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EFRAG Public Consultation on the first set of Draft ESRS, general comments by the Confederation of Finnish Industries EK

General remarks

The Confederation of Finnish Industries thanks for the opportunity to give its statement with this important matter. We support the basic goal to make the sustainability reporting more uniform and comparable and we also thank EFRAG for starting this work. However, the preparatory work and the contents of the standard proposals are not in a stage that standards could be approved as binding, even with some small corrections. We strongly believe that more time is needed to accomplish a functional set of standards.

We have already been in contact earlier with the EFRAG PTF -Board to stress our concern on the somewhat short consultation period. We pointed out that the contents and scale of the draft standards is so substantial that it is very challenging to thoroughly go through them all and assess all implications and effects towards reporting entities. We want to point this matter out still, since we believe that the preparational speed of the standards will lead into problems in the future. It also needs to be pointed out that the lack of EFRAG's impact assessment on the standards has not been finished yet. Since the standards will affect numerous companies and since they will be binding in nature, a more thorough preparation and completed impact assessment should be required.

The principles of better regulation need to be followed at all times and at all cases where EU is creating binding legislation, rules or standards towards EU companies. Quality of these standards need to be secured at the initial drafting phase, since correcting later already existing, poorly functioning standards is far more difficult task. Tight deadlines and schedules should never be used as an excuse to narrow down the quality of the legislation or other binding set of rules.

Moreover, according to our understanding, the ESRS should also be based on the CSDD-directive. This directive is still a proposal, and it is highly controversial and against better regulation principles to form binding standards affecting the matters on CSDD before the whole directive is finalized and approved. There are large matters such as companies' liability and responsibility issues in the value chain that need to be first agreed at the directive level before binding standards can be approved.

It is also to be pointed out that few of the ESRS are in fact trying to make mandatory such reporting that is based on non-binding international conventions and other instruments. This type of regulative measures requires more time and a thorough impact assessment on

companies and markets as a whole. The timeframe for such a massive “statutoriation of voluntary guidelines” goes against every better regulation principle and is problematic also because binding rules are now created without the steps and processes of the normal legislative procedure.

Functionality with other reporting requirements and taking smaller reporting entities into account

The ESRS create reporting obligations that are parallel with some of already existing reporting requirements and will be touching the same reporting requirements as standards currently prepared by ISSB. The field of sustainability reporting for companies will therefore be blurred and made quite challenging in the near future. We strongly suggest that the development of ESRS would be done in close co-operation with ISSB in order to eliminate any unnecessary differences and challenging reporting obligations towards companies.

Many existing reporting requirements or fields will be part of ESRS as well (e.g. corporate governance related matters and general business information) and it is important that any unnecessary overlapping on these topics would be avoided so that companies would not have to report almost identical data parallel with slightly different viewpoint. To some extent the ESRS makes it possible to refer to this information presented elsewhere, but this option still makes it difficult for companies to analyse which part and how this information can safely be referenced. The clearest way might be to just carve out such information from ESRS which can already be obtained from other sustainability data or reports that company is obligated to provide.

One of the goals for creating EU-level obligatory sustainability reporting is to create clarity, uniformity and comparability amongst companies’ sustainability efforts and data. This objective is important to advance the sustainability transition. However, when drafting new standards to function together with existing reporting obligations – the information needs to be clear and comparable to users and any contradicting and conflicting, overlapping and repetitive reporting requirements need to be avoided.

New ESRS -standards will affect companies that have not been obligated to any kind of non-financial or sustainability information reporting requirements. This will be a massive change into their daily reporting obligations and many companies will begin meeting the requirements for the first time – they do not have any previous experience on sustainability reporting and therefore they do not have any resources or competences to tackle these new obligations easily. According to multiple surveys, such as the EU Commission’s Annual Report on European SMEs 2021/2022¹, the key challenges of SMEs’ sustainability transition are limited resources (financial and human), operation in economic or geographic niches and uncertainties in markets and policies. The problem with the current proposals is that they are too general and open to different interpretations. They do not serve as clear and easily manageable set of reporting requirements – either in fact for many companies that

¹ https://single-market-economy.ec.europa.eu/smes/sme-strategy/sme-performance-review_en

are already familiar with certain level sustainability reporting. This unclarity and vagueness needs to be remedied through drafting more concrete instructions on how to actually define the scope and area of reporting subject.

Materiality analysis is challenging

The concept and principles determining the assessment of double materiality needs improvement. It is very difficult to ascertain which parts of ESRS are material. The idea to claim certain ESRS not being material based on evidence given by company is not working properly since there is not enough information on what is counted or approved as eligible counterevidence for materiality in different situations. -Otherwise all ESRS are material for companies. This will lead into a huge amount of work for companies in order to create and formulate basis and arguments and maybe even own system of criterion to decide why and on what grounds something should not be kept as material for the company. The process should be more streamlined and efficient for companies – so that the materiality analysis would not cause massive workload for companies. The information given by each company should be as relevant and clear as possible, it is not in anyone's interest to strive companies into reporting on every ESRS simply because of materiality argumentation is made too burdensome.

It is also to be pointed out that the references to "stakeholders" which basically means anyone who has some sort of link or interest in the company, makes the decision making and analysis of materiality too broad and fails to provide coherent and relevant information to the real users of the sustainability data. The clarity, uniformity and comparability of this data towards the common users (investors, analysts, consulting companies, officials, etc.) needs to be secured.

Reference on more detailed analysis of the ESRS and few comments on Own workforce -related proposals

We refer to the more detailed consultation answers given by BusinessEurope, our EU -level umbrella organisation as well as our Finnish Member Organisations, such as Chemical Industry Federation of Finland, which has focused thoroughly on the problems and challenges relating to the contents of the ESRS S1, Own workforce.

As regards the Own workforce -part of standard proposals, many of the reporting obligations lack legal basis completely. Part of the reporting obligations might also go against the EU's GDPR -rules, as regards the reporting on annual salaries. In this context it needs also to be pointed out that EU does not have a mandate to regulate on matters relating to salaries. Standard proposals which do not have any EU legal basis should not be prepared further.

To sum up

It is clearly obvious that the timeline for the preparation of the ESRS has been too short – both in terms of the quality of the ESRS and the phase of the process and time given to

stakeholders to comment on the draft proposals. These proposals should not advance according to the original timeline, since more preparatory work, a thorough impact assessment by EFRAG and more time for stakeholders to analyse and comment are needed.

We sincerely wish that the process would be prolonged in order to safeguard the quality and relevance and functionality of the ESRS's as a whole. It is easier to add more time to the preparational stage now than to correct later all the problems and irregularities that have gone into ESRS.