AmCham EU
SPEAKING FOR AMERICAN BUSINESS IN EUROPE

Consultation response

Delegated act on the European Sustainability Reporting Standards

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Executive summary

The American Chamber of Commerce to the EU (AmCham EU) welcomes the new draft of the European Sustainability Reporting Standards (ESRS) that the European Commission submitted to public consultation. We fully support regulatory efforts to provide a reliable framework for companies to report on sustainability. However, the complexity and detail of such an exercise presents significant – and for many companies new – challenges.

As explained below, positive developments in the new draft include:

- **The revisions to further position materiality at the core of reporting.**
- **The introduction of additional phase ins.**
- **The recognition that forward-looking information is uncertain.**

However, AmCham EU recommends the following additional steps to allow companies to report in a fair, useful and informative manner, without creating undue burdens:

- **Implement additional phase in of reporting requirements in recognition of the challenges companies face in analysing and reporting on the breadth of non-financial information, beyond climate-related disclosures.**
- **Broaden the scope of the safeguards and exemptions for disclosures that could risk company security or require exposure of commercially sensitive or valuable information.**
- **Provide targeted streamlining and adjustments for workable disclosures that are effective and aligned with sectoral legislation.**
- **Simplify requirements for entity-specific reporting requirements and disaggregation at the geographical level.**
- **Facilitate greater consistency with international standards.**
- **Provide further clarity and proposals on specific disclosure requirements to enhance comparability and consistency of information disclosed.**
- **Support implementation through guidance and restrict sector-specific standards to a limited set of necessary alternative or additional datapoints.**

Introduction

AmCham EU contributed to the public consultation organised by the European Financial Reporting Advisory Group (EFRAG) between April and August 2022. EFRAG's changes to the initial drafts and the European Commission's adjustments to EFRAG's technical advice are positive, in particular putting materiality more clearly at the core of reporting, reducing the number of mandatory disclosures and introducing additional flexibility through further phase ins and by making certain disclosures voluntary.

The ESRS should meet the EU's sustainability ambitions and be consistent with other sustainability legislation, including the Sustainable Finance Disclosure Regulation (SFDR). We support a maximum level of alignment between the information disclosed under the SFDR with the information that companies disclose under the CSRD. Alignment and harmonisation are also important in the transposition of the CSRD and with ESRS adopted as delegated acts that are directly implementable; they should set the framework for coherent and consistent reporting. The European Commission should closely monitor developments in each Member State to ensure harmonised implementation without divergence. The ESRS also must meet the needs of intended users, be implementable and take into account global standards by ensuring interoperability and minimising duplication, in consideration of the fact that non-EU issuers are also in scope of these requirements. In particular, they should align with existing international standards such as the Greenhouse Gas (GHG) Protocol, Global Reporting Initiative (GRI), Sustainability Accounting Standards Board (SASB), the International Sustainability Standards Board's (ISSB) recently released global baseline, as well as build upon the Task Force on Climate-Related Financial Disclosures' (TCFD) recommendations. As new voluntary or mandatory disclosure frameworks are created on an

international level, this engagement will continue to be relevant, particularly in the context of the anticipated US Securities and Exchange Commission's (SEC) disclosure rules on human capital management, climate disclosure and board diversity.

The Commission President's announcement of a 25% reduction in reporting burden for company reporting is a positive development, as is the reconsideration of EFRAG's working programme. To ensure simple and stable rules as well as legal certainty over time, the European Commission should focus on guidelines, clarification, and streamlining the draft standards rather than adopt additional sector-specific standards. At this moment, there is a unique opportunity to reduce unnecessary ESRS reporting burden, before adoption, and make disclosures more practical and relevant.

In advance of the release of the European Commission's proposals to reduce administrative burden, the below consultation response contains concrete proposals to further simplify the standards while also achieving the objectives of the legislation.

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1. Continue positioning materiality at the core of reporting

The materiality assessment should be at the core of reporting, and mandatory disclosure requirements should be the exception.

The European Commission's revision to reduce the number of 'mandatory for all' disclosures, including those described in paragraphs 4 and 6 below, are a positive change. The shift away from the 'comply-or-explain' mechanism is also welcome, as it would have made it mandatory for companies to explain why a topic was not considered material. These changes reduce the reporting burden and allow companies to make more targeted and relevant disclosures.

However, the new draft ESRS require companies to disclose how the materiality assessment was performed (ESRS 2, paragraph 58). This information could create confusion since the process of materiality assessment is described in the ESRS themselves. It would be useful to clarify the expectations provided for in this provision or to streamline the process further to avoid duplicative requirements.

In addition, ESRS 1, paragraph 32 still includes the obligation to disclose whether or not an undertaking has adopted policies, actions, metrics and targets. An undertaking should not be required to disclose the absence of information. If a policy is not in place or not applicable, companies should have the option to provide more details on reasoning but should also have the ability to stay silent and let the absence of information speak for itself.

2. Continue recognising that forward-looking information is uncertain

Although forward-looking sustainability reporting is an essential aspect of the CSRD disclosure process, forward-looking statements by their very nature are subject to change, and reporting companies need legal certainty on the disclosure expectations that may apply to such statements. To support this objective, AmCham EU previously proposed a safe harbour during EFRAG's consultation to ensure that undertakings do not incur inappropriate obligations as a result of restating or revisiting information in light of new information becoming available.

In that context, we welcome that draft ESRS 2, paragraph 12 now states: 'When disclosing forward-looking information, the undertaking may indicate that it considers such information to be uncertain.' This could help mitigate companies' potential liability for forward-looking information that does not come to fruition as anticipated due to unforeseen developments or expected developments not materialising.

The availability of a safe harbour for such statements should be harmonised at the EU Member State level. In addition to being classified as uncertain, ESRS 2, paragraph 12 should also allow companies to indicate that the information may be 'subject to change' and 'subject to the risk factors set forth in the report.'

3. Implement additional phase in of reporting requirements

It is appreciated that the European Commission has kept the gradual phase in of several disclosure requirements from EFRAG's November draft. We also welcome the further expansion of the phasing in to cover the anticipated financial effects related to non-climate environmental issues (pollution, water, biodiversity and resource use) and certain social indicators for the first year of reporting. On the latter, the European Commission should extend the phase in by an additional year – in other words, a two-year phase in for both the anticipated financial effects and social indicators to allow companies time to review and implement measures to address the final regulations. Such change reflects a more realistic understanding of what companies may, with significant efforts, be able to achieve in the first years of CSRD implementation. It also recognises the massive challenges companies would face in collecting, analysing, and ultimately reporting the required information along their value chains.

In addition, the European Commission should further phase in additional reporting topics, particularly related to value chain, affected communities, substances of concern (SoC) and the substances of very high concern (SVHCs). For example, companies should not be required to disclose pollution data which is not required in product labelling as measurement tools do not currently exist. In particular, in ESRS E2.5, the requirements on the SoC and SVHCs go beyond most commonly used sustainability reporting standards.

Furthermore, while there is already an obligation under Article 9(1)(i) of the Waste Framework Directive to provide information on SVHCs in articles (products), the concept of SoC has not been established in European legislation so far and therefore would be subject to various interpretations. Businesses need consistency and legal clarity across the different pieces of legislation (Ecodesign for Sustainable Products Regulation; Registration, Evaluation, Authorisation and Restriction of Chemicals Regulation [REACH]; ESRS, Waste Framework Directive etc). The SoC definition in the draft ESRS standards is too vague and, the European Commission should wait for a clear, unique definition that is implementable across different EU legislation and then provide a sufficient transition period (three years) for industry to adjust its supply chains accordingly.

We do not agree with limiting the additional phase ins of the new disclosure requirements specified in the standard on 'own workforce' – on biodiversity, value-chain workers, affected communities, consumers and end-users – to companies with fewer than 750 employees. These disclosure requirements would be as – or in some cases, even more – burdensome for larger companies than for smaller companies. The European Commission should further extend these phase ins across the board.

In addition, with respect to Scope 3 GHG emissions disclosures, the transition period for companies with fewer than 750 employees should be extended to two years instead of one year.

4. Broaden the scope of the safeguards and exemptions regarding disclosures that could risk company security or require exposure of commercially sensitive or valuable information

It is critical that broadening disclosures under the ESRS should not come at the expense of compromising the security of a company and its customers or the protection of its commercially sensitive or confidential information.

While the amendments related to classified and sensitive information introduced in ESRS 1 are positive, concerns remain about the expansive nature of some disclosure requirements. The definition of the types of information described under ESRS 1, 7.7 (paragraph 104-107) needs further refinement to sufficiently protect confidential information. This includes commercially sensitive or valuable information, in line with other regulations such as the EU Trade Secret Directive (referenced in the EU CSRD preamble 34), which states that

reporting requirements should 'be without prejudice to Directive (EU) 2016/943)' and the Freedom of Access to Information Directive.

The protections under ESRS 1, 7.7 should not be limited to 'classified information or sensitive information, or a specific piece of information corresponding to intellectual property, know-how or results of innovation.' By listing only these types of information, the scope is defined more narrowly and might be interpreted to exclude other commercially sensitive information. The definition of 'sensitive information' in Annex II should expressly include information that is protected because of community law or contractual obligations (which is not covered by the cross reference to Regulation (EU) 2021/695). ESRS 1, 7.7 should also be amended to clarify that 'the undertaking may as a consequence omit information that qualifies as a trade secret under the Directive 2016/943 or that is otherwise considered commercially sensitive.'

Certain proposed biodiversity disclosures could divulge the exact locations of critical infrastructure, which are highly confidential and pose security risks if made public. Requirements to disaggregate data by location and include information such as electricity use could expose details of research and development centers, quantum centers, and other confidential business information, creating site security risks. As such, companies should report site data in the aggregate, as opposed to listing specific site locations, which can endanger the site security.

Under ESRS E5 (paragraphs 2 and 31), we are concerned by the fact that the disclosure of material inflow, including packaging, is sensitive business information because people can the back-calculate products sold. The same applies to property, plants and equipment. Therefore, this requirement should be removed or allowed to be reported on an aggregate level.

Similarly, while ESRS 1 provides grounds for an undertaking to omit certain information based on the designation that such information is secret, the criteria should also include information deemed 'commercially sensitive or valuable.' While ESRS 1 mentions 'commercial value', the definitions of confidential and security relevant information should be expanded to also apply to commercially sensitive or valuable information.

5. Provide targeted streamlining and adjustments for workable disclosures

The streamlining of disclosures is a positive development. However, concerns remain that the quantity of detailed information required to be disclosed may cause information overload and reduce the effectiveness of the disclosures, therefore undermining reliability and transparency. New disclosure requirements were introduced that will be difficult or impractical to implement, and that would be of limited value to the stakeholder.

The following targeted proposals would help streamline and make workable the disclosures:

- Concerning the workforce standards, a qualitative approach rather than a quantitative approach would provide more useful information for reporting on workforce in the value chain (ESRS S2-5) – ie similar to the reporting on non-employees in an undertaking's own workforce. In addition, despite the new criteria which change the threshold for 'significant employment' in a particular country (ie at least 50 employees by head count representing at least 10% of its total number of employees), that threshold is too low and would cause disproportionate burden for employers.

- Although the modification of ESRS S2, paragraph 11 to make the disclosure of geographic location voluntary is positive, the new wording expanding it to value chain workers who 'can be materially impacted' is unnecessarily broad. The European Commission should revert to the wording that limits this requirement to workers subject to material impacts by own operations.

- ESRS E5, paragraph 36, contains reporting requirements on expected durability, reparability and packaging recyclability of an undertaking's products for which outflows are material. Applying such disclosure requirements for whole range of products is impractical and inconsistent with other ongoing legislative initiatives that will mandate disclosure of certain product information in a more targeted and relevant manner.

- In addition, there appears to be an inconsistency between paragraphs 35 and 36, with paragraph 35 limiting disclosure to metrics related to 'key products and materials that come out of the undertaking's production process', whereas paragraph 36 is wider, ie products placed on the market by the undertaking. Even with a limitation to 'key products' this disclosure would be unworkable for the reasons explained above. The European Commission should remove this altogether or make disclosure on this matter voluntary.

- The language in paragraph 36 (paragraphs a and b) also indicates a potential requirement to report on 'industry average' product lifetime. Determining such averages depends on many factors such as product group and companies taken into account and highly depend on the use of the final customer. All this makes it difficult, if not impossible, to establish objective, reliable, comparable, and verifiable information that is useful for decision-makers. If in the future there are attempts to establish product-specific standardisations on durability, such standards should be developed by recognised official organisations such as the European Committee for Standardization, the European Committee for Electrotechnical Standardization or the European Telecommunications Standards Institute as applicable.

The European Commission should also provide further streamlining and adjustments on the definition of affected stakeholders and the relevance of engagement with affected stakeholders.

- For example, it should change the description in ESRS 1, 3.1, paragraphs 22, 23 and 24 to include the word 'key' in front of 'stakeholders.' This ensures more targeted reporting and is coherent with the concept of key stakeholders used in ESRS 2.

- The definition of affected stakeholders (ESRS 1, 3.1, paragraph 22) continues to be too broad. This makes it unnecessarily burdensome and impractical for companies to identify, engage with, and assess such a large group of stakeholders, particularly given the tight timeline for reporting. This could also undermine comparability of reporting. The following amendment should be inserted:
    - 'Affected stakeholders: individuals or groups whose interests are affected or could likely be significantly affected – positively or negatively – by the undertaking's activities and its direct and indirect business relationships across its value chain'.

The European Commission should also streamline in the following areas where data is not available, where overlaps with legislation cause duplication or where requested disclosures are broad:

- Global water quality and quantity data are not readily available and when they are, they are often of very poor quality or in disparate datasets at the local level. In particular, the European Commission should amend ESRS E3-4, paragraph 28 (c) to clarify that such information is voluntary. It would be an undue burden on companies to require them to have water quality and quantity data for that watershed to put their water usage in context.

- With regard to ESRS E1-7 on GHG removals reporting and the definition of net zero, AR 26 – which requires that new GHG reduction targets be set every five years, starting in 2030 – would not be workable for a net-zero goal that references 'after approximately 90-95% of GHG emission reduction.'

It is not possible to continue reducing to 'approximately 90-95%' if the base year keeps advancing while reductions are occurring. In line with the above, ESRS1 AR 26 should be adjusted, as this approach is incompatible with the concept of a net-zero target that is based on a fixed percentage reduction. AR 26 and AR 30 should be either removed or clarified.

- ESRS S1 and S2 in relation to privacy rights relate to other EU and international laws and regulations, and such additional requirements represent duplicative and unnecessary disclosures, given mandatory rules relating to privacy. One of the challenges is the overlap between developing pieces of EU legislation. Specifically, in relation to data privacy, businesses need guidance as to how the CSRD requirements regarding materiality risk assessments and data privacy compliance relate to compliance and risk assessments required under EU General Data Protection Regulation, Digital Services Act and the proposed new AI Act.

- The European Commission should also modify ESRS S4, paragraph 10 to avoid duplicated reporting requirements and extension of existing laws which already provide sufficient transparency and disclosure. In particular, the disclosure should state disclosure is required 'unless already disclosed under existing legal requirements.'

- The European Commission should revert to the wording in ESRS G1 paragraphs 22 and 23 that limits disclosure to 'confirmed' incidents of corruption or bribery, to avoid an undue burden and potential disclosure of unsubstantiated incidents that undermine transparency objectives.

- It should also revert the inclusion of 'b) any actions taken to address breaches…' from ESRS G1 paragraph 24 b) or otherwise clarify this only relates to material actions taken to address breaches that companies consider breaches.

- The wording under ESRS G1 paragraph 33 d) should revert to its previous form, as companies should be required to disclose when they have used representative sampling to calculate average time taken to pay an invoice.

- Finally, the European Commission should expressly allow companies to omit and/or estimate information across all sustainability areas, particularly where sector-average data is not publicly available rather than inferring fault of the company for not being able to collect such information. ESRS 1, paragraph 69 should be amended as follows:
  'There are circumstances where the undertaking **either** cannot collect the information about **its** upstream and downstream value chain as required by **paragraph 63** after making reasonable efforts to do so, **or where such information is unavailable**. In these circumstances, the undertaking shall estimate the information to be reported about its upstream and downstream value chain, by using all reasonable and supportable information, such as sector-average data and other proxies.'

6. Simplify requirements for entity-related reporting requirements and disaggregation

It is positive that the European Commission makes it voluntary to disclose whether material positive impacts on an undertaking's own workforce occur in specific geographic locations. Similarly, the draft ESRS follow a more risk-based approach when disclosing information about value chain workers, affected communities and consumers and/or end-users possibly impacted by an undertaking.

However, requiring an extreme degree of granularity, particularly in entity-specific disclosures and geographic location/geocode datapoints, poses an excessively onerous burden for reporting entities. Navigating these disclosures would be particularly challenging for non-EU parent companies / groups whose affiliates and value

chain are less likely to be subject to the EU rules and therefore less likely to have this information readily available without significant cost.

Several of the datapoints would require an unnecessary level of disaggregation of specific geographic locations or geocodes (far beyond requirements of financial disclosures) and should be removed. Disaggregating information by geography would also provide limited value for integrating this information into other reporting formats, where information is often provided at a consolidated level.

For example, the draft ESRS continue to require undertakings to disclose whether they have considered geospatial coordinates when assessing climate-related physical risks (ESRS E1, AR 12 and AR 14) nor have the disaggregation requirements when disclosing locations of significant assets at material risk been reduced or when listing locations where pollution is material to operations and the value chain. Generally, companies should have the flexibility to report on an aggregated basis and/or to utilise estimations on all of the standards, where appropriate, taking into account the quality and nature of information reasonably available to the undertaking.

Furthermore:

- the European Commission continues to require the total amount of GHG removal and storage to be broken down by removal activity- (ESRS –1 - paragraph 59); and
- the European Commission draft proposal does not allow for aggregate Scope 1, 2 and 3 and total GHG emission disclosures for consolidated accounting groups.

If deletion of data points or simplifications cannot be achieved, the European Commission should consider phase-in provisions to allow for undertakings to set up a reporting infrastructure on such a detailed level.

Considering that even readers of financial disclosures struggle with information overload, the required level of detail could be overwhelming and would not add value.

7. Facilitate greater consistency with international standards

The ESRS draft references international standards or disclosure rules which are being brought in or subject to revisions. The European Commission should facilitate greater alignment between international standards and the ESRS.

With regard to the references to the International Organization for Standardization's (ISO) standards, the European Commission should remove the year reference to the ISO standard whenever they are mentioned or provide for a dynamic reference (ie in ESRS 1 – AR 30 and anywhere else it occurs). For example, 'ISO 14064-1:2018' should be written as 'ISO 14064-1'.

Generally speaking, undertakings should be encouraged to use the most recent and up-to-date standards as reference points. If an ISO standard is updated, then the undertaking should be able to use the latest version, although not immediately be required to do so.

Similarly, the ESRS references the GHG Protocol and standards in several areas. The GHG Protocol is currently undergoing a revision, and once this is completed companies should be free to use the updated versions. The European Commission should take account of this by for example, deleting reference years where possible (instead of specifying 'version 2004' of GHG Protocol Corporate Standard or 'version 2011' for GHG Protocol Corporate Value Chain (Scope 3) Accounting and Reporting Standards).

There are also the following consistency issues with GHG:
ESRS E1 – AR 40 should include a reference to GHG Protocol Scope 2 Guidance, and AR 47 should include a reference to GHG Protocol Scope 3 Calculation Guidance. In respect to offsets, the GHG Corporate Standard

does not require companies to conduct any value or quality assessment to identify 'high standard'. The European Commission should consider alignment. The GHGP Corporate Value Chain (Scope 3) Standard requires separate reporting of each of seven greenhouse gases for Scope 1 and Scope 2 and allows for aggregation of the greenhouse gases (in GWP/CO2e metrics) for Scope 3 reporting. The ESRS should consider following this approach.

The European Commission should also seek alignment where possible with climate-related disclosure rules in other jurisdictions, such as the rules proposed by the SEC (SEC Rules) under which many EU-based and other CSRD reporting entities will be required to report.

International Financial Reporting Standards (IFRS) S1 and S2 were released on 26 June 2023. It is understood that the European Commission and the ISSB have worked together to ensure coherence and alignment between the relevant ESRS as far as possible in the areas where there is direct overlap. The short deadlines only allowed for a limited analysis of this alignment. Interoperability of the ISSB standards with the ESRS is important. Since the publication of the draft ESRS by EFRAG in November 2022, there has been significant progress made in achieving further alignment, which is appreciated. We strongly encourage the European Commission and the ISSB to provide further clarity in explaining how to navigate between the ISSB and the ESRS climate requirements and would urge the Commission and ISSB to publish a correspondence and alignment table as soon as possible. Furthermore, the European Commission should make further adjustments to take into account the version published on 26 June.

Based on this first limited analysis, whilst a considerable amount of work appears to have been done to align the two concepts of 'financial materiality' contained in the ESRS and the ISSB standards, the financial materiality test in the ESRS appears to be broader than that of the ISSB because of the wider range of stakeholders which the entity might be required to consider for the purposes of identifying whether information is material. This would result in companies needing to undertake entirely separate materiality assessments to apply ESRS and the ISSB Standards – even for the non-impact related aspect of the test. Aligning the ESRS and ISSB financial materiality tests would provide a significant simplification for companies.

The ESRS' references to IFRS are needed to secure a future pathway to global alignment. Furthermore, all IFRS references should be expanded to 'other equivalent accounting standards' to ensure inclusion of further international and national global developments in this space. Further efforts to drive towards alignment and practical guidance for those subject to reporting under these regimes would be welcome. The European Commission should pursue its analysis of 'deemed equivalent' reporting standards to the ESRS in an expedited manner. The specifics and format of an 'equivalent' consolidated management report still need to be clarified, especially to ensure that this enhances the efficiency of non-EU parent companies which are subject to concurrent and potentially conflicting standards and timelines, over potentially different scopes of the company's group, which may come with significant legal liability based on disclosure location.

It is important that ESRS include provisions to ensure that cross referencing or digital tagging is available to reduce the risk of duplicative reporting – within ESRS itself – and with international standards, for instance, where the ISSB is developing its own 'digital tagging.' A coherent, coordinated and interoperable approach is not only important for less administrative burden but also for accurate and easily accessible information for all stakeholders.

8. Provide further clarity and proposals on specific disclosures requirements

In ESRS 1:

- Paragraph 34: We recommend deleting the following language: 'and/or the needs of users whose principal interest is in information about the undertaking's impacts' which was added by the European Commission, as it expands the scope of this provision in a manner that is overly broad and creates uncertainty.

- Paragraph 41: This provision should be deleted. Since ESRS discuss in detail what is 'material,' ESRS should not incorporate principal impacts as material impacts; materiality should be determined within the ESRS. 'Principal' remains undefined, and its inclusion could lead to inconsistencies and confusion.

- Paragraph 43 and ESRS 1 Appendix A AR 12: The European Commission should include changes of the concept of 'impact materiality' which have been implemented throughout the whole ESRS. We do not agree with the change to 'connected to/with' from the previous term 'applicable to' and 'impacts directly linked to' (for paragraph 43 and AR 12, respectively). Likewise, the addition of 'and value chain, including through its products and services, as well as through its business relationships' because it is overly broad and creates vagueness on causation. Similarly, the 'useful to investors' language should be reinserted in paragraph 48, and the ESRS should revert back to 'or are likely' to 'could reasonably be expected' in paragraph 49.

- Paragraph 47, 48 and 50-51: The European Commission should include changes to the concept of 'financial materiality'. The European Commission has made great efforts to bring this definition closer to the ISSB's definition of financial materiality. Nevertheless, the European Commission should fully align both definitions (ie information that if omitted could reasonably be expected to influence decisions that primary users of general purpose financial reports make on the basis of those reports). As stated above, at the moment, the ESRS application of the financial materiality assessment seems to contemplate a broader set of stakeholders than information which would be material for 'primary users of general purpose financial reports', by stating that the assessment '**includes, but is not limited to,** the identification of information that is considered material for primary users of general-purpose financial reporting'. Where these two definitions do not align, companies which report under both sets of standards would be obliged to conduct separate financial materiality tests, the results of which may lead to slightly different results and therefore separate reporting. It is far more relevant to consider the perspectives of this broader set of stakeholders for the impact materiality test than for the financial materiality test, where the perspectives of investors, lenders and other creditors (ie the primary users) ought to be the priority.

- Paragraph 125: While the addition of the word 'significant' to this provision is welcome, undertakings should be given the option to tie back to financials rather than providing this level of prescriptive data. The following amendment should be incorporated: 'In the case of information not covered by paragraphs 123 and 124, the undertaking ~~**shall**~~ **may** explain, based on a threshold of materiality **and if relevant or helpful to understand the disclosure**, the consistency of significant data…'

ESRS E1

- Paragraph 30, 34, 41, 51 and 54, AR 46/47 and 4;

- Paragraph 59 (a): In general, the detailed information listed is especially onerous for undertakings and provides limited extra information to the stakeholders. The text should be amended to make clear that disclosure should cover 'the total amount of GHG removals and storage in metric tonnes of CO_2 equivalent disaggregated and separately disclosed for the amount related to the undertaking's own operations and its value chain; ~~**and broken down by removal activity**~~';

- AR 42: In some cases, disaggregating information in high impact sectors may be reasonable. The European Commission should specify that this requirement only applies to high climate impact sector and revert to prior language (may vs shall). The proposed amendment is '**in line with ESRS 1 chapter**

3.7, undertakings operating in high impact sectors ~~the undertaking~~ shall disaggregate information on its GHG emissions as appropriate. For example, the undertaking may disaggregate its Scope 1, 2, 3, or total GHG…'.

ESRS E2

- AR 9: Several of the datapoints require an unnecessary level of disaggregation of specific geographic locations or geocode and should be removed. Amendment proposed: Delete the following language '**~~a list of site locations where pollution is a material issue for the undertaking's operations and its value chain~~**;'

- AR 15 and AR 18: Several of the datapoints require an unnecessary level of disaggregation of specific geographic locations or geocode and should be removed. Amendment proposed: Delete reference to 'site-level'.

ESRS E3

- Paragraph 11: The revised disclosure refers to water treatment and prevention, and abatement of water pollution. This is an addition to the EFRAG draft and should be deleted.

ESRS E4

- Paragraph 17 (b): Disclosing information by site could reveal exact location of site, which is highly confidential due to security risks. Disclosures should not risk confidential information, particularly those related to security. The European Commission should add the possibility of aggregating sites with similar types of impact. Proposed amendment: '**an aggregated** list of material sites based…'

ESRS E5,

- It is very challenging to report material resource inflow as it will be extremely hard to calculate for component level materials (reused and recycled), given some companies' product portfolio (subparagraph c) and for the percentage of biological materials to manufacture products/services and packaging (sub-paragraph b). Clear definitions are needed to set up a strong data gathering system for such information (paragraph 2 subparagraph (a)). 'Identification of the physical flows of resources' is unclear and vague; it does not specify how far back in the supply chain the data should be gathered and would not allow for accurate reporting (paragraph 5). The European Commission should include the following amendment: 'business as usual to a circular economic system, this [draft] Standard relies on the identification of resources, materials and products physical flows **directly procured** by the undertaking through Disclosure Requirement E5-4 Resource inflows and Disclosure Requirement E5-5 Resource outflows'.

- The reference to 'impact, risks and opportunities' does not specify the type of risks, eg if related to environmental, health, societal, etc. This leads to a large margin of error and interpretation of the data to be gathered, hindering the goal of reliable and comparable disclosures (paragraph 11 subparagraph (a)). The European Commission should include the following amendment: 'the methodologies, assumptions and tools used to screen its assets and activities in order to identify its actual and potential **social** risks in its own operations and value chain **for key materials**'.

- The information requested in paragraph 32, subparagraph (b) would be extremely hard to calculate and therefore needs guidance that is as accurate as possible in order to avoid inaccuracy and incomparability of data.

- In paragraph 35 subparagraph (a), it is hard to identify first use. For data to be accurate and comparable, a clear and detailed definition of 'first use' should be provided.

- The European Commission should align the definition of 'substance of concerns' with the provisions under existing regulations, such as REACH and the Restriction of Hazardous Substances Directive to avoid confusion and regulatory uncertainty (7b).

ESRS S1 and S2

- Further flexibility is needed in terms of approach, including relevant metrics to account for different labour legislation (including rights and benefits) across Member States and outside of the EU with respect to own workforce who may be employed by an EU undertaking in scope but working in a non-EU state, and some value chain workers. For example, the definition of 'own workforce' can extend to non-employees.

- Requirements with respect to privacy rights are duplicative and unnecessary given mandatory rules relating to privacy.

- In the light of the Corporate Sustainability Due Diligence Directive (expected to be implemented in Members States by 2027), the European Commission should consider simplifying the requirements on undertakings in particular with respect to material risks identification and mitigation.

ESRS S4

- Paragraph 12: The European Commission should remove the example of major privacy breaches from ESRS S4, paragraph 12, as it is potentially inaccurate and confusing. By definition, a major privacy breach would not impact a specific group of consumers and a disclosure pertaining to 'all affected consumers and/or end users' would not be meaningful.

9. Support implementation through guidance and restrict future sector-specific standards to a limited set of alternative or additional datapoints

The European Commission's intention to set up an interpretation mechanism is positive, as is its request to EFRAG to develop further guidance for ESRS reporting, in particular with the assistance of legal professionals trained in corporate reporting/structures. It is hoped that the new system will continue to focus on the reporting requirements' feasibility and efficiency and allow for regular input from stakeholders that may have implementation suggestions or questions, which could be made available to the public. It will be important to streamline questions and types of information required and provide clear guidance to Member States on how to implement the Directive. This will ensure consistency and minimise diverging requirements, thus advancing comparability and optimising reporting efficiency.

EFRAG is understood to be working on guidance about conducting the double materiality assessment. This material should be swiftly shared with all stakeholders. Guidance from the European Commission with examples and practical case studies would be welcome in order to make the requirements more accessible. We would also welcome guidance on value chain matters. In relation to the format of the guidance, we would welcome the issuance of guidance with worked examples and practical case studies, to make the requirements more accessible to relevant undertakings.

Companies need time and resources to prepare. Significant financial and human resource investments are for companies to assess and implement the ESRS' reporting requirements. The resource demands would be further compounded by uncertainty around when the sector specific as well as third-country reporting standards would be finalised.

EFRAG and the European Commission should accelerate the timetable and transparency with respect to the proposed work plan for the third-country standards and for the set of sector specific standards initially identified by EFRAG and/or provide for a phased-in approach to implementation for in-scope entities. Considering the large amount of data already requested, the development of sectoral standards should be restricted to a limited set of necessary alternatives or additional datapoints needed to translate reporting requirements to these

specific sectors. Any such alternative or additional datapoints should be justified either because there is a more appropriate industry-specific metric already existing elsewhere or because the horizontal standards turn out to be not entirely suitable for certain industries.

It is positive that EFRAG is establishing advisory panels for the financial sector to contribute to the sector-specific standards in order to gain sectorial expertise. Contributing expertise should not be coupled with nationality; many companies work with a global workforce. The European Commission should ensure that EFRAG calls are not coupled to EEA-nationality to enable contributions from all sectors and backgrounds. AmCham EU stands ready to contribute its experience and expertise to the ongoing work.

Conclusion

AmCham EU fully supports regulatory efforts to provide a reliable framework for companies to report on sustainability. Along with positive improvements in the new draft ESRS, the Commission should consider the concrete proposals highlighted in this paper to further simplify the standards while achieving the objectives of the legislation.