

EFRAG SECRETARIAT ANALYSIS OF THE OVERALL COMMENTS ON THE GOVERNANCE STANDARDS

These papers are the same as the ones prepared for 5 October 2022 meeting

This paper has been prepared by the EFRAG Secretariat for discussion at a public meeting of EFRAG SRB. The paper forms part of an early stage of the development of a potential EFRAG position. Consequently, the paper does not represent the official views of EFRAG or any individual member of the EFRAG SRB or EFRAG SR TEG. The paper is made available to enable the public to follow the discussions in the meeting. Tentative decisions are made in public and reported in the EFRAG Update. EFRAG positions, as approved by the EFRAG FR Board, are published as comment letters, discussion or position papers, or in any other form considered appropriate in the circumstances.

ESRS G1 Governance, risk management and internal control

- The EFRAG Secretariat notes that DRs G1-2; G1-3; G1-5; G1-6 and G1-10 have been deleted and DRs G1-7; G1-8 have been substantially revised due to changes to CSRD as discussed with SR TEG on 29 August 2022 and to be discussed by the EFRAG SRB. G1-4 remains in G1 in the context of the focus in CSRD on the importance of diversity. These changes may make comparison to the comments received in the consultation very difficult.
- Incorporation by reference paper discussed by EFRAG SR TEG on 29 August 2022.

Comment	Type	Already in TEG survey/ ISSB alignment/ GRI alignment	EFRAG Secretariat comments	EFRAG Secretariat conclusion (*)	Issue paper needed ?
I. Reservations					
01. High or disproportionate burden for reporting entities	Burden	No	Refer to paragraph 1	Current version complies with CSRD requirements and minimises duplication.	
02. Excessive granularity	Burden	Yes			
03. Inconsistencies with other existing reporting requirements – high amount of information to be disclosed	Burden	Yes			
04. Requirements go beyond CSRD requirements	Burden	No			
05. Standards are too prescriptive & lack scalability	Prescriptive	No	Compare with Reservations 07	Significant simplification already. To be further considered based on detailed recommendations.	No
06. Overlaps with existing reporting requirements & risk of double reporting	Burden for listed companies	Noted in Use test	Improvement to incorporation by reference should reduce risk of double reporting.	No further action needed once update for SRB decision	Incorporation by reference
07. Lack of comparability of data	Comparability	No	Compare with Reservations 05	Edits so far improve comparability of information and data where relevant. To be further considered based on detailed recommendations.	No
08. Difficulties & insufficient clarity on verification and assurance of DRs given high number of DRs	Burden for auditors	No	Refer to paragraph 1	Subject to discussion	Governance architecture

Governance – Assessment of summary comments (Table 1)

Comment	Type	Already in TEG survey/ ISSB alignment/ GRI alignment	EFRAG Secretariat comments	EFRAG Secretariat conclusion (*)	Issue paper needed ?
09. Inconsistent use of terminology	Glossary	No	Several details in individual DR comments.	DRs to be updated as required, but ESRS approach to Glossary minimizes separate definitions.	No
10. Multiple DRs are not relevant to all companies or countries	Relevance	No	Details unclear especially in context of alignment of G1 to art 20 in Accounting Directive.	If DRs are deleted as proposed by architecture paper, half of the original DRs will remain, but under discussion. Am evaluating comments in individual DRs	No
11. Different legal forms of undertakings not covered	Legal forms	No	Agreed.	Will add AG about different legal formats.	No
12. Difficulties in quantifying DRs given topics	Quantification	No	Quantitative data is not the only information that is useful.	Proposals for quantitative information on topics to be evaluated and included where relevant.	No
13. ESRS G1 lacks ambition	Unambitious	Yes	Compare with Reservations 01 & 02	Current version complies with CSRD requirements and minimises duplication.	
14. Difficulties in reporting along the value chain especially for SMEs	Value chain	Yes, in use test.	Agreed that it should be clarified that the disclosures in G1 only relates to own operations.	Separate ESRS standards for SMEs (both listed and unlisted). Updates may be required to reporting boundary in ESRS 1 based on issues paper.	Yes – value chain paper
15/ Policy and performance measurements are insufficient	Unambitious	No	The selection is based on internal prioritization by PTF and lack of performance governance is done qualitatively in the absence of a score that could reflect this properly. Further deletions to the ED was required by changes to CSRD.	No further action	
II. Suggestions for improvement					
01. Merge governance-related disclosures into ESRS 2	Architecture	No	Discussed by SRT on 29 August.	G1-7 and G1-8 to be moved to ESRS 1. Depending on how many DR will stay on G1, the rest could also be moved to ERS2. To be discussed.	Governance architecture
02. Foresee different reporting requirements for listed and unlisted companies	Differentiation	Yes	Given ambition in CSRD and now few DRs, no change foreseen	No action	No
03. Better specify certain definitions and concepts such as definition of “administrative, management and supervisory body”; the definition of	Glossary	No	ESRS 2 defines AMSBs, however, other examples may need attention.	Secretariat to evaluate and update where needed	No

Governance – Assessment of summary comments (Table 1)

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"director"; the notions of "independence", "stakeholders", "governance bodies"					
04. Allow for cross referencing	Incorporation by reference	No	Already allowed	Refer changes to par 135 of ESRS 1	Incorporation by reference
05. Disclosure of confidential information should not be required	Confidentiality	Yes	SRT disagreed at discussion on 6 September. To be discussed by SRB.	No exception in ESRS to omit information due to confidentiality. This aspect is already covered in the CSRD (possible only when member states allow for it). However, there is no requirement around disclosure of board minutes. Comments around legal problems for disclosing diversity metrics to be considered separately.	Part B of corruption events paper Possibly on legal consequences of diversity metrics.
06. Align with CSRD requirements around sustainability matters <ul style="list-style-type: none"> Consider deleting G1 	CSRD	Yes	CSRD still requires information about ASMBs composition and emphasizes diversity	Already incorporated	Governance architecture
07. Align with national level laws <ul style="list-style-type: none"> Reference to national rules for worker representation 	Local laws	Yes	Worker representation now included.	Include a note about local legal requirements.	No
08. Include additional DRs	Extend Missing topics		Contradicts feedback under reservations	Will consider additional proposals and update as necessary in future sets, not in Set 1 (NO ACTION)	No
09. Align with relevant EU and international legislation such as e.g. CSDDD, SRD II, Accounting Directive, Shareholder Value Directive and international level (the GRI standards, the OECD Principles and guidance on Corporate Governance, the ISSB standards) legislation and frameworks should be ensured	EU and international alignment	Yes	This has been done throughout the process as far as possible in the context that CSDDD have not been issued and the ISSB do not have standards on governance	No further action	No
10. Phase in disclosure requirements over time	Prioritisation	Yes	This contradicts other feedback stating that G1 should not be subject to revisions and should be given the highest priority together with ESRS E1.	Detailed analysis at DR level	Detailed analysis at DR level
11. Better specify certain DRs - definitions	Glossary	No	ESRS 2 defines AMSBs, however, other examples may need attention.	Secretariat to evaluate and update where needed	No
12. Standardisation of disclosure requirements to enable comparability	Comparability	No	Changes to G1 means that data will be more comparable with reference to composition and policies.	No action required	No
13. Traceability of referenced documents and materials – use hyperlinks in ESRS	Hyperlinks	No	General comment referring to ESRS. Probably not possible to do for delegated acts.	No action required	No

Governance – Assessment of summary comments (Table 1)

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14. Introduce a transition period	Prioritisation	No	Cross-cutting topic	No action required for G1	No
15. Reduce the level of detail of DRs	Burden	Yes	Refer to paragraph 1	Done	No
16. Consider merging certain DRs	Burden				
17. Consider using the incorporation by reference	Incorporation by reference	No	Already allowed in ED's and under discussion by SRT/SRB	No further action	Incorporation by reference
18. Limit the application guidance to explanations	AGs	Yes	Agreed	To be actioned depending on time.	No
19. Prioritise G1	Prioritisation	No	Will form part of discussion about prioritisation		Prioritisation paper

Governance – Assessment of summary comments (Table 1)

ESRS G2 Business conduct

Comment	Type	Already in TEG survey/ ISSB alignment/ GRI alignment	EFRAG Secretariat comments	EFRAG Secretariat conclusion (*)	Issue paper needed ?
I. Reservations					
01. Excessive granularity - is too long and detailed, which risks turning it into a tick-box exercise	Burden	Yes	Considering recommendations for changes to drafting	Draft to be amended	No
02. High or disproportionate burden for reporting entities - high number and level of detail of disclosure requirements, the tight timeframe and difficulties in collecting data will cause a substantial or disproportionate workload for companies and high costs	Burden	Yes	As for previous line. Prioritisation also to be determined	Draft to be simplified. Analysis at DR level.	No
03. Inconsistencies with existing EU or international level reporting requirements - in particular with respect to the inclusion of tax-related reporting requirements	Missing topics	Yes	Tax is outside the scope of CSRD	No change	No
04. Relevant DRs are missing such as tax governance and compliance; on animal welfare	Missing topics	Yes	As previous line. Animal welfare was added to CSRD post release of the ED.	Animal welfare possibly a sector specific standard	Yes
05. Certain DRs , for instance the number of reported allegations, are irrelevant	Relevance	No	This is per the requirements of GRI, although some changes will be made	Draft to be updated	Yes, paper discussed by SRT on 6 Sept
06. Requirements go beyond the CSRD requirements	CSRD	Yes	Further details in DR by DR summary, but some regard anti-competitive behaviour and beneficial ownership as going beyond CSRD.	No change at this stage given support from some for these DRs. To be decided by SRT/SRB	No
07. Appendix B provides insufficient guidance – it is too brief and high-level	Application guidance	No	A balance has to be struck between providing principles and becoming rules-based.	Some updates to be considered where possible/ relevant	No
08. Inconsistencies & risk of conflict with existing national regulations e.g. on anti-corruption frameworks.	National regulations	No	To be clarified that these are disclosure are expected to exclude names or identifiable details to reduce concerns	AG to be amended	No
09. Lack of comparability of data in particular as most of the disclosed information will be qualitative	Qualitative nature of requirements	No	As some of the information describes processes, it is factual, but would reflect differences in approach which would still be relevant to stakeholders.	No change	No
10. Standards are not proportionate - proportionate standards are standards that do not need a materiality assessment	Burden	No	Accounting systems all rely on materiality assessment and therefore, the Secretariat disagrees that a standard could be proportionate without such a materiality assessment.	No change	No

Governance – Assessment of summary comments (Table 1)

Comment	Type	Already in TEG survey/ ISSB alignment/ GRI alignment	EFRAG Secretariat comments	EFRAG Secretariat conclusion (*)	Issue paper needed ?
11. Difficulties in reporting along the value chain: to be particularly difficult, for SMEs and financial institutions	Value chain	No	Yes, agreed that this needs to be considered more deeply	To be discussed by SRT and SRB	Yes, paper on value chain
12. Overlaps with existing reporting requirements, e.g. the GRI standards	GRI	No	GRI is an important source in the drafting process. However, as they are voluntary, overlaps are not a general concern, rather deviations from GRI	No change on this point, but Corruption and anti-competitive behaviour events to be updated	No
Inconsistencies between the standards - the documents and the type of information requested	Inconsistencies	No	This reflects the different nature of the topics covered.	No change	No
Insufficient time for reporting	Burden		To be taken into account with prioritisation	No further action	No
Limited comparability of information, given the differences in sustainability between sectors	Comparability	No	Comparability is not the same as uniformity and should consider differences in business model, sector etc. Therefore, not a concern in itself unless it reflects items that should be reflected in the same way/	No further action	No
II. Suggestions for improvement					
01. Clarify certain notions and concepts for instance the notion of "relevant management"; "lobbying", "business conduct", "ethical corporate behaviour", "corruption" & "fraud", "legal proceedings", "at-risk employees", "experts"	Glossary	Yes	To be clarified where relevant.	Draft to be amended	No
02. Better align with relevant EU and international legislation and frameworks, in particular with respect to the inclusion of a tax-related disclosures	Missing topics	Yes	As for 03 under reservations	No change	No
03. Disclosure of confidential or sensitive information should not be required	Confidentiality	Yes	Discussion by SRT completed on confidential information and to be followed by discussion of SRB.	No change	Yes, paper discussed by SRT on 6 Sept
04. Include additional DRs to tax compliance, payment practices, corruption & bribery, sustainable revenue	Missing topics	Yes	Payment practices, corruption and bribery already included. Sustainable revenues to be covered by future guidance, not feasible at this stage. In ESRS 2 as part of Strategy value creation for all stakeholders.	No changes to topics	No
05. Phase-in disclosure requirements over time – G2 should be de-prioritised	Prioritisation	Yes	To be discussed by SRB/SRT	No further action	Yes
06. Merge governance-related disclosures into ESRS 2	Governance architecture	Yes	Discussed by SRT on 29 August, however ESRS G2 is to remain a separate standard.	No further action	Governance architecture
Re-structure ESRS 1 & ESRS 2 vs. ESRS G1 & ESRS G2 - Given significant overlaps					

Governance – Assessment of summary comments (Table 1)

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between governance-related standards (in particular between G1 and ESRS 2), multiple respondents suggest merging G1 (or, less frequently, both governance-related requirements) into the cross-cutting standard ESRS 2					
07. Foresee or better account for auditing procedures: Certain procedures in place should be audited; moreover, auditing and verification procedures are ought to be challenging and should be better accounted for	Assurance	No	Assurance procedures do not form part of the ESRS. We are considering comments around factual nature of DRs and updating where necessary.	Drafts to be updated	No
08. Traceability of referenced documents and materials	Hyperlinks	No	General comment referring to ESRS. Probably not possible to do for delegated acts.	No action required	No
09. Standardisation of disclosure requirements to enable comparability	Comparability	No	Changes to G1 means that data will be more comparable with reference to composition and policies.	No action required	No
10. Simplify DRs or reduce minimum DRs	Burden	Yes	Part of review of detail comments/Prioritisation	Drafts expended to be amended	No, except for prioritization paper
11. Need for more application guidance	Application guidance	Yes	To be considered	Some updates to be considered where possible/ relevant	No
12. Allow for cross-referencing	Incorporation by reference	Yes	Process under way to improve incorporation by reference paragraph in ESRS 1	No further action needed once updated for SRB decision	Incorporation by reference
13. Include certain DRs under sector-specific standards as certain business conduct aspects of financial undertakings are already strictly regulated	Burden/FIs	No	The regulations do not necessarily govern the disclosures referred to in G2, therefore not clear why sector-specific standards are required.	Detailed comments to be considered, but no change to sectors.	No
Business conduct information should be mandatory	Mandatory	No	Part of prioritization discussion	Awaiting SRT/SRB discussion	No
Consider using incorporation by reference	Incorporation by reference	Yes	Process under way to improve incorporation by reference paragraph in ESRS 1	No further action needed once updated for SRB decision	Incorporation by reference
Limit the application guidance to explanations	Application guidance	Yes	Agreed	To be actioned depending on time.	No