

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 Standards
(Set 1)

1 Introduction and legal basis

1. On 25 November 2022, the European Securities and Markets Authority (ESMA) received a request from the European Commission (Commission) to provide an opinion on the technical advice on the first set of European Sustainability Reporting Standards (ESRS) which the European Financial Reporting Advisory Group (EFRAG) published on 23 November 2022. The request is reproduced in Annex 1.
2. ESMA's competence to deliver an opinion on the technical advice is based on the fifth subparagraph of Article 49(3b) of the Accounting Directive (Directive 2013/34/EU¹) as amended by the Corporate Sustainability Reporting Directive or CSRD (Directive (EU) 2022/2464²).
3. Notably, according to this provision the Commission shall request the opinion of ESMA – as well as the opinions of the European Banking Authority (the EBA) and the European Insurance and Occupational Pensions Authority (EIOPA) – on the technical advice provided by EFRAG, in particular with regard to its consistency with the Sustainable Finance Disclosure Regulation or SFDR (Regulation (EU) 2019/2088³) and its delegated acts. ESMA – as well as the EBA and EIOPA – shall provide their opinions within two months from receiving the Commission's request.

2 Background

2.a Process for developing ESRS Set 1

4. On 21 April 2021, the Commission adopted a legislative proposal for a Corporate Sustainability Reporting Directive. A key provision of this legislative proposal was that undertakings

¹ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.6.2013, p. 19-76.

² Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, OJ L 322, 16.12.2022, p. 15–80. References to articles of the Accounting Directive in this opinion are to the Accounting Directive as amended by the CSRD.

³ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, OJ L 317, 9.12.2019, p. 1-16.

in scope would be required to provide sustainability reporting based on mandatory sustainability reporting standards which the Commission would adopt into delegated acts based on technical advice from EFRAG.

5. On 12 May 2021, Commissioner McGuinness requested EFRAG to establish interim working methods to commence the technical development of reporting standards in parallel with the legislative negotiations on the proposed CSRD and to reform its governance to incorporate a sustainability reporting pillar alongside the existing financial reporting pillar.
6. On this basis, EFRAG established a Project Task Force to prepare the ESRS (PTF-ESRS) which commenced its activities in June 2021. ESMA followed the work of the PTF-ESRS as an observer. The starting point for the work of the PTF-ESRS was the report of its predecessor, EFRAG's Project Task Force that undertook preparatory work for the elaboration of possible EU non-financial reporting standards (PTF-NFRS).
7. Based on the work of the PTF-ESRS, EFRAG issued Exposure Drafts of 13 standards for public consultation on 29 April 2022 (the Exposure Drafts). The public consultation ended on 8 August 2022.
8. In parallel with preparing the draft standards, EFRAG finalised its steps to incorporate a sustainability reporting pillar into its governance, including establishing a new Sustainability Reporting Board (SRB) and a new Sustainability Reporting Technical Experts Group (SR TEG). ESMA follows the activities of both the SRB and the SR TEG as an observer along with other EU public bodies.
9. Based on the input to the public consultation and a number of outreach events with stakeholders, EFRAG finalised its technical advice and published it on 23 November 2022. For the remainder of this opinion, EFRAG's technical advice is referred to as 'ESRS Set 1' or 'Set 1'.

2.b Content of ESRS Set 1 as submitted to the Commission

10. ESRS Set 1 aims at addressing the requirements set out in Article 29b(1), second subparagraph of the Accounting Directive⁴. EFRAG will develop and deliver further sets of ESRS over the coming years to function alongside Set 1, as is foreseen by the Accounting Directive.
11. Set 1 contains 12 ESRS which apply to large undertakings as defined in the Accounting Directive. EFRAG refers to these standards as sector-agnostic. The 12 ESRS are distributed across 2 cross-cutting standards (ESRS 1, ESRS 2) and 10 topical standards (E1 to E5 on

⁴ Article 29b of the Accounting Directive sets out requirements concerning the contents and structure of the sustainability reporting standards, most notably addressing: the information necessary to fulfil the disclosures required by SFDR, the distinction between sector-agnostic and sector-specific information, the specific matters relating to environmental, social and governance factors to be covered by the standards, the need to foresee both retrospective and forward-looking information and the consistency with global standard-setting initiatives and selected acts in EU law.

environmental matters (hereafter referred to as the topical E standards), S1 to S4 on social matters (hereafter referred to as the topical S standards) and G1 on governance matters:

- a) Within the cross-cutting standards, ESRS 1 presents the general principles which undertakings reporting under the ESRS should apply when they prepare and present their disclosure, whereas ESRS 2 contains disclosure requirements which provide for general information about the undertaking's strategy, business model, governance, materiality process, as well as requirements on disclosure content on policies, targets and action plans which are applicable to all sustainability matters addressed in the topical standards.
 - b) The topical E standards, E1 to E5, establish disclosure requirements in relation to the six environmental objectives set out in the Taxonomy Regulation (Regulation (EU) 2020/852⁵); climate change mitigation and climate change adaptation (E1), pollution (E2), water and marine resources (E3), biodiversity and ecosystems (E4) and resource use and circular economy (E5).
 - c) The topical S standards, S1 to S4, establish disclosure requirements in relation to the reporting undertaking's own workforce (S1), the workers in its value chain (S2), communities affected by the reporting undertaking's operations or through its value chain (S3) and consumers and end-users of the reporting undertaking's products and services (S4).
 - d) G1 (the only topical G standard) establishes disclosure requirements in relation to the reporting undertaking's business conduct.
12. Alongside Set 1, EFRAG delivered a number of accompanying documents to the Commission, such as a cover letter and a cost-benefit analysis, and several appendices, such as a list of datapoints which provide information needed by market participants under other pieces of EU legislation.
13. EFRAG will furthermore publish bases for conclusions, summarising the SRB's considerations in developing the standards, for all 12 standards. The bases for conclusions were therefore not part of the material used for the preparation of this opinion.

3 ESMA's assessment of the technical advice

3.a Application of the assessment framework

14. ESMA has assessed ESRS Set 1 against the criteria set out in the assessment framework which is included in Annex 2 to this opinion.
15. As explained in Annex 2, the overall objective of ESMA's assessment has been to ensure that ESRS Set 1 is conducive to investor protection – in particular by being consistent with the SFDR and its delegated acts – and does not undermine financial stability. This objective

⁵ Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, OJ L 198, 22.6.2020, p. 13-43.

reflects ESMA's remit and mission to enhance investor protection and promote stable and orderly financial markets. The objective is operationalised with four criteria which were used to structure ESMA's assessment on the following pages.

16. As mentioned in Annex 2, ESMA looked at *the extent* to which ESRS Set 1 is capable of addressing the elements of the assessment framework based on the following scale: fully capable, broadly capable, partly capable or not capable. The absence of any issues on ESRS Set 1 would result in it being considered as *fully capable* of addressing the assessment criteria. Where issues were identified, "*broadly capable*" or "*partly capable*" would be used depending on the significance of the issues and the extent and urgency of the measures needed to address them. Finally, "*not capable*" would be used in case the issues identified were so pervasive as to require extensive changes to ESRS Set 1.

3.b Advice to the Commission

17. As a result of its assessment, ESMA has identified certain issues with Set 1 which it would be necessary to tackle to ensure that Set 1 is fully capable of meeting the assessment criteria and which ESMA therefore advises the Commission to address. These issues are presented on the following pages of the opinion with underlined text.
18. ESMA is mindful that Article 29b(1), second subparagraph of the Accounting Directive requires the Commission to adopt Set 1 into delegated acts by 30 June 2023. It is therefore possible that the Commission may find it necessary to take a staggered approach to addressing the issues raised in this opinion in a way that provides for high-quality solutions and ensures the timely adoption of Set 1.
19. To cater for this eventuality, ESMA's conclusions to this opinion identify those issues which can be addressed with limited textual changes to Set 1 – which the Commission may decide to prioritise *before it adopts Set 1 into delegated acts* – and those issues which will require slightly more time to address, for example because more explanations have to be developed or because some rewording has to be considered which necessitates a detailed assessment of the possible consequences across Set 1 – which the Commission may decide to address *as soon as possible after the adoption of Set 1 into delegated acts and ideally before the adoption of Set 2*. The distinction between these two categories of issues is included in the conclusion to the opinion (section 4).
20. In addition to these issues, ESMA has identified certain areas where Set 1 *may* lead to issues but where it is necessary to observe the practical application of Set 1 to determine if there will be problems in practice. ESMA does not include any advice for the Commission to address these areas. Instead, ESMA will raise these issues during the first review of the ESRS, if they turn out to be relevant.

3.c Assessment

Criterion 1: Do the ESRS promote disclosure of material sustainability information of high quality?

1a: Do the ESRS ensure that undertakings report in line with the sustainability matters and reporting areas identified in the Accounting Directive?

21. Set 1 requires information which addresses the topics listed in Articles 19a, 29a and 29b of the Accounting Directive without generally appearing to go significantly beyond those topics.
22. An exception to this is the inclusion of disclosures regarding energy efficiency and consumption in E1 which is not mentioned *per se* in the articles of the Accounting Directive. However, as these matters are closely linked to greenhouse gas (GHG) emissions and to an undertaking's transition risks, and as energy use and energy efficiency are furthermore mentioned in Recital 48 of the CSRD, this inclusion seems relevant.
23. Similarly, while not explicitly envisaged by the Accounting Directive, the possibility in ESRS 1, as further explained in ESRS 2, to disclose information within the sustainability statements – subject to the qualitative characteristics of information – based on local legislation or on generally accepted sustainability reporting pronouncements seems to be a practical measure to improve the usability of sustainability statements.
24. ESMA observes that there is one area of discrepancy between the Accounting Directive and Set 1 relating to the transitional provision on value chain reporting. According to Article 19a(3), second subparagraph of the Accounting Directive, for the first three years of application, in the event that not all the necessary information regarding an undertaking's value chain is available, the undertaking shall explain the efforts made to obtain the necessary information about its value chain, the reasons why not all of the necessary information could be obtained, and its plans to obtain the necessary information in the future (hereafter referred to as 'the Level 1 transitional provision'⁶). Against this provision, ESMA has identified the following issues in ESRS 1, paragraphs 133-134:
 - (a) Whereas paragraph 133 refers to "*the first three years of the **undertaking's** sustainability reporting*" (emphasis added), the second subparagraph of Article 19a(3) of the Accounting Directive refers to "*the first three years of the application of the measures to be adopted by the Member States in accordance with Article 5(2)*" of the CSRD. The first wording would permit an undertaking to apply the transitional provision whenever it becomes subject to the CSRD (for example, an undertaking which passes the threshold of 'large undertaking' in 2030 could apply the transitional provision in 2030, 2031 and 2032) whereas the second wording would permit undertakings to apply the transitional provisions in the first three years in which the measures adopted pursuant to the CSRD

⁶ A corresponding transitional provision for parent undertakings is established in Article 29a(3), second subparagraph of the Accounting Directive.

are applicable (2024, 2025 and 2026). This difference could lead to a misinterpretation of the Accounting Directive.

- (b) Paragraph 133 repeats the Level 1 transitional provision and adds that regardless of these limitations, the undertaking is expected to use in-house available value chain information to meet the value chain reporting requirements in ESRS 1, Section 5⁷. ESMA considers that this requirement would benefit from clarification as indicated in paragraph 25 below.
- (c) Paragraph 134 establishes further provisions related to the Level 1 transitional provision and it does so “*in order to limit the burden for SMEs that are a part of the value chain*”. ESMA considers that this reference to limiting burden on SMEs suggests that the Level 1 transitional provision only applies to value chain information collected from SMEs, which is not the case.
- (d) Points (a) and (b) of paragraph 134 each appear to slightly alter the Level 1 transitional provision. Paragraph 134(a) states that the undertaking is not required to include information on impacts, risks and opportunities connected with the value chain, except for the always-to-be-disclosed datapoints in ESRS 2, Appendix C. In ESMA's view, this adds a new transitional provision which applies in all cases, not only “*in the event that not all the necessary information regarding [the] value chain is available*”. The new transitional provision limits the value chain information that needs to be disclosed to the always-to-be-disclosed datapoints in ESRS 2, Appendix C, which does not appear to comprehensively cover the value chain information required by the first and second subparagraphs of Article 19a(3) as it suggests that certain value chain information is less relevant than other value chain information, irrespective of the availability of that information. Paragraph 134(b) states that the undertaking can limit value chain reporting in relation to ESRS 2 and disclosure requirements on policies, actions and targets in the topical standards to value chain information which is available in-house, another point which does not fully reflect the Level 1 transitional provision.

25. Consequently, ESMA advises the Commission to amend paragraphs 133 and 134 of ESRS 1 by:

- (a) Clarifying in paragraph 133 that the first three years do not refer to the reporting of an individual undertaking but to the first three years of application of the measures to be adopted by the Member State.
- (b) Amending the second sentence of paragraph 133 in a way that ensures consistency with the Level 1 transitional provision. This could, for example, be done by saying that, before applying the Level 1 transitional provision, undertakings shall consider whether they have information available in-house (such as data already available to the undertaking or publicly available information) that would permit them to provide the value

⁷ The relevant text of paragraph 133 is as follows: “Regardless of these limitations, the undertaking is expected to use in-house available value chain information (such as data already available to the undertaking and publicly available information) when applying chapter 5 of this [draft] Standard in the first three years.”

chain reporting required by ESRS 1, Section 5, and that such in-house information may be particularly relevant to cover disclosure on policies, actions and targets (as opposed to metrics).

(c) Removing paragraph 134 for the reasons mentioned in paragraphs 24(c) and (d).

26. ESMA notes that, in general, Set 1 does not appear to place distinctive new conduct requirements on undertakings. Furthermore, ESMA notes that ESRS 2, GOV-4, paragraph 31 specifies that GOV-4 does not mandate any specific behavioural requirements with regard to sustainability due diligence actions and does not extend or modify the role of the administrative, management and supervisory bodies as mandated by other legislation or regulation. ESMA encourages the Commission to include a similar wording in ESRS 1 to clarify that the same applies to the entire Set 1. ESMA furthermore advises the Commission to reconsider the provision in ESRS 1, paragraph 77 which currently seems to suggest that undertakings may use or increase their ‘leverage’ on value chain actors to obtain the necessary information and which, therefore, may be considered as a behavioural indication. ESMA suggests replacing this provision with a requirement in ESRS 2, BP-2 to disclose any unsuccessful reasonable efforts the undertaking made to collect value chain information which led to the use of estimates.
27. ESMA raises a note of caution in relation to the provisions in ESRS 1, paragraphs 108-110 which allow undertakings to omit information on intellectual property, know-how or the results of innovation corresponding to ‘trade secrets’. While the interplay between the Accounting Directive and the Trade Secrets Directive (Directive (EU) 2016/943⁸) must be duly taken into consideration in Set 1 to avoid any unintended consequences on undertakings, in ESMA’s view, it is important that the inclusion of any such provision is carefully assessed by the Commission for two reasons:
- (a) Firstly, the draft provisions in paragraphs 108-110 constitute a *blanket* requirement which may lead undertakings to omit material information on the grounds of an alleged risk of disclosing trade secrets.
 - (b) Secondly, there is a possible interaction between these draft provisions and Article 19a(3), fourth subparagraph of the Accounting Directive. This article permits Member States to allow for the omission in exceptional circumstances of commercially sensitive information, on impending developments and matters under negotiation, under specific conditions⁹. It is unclear whether, in some cases, the trade secrets addressed in paragraphs 108-110 of ESRS 1 could also constitute “*impending developments or matters under negotiation*” under Article 19a(3), fourth subparagraph of the Accounting Directive.
28. ESMA, therefore, advises the Commission to carefully assess this provision, in particular, by considering whether it is necessary to retain the provision. If this provision is retained,

⁸ Directive (EU) 2016/943 of the European Parliament and of the Council of 8 June 2016 on the protection of undisclosed know-how and business information (trade secrets) against their unlawful acquisition, use and disclosure, OJ L 157, 15.6.2016, p. 1-18.

⁹ A corresponding provision for parent undertakings is established in Article 29a(3), fourth subparagraph of the Accounting Directive.

the Commission should consider whether to amend it to ensure that: it (i) does not contradict Article 19a(3), fourth subparagraph of the Accounting Directive; (ii) is formulated in a way that is as aligned as possible with Recital 34 of the CSRD; (iii) requires the undertaking to ensure that the omission of information does not prevent a fair and balanced understanding of the undertaking's development, performance and position and the impact of its activities; and (iv) can only be applied in exceptional circumstances.

29. Lastly, ESMA advises the Commission to amend ESRS 2, DC-A to further specify, in line with Article 19a(2)(f)(iii), of the Accounting Directive that undertakings shall also disclose actions to prevent or mitigate *potential* negative impacts, as the current text only addresses actions to mitigate *actual* negative impacts.

30. **To summarise the assessment of sub-criterion 1a, ESMA finds ESRS Set 1 broadly capable of ensuring that undertakings report in line with the sustainability matters and reporting areas identified in the Accounting Directive. ESMA has identified certain issues which it advises the Commission to address, as indicated in the underlined text.**

1b: Do the ESRS promote disclosure which reflects the way undertakings internally identify, assess and manage impacts, risks and opportunities related to sustainability matters and which enables a forward-looking identification of material impacts, risks and opportunities by users?

31. Set 1 requires disclosure which is meant to allow users to understand how undertakings identify, assess and manage both actual and potential impacts, risks and opportunities. ESMA observes that the application requirements in ESRS 1 provide some guidance on how to identify and assess, as part of the materiality process, impacts, risks and opportunities. Furthermore, ESRS 1, Chapter 4 also provides for useful requirements to promote the alignment between an undertaking's materiality assessment and its internal due diligence process.
32. However, ESMA notes that to further support the implementation of the materiality assessment requirements, the application requirements of ESRS 1 should explain the sequence of the steps of the materiality process and clarify how the same materiality process is expected to inform several disclosure requirements in ESRS 2 (e.g., GOV-4, GOV-5, SBM-1, SBM-2 and SBM-3). Otherwise, there is a risk of a disconnect between the level of transparency envisaged in ESRS 2 on how the materiality assessment is *conducted* and how the outcome of this assessment *feeds into the above-mentioned disclosures*. Similarly, it is unclear how the requirement in ESRS 1, paragraph 36 which refers to the relevance of the information from three different perspectives (i.e., significance of the information, ability of the information to meet decision-making needs and transparency) interacts with the fact that the materiality assessment is the driving principle for disclosure under Set 1.

33. ESMA therefore advises the Commission to include additional detail in ESRS 1, Appendix B on the materiality assessment sequence. In addition, ESMA suggests adding application requirements in ESRS 2 to explain the interaction between the materiality assessment steps and outcome and the disclosure requirements in ESRS 2. In doing so, ESMA observes that it will be possible to capture the role of sector-based information within the materiality assessment process given that Set 2 will contain a first set of sector-specific standards. ESMA finally considers that it is not fully clear how the requirement in ESRS 1, paragraph 36 should be made part of the materiality assessment process (for example, whether it constitutes a second step following the determination of the material sustainability matters). Application requirements in ESRS 1 should explain the role of these requirements in the materiality process.
34. In relation to Set 1's approach to disclosure of sustainability matters along different time horizons, ESMA notes that ESRS 1 strikes a balance between a principles-based approach and the need for more precise rules, as it establishes pre-set time bands but permits undertakings to depart from them if this is necessary to ensure information that better reflects their business model.
35. Finally, ESMA notes that Set 1 provides guidance on how undertakings should present their long-term assessment of impacts, risks and opportunities, notably through the use of scenario analysis which is addressed in general in ESRS 2 and specifically in certain topical standards, notably E1 and E4. Set 1 furthermore requires undertakings to disclose any target they have established to assess progress. Lastly, Set 1 generally specifies the nature of the most relevant qualitative and quantitative forward-looking information that undertakings should disclose. This is done through a combination of requirements in ESRS 2 (e.g., information about the resilience of an undertaking's strategy and business model, actions and resources to achieve objectives and targets) and in the topical standards.
36. **To summarise ESMA's assessment of sub-criterion 1b, ESRS Set 1 is broadly capable of promoting disclosure which reflects the way undertakings internally identify, assess and manage impacts, risks and opportunities related to sustainability matters and which enables a forward-looking identification of material impacts, risks and opportunities by users of sustainability statements. ESMA has identified certain issues which it advises the Commission to address, as indicated in the underlined text.**

1c: Do the ESRS promote disclosure which is understandable, relevant, comparable and represented in a faithful manner?¹⁰

37. Ensuring the quality of reported information is a clear requirement for the ESRS, as set out in Article 29b(2), first subparagraph of the Accounting Directive. In this respect, ESRS 1, Chapter 2 establishes an overarching requirement for undertakings to apply the qualitative

¹⁰ For the purpose of this opinion, the characteristic of verifiability is assessed as part of sub-criterion 2a.

characteristics of information set out in ESRS 1, Appendix C when preparing their sustainability statements. The qualitative characteristics mirror those which are the basis for financial reporting under IFRS, and this requirement, if properly applied, will promote reporting of sustainability information of a high quality.

38. ESMA, however, advises the Commission to clarify that the disclosures pursuant to Article 8 of the Taxonomy Regulation – which are to be located within the sustainability statements – are not intended to be subject to the qualitative characteristics of information. ESMA notes that if the qualitative characteristics are applied to the disclosures under Article 8 of the Taxonomy Regulation, this would imply the application of the materiality test to these disclosures. This could lead to a scenario in which the Article 8 disclosures would have to be left out of the sustainability statements if they were to not meet the materiality threshold. In ESMA’s view, this approach would not be in line with the delegated act under Article 8.
39. ESMA notes that Set 1 is structured around overarching disclosure objectives and more specific disclosure requirements. This ensures that, even if an undertaking deems that an individual datapoint within a disclosure requirement is immaterial and should not be disclosed, the undertaking must still ensure that it meets the overarching disclosure objective.
40. In relation to the materiality principle, which is an entity-specific aspect of relevance, Set 1 uses double materiality as a guiding principle, including for the disclosure of value chain information. This implies that materiality will determine both an undertaking’s decision on whether to omit certain information because the undertaking considers it to be immaterial and, for disclosure which *is* provided, materiality will determine the level of granularity of that disclosure to fulfil the disclosure requirement in question.
41. However, ESMA observes that this principle of materiality is combined with a web of requirements which define information that must always be disclosed regardless of the outcome of the materiality assessment. As explained in ESRS 1, paragraph 32, this is the case for: (i) the disclosure required by ESRS 2, (ii) the disclosure required by E1, (iii) information demands arising from EU legislation (SFDR, Benchmarks Regulation (Regulation (EU) 2016/1011¹¹), Capital Requirements Regulation (Regulation (EU) No 575/2013¹²) and EU Climate Law (Regulation (EU) 2021/1119¹³)) as per the list in ESRS 2, Appendix C and (iv) information related to the undertaking’s own workforce required by S1-1 to S1-9 (for undertakings with at least 250 employees).
42. Regarding point (i), the requirements in ESRS 2 address basic information on the undertaking itself. This information is furthermore necessary to contextualise the other information in the sustainability statements and disclosure content on policies, targets and action plans

¹¹ Regulation (EU) 2016/1011 of the European Parliament and of the Council of 8 June 2016 on indices used as benchmarks in financial instruments and financial contracts or to measure the performance of investment funds and amending Directives 2008/48/EC and 2014/17/EU and Regulation (EU) No 596/2014, OJ L 171, 29.6.2016, p. 1-65.

¹² Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms and amending Regulation (EU) No 648/2012, OJ L 176, 27.6.2013, p. 1-337.

¹³ Regulation (EU) 2021/1119 of the European Parliament and of the Council of 30 June 2021 establishing the framework for achieving climate neutrality and amending Regulations (EC) No 401/2009 and (EU) 2018/1999 ('European Climate Law'), OJ L 243, 9.7.2021, p. 1-17.

which is always to be provided for sustainability matters that have been identified as material.

43. Regarding point (iii), ESMA notes that this information supports other disclosure obligations of EU sustainable finance legislation whose fulfilment will enable the improvement of the data flow across the sustainable investment value chain. In particular, ESMA highlights that this is consistent with Article 29b(1), second subparagraph of the Accounting Directive which indicates that the reporting standards shall at least include the information that financial market participants subject to the disclosure obligations of the SFDR need in order to comply with those obligations. Closely connected to this, ESMA notes that a large part of the disclosure requirements in E1 (point (ii)) are necessary to feed information to other areas of EU legislation. In order to support the overall efficiency in the application of Set 1, this seems to justify that all information required by E1 is considered as always-to-be-disclosed.
44. However, ESMA is not convinced by point (iv). Firstly, without the basis for conclusions for Set 1, at the date of ESMA's assessment it is not immediately clear why S1-1 to S1-9 are to be treated differently to other requirements in the topical S standards. Secondly, ESMA is concerned that the selection of the 250-employee threshold seems somewhat arbitrary. ESMA therefore advises the Commission to carefully consider whether such a list of requirements in the social area should be included amongst those that are always-to-be-disclosed and, if so, whether it is appropriate to retain the 250-employee threshold. ESMA would advise the Commission to remove this threshold whose introduction does not seem to be justified by the Accounting Directive.
45. Furthermore, ESMA advises the Commission to clarify whether and how to apply the materiality concept for the always-to-be-disclosed disclosure requirements. For example, it should be clarified that for these requirements undertakings should apply the materiality concept to determine the *level of detail* the undertaking should adopt to provide the required information. This is particularly important for the application of requirements in ESRS E1 which are mandatory in their entirety. For example, it is important to clarify how the materiality process applies when some of these always-to-be-disclosed requirements refer directly to 'materiality' (e.g., E1, paragraph 19 requiring disclosure on *material* impacts, risks and opportunities related to climate change mitigation and adaptation or E1, paragraph 61 on potential financial effects from *material* physical and transition risks and *material* climate-related opportunities). Such a clarification could be included as part of the additional application requirements in ESRS 1 suggested under criterion 1b of this opinion.
46. ESMA also notes that there is a potential inconsistency between the text of ESRS 2, Appendix C which identifies the list of items required by EU legislation that are always-to-be-disclosed irrespective of the outcome of the materiality assessment and S1, paragraph 12(b) which indicates that, for undertakings with less than 250 employees, all the disclosure requirements in S1 – including arguably the always-to-be-disclosed ones referred to in ESRS 2, Appendix C – apply only in relation to material impacts, risks and opportunities identified through the entity-level materiality assessment. ESMA advises the Commission to provide a clarification on the interplay between the S1-related indicators referred to in ESRS 2, Appendix C and S1, paragraph 12(b).

47. ESMA furthermore advises the Commission to address the following aspects with regards to impact materiality:
- (a) To improve consistency in the materiality assessment, clarify in the application requirements to ESRS 1 that in assessing environmental matters, impacts on environment shall be taken into account and, if material, reported on independently of whether nature's interests are explicitly represented by one or more categories of stakeholders. This clarification could complement the reference to "*nature as a silent stakeholder*" in ESRS 1, Appendix B, paragraph AR2.
 - (b) Clarifying, as part of the application requirements on the materiality assessment process, how the materiality thresholds should be set once the sustainability matters have been ranked according to their severity. It should be notably clarified whether the material impacts to be reported on are only the 'most significant' ones as prioritised by the undertaking based on the resources available for taking action on them or whether – as ESMA would expect – the identification of the material impacts to be reported on in the sustainability statements should be disconnected from the internal planning and resources available to address these impacts. ESMA notes that some confusion may arise in this regard when reading ESRS 1, paragraph 45 which refers to the fact that (emphasis added): "*Appropriate thresholds are necessary to determine which impacts, risks and opportunities are **identified and addressed** by the undertaking as material (also referred to in some existing standards and frameworks related to impacts as "most significant")*". This text seems to imply that the thresholds set for reporting purposes are meant to select a subset of all significant impacts which coincides with those that have been 'addressed' by the undertaking.
 - (c) Clarifying, as part of the application requirements of the topical standards on environmental matters, how undertakings are expected to make use of ecological thresholds. In general, it should be clarified whether the thresholds an undertaking should refer to are based, for example, on externally verifiable scientific criteria of absolute damage caused to environmental or social factors, or – where different – on the thresholds set internally for the purpose of prioritising an undertaking's actions based on other considerations.
48. Regarding the concept of financial materiality, ESMA notes that ESRS 1, paragraph 51 contains two different criteria for information to be deemed material from a financial perspective. As such, the first sentence of paragraph 51 establishes a criterion based on the 'usefulness' of the information while the second sentence, which is a specification of the first, establishes a threshold based on the 'reasonable expectation' that information will influence investment decisions taken on the basis of the undertaking's sustainability statements. ESMA advises the Commission to retain only the second sentence to ensure clarity – considering that the usefulness, as mentioned in paragraph 51, is not a precise criterion – and help build interoperability with international standards (as detailed under criterion 4 of this opinion).
49. Overall, ESMA considers that Set 1 entails a level of granularity which is necessary to provide a complete depiction of the phenomena that the standards purport to represent, in line

with the requirements of the Accounting Directive, and which is necessary to meet the information needs of users of sustainability statements.

50. Notwithstanding this, ESMA observes that some disclosure requirements, in particular in the S topical standards, may lead to very detailed disclosures. For instance, S1, paragraph 51(a) requires undertakings to disclose the total number of employees, and breakdowns by gender and by country, for countries in which the undertaking has 50 or more employees. This threshold could lead to very extensive disclosure for undertakings that have operations in many countries, and such extensive disclosure could risk obscuring material information to the detriment of users. It is not possible to ascertain at this stage how these disclosure requirements will fare in practice, however, if this were to cause unnecessarily detailed reporting, ESMA will raise this point in the first review of the ESRS and suggest assessing whether – instead of setting specific thresholds – the level of disaggregation should rather be set based on the undertaking's materiality assessment.
51. ESMA observes that the first years of application of the ESRS might pose challenges requiring some reporting undertakings to go through a learning curve. However, the phase-in requirements which Set 1 envisages for the first years of application are generally expected to help mitigate this issue. Nevertheless, ESMA would advise the Commission to re-consider the phase-in provision in relation to the disclosure requirement E1-9 on the potential financial effects from material physical and transition risks and potential climate-related opportunities which de facto would postpone the obligation to provide quantitative information by three / four years from the first application of the ESRS (it is not fully clear if the one year opt-out sits within the three-year phase-in period or if they are cumulative, leading to a total period of four years of special measures on this disclosure requirement). ESMA notes that such a delay seems to be inconsistent with the increasing investor demand to incorporate such information in their decision-making and with the need to accelerate the transition towards a more sustainable financial system, particularly for matters related to climate change. Due to the relevance of this information, ESMA therefore considers that its inclusion in the sustainability statements should not be unduly delayed. Furthermore, it is unclear why this phase-in period seems more generous than the transitional provisions foreseen for the disclosure of financial effects relating to the other topical E standards. ESMA, therefore, advises the Commission to remove for E1-9 the possibility for undertakings to entirely omit the disclosures on the financial effects in the first reporting period and to align the phase-in period for all topical E standards to allow for a three-year period during which the undertakings will be required to disclose qualitative information if it is impracticable to prepare quantitative disclosures, a condition which is currently only included for E1.
52. ESMA notes that Set 1 prevents duplication of information across the sustainability statements by permitting cross-references amongst disclosure made under different parts of the standards (ESRS 1, paragraph 116).
53. Set 1 also appears to promote entity-specific disclosure as opposed to disclosure that is generic or 'boilerplate'. It requires undertakings to disclose additional entity-specific information if the requirements of the ESRS do not address the specific fact patterns faced by the undertakings, and the combination of disclosure objectives and detailed requirements

further contributes to this end, as explained above in paragraph 39. The requirement in ESRS 1 to ensure that the disclosures meet the qualitative characteristics of ‘relevance’ and ‘faithful representation’ also promotes entity-specific disclosure.

54. Set 1 requires disclosure of comparative information, applying a one-year phase-in period (ESRS 1, paragraphs 87-90 and 136). Undertakings are required to prepare this information consistently over time and to restate information when a metric or target is recalculated or replaced (ESRS 1, paragraph 98), and there are requirements relating to correcting reporting errors in prior periods (ESRS 1, paragraphs 99-104).
55. To complement these provisions on comparative information and help users better understand the nature of changes occurring to the reported information over time, ESMA suggests that it may be necessary to introduce a distinction between changes in *policy* and changes in *estimates* and to provide guidance on how to address those changes in the sustainability statements. ESMA will raise this point in the first review of the ESRS if the absence of these measures were to be a problem in practice.

56. **To summarise its assessment of sub-criterion 1c, ESMA finds ESRS Set 1 broadly capable of promoting disclosure which is understandable, relevant, comparable and represented in a faithful manner. ESMA has identified a number of issues which it advises the Commission to address, as indicated in the underlined text.**

1d: Do the ESRS support coherence in undertakings’ reporting, including between their sustainability reporting and their financial reporting?

57. Set 1 provides guidance on how undertakings – within their sustainability statement – should insert references to, and additional explanations of, other information included in the management report and amounts reported in the annual financial statements. They furthermore require that undertakings use consistent inputs for the preparation of their sustainability information and their financial information or, where that is not possible, that they explain and justify any differences in inputs (ESRS 1, Section 9).
58. Set 1 allows for information to be incorporated by reference from another section of the management report, the financial statements, the corporate governance report, the remuneration report, Pillar 3 disclosures, Solvency II disclosures and the EU Eco-Management and Audit Scheme (EMAS) report (ESRS 1, Section 9). Undertakings may only incorporate information from these sources when it is subject to at least the same assurance and digitalisation regime and published with the same timing as the sustainability statements.
59. ESMA notes that the list of documents which can be used as sources for incorporation by reference was intentionally kept limited by EFRAG to maximise the role of the sustainability statements as a self-standing set of information. In this respect, ESMA questions why the EMAS’ environmental statement was chosen as a source for incorporation by reference.

While ESMA understands that Article 29b(5)(i) of the Accounting Directive requires the Commission to take account of the EMAS Regulation (Regulation (EC) No 1221/2009¹⁴) when adopting the ESRS, it is unclear why the EMAS environmental statement was included in the short list of documents from which information can be incorporated by reference given its specificity compared to other sources. Most notably, the EMAS environmental statement is not typically part of an undertaking's annual reporting package, it is subject to a different external verification regime, and it is entirely voluntary in nature. On the other hand, ESMA notes that it would be useful to allow incorporation by reference from the Universal Registration Document (URD) as foreseen by Article 9 of the Prospectus Regulation (Regulation (EU) 2017/1129¹⁵) given the role of this document in facilitating investors' access to multiple sources of corporate reporting. ESMA therefore advises the Commission to:

- (a) Remove the reference to the EMAS statement as a possible source for incorporation by reference and consider it at its first review of the ESRS based on the experience from practice; and
- (b) Include a reference to the URD as a possible source of information that can be incorporated by reference into the sustainability statements.

60. The general principle for incorporating information by reference is that the undertaking shall consider the overall cohesiveness of the reported information and ensure that the incorporation by reference does not impair the readability of the sustainability statement. ESMA considers that it may be necessary to include examples and further guidance in the application requirements of ESRS 1 on how to apply this principle. ESMA will raise this point in the first review of the ESRS if it observes that the absence of such examples and further guidance is causing issues with the application of Set 1.

61. To summarise the assessment of sub-criterion 1d, ESMA finds ESRS Set 1 broadly capable of supporting the coherence in undertakings' reporting, including between their sustainability reporting and their financial reporting. ESMA has identified certain issues which it advises the Commission to address, as indicated in the underlined text.

¹⁴ Regulation (EC) No 1221/2009 of the European Parliament and of the Council of 25 November 2009 on the voluntary participation by organisations in a Community eco-management and audit scheme (EMAS), repealing Regulation (EC) No 761/2001 and Commission Decisions 2001/681/EC and 2006/193/EC, OJ L 342, 22.12.2009, p. 1.

¹⁵ Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC, OJ L 168, 30.6.2017, p. 12-82.

Criterion 2: Are the ESRS conducive to consistent application in terms of both content and format?

2a: Do the ESRS facilitate undertakings' understanding of how their disclosure should be prepared and promote reporting which can be subjected to assurance by the statutory auditor / audit firm / an independent assurance services provider and to supervision and enforcement by national competent authorities?

62. Set 1 is overall internally consistent, and all the topical standards generally have the same structure, even though the topical S standards seem to provide more details as to how the ESRS 2 disclosure content requirements should be applied to the specific matters addressed by these standards.
63. The language of the standards is generally reasonably clear, and definitions of main terms are included. ESMA, however, advises the Commission to make the following important adjustments to ensure internal consistency and enhance the clarity of the language and as such to facilitate the consistent application and enforcement of Set 1:
- (a) In ESRS 1, paragraph 7 clarifies the meaning of “shall disclose”, “shall consider” and “may disclose” across the entire Set 1 which is helpful. Nevertheless, ESMA notes certain problems in relation to the term “shall consider”. This term is defined as “*factors that the undertaking is expected to consider – if they are applicable – in the preparation of the reporting...*”. ESRS 1 uses “consider” to define “consider” which is circular and which does not clarify if this is an obligation or an option. Given the phrase “if they are applicable”, it appears that this label dictates a mandatory action. To increase clarity, ESMA advises the Commission to change the definition by replacing “is expected to consider” with, for example, “is expected to use”.
 - (b) Either way, “shall consider” appears to relate to the processes and tools which undertakings shall use when they prepare their reporting, as indicated by the definition (“*factors...to consider...in the preparation of the reporting*”). ESMA observes that “shall consider” is also sometimes used in relation to the disclosure which undertakings shall provide by indicating that an undertaking “shall consider XYZ when disclosing information on ABC”. ESMA has observed that “shall consider” is used in relation to disclosure in at least the following instances: E2, paragraph AR9; E2, paragraph AR32; E3, paragraph AR19; E4, paragraph AR24; E5, paragraph AR8. ESMA suggests that “shall consider” should not be used in relation to disclosure because this creates confusion on whether this disclosure is mandatory or optional. Those instances of “shall consider” should be replaced either with “shall disclose” (for mandatory disclosure) or “may disclose” (for optional disclosure).
 - (c) In addition to the three terms defined in ESRS 1, paragraph 7, Set 1 also uses the term “shall consider disclosing” in E1, S1, S2, S3 and S4 which *de facto* is very similar to “may disclose”. ESMA advises the Commission to ensure further clarity on what expectations “shall consider disclosing” places on undertakings, or alternatively to replace this term with “may disclose”.

- (d) E1, paragraph 43 uses the concept of operational control to illustrate how undertakings are to apply reporting boundaries for Scope 1, 2 and 3 GHG emission reporting in relation to associates, joint ventures, unconsolidated subsidiaries and contractual arrangements. ESMA considers that the concept of operational control will be fundamental to ensure a consistent application of the GHG emission disclosure requirements and advises the Commission to clarify this concept to make sure it is easily understood by reporting undertakings, auditors and national competent authorities, notably as to how it differs from financial control.
 - (e) ESMA has noticed that the definition of “corruption” in G1 is not fully aligned with the definitions set out in Article 2 of the Council Framework Decision on combating corruption in the private sector (Council Framework Decision 2003/568/JHA¹⁶) and Article 4 of the Directive on the fight against fraud to the Union's financial interests by means of criminal law (Directive (EU) 2017/1371¹⁷). ESMA therefore advises the Commission to consider whether the definition in G1 should be aligned to the notion of “corruption” the mentioned Directive and Council Framework Decision.
 - (f) Lastly, ESMA reiterates that certain clarifications and streamlining of the definition of financial materiality and of the assessment process of both impact and financial materiality are needed. The necessary changes are already described under criterion 1 of this opinion as they relate to ensuring that Set 1 promotes disclosure of material sustainability information of high quality. ESMA remarks that these changes would also be necessary to ensure that reporting undertakings, auditors and national competent authorities have a consistent understanding of these fundamental concepts.
64. ESMA notes that in some topical standards, for example E2 and E3, there is not a full alignment between the sub-topics to be addressed under policies and under targets. ESMA considers that it may be helpful to have a more direct alignment but will assess in practice whether the current drafting leads to any issues. If that is the case, ESMA will raise this point in the first review of the ESRS.
65. Set 1 broadly sets clear expectations for the type of information undertakings should provide, for example by stating the specific unit of measurement in which quantitative disclosure should be provided. The level of detail – and as such the level of accuracy – varies between topical standards. This may to a certain extent be explained by varying levels of maturity of the different topics (for example, E4-5 *Impact metrics related to biodiversity and ecosystems change* is more principle-based than corresponding disclosure requirements in other topical E standards, as performance measures on biodiversity are still being developed). However, maturity cannot be used to explain the different level of detail required in all cases (e.g., the accuracy of the requirements on lobbying activities in G1-5 was reduced since the Exposure Drafts which leaves more room for undertakings to interpret and therefore a less robust basis for audit and enforcement). Additionally, the application requirements for some of the topical

¹⁶ Council Framework Decision 2003/568/JHA of 22 July 2003 on combating corruption in the private sector, OJ L 192, 31.07.2003, p. 54-56.

¹⁷ Directive (EU) 2017/1371 of the European Parliament and of the Council of 5 July 2017 on the fight against fraud to the Union's financial interests by means of criminal law, OJ L 198, 28.7.2017, p. 29.

standards (e.g., E3, S1) make frequent use of “may”. This creates a less clear expectation for the type of information undertakings should provide which can create challenges for the audit and enforcement of the disclosures under these standards. If these points lead to application issues, ESMA will raise them in the first review of the ESRS.

66. Set 1 broadly explains how undertakings should apply the disclosure requirements. They do this through application requirements which instruct undertakings on how to apply the disclosure requirements in the main body of the standard. Since the Exposure Drafts it has been clarified through changing the title from “application guidance” to “application requirements” that this material is binding. Furthermore, since the Exposure Drafts, the content of the application requirements has been calibrated across both cross-cutting and topical standards, notably by ensuring that all disclosure requirements are in the body of the standard and that no obligations are presented only in the application requirements.
67. ESMA observes that while Set 1 contains many application requirements, some disclosure requirements have yet to be covered. For example, only the five topical E standards contain application requirements on ESRS 2, IRO-1 *Description of the processes to identify and assess material impacts, risks and opportunities* which is a central part of ESRS Set 1 (though the application requirements in S1 do present a non-exhaustive list of factors to consider in the materiality assessment). ESMA suggests that it may be helpful to add application requirements for the outstanding disclosure requirements and will raise this point in the first review of the ESRS if it observes practical issues caused by the absence of application requirements.
68. Equally, ESMA notes that some of the standards contain requirements for disclosure for which there are no internationally recognised standards (for example, the disclosure requirements in E1 on GHG removals and carbon credits). If ESMA becomes aware of application difficulties with these disclosure requirements once Set 1 becomes applicable, ESMA may include recommendations for further detail or guidance in the first review of the ESRS.
69. Set 1, specifically the topical standards, broadly seems to prescribe the methodological principles which undertakings should use to prepare some of the more complex disclosure. As some topics are more mature, some topical standards can refer to more methodologies than others and for some standards, notably G1, there is less of a need to prescribe methodological principles due to the nature of the disclosure that is being required. ESMA observes that some areas may benefit from additional clarity and / or detail about the methodological principles which undertakings should apply, for example the disclosure requirements on potential financial effects (topical E standards), resilience analysis (ESRS 2, E1 and E4) and transition plans (E1 and E4). ESMA will observe how the standards fare in this area once they become applicable and will raise this point in the first review of the ESRS, if it were to be necessary.
70. The topical standards broadly require undertakings to be transparent about the methodology and assumptions they have used to prepare their disclosure (S3 and S4 to a lesser extent which is to be expected since they require disclosure on processes more than on performance metrics). However, there is no general requirement in the cross-cutting standards for

such transparency to complement the specific disclosure requirements in the topical standards, though ESRS 1, Section 2 and Appendix C require the information disclosed under the standards to be verifiable which contributes to transparency on methodologies and assumptions. ESMA advises the Commission to insert a general requirement to disclose the methodologies and significant assumptions behind metrics and targets and potentially also a requirement for undertakings to disclose their broader “accounting policies” (i.e., explanations of how undertakings have applied the ESRS).

71. Set 1 has a structure which would seem to allow undertakings to easily identify the disclosure requirements related to a given topic. As such, ESRS 1, Appendix B contains an overview of the topics, sub-topics and sub-sub-topics which are covered in each topical standard. Furthermore, the topical standards each contain an introductory section called *Interactions with other ESRS* which helpfully describes the articulation and boundaries of each standard vis-à-vis other standards. ESMA observes that in most cases, for the environmental standards¹⁸, there is not currently a clear explanation of what these interactions mean for undertakings’ reporting. If this causes problems when Set 1 becomes applicable, ESMA will raise this point in the first review of the ESRS.

- 72. To summarise the assessment of sub-criterion 2a, ESMA finds that ESRS Set 1 is broadly capable of facilitating undertakings’ understanding of how their disclosure should be prepared and that it broadly promotes reporting which can be subjected to assurance and to supervision and enforcement. ESMA has identified certain issues which it advises the Commission to address, as indicated in the underlined text.**

2b: Do the ESRS ensure that reporting can be effectively delivered and marked-up in accordance with the European single electronic format (ESEF) Regulation?

73. Generally, the topical standards define the units of measurement undertakings should use for quantitative disclosure, and it is generally clear whether a data point needs to be met with quantitative or qualitative disclosure.
74. Looking at Set 1 strictly from the perspective of digital reporting, it would have been useful to go further in separating out individual datapoints rather than collecting several datapoints within one paragraph. Further splitting out datapoints would have enabled these datapoints to be more easily identifiable and reflected in the future digital taxonomy. However, ESMA considers that when the perspective of digital reporting is weighed against other considerations, notably the clarity and human readability of Set 1, a reasonable balance has been achieved.
75. ESMA suggests that one additional step might help ensure that it is possible to deliver the disclosure under Set 1 in accordance with the ESEF Regulation (Commission Delegated

¹⁸ E1, paragraphs 8-9; E2, paragraph 7; E3, paragraph 4 and the first two sentences of paragraph 5; E4, paragraphs 4-8; E5, paragraphs 6-8.

Regulation (EU) 2019/815¹⁹): for digitisation purposes, it might be helpful to clarify the expected presentation format of the disclosures when it is preferable that reporting entities use a specific format. This is already done in some places across Set 1, for example in E1, paragraph 46. ESMA will observe how the development of the taxonomy for the ESRS progresses and will raise this point in the first review of the ESRS, if it appears necessary for the accessibility and comparability of information.

- 76. To summarise the assessment of sub-criterion 2b, ESMA finds ESRS Set 1 broadly capable of ensuring that reporting can be effectively delivered and marked up in accordance with the European single electronic format (ESEF) Regulation.**

Criterion 3: Are the ESRS consistent and interoperable with other relevant EU legislation within ESMA's remit?

3a: Do the ESRS cover the information that financial market participants need from their investee companies to meet their own reporting obligations under the Sustainable Finance Disclosure Regulation and accompanying delegated acts?

3c: Do the ESRS cover the information that benchmark administrators need to meet their own ESG obligations under the EU benchmarks regime?

77. ESRS Set 1 covers the information which financial market participants need to be able to disclose principal adverse impact (PAI) indicators regarding investments in investee companies under the delegated act of the SFDR, and importantly both the mandatory and the opt-in indicators are covered. The standards also cover the information that benchmark administrators need to meet their ESG obligations under the EU benchmarks regime, both for the purposes of disclosing ESG factors in the benchmarks statement and for the purposes of applying the minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks. Undertakings are required to disclose the datapoints which provide input to financial market participants and to benchmark administrators irrespective of the materiality assessment which means these datapoints will always be available.
78. As already highlighted under criterion 1c (paragraph 44), a clarification is needed on the interplay between ESRS 2, Appendix C which identifies the items required by EU legislation that are always-to-be-disclosed (including PAI and benchmark-related indicators) and S1, paragraph 12(b). Paragraph 12(b) indicates that, for undertakings with less than 250 employees, all the disclosure requirements in S1 – including those that are referred to in ESRS 2, Appendix C – apply only in relation to material impacts, risks and opportunities identified through the entity-level materiality assessment. ESMA advises the Commission to address

¹⁹ Commission Delegated Regulation (EU) 2019/815 of 17 December 2018 supplementing Directive 2004/109/EC of the European Parliament and of the Council with regard to regulatory technical standards on the specification of a single electronic reporting format, OJ L 143, 29.5.2019, p. 1.

this inconsistency by clarifying that the S1-related indicators referred to in ESRS 2, Appendix C are outside the scope of S1, paragraph 12(b).

79. **To summarise the assessment of sub-criteria 3a and 3c, ESMA finds ESRS Set 1 broadly consistent and interoperable with SFDR and benchmark requirements. ESMA has identified one issue which it advises the Commission to address, as indicated above with underlined text.**

3b: Are the ESRS consistent and interoperable with the Disclosure Delegated Act adopted pursuant to Article 8 of the Taxonomy Regulation?

80. Set 1 avoids duplicating or pre-empting requirements from the delegated act under Article 8 of the Taxonomy Regulation and they clarify the interaction vis-à-vis the delegated act, both in terms of presentation (ESRS 1, paragraph 113 and Appendix G) and, where relevant, in terms of substance (E1). ESMA notes that a clarification is needed on the applicability of the qualitative characteristics of information to the Article 8 Taxonomy disclosures, as explained under criterion 1c.

81. **ESMA finds ESRS Set 1 broadly consistent and interoperable with the Disclosure Delegated Act adopted pursuant to Article 8 of the Taxonomy Regulation. ESMA has identified one issue which it advises the Commission to address, as indicated in the underlined text.**

3d: Are the ESRS consistent with other relevant EU legislation within ESMA's remit?

82. ESRS 2, paragraph AR6 specifies that for listed undertakings the information required under GOV-3 should be consistent with the remuneration report prescribed in Articles 9a and 9b of the Shareholders' Rights Directive (Directive 2007/36/EC²⁰). While not legislation per se, ESMA notes that it will be important for the Commission to consider the consistency between this requirement and any future Commission guidelines on the standardised presentation of the remuneration report.
83. In addition, it should be noted that the definition of "Administrative, management and supervisory bodies" in ESRS 2, Appendix A is only partly aligned with the wording of the Shareholders' Rights Directive. In particular, this definition seems to encompass the CEO or deputy CEO only *"If there are no administrative, management or supervisory body of the undertaking"*. To improve clarity and consistency with the Shareholders' Rights Directive, ESMA advises the Commission to adjust the sentence as follows: "If they are not members of the

²⁰ Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, OJ L 184 14.7.2007, p. 17-24.

administrative, management or supervisory body of the undertaking, the CEO and, if such function exists, the deputy CEO, should be included”.

84. **To summarise the assessment of sub-criterion 3d, ESMA finds ESRS Set 1 broadly consistent and interoperable with other relevant EU legislation within ESMA’s remit. ESMA has identified three issues which it advises the Commission to address, as indicated in the underlined text.**

Criterion 4: Do the ESRS promote interoperability with global standard-setting initiatives for sustainability reporting to the greatest extent possible (and taking account of the EU’s sustainability requirements and objectives)?

85. For the purpose of ESMA’s assessment under criterion 4, interoperability is considered on the basis of Recital 43 of the CSRD which calls for the integration by the ESRS of the content of the global baseline standards to be developed by the International Sustainability Standards Board (ISSB), to the extent that the content of those baseline standards is consistent with the Union’s legal framework and objectives, as well as for the ESRS to take into account existing standards and frameworks for sustainability reporting and accounting where appropriate, including those of the Global Reporting Initiative (GRI).
86. ESMA has assessed the interoperability with the disclosure requirements of the ISSB’s IFRS Sustainability Disclosure Standards based on the ISSB’s Exposure Drafts published in March 2022 and having taken into account the documents made public by the ISSB until December 2022²¹ in relation to tentative decisions of the Board on the evolution of the IFRS ED.
87. A complete assessment of interoperability between Set 1 and the IFRS Sustainability Disclosure Standards will only be possible when the final IFRS Sustainability Disclosure Standards are published. ESMA expects that EFRAG will assess any need for amending Set 1 (and subsequent sets, as appropriate) for the purpose of ensuring interoperability with international standards. ESMA will consider the final version of the IFRS Sustainability Disclosure Standards (and any subsequent amendments) when providing its opinion on Set 2 (and subsequent sets) of the ESRS and will determine at that stage whether updated considerations on interoperability are necessary.

²¹ <https://www.ifrs.org/groups/international-sustainability-standards-board/#meetings>

4a: Do the ESRS cater to the greatest extent possible for interoperability with the disclosure requirements of the IFRS Sustainability Disclosure Standards and the GRI Standards?

4b: Are the terminology and definitions of the ESRS interoperable with the terminology and definitions of the IFRS Sustainability Disclosure Standards and the GRI Standards to the greatest extent possible?

88. Based on the information currently available, in ESMA's view the structure of Set 1 is substantially aligned, or at least easily reconcilable, with the structure of the IFRS Sustainability Disclosure Standards (based on the ISSB's Exposure Drafts and the latest tentative decisions). The architecture of the Set 1 topical standards has been modified since the Exposure Draft phase to mirror the IFRS Sustainability Disclosure Standards (and TCFD) architecture, allocating content in the four core areas of governance, strategy, impact/risk/opportunity management and metrics and targets. On the other hand, in the Exposure Draft of IFRS S1 principles and disclosure requirements are in one standard, while in Set 1, the principles are in ESRS 1 and the disclosure requirements in ESRS 2.
89. ESMA notes that concentrating cross-cutting disclosure requirements in one standard is also the approach followed by GRI. The GRI general standards are organised in three documents: GRI 1 (Foundation), GRI 2 (General Disclosures) and GRI 3 (Material topics). The Set 1 structure is slightly different (though easily reconcilable), with ESRS 1 covering GRI 1 and GRI 3 and ESRS 2 covering GRI 2. Similarities and differences in the structure of the different sets of standards are identified in the Explanatory Note which EFRAG published along with Set 1.
90. Regarding interoperability with the disclosure requirements of the IFRS Sustainability Disclosure Standards, the disclosures covered by the Exposure Draft of IFRS S1 have been included in ESRS 2 and the disclosures covered by the Exposure Draft of IFRS S2 have been covered in E1. In parallel, the ISSB has brought forward re-deliberations to tentatively confirm or clarify points which, if reflected in the final IFRS Sustainability Disclosure Standards, would ease interoperability with Set 1²².
91. Regarding interoperability with the disclosure requirements of the GRI standards, the Set 1 disclosure requirements are generally aligned with the GRI standards, where relevant, in the sense that EU undertakings using the GRI standards will be well prepared to comply with the requirements of Set 1. ESMA observes that interoperability could be enhanced through separating the disclosures of impacts and the disclosures of risks and opportunities in the disclosure requirements where, instead, they have been grouped in ESRS 2 (such as SBM-3) and related disclosure requirements and application requirements of topical standards. ESMA advises the Commission to consider providing more granularity where needed.
92. The main differences between the disclosure requirements of the different sets of standards as identified by EFRAG are listed in the Explanatory Note published along with Set 1. A

²² <https://www.ifrs.org/content/dam/ifrs/meetings/2022/december/issb/ap4-climate-related-disclosures-cover-note-and-summary-of-redeliberations.pdf>

detailed comparison of Set 1 with the Exposure Drafts of IFRS S1 and S2 is provided in Appendix V to Set 1. These differences mostly stem from specific requirements under the Accounting Directive. For instance, double materiality is defined in ESRS 1 in reference to impact materiality (relevant for the GRI standards) and financial materiality (relevant for the IFRS Sustainability Disclosure Standards). In addition, Set 1 deviates from the IFRS Sustainability Disclosure Standards and the GRI standards on the scope of the materiality assessment as some datapoints related to EU legislation are always-to-be-disclosed. The Exposure Draft of IFRS S1 and the GRI standards allow for more extensive incorporation by reference than Set 1. Targets in E1 are expected to be compatible with the limiting of global warming to +1.5°C while under the Exposure Draft of IFRS S2, a broader range of options for scenarios is allowed.

93. Apart from the differences in the disclosure requirements identified above, ESMA observes that the way the materiality assessment process is conducted can also lead to different disclosures. Assessing interoperability hence also means considering whether the outcomes of the double materiality assessment conducted under Set 1 would satisfy the Exposure Draft of IFRS S1's criteria (for financial materiality) and how it compares to GRI's criteria (for impact materiality). This point is linked to the degree of alignment of the materiality definition and assessment process in ESRS 1 with the corresponding definitions and requirements in the Exposure Draft of IFRS S1 and GRI 3.
94. ESMA notes that the IFRS definition of materiality has been included in the Set 1 definition of financial materiality in ESRS 1, paragraph 51. However, this does not ensure total equivalence between the two definitions and differences could result in difficulties in reconciling disclosures prepared under the two sets of standards. The Exposure Drafts of the IFRS Sustainability Disclosure Standards require that material information must not be obscured, and ESMA observes a risk that different notions of financial materiality between Set 1 and IFRS Sustainability Disclosure Standards may result in the conclusion that ESRS-based financial information partially obscures information based on IFRS Sustainability Disclosure Standards. As a consequence, and as already mentioned under sub-criterion 1c, ESMA advises the Commission to fully align the definition of financial materiality with the IFRS definition.
95. If the definitions of financial materiality are fully aligned between Set 1 and IFRS S1 (including in ESRS 1, Appendix A), the risk for ESRS-based information to obscure information that is only relevant from a financial materiality perspective would be mostly limited to the broader scope of ESRS reporting (as the ESRS also covers impacts and information mandated by other EU legislation). ESMA considers that this issue can be addressed through the development of a mapping between the two sets of standards once the final IFRS Sustainability Disclosure Standards are published – a tool which is mentioned in Appendix V published by EFRAG alongside Set 1. ESMA supports the development of such a mapping tool as a useful accompanying material to assist both reporting undertakings and users of sustainability reporting as well as to facilitate digital reporting. Similarly, interoperability tools would be useful for preparers and users of the GRI standards as well.

96. As for the definition of impact materiality, the efforts to streamline the terminology between the different standards have led to a wording which could be clearer, especially regarding the basis on which the impact materiality threshold should be set. Regarding the materiality assessment process, ESRS 1, Appendix B includes the main steps of GRI 3 for impact materiality but provides a lower level of detail. ESMA already advises the Commission to ensure additional clarity on the materiality assessment process under sub-criteria 1b and 1c of this opinion, and in this context ESMA advises the Commission to consider whether it is possible to further align the materiality assessment processes of the different sets of standards.
97. ESMA also notes that digital taxonomies will be developed for both ESRS and international standards. ESMA observes that the interoperability of the disclosure requirements may be further supported by these digital taxonomies if they illustrate which disclosure requirements are substantially the same across different sets of standards and which disclosure requirements are specific to one or more sets of standards.
98. Apart from the issues related to financial and impact materiality definitions discussed above, ESMA notes a good level of interoperability between the terminology and definitions of Set 1 and the terminology and definitions of the two other sets of standards.
99. For instance, ESMA observes that the qualitative characteristics of information have been aligned between ESRS 1 and the Exposure Draft of IFRS S1 (except for timeliness which is a characteristic that is not explicitly mentioned in the CSRD). As another example, the ISSB tentatively decided to change their terminology in IFRS S2 from carbon offsets to carbon credits. In some cases where full alignment was not possible, ESMA notes that changes have been made to enable interoperability. For instance, the definitions of time horizons in ESRS 1 and the Exposure Draft of IFRS S1 are different, but flexibilities (for medium and long term) were included in ESRS 1 for better interoperability with IFRS S1 which does not prescribe quantitative time horizons.
100. **To summarise the assessment of sub-criteria 4a and 4b, based on the information available at the time of ESMA's assessment, ESMA finds that ESRS Set 1 appears broadly capable of catering for interoperability with the disclosure requirements of the IFRS Sustainability Disclosure Standards and with the GRI standards. The terminology and definitions of ESRS Set 1 also seem broadly interoperable with the terminology and definitions of the IFRS Sustainability Disclosure Standards and the GRI Standards. ESMA has identified a small number of issues which it advises the Commission to address, as indicated in the underlined text.**

4 Conclusion

101. Based on the assessment of the four criteria set out in ESMA's assessment framework, ESMA concludes that ESRS Set 1 *broadly* meets the objective of being conducive to investor protection and not undermining financial stability.
102. ESMA has identified a number of issues with Set 1 that it advises the Commission to address in order to ensure that Set 1 *fully* meets the objective of being conducive to investor protection and not undermining financial stability. These issues should ideally be addressed before Set 1 is adopted into delegated acts.
103. However, should the Commission find it necessary to stagger the way in which it addresses these issues to ensure the timely adoption of Set 1, ESMA has distinguished the issues into two categories:
- The issues which it would be possible to address with relatively simple textual changes to Set 1. These issues are listed in the left column of the table below and could be prioritised before the Commission adopts Set 1 into delegated acts.
 - The issues which would require more time to address, for example because more explanations have to be developed or because some rewording has to be considered which necessitates a detailed assessment of the possible consequences across Set 1. These issues are listed in the right column of the table below and could be addressed as soon as possible after Set 1 is adopted into delegated acts and ideally before the adoption of Set 2.

Before adopting Set 1 into delegated acts	As soon as possible thereafter and ideally before adopting Set 2
<ol style="list-style-type: none"> Amend ESRS 1, paragraphs 133-134 to align with the Level 1 transitional provision (paragraph 25 of the opinion) Ensure there are no behavioural requirements (paragraph 26 of the opinion) <ol style="list-style-type: none"> Elevate disclaimer about behavioural requirements in ESRS 2, paragraph 31 to a general requirement in ESRS 1 Remove or redraft ESRS 1, paragraph 77 which could be seen as a behavioural indication Reconsider paragraphs 108-110 on trade secrets (according to paragraph 28 of the opinion) Specify in ESRS 2, DC-A that undertakings shall disclose actions to prevent or mitigate potential negative impacts (paragraph 29 of the opinion) 	<ol style="list-style-type: none"> Provide guidance on the materiality assessment process <ol style="list-style-type: none"> Explain the sequence of the materiality assessment and the interaction between the outcome of the materiality assessment process and selected requirements in ESRS 2 (paragraph 33 of the opinion) Clarify in application requirements how to determine the relevance of information in ESRS 1, paragraph 36 as part of the materiality assessment process (paragraph 33 of the opinion) Explain whether and how to apply the materiality concept to always-to-be-disclosed disclosure requirements (paragraph 45 of the opinion) Clarify that impacts on "nature" shall be taken into account irrespective of

<ol style="list-style-type: none"> 5. Clarify whether Article 8 disclosures are subject to qualitative characteristics (paragraph 38 of the opinion) 6. Consider whether S1-1 to S1-9 should be always-to-be-disclosed and, if so, consider whether to retain the 250-employee threshold (paragraph 44 of the opinion) 7. Address inconsistency between ESRS 2, Appendix C and S1, paragraph 12(b) (paragraph 46 of the opinion) 8. Delete first sentence of ESRS 1, paragraph 51, on the definition of financial materiality (paragraph 48 of the opinion) 9. Amend phase-in requirements in relation to environmental standards (paragraph 51 of the opinion) 10. Incorporation by reference: remove the reference to EMAS as a possible source and insert a reference to the URD in the list of documents from which information can be incorporated by reference (paragraph 59 of the opinion) 11. Insert a general requirement to disclose methodologies and main assumptions behind metrics and targets and potentially a requirement to disclose “accounting policies” (paragraph 70 of the opinion) 12. Align the definition of “Administrative, management and supervisory bodies” with the Shareholders’ Rights Directive (paragraph 83 of the opinion) 	<p>whether stakeholders refer to those (paragraph 47(a) of the opinion)</p> <ol style="list-style-type: none"> e. Clarify in application requirements how to set impact materiality thresholds and whether undertakings should report only on the ‘most significant’ impacts which they have resources to address (paragraph 47(b) of the opinion) f. Clarify in application requirements how undertakings should make use of ecological thresholds (paragraph 47(c) of the opinion) g. Explore opportunities to further ensure a smooth articulation of the materiality assessment process with IFRS Sustainability Disclosure Standards and GRI standards (paragraph 96 of the opinion) <ol style="list-style-type: none"> 2. Definition of “shall” consider in ESRS 1, paragraph 7 <ol style="list-style-type: none"> a. Amend the definition (paragraph 63(a) of the opinion) b. Remove use of “shall consider” in relation to disclosures (paragraph 63(b) of the opinion) c. Define or remove the term “shall consider disclosing” (paragraph 63(c) of the opinion) 3. Clarify “operational control” (paragraph 63(d) of the opinion) 4. Consider alignment of the definition of corruption with other EU law definitions (paragraph 63(e) of the opinion) 5. Separate disclosure of impacts and risks and opportunities in ESRS 2 (paragraph 91 of the opinion) 6. Develop a mapping of Set 1 vis-à-vis IFRS Sustainability Disclosure Standards and GRI standards (paragraph 95 of the opinion)
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104. While not directly related to the assessment framework which ESMA applied to develop its opinion on Set 1, ESMA would like to highlight the following additional remarks for the Commission to consider since they are, in ESMA’s view, critical aspects to ensure the consistent and correct implementation of Set 1, and the ESRS more generally, in the EU.

105. Firstly, ESMA notes that it will be critical for the successful application of the ESRS to ensure that a standardised and clear process exists at European level to address relevant application and interpretation questions by stakeholders which may already arise in the transition


phase to the first application of the ESRS and which could compromise the consistent application. ESMA stands ready to actively contribute to any such mechanism that the Commission may set up for the ESRS, as the participation in such a mechanism of ESMA and the other ESAs would help ensure consistency between the application of the ESRS and other technical requirements in the EU sustainable finance legislative framework within their respective remits. This is particularly important, taking into account that the ESAs address questions of consistent application of the SFDR requirements via their regular convergence tools.

106. Secondly, ESMA stresses the importance of prioritising the sector-specific standards for the financial sector. In light of the central role that financial institutions play in the transition towards a more sustainable financial system as investors and intermediaries, it is important to accelerate the development of these standards ideally for adoption by the Commission already in 2025.
107. Thirdly, it is important that new developments in sectoral EU regulation continue to be captured in future sets of ESRS and the related standard-setting timelines. This is particularly important in relation to the future developments of the SFDR Level 2 measures. To this end, the ESAs will continue to engage at staff level with EFRAG to help fill any gaps in terms of substantive requirements and definition of concepts and methodologies relating to ESRS datapoints that are linked to SFDR disclosures.
108. Lastly, in order to ensure the consistent and correct implementation of the new requirements, national competent authorities, in coordination with ESMA, will supervise and, where necessary, enforce the ESRS. ESMA will stand ready to contribute to the further development of these standards in a way that enhances their enforceability and consistent application across the Union.

Done in Paris, 26 January 2023

For the Board of Supervisors
Verena Ross
Chair
[signed]

Annex 1: Request for opinion from the European Commission

 Ref. Ares(2022)8163710 - 25/11/2022



EUROPEAN COMMISSION

DIRECTORATE-GENERAL FOR FINANCIAL STABILITY, FINANCIAL SERVICES AND CAPITAL
MARKETS UNION

Director-General

Brussels
FISMA.C.1/GB/rv/(2022)9029000

Ms Verena Ross
Chairperson
European Securities and Markets
Authority
201-203 Rue de Bercy
75012 Paris
France

Dear Ms Ross,

On 21 June 2022, the Council and European Parliament reached a political agreement on the Corporate Sustainability Reporting Directive (CSRD) ⁽¹⁾, which amends the Accounting Directive ⁽²⁾ by revising and strengthening the provisions introduced by the Non-Financial Reporting Directive ⁽³⁾.

The CSRD - whose final text we understand is scheduled to be published in the Official Journal by the end of this year - requires certain categories of undertakings to report sustainability-related information in accordance with European Sustainability Reporting Standards (ESRS).

Article 29b of the Accounting Directive, as amended by the CSRD, empowers the Commission to adopt these ESRS as delegated acts taking account of the technical advice of EFRAG ⁽⁴⁾ and after having consulted the Member States and certain Union bodies identified in the Directive ⁽⁵⁾. In particular, it requires the Commission to adopt, by 30 June 2023, a first set of ESRS specifying the information that undertakings are to report

⁽¹⁾ Proposal for a Directive of the European Parliament and of the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting (COM/2021/189 final).

⁽²⁾ Directive 2013/34/EU on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

⁽³⁾ Directive 2014/95/EU amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups.

⁽⁴⁾ Art. 49(3b) of the Accounting Directive, as amended by the CSRD, specifies the requirements to be met by EFRAG technical advice.

⁽⁵⁾ Art. 49(3b) of the Accounting Directive, as amended by the CSRD, requires the Commission to consult jointly the Member State Expert Group on Sustainable Finance and the Accounting Regulatory Committee. The Commission is also to request the opinion of ESMA, EBA, and EIOPA, and to consult the European Environment Agency, the European Union Agency for Fundamental Rights, the European Central Bank, the Committee of European Auditing Oversight Bodies and the Platform on Sustainable Finance.

in accordance with Article 19a(1) and (2), and Article 29a(1) and (2) of this Directive, and including at least the information that financial market participants need to comply with the disclosure obligations of Regulation (EU) 2019/2088 ⁽⁶⁾.

On 23 November 2022, EFRAG published its technical advice (available at <https://www.efrag.org/lab6>) for the first set of ESRS, which includes cross-cutting standards and standards for all ESG matters, accompanied by a cost-benefit analysis and an explanation of how these draft ESRS take account of the elements listed in Article 29b(5) of the Accounting Directive, as amended by the CSRD ⁽⁷⁾.

In order for the Commission to be able to adopt this first set of ESRS by 30 June 2023, and in line with Article 49(3b) of the Accounting Directive as amended by the CSRD, we kindly request your opinion on the draft ESRS developed by EFRAG, in particular with regard to its consistency with Regulation (EU) 2019/2088 and the delegated acts adopted pursuant to that Regulation. Please submit your opinion to FISMA-CSRD@ec.europa.eu. In accordance with the provisions of the CSRD, your opinion should be submitted within 2 months from the date of this letter.

I thank you again for your cooperation on this important new initiative. Please do not hesitate to contact Thomas Dodd (Thomas.Dodd@ec.europa.eu) or Giulia Bottazzi (Giulia.Bottazzi@ec.europa.eu) for any further clarifications that may be necessary during the course of this work.

Yours faithfully,

Electronically signed

John BERRIGAN

Enclosure: draft Commission Delegated Regulation (EU) .../... of XXX supplementing Directive XX/XXX/EU of the European Parliament and of the Council as regards sustainability reporting standards.

⁽⁶⁾ Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector (SFDR).

⁽⁷⁾ Article 29b(5) of the Accounting Directive, as amended by the CSRD, requires the Commission, when adopting the sustainability reporting standards, to take account of the global standard-setting initiatives, standards and framework for sustainability reporting, and of certain existing Union legislation.

Annex 2: Assessment framework used to prepare the opinion

1 Introduction

Purpose of the assessment framework

1. ESMA has used the present assessment framework as a basis for preparing its opinion to the European Commission on EFRAG's technical advice on draft European Sustainability Reporting Standards (ESRS), delivered by EFRAG in November 2022. The framework was developed to establish a clear methodology for how EFRAG's technical advice should be assessed and, as such, to ensure that ESMA delivers a robust opinion to the European Commission.
2. In accordance with Article 49(3b), fifth subparagraph of the Accounting Directive (Directive 2013/34/EU²³), ESMA's role of opinion-giver is a continued one: each time EFRAG submits technical advice on draft ESRS to the European Commission, the European Commission shall request ESMA's opinion and ESMA shall provide its opinion within two months of receiving the request. The assessment framework therefore also serves the purpose of ensuring consistency in ESMA's successive opinions on EFRAG's technical advice.

Terminology

3. For simplicity, the remainder of the framework refers to 'ESRS'; this should be understood as 'the technical advice on draft ESRS which EFRAG submitted to the European Commission in November 2022'.
4. All references to the Accounting Directive are to the Accounting Directive as amended by the Corporate Sustainability Reporting Directive (Directive (EU) 2022/2464²⁴).

2 Overall objective of the assessment

5. The overall objective of ESMA's assessment of the ESRS was to ensure that the ESRS are conducive to investor protection – in particular by being consistent with the Sustainable Finance Disclosure Regulation²⁵ and its delegated acts – and do not undermine financial stability.
6. The overall objective was defined with reference to Article 49(3b), fifth subparagraph of the Accounting Directive which establishes ESMA's role of opinion-giver. The objective reflects

²³ Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC, OJ L 182, 29.6.2013, p. 19.

²⁴ Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting, OJ L 322, 16.12.2022, p. 15–80. References to articles of the Accounting Directive in this assessment framework are to the Accounting Directive as amended by the CSRD.

²⁵ Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector, OJ L 317, 9.12.2019, p 1.

ESMA's mission of enhancing investor protection and promoting stable and orderly financial markets which is enshrined in ESMA's founding Regulation²⁶.

3 Criteria for the assessment

7. The overall objective in section 2 is further operationalised by the four criteria in this section.
8. Each criterion is split into sub-criteria which are accompanied by assessment indicators. While non-exhaustive, the assessment indicators are concrete illustrations of what ESMA looked for when assessing whether the ESRS meet each sub-criterion.
9. ESMA did not assess the criteria, sub-criteria and assessment indicators in a binary fashion. Rather, with the aim of informing a balanced assessment of the ESRS, ESMA looked at *the extent* to which the ESRS are capable of addressing the pre-defined criteria, sub-criteria and assessment indicators based on the following scale: fully capable, broadly capable, partly capable, not capable. The absence of any issues on the ESRS would result in them being considered as *fully capable* of addressing the assessment criteria. Where issues were identified, *broadly capable* or *partly capable* would be used depending on the significance of the issues and the extent and urgency of the measures needed to address them. Finally, *not capable* would be used in case the issues identified were so pervasive as to require extensive changes to the ESRS.
10. Furthermore, the criteria, sub-criteria and assessment indicators were not considered in isolation from one another but as elements to reach an overall assessment of the ESRS. As such, ESMA's opinion is based on a global view of the extent to which the ESRS, on balance, meet the criteria and sub-criteria beyond the mere satisfaction of each individual indicator and, therefore, are aligned with the overall objective in section 2. Where the assessment against one or more of the individual indicators has suggested any potential areas for improvement of the ESRS, ESMA has reflected those in its opinion.
11. In assessing the disclosure requirements of the ESRS, ESMA was mindful that Member States may permit an undertaking to omit information from its sustainability disclosure if publishing such information could be seriously prejudicial to the undertaking's commercial position.²⁷

Criterion 1: Do the ESRS promote disclosure of material sustainability information of high quality?

12. The purpose of applying criterion 1 was to assess whether the ESRS require disclosure which will be relevant and helpful for users. With reference to the overall objective of the assessment (section 2), this criterion is closely connected to ensuring that the ESRS are

²⁶ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC, OJ L 331, 15.12.2010, p. 84.

²⁷ Article 19a(3), fourth subparagraph and 29a(3), fourth subparagraph of the Accounting Directive.

conducive to investor protection. Furthermore, sub-criterion 1b relates to identifying, assessing and managing risks which are important elements to ensure the ESRS do not undermine financial stability.

13. Criterion 1 is divided into four sub-criteria – 1a to 1d – which are described below along with their assessment indicators.

Sub-criterion 1a: Do the ESRS ensure that undertakings report in line with the sustainability matters and reporting areas identified in the Accounting Directive?

Assessment indicators:

- i. The ESRS require disclosure on the information mentioned in the following articles of the Accounting Directive, as relevant to the standard in question²⁸:
 - i) 19a(2)
 - ii) 19a(3)
 - iii) 19a(6)
 - iv) 29a(2)
 - v) 29a(3)
 - vi) 29a(4)
 - vii) 29b(2), second subparagraph
 - viii) 29b(3)
 - ix) 29b(4)
 - x) 29c(1), first subparagraph
 - xi) 29c(2)
 - xii) 40a(1), first and third subparagraphs
- ii. The ESRS do not require disclosure on a significantly wider array of sustainability matters or reporting areas than those identified by the co-legislators in the articles mentioned under point i.
- iii. The ESRS do not place distinctive new conduct requirements on undertakings (as opposed to requirements on the disclosure they should make).

²⁸ Depending on the set of standards, only some of these articles will be relevant. For example, for the SME standard only Articles 19a(6), 29b(2), second subparagraph, 29b(3), 29b(4), 29c(1), first subparagraph and 29c(2) are relevant.

Sub-criterion 1b: Do the ESRS promote disclosure which reflects the way undertakings internally identify, assess and manage impacts, risks and opportunities related to sustainability matters and which enables a forward-looking identification of material impacts, risks and opportunities by users?

Assessment indicators:

- i. The ESRS require disclosure on how undertakings identify, assess and manage material impacts, risks and opportunities, both actual and potential, related to their business, strategy and financial performance arising from sustainability matters.
- ii. The ESRS require that the disclosure in point i. be distinguished into short-, medium- and long-term impacts, risks and opportunities. The ESRS provide guidance on how undertakings should present their long-term assessment of impacts, risks and opportunities. *For example, by requiring that undertakings make use of scenario analysis.*
- iii. The ESRS require disclosure of targets.
- iv. The ESRS specify the nature of the most relevant qualitative and / or quantitative forward-looking information that undertakings should disclose.

Sub-criterion 1c: Do the ESRS promote disclosure which is understandable, relevant, comparable and represented in a faithful manner?

Assessment indicators:

- i. The ESRS are structured around overarching disclosure objectives and more specific disclosure requirements.
- ii. The ESRS use materiality of information as a fundamental guiding principle. As such, they require that undertakings only disclose material information and that they disclose material information related to the overarching disclosure objectives even if it is not covered by a specific disclosure requirement.
- iii. The ESRS prevent duplication by permitting cross-references between disclosure made under different parts of the ESRS and provide guidance on how to make such cross-references.
- iv. The ESRS promote disclosure of information that is entity-specific. *For example: they require undertakings to justify their assertions (such as when an undertaking declares that it is 'resilient to physical climate risk' or that it 'takes into account climate risk as part of its strategy'); they require undertakings to explain what the information they disclose says about their impact, development, performance and / or position (if an undertaking discloses total water consumption, it should explain the environmental impact of this water consumption).*

- v. The ESRS (or accompanying material) illustrate that the level of granularity and technicality which they require is aligned with the needs and expectations of users. *For example, when very granular or lengthy disclosure on certain items (such as metrics, value chain) is required, the basis for conclusions explains why this is needed.*
- vi. The ESRS require disclosure of comparative / retrospective information, in particular for key performance indicators (potentially after a period of first-time application with no requirement for comparative / retrospective information).
- vii. The ESRS require that the comparative / retrospective information in point vi. is prepared consistently over time and that qualitative and quantitative explanations are provided if the undertaking changes the methodology or the metrics for this information.
- viii. The ESRS facilitate a similar presentation of disclosures across undertakings.
- ix. The level of detail of the disclosure requirements in the ESRS is carefully assessed to adequately reflect the underlying fact patterns while avoiding unnecessary complexity for users targeted by the Corporate Sustainability Reporting Directive.

Sub-criterion 1d: Do the ESRS support coherence in undertakings' reporting, including between their sustainability reporting and their financial reporting?

Assessment indicators:

- i. The ESRS clarify that duplication of information already included elsewhere in the annual financial report should be avoided. *For example, the disclosure required by the ESRS on the undertaking's business model could be covered via a reference to the existing disclosure in the management report.*
- ii. The ESRS provide guidance on how undertakings should insert references to, and additional explanations of, other information included in the management report and amounts reported in the annual financial statements in the sustainability statement.²⁹ *For example, undertakings could be required to refer to the section of the annual financial report that identifies risk factors or to the financial impacts of a decarbonisation plan.*
- iii. The ESRS require undertakings to use consistent inputs for the preparation of their sustainability information and their financial information. *For example, in terms of projections.*

²⁹ As required by Article 19a(3), third subparagraph of the Accounting Directive.

- iv. When undertakings are not able to use consistent inputs as mentioned in point iii., the ESRS require them to explain and justify the differences. *For example, conceptual, technical or operational differences.*
- v. The ESRS permit undertakings to incorporate information into the sustainability report from other sources when such information is made subject to at least the same assurance and digitalisation regime and published with the same timing as the sustainability report. *This may for example include information from the corporate governance report, the remuneration report and regulatory information on ESG risks from credit institutions.*

Criterion 2: Are the ESRS conducive to consistent application in terms of both content and format?

14. The purpose of applying criterion 2 was to assess whether the ESRS are formulated in a sufficiently precise and clear way to promote consistent application by undertakings, to facilitate assurance by auditors / independent assurance services providers and supervision and enforcement by national competent authorities and to permit electronic reporting by undertakings. With reference to the overall objective of the assessment (section 2), each of these aspects is central to ensuring that the ESRS contribute to investor protection. Ensuring consistent application by undertakings as well as facilitating assurance and supervision and enforcement are additionally fundamental to making sure the ESRS do not undermine financial stability.
15. Criterion 2 is divided into two sub-criteria – 2a and 2b – which are described below along with their assessment indicators.

Sub-criterion 2a: Do the ESRS facilitate undertakings' understanding of how their disclosure should be prepared and promote reporting which can be subjected to assurance by the statutory auditor / audit firm / an independent assurance services provider and to supervision and enforcement by national competent authorities?

Assessment indicators:

- i. The ESRS are clear and precise. *For example, language is succinct, concepts are explained, terminology is defined, standards are internally consistent.*
- ii. The ESRS establish disclosure requirements which set clear expectations for the type of information undertakings should provide. *For example, 'undertakings shall disclose their gross indirect Scope 3 greenhouse gas emissions in metric tons of CO2 equivalent' rather than 'undertakings shall disclose their Scope 3 greenhouse gas emissions'.*

- iii. The ESRS explain, where possible, how undertakings should apply the disclosure requirements. *For example, application guidance with descriptions, clarifications and examples.*
- iv. Where possible, the ESRS prescribe the methodological principles undertakings should use to prepare certain complex information. *For example, by referring to established methodologies for conducting scenario analysis.*
- v. The ESRS promote transparency on the methodology and assumptions undertakings have used to prepare their disclosure.
- vi. The ESRS have a structure which permits undertakings to easily identify the disclosure requirements related to a given topic.

Sub-criterion 2b: Do the ESRS ensure that reporting can be effectively delivered and marked-up in accordance with the European single electronic format (ESEF) Regulation³⁰?

Assessment indicator:

- i. The ESRS contain clear disclosure requirements which make it easy for undertakings to understand what their disclosure should look like to enable it to be marked up according to the relevant (sustainability) taxonomy. *For example, the ESRS clearly define whether the disclosure requirement should be met with quantitative or qualitative information, clearly define which metrics to use for quantitative disclosure (e.g., tons of emissions, number of employees), clearly express when there is no particular limitation for presenting the information (e.g., narrative disclosures).*

Criterion 3: Are the ESRS consistent and interoperable with other EU legislation within ESMA's remit?

- 16. The purpose of applying criterion 3 was to assess whether the ESRS are aligned, and can be applied in combination, with other EU legislation within ESMA's remit, in particular the Sustainable Finance Disclosure Regulation and its delegated acts.
- 17. Such features are important to ensure the robustness of the EU sustainable finance framework and – with reference to the overall objective of the assessment (section 2) – are as

³⁰ Commission Delegated Regulation (EU) 2019/815.

such crucial to investor protection. Criterion 3 reflects the content of Article 29b(5)(b), (c) and (d) of the Accounting Directive³¹.

18. Criterion 3 is divided into four sub-criteria – 3a to 3d – which are described below along with their assessment indicators.

Sub-criterion 3a: Do the ESRS cover the information that financial market participants need from their investee companies to meet their own reporting obligations under the Sustainable Finance Disclosure Regulation and accompanying delegated acts?

Assessment indicators:

- i. The ESRS cover information which financial market participants need for the purposes of disclosing the climate and other environment-related principal adverse impact indicators regarding investments in investee companies which are listed in Commission Delegated Regulation (EU) 2022/1288, Annex I, Table 1 and Table 2.
- ii. The ESRS cover information which financial market participants need for the purposes of disclosing the principal adverse impact indicators for social and employee, respect for human rights, anti-corruption and anti-bribery matters regarding investments in investee companies which are listed in Commission Delegated Regulation (EU) 2022/1288, Annex I, Table 1 and Table 3.

Sub-criterion 3b: Are the ESRS consistent and interoperable with the Disclosure Delegated Act³² adopted pursuant to Article 8 of the Taxonomy Regulation³³?

Assessment indicators:

- i. The ESRS clarify how the information required under the Disclosure Delegated Act interacts with the information required under the ESRS.

³¹ "When adopting delegated acts pursuant to paragraph 1, the Commission shall, to the greatest extent possible, take account of: (b) the information that financial market participants need in order to comply with their disclosure obligations laid down in Regulation (EU) 2019/2088 and the delegated acts adopted pursuant to that Regulation; (c) the criteria, indicators and methodologies set out in the delegated acts adopted pursuant to Regulation (EU) 2020/852, including the technical screening criteria established pursuant to Article 10(3), Article 11(3), Article 12(2), Article 13(2), Article 14(2) and Article 15(2) of that Regulation and the reporting requirements set out in the delegated act adopted pursuant to Article 8 of that Regulation; (d) the disclosure requirements applicable to benchmarks administrators in the benchmark statement and in the benchmark methodology and the minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks in accordance with Commission Delegated Regulations (EU) 2020/1816, (EU) 2020/1817 and (EU) 2020/1818;"

³² Commission Delegated Regulation (EU) 2021/2178.

³³ Regulation (EU) 2020/852.

- ii. The ESRS do not duplicate or pre-empt requirements from the Disclosure Delegated Act.

Sub-criterion 3c: Do the ESRS cover the information that benchmark administrators need to meet their own ESG obligations under the EU benchmarks regime?

Assessment indicators:

- i. The ESRS cover information which benchmark administrators need for the purposes of disclosing the ESG factors required by Commission Delegated Regulation (EU) 2020/1816, Annex II.
- ii. The ESRS cover information which benchmark administrators need for the purposes of applying the minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks established in Commission Delegated Regulation (EU) 2020/1818.

Sub-criterion 3d: Are the ESRS consistent with other relevant EU legislation within ESMA's remit?

Assessment indicator:

- i. The ESRS require disclosure that is consistent with other relevant EU legislation within ESMA's remit, for example the disclosure on directors' remuneration which undertakings are required to provide under Article 9b of the Shareholders' Rights Directive³⁴ and related guidelines.

Criterion 4: Do the ESRS promote interoperability with global standard-setting initiatives for sustainability reporting to the greatest extent possible (and taking account of the EU's sustainability requirements and objectives)?

19. The purpose of applying criterion 4 was to assess whether the ESRS permit users to easily compare information prepared under the ESRS with information prepared under the two main global standard-setting initiatives for sustainability reporting, i.e., the IFRS Sustainability Disclosure Standards and the GRI Standards. This assessment was made while bearing

³⁴ Directive 2007/36/EC of the European Parliament and of the Council of 11 July 2007 on the exercise of certain rights of shareholders in listed companies, OJ L 184 14.7.2007, p. 17-24.

in mind the conditions under which the ESRS were developed, namely, the need to be consistent with the objectives the EU has adopted in relation to sustainability, the need to be aligned with other EU legislation and the requirement to reflect a double materiality perspective (this is referred to below as 'EU specificities'). Similarly, this assessment took account of the circumstances under which the IFRS Sustainability Disclosure Standards and the GRI standards were / are being established, e.g., in terms of scope and timing.

20. Linking this criterion to the overall objective of the assessment (section 2), it is important for EU users of sustainability reporting to be able to compare disclosure provided under the ESRS as easily as possible with disclosure provided under the IFRS Sustainability Disclosure Standards and the GRI Standards. Lack of international comparability and consistency results in complexities for investors in detecting and understanding material information across actual or possible investee companies which in turn affects price formation and creates a risk of fragmentation in securities markets. Criterion 4 is, therefore, closely linked to investor protection. Furthermore, criterion 4 is consistent with Recital 43³⁵ of the CSRD and Article 29b(5)(a)³⁶ of the Accounting Directive. In addition, interoperability is helpful for EU undertakings who, currently, are already applying international standards and for EU undertakings who, in the future, may apply international standards due to their reporting obligations in other jurisdictions, an aspect which is equally highlighted in Recital 43.
21. Criterion 4 is divided into two sub-criteria – 4a and 4b – which are described below along with their assessment indicators.

Sub-criterion 4a: Do the ESRS cater to the greatest extent possible for interoperability with the disclosure requirements of the IFRS Sustainability Disclosure Standards and the GRI Standards?

Assessment indicators:

- i. When EU specificities or the circumstances under which the IFRS Sustainability Disclosure Standards and the GRI Standards were developed do not necessitate a different approach, the disclosure requirements of the ESRS are substantially interoperable with the disclosure requirements of the IFRS Sustainability Disclosure Standards and the GRI Standards.

³⁵ "Sustainability reporting standards should be proportionate and should not impose unnecessary administrative burden on companies that are required to use them. In order to minimise disruption for undertakings that already report sustainability information, sustainability reporting standards should take account of existing standards and frameworks for sustainability reporting and accounting where appropriate. [...] To avoid unnecessary regulatory fragmentation that could have negative consequences for undertakings operating globally, Union sustainability reporting standards should contribute to the process of convergence of sustainability reporting standards at global level, by supporting the work of the International Sustainability Standards Board (ISSB). Union sustainability reporting standards should reduce the risk of inconsistent reporting requirements for undertakings that operate globally by integrating the content of global baseline standards to be developed by the ISSB, to the extent that the content of those baseline standards is consistent with the Union's legal framework and the objectives of the Green Deal."

³⁶ "When adopting delegated acts pursuant to paragraph 1, the Commission shall, to the greatest extent possible, take account of: (a) the work of global standard-setting initiatives for sustainability reporting, and existing standards and frameworks for natural capital accounting and for greenhouse gas accounting, responsible business conduct, corporate social responsibility, and sustainable development;"

- ii. When EU specificities or the circumstances under which the IFRS Sustainability Disclosure Standards and the GRI Standards were developed do necessitate a different approach, the ESRS (or accompanying material) clearly identify the substantial differences between their disclosure requirements and the disclosure requirements of the IFRS Sustainability Disclosure Standards and the GRI Standards.
- iii. When EU specificities or the circumstances under which the IFRS Sustainability Disclosure Standards were developed do not necessitate a different approach, the structure of the ESRS is substantially aligned, or at least easily reconcilable, with the structure of the IFRS Sustainability Disclosure Standards.
- iv. When EU specificities or the circumstances under which the IFRS Sustainability Disclosure Standards were developed do necessitate a different approach, the ESRS (or accompanying material) clearly identify the substantial differences between their structure and the structure of the IFRS Sustainability Disclosure Standards.

Sub-criterion 4b: Are the terminology and definitions of the ESRS interoperable with the terminology and definitions of the IFRS Sustainability Disclosure Standards and the GRI Standards to the greatest extent possible?

Assessment indicators:

- i. When EU specificities or the circumstances under which the IFRS Sustainability Disclosure Standards and the GRI Standards were developed do not necessitate a different approach, the terminology and definitions of the ESRS are interoperable with the terminology and definitions of the IFRS Sustainability Disclosure Standards and the GRI Standards.
- ii. When EU specificities or the circumstances under which the IFRS Sustainability Disclosure Standards and the GRI Standards were developed do necessitate a different approach, the ESRS (or accompanying material) clearly identify the differences between their terminology and definitions and the terminology and definitions of the IFRS Sustainability Disclosure Standards and the GRI Standards.

4 Use of the assessment framework for future opinions

- 22. For its future opinions on draft ESRS, ESMA may adjust the assessment framework based on developments that have taken place since the framework was initially developed in 2022. For example, it may be necessary to update the pieces of legislation with which the ESRS

should be consistent, e.g., to include a potential evolution of the Sustainable Finance Disclosure Regulation delegated acts under the mandate given to the ESAs in April 2022³⁷ or to reflect the expected introduction of the Corporate Sustainability Due Diligence Directive³⁸.

23. When developing future opinions on draft ESRS, ESMA will – in addition to the criteria in the assessment framework – consider any other relevant aspects that come to its attention during the assessment. Moreover, even though ESMA intends to apply the criteria in the framework to ensure the consistency and thoroughness of its assessment, ESMA cannot exclude that deviations from the criteria will be considered where necessary to deliver ESMA's opinion.
24. If at any point ESMA will have to deliver an opinion on draft ESRS with a more limited focus than the first, all-encompassing set of ESRS that EFRAG submitted in November 2022, ESMA will only apply the parts of the assessment framework that are relevant to the substance of the ESRS in question, while still assessing any such limited-scope proposals in the context of the ESRS as a whole.

³⁷ [Mandate](#) to the ESAs to develop SFDR regulatory technical standards on principal adverse impacts indicators.

³⁸ COM(2022) 71 final, Proposal for a Directive of the European Parliament and of the Council on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937.