



Vereniging Effecten Uitgevende Ondernemingen

EFRAG
Attn. Mr. Hans Buysse
President of the EFRAG Administrative Board
Square de Meeûs 35
B-1000 Brussels
Belgique

CC attn. Mr. Sven Gentner
Head of unit, DG FISMA, Corporate Reporting,
Auditing Credit rating agencies
European Commission

Date 8 August 2022

Subject: VNO-NCW/VEUO feedback on draft European Sustainability Reporting Standards

Dear Mr. Buysse,

The Confederation of Netherlands Industry and Employers (VNO-NCW) and the Dutch representative organisation of listed companies at Euronext Amsterdam (VEUO) value the opportunity to provide the European Financial Regulatory Advisory Group (EFRAG) feedback on the draft European Sustainability Reporting Standards (ESRS).

VNO-NCW and VEUO fully endorse the creation of a standardised sustainability reporting framework, providing investors and other stakeholders of companies with insightful, transparent, high quality, reliable and comparable sustainability information.

However, we do have concerns related to the large volume of reporting standards – 13 ESRS drafts covering more than 400 pages containing 137 distinct disclosure requirements often referring to a number of data points –, the very short timeframe for the creation of the ESRS – not more than a few months – and the complexity of the draft ESRS – requiring companies that are but also companies that are not experienced reporters to produce a vast amount of complex information that is not available today and in many cases is to be obtained from third parties.

Also, the information to be reported on by companies needs to be insightful and digestible for the intended users. With projected additional sustainability reporting covering more than 100 pages in the annual reports of the relevant companies, there is a real concern that already the vastness of information will make these reports untransparent, thus defeating the purpose of the ESRS.

We therefore wish to contribute to the establishment of the ESRS by making suggestions for improvement on the following topics: (i) international level playing field, (ii) materiality, (iii) phasing in approach, (iv) workability, (v) disclosures on value chain information, and (vi) forward looking and competitive information.

(i) Convergence of European and international sustainability reporting standards is beneficial to reporting companies and users of the information

The activities of many Dutch companies go far beyond national borders and worldwide operating companies are faced with multiple sustainability reporting initiatives. Mismatched and voluminous frameworks and different timelines will hamper the accessibility and usefulness of the reported information and will make it even more difficult and costly for companies to provide the required information. As important as it is that the ESRS will create a pan-European reporting framework, it is of equal great importance that European sustainability standards are aligned with international initiatives and other European legislation. Indeed, the CSRD's explanatory memorandum (37) explicitly recognises the need of supporting the work of the International Sustainability Standards Board (ISSB) to reduce the risk of inconsistent reporting.

Currently, the draft ESRS do not sufficiently align with international initiatives and other European legislation. See for example the variations between the draft ESRS and IFRS S1 and S2 and the adjustments of the CSRD. Furthermore, the draft ESRS contain references to several acts and plans that are not legislation, which leads to incorporating non-legislative norms in the sustainability reporting standards. VNO-NCW and VEVO find this an undesired result.

Building block approach with ISSB

VNO-NCW and VEVO believe that the attention for and convergence with international sustainability initiatives should be more firmly secured in the ESRS. To facilitate a future possibility of designating international standards as equivalent standards, we believe the architecture of the ESRS should incorporate a building block approach, whereby the ISSB standards offer the global baseline for sustainability reporting to which the EU will add multi-stakeholder reporting requirements in the form of ESRS, if and where necessary. At the very least we ask EFRAG to clearly indicate the differences between the ESRS and the work of the ISSB, both in relation to content and terminology. We also refer to the ISSB working group, which was established specifically for this purpose. Lastly, we suggest incorporating references to acts and plans in a separate appendix and remove them from the ESRS.

Finally, VNO-NCW and VEVO believe the necessary level playing field can be supported by providing guidance on consolidated sustainability reporting for the many companies that will make use of the subsidiary exemption. We propose EFRAG

facilitating these companies by providing guidance on, for example, how to cope with different sustainability practices within the group when drafting the consolidated sustainability statements, specifically regarding G-topics.

(ii) Double materiality is a good basis for sustainability reporting, but the concept needs further elaboration to enhance usability of sustainability information

VNO-NCW and VEUEO support the principle of double materiality as a base for sustainability reporting. However, currently all disclosure requirements in the draft ESRS are presumed to be material for all reporting entities, with the possibility for them to rebut this presumption in a substantiated manner. This blanket and undifferentiated approach is not only very extensive, unpractical and costly, it will also lead to a lot of irrelevant content in the management report which will already be very significantly expanded by the intended additional disclosures. It also deviates from the already existing fundament of materiality analysis for sustainability reporting as for example provided by GRI and for all financial reporting.

For sake of keeping the disclosures manageable and information insightful and well accessible, we deem it highly important that the ESRS focus on disclosing relevant information. VNO-NCW and VEUEO therefore propose to follow the current practice of materiality analysis and (further) clarify the guidance for this materiality assessment by, for example, incorporating factors that should be taken into account when making the assessments. This means that the requirement to disclose on a certain topic will follow from the entities' preceding identification of material impacts, risks and opportunities. Entities should be allowed to leave a non-material issue out of the sustainability disclosures completely, as is the case with financial information.

Furthermore, we suggest defining an elaborated set of sector-specific standards with tailored information that is material for the relevant sector, thereby limiting the amount of disclosure requirements that are now included in the draft ESRS under the sector-agnostic standards. Such an approach would also limit the deemed risk of "green washing" (reporting only on topics that makes the company look good).

(iii) Phasing in approach is desirable also given the very ambitious timeline

Commonly, companies report to the best of their ability and in doing so strive to obtain an unqualified audit opinion. This will be no different for sustainability reporting. However, for most reporting entities, the disclosure requirements are fairly new and very substantive. Consequently, early sustainability reporting on the basis of the ESRS logically will not have the same quality as financial reporting which has been developed over many decades, even centuries.

A further complicating element is that not all matters covered by the ESRS have reached a sufficient level of maturity in terms of standards, data, and monitoring of

information. As regards the standards, there is a lack of authoritative and mature guidance for new areas introduced by the ESRS. Examples are biodiversity and social-topics such as work-life balance. A clarification on minimum principles to be applied for these topics – in line with the standards that are currently available for disclosures of carbon emissions, for example – is absent but desirable. The timeline of the public consultation and subsequent finalisation of the standards make this even more challenging if not impossible.

To ensure and maximise reporting quality, VNO-NCW and VEUEO believe it is important and realistic to use a phasing-in approach of the reporting requirements. The phasing-in of value chain information is already included in the CSRD (see (v) below). This will not only increase the workability and auditability of the ESRS, but also provides EFRAG the necessary amount of time to work on mature ESRS. The suggested phasing in approach implies (a) starting with more "mature" topics and later supplementing them with new topics covered by the ESRS, (b) initially requiring a lower level of detail in reporting, which can be expanded at a later stage, (c) moving disclosure requirements that are only or mostly relevant to specific industries out of the sector agnostic disclosures to the sector-specific disclosures (as mentioned under (ii)), and (d) aligning the ESRS with the updated text of the CSRD where possible.

Furthermore, we propose to include safe harbour provisions in the ESRS to the effect that reporting entities will not (need to) take responsibility for the accuracy of information received from third parties.

(iv) Enhance workability of ESRS by increased consistency, taking away ambiguity, and allowance of cross-references

VNO-NCW and VEUEO note that there is still room for improvement regarding the workability of the ESRS. Definitions in the draft ESRS contain inconsistencies and unclarity and certain concepts remain open to interpretation. For example, (a) "value chain" lacks a clear definition and should be delimited, (b) in ESRS E-1 on climate change, clear and manageable guidance is needed on how to identify stakeholders and a definition of "key stakeholders" is missing, (c) it is unclear if the terms "own workforce", "own employees" and "own workers" (e.g. draft ESRS S1 10 and 24) are interchangeable (making it indistinct whether, for example, hired workers or flex-workers are included in one, all or none of the definitions) and we see that flex-workers are included in more than one definition leading to double counting, (d) in relation to policies related to pollution, it is unclear what is meant by enabling activities and objectives to pursue, and (e) in ESRS 1 paragraph 49, the definition of "potential significant impacts", lacks the possibility to quantify information, which hinders a comparison with other standards. Last, due account should be taken of privacy legislation for instance in relation to mandatory disclosure of personal sensitive information, especially in the social reporting standards.

The ESRS should leave no ambiguity to what the ESRS asks of companies, to ensure concise and clear reporting and auditability of the sustainability information. We recommend harmonising definitions and centralising them throughout the whole ESRS in one place, check if all terms are clearly defined and explained, and elaborating on unclear concepts.

To boost integrated reporting as much as possible, we furthermore propose that cross-references within the other parts of the management report are allowed. This will support and strengthen the connection between sustainability and financial information and will minimise simultaneously overlapping information in the management report.

(v) Value chain information

Value chain reporting is one of the key concepts of sustainability reporting. For the vast majority of companies, reporting on the value chain will be entirely new. Also, not only companies within the scope of the CSRD but also companies in the value chain outside the scope of the CSRD (e.g. non-listed SMEs, companies in third countries) will be confronted with the consequences of value chain reporting as they need to produce the relevant information to their reporting business partners. Although value chain reporting ensures visibility of a company's impact, it also imposes a massive burden on companies to gather information from value chain parties and to process the data obtained.

VNO-NCW and VEVO therefore support the phasing in of value chain provisions provided in art. 19a(3) CSRD. We recommend clarifying in the ESRS that for the first three years of the application of the CSRD in the event that not all the necessary information regarding the value chain is available, companies do not have to fulfill all the value chain reporting obligations (on condition that they provide an explanation of the same). We also recommend aligning the ESRS with other future legislation regarding the value chain, such as the proposed directive on Corporate Sustainability Due Diligence. Furthermore, it is important to facilitate companies in reporting on the value chain by among others facilitating the use of approximations and extrapolations for value chain information and allowing value chain information to be less detailed.

(vi) Forward-looking and/or competitive information

The CSRD requires companies to specify forward-looking and retrospective information as appropriate (art. 29b(2a) CSRD). The draft ESRS includes disclosures on forward-looking information, including information on for example expected investments. This information could include competitive information and harm the level playing field between EU- and non-EU companies that do not have to disclose this information, thereby harming the legitimate interests of the reporting company. We also see difficulties regarding the reasonableness and scientific substantiation of forward-looking information that is based on assumptions.

We suggest shaping or exclude the requirement to disclose forward looking and/or competitive information, according to the type of forward looking information to be provided. ESRs 2, for example, offers a “commercial exemption”.

Conclusion

The above-mentioned suggestions for improvement are meant to facilitate the creation of a standardised sustainability reporting framework, providing investors and other stakeholders of companies with insightful, transparent, high quality, reliable and comparable sustainability information. And to help and further guide companies in applying such framework. Should you need any further clarification on the above, please do not hesitate to contact us.

Yours sincerely,

On behalf of the Confederation of Netherlands Industry and Employers (VNO-NCW) and the Dutch representative organisation of listed companies at Euronext Amsterdam (VEUO),

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