Template for comments on draft ESRS Delegated Act

The draft delegated on European Sustainability Reporting Standards (ESRS) comprises: the main text of the legal act; twelve draft standards (annex I); and a glossary of abbreviations and defined terms (annex II).

The twelve draft standards in Annex I are:

Group	Number	Subject
Cross-cutting	ESRS1	General Requirements
Cross-cutting	ESRS2	General Disclosures
Environment	ESRS E1	Climate
Environment	ESRS E2	Pollution
Environment	ESRS E3	Water and marine resources
Environment	ESRS E4	Biodiversity and ecosystems
Environment	ESRS E5	Resource use and circular economy
Social	ESRS S1	Own workforce
Social	ESRS S2	Workers in the value chain
Social	ESRS S3	Affected communities
Social	ESRS S4	Consumers and end users
Governance	ESRS G1	Business conduct

Each standard is divided into numbered paragraphs. Each standard also has an appendix A containing “application requirements” which are numbered as AR 1, AR 2 etc. Some standards also contain additional appendices.

To facilitate analysis of comments, respondents are kindly requested to use the simple template below when sending their comments.

Name of respondent/responding organisation: BUSINESSEUROPE

1. General comments

We welcome the changes introduced as compared to the technical advice by EFRAG. They are necessary to make the practical implementation of the standards more workable for business at large, and to take the necessary steps to achieve the Commissions' engagement of reducing reporting requirements by 25%. In particular, the following improvements are important:

- **The wide application of materiality assessment across the ESRS framework.** Materiality assessment is essential both in the context of financial and sustainability reporting, and it will increase the relevance of information disclosed to users. It is also one of the most effective measures to reduce the overall reporting burden for preparers of non-financial information. Still, conducting meaningful materiality assessments will involve collection and analysis of granular and complex data.

  To improve coherence within the EU sustainable finance framework, we suggest to give guidance to the financial sector about reporting on mandatory PAIs while respecting materiality assessment in ESRS.

- **Several datapoints in areas particularly difficult to report on have become voluntary.** This approach encourages companies who want to report additional information about their sustainability performance to do so by providing a relevant reference point, however it does not force to report those who will experience difficulties in compiling the necessary data.

- **The additional phase-ins for companies and in particular those with less than 750 employees**. While this does not fully address the challenge of data collection, it will grant companies more time to adapt their systems and prepare sustainability reports.

- **The progress made towards aligning ESRS with IFRS S2 standard.** We urge the European Commission to ensure that "when a company reports sustainability information in accordance with the ESRS, they will be deemed to be compliant with global standards" (Commission Communication of 13 June 2023), knowing that ESRS requirements will go beyond the different reporting frameworks. In this light, a reconciliation table between ESRS and existing IFRS S1 and S2 standards will be useful to avoid as much as possible double reporting, while continuing to seek alignment with ISSB.

We note however that despite those improvements, standards in the proposed share represent a massive amount of sustainability information which will need to be collected, validated and ultimately reported on by companies. Compliance with the disclosure requirements will be burdensome, costly

and will pose a significant challenge to many companies, especially first preparers. More concretely, we still see areas where the proposed disclosure requirements could be further improved to ensure the success of this framework. You will find them below.

2. Specific comments on the main text of the draft delegated act

N/A

3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
ESRS 1	*Para 104-107*	The EU Trade Secret Directive (2016/943) aims at the protection against the disclosure of sensitive and proprietary information that has commercial value. The draft of ESRS 1 is now directly quoting text from the Trade Secret Directive in paragraph 105, conditions (a)-(c) which aligns more clearly with existing EU law than the EFRAG draft. However, the text is still limited to 'intellectual property, know-how or the results of innovation', which is narrowing down the scope and excludes other commercially sensitive information protected by the Trade Secret Directive. We therefore suggest deleting the references to 'intellectual property, know-how or the results of innovation' from 7.7 to ensure the consistency and convergence with the EU Trade Secret Directive.
ESRS 1	*Para 119*	The conditions for incorporation by reference were too restrictive and did not allow, for example, to incorporate by reference information published in previous reports. These constraints could significantly reduce the benefits of this practice which has been used for prospectuses for the last 15 years (and more recently for registration documents). The limitation to require the reference to be in the same language should be removed to allow reference to any relevant filings in any of the union's accepted languages. This will help for example to facilitate transitional consolidation in one member state under article 48, CSRD.
ESRS 2	*Para 48*	Such forward-looking quantitative information depends on so many uncertain factors, among which many are beyond the company's control, that it will necessarily be subject to errors, exposing EU companies to risks of litigation and liability when forward-looking sustainability information finally turns out to be inaccurate. Making public such information would also raise confidentiality issues. Mitigating language should therefore be introduced to allow companies to disclose only qualitative information when disclosing

		quantitative information is prejudicial to the company. This requirement links the financial and non-financial reporting in a way that is unclear as to how it should be practically applied, and it also remain unclear how quantitative information could be subject to assurance or attestation. In order to conclude in such linkages a formal process should be in place as well as commonly agreed framework, followed ideally at sectoral level, otherwise such disclosures may affect competitive advantages especially towards peers outside EU that might not be affected by the new regulations.
ESRS 2	*General comment*	Disclosures around governance and risk management are still very granular. See for example para. 48 in SBM3. It would have been ideal to have included, where relevant, wording indicating that these disclosures are without prejudice the protection of business secrets and other commercially sensitive information.
ESRS 2	*Para 33*	Positive that this key provision is kept. Perhaps it should have been reproduced in other sections of governance of ESRS 2 (e.g. GOV 2 and GOV 3).
ESRS 2	*Para 53*	This might imply that consultation with stakeholders is always necessary. Consultation with key stakeholders is subject to each undertaking's judgement in terms of frequency and that this is a disclosure of how the undertaking consults and not a requirement under the ESRS as to how and how often an undertaking consults. This is a potential problematic point to be addressed and two options could be: A new wording under iii): 'may include consultation…' or the elimination of sub-paragraph (iii) from Paragraph 53, while keeping 'as is' sub-paragraphs (i), (ii), and (iv).
ESRS E1-E5	*IRO analysis*	It is important to clarify that the IRO analysis through the value chain across the environmental standards (ESRS E1-E5) is subject to materiality assessment. The undertaking cannot review the exhaustive list of sites of its whole value chain, an approach by significant risk is needed. Furthermore, this principle exists in ESRS 1 § 57, which limits the level of disaggregation in the reporting to <u>significant</u> sites. Such a principle should be added in the corresponding ESRS 2 IRO 1 in the topical standards to set appropriate boundaries to the screening exercise by site.
ESRS E1-E5	*Resource plans for actions*	The resource plans for actions to be prepared under each environmental standard are disproportionality burdensome and extremely intrusive into companies' practices. What matters is that companies inform about their objectives and progress towards them. Granular disclosure about how they organise themselves to reach these objectives becomes a culture of distrust and micro-management. Resource plans for action should be further simplified (i.e., a brief qualitative action plan to inform interested stakeholders about planned measures by a reporting company) and be voluntary in ESRS E1 – E5.
ESRS E1-E5	*Financial effects on sustainability aspects*	Even if some companies are already implementing methodologies to be able to disclose financial effects on sustainability aspects, there are no commonly used indicators that would also be used at international level, making the comparison between reporting entities difficult. In the absence of commonly used methodology, the disclosure of financial effects on sustainability should be voluntary and information requested under ESRS E1-E5 substantially reduced.

ESRS E1	*Para 1*	CSRD does not give a mandate to include future international agreements. It only refers to Paris agreement. The text "…*(or an updated international agreement on climate change)*…" should therefore be deleted.
ESRS E1	*Para 31*	Targets are often not set and tracked at local entity-level. However, the undertaking might well follow and contribute to the delivery of corporate-wide targets, thus it might be reasonable to share such targets here.
ESRS E1	*Para 67-68*	The addition of "*before considering climate change adaptation/mitigation actions*" under paras 67(a)/68(a) respectively is highly problematic as this would mean companies need to report on the *gross r*isks, rather than the *net* risks. This is clearly an undue reporting burden which would create significant reporting efforts on the part of preparers while these efforts will only ever yield non-robust results (such risks can only be roughly estimated). Auditors have already stressed that this data cannot be verified for this very reason. In other words, this would not help readers in assessing a company's performance. Decision-useful information would address risks *after* mitigation measures (net risks). Instead of requiring monetized/quantitative reporting on gross risks, a qualitative description of gross risks could help provide context for monetized/quantitative net risks. We therefore recommend to: - Para 67(a): remove "before considering climate change adaptation actions" to focus on monetized/quantitative net risk. If information/context on gross risk needs to be provided, "companies shall, on a qualitative basis, describe their general risks before adaptation measures" could be added. - Para 68(a): Remove "before considering climate change mitigation actions" to focus on monetized/quantitative net risk. If information/context on gross risk needs to be provided, "companies shall – on a qualitative basis – describe their general risks before mitigation measures" could be added.
ESRS E2	*Para 32-35*	The requirement for an undertaking to *disclose information on the production, use, distribution, commercialisation and import/export of substances of concern and substances of very high concern, on their own, in mixtures or in articles* would expose that undertaking to unfair competition by allowing its competitors to calculate production volumes for specific products. This could affect competition within the Single Market and deteriorate competitiveness vis-à-vis third-country competitors in particular. Especially para 34 mandating these disclosures should include the *total amounts* of substances is problematic. Furthermore, the focus on the use of substances during production is not appropriate as it is not a proxy for environmental impacts. Currently, the draft standard wrongly implies that substances of (very) high concern are emissions with a negative impact by default. Yet, the essential information that needs to be disclosed is the management/monitoring system to ensure safe handling of such substances. We therefore recommend removing the references to amounts/metrics and disclosure obligations regarding the production phase.
ESRS E4	*Making some disclosures voluntary*	Positive on the change to voluntary. However, it is not clear if the biodiversity metrics that the undertaking is expected to report may only be qualitative or qualitative-quantitative, instead of quantitative.
ESRS E4	*Para 17(b)*	Sustainability disclosures should not come at the expense of compromising company security or confidential information. For example, the mentioned biodiversity disclosures under par. 17(b) could divulge the exact locations of critical infrastructure, which are

		highly confidential and, if public, could lead to security risks. We recommend reporting site data in the aggregate, as follows: *"The undertaking shall specifically disclose: (…) (d) an aggregated list of material sites based on the results of paragraph 17 (a). The undertaking shall disclose these locations by:…"*
ESRS E4	*Para 21*	The scope covered here under Policy is too far-reaching. Annex II defines a policy as a "*set or framework of general objectives and management principles that the undertaking uses for decision-making*" while this section includes elements like Risks & Opportunities, operations, monitoring and reporting.
ESRS E4	*Para 30*	There needs to be more application guidance on how to apply the concept of ecological thresholds to target setting. Ecological thresholds are generally location-specific and thus typically not comparable between different undertakings. If more clarity is expected over time, a phase-in approach should be considered.
ESRS E5	*Material resources inflows and outflows*	The requirement for an undertaking to disclose granular information on the inflow and outflow of resources in quantities (kg/tons) leads to concerns around competitiveness as competitors could calculate production volumes for specific products. This could affect fair competition within the Single Market and deteriorate competitiveness vis-à-vis third-country competitors in particular. We therefore recommend removing the references to amounts/metrics.
ESRS S1	*Para 4*	We acknowledge the positive change regarding the indicators of the non-employee workers which become voluntary. However, for the indications of disclosure presented in paragraph 55 of S1-7 and AR64 it remains unclear whether the total figure or an average is expected. Although the company is authorized to provide an estimate, it will be difficult for companies operating in different countries to do so for non-employees.
ESRS S1	*Para 60*	Despite the new criteria which change the threshold for "significant employment" in a particular country (i.e., at least 50 employees by head count representing at least 10% of its total number of employees), we still consider that threshold is too low, causing disproportionate burden for employers. The developing solutions for collective representation of the self-employed should in any case be organised differently to the existing collective bargaining frameworks for employees, taking into account the clear differences between both categories; for temporary workers information could be required in the purchasing conditions, if necessary, but companies cannot check actual corresponding payment. Some companies may be applying collective bargaining agreements to organise their labour relations including wage setting but not be legally bound to them.
ESRS S1	*Para 67*	We noted the change of the definition in the Appendix A, but the old definition still appears in the Annex 2 – Acronyms and glossary of terms. The Commission should clarify this. The notion of adequate wages as defined in Appendix A ('EU, national or local legal definitions of adequate wages, fair wages, and minimum wages') should take into account that companies are respecting the legal requirements and customs that apply within the national context of their economic activities, reporting on compliance thus would become redundant. Furthermore, there is legal unclarity regarding GDPR restrictions and individualized wage disclosures

		("highest/lowest paid individual") both regarding the collection and the publication of this data. For countries outside the EEA, the text suggests that any benchmark that meets the criteria set out by the Sustainable Trade Initiative (IDH) (Roadmap on Living Wages, A Platform to Secure Living Wages in Supply Chains) may be used, including applicable benchmarks aligned with the Anker methodology, or provided by the Wage Indicator Foundation or Fair Wage Network. However, these are private initiatives with their own grave shortcomings. It is inappropriate to use these initiatives as benchmarks and should be therefore eliminated. Rather than using quantitative KPIs which currently cannot be compiled due to the lack of country-specific data – both for countries outside of Europe and European countries - we recommend that companies should be required to holistically describe their policies and respective monitoring systems aimed at ensuring its employees are paid adequate wages.
ESRS S1	*S1-11*	We welcome the phase-in measures taken on social protection requirements. Yet, globally, a wide array of legal frameworks exists, each with their own idiosyncrasies. 'Global statements' will not be meaningful. Alternatively, reporting could become extremely granular and disproportionate. Information would also have to be collected manually, adding on to the reporting burden. The potential usefulness of this requirement does not justify the associated reporting burden while also exceeding the CSRD and should therefore be removed.
ESRS S1	*S1-12*	We welcome the phase-in measures taken. We also appreciate the acknowledgements regarding the potential (mis)alignment with local laws. However, these issues are likely to persist in case these draft requirements remain unchanged. Moreover, if these requirements would remain unchanged, they will lead to conflicts with local legislation and could also raise GDPR issues. In addition to the legal constraints, information gathering and processing with regard to disabilities of employees is also likely to lead to protracted discussions with employee representatives (also outside of Europe). Many (other) social indicators also mandate a breakdown by gender which could again give rise to similar issues. If these legal uncertainties cannot be resolved in time, the requirement should be removed. For the paragraphs 77-80 it should be added that the disclosure should be in accordance with the legal provisions established by the legislation at national level. Rather than using quantitative KPIs which currently cannot be compiled due to the lack of country-specific data – both for countries outside of Europe and European countries - we recommend that companies should be required to holistically describe their policies and respective monitoring systems aimed at ensuring persons with disabilities are not discriminated against.
ESRS S1	*S1-13*	Training and skills development indicators: Modern training comes in many forms, not just classroom trainings, but also "on the job" training such as social learning, coaching, peer exchanges, digital self-learning. Measuring these types of training in hours/costs is not appropriate and does not reflect the true extent to which training and development opportunities are provided. Rather than using quantitative KPIs which do not reflect the underlying concept to a satisfactory degree, companies should be required to holistically describe their training/development policies and offerings. On paragraph 83 which refers to regular performance and career development review, it should be sufficient to explain the policies and system of the regular performance and career review, without having to disclose exactly how many employees have received

		these reviews per year. The obligation does not reflect the operational implementation.
ESRS S1	*Para 88*	The definition of 'work-related injuries and fatalities' (see (e) and footnote 80) diverges from well-established reporting standards such as the GRI/OSHAs definition (i.e. GRI 2018: Compilation requirements related to Disclosure 403-9). Parallel methodologies, definitions, and reporting should be avoided, especially when existing standards do not represent a reduction in the underlying ambition. We therefore recommend aligning Para 88 (e) and footnote 80 with the existing definition under GRI/OSHAs.
ESRS S1	*Para 88*	We noted the positive change in the text which acknowledge that data might be subject to legal restrictions. Nevertheless, it is important to acknowledge that the mere indication of numbers and quotas will not provide any meaningful insights in this regard. They must be put into context considering, in particular, what accident rates and occupational diseases are common in the respective countries and in the corresponding sector. The applicable timeframe plays a vital role as well, as to whether the figures are counted, for example, within a calendar year, quarterly, or since the company was founded. What would be more interesting is to ask companies to report about the number of cases of recordable ill health that are not work related. This would help shed light on the expected high proportion of absences from work that are not work-related. Another main issue with this indicator is the complexity and inconsistency in its calculation. The number of days lost to work-related injuries can be counted differently under different legislations, making it challenging to collect data in a comparable manner. Currently, there are numerous definitions among experts, further enhancing the claim to reduce complexity and eliminate this non-meaningful indicator. Instead, it adds unnecessary complexity and fails to capture the diverse realities across the globe.
ESRS S1	*Para 103*	It is still unclear as to what constitutes a complaint or grievance. Moreover, the number of grievances, allegations, internal investigations, or pending legal proceedings is not indicative of real issues that may ultimately be substantiated. These metrics therefore lack relevance but the key issue with these metrics is that high numbers may generally be interpreted as an indication of poor practices, despite the fact that it is in many cases a result of a litigation oriented legal culture prompted by the EU and national governments that increasingly encourages employees and others to take legal action against companies. What is needed instead is to foster better conditions for trust and cooperation, recognising that there are limits to what can legitimately be expected from companies whereas they are already faced with enormous regulatory burdens. Furthermore, companies are already compliant with the legal requirements and customs that apply within the national context of their economic activities, reporting on compliance thus would become redundant. The Commission should also provide clarifications on subparagraph (b) so as incidents are separated from complaints.
ESRS S2	*Para 39*	Such far-reaching adjustments to business strategies formulating targets aiming at third-parties company structure is out of proportion and goes far beyond the requirements set by the directive. For the supply chain, comprehensive quantitative outcome measurement is not yet feasible in practice, due to the complexity of supply chains and the associated challenges in data collection, especially from n-tier suppliers. The standards should, if at all, specify the requirements regarding the supply chain and should enable qualitative target measurement. The Commission should clarify that the addition of 'it may have set' means that when no target has

		been set, no reporting is needed.
ESRS S3	*Para 9*	The draft requests to disclose affected communities likely to be materially impacted by the company in its activities, including impacts connected with value chain operations and through its business relationships goes beyond companies' operations and includes operations of suppliers' facilities, which is unrealistic and difficult to handle for companies. It will be very difficult to provide even a brief description of this category with the adequate data quality/accuracy, considering that this type of information is out of the control of the undertaking.
ESRS S4	*Para 16*	Many companies already have governance structures and management systems in place to deal with human rights issues, including through due diligence, which are based on the UN Guiding Principles and the OECD Guidelines, and they already communicate on this basis. Making it, however, obligatory for companies or setting a de facto standard to comply with voluntary CSR frameworks is not acceptable, as these are not meant as corporate policy instruments. Also, it may be that companies use other frameworks, which is completely justifiable. Whilst we have no problems with calling on companies to adhere to the UN guiding principles on business and human rights, this must be in line with the division of responsibilities between state and companies, as is clearly highlighted in the UNGPs – states duty to protect and business responsibility to respect. While ESRS S4 Consumers and end-users cites again the UN document with respect to the business obligations, there is no mention of how the business reporting is affected if a state fails to uphold human rights, reflecting the overreaching approach of the document to ignore the impact of a state's failure to ensure delivery of its duties, the impact this has on business and how this affects the strategy of a business. In the context of the CSRD, business should be able to report and explain that it falls short of the desired goals when failure of a state to deliver what it has as an obligation to deliver affects materially the ability of the company to reach the set targets according to the metrics suggested by the relevant ESRS.
ESRS S4	*Para 31 a) and b)*	In relation to material impacts: without further clarification, Para 31(a) can lead to highly granular reporting obligations when this means an *exhaustive* list of actions would need to be compiled (regarding quality-related non-conformities). We recommend clarifying that the reported list of 'actions' should not be exhaustive but should rather provide an overview of the *types of* actions taken/planned/underway. Similarly, Para 31(b) should be removed, or it should be clarified that an example(s) of a remedial action(s) should be provided, not an exhaustive list.
ESRS G1	*Para 22*	Clear distinction needed between active/passive and public/non-public corruption. Differentiation reasonable as public corruption is much more severe (and rare compared to private passive corruption which comprises e.g. conflict of interest situations.) Proposed amendment: "The undertaking shall provide information on incidents of *passive and active* corruption or bribery during the reporting period."
ESRS G1	*Para 25(d)*	The wording "details" needs to be delineated in the glossary as it is unclear : "d) details of public legal cases regarding corruption or

		bribery brought against the undertaking (…)"
ESRS G1	*Para 26*	'Confirmed' should be added to maintain consistency with the other data points and avoid reporting on frivolous claims: "The disclosures required shall include [confirmed] incidents involving actors in its value chain only where the undertaking or its employees are directly involved."
ESRS G1	*Para 27*	Legal impact of this reformulation to be checked. Clarification needed. Some granularity remains, for example: information on contributions aggregated by country and geographical area; and reporting on the main topics covered by its lobbying activities and the undertaking's main positions on these in brief.
ESRS G1	*Para 29(b)*	Large multinational companies have hundreds of different associations to which they pay a membership fee to or which they provide a contribution. There is no cost / benefit value to request from these various associations information about whether they do also support political parties. Hence indirect contribution shall be deleted. Proposed amendment: The disclosure required by paragraph 27 shall include: (b) for financial or in-kind political contributions: i. the total monetary value of financial and in-kind political contributions made directly ~~and~~ ~~indirectly~~ by the undertaking aggregated by country or geographical area where relevant, as well as type of recipient/beneficiary; and
ESRS G1	*AR 2*	Legal impact to be assessed. The disclosure is too granular.

4. Specific comments on Annex II

Defined term	Comment
N/A	N/A