

7 JUILLET 2023

RÉPONSE A CONSULTATION

Réponse de l'AFG à la consultation de la Commission Européenne sur les standards extra-financiers (ESRS)

*Template for comments on draft
ESRS Delegated Act*



AFG



L'AFG fédère les professionnels de la gestion d'actifs depuis 60 ans, au service des acteurs de l'épargne et de l'économie. Elle est la voix collective de ses membres, les sociétés de gestion de portefeuille, entrepreneuriales ou filiales de groupes bancaires ou d'assurance, français et étrangers. En France, la gestion d'actifs c'est 700 sociétés de gestion, pour 4 600 Mds € d'actifs sous gestion et 85 000 emplois dont 26 000 propres aux SGP.

L'AFG se mobilise pour la gestion d'actifs et sa croissance. Elle définit des positions communes, qu'elle porte et défend auprès des pouvoirs publics, contribue à l'émergence de solutions bénéfiques à tous les acteurs de son écosystème et s'engage dans l'intérêt de tous à favoriser le rayonnement de l'industrie, en France en Europe et au-delà. Elle s'investit pour l'avenir.

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: Association Française de la Gestion financière (AFG)

1. General comments

I. AFG general comments and main concerns

AFG fully supports the efforts made by the European Commission (EC) to ensure an effective and useful sustainability reporting framework. We also welcome the proposed adjustments to the ESRS to reduce the amount of required information to avoid a disproportionate administrative burden on undertakings and enhance sustainability reporting readability.

However, we have major concerns with regards the differentiated treatment between corporates and financial institutions, as PAI indicators are now subject to the corporates' materiality assessment. The work done by EFRAG to reconcile SFDR PAI indicators and the ESRS requirement disclosures is essential to allow financial institutions to comply with their own regulatory requirements. This inconsistency between frameworks will lead to data gaps and financial institutions will have to engage with:

- Data providers to fill in the gap, reinforcing their dependency towards such counterparties.
- Issuers directly, increasing the burden on them as data points will be required by multiple FMPs instead of directly disclosing them.

Moreover, it should be reminded that the extension of materiality assessment to SFDR PAI indicators creates an inconsistency with CSRD level 1. Indeed, recitals (41) and (54) and article 29b of the CSRD states that “*standards should be aligned with disclosure requirements laid down*” in financial institutions' regulations. Applying this materiality assessment in the level 2 would be in conflict with level 1 requirements. To avoid such discrepancies between corporates and financial institutions' obligations, **we urge the EC to reconsider its position and allow for PAI indicators** (mandatory and additional, i.e. Table 1 to 3 of Annex I of SFDR Delegated Regulation) **to be considered as always material. If the EC maintain its position to subject PAI to the materiality assessment, consistency is needed in the SFDR.** Indeed, if undertakings do not report on some PAI indicators because they are deemed not material, financial institutions should also be able to consider that such information is not material for their own reporting requirement. Contrary to what is proposed, it is essential that any materiality assessment be always justified.

Moreover, the additional phase-in proposed by the EC should not apply to PAI indicators to avoid data gaps between financial undertakings and non-financial undertakings' reporting.

AFG also regrets some changes made by the EC:

- Insufficient guidance on what constitutes a “material” indicator or topic.
- The conversion of some mandatory requirements to voluntary requirements (from “shall” to “may”).
- The reduced granularity of information.
- The new threshold set at 750 employees for the additional phase-in period. We believe that the threshold should be set at 500 employees to align with the NFRD threshold.

II. Specific comments on Topical standards:

1. Climate

Climate reporting plays an important role in achieving global climate-related objectives, notably keeping the temperature below 2°C and pursuing efforts to limit it to 1.5°C above pre-industrial levels. As a member of the G20 countries, France is committed to promoting a convergence in international reporting standards on climate and recognized that climate-related objectives would be hard to achieve without a harmonization of jurisdictional reporting standards. Hence, similarly to our comment on PAI indicators (including GHG emissions), we believe that **the EC should remove the materiality assessment and make fully mandatory climate transition plans and targets to allow for comparability between undertakings**, notably: net-zero scenario, decarbonation plans, forward looking information.

2. Biodiversity

We believe that the information required by Disclosure Requirement E4: “*Transition plan and consideration of biodiversity and ecosystems in strategy and business model*” should be made mandatory again (“shall” instead of “may”). This is all the more important for high-risk sectors under the TNFD.

3. Social

The European Supervisory Authorities (ESAs) are currently consulting stakeholders on the SFDR level 2 and have proposed new social PAI indicators. As already mentioned above, such indicators should also be included in the ESRS, made mandatory and implemented only once CSRD related disclosure requirements are fully applicable by undertakings. Otherwise, they should not be added to SFDR’s list.

AFG would also like to highlight the importance of adding profit sharing and employee savings schemes indicators as optional social indicators.

4. Governance

We regret the reductions made in the ESRS-G, in particular, with regards remuneration policies. Indeed, some transparency requirements have either disappeared or become optional.

III. Ensuring interoperability and dialogue with the ISSB, SEC and GRI

In the context of the urgent need to improve the consistency, comparability and reliability of sustainability reporting for investors, we believe that **interoperability between reporting frameworks must be a priority.**

Such operability is essential to ensure that undertakings reporting under the future ESRS are also compliant with the ISSB, SEC and GRI frameworks to avoid double reporting operational burden and secure legal certainty.

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	Comment
ESRS 1	Par 31	The explanation of the materiality assessment and the reason why the undertaking omits to report on “all Disclosure Requirements in a topical ESRS” is not mandatory anymore (“may” instead of “shall”). We believe that the undertaking should at least publish a list of mandatory DR that it assesses as not material with a short explanation.
ESRS 1	Par 29, 33 and 36	There are some inconsistencies between paragraphs 29, 33 and 36: <ul style="list-style-type: none">- On one hand, paragraph 29 indicates that information required by ESRS 2 General Disclosure shall always be disclosed (i.e. not subject to a materiality assessment).

		<ul style="list-style-type: none"> - On the other hand, paragraphs 33 and 36 seem to indicate the opposite, when disclosing on metrics / datapoints that derive from other EU legislation, “the undertaking may omit the information [...] if it assesses such information to be not material”. <p>Consistency is needed to understand what is expected from undertakings. As already explained in our general comments, SFDR PAI indicators should be made mandatory and should not be subjected to the materiality assessment.</p>
ESRS 1	Par 124	<p>Undertakings are not required to include monetary amounts or other quantitative datapoints in their sustainability statement (“may” instead of “shall”).</p> <p>We believe that the ESRS are based on a huge amount of qualitative information and lacks of quantitative and monetary information. To further enhance readability and transparency of the sustainability reporting, we need a succinct report allowing for more:</p> <ul style="list-style-type: none"> - Consistency between financial and sustainability information, i.e. the direct links and impacts between the two types of information. - Quantitative and monetary information (instead of juxtaposition of qualitative information).
ESRS 1	Appendix C	<p>Please refer to our general comments, we believe that the threshold for the additional phase-in period should be set at 500 employees to align with the NFRD instead of 750. As already stated, this additional phase-in period should not apply to PAI indicators to avoid data gaps between financial undertakings and non-financial undertakings’ reporting.</p>
ESRS 2	Par 2 and Appendix C	<p>The articulation between §2 and Appendix C is not clear.</p> <p>On the one hand, it is stated that appendix C <i>“is an integral part of ESRS 2 and has the same authority as the other parts of the standard”</i>.</p> <p>On the other hand, §2 indicates that for all other requirements (not related to IRO-1) <i>“the undertaking shall apply the requirements listed in appendix C, only if the sustainability topic is material based on the undertaking’s materiality assessment”</i>.</p> <p>It is hence not clear if the entire ESRS 2 is mandatory for all undertakings (please also refer to our comments on Par29, 33 and 36 of ESRS1). This should be clarified so undertakings can understand what is expected from them.</p>
ESRS 2	Par 57	<p>The explanation of the materiality assessment and the reason why the undertaking omits to report on “all Disclosure Requirements in a topical ESRS” is not mandatory anymore (“may” instead of “shall”). We believe that the undertaking should at least publish a list of mandatory DR that it assesses as not material with a short explanation.</p>
ESRS 2	Appendix B	<p>Appendix B that lists datapoints in cross-cutting and topical standards that are required by EU law should not be subject to materiality and therefore be made fully mandatory to allow financial institutions to comply to their own regulatory requirements.</p>
ESRS 2- GOV-3	Par 29 c) and d)	<p>We think the wording of these paragraphs could be improved. Indeed, we would like undertakings to explain precisely how targets are assessed and how they have been achieved.</p>

ESRS 2-GOV-5	Par 36 e)	About the <i>periodic reporting</i> , we believe it is important to specify a period and the reporting should be annual.
ESRS E1-1	Par 16.d.	a qualitative and quantitative assessment of the potential locked-in GHG emissions from the undertaking's key assets and products. This shall include an explanation of if and how these emissions may jeopardise the achievement of the undertaking's GHG emission reduction targets and drive transition risk, and if applicable, an explanation of the undertaking's plans to manage its GHG-intensive and energy-intensive assets and products;
ESRS E1-4	Par 35	This disclosure requirement should not be subject to materiality assessment and should be mandatory to align with additional SFDR PAI Indicator n.4 Table #2 of Annex 1.
ESRS E1-5	Par 38-40	This disclosure requirement should not be subject to materiality assessment and should be mandatory to align with mandatory SFDR PAI Indicator n.5 Table #1 of Annex 1 and additional SFDR PAI Indicator n.5 Table #2 of Annex 1.
ESRS E1-5	Par 41-44	This disclosure requirement should not be subject to materiality assessment and should be mandatory to align with mandatory SFDR PAI Indicator n.6 Table #1 of Annex 1.
ESRS E1-6	Par 45	This disclosure requirement should not be subject to materiality assessment and should be mandatory to align with mandatory SFDR PAI Indicators n.1 and 2 Table #1 of Annex 1.
ESRS E1-6	Par 54-56	This disclosure requirement should not be subject to materiality assessment and should be mandatory to align with mandatory SFDR PAI Indicator n.3 Table #1 of Annex 1.
ESRS E1-7	Par 57.b.	the amount of GHG emission reductions or removals from climate change mitigation projects outside its value chain it has financed or intends to finance through any purchase of carbon credits
ESRS E2-4	Par 28	This disclosure requirement should be made mandatory to align with mandatory SFDR PAI Indicator n.8 Table #1 of Annex 1 and additional SFDR PAI Indicators n.1, 2 and 3 Table #2 of Annex 1
ESRS 3-4	general	The distinction between disclosure requirements and application requirements is unclear.
ESRS E3-4	AR31	The wording shouldn't be in the conditional tense because the information requested is relevant and important concerning water withdrawals and water discharges. « <i>The undertaking may shall also provide information on its water withdrawals and water discharges</i> »
ESRS E4	general	We regret the deletion of several data points and the fact that several mandatory data points have become optional.
ESRS E4	general	We regret the deletion of references to several methodological frameworks such as the TNFD. This would make it possible to set up a toolbox for companies and standardise methodologies. Not consistent with the use of LEAP methodology, which stems from the TNFD.
ESRS E4	general	2-year phase-in for biodiversity (ESRS 4) for companies with < 750 employees, but we consider that the integration of financial metrics (such as revenue) to determine the term "large companies" would be relevant. A company with < 750 employees can generate a high level of revenue and therefore a significant impact.
ESRS E4-1	Par 15	The term "biodiversity transition plan" should be defined and framed.

		Moreover, we believe that the information required should be made mandatory again (“shall” instead of “may”). This is all the more important for high risk sectors under the TNFD.
E4 - ESRS 2-IRO-1	Par 16	An analysis of the use of scenario by the company is requested (not mandatory), but to date the term of scenarios for biodiversity has not been fully developed or quantified.
ESRS E4-5	AR33	This disclosure has become voluntary but the information requested is relevant and important concerning land use. <i>“The undertaking may shall disclose in units of area (e.g., m2 or ha) on land-use using guidance provided by the Eco-Management and Audit Scheme (EMAS)66: (a) total use of land; (b) total sealed area; (c) total nature-oriented area on site; and (d) total nature-oriented area off site.”</i>
ESRS E5		<ul style="list-style-type: none"> - The details of the requested elements are particularly relevant in the case where the issuer produces goods; in the case where the company markets services, the IRO analysis will likely be limited to the analysis of purchases of goods/materials. The disclosure requirements will be particularly burdensome for these companies. - For small-sized enterprises, the volume of requested information remains very significant. - For each data point, it would be necessary for each issuer to specify the level of reliability of the data and calculations to measure the issuer's performance in terms of circular economy. - As it currently stands, the measurement of positive impacts is limited to the calculation of taxonomy alignment with the circular economy objective for very recent texts. This will effectively limit the number of issuers able to publish elements on their activities to the list of activities integrated into the taxonomy. <p>Regarding the articulation with the SFDR PAIs: unless we are mistaken, there is no mandatory PAI on the circular economy and resource usage aspect. For the mentioned optional PAIs, it would be appropriate to specify in the standard the details as expected by SFDR or to refer to the SFDR PAI number to address any regulatory text evolution (example: 1. Average quantity of water consumed by beneficiary companies of investments (in cubic meters), per million euros of turnover / 2. Weighted average percentage of water recycled and reused by beneficiary companies of investments).</p>
ESRS E5-3		We have not identified any specific inconsistencies regarding the requirements; however, some language elements should be clarified, particularly the term "ecological thresholds," which, although defined, lacks clarity (some examples would be helpful).
ESRS E5-4 and E5-5		The risk of non-standardization and harmonization is particularly evident in points E5-4 and E5-5. The absence of a methodological framework will make it difficult to compare companies.
ESRS E5-5		The absence of "Water" in "Resources outflows - Waste," which can be a central element of the circular economy. The closed-loop water usage in industrial processes, water treatment, and reuse... A direct link should be made with ESRS E3.
ESRS S1	Para 4	Replacing the terms "individuals or self-employed workers" with "people" is likely to confuse companies. The risk is that companies will not understand the scope in question and may no longer include "self-employed workers" in their reporting.

ESRS S1-6	Par 50 q)	The addition of "at least 10% of its total number of employees" is not a good thing in our view, as it risks removing many entities from the scope of company reporting and creating gaps in the reporting.
ESRS S1	Par §50 b) i); ii); iii)	We do not think it's a good thing that the disclosure of "breakdown by region" is now left to the discretion of companies and is no longer considered an obligation for companies. We are losing the granularity of the information.
ESRS S1-8		The notion of "non-employed" has been excluded from the scope of reporting for S1-8 (Collective bargaining coverage and social dialogue). We find this unfortunate.
ESRS S1-10 ; 11 ; 12 and 15		Replacing the notion of "own workforce" with "employees" risks reducing reporting and the consideration of risks to employees alone. There is a risk that workers who do not have employee status will no longer be included in the company's social policies in terms of social protection, adequate pay or protection for people with disabilities.
ESRS S1-11		Overall, we regret that the S-1 pillar contains fewer mandatory indicators than it did before. For example, for S1-11 "Social protection": The percentage of workers not covered is not required anymore.
ESRS S1-14	Par 88 (e)	Number of days lost to work-related injuries and fatalities from work-related accidents, work-related ill health and fatalities from ill health : this information is now only mandatory for undertaking's employees. This data point sustains SFDR PAI 3 in table 3. Either the ESRS makes it mandatory for non-employees, either it is clarified in SFDR that this PAI only relates to employees.
ESRS S1-16	Par 95-97	These remuneration metrics (pay gap and total remuneration), the disclosure of the unadjusted gender pay gap, should be made mandatory to align with SFDR PAI Indicators (n.12 Table #1 and n.8 Table #3).
ESRS S1-17	Par 103	This disclosure requirement should be made mandatory to align with additional SFDR PAI Indicators n.7 Table #3.
ESRS S1-17	Par 104	This disclosure requirement should be made mandatory to align with mandatory SFDR PAI indicator n.10 Table #1 and additional SFDR PAI Indicators n.14 Table #3.
ESRS S2	SBM-3 11 (b)	This disclosure requirement should be made mandatory to align with additional SFDR PAI Indicators n.12 and 13 Table #3 of Annex 1. Operations and suppliers at significant risk of incidents of forced or compulsory labour => Share of the investments in investee companies exposed to operations and suppliers at significant risk of incidents of forced or compulsory labour in terms in terms of geographic areas and/or the type of operation (additional PAI indicator). Specify raw materials/resources on top of "commodities" to have more granular information.
ESRS S2-1	Par 14	The summary of the content of the policies was removed between versions. We believe this would have been useful for stakeholders.
ESRS S2-1	Par 17	"The undertaking shall describe its human rights policy commitments that are relevant to value chain workers, including those processes and mechanisms to monitor compliance with the UN Guiding Principles on Business and Human Rights, ILO Declaration on Fundamental Principles and Rights at Work or and OECD Guidelines for Multinational Enterprises" => replace "or" by "and" – more stringent.

		This disclosure requirement should be made mandatory to align mandatory SFDR PAI indicator n.11 Table 1 and with additional SFDR PAI Indicators n.9 Table #3.
ESRS S2-1	Par 18	Beyond policies and code of conduct => include contractual obligation / dedicated clauses / sharing of responsibilities with suppliers, responsible sourcing policies and for which part/geographies/perimeter of its value chain. This disclosure requirement should be made mandatory to align with additional SFDR PAI Indicators n.4 and n.11 Table #3.
ESRS S2-1	Par 19	This disclosure requirement should be made mandatory to align with mandatory SFDR PAI indicator n.10 Table #1.
ESRS S2-3	Par 28	“ It may shall disclose a timeframe in which it aims to have such a channel or processes in place” => replace “may” by “shall” as it is important to have a timeframe communicated to stakeholders, this serves as a guarantee the topic will be taken seriously and that the target is sufficiently stringent.
ESRS S2-5	Par 39	This disclosure requirement should be made mandatory to align with mandatory SFDR PAI indicator n.10 Table #1 and additional SFDR PAI Indicators n.14 Table #3.
ESRS S2	Par 42	Specify that, as much as possible, these targets should be measurable and quantifiable.
ESRS S2-1	AR.12	“The undertaking may shall disclose explanations of significant changes to the policies adopted during the reporting year (e.g., new expectations for suppliers, new or additional approaches to due diligence and remedy)” => changed from “shall” to “may” between version. “Shall” would be more stringent and would help investor spotting improvements vs lowering of the standards.
ESRS S2-1	AR.15	Reference is only made to “ILO standards” and not all the commonly shared standard previously mentioned => add explicit reference to the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises which are part of the PAI indicators also.
ESRS S2-4	AR32	Change from “living wage” to “adequate wage” between versions. Preference for “living wage” as this concept is more well-known and better defined – it would avoid discretionary interpretation. Add that companies also need to specify which methodology they used to determine it.
ESRS S2-4	AR36	If the undertaking uses external verification/audits - it should specify which entity it works with and why it chose them. The undertaking should specify how the third party’s missions specifically aim to address the material impact concerned and how they ensure their effectiveness/relevance. The point here is to make sure controls are specifically dedicated to the workers in the value chain topic and are not “diluted” among other topics.
ESRS S2-4	AR42	Might be a little too “business” focused. Material risk appreciation should also consider the worker’s point of view, not only the value chain / legal / reputational exposure of the company.
ESRS S3-1	Par 12	It is a pity that the summary of the policies isn’t required anymore.

ESRS S3-1	Par 16 and 17	<p>These disclosure requirements should be made mandatory to align with mandatory SFDR PAI indicator n.10 and 11 Table #1 and additional SFDR PAI Indicators n.9 Table #3.</p> <p>The description and the disclosures are now referring to several optional standards whereas beforehand, it was more constraining. It was referring to a compliance to all of these standards by using 'AND' in the documentation : "the UN Guiding Principles on Business and Human Rights, ILO Declaration on Fundamental Principles and Rights at Work or and OECD Guidelines for Multinational Enterprises."</p>
ESRS S3-4		<p>The reference to actions taken referring to material risks has been modified from "Mitigating' to 'Managing'. The meaning has been significantly changed: "Taking actions on material impacts on affected communities, and approaches to mitigating managing material risks and pursuing material opportunities related to affected communities, and effectiveness of those actions and approaches"</p>
ESRS S3-5	Par 35	<p>This disclosure requirement should be made mandatory to align with additional SFDR PAI Indicators n.14 Table #3.</p>
ESRS S3-5	AR 47	<p>It is a pity that the definition of a 'Voluntary disclosure' does not include anymore a reference to measurable and verifiable.</p>
ESRS S4-1	Par 13	<p>It is a pity that the summary of the content of the policies is not required anymore.</p>
ESRS S4-1	Par 16 and 17	<p>Link to PAI indicator on "Share Of Companies Without Policies To Monitor Compliance With UNGCP And OECD Guidelines For Multinational Enterprises Value".</p> <p>These disclosure requirements should be made mandatory to align with mandatory SFDR PAI indicator n. 10 and 11 Table #1 and additional SFDR PAI Indicators n.9 Table #3.</p>
ESRS S4-4	Par 28	<p>Changing the wording of communities by "indigenous peoples" is more specific and some stakeholder could be out of the spectrum.</p>
ESRS S4-4	Par 35	<p>These disclosure requirements should be made mandatory to align with additional SFDR PAI Indicators n.14 Table #3.</p>
ESRS S4-4 and S4-5		<p>The differences between the two texts lie mainly in the formulation of the requirements and the organization of the information requested. The first text is more detailed and specific in its requirements, while the second focuses more on the actions, risks and opportunities linked to the company's consumers and end-users.</p>
ESRS G1-2	Par 14 c)	<p>We do believe it is essential to retain paragraph 14 c). Indeed, as far as suppliers are concerned, it is important that the undertakings act to support improvements in terms of compliance with social and environmental criteria. Deleting this paragraph removes the binding nature of the initiative.</p>
ESRS G1-4	Par 23 a) c) d) e) and Par 24	<p>The new wording of paragraphs 23 to 26 of the "Incidents of corruption or bribery" section makes this part optional. Corruption and bribery are too important issues and the undertakings shall include crucial information and not "may</p>

		disclose". For greater transparency and to provide a general overview, companies need to publish the number and nature of incidents, and the legal cases involving their employees and business partners. Just disclosing corruption fines track record says little about the mitigation of corruption risks by an undertaking because corruption legal procedures are generally long and rarely lead to fines.
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4. Specific comments on Annex II

Defined term	Comment
Indigenous population	What is the definition ? What about the rest of the communities ?