

## 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: European Association of Co-operative Banks (EACB)

### 1. General comments

For EACB members, despite some of them already reporting under the Global Reporting Initiative (GRI) standards, the ESRS compliant non-financial reporting is going to be demanding and represent a non-paralleled effort. The EACB therefore welcomes the extensive simplifications made by the European Commission to streamline the ESRS with regard to the deletion of the mandatory reporting of E and S topical disclosure requirements (DRs) and to keep the well-established double materiality approach. This being said, banks and other financial market participants (FMPs) find themselves in the uncomfortable position of needing information from their counterparties on topics that may not be material for the counterparty because of their SFDR and CRR Pillar 3 requirements. This is due to the unfortunate sequencing of the ESRS DRs as well as the lack of risk-based approach of the ESG Pillar 3 requirements. We urge the Commission to work with FMPs and the ESAs to produce a solution to this issue soon and, in the meantime, to require disclosure of ESRS 2 Appendix B datapoints.

We also acknowledge a more feasible approach to **proxies and sector metrics** made by the Commission in section 5.2 of ESRS 1 General Requirements. However, there could still be room for improvement (please see the specific comment on Annex I).

While it is expected that there is no specific definition the **“value chain” for financial institutions** (Fis), we would like to point out that the EFRAG’s work to develop the value chain guidance for FIs is expected to take some time. In the meantime, we appreciate that the use of the 3-year phase-in for value chain reporting is provided in the CSRD. However, it must be ensured that the value chain guidance for FIs will be made available before the end of that 3-year phase-in period.

Regarding the **section 4 “Due diligence”** in the ESRS 1, the EACB finds it positive that the ESRS do not modify any of the conduct rules of companies with respect to the due diligence or the allocation of responsibilities amongst directors on due diligence processes.

The EACB members would like to further highlight the importance of ensuring the interoperability between the ISSB standards and the ESRS. It is key to ensure that companies reporting under ESRS would also be considered as compliant with ISSB sustainability reporting requirements, thus avoiding double reporting. Any duplication of reporting for companies would be problematic.

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

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## 3. Specific comments on Annex I

| Standard | Paragraph or AR number or appendix | EACB comments   |
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| ESRS1    | Paragraph 11                       | <p>The EACB appreciates the flexibility provided in paragraph 11. It should provide the option for cooperative banks and other social economy enterprises to voluntarily measure their societal impact and report on the benefits and performance that are specific to their business model.</p> <p>In fact, paragraph 7 of the <a href="#">OECD Recommendation of the Council on the Social and Solidarity Economy and Social Innovation</a> encourages its member countries to support the design and dissemination of the impact measurement of cooperatives and other social economy enterprises, with the aim to better analyse their performance and assess their social impact. Any reporting on such measurement would make best sense in the context of reporting on the basis of the CSRD.</p>  |
| ESRS1    | Paragraph 18                       | <p>The European Commission has replaced several instances of “may disclose” by “shall consider”. We find the concept of “shall consider” vague and suggest that all its occurrences should be deleted so that only “shall disclose” and “may disclose” remain.</p>  |
| ESRS1    | Paragraph 33                       | <p>The datapoints required by the SFDR, Pillar 3 disclosures and other EU legislations are covered by Appendix B of ESRS 2. This would lead us to think that they are to be reported at all times, and not subject to the materiality assessment, as is the case for all the ESRS 2 requirements. Indeed, paragraph 29 of ESRS 1 states: <i>“Irrespective of the outcome of its materiality assessment, the undertaking shall always disclose the information required by ESRS 2 General Disclosure”</i>.</p> <p>However, paragraph 33 of ESRS 1 states that <i>“When disclosing information on metrics for a material sustainability matter according to the metrics and targets section of the relevant topical ESRS and when disclosing the datapoints that derive from other EU legislation listed in Appendix B of ESRS 2, the undertaking: 1. shall include the information prescribed by a Disclosure Requirement if it assesses such information to be material;”</i></p> |

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|  |  | <p>In light of the above, we would like to:</p> <ul style="list-style-type: none"><li>- Underline the inconsistency between ESRS 2 being “always to be disclosed” and the fact that this does not apply to the datapoints of ESRS 2 Appendix B.</li><li>- Ask for all the datapoints of Appendix B ESRS 2 to be “always to be disclosed” as proposed by EFRAG because most of the banks need them to comply with their own reporting requirements and in the absence of another operational solution to the issue related to the lack of data. We urge the Commission considering the following arguments for this:<ul style="list-style-type: none"><li>i. asking each client is not a realistic option;</li><li>ii. this issue is pointed out in the CSRD (recitals 19 and 47; art. 29b(1) and (5); and also draft delegated regulation on ESRS recital 3), and we are of the view that the level 2 legal text must respect that;</li></ul></li></ul> <p>However, when it comes to reporting on the SFDR PAIs, non-listed small and non-complex financial institutions (SNCIs) which would be subject to the LSME ESRS have to be distinguished from listed SMEs. In addition, we would like to point out that there are also non-capital-market-oriented CRR credit institutions that are required to report in accordance with the full ESRS. For such banks/ SNCIs with no investors, there is currently no disclosure requirements under the SFDR that require PAIs to be reported. Should the EU Commission decide to make reporting on PAIs mandatory, in order to increase acceptance of the reporting requirements, we propose that the EU Commission explicitly discloses the main reasons for mandatory PAIs reporting for these institutions.</p> <ul style="list-style-type: none"><li>- If the Commission does not change its approach, it should - after consulting with FMPs - come up with a solution that would ensure that banks are not getting exposed to legal risk when complying with the SFDR and Pillar 3 requirements. It would not be feasible to request data from a company where its auditors will have validated the non-material nature of that data. While the use of proxies is an option under Pillar 3, however the information from the company itself is more reliable; as such non-materiality is an information in itself and we need an official, formal solution on how to factor that in our reporting under the SFDR PAIs and Pillar 3.</li></ul> <p>We believe that a workable solution would fit well with the ongoing work at the Commission and at the PSF’s level on improving the usability of the overall sustainable finance framework.</p> |
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| ESRS1 | Paragraph 45                  | Clarification should be provided regarding whether the reference to the OECD Guidelines for Multinational Enterprises is dynamic or absolute. In addition, the situation when the Guidelines are updated should be elaborated.   |
| ESRS1 | Paragraph 62                  | We firmly believe that it should be clarified that any divergence in the scope of consolidation between financial and non-financial reporting must be avoided.   |
| ESRS1 | Former paragraph 77 (deleted) | We believe the deletion of former paragraph 77 - applying leverage to the SMEs to demonstrate reasonable effort in collecting data and therefore be able to use proxies - is a positive change on the way of making the ESRS more feasible. Nevertheless, missing data from the SMEs is rather the rule than an exception. While the use of proxies is considered, this should generally be possible with respect to the SMEs that are part of an entity's value chain. In other words, in order to avoid overburdening both SMEs and financial institutions, it should in our opinion always be possible to use proxies and/or sector values.                   |
| ESRS1 | Paragraph 118 (f)             | The new paragraph 118 (f) specifies that <i>"If the undertaking incorporates by reference information from Pillar 3 disclosures, it shall ensure that the information matches the scope of consolidation used for the sustainability statement by complementing the incorporated information with additional elements as necessary."</i><br>This addition does not solve the issue whereby Pillar 3 disclosure applies on a prudential perimeter whereas sustainability reporting applies on an accounting perimeter, effectively meaning that reporting entities cannot benefit from the possibility to report by cross-referencing another part of the report. |
| ESRS1 | Paragraph 135                 | Paragraph 135 should also apply to the disclosures pursuant to Article 8 of the Taxonomy Regulation for those companies that are required to report for the first time under the CSRD and also for the first time under the Taxonomy Directive. Otherwise, the previous year's disclosure requirements of the Taxonomy Regulation and the ESRS would diverge.  |
| ESRS1 | Appendix C                    | The phasing-in rules should apply to every company that becomes subject to reporting requirements under the CSRD for the first time. It should be clarified that the phasing-in rules do not refer to the first time application of the ESRS but to the first time application of the CSRD. This means, for example, that they also apply to entities reporting for the first time in 2030. Especially in the case of mergers, there could otherwise   |

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|         |                     | be major challenges in practice if the merger only takes place in the reporting year and data has to be collected retroactively.  |
| ESRS2   | Paragraph 33        | We find it positive that the ESRS do not modify any of the conduct rules of companies with respect to the due diligence or the allocation of responsibilities amongst directors on due diligence processes.   |
| ESRS E1 | Paragraph 13        | The EACB is of the position that Members of the Board (management body in its supervisory function) must be excluded from reporting according to paragraph 13 of the DR related to ESRS 2 GOV-3 <i>Integration of sustainability-related performance in incentive schemes</i> , because they do not have variable remuneration, but only the «attendance fees» which cannot be linked to climate targets.<br>For the Directors, we believe that variable remuneration should be linked to ESG criteria, and not climate only.   |
| ESRS E1 | AR 74               | The current wording of AR 74 (b) in Disclosure Requirement E1-9 allows the energy efficiency to be represented in terms of <b>either</b> the ranges of energy consumption in kWh/m <sup>2</sup> <b>or</b> the EPC (Energy Performance Certificate) label class. However, we would like to highlight that banks need both disclosures for their Pillar 3 reporting: the energy consumption in kWh/m <sup>2</sup> <b>and</b> the EPC class.   |
| ESRS E1 | Paragraph 35, AR 24 | There is an apparent synchronization issue between the Disclosure Requirement E1-4, paragraph 35 and the Application Requirement 24 in that the DR defines absolute emissions targets as leading with the optional inclusion of data on an intensity basis, whereas the AR suggests that more emphasis could be placed on an intensity based GHG reduction target with the absolute emission level associated with that being derived from the intensity based target but not as the basis for a target for absolute emissions.<br>Considering this inconsistency, we would suggest clarifying the wording in paragraph 35 such that intensity based targets are on equal footing to absolute targets allowing reporting entities to express their targets. |
| ESRS S1 | Paragraph 24 (b)    | Racial and ethnic origin, colour, sex, sexual orientation, religion, political opinion, national extraction or social origin are data that are prohibited from being collected and reported in some Member States. Therefore, we ask for the specific clause to be inserted clarifying that this information may only be reported provided it is legally possible to do so.   |
| ESRS S1 | Paragraph 102       | Racial and ethnic origin, colour, sex, sexual orientation, religion, political opinion, national extraction or social origin are data that are prohibited from being collected and reported in some Member States.  |

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|         |       | Therefore, we ask for the specific clause to be inserted clarifying that this information may only be reported provided it is legally possible to do so. |
| ESRS S1 | AR 55 | Reporting on “other” or “not reported” items is prohibited in some Member States.  |

**4. Specific comments on Annex II**

| Defined term | Comment |
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