European Sustainability Reporting Standards – First Set

Eurelectric response paper

July 2023

Eurelectric represents the interests of the electricity industry in Europe. Our work covers all major issues affecting our sector. Our members represent the electricity industry in over 30 European countries.

We cover the entire industry from electricity generation and markets to distribution networks and customer issues. We also have affiliates active on several other continents and business associates from a wide variety of sectors with a direct interest in the electricity industry.

We stand for

The vision of the European power sector is to enable and sustain:
- A vibrant competitive European economy, reliably powered by clean, carbon-neutral energy
- A smart, energy efficient and truly sustainable society for all citizens of Europe

We are committed to lead a cost-effective energy transition by:

investing in clean power generation and transition-enabling solutions, to reduce emissions and actively pursue efforts to become carbon-neutral well before mid-century, taking into account different starting points and commercial availability of key transition technologies;

transforming the energy system to make it more responsive, resilient and efficient. This includes increased use of renewable energy, digitalisation, demand side response and reinforcement of grids so they can function as platforms and enablers for customers, cities and communities;

accelerating the energy transition in other economic sectors by offering competitive electricity as a transformation tool for transport, heating and industry;

embedding sustainability in all parts of our value chain and take measures to support the transformation of existing assets towards a zero carbon society;

innovating to discover the cutting-edge business models and develop the breakthrough technologies that are indispensable to allow our industry to lead this transition.

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WG Financial Regulation & Market Integrity
DT Sustainability Reporting

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KEY MESSAGES

- Eurelectric, the European association representing the electricity industry, supports the aim of European Sustainability Reporting Standards (ESRS) to improve companies' opportunities for reliable and comparable reporting of sustainability information to financial market participants. The European Sustainability Reporting Standards should aim at helping companies provide information that is proportionate, understandable, verifiable and comparable.

- Eurelectric acknowledges that the Commission substantially adapted different aspects of the ESRS:
  - **Improved readability and implementation** of reporting obligations.
  - **Revision of the materiality approach** will allow companies to focus their reporting on issues relevant to the company and readers – such as investors – of these ESG data, also noting that the accuracy of the materiality assessment will be ensured through external auditing.
  - **Phasing-in of disclosure obligations** will help organisations to focus on material topics first, allowing them to stretch their reporting over the following years.

- However, we still see room for improvement on the following issues:
  - **Comparability:** certain reporting obligations lack in precision and leave ample room for different ways of reporting. A high level of generality and vague guidelines for metrics should be noted. Tables, units e.g., are missing – contrary to what exists for GRI indicators. The comparability of the materiality assessment could also have been improved by providing references such as percentages of total assets, own funds, income figures or similar, in line with audit techniques for annual accounts. The reporting of e.g., GHG emissions leaves room for interpretation across companies, especially when data is forward-looking. Additional guidance should be taken from global standards already used by companies (e.g., ISSB and GRI).

  - **Alignment with global standards:** it is considered essential to ensure interoperability with other standards/frameworks at a global level, not only at a theoretical level but especially at a practical level, in view of the fact that many international groups will still be called upon to comply with the requirements of the European Sustainability Standards (ESRS) but also those developed by the ISSB, especially in view of the push by investors to adopt them. It is therefore extremely important that there is alignment between the requirements and practical tools (e.g., reconciliation tables) that can effectively support companies and, above all, avoid excessive reporting burdens for those who will have to report according to both standards.

The materiality assessments, including thresholds, used in other standards with a long track record (e.g., IFRS Accounting) should be considered more extensively in the development of the ESRS approach. The materiality approach utilised by the ISSB Standards is already applied globally when reporting based on IFRS Accounting Standards to meet the information needs of investors. It is thus well established and understood. Alternatively, if the financial materiality test used in ESRS expressly acknowledged a component that was defined as 'investor materiality' (aligned with the ISSB definition), it would more clearly explain the common components of the materiality assessment.

- **Clarification of key definitions**: some definitions in the ESRS are not sufficiently explained (e.g., "ESRS sectors", "potential" as compared to "anticipated" financial effects). The definition of an undertaking's workforce notably remains a source of confusion for reporting market participants. A broad definition of workers ("own workforce") creates an issue of practical application; it should be restricted to employees only. The additional collection of data on non-employees is a complex process with significant limitations:
  - **Working time:** the company has no influence on the time of work performed and the breaks implemented by non-employees.
  - **Absenteeism:** paid sick leave is not provided by all B2B contractors.
  - **Non-employees** are not affected by the outcomes of negotiations between social partners.
  - **B2B Contractors** are not required to provide companies with data like gender, age, etc.

  As a result, data on non-employees will be incomplete. An improvement of data collection on those issues will take time. If data on workforce were to be requested, the disclosure obligation should be subject to a phase-in period.

- **Consistency with EU law**: when ESRS refer to other legislation, the European Commission needs to define the process for updating the ESRS as a result of changes to such regulation. ESRS need to be aligned with other ESG legislation, such as SFDR. Materiality assessments realised in accordance with ESRS should be recognised in SFDR. It is problematic for companies having completed their ESRS reporting to be met with inquiries from financial stakeholders who want data compliant with SFDR. It would be useful to have a reconciliation table between SFDR requirements and ESRS. This was already included in the April 2022 version (Appendix III - SFDR Principle Adverse Impacts Indicators in the ESRS) but would need to be updated. Notions in the text should also be aligned with those from other EU legislation (e.g., high climate impact sectors).

- **Disclosure of sensitive information**: disclosure obligations around governance and risk management remain very granular (e.g., ESRS 2 SBM3, Paragraph 48). It would have been ideal to have included, where relevant, wording indicating that these disclosures are without prejudice to the protection of business secrets and other commercially sensitive information (e.g., strategic plans) that goes beyond what external stakeholders can reasonably be expected to disclose.

- **Phasing-in of reporting**: we welcome that the European Commission has resorted to a phase-in approach for the disclosure of financial impact effects of climate change risks and other environmental topics. However, even if some companies are already implementing methodologies for the disclosure of financial effects concerning sustainability aspects, there are no commonly used indicators that could also be used at international level, making the comparison between reporting entities difficult. We highly recommend the EC to work on guidelines to assess the financial effects of environmental issues. Such guidelines should be published in advance of the implementation of this requirement to allow companies to prepare appropriately.

- **Incorporation by reference**: the current articulation of ESRS 1/9.1 (Incorporation by reference standard) does not allow for references to documents that are not subject to the same level of assurance as sustainability information, let alone the same digital requirements. Thus, it may not be possible to cross-reference the Management Report and other governance documents (e.g., the Corporate Governance Report and the Remuneration Report). This has a negative impact on the readability and causes an excessive reporting burden for companies that are forced to report the same information on different documents. Furthermore, we suggest introducing the possibility of cross-referencing for certain matters such as policies and similar static information in addition to the information contained in the management report. In conclusion, we agree that there should be easy access to such company policies, but this consideration can more appropriately be observed via a reference (e.g., link to a homepage).

1. **General comments**

• **See above**

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

None.

3. **Specific comments on Annex I**

Standard	**Paragraph or AR number or appendix**	**Comment**
ESRS 1	*3.2 / Paragraph 29*	Appendix B of ESRS 2 includes indicators required in other European legislation. Those are however often required of financial agents, not issuers. A literal interpretation of paragraph 29 would make it mandatory to publish several complex indicators and thus nullify the prevalence of materiality as a reporting criterion. Greater clarity is therefore needed on whether the obligation to report all information in ESRS2 includes the indicators described in Appendix B of ESRS 2.

ESRS 1	*3.2 / Paragraph 31*	We support that the provision of explanations about the conclusions of the materiality assessment regarding topics that are not material become voluntary.
ESRS 1	*3.5/ Paragraph 48-49*	We welcome that the European Commission has chosen to defer a more decisive role to materiality, especially when it comes to the alignment of financial materiality with the ISSB. However, we believe that more detail on the practical application is needed to support companies in its implementation. Therefore, more guidance on the methodology for double materiality (and for financial materiality in particular) is required. Above all, guidelines or good practices should be published on the definition of thresholds for companies.
ESRS 1	*3.7 / Paragraphs 54, 62-67*	Further guidance and examples are needed to support companies' understanding of the actors in their downstream and upstream value chain that need to be included in the reporting scope. Those disclosure obligations should be based on materiality principles to help readability and to avoid unnecessary reporting burdens, especially when going beyond Tier-1 suppliers. Value chain considerations beyond Tier-1 suppliers should rely on a risk-based approach. In relation to disclosures regarding Joint Ventures (JV) and associates, ESRS 1 states that "the data of the associate or JV are not limited to the share of equity held but taken into account on the basis of the impacts that are directly linked to the undertaking's products and services through its business relationships." The articulation of this provision with the operational control of an undertaking over associates or JVs is unclear and leaves excessive room for interpretation regarding the extent of required disclosures.

		Only impacts identified as material by the undertaking shall be reportable in relation to JVs and associates. Thus, the principles used for the consolidation of disclosure requirements regarding JVs and associates *must* follow the undertaking's principles for financial consolidation. ESRS standards cannot require ESG data to be differently consolidated in different operational contexts, since it would make financial and sustainability statements incomparable.
ESRS 1	*5.1 / Paragraph 63*	Clarification needed on the implications of this provision for corporate auditing, in the frame of which the comparability of information is key.
ESRS 1	*5.1 / Paragraph 71*	As impact analysis progresses along the value chain, certain actions or targets concerning value chain actors may not be quantifiable. In such cases, qualitative descriptions should be deemed sufficient.
ESRS 1	*8.2 / Paragraph 111*	Except for ESRS 2, which is always disclosed in the management report, only material topics need to be disclosed in the management report. Non-material topics should not require reporting in the same report.
ESRS 1	*9.1 / Paragraph 119*	We welcome the increased flexibility for incorporation by reference regarding information that has already been published.
ESRS 1	*10.2 / Paragraphs 131, 132*	Annex B is excluded from the 3-year transition period for information on companies' value chains. However, we believe that it should be further evaluated whether certain information beyond Tier-1 supplier relations can realistically be obtained from the beginning.
ESRS 2	*SBM-1 / Paragraph 40(b)*	The provision refers to "ESRS sectors" without defining the concept in an appendix or annex. It should be further detailed in the final version.

ESRS 2	*SBM-1 / Paragraph 40(e)*	We believe that the requirement for companies to report sustainability targets by product categories, services or geographic areas is disproportionate. "When available" should be added. Furthermore, if the level of disclosures is too granular, this may imply a clash with the need to protect commercially sensitive data.
ESRS 2	*SBM-2 / Paragraph 45*	We welcome that the stakeholder evaluation involves materiality criteria. However, the obligation to disclose a summary of "key" stakeholders may lead to confidentiality issues regarding key suppliers.
ESRS 2	*SBM -3 / Paragraph 48*	Information should only be quantitative to the extent possible. Undertakings could e.g., provide an approximation or proxy. For forward-looking data, the use of data ranges or scenarios should be allowed.
ESRS 2	*GOV-1 / Paragraph 21*	We welcome alignment with the CSDD Directive proposal on these provisions.
ESRS 2	*GOV-4 / Paragraph 33*	We support that this disclosure requirement does not mandate due diligence requirements.
ESRS 2	*SBM-2 / Paragraph 45*	We welcome that the stakeholder evaluation takes the materiality assessment into account. However, the notion of "key stakeholders" could lead to confidentiality issues if it overlaps e.g., with key company suppliers.
ESRS 2	*IRO-1 / Paragraph 53*	Consultations with stakeholders might be potentially burdensome for undertakings. The provision should strike a better balance between the legitimate involvement of stakeholders and company burdens.
ESRS E1-E5	*General remark*	We welcome that the disclosure obligations regarding resource plans have become voluntary in part, leaving room to the application of the materiality assessment.

		At the same time, the granularity of disclosure requirements on resource plans is potentially problematic.
ESRS E1	*Objectives / Paragraph 1*	Any reference to mitigation efforts in line with the Paris Agreement needs to steer clear from requiring compliance with its objectives. As long as the provision is designed for information purposes, we can accept it.
ESRS E1	*E1-3* *Paragraph 30 a)*	Providing detailed information on the levers of action for climate change mitigation actions is challenging, especially when providing forward-looking information (cf. SBM-3, Paragraph 48).
ESRS E1	*E1-4 /* *Paragraph 35*	35.a: The disclosure of GHG emission reduction targets should be possible both in absolute value and through intensity value targets. This should especially be possible for GHG sources whose targets have been defined following a sectorial decarbonisation pathway. 35.b: In the case of combined targets the disaggregation by scope reduces flexibility in achieving the target. Moreover, general frameworks already state specific methodologies for emissions targets either separately or combined. 35.d: Compliance with science-based targets from recognised and authoritative sources should be considered as complying also with ESRS.
ESRS E1	*E1-5 /* *Paragraph 39*	In many cases, determining the exact source of electricity in final consumption is impossible. Companies having to disclose their consumption of purchased electricity, heat, steam or cooling should therefore be allowed to use proxies based on data they can be realistically expected to obtain.
ESRS E1	*E1-5 / AR 35*	The inclusion of consumption from nuclear sources in undertakings’ energy consumption will improve transparency and is therefore welcome.

ESRS E1	*E1-6 / Paragraph 51, and AR 26, 47*	In certain cases, companies may be unable to properly report Scope 3 emissions if suppliers have not set-up appropriate measurements. In such cases, a “best efforts” approach should be used and companies can be asked to prove that they have taken the necessary initiatives. In addition, the disclosure of GHG emissions should rely on the provisions of acknowledged standards (e.g., Greenhouse Gas Protocol) that are already used by companies. This would prevent companies from having to switch from obligations based on “financial control” to such based on “operational control”. In general, alignment with the GHG Protocol is appropriate to avoid double reporting and to align with globally recognised standards.
ESRS E1	*E1-7 / Paragraph 61*	As long as disclosure concerning net-zero targets is limited to transparency, we can agree to it.
ESRS E1	*E1-9*	More guidance is necessary on reporting regarding “anticipated financial effects” to ensure the comparability of information on financial effects. This could be done e.g., through likelihood and severeness assessments.
ESRS E1	*AR 13*	We suggest deleting the IEA Sustainable Development Scenario, since it is not aligned with a limitation of global warming to 1.5°C and has not been updated since 2021. The specific scenarios from the Network for Greening the Financial System (NGFS) that companies should rely on should be detailed in the ESRS.
ESRS E1	*AR 68*	The quantification of impacts caused by transition risks might be inaccurate or have a high variation from one company to another, depending on the assumptions. Transition risks and their impacts on assets are often insufficiently tangible. In addition, it is not clear when a transition risk becomes material for the company. Since there are no common frameworks available to measure it, data comparability could be distorted.

		Companies therefore need more guidance to comply with the requirement and to ensure the comparability of reporting.
ESRS E2	*Paragraph 10*	We welcome that the transparency obligation only concerns the disclosure of methods to assess undertakings' materiality. As long as transparency is restricted to assessment methods, this provision is acceptable. However, we are concerned about the definition of "value chains". Definitions should take the ability of companies to report about value chains into account, e.g., by phasing-in disclosure requirements.
ESRS E2-E5	*General remark*	The use of the LEAP methodology for the materiality assessment gives companies more flexibility, which is positive.
ESRS E4	*General remark*	We welcome that several disclosure requirements have been made voluntary.
ESRS E4	*E4-1 DR*	Sustainability disclosures should consider the costs of compromising company security or confidential information. We believe that the provisions of paragraph 17 (b) should be mandatory only for the locations described where negative impacts are found. The text refers to "the results of paragraph 17 (a)" and is not sufficiently clear. We recommend reporting site data in the aggregate, as for example: "The undertaking shall specifically disclose: (…) **(d) a list of sites identified as non-compliant pursuant to the assessment according to paragraph 17 (a). The undertaking shall disclose these locations by: […]"**

ESRS E4	*E4-2/ Paragraph 21*	The scope of disclosures about biodiversity policies is too far-reaching considering the current development stage of relevant methodologies and frameworks to measure the effects of policies. Therefore, we suggest reducing the scope of sustainability-related information, since its disclosure requirements go far beyond those requested in the ESRS 2 MDR-P in terms of policy effects. Accordingly, we suggest deletion of the strikethrough text as proposed below. The relevant paragraph then reads as follows: "In addition to the provisions of ESRS 2 MDR-P the undertaking shall describe whether and how its biodiversity and ecosystems-related policies: (…) ~~(c) relate to material dependencies and material physical and transition risks and opportunities;~~ ~~(d) support traceability of products, components and raw materials with significant actual or potential impacts on biodiversity and ecosystems along the value chain;~~ ~~(e) address production, sourcing or consumption from ecosystems that are managed to maintain or enhance conditions for biodiversity, as demonstrated by regular monitoring and reporting of biodiversity status and gains or losses; and~~ ~~(f) address social consequences of biodiversity and ecosystems-related impacts."~~
ESRS E4	*E4-4/ Paragraph 30*	More guidance on how to apply the concept of ecological thresholds to target setting is needed. Ecological thresholds are generally location-specific and thus typically not comparable between different undertakings.

		If more clarity is expected over time, we suggest considering a phase-in approach or the use of a “best efforts” approach.
ESRS E5	*E5-4, E5-5*	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. Reference to amounts/metrics should be removed and companies should be allowed to provide qualitative information on this point.
ESRS S1	*Objectives / Paragraphs 4, 6*	The definition of own workforce requires clarification. In addition, further guidance is needed on the delimitation of “own workforce” as compared to the “workforce in the value chain”. Alignment with the upcoming CSDDD will be necessary, especially concerning definitions. The identification of non-employees is inherently difficult. Flexibility should be granted to companies until appropriate guidance and experience exist.
ESRS S1	*S1-8 / Paragraph 60*	Disclosure obligations should not allow the identification of roles within the workforce.
ESRS S1	*S1-12 / Paragraph 77-80*	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 in and outside of Europe.

		Many (other) social indicators also mandate a breakdown by gender which could again give rise to similar issues.
ESRS S1	*S 1-14 / Paragraphs 86, 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. E.g., footnote 80: this information supports the information needs of financial market participants subject to Regulation (EU) 2019/2088 as reflecting an additional indicator related to principal adverse impacts as set out by indicator #3 in Table 3 of Annex 1 of the related Delegated Regulation regarding disclosure rules on sustainable investments ("Number of days lost to injuries, accidents, fatalities or illness").
ESRS S3	*Objectives / Paragraph 2*	The language used regarding the involvement of affected indigenous populations is not in line with the ILO Convention 169. It will create substantial uncertainties for European companies willing to operate globally.

4. Specific comments on Annex II

Defined term	**Comment**
Business relationship	More guidance needed on the extent to which direct and indirect business relations are covered by this definition.
Value chain worker	More guidance, including practical examples, needed on the implementation of this definition.

Eurelectric pursues in all its activities the application of the following sustainable development values:

Economic Development

- Growth, added-value, efficiency

Environmental Leadership

- Commitment, innovation, pro-activeness

Social Responsibility

- Transparency, ethics, accountability

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