



To the European Commission
Directorate General for Financial Stability, Financial Services and Capital Markets Union

Submitted by email

24 January 2023

Response to consultation on the first set of Draft European Sustainability Reporting Standards published by EFRAG

Dear Sirs,

1. On 23 November 2022, EFRAG published its technical advice for the first set of European Sustainability Reporting Standards (ESRS), which includes, amongst others, cross-cutting standards and standards for environmental, social and governance matters. In order to be able to adopt a first set of ESRS by 30 June 2023, and in line with Article 49(3b) of the Accounting Directive as amended by the Corporate Sustainability Reporting Directive (CSRD), the European Commission consulted with the Committee of European Audit Oversight Bodies (CEAOB) on this first set of ESRS developed by EFRAG.
2. The content of the CEOB response to this consultation has been prepared by the CEOB sustainability reporting support team and has been adopted by the CEOB. The comments raised in this letter reflect matters agreed within the CEOB. It is not intended, however, to include all comments that might be provided by the individual regulators that are members of the CEOB and their respective jurisdictions. This letter builds on the comments made by the CEOB and expressed in its letter in response to EFRAG's consultation of the draft ESRS issued on 5 August 2022.¹
3. The CEOB monitored the developments of ESRS closely, since the sustainability statements prepared based on these standards will need to be verified by auditors or assurance providers. The CEOB appointed observers at the EFRAG Sustainability Reporting Board (SRB) and Technical Experts Group (TEG). Given its mandate in the field of audit oversight, the CEOB focused solely on the issues which may be related to the provision of external assurance on the sustainability statements. This included focusing on the clarity of the provisions of the ESRS, and whether those provisions create a sufficient basis for the verifiability and consistency of disclosures, meaning that different informed preparers, auditors/assurance providers and enforcers would come to the same conclusions and disclosures based on the ESRS.

¹ See https://finance.ec.europa.eu/system/files/2022-08/220805-ceaob-reply-efrag-consultation-esrs_en.pdf



4. The CEAOB thus did not perform any analysis of whether the ESRS take into account the elements listed in Article 29b(5) of the Accounting Directive, as amended by the CSRD and did not perform any review of the cost benefit analysis. Its review was mostly targeted on the two cross cutting standards ESRS1 and ESRS2.
5. The CEAOB identified no issue in the ESRS that would be of such importance that it should prevent the Commission from a timely adoption of the ESRS prepared and adopted by EFRAG. However, the CEAOB is of the view that further enhancements would be necessary in the future, once more practical experience is gained by preparers, auditors/assurance providers and users of the information implementing the ESRS.
6. Thus, the CEAOB reiterates its support for a timely adoption of the standards and welcomes the use of the ESRS prepared by EFRAG. However, the CEAOB provides the following recommendations for enhancements that should be dealt with shortly after some experience has been gained in the implementation.

Need for mechanisms to enhance the ESRS over time, based on experience gained

7. The CEAOB is fully aware that it will take some time for preparers to gain the same maturity on sustainability reporting following new ESRS, as the maturity achieved on financial reporting, based on the EU adopted IFRS. Preparers will need to put in place the mechanisms, systems and internal procedures within the undertaking to collect the information to be reported, including from subsidiaries. This will especially be the case for preparers with consolidated statements or for the collection of information from the entities included in the value chain.
8. A mechanism should be designed and put in place to collect information from preparers during the implementation of ESRS regarding challenges occurred when applying the ESRS, spotting potential divergences in application (as an ESRS post-implementation review). Such collected information, after further scrutiny by EFRAG, should inform the review by the Commission² and facilitate future enhancements and revisions of the ESRS.
9. The ESRS should benefit from the review to be performed at least every three years by the Commission, which should allow to incorporate potential changes in EU laws and to correct any issues identified during the implementation. The review mechanism should ensure that the ESRS continue to be up to date and to respond to the needs of stakeholders.
10. Given the absence of sufficient time to perform field testing of the ESRS by a sample of preparers, the CEAOB recommends that EFRAG, or the Commission, be tasked with examining and publishing responses to questions, where needed, on issues which may not have been identified during the drafting phase of the ESRS. The published responses would constitute further guidance and basis to facilitate consistent implementation, pending a revision.

Digitalisation

11. Digitalisation rules and requirements are not embedded in the ESRS submitted by EFRAG to the Commission. The Commission should therefore be prepared and accept to refine the content of the ESRS where digitalisation aspects would not have been sufficiently reflected during the initial drafting, and where limited changes would facilitate digitalisation of the data and thus, its comparability.

² Commission review at least every three years is required by Directive 2013/43/EC revised by the CSRD (art 29b paragraph 1)

12. Furthermore, the CEAOB highlights that, according to the CSRD, the assurance opinion to be provided will cover, amongst others, the digital format of the information. The CEAOB thus flags that providing this opinion will only be possible if the ESRS, or any appropriate specific additional legal vehicle, cover the taxonomy and digitalisation aspects, which is currently not the case. In the absence of a description and clarity on the digitalisation of the information, auditors/assurance providers will not be able to opine on the compliance with the requirement to mark-up sustainability reporting that is required by the CSRD, notwithstanding their ability to address the other elements of the required assurance opinion.

Incorporation by reference

13. The CEAOB stressed its concerns regarding incorporation by reference during the development of the ESRS. On the one hand, the CEAOB is in favour of the avoidance of duplication of information provided by the undertaking, but, on the other hand, the CEAOB sees a risk that the cohesiveness of the sustainability statements and their human readability may be impaired by the use of the technique of “incorporation by reference”. In this regard, preparers and auditors/assurance providers will need further clarity on how the cohesiveness of the information can be achieved,³ and what is acceptable in term of readability of the sustainability statements.⁴

14. Clarity should be provided on the extent to which incorporating one specific datapoint⁵ by reference could be assessed as acceptable regarding the cohesiveness of the reported information.

15. The CEAOB underlines that the availability of the disclosures in digital format⁶ should be such that the full content/set of the disclosures provided to comply with the ESRS can be accessed in a single access point.

16. The CEAOB stresses that all disclosures reported according to the ESRS, whether located inside the management report or outside through “incorporation by reference” will form the full set of information on which the assurance opinion is required per the CSRD. The auditor/assurance provider, who will be tasked to issue an opinion on the sustainability statements, may in this regard decide to use the work of other auditors⁷ on information disclosed in documents to which reference is made. The CEAOB would like to make sure that par 121 c of ESRS1 does not create confusion amongst readers on the fact that information incorporated by reference is also in the scope and subject to this (single) assurance opinion.

17. The CEAOB is of the view that the voluntary nature of EU Eco Management Scheme (EMAs) creates some uncertainty with regards to whether the preconditions for incorporation by reference can be met, in terms of assurance and cohesiveness, in particular. Specific questions may also arise regarding the legal approval of the environmental report/statements as required by EMAs by the undertaking’s governance bodies. This may in turn create uncertainties for auditors/assurance providers. It seems preferable, to facilitate the assurance, to duplicate the relevant EMAs information in the management report rather than to incorporate it by reference.

³ ESRS1 Par 123: *“In the preparation of its sustainability statements using incorporation by reference, the undertaking shall consider the overall cohesiveness of the reported information and ensure that the incorporation by reference does not impair the readability of the sustainability statements.”*

⁴ ESRS1 Par 123.

⁵ ESRS1 par 121 (a)

⁶ See ESRS1 Par 121 (d)

⁷ ESRS1 par 121 (c) *“... provided that the disclosures incorporated by reference ... (c) are subject to at least the same level of assurance as the sustainability statements; “*

Materiality

18. The concept of double materiality is explicitly included in the CSRD, and the ESRS require material information to be disclosed with this double perspective. The definitions provided in the ESRS are helpful to clarify the expectation of the CSRD. However, the definitions, taken in isolation without examples and real cases experience, do not fully ensure that different preparers will have a common understanding and assessment of what specifically matters for people and environment. More experience will be needed, and additional guidance and practice should be developed in the future to capitalise on the experience that will be gained, to make sure that, in practice, there is a common understanding of how to operationalise the definitions.
19. In particular, the assessment of impact materiality will be challenging, in the absence of sufficient practical reference points and examples, and the availability of benchmarks with other comparable undertakings. The CEAOB recommends that the development of guidance be started shortly by EFRAG to facilitate the materiality assessment.

Value chain information

20. Further guidance will be helpful in the ESRS when the CSRD provisions regarding the value chain information will fully come into force, to facilitate consistent determination of the scope of value chain information required⁸ and the quality of the data, including what underlying evidence would be needed, to allow for an external review.

Prejudice to a commercial position

21. The CEAOB would welcome further guidance in the ESRS to determine to what extent information can be omitted⁹ as allowed for by the CSRD in case of serious prejudice to the commercial position, without impairing the overall relevance of the information.

Interoperability - Mapping ESRS disclosures and EU legislation / other standards

22. The CEAOB welcomes EFRAG's efforts to incorporate the different requirements stemming from various existing EU law and initiatives into the ESRS, to form a complete framework for the preparation of sustainability reporting. The CEAOB encourages in this regard EFRAG to regularly update the tables included as Appendixes¹⁰ to reconcile provisions of EU law and ESRS provisions. ESRS provisions may need to be adjusted in the future, following changes to existing EU laws or the completion of initiatives currently in progress. Providing corresponding mapping and updating mapping already provided will continue to be beneficial for stakeholders.
23. The CEAOB will also be supportive of the provision of additional operational tables overtime to map the content of the ESRS with the International Sustainability Standards Board's reporting framework, to facilitate interoperability for preparers and users.

Challenges identified, that will require to build up experience

24. The CEAOB anticipates various upcoming challenges, which stem from the ambitions operationalized in the CSRD and are thus reflected in ESRS. Complexity will be faced by auditors/assurance providers with regards to:

⁸ ESRS1 par 68, 69 page 26 – Definition of value chain

⁹ ESRS1 par 108.

¹⁰ ESRS1 Appendix D

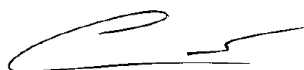
- a. the nature of the information, with a higher proportion of forward-looking information, for which reasonableness of assumptions may need to be assessed, and of narrative information, covering a large range of very different technical subjects matters (ranging from human rights to biodiversity for instance) which require adequate technical expertise,
- b. the scope of the information to be collected, including data from consolidated entities and from the value chain,
- c. the implementation of the CSRD concept of double materiality, with limited experience in applying impact materiality and its interplay with financial materiality,
- d. the very recent definition of the information requirements, which will mean in the first years an absence of experience by preparers, a limited maturity of internal control and systems to prepare the information, a limited availability of sources for benchmarks, sector average data or comparative data.

Next steps

25. The CEAOB further stresses that the assurance required by the CSRD on sustainability statements will be initially operationalised by a “limited assurance” opinion, and it is likely to become a “reasonable assurance” opinion. The challenges described in this letter will represent difficulties for the auditors/assurance providers in charge of gathering the necessary “evidence” to express the assurance opinion, and these difficulties may increase over time due to the higher level of evidence which will be required to issue a “reasonable assurance” opinion. A “reasonable assurance” opinion requires more extensive, relevant and reliable underlying evidence than “limited assurance”. Therefore, the CEAOB underlines the need for a future assessment to determine if reasonable assurance is achievable for auditors/assurance providers and for undertakings, and that such an assessment should be carried out before the adoption of delegated acts providing for “reasonable assurance standards”. Users of sustainability information will also need a proper understanding of what limited assurance means. The standards on assurance, but also accompanying explanation and education will help to avoid misunderstanding on the potential expectations of stakeholders. The CEAOB also stresses that a timely adoption, by the Commission, of appropriate assurance standard(s) will be needed and is committed to providing its expertise to the Commission.

Please feel free to contact me, should you need any further information about the content of this response.

Yours faithfully,



Patrick Parent

Chairman