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: European Banking Federation

1. General comments

We welcome the European Commission's efforts to further enhance the European Sustainability Reporting Standards (ESRS) developed by the EFRAG in the attempt to reduce reporting burdens for undertakings and to increase interoperability with the global standards.

However, we are concerned about the amendments related to the materiality assessment as proposed by the European Commission which, in our view, contradict the level 1 text as well as the overall spirit of the Directive.

In particular, we consider the following Recitals not to be reflected in the ESRS proposed by the European Commission:

- *(41) Sustainability reporting standards should be coherent with other Union law. Those standards should in particular be aligned with the disclosure requirements laid down in Regulation (EU) 2019/2088, and they should take account of underlying indicators and methodologies set out in the various delegated acts adopted pursuant to Regulation (EU) 2020/852, disclosure requirements applicable to benchmark administrators pursuant to Regulation (EU) 2016/1011 of the European Parliament and of the Council (25), the minimum standards for the construction of EU Climate Transition Benchmarks and EU Paris-aligned Benchmarks, and of any work carried out by the EBA in the implementation of the Pillar III disclosure requirements of Regulation (EU) No 575/2013.*

- *(54) To meet the information needs of users in a timely manner, and in particular given the urgency to meet the information needs of financial market participants subject to the requirements laid down in the delegated acts adopted pursuant to Article 4(6) and (7) of Regulation (EU) 2019/2088, the Commission should adopt a first set of sustainability reporting standards by means of delegated acts by 30 June 2023. That set of sustainability reporting standards should specify the information that undertakings should disclose with regard to all reporting areas and sustainability matters, and that financial market participants need to comply with the disclosure obligations laid down in Regulation (EU) 2019/2088*.

With the draft ESRS Delegated Act published by the EC, companies will only be required to disclose the information that is material on the basis of their individual materiality assessment (with the exceptions of ESRS 2 General Disclosures).

This provision will put financial institutions in a difficult situation due to incoherences between their reporting requirements and companies' reporting requirements. On the one hand, non-financial companies have the option to not include information on topics such as their climate-related risks and impacts, or on certain Principle Adverse Impacts (PAI) [as defined by Regulation (UE) 2019/2088 (thereafter SFDR)] in their sustainability statements if these are deemed to not be material. On the other hand, financial institutions, and in particular banks, are required to collect and report climate-related information on their counterparties, whether the topic is material or not (under Pillar 3 ESG, as defined by Regulation (EU) No 575/2013 and under the SFDR).

Financial institutions should be able to find the information in the sustainability statements of their counterparties to comply with their own reporting and disclosure requirements. Financial institutions cannot be expected to request data from the substantial number of counterparties on a bilateral basis, which would represent a significant burden.

In order to maintain coherence between reporting standards and obligations under Union law, we strongly encourage the European Commission to require, at a minimum:

- key climate disclosure indicators and topics, including Scope 1, 2, and 3 GHG emissions, climate targets and transition plans;
- key environmental and social disclosures necessary to comply with the SFDR, the Benchmark Regulation and Climate Benchmark Delegated Acts, as well as Pillar 3 disclosure requirements; but also
- reconsider the voluntary nature of certain disclosures (e.g., for biodiversity and own workforce), including on why a specific sustainability topic would not be deemed material.

We have included a detailed list of the disclosure requirements and/or datapoints that are necessary, at the bare minimum, for credit institutions to comply with their reporting requirements (see the **Annex of this document**) and for which we urgently request the removal of the materiality assessment. We would ask for this to be considered also bearing in mind that the CSRD proposes a 3-year phase-in to collect and publish information on the value chain. In this context, some information, for example the scope 3 emissions of banks' counterparties, will in any event not to be published before 2028. Nevertheless, banks are expected to disclose information on their financed emissions (i.e., their scope 3) by June 2024 pursuant to the entry into application of the Pillar 3 ESG reporting. Other regulations, such as the SFDR, will also require financial institutions to collect this information. Having a set of mandatory climate-related datapoints for companies should therefore be considered to ensure that a minimum level of information to be reported by banks is readily available. The list we provide is not, however, exhaustive, but only regards the data needs satisfied by the existing disclosures foreseen in the ESRS draft for which we would ask the removal of the materiality assessment. Banks will require further information to comply with their Pillar 3 reporting (e.g., production metrics that will enable banks to calculate the alignment of eight high emitting sectors to a net zero decarbonation trajectory). This further information will need to be satisfied via the sector-specific standards. In this respect, we ask that the EFRAG and European Commission clearly indicate when these standards will be published and that they make sure they include all information needed by banks to comply with Pillar 3 reporting.

In addition, the requirement to provide a brief explanation when a topic is deemed not material has also been removed, which adds to the potential of undermining the intention of the CSRD and ESRS and addressing the challenge of lack of relevant and material sustainability-related information in the market.

If the materiality assessment in the final ESRS will remain as proposed by the European Commission, hence including the disclosure requirements related to financial sector data needs, this will have to be reflected in the requirements the financial sector is subject to under the SFDR, Pillar 3, and any other future obligations. The financial sector cannot reasonably be expected to retrieve information on a bilateral basis to fulfil its reporting obligations, where the customer has deemed such information to be immaterial. If companies will have the option to consider these datapoints immaterial, the SFDR and Pillar 3 ITS will need to be amended to allow the possibility for banks to exclude such immaterial information.

Moreover, we would also like to include a further reflection for your consideration. Throughout the document the Paris Agreement appears to be aligned with limiting global warming to 1.5°C. However, this is a narrow view of the Paris Agreement's stated objective of limiting global warming and also as specified by the European Commission: "the *Paris Agreement sets out a global framework to avoid dangerous climate change by* ***limiting global warming to well below 2°C*** *and pursuing efforts to limit it to 1.5°C*[1]*"*. Therefore, we suggest that requirements contextualising the Paris Agreement be unambiguously defined as either aligned to 1.5°C warming or more generally to below 2°C warming. Additionally, as 1.5°C warming remains a hypothetical proposition, which may prove to be unachievable with no or limited overshoot, we would kindly urge the European Commission to clarify how it intends to reconcile this issue with the existing requirements to provide realistic strategic disclosures (aligned with limiting global warming to 1.5°C).

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

[1] https://climate.ec.europa.eu/eu-action/international-action-climate-change/climate-negotiations/paris-agreement_en#:~:text=The%20Paris%20Agreement%20sets%20out,support%20them%20in%20their%20efforts.

Given the nature of financial institutions with respect to the ESRS, being both preparers and users of the information disclosed under the standards, we have included a distinction, within the table below, to clarify the nature of each comment (preparer/user).

3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Perspective	Comment
ESRS (All)		Preparer/user	We note the use of the wording "*shall consider*" in various paragraphs of the ESRS. We believe that this wording does not clearly indicate what companies are expected to do and disclose. We advise the European Commission to use the wording proposed in paragraph 18 of ESRS1: "*shall disclose*" or "*may disclose*" and replace or delete all the "*shall consider*" when regulating the content of disclosures.
ESRS 1	*Chapter 3.2, paragraphs 30 & 31*	Preparer	More granular and clearer guidance on how undertakings must conduct the materiality assessment is needed. The information already included in "*Appendix E: Flowchart for determining disclosures to be included*" provides some guidance on how undertakings should report on their materiality. However, no clear guidance is given on how this assessment should be performed. We suggest the ESRS to include further guidelines on the latter in order to facilitate undertakings' identification of a suitable materiality assessment methodology. These could include threshold levels, scales of severity and other criteria. Metrics and indicators on how to measure (in a quantitative way) materiality would help institutions identify and select material topics.
ESRS 1	*Chapter 3.5*	Preparer	Interoperability between the European and international standard is essential in order to ensure compatibility and reduce the reporting burden for stakeholders operating internationally. In this respect, we see value in having a common baseline with the concept of financial materiality being the same under the two standards. If there are differences between the concept of financial materiality under the two standards (e.g., the different stakeholders being considered under each standard may result in differing financial materiality assessments*), these should be changed to achieve alignment as to avoid the risk of reporting entities having to duplicate their efforts. We encourage the European Commission and ISSB to further coordinate their efforts in this respect to ensure coherence between the standards to the extent possible. We would, moreover, like to call for a mapping highlighting the divergences between the two standards to allow users, preparers and

			regulators to have a shared understanding of the comparability of information for market participants adhering to multiple standards. * The concept of financial materiality under the current ESRS, and if not changed in the final version, would merit clarification to specify how implementation should be foreseen when extending the consideration beyond only investors and to risks and opportunities attributable to business relationships with other undertakings or stakeholders (as defined under paragraph 48 and 49).
ESRS 1	*Chapter 4*	Preparer	Guidance would be appreciated with respect to how due diligence should be conducted vis-à-vis retail and SME exposures. A simplified approach should be envisioned, otherwise an exemption would be appropriate.
ESRS 1	*Chapter 5.1, paragraph 66*	Preparer	The definition provided for value chain and its application to the financial sector requires dedicated guidance. We would propose a clarification on the reporting boundary under the ESRS for credit institutions. This should not be interpreted as an amendment to the definition of ‘’value chain’’ for credit institutions, but of the boundary that should be applicable in the context of the materiality assessment envisioned under the ESRS. <u>Please also note that we are limiting our proposal to the value chain scope applicable to credit institutions.</u> We would propose that credit institutions report on the sustainability impacts, risks and opportunities (IROs) distinguishing between the two streams of their value chain described hereunder: 1. Own procurement and own operations 2. Financial services, and in exact, the exposure to undertakings the credit institution finances and invests in reflected as assets in the credit institution’s banking book. These assets are loans, advances, debt securities and equity holdings. For **own procurement and own operations**, credit institutions should report their sustainability IROs on the basis of the definition of ‘value chain’ provided in ESRS 1. For **financial services**, credit institutions should exclusively assess and disclose the sustainability IROs related directly to their financed entities. The requirement should not extend to reporting the financed entities’ up- and downstream value chain.

			We would welcome the creation of a dedicated workstream under the EFRAG, which should involve expert practitioners from the banking sector, to further elaborate clear guidance on credit institutions' value chain reporting under the ESRS.
ESRS 1	*Chapter 7.2, paragraph 89*	Preparer	Further specifications regarding the use of estimates would facilitate comparability of disclosures along undertakings' value chains. We would suggest including: 1) additional guidance on the use of estimates, for example, through the establishment of a hierarchy amongst the different types of estimates used to provide value chain-related information 2) at minimum, guidance on the significant judgements that an undertaking should use to estimate the information that it cannot collect from its value chain partners.
ESRS 1	*Chapter 9.1, paragraph 118f*		For credit institutions, Pillar 3 and Article 8 reporting are based on a prudential perimeter, while the sustainability report (as envisioned by the CSRD) is based on a financial perimeter. Paragraph 118(f) states the following in the context of information that can be incorporated by reference "*public disclosures under Regulation 575/2013 of the European Parliament and of the Council (Pillar 3 disclosures). If the undertaking incorporates by reference information from Pillar 3 disclosures, it shall ensure that the information matches the scope of consolidation used for the sustainability statement by complementing the incorporated information with additional elements as necessary*". We would request that this issue regarding the scope of consolidation be addressed to avoid the duplication of reporting for financial institutions.
ESRS 1	*Chapter 9.1, paragraph 119*	Preparer	Incorporation by reference is too restricted by proposed conditions, thus we would propose removing condition (e) ''*meet the same technical digitalisation requirements as the sustainability statement*''.
ESRS 1	*Chapter 10.2, paragraph 131*	Preparer/user	The phase-in period related to information regarding an undertaking's value chain should consider the progressive enlargement of the scope provided by the CSRD. In particular, listed SMEs will be obliged to publish their data starting from 2029 (on the previous financial year). For this reason, we would ask for an extension of the public-interest entities phase-in period for an additional two years, to allow them to collect the needed information also from their value chain SME counterparties. Moreover, considering the role of credit institutions as "users" of data provided by counterparties for other disclosure obligations (e.g., EU Taxonomy, Pillar 3), we propose that during this phase-in period credit

			institutions be allowed to limit their reporting to the data published by counterparties without having to resort to estimates and proxies (unless they wish to do so). Moreover, we would like to highlight the following inconsistency in paragraphs 131 and 132: Companies are given time to report information on their value chain, i.e., they are allowed to not report any information for the first three years of reporting except for the information listed in appendix B of ESRS 2. We believe there is a slight incoherence between paragraph 132 "*when disclosing metrics, the undertaking is not required to include value chain information, except for datapoints derived from other EU legislation, as listed in ESRS 2 Appendix B*" and the appendix C "*List of phase-in disclosure requirements*". Appendix C clearly states that for the DR E1-6 companies of less than 750 employees can omit information on their scope 3 and their total GHG emissions for their first reporting. Nevertheless, this information is listed in appendix B of ESRS 2 and therefore should not be phased in.
ESRS 1	*Appendix E*		Flowchart boxes starting with "Is the topic covered…" and "Has the undertaking established…" appear to be incomplete.
ESRS 2 GOV-3	*Paragraph 13*	Preparer	We propose reconsider the position of the members of the Board of Directors in the scope, given that they have no variable remuneration and only directors' fees; their remuneration cannot, therefore, be linked to climate criteria. We also propose that, for executive directors, their variable remuneration should be linked to ESG criteria in general, and not just to climate.
ESRS 2	*Paragraph 33*	Preparer/user	We support paragraph 33 (ESRS 2, DR GOV-4), which clarifies that due diligence requirements do "*not extend or modify the role of administrative, management and supervisory bodies as mandated by other legislation or regulation*".
ESRS 2	*Paragraph 40 & 41*	User	We note that companies should include a breakdown of their total revenue, by significant ESRS sectors. Nevertheless, to comply with Pillar 3 ESG, banks will need their clients to publish a breakdown of their significant activities by NACE code. We ask the Commission to make the necessary change. In addition, we draw the Commission's attention to the fact that, as things stand, it will be difficult to reconcile the financial data to be published under IFRS 8 with the NACE codes and the future sector specific ESRS (SEC 1). Banks need this information whether the company is exempted to publish the information required by paragraph 4(b), or not.
ESRS 2	*DR SBM-3, paragraph 48*	Preparer/user	Some information that should be disclosed will favour foreign companies. This information concerns, in particular, the financial losses that the company may face, investments planned to limit the negative impact of ESG risks and the identification of ESG opportunities.

			We are referring in particular to **DR SBM-3 - Material impacts, risks and opportunities and their interaction with strategy and business model**. Regarding information on ESG-related opportunities, we believe that it should only be disclosed if it the information is not proprietary and will not favour competitors. We believe that this kind of information should be disclosed by the company during bilateral meetings with its bankers or investors.
ESRS 2	*Appendix B*	Preparer	In the draft delegated act, it is specified under CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT: *Materiality: all standards and all disclosure requirements and data points within each standard will be subject to materiality assessment by the undertaking, with the **exception of the disclosure requirements specified in the "General disclosures" standard.*** Which in that case are understood as now only mandatory. However, given the full Appendix B table in the ESRS 2: "General disclosures" standard it is not clear if all specified datapoints in the table are now mandatory or still subject to materiality assessment. Which either suggests that the Appendix B table that is part of ESRS 2, part of General disclosures standard is fully voluntary (based on materiality assessment for all parameters including Scope 3 emissions and targets) or all is mandatory (based on wording in Draft Delegated Act). In addition, point 32. Under ESRS 1 specifies: *If the undertaking cannot disclose the information prescribed by either the Disclosure Requirements and datapoints in the topical or sector-specific ESRS, or the Minimum Disclosure Requirements in ESRS 2 on policies, actions and targets, because it has not adopted the respective policies, implemented the respective actions or set the respective targets, it shall disclose this to be the case and it may report a timeframe in which it aims to have these in place.* This suggests that all undertakings have the option to omit Disclosure Requirements if they explain and optionally set out the timeframe for future compliance. To be clarified if this is the case for all datapoints or only for policies, actions and targets.

			As it is not fully clear what is mandatory, we suggest unique referencing in the Appendix B table of ESRS 2 with specific phase-in for the specific undertakings or including the wording that is all subject to materiality in all above places. e.g., Undertaking with less than 750 employees may omit in the first year X data points that are highlighted. All other is mandatory from year 0. Highlighting which of the data points are subject to materiality for all.
ESRS E1	*General Comment*	Preparer	Considering that under the EU Taxonomy credit institutions are required to disclose KPIs based on the institution's exposure to economic activities that are aligned, more specification may be useful in order to satisfy datapoints referring to turnover/capex with respect to the EU Taxonomy.
ESRS E1	*Paragraph 13*	Preparer	We propose reconsidering paragraph 13: 1) as members of the board are not subject to a salary, but only receive fees
ESRS E1	*DR E1-1, paragraph 16c*	Preparer	Investments and funding supporting the implementation of the transition plan. Guidance would be appreciated on how this applies to a financial institution (e.g., would this refer toIT costs or FTE costs.)
ESRS E1	*DR E1-3, paragraph 29*	Preparer	For the disclosure of climate change mitigation and adaptation actions and the resources allocated for their implementation, guidance would be appreciated on how these concern financial institutions and on the interpretation of 30a in terms of whether and how to consider direct or indirect approach for nature-based solutions. We would appreciate a clarification as to whether financial institutions are expected to explain efforts for environmental indirect impacts as well as direct ones.
ESRS E1	*DR E1-4, paragraph 35a*	Preparer	GHG emission reduction targets shall be disclosed in absolute value. That is not in line with e.g., SBTi which doesn't require absolute value. We would recommend foreseeing the disclosure of both the absolute value and percentage.
ESRS E1	*DR E1-4, Paragraph 35. b*		Under ESRS E 1 point 35. B) it is specified: "*The GHG emission reduction targets shall be gross targets, meaning that the undertaking shall not include GHG removals, carbon credits or avoided emissions as a means of achieving the GHG emission reduction targets*". Since Scope 3 targets by definition incorporate information from the value chain (clients' and suppliers' emissions where material), this indicates the requirement exclude clients' and suppliers' GHG removals, carbon credits and avoided emissions. In the absence of information where clients and suppliers are not disclosing separately gross GHG emissions and their offset / removals / carbon credits cancellation, it should not be incumbent on the reporting entity to

			proxy or estimate this information as this would undermine the comparability and accuracy of the information. Requesting the information bilaterally would significantly increase the reporting burden both for financial institutions and non-financial companies or lead to reporting errors.
ESRS E1	*DR E1-4, AR24*	Preparer	It is challenging for financial institutions to disclose absolute Scope 3 emissions associated with targets, as Scope 3 emissions for the financial industry are influenced by many factors not always related to sustainability and have lower correlation to carbon intensity compared to other sectors. More concretely as for Scope 3 FIs look through exposure times absolute emissions divided by EVIC (Enterprise Value Including Cash), when available, which can change according to market conditions of the shares of a company. However, actual amounts of absolute emissions for the most material carbon intensive sectors for which have been set can be disclosed. FIs ask EFRAG that this is adjusted for disclosures of banks' targets to be only carbon intensity.
ESRS E1	*DR related to ESRS 2 SBM-3, Paragraph 19.a* *p. 72-73*	Preparer	"*The undertaking shall describe the resilience of its strategy and business model in relation to climate change. This description shall include:* a. *the scope of the resilience analysis;*" Clarity would be appreciated on which are the expectations around the typical input components and results of a resilience analysis.
ESRS E1	*DR related to ESRS 2 IRO-1, Paragraph 20.b.ii and 20.c.ii* *p. 73*	Preparer	"*b.* ***climate-related physical risks*** *in own operations and along the* ***value chain****, in particular:* *i. the identification of climate-related hazards, considering at least high* ***emission*** *climate* ***scenarios****; and* *ii. the assessment of how its assets and business activities may be exposed and are sensitive to these climate-related hazards, creating gross* ***physical risks*** *for the undertaking.* *c.* ***climate-related transition risks*** *and opportunities in own operations and along the* ***value chain****, in particular:* *i. the identification of climate-related transition events, considering at least a climate scenario in line with limiting global warming to 1.5°C with no or limited overshoot; and* *ii. the assessment of how its assets and business activities may be exposed to these climate-related transition events, creating gross* ***transition risks*** *or* ***opportunities*** *for the undertaking*."

			Clarity would be appreciated concerning whether when assessing “gross” transition and physical risks, international institutions should follow the “gross approach” described in Principle 4 of the ECB Guide to the internal capital adequacy assessment process (ICAAP).
ESRS E1	*DR E1-7, Paragraph 61*		"In the case where the undertaking discloses a ***net-zero target*** in addition to the gross ***GHG emission reduction targets*** **(in accordance with** Disclosure Requirement E1-4, paragraph **31)**, it shall explain the scope, methodologies and frameworks applied and how the residual GHG ***emissions*** (after approximately 90-95% of GHG emission reduction **with the possibility for justified sectoral variations in line with a recognised sectoral decarbonisation pathway**) are intended to be neutralised by**, for example,** GHG removals in its own operations and value chain.” Clarity would be appreciated as to where the 90-95% level comes from in relation to explaining the residual emissions.
ESRS E1	*Paragraph 67*	User	We advise the Commission to change the wording of point (c) of paragraph 67: “*The location of significant assets at material physical risk*”. We believe that the word “*significant*” is not precise enough and could lead to various interpretation, it should either be clarified or deleted.
ESRS E1	*DR Related to ESRS 2 IRO-1, AR 12 (c)*		“*When disclosing the information on the processes to identify and assess physical risks as required under paragraph 20(b), the undertaking shall explain whether and how:* *(c) it has assessed the extent to which its assets and business activities may be exposed and are sensitive to the identified climate-related hazards, taking into consideration the likelihood, magnitude and duration of the hazards as well as the geospatial coordinates (such as Nomenclature of Territorial Units of Statistics- NUTS for the EU territory) specific to the undertaking’s locations and **supply chains**; …*” International institutions will be assessing chronic physical risks for the first time under the CSRD and need time to develop approaches, methodologies and datasets. It is reasonable to request chronic physical risk assessments for own operations and direct clients using the EBA Pillar 3 ITS Template 5 approach, but international institutions will be disproportionately disadvantaged if they are also required to assess chronic physical risks for their supply chains at the same time. It is requested that physical risk supply chain impact assessments are subject to a 3-year phase in period to allow for the development of assessment approaches, methodologies and datasets.

ESRS E2	*DR related to ESRS 2 IRO-1, AR 1, p. 113*		The reference to the TNFD has been removed from E2. Clarification would be appreciated as to whether there still is an expectation that the TNFD still be used as a guide, once the initiative has been finalised.
ESRS E4	*DR related to ESRS 2 IRO-1, AR6*		"*The undertaking shall* ***assess the materiality of biodiversity and ecosystems in its own operations and its value chain, and may*** *consider conducting its* ***materiality*** *assessment in line with the first three phases of the LEAP approach: Locate (paragraph AR 7), Evaluate (paragraph AR 8) and Assess (paragraph AR 9)", Prepare and report (paragraph AR 10)* The reference to the TNFD has been removed from E4. The LEAP approach has remained in the document but the definition could be better articulated. We suggest the additions shown *above*.
ESRS S1	DR S1- 10 Paragraph 70	Preparer	*''If not all its employees are paid an adequate wage in line with applicable benchmarks, the undertaking shall disclose the countries where employees earn below the applicable adequate wage benchmark and the percentage of employees that earn below the applicable adequate wage benchmark for each of these countries.''* Referring countries, we ask to add **in which it has significant employment, defined as at least 50 employees by head count representing at least 10% of its total number of employees** (as in ESRS S6 and ESRS S8).
ESRS S1	*DR S1-11, paragraph 74*	Preparer	Parental leave for both fathers and mothers are becoming more normative. The indicator should not be restricted to maternity leave. We suggest changing "*maternity leave*" with "*parental leave*" for inclusion.
ESRS S1	DR S1 – 11 Paragraph 75	Preparer	*If not all of its employees are covered by social protection in accordance with paragraph 72, the undertaking shall in addition disclose the countries where employees do not have social protection with regard to one or more of the types of events listed in paragraph 72 and for each of those countries the types of employees who do not have social protection with regard to each applicable major life event.* When referring to countries, we ask to specify a perimeter as described in ESRS S1-6 and S1-8
ESRS S1	DR S1-16 Paragraph 97a	Preparer	*The gender pay gap, defined as the difference of average pay levels between female and male employees, expressed as percentage of the average pay level of male employees.*

			1. It is important that the primary and secondary discipline provide the same indicators. For example, according to EBA guidelines on sound remuneration policies under Directive 2013/36/EU, it could be used this provision: ***"gender pay gap defined as the difference between the average gross hourly earnings of men and women expressed as a percentage of the average gross hourly earnings of men"*** **In other words, it should be clear what method is used to calculate the gender pay gap: (average remuneration of men-average remuneration of female)/average remuneration of male**. 2. The DR refers to gross hourly earnings, which is not an indicator that is always followed by banks for employees whose working time is determined on the basis of days rather than hours of work. Annual gross salary would be a better proxy as it is used by most institutions, see p (§92, p17). Moreover, it would be more relevant to limit the disclosure at the single country where the parent company is implemented, because considering the gender pay gaps at the global level of the institution combining national differences countries where a bank is present may not accurately depict whether or not the compensation policy of the company is gender neutral. Indeed, depending on the geographical presence of companies, the global gap could be biased, as the countries do not have the same levels of cost of living and therefore of wages.
ESRS S3	*General Comment*	Preparer	It could be useful to provide a more specific definition of ''affected communities'' ("*People or group(s) living or working in the same area that have been or may be affected by a reporting undertaking's operations or through its value chain. Affected communities can range from those living adjacent to the undertaking's operations (local communities) to those living at a distance. Affected communities include actually and potentially affected indigenous peoples*."), in particular for financial undertakings for which communities may result in a material aspect for reporting.
ESRS G1	*General comment*	Preparer	Guidance would be useful to help better understand "materiality" with respect to this standard.
ESRS G1	*ESRS G1-4, Paragraph 25*	Preparer	The standard requests the disclosure of detailed information on a voluntary basis about confirmed incidents concerning employees or business partners related to corruption or bribery as listed in paragraph 25. Should such detailed sensitive and confidential information be published, we believe it would be at odds with national and European laws, such as the principle of presumption of innocence, legal provisions prohibiting communication on ongoing cases, in application of the principle of the secrecy of the investigation in criminal

			matters, and labour law where employees are concerned. Concerning relations with clients, banks are subject to banking secrecy, which entails penalties in the event of a breach. Contracts with suppliers may also contain contractual confidentiality clauses providing for penalties in case of breach.
ESRS G1	*ESRS G1-4, Paragraph 26*	Preparer	Disclosures related to incidents in the entity's value chain "*where the undertakings or its employees are directly involved*" should be reported only if the incidents directly involving its employees are justly known to the entity.
ESRS G1	*G1-4 29b/AR 9*	Preparer	Loans are included in "financial contributions" under "political contribution": we reckon they could be not included as they might be granted in the context of a commercial relationship.
ESRS G1	*ESRS G1-5, Paragraph 29 i, AR 10*	Preparer	Reporting on in-kind political contributions made indirectly: businesses do not necessarily endorse or even know about political contributions made by organisations to which they have made a contribution – we suggest removing "indirectly" or amending as follows: AR 10. "*Indirect political contribution' refers to those political contributions made through an intermediary organisation such as a lobbyist or charity, or support given to an organisation such as a think tank or trade association linked to or supporting particular political parties or causes…*": - <u>"*when the contribution is made by the intermediary organisation **in the name of** the undertaking*"</u> <u>OR</u> - <u>"*when the undertaking is represented on the management body of the intermediary organisation" (i.e., is able to influence the positions/decisions taken by the organisation)''.*</u>
ESRS G1	*ESRS G1-5, AR 12*	Preparer	Lobbying expenses and management fees: although this is not obligatory it needs to be practicable and to ensure relatively comparable reporting from one company to another. **-Total expenses**: a scope should be defined, e.g., the reporting could target expenses made: - <u>by the company itself</u> (i.e., not by its subsidiaries/branches) ; - <u>on the main topics covered by its lobbying activities</u> (in coherence with para 29c). **- Amount paid for membership to lobbying associations** Scope: the term ''*lobbying associations*'' should be defined, e.g., "*associations representing the interests of the undertakings, i.e., trade associations of the industry it belongs to*" + "*when the undertaking is represented on its management body*".

			Membership fees to lobbying associations cover not only expenditures in the area of policy influence but also numerous other activities conducted by these associations: social dialogue, media relations, organisation of trainings and events for their members, economic research, relationships with consumer associations, financial education, publishing activities, etc. Thus, the amount to report should not be the total amount of the membership fees paid to these organisations but a percentage of it, corresponding to actual lobbying expenditure.

4. Specific comments on Annex II

Defined term	**Comment**
CRR	The text in the annex refers to 757/2013, however the correct No. for the CRR is 575/2013.
CSRD	The referred act in this cell should rather be "*DIRECTIVE (EU) 2022/2464 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting*" since the current referred act is the "Accounting directive" which the CSRD among others amend.
CO2eq	We would suggest inserting the acronym CO2eq to the list, referencing CO2-equivalents.
Carbon dioxide (CO2) equivalent (eq)	We suggest defining CO2 and CO2eq separately to not confuse the two terms.
Climate change mitigation	Typo: "The process of reducing GHG emissions and holding the increase in the global average temperature to 1,5 °C above pre-industrial levels, in line with the Paris Agreement."
Datapoint	We would see value in adding the definition of ''datapoint'', which is currently not included in Annex II.

Annex – Financial institution information needs (Pillar 3 ESG & SFDR)

With specific reference to ***alignment between the ESRS and Pillar 3 reporting****, it will be important that the following quantitative information disclosures* ***remain in the final version of the ESRS as mandatory data points (not subject to materiality assessment)*** *in order to ensure banks' possibility to report under Pillar 3:*

1. *Breakdown of total revenue by significant ESRS sectors (draft ESRS 2)*
2. *Statement indicating whether the company is excluded from the Paris Aligned Benchmarks (draft ESRS E1)*
3. *Statement indicating, together with the related revenues, whether a company is active in the fossil fuel (coal, oil and gas) sector, i.e., it derives revenues from exploration, mining, extraction, production, processing, storage, refining or distribution, including transportation, storage and trade of fossil fuels (draft ESRS 2)*
4. *Breakdown of the carrying value of companies' owned real estate assets, or at least buildings used as loan collaterals, by energy-efficiency classes (draft ESRS E1). It is important that the information provided includes both the ranges of energy consumption in kWh/m² and the EPC (Energy Performance Certificate) label class (and not just one of these information as currently required by the draft ESRS E1). Companies should also disclose whether the information provided is an estimate.*
5. *Scope 1, 2, 3 GHG emissions (draft ESRS E1) per subsidiary and consolidated at group level*
6. *Potential financial effects from material physical risks, including the location of significant assets at material physical risk (aggregated by NUTS codes 3 level digit when the asset is localized in Europe or equivalent for assets outside the EU) (draft ESRS E1).*
7. *Information on assets/companies in the value chain that are subject to physical risks is also necessary (draft ESRS 2: "When describing where in its value chain material impacts, risks and opportunities are concentrated, the undertaking shall consider: geographical areas, facilities or types of assets, inputs, outputs or distribution channels").*

On top of the above, banks will need ***additional information to report under Pillar 3 and*** *we would suggest, therefore, that the* ***following disclosures be included either in the sector-agnostic ESRS or in the future sector-specific standards:***

1. *Turnover/revenues segregation with the same level of sectoral granularity as detailed in Template 1 and Template 3 (NACE code digit 2, 3 or 4 depending on the sector)*
2. *Amount of capex and turnover derived from activities aligned with the climate mitigation objective broken down by the NACE codes indicated in template 1.*
3. *% of turn-over/revenues derived from activities excluded from the Paris-aligned Benchmark under the Benchmark Regulation, incl.:*
    - ***Exploration, mining, extraction, distribution or refining of hard coal and lignite*** *(incl. B.05.10 Mining of hard coal; B.05.20 Mining of lignite; C.19.10 Manufacture of coke oven products - EFRAG draft ESRS SEC 1 Coal Mining sector)*
    - ***Exploration, extraction, distribution or refining of oil fuels*** *(incl. B.06.10 Extraction of crude petroleum; B.09.10 Support activities for petroleum extraction - EFRAG draft ESRS SEC 1 Oil and Gas - Upstream and Services sector + C.19.20 Manufacture of refined petroleum*

products; G.47.3 Retail sale of automotive fuel in specialised stores - <u>EFRAG draft ESRS SEC 1 Oil and Gas – from Midstream to Downstream sector</u>)

- ***Exploration, extraction, manufacturing or distribution of gaseous fuels*** *(incl. B.06.20 Extraction of natural gas; B.09.10 Support activities for natural gas extraction <u>EFRAG draft ESRS SEC 1 Oil and Gas - Upstream and Services sector</u> + G.46.71 Wholesale of solid, liquid and gaseous fuels and related products; H.49.50 Transport via pipeline - <u>EFRAG draft ESRS SEC 1 Oil and Gas – from Midstream to Downstream sector</u>; D.35.21 Manufacture of gas; D.35.22 Distribution of gaseous fuels through mains; and D.35.23 Trade of gas through mains - <u>EFRAG draft ESRS SEC 1 Power production and Energy Utilities sector)</u>*
- ***Electricity generation with a GHG intensity of more than 100 g CO2 e/kWh*** *(incl. D.35.11 Production of electricity - <u>EFRAG draft ESRS SEC 1 Power production and Energy Utilities sector)</u>*

4. ***Alignment metrics**, including actual and targeted GHG emission intensity per sector-specific production unit. All companies that operate in sectors listed in Template 3 should be required to disclose carbon alignment metrics. Please see below metrics used to align loan portfolios with the objectives of the Paris Agreement and on which banks are required to fill in Template 3 by June 2024 (including measuring the alignment of each sector with its benchmark IEA NZE2050 scenario):*
    - ***Power***
        - *NACE codes and EFRAG draft ESRS SEC 1 sector: D.35.11 Production of electricity - Power production and Energy Utilities sector Metrics:*
            - ***GHG emission intensity in tons (t) CO_2-e per MWh (at least scope 1 and scope 2)***
            - ***Fuel mix: share of power generation from each fuel source (% of MWh produced from coal, oil, gas, nuclear, renewables)***
    - ***Oil and Gas upstream***
        - *NACE codes and EFRAG draft ESRS SEC 1 sectors: B.06.10 Extraction of crude petroleum and B.06.2 Extraction of natural gas - Oil and Gas - Upstream and Services sector + D.35.21 Manufacture of gas - EFRAG draft ESRS SEC 1 Power production and Energy Utilities sector*
        - *Metrics:*
            - ***GHG emission intensity in tons (t) CO_2-e per mega joule (MJ) (scope 1 and scope 2, scope 3 could also be reported but separately from scope 1 and 2)***
            - ***Absolute scope 3 GHG emissions (present and forward looking). Absolute scope 1 and 2 GHG emissions could also be reported but separately from scope 3.***
            - ***Oil and gas production trend (i.e. targeted volumes of extraction and production)***
    - ***Oil and Gas midstream and downstream***
        - *NACE codes and corresponding EFRAG draft ESRS SEC 1 sectors: C.19.20 Manufacture of refined petroleum products - EFRAG draft ESRS SEC 1 Oil and Gas – from Midstream to Downstream sector + D.35.22 Distribution of gaseous fuels through mains and D.35.23 Trade of gas through mains - EFRAG draft ESRS SEC 1 Power production and Energy Utilities sector*

        - *Metrics:*
            - ***GHG emission intensity in tons (t) CO_2-e per mega joule (MJ) (scope 1 and scope 2, scope 3 could also be reported but separately from scope 1 and 2)***
            - ***Absolute scope 3 GHG emissions (present and forward looking). Absolute scope 1 and 2 GHG emissions could also be reported but separately from scope 3.***
    - ***Coal***
        - *NACE codes and corresponding EFRAG draft ESRS SEC 1 sectors: B.05.10 - Mining of hard coal and B.05.20 - Mining of lignite - EFRAG draft ESRS SEC 1 Coal Mining sector*
        - *Metrics:*
            - ***GHG emission intensity in tons (t) CO_2-e per mega joule (MJ) (scope 1, 2, 3)***
            - ***Thermal coal production trend (i.e., targeted volume of extraction and production)***
    - ***Aluminium***
        - *NACE codes and corresponding EFRAG draft ESRS SEC 1 sectors: C.24.42 - Aluminum production - EFRAG draft ESRS SEC 1 Metal Processing sector*
        - *Metric:* ***GHG emission intensity in tons (t) CO_2-e per ton (t) of aluminium (scope 1 and scope 2)***
    - ***Cement***
        - *NACE codes and corresponding EFRAG draft ESRS SEC 1 sectors: C.23.51 - Manufacture of cement - EFRAG draft ESRS SEC 1 Construction Materials sector*
        - *Metric :* ***GHG emission intensity in tons (t)CO_2-e per ton (t) of cement (scope 1 and scope 2)***
    - ***Iron and Steel***
        - *NACE codes and corresponding EFRAG draft ESRS SEC 1 sectors: C.24.10 - Manufacture of basic iron and steel and of ferro-alloys and C.24.20 - Manufacture of tubes, pipes, hollow profiles and related fittings, of steel and C.24.34 - Cold drawing of wire - EFRAG draft ESRS SEC 1 Metal Processing sector*
        - *Metrics:*
            - ***GHG emissions Intensity in tons (t)CO_2-e per ton (t) of iron and steel produced (scope 1 and scope 2)***
            - ***Scrap Charge as defined by the Sustainable Steel Principles*** *[see sustainable_steel_principles_framework.pdf (climatealignment.org) page 16]*
    - ***Automotive***
        - *NACE codes and corresponding EFRAG draft ESRS SEC 1 sectors: C.29.1 - Manufacture of motor vehicles; EFRAG draft ESRS SEC 1 Motor Vehicles sector*
        - *Metrics:*
            - ***Tailpipe GHG emissions intensity in gCO2e/passenger-km (passenger transport) or gCO2e/km (freight transport)***
            - ***Share of high carbon technologies (ICE) and electric vehicles (EV) sales over total sales***

- *Shipping / maritime transport*
  - *NACE codes and corresponding EFRAG draft ESRS SEC 1 sectors: H.50.10 and H.50.20 Sea and coastal passenger/freight water transport; EFRAG draft ESRS SEC 1 Other Transportation sector*
  - *Metrics:*
    - ***Emissions intensity in gCO2e/passenger-km (passenger transport) or gCO2e/MJ (freight transport)***
    - ***GHG emission intensity of the vessel relative to decarbonization trajectories***

- *Aviation*
  - *NACE codes and corresponding EFRAG draft ESRS SEC 1 sectors: H.51.1 - Passenger air transport and H.51.21 - Freight air transport - EFRAG Other Transportation sector*
  - *Metric:* ***GHG emission intensity in gCO_2-e / per passenger-kilometer***

With specific reference to ***alignment between the ESRS and Sustainable Finance Disclosure Regulation (SFDR) reporting****, in its draft form the ESRS included all information necessary for financial institutions to comply with the SFDR, however,* ***subjecting these to materiality assessment may lead to non-availability of the data and the need to either collect the data bilaterally or use of proxies where possible.***

We therefore believe that it should be mandatory for all companies to explain whether or not they respect the mandatory Principle Adverse Impacts (PAI) included in the Regulation (regardless of the result of their materiality assessment).

We recommend that those indicators remain in the final version of ESRS as mandatory datapoints and that they be disclosed regardless of the results of the materiality assessment. ***The list of PAI indicators required for FIs to comply with SFDR is the following:***

1. *GHG emissions (scopes 1, 2 and 3)*
2. *Carbon footprint*
3. *Monetary GHG intensity (tCO2e/M€ of enterprise value)*
4. *Activities in the fossil fuel sector*
5. *Share of non-renewable energy consumption and production*
6. *Energy consumption intensity*
7. *Activities negatively affecting biodiversity-sensitive areas*
8. *Emissions to water*
9. *Hazardous waste and radioactive waste ratio*
10. *Violations of UN Global Compact principles and Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises*

11. *Lack of processes and compliance mechanisms to monitor compliance with UN Global Compact principles and OECD Guidelines for Multinational Enterprises*
12. *Unadjusted gender pay gap*
13. *Board gender diversity*
14. *Exposure to controversial weapons (anti- personnel mines, cluster munitions, chemical weapons and biological weapons)*

PAI related solely to real-estate investments were not included in the ESRS. Nevertheless, it will be important that companies also disclose those, depending on their sector:

1. *Exposure to fossil fuels through real estate assets*
2. *Exposure to energy-inefficient real estate assets*