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: Vereinigung zur Mitwirkung an der Entwicklung des Bilanzrechts für Familiengesellschaften e.V. (VMEBF)

1. General comments

We welcome the adjustments made by the EU Commission in the course of publishing the draft delegated act on the ESRS. These improve the practicability and implementability of the regulations, especially for non-capital-market-oriented companies.
In this context, special attention has to be paid to the rules on materiality assessment. We welcome the decision to make all disclosure requirements, apart from the disclosures required by ESRS 2, dependent on an individual materiality assessment. In line with the requirements for financial reporting, it is also important for sustainability reporting to provide stakeholders with material information and thus avoid an information overload by reporting on information that is not material. In that respect, we also consider the implementation guidance on materiality assessment, which is currently being developed, to be an important success factor for mandatory sustainability reporting and the resulting changes in companies' behaviour. However, it is unclear to us how disclosure requirements mandatory as material according to ESRS interact with the regulatory requirements of the SFDR. For example, the SFDR requires various disclosures that, according to the draft delegated act on the ESRS, are only to be disclosed if they are material as per an individual materiality assessment. As a consequence, an amendment of the SFDR would be necessary in order not to invalidate the materiality requirement for companies in the scope of the SFDR through higher-level regulation (meaning the SFDR).
We also welcome the phasing-in of some of the disclosure requirements or even entire standards. However, we consider the limitation of some of the transitional regulations to companies with a maximum of 750 employees to fall too short (even though we acknowledge that the phasing-in threshold of a maximum of 750 employees in the average of the fiscal year is an improvement on the thresholds for the scope of application of the NFDR as well as the CSRD). It is true that in particular companies at the lower limit of the large corporations have to be relieved. But also larger, even capital market-oriented companies will face immense challenges from many of the new reporting requirements – not least because of the sheer extent of these requirements. In this respect, from our point of view, an extension of the proposed transitional regulations to all companies would be appropriate. Should this not be an option from the Commission's point of view, we propose an extension of the transitional regulations at least to all non-capital-market-oriented companies. Even in large non-capital-market-oriented companies with more than 750 employees, structures and capacities often prevail that are de facto common in medium-sized structures, which in turn would justify an extension of the transitional rules to at least these companies. In addition,

consideration should be given to extending the phase-in provisions in terms of time by 1-2 additional years in each case, at least for non-capital-market-oriented companies – especially with regard to disclosure on scope 3 GHG-emissions. Furthermore, we doubt that the intended alignment with the ISSB standards can be realised by the current wording in ESRS 1, especially regarding financial materiality. We therefore suggest that the wording of chapter 3.5 of ESRS 1 in particular be reviewed in this regard.

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

3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
ESRS 1	*Chapter 3*	As already stated in our general comments, we welcome the decision to make all disclosure requirements, apart from the disclosures required by ESRS 2, dependent on an individual materiality assessment. However, it is unclear to us how disclosure requirements mandatory as material according to ESRS interact with the regulatory requirements of the SFDR. For example, Appendix B of ESRS 2 includes a list of datapoints in ESRS that are required by EU law. In our view, the relationship between these disclosures required by EU law and those mandatory as material according to ESRS is unclear. For example, some of these disclosures are only required under ESRS if they are material, whereas from the perspective of the SFDR, they are mandatory disclosures. As a consequence, the EU Commission has to clarify how the disclosures required under EU law interact with the materiality requirement under ESRS, e.g. by amending the SFDR with regard to an identical materiality concept.

ESRS 1	*Par. 45 et seqq.*	We doubt that the intended alignment with the ISSB standards can be realised by the current wording in ESRS 1, especially regarding financial materiality. We therefore suggest that the wording of par. 45 et seqq. of ESRS 1 in particular be reviewed in this regard.
ESRS 1	*Appendix C*	We welcome the phasing-in of some of the disclosure requirements or even entire ESRS. However, we consider the limitation of some of the transitional regulations to companies with a maximum of 750 employees to fall too short (even though we acknowledge that the phasing-in threshold of a maximum of 750 employees in the average of the fiscal year is an improvement on the thresholds for the scope of application of the NFDR as well as the CSRD). It is true that in particular companies at the lower limit of the large corporations have to be relieved. But also larger, even capital market-oriented companies will face immense challenges from many of the new reporting requirements – not least because of the sheer extent of these requirements. In this respect, from our point of view, an extension of the proposed transitional regulations to all companies would be appropriate. Should this not be an option from the Commission's point of view, we propose an extension of the transitional regulations at least to all non-capital-market-oriented companies. Even in large non-capital-market-oriented companies with more than 750 employees, structures and capacities often prevail that are de facto common in medium-sized structures, which in turn would justify an extension of the transitional rules to at least these companies. In addition, consideration should be given to extending the phase-in provisions in terms of time by 1-2 additional years in each case, at least for non-capital-market-oriented companies – especially with regard to disclosure on scope 3 GHG-emissions.
ESRS 1	*Appendix C*	In our view, the table in ESRS 1 Appendix C contains three incorrect references. Firstly, the references to ESRS 2 SBM 1 are to ESRS 2 par. 38 (b) and (c), but should be to par. 40 (b) and (c). The same applies to ESRS E2-6, where the reference should go to par. 40 (b) instead of par. 38 (b).
ESRS 2	*Par. 17*	We do not think that the reporting requirements related to the use of the phase-in provisions according to ESRS 2.17 are practicable. In fact, these requirements will lead to a substantial burden on side of the reporting entities. Although we understand that these additional reporting requirements are derived from the CSRD, we ask the Commission to delineate or define them more clearly and thus preserve the intended relief for companies in the scope of the phase-in provisions.
ESRS E1	*DR E1-6*	The rules of ESRS E1-6 with regard to greenhouse gas emissions should be fully in line with the conventions of the Greenhouse Gas Protocol. It is our understanding that ESRS E1-6 restricts the choices granted by the Greenhouse Gas Protocol.

ESRS E1	*Par. 47*	We believe that the concept of operational control is not defined sufficiently in ESRS. This is also true for the Greenhouse Gas Protocol. This lack of clarity in the definition of operational control leads to a tremendous degree of uncertainty for preparers of sustainability statements (and consequently auditors and users). As a consequence, the Commission should (a) fully align the reporting requirements in ESRS E1-6 with the requirements of the Greenhouse Gas Protocol and (b) give more guidance on applying the concept of operational control properly.
ESRS E1	*Par. 54*	As Appendix C of ESRS 1 states that some entities may omit the datapoints on scope 3 emissions and total GHG emissions in ESRS E1-6 for the first year of preparation of their sustainability statement, those entities will not be able to provide the information on GHG intensity based on net revenue. Consequently, the Commission should expand the phase-in provisions to the datapoints required by par. 54-57 of ESRS 1.
ESRS E1	*Par. 65*	We do not think that the disclosure of anticipated financial effects from material physical and transition risks and potential climate-related opportunities – particularly for the medium- or long-term perspective – is a common information to generate for all entities in the scope of the CSRD. Especially non-capital-market-oriented companies will often not be able to fulfil this requirement without excessive burden, which would be on the expense of data quality and comparability. The commission should think about focussing on qualitative data with regard to those effects. This comment also applies to similar disclosure requirements in other ESRS.
ESRS E1	*Par. 67 et seqq.*	We do not think that ESRS E1-9 should require the disclosure of amounts and proportions <u>before</u> considering climate change adaptation and climate change mitigation action. In financial reporting, financial risks are regularly provided on a net basis. As a consequence, requiring disclosure of gross risks would result in sustainability reporting being inconsistent with financial reporting and impaired understandability.
ESRS E2	*Par. 32 et seqq.*	The obligation 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 allow competitors to draw conclusions on production quantities for certain products. This could lead to competitive disadvantages for the reporting entity. The requirements to report on amounts as per par. 34 are particularly problematic. Here, we would suggest that the obligation to specify concrete quantities be deleted.
ESRS E4	*Par. 26*	Biodiversity and ecosystems are highly complex and therefore cannot be calculated and expressed in numbers or monetary units. They are site-specific and hence irreplaceable. In order to justify biodiversity offsets, many simplifications have to be made, which usually serve the same project operator who makes the calculations. Offsetting also ignores the social dimension and the attachment of local people to their environment. As a

		consequence, we would suggest eliminating that disclosure requirement as it could be understood as a kind of legitimation for biodiversity offsets.
ESRS S1	*Par. 77 et seqq.*	In our view, the disclosure requirements of ESRS S1-12 conflict with the data protection requirements of the GDPR. As a consequence, this data might – if at all – only be generate at disproportionate cost and might be rather hard to verify/assure. We would therefore suggest to remove that disclosure requirement.
ESRS S1	*Par. 88*	As there is no proper definition of "work-related injuries and fatalities", the Commission should align these terms with the GRI definition and the definition of the Occupational Safety and Health Administration.
ESRS S1	*Par. 95 et seqq.*	We believe that disclosure requirement ESRS S1-16 as proposed does not deliver meaningful information. When calculating a gender pay gap, it must be taken into account whether the men and women under consideration perform the same or at least similar work. Therefore, the Commission should adjust this disclosure requirement as described. Even the recommendation to report "information regarding how objective factors such as type of work and country of employment influence the gender pay gap" does not heal this grievance. Moreover, especially international groups see it as quite problematic to get the data from different countries with partly different ERP systems mapped in a comparable way and with sufficient data quality in the first year of application. Therefore, we propose to require the datapoints under ESRS S1-16 – as well as certain disclosures according to ESRS S1-14 and the disclosures according to ESRS S1-15 – only from the second or even third year of application.
ESRS S3	*Par. 9*	ESRS S3.9 requires entities to disclose whether "all affected communities who are likely to be materially impacted by the undertaking, including impacts that are connected with the undertaking's own operations and value chain, including through its products or services, as well as through its business relationships, are included in the scope of its disclosure under ESRS 2." In our view, the requirement for disclosures especially on impacts related to the value chain and business relationships that go beyond the activities of the company itself and thus also include the activities of suppliers is unrealistic and hardly meaningful to handle in corporate practice.

4. Specific comments on Annex II

Defined term	**Comment**
