESRS 1). ESMA is concerned that when put together, these flexibilities (removing the requirement to disclose a target for 2030, the normalising of baseline values and the requirement to update the base year every 5 years after 2030) will make it more difficult for users, including investors, to compare or aggregate the targets, could increase greenwashing and more generally question the overall consistency with the Green Deal objectives.
110. Regarding decarbonisation levers, the overall quantitative contributions are no longer required to be disclosed and only appear as a voluntary presentation provision (AR14). ESMA thinks it is key for the credibility of the transition plans to keep a mandatory disclosure of these quantitative contributions, which could be included in E1-1 par. 14 a.
111. E1-8: Regarding the disclosure of GHG emissions in E1-8, ESMA welcomes the exclusion of scope 3 emissions from the relief on metrics introduced in ESRS 1. ESMA would favour keeping the use of the table in AR 27 as mandatory rather than voluntary, as tables generally increase comparability.
112. E1-9: ESMA's view is that the concept of GHG neutrality claim (par. 37) should be defined in the Glossary, where it should be specified that the concept covers all types of claims, including neutrality targets.
113. ESMA also regrets the removal of all reference to net-zero targets from the standard. Such targets are widely used by issuers in some constituencies where supervisors could note improved disclosures and reduced instances of greenwashing in the 2025 sustainability statements. While ESMA agrees that a specific disclosure on how residual emissions will be addressed poses reporting challenges and should be removed at this stage, the concept of net-zero target itself should be defined and disclosure, where applicable, re-introduced, for instance through broadening par. 37. The definition of net-zero targets should clarify that all types of removals (removals in the value chain, as well as carbon credits of the removal type) are allowed for the neutralisation of residual emissions step.

Proposed amended ESRS E5

114. As part of the considerations linked to EU legislation, the proposed Amended ESRS should clarify references to the Ecodesign for Sustainable Products Regulation (ESPR), especially for reporting on unsold products. In line with the objective of revised ESRS to ensure greater consistency between European regulations, an AR for E5-5 could be added related to ESPR Art 24.1. The ESPR text already provides for the possibility of incorporating this information into sustainability reporting.

Proposed amended ESRS S1

115. **ESMA partially agrees and partially disagrees** that the proposed revisions to ESRS S1 strike the right balance between the need for significant simplification and meeting the core objectives of the EU Green Deal. ESMA observes that EFRAG has significantly simplified the topical social standards by trimming down the narrative disclosures, reducing the scope of application of disclosure requirements, merging disclosure requirements / data points and cutting back the application requirements. The topical social standards that remain still appear to address the social and human rights factors which are required by CSRD Article 29b(2)(b). We provide some critical comments at disclosure requirement or paragraph level below. These comments will be reflected in the Section 3 of the EFRAG questionnaire.
116. S1-3 par. 19: ESMA considers there is room for further simplification in S1-3 as GDR-A of ESRS 2 seems sufficient to cover most information regarding a company's actions, and the associated resources, to manage the material IROs related to its workforce. As such, in S1-3 most of paragraph 19 could be removed to avoid adding narrative disclosures on top of those already envisioned by GDR-A of ESRS 2. However, ESMA suggests to keep the requirement to disclose how the company approaches situations where tensions arise between its actions to prevent, mitigate and remediate material negative impacts on its own workforce and other business pressures. The same consideration applies to the Disclosure Requirements on Actions and Resources of the other social standards (S2-3 par. 18, S3-3 par. 16 and to S4-3 par. 15).
117. S1-5 par. 23 b): In S1-5, paragraph 23(b) could require that companies always break down their employees into contract types using headcount (as opposed to leaving the choice between either headcount or full time equivalent (FTE) in the current drafting). This would enhance consistency in disclosure and give a clearer methodology for companies. Further in S1-5, paragraph AR 10 says that the company's "*method for compiling the employee data [...] may provide contextual information*", i.e., it is up to the company to determine whether it provides the methodology for its data compilation. This seems inconsistent with ESRS 2, GDR-M (*General Disclosure Requirement for metrics*), par. 41(a) and (d) which require companies to disclose "*the calculation methodology*" and "*contextual information about the metric*". ESMA furthermore suggests laying down one clear requirement for how to report the employee numbers to enhance comparability (at period-end or as an average // either in head count or full-time equivalent). ESMA also recommends retaining the requirement to disclose the total number of employees who have left the company as investors and other stakeholders would need gross numbers to validate the calculation.
118. S1-7 AR 16 and par. 27 b): In S1-7 AR 16, ESMA suggests adjusting the sentence "*An employee in the undertaking's own workforce covered by more than one collective bargaining agreement only needs to be counted once*" to "*An employee in the undertaking's own workforce covered by more than one collective bargaining agreement shall only be counted once*" to improve accuracy and consistency across companies. Furthermore, ESMA suggests providing clarity also in relation to par. 27(b) as to whether it requires disclosures about collective bargaining agreements in the EEA with reference

to the ten largest countries having regard for the entire international presence of the undertaking or only with regards to the undertaking's presence within the EEA.

119. S1-8: ESMA believes the deletion of the age distribution of a company's employees is problematic as this is an important information for investors. ESMA therefore encourages EFRAG to reinsert age distribution in S1-8. ESMA also recommends that when an undertaking decides to depart from the definition of '*top management*' provided in the ESRS, it shall also disclose that definition.
120. S1-9 AR 22: ESMA suggests adjusting the sentence "*The adequate wage benchmark used under points i), ii) or iii) should take into account both needs of workers and their families, as well as economic factors, as stated in the ILO Minimum Wage Fixing Convention No.131*" to "*The adequate wage benchmark used under points i), ii) or iii) shall take into account both needs of workers and their families, as well as economic factors, as stated in the ILO Minimum Wage Fixing Convention No.131*".
121. S1 and S2: Lastly as regards the topical social standards, ESMA suggests it would be beneficial to clarify how to treat franchisees, i.e., whether they are captured under S1 as non-employees or under S2 as workers in the value chain.

Proposed amended ESRS G1

122. **ESMA partially agrees and partially disagrees** that the proposed revisions to ESRS G1 strike the right balance between the need for significant simplification and meeting the core objectives of the EU Green Deal. ESMA welcomes the clear structure for Policies, Actions and Targets which has been introduced in G1, similar to the one observed in other topical standards. However, ESMA would like to flag that par. 6 of the amended ESRS G1 requires disclosing the number and nature of confirmed incidents of corruption or bribery that occurred during the year (in addition to the number of convictions required under par. 5). ESMA suggests clarifying the definition of a "confirmed incident" in the glossary as the interpretation of this term may otherwise vary from one company to another making the information difficult to compare. Should this concept remain vague, divergence in practice may be so significant to suggest that this datapoint should not be required until its disclosure can lead to comparable information.