



Council of the
European Union

**Brussels, 31 January 2023
(OR. en)**

5878/23

**DRS 7
SUSTDEV 25
CODEC 98
COMPET 56
EF 31
ECOFIN 90**

COVER NOTE

From:	European Banking Authority
date of receipt:	26 January 2023
To:	Ms Thérèse BLANCHET, Secretary-General of the Council of the European Union

Subject:	Opinion of the European Banking Authority on the draft European Sustainability Reporting Standards (ESRS).
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Delegations will find enclosed for their information the Opinion of the European Banking Authority on the draft European Sustainability Reporting Standards (ESRS).

EBA/Op/2023/01

26 January 2023

EBA Regular Use

Opinion of the European Banking Authority on the draft European Sustainability Reporting Standards (ESRS)

Introduction and legal basis

On 25 November 2022, the European Banking Authority (EBA) received a request¹ from the European Commission (hereinafter, Commission) to provide an opinion on the first set of draft European Sustainability Reporting Standards (draft ESRS set 1) as prepared by the European Financial Reporting Advisory Group (EFRAG). This first set of draft ESRS² was submitted by the EFRAG to the Commission on 22 November 2022.

Article 49(3b) of Directive 2013/34/EU (Accounting Directive), as amended by the Corporate Sustainability Reporting Directive (CSRD)³ lays down the conditions for the adoption by the Commission of the delegated acts on the ESRS. In accordance with Article 49(3b), the Commission shall request the opinion of the EBA, the European Securities and Markets Authority (ESMA) and the European Insurance and Occupational Pensions Authority (EIOPA) on the technical advice provided by EFRAG, in particular with regard to its consistency with Regulation (EU) 2019/2088 and its delegated acts. The opinions shall be provided by the three European Supervisory Authorities (ESAs) within two months from the date of receipt of the request from the Commission.

The EBA competence to deliver an opinion is based on Article 16a(4) of Regulation (EU) No 1093/2010⁴, as an opinion was requested by the Commission as regards EBA's area of competence.

¹ [Request from the Commission to the EBA](#)

² [First Set of draft ESRS](#)

³ [Publications Office \(europa.eu\)](#), 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 published in the OJ on 16 December 2022

⁴ [Regulation \(EU\) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority \(European Banking Authority\) amending Decision No 716/2009/EC and repealing Commission Decision 2009/78/EC \(OJ L 331, 15.12.2010, p. 12\).](#)

In accordance with Article 14(7) of the Rules of Procedure of the Board of Supervisors⁵, the Board of Supervisors has adopted this opinion which is addressed to the European Commission.

Scope of the Opinion

The EBA is providing an opinion on those draft ESRS that are more related to the EBA responsibilities at this stage, with particular attention being given to the interoperability with the sustainability-related disclosures required under the EBA Pillar 3 Framework and to credit institutions' data needs from a risk management perspective. In this sense, while the package submitted by EFRAG to the Commission (ESRS set 1) is composed by twelve draft ESRS, EBA's opinion is focused on the cross-cutting standards (*ESRS 1 General requirements* and *ESRS 2 General disclosures*) and *ESRS E1 Climate change*. A few references to other ESRS are made whenever it is needed to illustrate specific points also included in this opinion.

The opinion leverages on the assessment performed during the public consultation phase that resulted in an EBA comment letter being submitted to the EFRAG on 28 July 2022⁶. The purpose of the opinion is not to provide views on the global accuracy level of the draft ESRS but to express views on specific aspects that are deemed relevant to credit institutions and should be considered either (i) by the Commission before the adoption of the first set of standards (ESRS set 1), case under which it is specifically mentioned in this opinion; (ii) when developing the next sets of standards (specific-sector standards to be delivered by EFRAG in the next few years); or (iii) by the Commission shortly after the adoption of ESRS set 1, when performing a more global review of ESRS set 1 or via the issuance of educational material, as deemed more appropriate.

General and specific comments / proposals

Cross-cutting standards (ESRS 1 and ESRS 2)

A. Architecture of the cross-cutting standards and consistency with the ISSB's initiative on sustainability-related disclosure requirements

1. During the consultation phase, particular attention was given to the consistency between the exposure draft ESRS and the standards being developed by the International Sustainability Standards Board (ISSB). Having a good alignment between the two sets of standards is considered key to ensure comparability between European entities, implementing ESRS, and the international entities applying the International Sustainability Reporting Standards. Amongst many other benefits that this comparability may bring it will, in particular, allow credit institutions to gather relevant "environmental, social and governance" (ESG) information from non-European investee companies that will be relevant to comply with the Sustainable Finance Disclosures regulation (SFDR)⁷.

⁵ Decision adopting the Rules of Procedure of the European Banking Authority Board of Supervisors of 22 January 2020 (EBA/DC/2020/307).

⁶ EBA comment letter to EFRAG (28 July 2022)

⁷ Regulation (EU) 2019/2088 on sustainability-related disclosures in the financial services sector

2. In the comment letter submitted by the EBA to EFRAG, it was acknowledged that the EFRAG's proposal was already broadly consistent with the ISSB's ED IFRS S1. However, a few points were brought to EFRAG's attention that, in the EBA's views, could enhance the alignment between these two standard-setting initiatives:

- a) Architecture of the cross-cutting standards: the Task Force on Climate related Financial Disclosures (TCFD) structure has been altered by the EFRAG into a more complex architecture, which could hinder the comparison between the provisions of the ESRS and the International Sustainability Standards. The EBA encouraged EFRAG to minimize these differences;
- b) Overlapping between ESRS 1 and ESRS 2: the EBA invited EFRAG to (i) explore other possible different structures (for instance, turn it into a single standard as the IFRS S1) or (ii) have a clearer split between the principles contained in ESRS 1 and the general disclosure requirements of ESRS 2;
- c) Better alignment of terminology between EFRAG's and ISSB's standards when referring to equivalent concepts; and
- d) Higher focus on quantitative disclosures over qualitative ones in order to foster comparability and improve the usability of disclosures.

EFRAG approach after consultation:

3. The EBA acknowledges EFRAG's efforts to address the concerns expressed during the public consultation, including those expressed in the EBA's comment letter. In this context, the following aspects are worth highlighting:
- a) The structure and index of the draft ESRS was adjusted to follow TCFD structure. On top of the TCFD four pillars (basis for preparation, governance, strategy and management of impacts, risks and opportunities) a fifth chapter was also added (on metrics and targets), in order to promote better alignment with IFRS S1. Other international guidance was also considered when designing the final proposed architecture of the two cross-cutting standards (in particular, the OECD Guidelines for Multinational Enterprises and UN Guiding Principles on Business and Human rights).
 - b) In general, when developing the new version of ESRS, special attention was dedicated to achieve better alignment between ESRS and ISSB's standards in terms of content and terminology. A reconciliation table was prepared by EFRAG under which the general consistency between the two sets of standards is assessed. Disclosures prepared under ESRS are expected to be aligned with the disclosures required by IFRS S1 and S2. Quantitative and qualitative data points have been deleted or simplified. Qualitative data points and application requirements have been streamlined. Appendix D of draft ESRS 1 establishes the list of phased-in disclosure requirements, under which (i) one year deferral is allowed and (ii) three years of qualitative information is allowed instead of quantitative

information on potential financial effects of material physical and transition risk. Appendix C of draft ESRS 1 establishes the qualitative characteristics that quantitative data is required to have in order to be disclosed.

4. In addition to these points, important to mention that draft ESRS 1 was amended to mandate a definition of "short period" (the same adopted for financial reporting purposes) to promote connectivity with financial statements. Entities are also required to disclose inconsistencies between assumptions made to assess the potential financial effects in sustainability reporting with corresponding assumptions used in financial statements.
5. Given the different timelines followed by EFRAG and the ISSB, the work on consistency between the two sets of standards is expected to be continued.

EBA's views

6. The EBA very much welcomes the better alignment with the ISSB's standards and other international existing guidance, which is key to ensure consistency and comparability between the sustainability statements prepared by entities at European and international level. Being the application of ESRS conducive to compliance with the majority of ISSB's requirements will certainly be extremely useful to the various relevant stakeholders (investors and other users) as disclosures will be based on a set of comparable requirements. The substantially converged requirements will certainly help institutions operating in the financial sector, as investments are normally performed at both European and non-European level. For internationally active financial groups, this convergence leads to a decrease in the reporting burden which is very much welcomed as this is an aspect that, indeed, is carefully considered when developing regulatory products. For the future, when taxonomies for both frameworks are developed, **the EBA would encourage the Commission to promote the development of a more detailed reconciliation table jointly prepared by the ISSB and EFRAG.**
7. In general, after the consultation phase, an improvement in draft ESRS 1 and draft ESRS 2 was achieved with a clear split between general requirements and general disclosures. The fact that ISSB's standards are not finalised yet represents an additional challenge as regards the consistency goal, reason why the **EBA encourages developments at the ISSB level to be closely followed and, if needed, still considered by the Commission before adopting the first set of ESRS.** Any other subsequent developments at the ISSB level should then be considered in more global review of ESRS set 1, to ensure that a good level of alignment is kept over time.
8. The reduction of complexity in some of the requirements and creation of a phased-in approach is strongly supported by the EBA. While requiring all the relevant information to be disclosed is key, it should be guaranteed that requirements are not too complex and are well understood by preparers. In this context, the proposed phased-in approach seems a quite well-balanced one, promoting a good interaction between the quantitative and qualitative information to be disclosed and the minimum qualitative characteristics that this information should meet in order to be included in the sustainability statements.

9. For certain sustainability-related information required to be disclosed, linking this information with the financial statements might provide relevant additional information to the users of financial and sustainability statements. Considering a similar time horizon ("short-term") and requiring the disclosure of inconsistencies between assumptions behind sustainability reporting and those used in financial statements seems a first important step in that direction. The current expectation is that, to properly understand how this link could be improved, some practical experience is needed. The EBA suggests that **additional monitoring is performed on this topic over time, in order to improve the links between sustainability and financial information as deemed necessary**. If needed, requiring educational material with concrete examples could be considered by the Commission as a result of those monitoring activities.
10. As regards the medium-term and the long-term time horizons to be adopted when preparing the sustainability statements, the EBA believes that the draft ESRS 1 achieves the right balance between a principle based approach and a more strict rule based approach, as concrete periods of time are pre-defined but undertakings can adopt different ones as long as it is justified.
11. In overall terms, as regards the terminology used in the draft ESRS, it is also key to keep consistency between the definitions under this set of standards and those used in other related EU regulations. The EBA believes that currently a good level of consistency has been achieved. However, the EBA identified a few instances where clarifications may be needed⁸. In addition, the EBA expects that regular reviews over time should be conducted.

B. Double materiality approach and rebuttable presumption

12. In the above mentioned comment letter to EFRAG, the EBA welcomed the double materiality approach in the context of the sustainability-related information subject to disclosure requirements. However, the EBA raised a concern about the limited guidance available to companies to apply consistently the criteria of severity and likelihood when prioritizing the negative impacts on the environment and people. Besides, the EBA encouraged EFRAG to cooperate with the ISSB to align their definitions and promote a more consistent application of the materiality concept, especially with regards to the financial materiality.
13. Regarding the rebuttable presumption (i.e. the requirement to provide an explanation when a company omits a disclosure foreseen in a European Sustainability Reporting Standard), the EBA expressed concerns that it might undermine a proper materiality assessment and encourage companies to omit relevant sustainability-related information.

EFRAG approach after consultation:

14. EFRAG has removed the rebuttable presumption, i.e. the possibility to rebut the presumption that all mandatory disclosure requirements are material based on reasonable and supportable

⁸ Please see point "Clarification between ESRS, the Accounting Directive and the Directive against fraud in the European Union (2017/1371)" in the section "Other specific comments / proposals" of this opinion.

information related to the undertaking's facts and circumstances. As a general principle, undertakings have now to perform a materiality assessment and set up their own thresholds in order to determine whether a disclosure requirement in an ESRS is material and, therefore, shall be reported in the management report⁹. However, if the undertaking considers that a whole sustainability topic is immaterial and therefore omits all the disclosure requirements in a topical ESRS, it shall report a brief explanation of the conclusion of its materiality assessment. If a sustainability matter as defined under ESRS is material according to the undertaking's materiality assessment, it shall disclose all the disclosures in the relevant ESRS about policies, actions and targets. However, the undertaking may omit metrics if not deemed relevant to its specific context.

15. In order to circumvent the risk of omissions, EFRAG has introduced an exception to the general approach and introduced mandatory disclosures requirements that are applicable irrespective of the outcome of the undertaking's materiality assessment. These mandatory requirements correspond to:

- a. ESRS 2 General Disclosures;
- b. ESRS E1 Climate Change;
- c. Appendix C of ESRS 2;
- d. ESRS S1 Own work force S1-1 to S1-9 (only for companies with more than 250 employees).

Appendix C of the draft ESRS 2 encompass ESRS disclosures requirements needed to comply simultaneously with: (1) the SFDR Regulation; (2) The Pillar 3 implementing technical standard on climate risks pursuant to article 434a of the CRR regulation; (3) the Benchmark regulation; and (4) the EU Climate Law. For these mandatory disclosures, an undertaking shall provide all the required information under ESRS, including all the individual data points within each disclosure requirement.

16. EFRAG has amended its definition of financial materiality to converge towards the definition set out in IFRS S1 General requirements for Disclosure of Sustainability-related Financial Information issued by the ISSB¹⁰. Paragraph 51 of the draft ESRS 1 highlights that the financial materiality assessment includes the identification of information that is useful to investors, lenders and other creditors. In particular, information is considered material for primary users of general-purpose financial reporting if omitting, misstating or obscuring that information could reasonably be expected to influence decisions that they make on the basis of the undertaking's sustainability statements. This ensures consistency with the definition of material information under IFRS S1.

⁹ Appendix F of the draft ESRS 1 provides a comprehensive overview of the approach to be followed when assessing materiality.

¹⁰ For instance, by removing the reference to the concept of enterprise value.

EBA's views:

17. The EBA welcomes the removal of the rebuttable presumption and supports the approach based (i) on the undertaking's materiality assessment and (ii) the introduction of mandatory requirements. In particular, the EBA supports that all disclosure requirements under ESRS E1 are to be considered material irrespective of the outcome of the undertaking's materiality assessment. This assumes particular relevance as the draft ESRS E1 includes critical disclosures to allow institutions operating in the financial sector to perform the assessment on how their investments and financing activities contribute to the transition towards a carbon-neutral economy. However, the EBA would have welcomed **better clarification on the content of the brief explanation required by paragraph 56 of the draft ESRS 2**, when all disclosure requirements in a topical ESRS are omitted. While this is not a key point, **the EBA encourages the Commission to require EFRAG to consider this point in the future activities related to the first set of standards.**
18. The mandatory publication of all indicators and qualitative information needed for banks to comply with the Pillar 3 ESG disclosures is also very much welcomed by the EBA. The good cooperation with EFRAG on this topic is welcomed and **the EBA expects that this good cooperation continues in the future to keep both disclosure frameworks aligned and consistent.**
19. The EBA very much welcomes the better alignment of the definition of financial materiality with the one considered by the ISSB. In particular, the wording of the second part of paragraph 51 is fully consistent when comparing the two frameworks (draft ESRS 1 and IFRS S1 exposure draft)¹¹. **The EBA does not believe that the first part of this paragraph, referring to the usefulness of data to investors, lenders and other creditors would bring added value to the definition.** On the contrary, it could create some uncertainty of the type of criteria to be considered when performing the materiality assessment. In this sense, **the EBA would suggest the Commission to delete the first part of the paragraph, ideally before the adoption of the first set of ESRS, keeping solely the wording aligned with the ISSB concept.**
20. Regarding the definition of impact materiality, the EBA reiterates its concern about the lack of guidance to determine the "severity" and the "likelihood" of the impact, which may lead to inconsistent materiality assessment across entities. The EBA, however, acknowledges that the list of mandatory requirements in the Appendix C of the draft ESRS 2 adequately covers the needs of credit institutions and circumvents the risk of omissions. Even with this important specification for credit institutions, given the complexity of the matter, **the EBA encourages the Commission to consider requiring EFRAG to issue additional guidance and educational material in order to foster consistency in the practical implementation of the materiality assessment**, in particular as regards: (i) the thresholds being considered by the entities; (ii) the

¹¹ "(...) information is considered material for primary users of general-purpose financial reporting if omitting, misstating or obscuring that information could reasonably be expected to influence decisions that they make on the basis of the undertaking's sustainability statements."

materiality assessment sequence; and (iii) the disclosures to be performed on the interaction between the outcome of the materiality assessment and the ESRS 2 selected requirements.

21. Additionally, in order to avoid any misunderstanding in the application of the requirements, it **might be relevant for the Commission to clarify in ESRS whether**, notwithstanding the fact that certain disclosures needed to comply with EU Law are to be included in the sustainability report, **these disclosures are or not subject to the qualitative characteristics of information assessment¹². This is the particular case of the disclosures required under Article 8 of the Taxonomy Regulation.** Should these disclosures be subject to the assessment on the qualitative characteristics, **the EBA believes that there could be unintended consequences on the application of EU Law requirements.**

22. The EBA notes that the disclosure requirements 1 to 9 of the draft ESRS S1 Own Workforce include data points that are relevant to financial market participants to comply with the SFDR disclosures. However paragraph 12 (a) of the draft ESRS S1 highlights that those disclosure are required regardless of the materiality assessment only to the extent that the reporting has more than 250 employees. As a general rule, **the EBA considers that ESRS should avoid creating exemptions from reporting SFDR-related data points.** This is because SFDR indicators are a weighted average of the negative impacts arising from all the investee companies that financial market participant invest in. The EBA understands that the proposed exemption in paragraph 12 (a) would not apply to subsidiaries of a large group as the 250 employees threshold would be assessed for the group as a whole. In other words, any subsidiary that would fall below would still have to report the required data points to its parent company for the purpose of drawing the consolidated sustainability statements. Being this the correct interpretation, **the EBA would expect that the exemption may have limited consequences on the availability of SFDR-related data points assuming that most sustainability statements will be issued on a consolidated basis.** However, having into consideration that this threshold can result in some inconsistencies (also with other requirements under topical S standards), **the EBA would encourage the Commission to further analyse the practical consequences of such a threshold and conclude on whether it is needed.**

C. Location and presentation of information

23. The exposure draft ESRS 1 subject to public consultation already required to disclose the sustainability-related information in the management report. Cross-references to other parts of the management report were allowed in order to avoid repetition. In addition, within the management report, three different options of presentation were provided: (a) reporting the disclosures within a single separately identifiable section of the management report; (b) aggregating the disclosures into four separately identifiable parts of the management report (general information, environmental information, social information, and governance information); and (c) aggregating the disclosures required by each ESRS and reporting them as

¹² Under Appendix C of the draft ESRS 1.

non-separable blocks in identifiable parts of the management report 'on a standard-by-standard basis'.

24. In the comment letter submitted to the EFRAG, the EBA generally agreed with the proposed location of the information in the management report. Regarding the three options of presentation, the EBA expressed a preference for the first one (single separately identifiable section of the management report) and invited the EFRAG to consider the benefits of allowing a single option in terms of comparability.

25. In the case of credit institutions, the EBA suggested that risk-related information could be solely provided in the Pillar 3 report, with cross-references to these Pillar 3 disclosures being considered. Naturally, this would be limited to those cases where equivalent specific information is required under both frameworks in order to avoid unnecessary double reporting, additional burden, complexity and potential inconsistencies.

EFRAG approach after consultation:

26. The current version of the draft ESRS 1 requires that disclosures shall be reported within a single section of the management report, eliminating the different options previously available.

27. The new chapter 9 of the draft ESRS 1 also establishes the possibility of incorporation by reference, including to the Pillar 3 disclosures. Paragraph 121 of the draft ESRS 1 lists a few conditions that disclosures to be incorporated by reference should meet. Paragraph 122 of the same standard establishes that *"the undertaking shall ensure that the information incorporated by reference is produced using the same basis for preparation (...) including scope of consolidation and treatment of value chain information"*.

EBA's views:

28. The EBA very much welcomes these developments, as indeed it is deemed of the utmost importance to have the information presented in such a way that would allow comparability between different entities. Also the fact that referencing to Pillar 3 disclosures, when adequate, is now possible is seen by the EBA as an important improvement on the location and presentation of sustainability-related information. **The EBA is of the view that it would be useful if the Commission considers the inclusion of concrete examples in the ESRS on how to apply the principle for incorporating information by reference.**

29. In the specific case of credit institutions and Pillar 3 disclosures, there might be some differences between the accounting scope of consolidation (the one considered for the purpose of ESRS disclosures) and the prudential scope of consolidation (the one considered under the Pillar 3 framework). The differences between the two scopes of consolidation are well identified and subject to disclosure under the Pillar 3 Framework. In this very specific case, **the EBA is of the view that these differences in the consolidation scope should not prevent the incorporation by reference**, especially when the users of the sustainability statements would have access to detailed information on those differences via the respective Pillar 3 disclosure requirements.

While this is a matter that could be revisited when developing the sector-specific standard for credit institutions, **the EBA would recommend that paragraph 122 of the draft ESRS 1 specifically allows incorporation by reference when differences with the accounting scope of consolidation are readily identified and subject to disclosure within the set of disclosures to be incorporated by reference** (which is the case of disclosures under the Pillar 3 Framework for credit institutions). In other words, it would be allowed a different scope of consolidation (from the accounting one) as long as it is explained. Any additional information deemed relevant for disclosure purposes (on entities outside of the prudential scope of consolidation) should still be provided in the sustainability statements in order to comply with all the requirements under ESRS. **To avoid unnecessary burden and double reporting for credit institutions, the EBA encourages the Commission to address this issue before adopting ESRS set 1.**

D. Value chain

30. The concept of the value chain initially introduced by the exposure draft ESRS 1 is a core principle in the sustainability reporting framework, reason why it is of the utmost important, from the EBA's perspective, that this definition is clear and implementable for credit institutions. In general terms, a reporting undertaking should prepare sustainability statements in accordance with the scope considered for the preparation of the financial statements extended to include information on impacts, risks and opportunities connected to the undertaking through its direct and indirect business relationships in the upstream and/or downstream value chain ("value chain information")¹³.

31. In the comment letter submitted to the EFRAG, the EBA highlighted that data quality could be impaired if there is no sufficient guidance and practical examples on the application of the definition of the value chain, also considering the wide range of different business models of the entities, including the institutions operating in the financial sector.

EFRAG approach after consultation:

32. The EBA has noticed that EFRAG has implemented some changes to the concept of the value chain. Those that the EBA would highlight as the most relevant are: a clear definition of the concept, aligned with the same concept under the ISSB framework; a clarification on the actors of the value chain, in particular joint ventures and associates; the removal of due diligence requirements; and avoidance of reference to "approximations" as this could raise some questions on the quality level of estimations.

33. In particular, the following specifications were included in the draft ESRS 1:

- *"information about the reporting undertaking in the sustainability statements shall be extended to include information on the **material** impacts, risks and opportunities connected to the undertaking through its direct and indirect business relationships in the value chain"*¹⁴;

¹³ Please see paragraphs 66 and 67 of the draft ESRS 1.

¹⁴ Paragraph 67 of the draft ESRS 1.

- “**affected stakeholders**” are defined as “*individuals or groups whose interests are affected or could be affected – positively or negatively – by the undertaking’s activities and its direct and indirect business relationships across its value chain*”¹⁵;
- Finally, the definition of the value chain in the draft ESRS 1 includes “*all relationships related to the undertaking’s business model*” and “*relationships the undertaking uses and rely on to create its product or services*”.

34. In addition, the EBA also notes that paragraph 77 of draft ESRS 1 highlights that “*One way through which the undertaking can demonstrate reasonable effort in collecting data from actors in its value chain(s), is by using or increasing leverage over them, e.g., through collaboration with other companies and stakeholders that could help to do so.*”

EBA’s views:

35. The EBA welcomes the definition on the value chain and its alignment with the same definition used by the ISSB.

36. The EBA supports the clarification of EFRAG that the entity does not have to report on all actors in the value chain and agrees with EFRAG that only material value chain information of actors of the value chain should be included. Therefore, the EBA supports that only material value chain information of joint ventures and associates that are actors in the value chain should be included. If this information is to be included, it should be on the same basis as all other actors of the value chain and not limited to the equity investment held.

37. The EBA agrees with EFRAG that the identification and assessment of an undertaking’s risks, impacts and opportunities should be performed all along the value chain, both upstream and downstream, in order to identify the extent to which the entity’s business model may depend on key resources or relationships. Further to this, the EBA agrees that some metrics, such as the Scope 3 greenhouse gases emissions, have to include the actors and business partners in the value chain in order to enhance comparability across undertakings and avoid structuring opportunities.

38. **However, the EBA believes that further clarifications are necessary to understand how the definition of the value chain applies to credit institutions.** While the concept of value chain is clearer now, in the specific case of credit institutions it continues to seem operationally challenging to implement. This is the reason why additional sector-specific guidance would be needed in order to achieve an adequate quality level in the data to be disclosed. **As regards the specific-sector standards for credit institutions and other entities operating in the financial sector, the EBA would encourage the Commission to follow a timetable where these standards would be finalised still in 2024, having in view the respective adoption in 2025. This would allow, on the one hand, to still gain experience from institutions’ Pillar 3 disclosures that start to apply as of 31 December 2022 first reference date and, on the other hand, to provide earlier**

¹⁵ Paragraph 26 (a) of the draft ESRS 1

clarifications specifically applicable to credit institutions' disclosures on topics like the one reflected in this paragraph.

39. As part of their financing and asset management activities, credit institutions hold stakes in investee companies and lend money to borrowing companies. Applying the above mentioned definitions, investee and borrowing companies may be part of a credit institution's value chain. However, credit institutions usually hold non-controlling interests in their investee companies or provide lending without gaining management influence, which implies that they are not involved in the decision making process of counterparties and rely on information from public sources to monitor their investments. Similarly, they may usually not be in a position to identify and engage with the third parties affected by the investee or borrowing companies. Considering the broad implications of this issue on the implementation of the full set of ESRS by credit institutions, **the EBA would welcome if the Commission could clarify the boundaries of the value chain and affected stakeholders for institutions operating in the financial sector.** More specifically, the EBA would welcome the following clarifications:

- Whether holding a non-controlling interest implies that an investor "affects" the stakeholders of its investee companies;
- Whether lending implies that a credit institution "affects" the stakeholders of the borrowing companies (it is assumed that individuals would not be in scope, but also this point would need clarification especially taking into account proportionality considerations); further, indirect business relationships should not be part of the value chain of credit institutions as this would lead to an indeterminable number of entities included in the value chain;
- Which investment decision may have impacts on third parties.

40. The EBA acknowledges that it might be challenging for undertakings to obtain value chain information because information about their business partners may not be publicly available in all jurisdictions. Against this background EBA agrees with the requirement in the draft ESRS 1 paragraph 73 that an undertaking estimates the information to be reported about its upstream and downstream value chain by using all reasonable and supportable information, such as sector-average data and other proxies. However, **EBA is concerned that the use of proxies may turn comparability of the disclosures along the value chain challenging.** It is, therefore, **critical that ESRS include disclosures about the significant judgments that an entity uses to estimate the information that it cannot collect from its value chain partners.**

41. The EBA welcomes the decision to require an undertaking to disclose the emission factors and methodologies used when estimating their greenhouse gases emissions¹⁶ that occur within its value chain. However, those disclosures may not be sufficient to draw meaningful comparisons between undertakings. The EBA would recommend the Commission to consider introducing a **hierarchy of emission factors that would guide companies to select the most relevant emission**

¹⁶ Draft ESRS E1, paragraph AR39 (b)

factors depending on the data that are reasonably available to them¹⁷. Similarly, the EBA expects that such a guidance would enhance the comparability and understandability of all metrics that apply across an undertaking's value chain.

42. While the EBA agrees with EFRAG that institutions operating in the financial sector may be in a position to influence their investee companies through their engagements policies or the exercise of their voting rights, the EBA would like to highlight that this practical ability is a matter of facts and circumstances that depend on a combination of factors such as the extent of the stake that each institution holds, the number of shareholders of the investee company and their relative weight and the strategy pursued by the investee companies. As a consequence, **the EBA does not expect that the guidance in paragraph 77 is enough to determine whether a financial institution has made reasonable efforts to collect data from actors in the value chain. For this reason, the Commission is encouraged to review the wording of this specific paragraph, turning it into a disclosure requirement or delete it from the draft ESRS 1, ideally before the adoption of the ESRS set 1**

ESRS E1 – Climate change

E. Scope 1, 2, 3 emissions calculations

43. The exposure draft ESRS E1 subject to public consultation introduced the notion of Scope 1, 2 and 3 emissions reporting. In general, Scope 1 Greenhouse Gases (GHG) emissions arise from sources controlled by the reporting entity whereas Scope 2 and 3 emissions are indirect. This distinction between controlled and indirect GHG emissions is relevant for reporting the impact the reporting entity has on climate change. The requirements highlight that undertakings are to provide an understanding of the GHG emissions that occur in the undertaking's value chain beyond its Scope 1 and 2 GHG emissions. For many undertakings, Scope 3 GHG emissions are the main component of the GHG inventory and an important driver of their transition risks. This is certainly the case for the banking sector.

44. The exposure draft ESRS E1 subject to public consultation confirms that, as part of the Scope 3 GHG emission reporting, credit institutions also have to include their financial investments¹⁸. These include equity investments that result in subsidiaries, associates and joint ventures. Scope 3 emissions are defined by the draft standard as "indirect GHG emissions are a consequence of the operations of the undertaking but occur at sources owned or controlled by another company". Scope 3 GHG emissions are all indirect emissions (not included in Scope 2) that occur in the value chain of the reporting company, including both upstream and downstream emissions¹⁹.

¹⁷ Further expectations concerning the hierarchy of emission factors are mentioned below.

¹⁸ Exposure draft ESRS E1 subject to public consultation, Disclosure Requirement E1-9 – Scope 3 GHG emissions, paragraph 46

¹⁹ GHG Protocol: A corporate accounting and reporting standard, Glossary, 2004

45. The exposure draft ESRS E1 describes that, for the purpose of simplified presentation, the 15 Scope 3 emission categories²⁰ should be grouped in: a) upstream purchasing, b) downstream sold products, c) goods transportation, d) travels and e) financial investments. In order to foster comparability and consistently with the GHG protocol, the EBA was of the opinion that ESRS should request the breakdown of the GHG emissions for all the 15 categories.

46. In the EBA comment letter addressed to the EFRAG during the consultation period, the disclosure of Scope 1, 2 and 3 GHG emissions was supported. The same is valid as regards the reference to the GHG Protocol and to the PCAF methodology²¹. Furthermore, EBA greatly appreciated the exposure draft ESRS E1 proposal to disclose offset separately from the gross emission. This choice increases the transparency of the information provided and it ultimately benefits the users of the disclosures

47. In the same letter, the EBA recommended that reporting undertakings should be required to provide the breakdown of all seven-greenhouse gases, also in line with the SEC proposal²², the volume of GHG emissions for each gas and the Global Warming Potential (GWP) factor used for the translation into CO2 equivalent.

48. At the international level, the exposure draft IFRS S2 also introduced the requirement for reporting undertakings to disclose GHG emission information in Scope 1, Scope 2 and Scope 3. The exposure draft IFRS S2 defines Scope 3 emissions as indirect emissions outside of Scope 2 emissions that occur in the value chain of the reporting entity, including both upstream and downstream emissions. For the purposes of this standard, Scope 3 emissions include all 15 categories consistent with the GHG Protocol. Disclosure of the 15 categories provides insight into GHG emissions needed also for reporting purposes further in the value chain.

EFRAG approach after consultation

49. The presentation of the Scope 3 greenhouse gas emissions under five categories has become an optional disclosure. Paragraph 48 requires undertaking to report Scope 3 GHG emissions only for significant Scope 3 emission category. Paragraph AR 44 requires to disclose the *“list of Scope 3 GHG emissions categories included in and excluded from the inventory with a justification for excluded Scope 3 categories”*.

50. EFRAG has clarified the reporting boundary for the GHG emissions arising from associates, joint ventures, unconsolidated subsidiaries and contractual arrangements. Draft ESRS E1 paragraph 43 requires undertakings to account for the GHG emissions from its associates, joint ventures, and unconsolidated subsidiaries depending on whether the parent company exercises an operational control over them. If the undertaking has operational control over such an entity, it shall include the entity's full (Scope 1 and 2) GHG emissions in its reported GHG emissions. If the

²⁰ Exposure draft ESRS E1 subject to public consultation, Appendix A: Defined terms

²¹ [Partnership for Carbon Accounting Financials](#)

²² [SEC Proposal, The Enhancement and Standardization of Climate-Related Disclosure for Investors](#)

undertaking has no-operational control and these entities and contractual arrangements are part of the undertaking's value chain, it shall include the entity's Scope 1, 2 and 3 GHG emissions in its reported Scope 3 GHG emissions.

51. EFRAG added an additional breakdown of reported Scopes 1 and 2 emissions. Draft ESRS E1 paragraph 47 requires undertaking to disclose Scope 1 and Scope 2 GHG emissions separately from (1) the consolidated accounting group entities and (2) the associates, joint ventures, unconsolidated subsidiaries and joint arrangements over which the entity has operational control.

52. Draft ESRS E1 paragraph AR 39 added the disclosure of the methodologies and emissions factors used to calculate GHG emissions and the use of the Global Warming Potential (GWP) values published by the IPCC.

EBA's views:

53. EBA welcomes the mandatory disclosure of:

- a) The emission factors and the methodologies used to compute GHG emissions,
- b) the percentage of emissions calculated using primary data obtained from suppliers or from other value chain partners.
- c) the list of Scope 3 GHG emissions categories and the justification for the omitted categories
- d) the breakdown of Scope 1 and Scope 2 emissions between those that arise from (1) entities that are included in the consolidated financial statements and from (2) the associates, joint ventures, unconsolidated subsidiaries and joint arrangements over which the entity has operational control.
- e) the clarification regarding reporting boundaries and the full consolidation of Scope 1 and 2 GHG emissions of entities the undertaking controls.

The EBA expects that those disclosures will promote transparency and help users to better understand and compare GHG emissions across undertakings.

54. Notwithstanding this positive assessment, the EBA notes that the emission factors²³ are critical input in the estimation of GHG emissions and that those inputs are not standardized by the GHG protocol. Companies may therefore apply different emission factors for similar activities which may impair comparability. Therefore, **the EBA encourages the Commission to introduce a hierarchy of emission factors**. The approach of introducing a hierarchy of emission factors could take some inspiration from the fair value hierarchy under IFRS 13 Fair Value Measurement, considering different levels of uncertainty when performing the estimates. This type of disclosure **would certainly provide useful information on the measurement techniques and data availability challenges**.

²³ "These factors are calculated ratios relating GHG emissions to a proxy measure of activity at an emissions source", GHG Protocol: A corporate accounting and reporting standard, 2004

55. The EBA also welcomes the standardised use of the GWP values published by the IPCC as it will ensure comparability across entities.

F. Physical and transition risks disclosures

56. The exposure draft ESRS E1 required the disclosure of potential financial effects from material physical risks (DR E1-15). Particularly, the undertaking had to describe how material climate-related physical risks may affect its performance and position over the short, medium and long term.

57. In its comment letter to EFRAG, the EBA supported that undertakings should make a distinction between acute and chronic climate change events when disclosing the impact of physical risks. However, the EBA believes that it would be useful to add the disclosure of exposures sensitive to physical risks broken-down by geographical location of the activities of the counterparty (information also included in the EBA Pillar 3 ITS on ESG risks).

EFRAG approach after consultation

58. EFRAG has included the disaggregation of monetary amounts at material physical risk by acute and chronic risk and the location of significant assets at material physical risk in the standard as disclosure requirements. In addition, the real estate asset distribution by energy efficiency classes was also added as a disclosure requirement on transition risks.

EBA's views

59. The EBA appreciates the approach followed by EFRAG to broaden the disclosure of physical risk, incorporating the requirement on the geographical location of exposures subject to physical risk.

60. These additional data points now considered in the sector-agnostic standards are aligned with the requirements set in the EBA Pillar 3 ITS on ESG risks, promoting regulatory convergence and comparability across the reporting entities.

G. GHG intensity metric for transition plan

61. The EBA recognised that undertakings should provide metrics that inform on climate-related financial impacts, including financial performance such as cost, profitability, operating cash flow amongst others and their financial assets and liabilities position. The exposure draft ESRS E1 only required undertakings to disclose emissions intensity metrics in terms of net turnover aligned to the most relevant amounts presented in the financial statements. The EBA believed that this approach is sufficient for a cross-industry standard since it has the advantage of simplicity and comparability, but different options or a multitude of granular metrics should be envisaged in a sector-specific standard. The EBA encouraged in its comment letter the EFRAG to consider a more granular information by referring to the EBA draft Pillar 3 ITS on ESG risks in the forthcoming sector-specific standards. It would be useful if the sector-specific standard would include GHG intensity per unit of production for all sectors listed in template 3 of the Pillar 3

ESG disclosures implementing technical standard ²⁴ which is also aligned with the units of production available in the International Energy Agency Net Zero Emission by 2050 Scenario NZE2050.

62. The EBA generally welcomed the GHG intensity approach in its comment letter, which can be accounted for by measuring the total emissions for each set amount of production. This method may produce more credible transition plans as the intensity of operations at product levels can be more detailed than at general levels. This could identify intensity reduction targets overall and at product level. The degree of alignment for sustainable activities and available indicators will increase market transparency. These should include a greater emphasis on industry-specific production metrics to facilitate comparability and assessment against the standards. The GHG intensity metrics in terms of net turnover with the consideration of alignment with GHG intensity per units of production could reflect performance improvements and comparability amongst institutions independent of growth.

63. Furthermore, with regards to the rolling periods, the EBA suggested that the disclosure of reduction targets should be foreseen for 3 years after the reference period.

EFRAG approach after consultation

64. EFRAG intends to include GHG intensity per units of production metrics within the sector-specific standards. Also, the respective undertakings shall provide information on the energy intensity (total energy consumption per net revenue) associated with activities in high climate impact sectors and shall disclose their GHG emissions intensity (total GHG emissions per net revenue).

EBA's views

65. **The EBA very much supports the approach of having these additional requirements in the sector-specific standards. To achieve closer alignment, GHG intensity per units of production metrics recommended to be in scope for all sectors listed in template 3 of the Pillar 3 ITS on ESG risks.** Such indicators even facilitate better interpretation of the undertakings' disclosures, if these are required within the same sectorial category and when compared to each other, the differences won't be accounted for the specifications of the different industries. Nevertheless, they are very important and useful metrics for the disclosure of the climate-related financial impacts of the entities.

Other specific comments / proposals

Standards wording

66. The EBA notes that paragraph 7 (b) of the draft ESRS 1 defines the terms "shall consider" as factors that the undertaking is expected to consider in the preparation of the reporting

²⁴ Power, Fossil fuel combustion, Automotive, Aviation, Maritime transport, Cement, clinker and lime, Iron & steel, Chemicals

prescribed by a disclosure requirement or a data point. However, the EBA is concerned that this definition may lead to different interpretations as it does not clarify what the term “consider” implies in practice. Overall, the EBA understands that the term “shall consider” is used throughout ESRS in order to refer to external guidance not directly included in the standards. For instance, paragraph AR 39 of the draft ESRS E1 Climate Change states that *“When preparing the information for reporting GHG emissions as required by paragraph 41, the undertaking shall: (a) consider the principles, requirements and guidance provided by the GHG Protocol Corporate Standard (version 2004 or the latest one) and GRI 305 (version 2016 which is directly based on the requirements of the GHG Protocol)”*. **Considering the relevance of the GHG protocol to ensure consistent reporting of GHG emissions, the EBA recommends that the Commission clarifies under which circumstances and conditions an undertaking may decide to deviate from the guidance that “it shall consider” and requiring justification from the entity when it chooses to disregard the guidance.**

Mechanism to address the implementation issues questions which will arise from the practical implementation of ESRS

67. The EBA notes that the first set of European sustainability reporting standards constitutes a milestone in the development of the European Sustainable Finance agenda as it sets out standardised ESG disclosure requirements for all companies. The EBA notes however that the standards will introduce many new concepts that are likely to raise implementation questions from companies and interpretation questions for supervisors and auditors. **The EBA therefore recommends that the Commission swiftly set up an official channel which will allow collecting and addressing these questions.** The EBA also recommends that the Commission clarifies which bodies may issue binding guidance to help enforcers ensure the consistent implementation of the standards.

68. In that regard, the EBA would like to highlight that the European disclosure framework now includes several pieces of disclosure regulations such as the Sustainable Finance Disclosure Regulation, the Taxonomy regulation and the Pillar 3 implementing technical standard pursuant to article 434a of the CRR regulation. All those pieces of legislations are interconnected to a large extent. For instance, the SFDR disclosure regulation, the Pillar 3 ITS on ESG risks and the draft ESRS E1 on climate change all require companies to disclose their greenhouse gases emissions with varying extent of implementation guidance. **In order to ensure consistency in the implementation of the European sustainable finance framework, the EBA recommends that the interpretation guidance should apply equally across the various pieces of legislation when they share common disclosure requirements.** In addition, it would be highly desirable that all interpretative statements and guidance issued by the Commission, the European Supervisory Authorities and other official bodies be consolidated within a single rulebook rather than scattered in separate documents. Within its mandate to draft implementing technical standards for the CRR Pillar 3 disclosures, the EBA has already started issuing Q&As about the practical implementation of the Pillar 3 ITS on ESG risks.

The need to swiftly adopt audit standards in order to ensure consistent implementation of the European sustainability reporting standards

69. The EBA notes that the CSRD requires the statutory auditor, an audit firm or an independent assurance service provider to express an opinion as regards the compliance of an undertaking's sustainability reporting with the European sustainability reporting standards and the requirement in Article 8 of Regulation 2020/852 on the establishment of a framework to facilitate sustainable investment ('Taxonomy Regulation'). The CSRD empowers the European Commission to adopt limited assurance audit standards before 1 October 2026 and assurance standards for reasonable assurance no later than 1 October 2028. However, large undertakings that are public interest entities exceeding on their balance sheet dates the criterion of the average number of 500 employees during the financial year will be required to disclose their sustainability reporting as from financial years starting on or after 1 January 2024 first reference date. In the meantime, Member States may apply national assurance standards, procedures or requirements.

70. Robust audit opinions are instrumental to ensure consistent application of the European standards and to safeguard the trust of the public in companies' sustainability reporting. Furthermore, the quality and reliability of the SFDR disclosures reported by financial market participants will depend to a large extent on the quality of the disclosures from investee companies. For instance, starting from 2023, financial market participants will have to report on the principal adverse impacts of their investment decisions on sustainability factors. Therefore, **the EBA is of the opinion that the adoption of audit standards for sustainability reporting should be pursued ahead of the deadline set out in the CSRD in order to ensure consistent high quality disclosures throughout the European Union.**

Clarification between ESRS, the Accounting Directive and the Directive against fraud in the European Union (2017/1371)

71. The EBA notes that the term "joint venture" is not defined in the Accounting Directive 2013/34/EU, however it is used in the draft ESRS 1 Paragraph 71. Furthermore, the accounting directive refers to "associated undertaking" instead of "associates". Considering that the CSRD will amend the Accounting Directive, EBA understands that European undertakings will apply the consolidation rules outlined in chapter 6 of the Accounting Directive to report their consolidated management report, **the Commission may therefore consider a closer alignment between the terminology used in the Accounting Directive and in ESRS 1.**

72. The EBA notes that appendix A and paragraph AR53 of the draft ESRS S1 reads that "an employee is an individual who is in an employment relationship with the undertaking according to national law or practice." Furthermore the definition of "own workforce/ own workers" draws a distinction between "workers who are in an employment relationship with the undertaking ("employees")" and "non-employee workers who are either individual contractors supplying labour to the undertaking ('self-employed workers') or workers provided by undertakings primarily engaged in "employment activities" (NACE Code N78)." Both definitions seem to lead

to the conclusion that the term employees designates only people who have signed an employment contract with the reporting undertaking. However, paragraph 57 highlights that an undertaking may have an employment relationship with a non-employee “When reporting its employment relationship with the most common types of non-employee workers in its own workforce, the undertaking shall provide a general description as to whether it engages them directly (as self-employed contractors) or indirectly through a third party.” Considering the potential inconsistency between paragraph AR53 and 57 of the draft ESRS S1, **the EBA recommends clarifying explicitly in ESRS S1 the definition of an “employment relationship”**. The EBA would like to highlight that this clarification may be consequential because the number of employees is one of the threshold set out in the CSRD to set out the scope of application of the disclosure requirements and the Accounting Directive does not explicitly defines what an employee is. It is therefore critical that ESRS sets out a definition consistent with current practices i.e. which excludes individual contractors and interim workers.

73. The EBA has also identified a difference between the draft ESRS G1 and the Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law. The definition of the wording “corruption” in the draft ESRS G1 is not fully aligned with the definitions set out in Article 2 of the Council Framework Decision 2003/568/JHA and Article 4 of Directive 2017/1371 on the fight against fraud to the Union's financial interests by means of criminal law. **The EBA advises the Commission to consider whether the definition of “corruption” in ESRS G1 should be aligned with the mentioned Directive and Council Framework Decision.**

Conclusion

74. The EBA acknowledges the significant improvement of the draft ESRS prepared by EFRAG when compared to the respective exposure drafts published for consultation. In EBA's view, overall consistency with international standards and relevant EU Law was achieved. In particular, the EBA very much welcomes the better alignment with the disclosure requirements under the EBA's Pillar 3 Framework that is deemed adequate at this stage.

75. As regards proportionality considerations, the EBA believes that the current draft standards offer a well-balanced approach with relevant phasing-in provisions being considered. This approach will allow undertakings to have some time to prepare to the new additional disclosure requirements which may lead to a higher quality level of disclosures.

76. Based on the assessment performed²⁵, the EBA is of the opinion that the current draft ESRS represent a good basis for the implementation of the CSRD. This conclusion is subject to a few aspects, detailed in the relevant sections of this opinion, that would deserve further consideration by the Commission²⁶ either in ESRS set 1 (prior to or shortly after its adoption); as

²⁵ Please see section “Scope of the Opinion”.

²⁶ Or EFRAG, as per request from the Commission, when developing future sets of standards or specific educational material.

part of specific-sector standards; when performing a more global review of ESRS set 1 or when developing educational material, depending on the relevance of the specific issue:

- a) Interoperability with international standards, especially having in mind the different timelines followed by EFRAG and the ISSB (please see section A. of this opinion);
- b) Additional guidance and clarification on the materiality assessment and implementation of value chain concept for institutions operating in the financial sector (please see sections B. and D. of this opinion). In addition, further more immediate amendments were suggested on these two topics as, in EBA's view, additional clarity in the wording of the current disclosure requirements would be useful;
- c) Further alignment with the EBA's Pillar 3 requirements would be considered when developing the sector-specific standards (please see section G. of this opinion). The EBA stands ready to give continuity to the good collaboration with the EFRAG on this matter;
- d) Additional clarification and consistency between the draft ESRS, the Accounting Directive and the Directive against fraud in the European Union would be needed (please see section "Other specific comments / proposals" of this opinion).

77. On top of these technical considerations, the EBA would also suggest the Commission to establish a mechanism to address the interpretation questions that are expected to arise from the practical implementation of ESRS. The EBA stands ready to actively contribute to this interpretation mechanism to ensure consistency between ESRS requirements and other legislative framework under the EBA's remit.

78. Furthermore, the EBA is encouraging the Commission to anticipate the timetable for the specific-sector standards for credit institutions and other entities operating in the financial sector, for finalisation in 2024 and adoption in 2025, in order to provide earlier clarifications specifically applicable to credit institutions' disclosures on certain topics, while still giving time to gain experience from institutions' Pillar 3 disclosures that start to apply as of 31 December 2022 first reference date.

79. Lastly, the EBA would see merits in the adoption of audit standards for sustainability reporting ahead of the deadline set out in the CSRD in order to ensure consistent high quality disclosures throughout the European Union earlier than currently established.



This opinion will be published on the EBA's website.

Done at Paris, 26 January 2023

[signed]

[José Manuel Campa]

Chairperson
For the Board of Supervisors