

JBCE's feedback on the first set of European Sustainability Reporting Standards

Japan Business Council in Europe (JBCE) welcomes this opportunity to provide feedback on the draft delegated regulation supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards. JBCE welcomes this final draft on ESRS and believes that the phase-in approach leaves room for companies to prepare for the new dimensions of reporting.

However, we would like to raise the following comments for further improvements and consideration. The comments reflect mainly perceived inconsistencies between CSRD and ESRS, GDPR and ESRS data requests, and improvements in flow charts.

1. General comments

- We welcome the Commission and EFRAG's effort to ensure alignment with existing international standards on sustainability reporting, as well as due diligence. For our members, non-EU companies with EU subsidiaries, ensuring alignment with existing international standard is crucial to streamline internal efforts on risk and opportunities assessment and data collection.
- In addition, we are pleased to hear that a phase-in mechanism has been introduced in the first set of ESRS. This would help companies build in-house capacity to prepare internal developments with prioritized topics and improve the quality of data presented to stakeholders.

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

- Representing companies with parent companies outside the EU, we would urge EFRAG and the Commission to swiftly define "equivalent" standards to avoid potential double reporting.

3. Specific comments on Annex I

A) ESRS 1:

➤ Value chain-5.1 Reporting undertaking and value chain - Para. 62

- According to paragraph 62 "the sustainability statement" shall be for the same reporting undertaking as the financial statements. For example, if the reporting undertaking is a group and if the parent company is required to prepare consolidated financial statements, the consolidated financial and sustainability statements will be for the parent company

and its subsidiaries. However, CSRD articles 19a and 29a allow undertakings which are a subsidiary undertaking to be exempted from the obligations if such undertaking and its subsidiary undertakings are included in the consolidated management report of a parent undertaking. At the same time, according to recital 25 of CSRD, the exemption regime for consolidated financial statements and consolidated management reports operates independently from the exemption regime for consolidated sustainability reporting. Therefore, we believe that the scope of financial and sustainability statements would potentially not match. Especially, if undertakings would like to use Article 40a. Hence, what ESRS1 5.1. 62 suggests, could potentially create a conflict with the text of the CSRD. As the legal text should be guiding, we therefore suggest to modifying recital 62.

➤ Appendix E

- The flowchart may need another junction between the 1st box (“Perform 1 the impact assessment ...”) and the 2nd box (“Is the topic covered by a topical...”) which would ask if this were determined as material matters or not.
- If determined “yes” for the first junction in the 2nd box (“Is the topic covered by a topical standard”), there are 2 flows – metrics and others (policy). However, their definition should be clarified to be able to make a judgement.
- In the judgement box “Is the Disclosure requirement material?”, which is after “For metrics”, the “No” option seems to be missing.
- It is unclear how companies can determine materiality at Disclosure Requirement level and/or Data point Level. What should be the threshold to deem a DR/DP as non-material?

B) ESRS 2

➤ Disclosure Requirement BP-2 Disclosures in relation to specific circumstances Para.12

- We welcome paragraph 12 which highlights "When disclosing forward-looking information, the undertaking may indicate that it considers such information to be uncertain." This section should also ensure the safe harbour on disclosed forward-looking information.

C) ESRS E2

➤ Objective – Para. 6

- “With regard to “substances of concern”, this standard covers the undertaking’s production, use and/or distribution and commercialisation of substances of concern, including substances of very high concern. Disclosure Requirements on substances of concern aim at providing users with an understanding of actual or potential impacts related to such substances, also taking account of possible restrictions on their use and/or distribution and commercialisation.”

There is no clear definition yet on the “substances of concern” in the main/primary chemicals regulation (REACH). Therefore, a definition should be introduced in REACH first, and then other sectoral regulations shall refer to that definition (“technically impractical to implement”).

D) ESRS S1

- Disclosure Requirement S1-17 Incidents, complaints and severe human rights impacts - Para. 104
 - To be able to fulfil this requirement effectively, further clarifications should be provided on the correlation between reporting on actual human rights impacts and accountability under upcoming EU Corporate Sustainability Due Diligence Directive and other relevant legislations. Otherwise, no company will be able to fulfil this reporting requirement adequately if they face potential liability when disclosing. In our opinion, a clear safe harbour on civil liability or similar clauses needs to be set in this section.
 - If a due diligence approach defined in International Standards such as the United Nations' Guiding Principles on Business and Human rights and OECD's MNE Guidelines is taken, then there should not be so much emphasis on reporting on a number of cases but on the actual mitigation activities which were taken to prevent or remediate these severe human rights incidents.
- Specific Disclosure Requirements and their compatibility with GDPR
 - There might be problems in data collection related to GDPR e.g. on disabilities as employees do not have to disclose their disability. It differs from country to country however, the following are data categories that are sensitive in EU: Ethnicity, National background, Age, Sexual identity and Disability. If data are not registered in the Human Resources' database due to GDPR, it might be impossible to disclose the requested data. This problem was already mentioned in the summary of Ramboll in the previous round of comments. We believe a new check should take place to determine if the datapoints are all in line with GDPR.

E) ESRS S2 · ESRS S3 · ESRS S4

- Disclosure Requirement - S2-4 Taking action on material impacts on value chain workers, and approaches to managing material risks and pursuing material opportunities related to value chain workers, and effectiveness of those actions
- Para. 36
- Disclosure Requirement - S3-4 Taking action on material impacts on affected communities, and approaches to managing material risks and pursuing material opportunities related to affected communities, and effectiveness of those actions
- Para. 35
- Disclosure Requirement - S4-4 Taking action on material impacts on consumers and end-users, and approaches to managing material risks and pursuing material opportunities related to consumers and end-users, and effectiveness of those actions
- Para. 35
 - To be able to fulfil this requirement effectively, further clarification should be provided on the link between reporting on actual human rights' impacts and accountability under upcoming EU Corporate Sustainability Due Diligence Directive and other relevant legislations. Otherwise, no company will be able to fulfil this reporting requirement adequately if they face potential liability when disclosing. In our opinion, a clear safe harbour on civil liability or similar clauses needs to be set in this section.

- It would also be helpful if the paragraph would clarify which level of detail the disclosure of severe human rights issues and incidents is expected to have.

F) ESRS G1

➤ Disclosure Requirement G1-6 Payment practices - Para. 31

- We find this requirement difficult to comply with, especially for companies with a lot of subsidiaries. Some companies have different accounting/payment systems in their subsidiaries. Hence, it is not always easy to pull this financial data centrally. Therefore, we propose G1-6 to be in a phased-in approach.

4. Specific comments on Annex II

➤ Substances of concern

- As raised above, the definition of Substances of Concern has not yet been determined in the primary regulation (REACH) therefore, in order to avoid any confusion and inconsistency, ESRS should only refer to the definition once determined in a primary legislation.

About JBCE

Founded in 1999, the Japan Business Council in Europe (JBCE) is a leading European organization representing the interests of 100 multinational companies of Japanese parentage active in Europe. Our members operate across a wide range of sectors, including information and communication technology, electronics, chemicals, automotive, machinery, wholesale trade, precision instruments, pharmaceutical, textiles and glass products.

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