

## Written Comments NL

### General remarks

Overall, the Netherlands welcomes the final set of European Sustainability Reporting Standards (ESRS). The Netherlands is in favor of ambitious sustainability reporting standards and underlines the importance of publishing these standards as soon as possible. With regard to reporting obligations, the Netherlands also attaches great importance to its effectiveness and limiting the administrative burden for companies where possible, within what is necessary to achieve the ambitions set out in our sustainability goals.

#### **The Netherlands supports broadening the materiality assessment to all E, S and G topics.**

The materiality assessment ensures that companies only report information on sustainability topics that are relevant to their operations, that either have a potential impact on the company and its stakeholders, or on which the company itself has a potential impact. This contributes to the clarity and quality of reporting, and a better understanding of the company's impact, risks and opportunities.

#### **In our view the standards would improve their usability and transparency when a reporting obligation for companies that do not consider climate, their own workforce and workers in the value chain, biodiversity and circular economy material, to provide an explanation per theme as to why that is the case.**

**The Netherlands furthermore welcomes additional guidance for corporations on their materiality assessments, similarly to financial reporting.** Additional guidance is essential to ensure that the materiality assessment is performed in a rigorous manner. The Netherlands does question the quality of the materiality assessment regarding circular economy, which should only be based on circular economy aspects.

**The Netherlands would like to underline that the disclosure requirements and general disclosures under the cross-cutting standards remain obligatory for all companies under the scope of the Corporate Sustainability Reporting Directive (CSRD).** However, we remain convinced that the topical standards only need to be disclosed based on a materiality assessment.

**The Netherlands furthermore supports following the EFRAG advice regarding mandatory disclosure of transition plans for biodiversity** in case biodiversity is deemed material, in line with the reporting obligation for transition plans for climate. This would not only ensure better availability and comparability of data, but also stimulate companies to address climate change and biodiversity loss in an integral manner. Furthermore, the Netherlands regrets that its earlier suggestions on circular economy have not been sufficiently included in the ESRS proposal by the Commission.

**The Netherlands is of the opinion that the reporting standards should apply to all employees, regardless of their employment status.** In the current proposal, the ESRS S1 standards only apply to workers that are in direct employment ('own workforce') and not to 'people provided by undertakings primarily engaged in 'employment activities''. The Netherlands notes that especially workers that are recruited through these undertakings and are hired on a flexible basis, are vulnerable for fraudulent activities falling under disclosure requirements S1-10 (Adequate wages) and S1-11(Social Protection). Therefore, there should be no distinction between the responsibility of a company for its own employees or employees hired through another undertaking.

**In our view there could be inconsistencies between the ESRS and SFDR, which should be addressed in the ESRS standards or in the upcoming review of the SFDR.** The materiality assessment could, lead to inconsistencies for financial advisors and institutions which have to disclose sustainability related information according to the Sustainability Financial Disclosure Regulation (SFDR).

**Lastly, the Netherlands is strongly in favor of maintaining the proposed phase-in periods as agreed under the CSRD and in the EFRAG advice.** Maintaining the phase-in included in the CSRD ensures harmonization with the NFRD, CSRD and SFDR, improving clarity of definition.

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### Remarks per topic

#### ***Circular economy***

Annex 1, ESRS E5 (Resource use and circular economy), ESRS 2 General disclosures (Impact, risk and opportunity management), IRO-1 (Description of the process to identify and assess material resource use and circular economy-related impacts, risks and opportunities)

AR 2 (p154): "With regard to ESRS E5, phases 1 and 2 rely mainly on the materiality assessments conducted under ESRS E1 (including energy consumption), ESRS E2 (pollution), ESRS E3 (marine resources, water consumption) and ESRS E4 (biodiversity, ecosystems, raw materials). Indeed, circular economy eventually aims at reducing the environmental impact of the use of products, materials and other resources, minimizing waste and the release of hazardous substances and hence at reducing impacts on nature. This application requirement focuses mainly on the third phases of this LEAP approach, while the fourth phase addresses the outcome of the process."

When conducting a materiality assessment on Circular economy, we believe all four phases of the LEAP approach (a, b, c, and d, mentioned under AR 1) should focus on Circular Economy, not only phases (c) and (d). This is needed to ensure the quality of the materiality assessment for this particular topic, Circular Economy.

Hence we propose the following text revision: "~~With regard to ESRS E5, phases 1 and 2 rely mainly on the materiality assessments conducted under ESRS E1 (including energy consumption), ESRS E2 (pollution), ESRS E3 (marine resources, water consumption) and ESRS E4 (biodiversity, ecosystems, raw materials). Indeed,~~ circular economy eventually aims at reducing the environmental impact of the use of products, materials and other resources, minimizing waste and the release of hazardous substances and hence at reducing impacts on nature. This application requirement focuses ~~mainly on the third~~ **on all four** phases of this LEAP approach (**mentioned under AR 1**), ~~while the fourth phase addresses the outcome of the process.~~ **This may be informed by, but cannot be replaced with** the materiality assessments conducted under ESRS E1 (including energy consumption), ESRS E2 (pollution), ESRS E3 (marine resources, water consumption) and ESRS E4 (biodiversity, ecosystems, raw materials).

General comments on ESRS E5 (Resource use and circular economy).

To our regret, our earlier comments (via EFRAG) on the draft standards were not taken on board. This includes attention for microplastics (absent from the text), attention to more ambitious circular strategies in the so-called "R-ladder" in the priority order of the waste hierarchy, and attention to resources use optimization.

#### ***Biodiversity***

##### General requirements (ESRS 1) – general comments and biodiversity-relevant specific comments

33 (and IRO-2, 57):

- Since an undertaking may report but is not required to report on a timeframe explaining when the information still missing will be provided, it will remain unclear to users of the disclosure whether the situation is likely to change. It is unclear how this relates to article 34b addressing "the capacity of the information to meet the users' decision making needs". It is recommended to make reporting on a timeframe mandatory.

AR7:

- "Nature may be considered as a silent stakeholder. In this case, ecological data and data on the conservation of species may support the undertaking's materiality assessment." Good that this is included in the ESRS. However, note that nature will always have a link to the ability of an ecosystem to provide ecosystem services (more biodiverse ecosystems are more resilient ecosystems), thereby creating a link to impacts and dependencies.

AR16:

- It should be made clear what 'Direct exploitation' refers to in the table with sustainability matters covered. Direct exploitation of species, or also of, for example, water? Note that this is defined in different ways by different stakeholders.

AR17:

- AR17 also refers to "information that is available to the undertaking at the reporting date without undue cost or effort". What is meant by "undue cost or effort"?

Appendix C: Disclosure and Application Requirements in Topical ESRS that are applicable in conjunction with ESRS 2 General disclosures

- It is sometimes not fully clear how voluntary disclosures in the topical disclosure ESRS E4 relates to the required disclosures in ESRS 2.

4. ESRS E4 Biodiversity and Ecosystems

4.1 ESRS E4 Biodiversity and Ecosystems – Introduction - general feedback

- Key point. The disclosure on impacts and dependencies, risks and opportunities regarding Biodiversity and Ecosystems is an important step towards getting more and better data available from undertakings, including companies and financial institutions. Getting more and better data is key from the viewpoint of managing direct and indirect (through the value chain) impacts and dependencies and related risks and opportunities. To accomplish this improved data flow, data need to be made available in the whole value chain. Downstream companies and financial institutions depend on the data disclosed by upstream suppliers. The need to use modelled or secondary data instead of primary/company data will depend on the 'weakest link' in the value chain. More modelled or secondary data means a reduction in the level of data accuracy and less detailed action perspectives to manage the risks and opportunities. This also means that phasing-in of disclosures should be as limited as possible (see earlier comments) and the information requested should be clearly defined to allow comparison and aggregation. The feedback below shows that the clarity of what is requested in the various paragraphs can still be improved.

4.2 ESRS 4 Biodiversity and Ecosystems - Detailed feedback paragraphs

Interaction with other ESRS

5:

- Note that the step towards (potential) impacts on biodiversity requires an additional assessment step: pressure-impact modelling. Pollutant A can have a much higher impact than pollutant B when emitted at the same location in equal quantity.

Strategy

Disclosure Requirement E4-1 – Transition plan and consideration of biodiversity and ecosystems in strategy and business model

12:

- Is it clear enough what is meant by strategy and business model? Sales strategy, sourcing strategy, diversification strategy, etc.? If not, this may lead to many different interpretations, hindering comparison between undertakings. Some information is provided in 'Disclosure Requirement SBM-1', article 40 and 42, but this is still limited. Would be good to prescribe or at least provide guidance on what topics to address here.

15:

- Key point. The Netherlands urges to make the reporting requirement about the transitional plan for biodiversity mandatory, in case biodiversity is deemed to be material based on the materiality assessment. Just like the transition plan for climate is mandatory. Steps must be taken, doing nothing should not be an option. According to the Intergovernmental

Platform for Biodiversity and Ecosystem Services, biodiversity loss is at least as great a threat to humanity as global warming, and can lead to serious (financial) risks. It is critical that companies fulfil their responsibility in this regard. A transition plan would furthermore encourage companies to take an integrated look at climate and biodiversity related impacts and dependencies, and consider potential synergies and trade-offs. After all, climate and biodiversity are strongly interdependent. Such an obligation is in line with the Global Biodiversity Framework and EFRAG's advice.

- Furthermore, it should include the actual criteria for transition plans developed by EFRAG, to avoid that companies are completely free to frame what transition means and what to disclose, as this would open doors for greenwashing. Moreover, making it mandatory would support getting more and comparable data of better quality, which is instrumental to support the transition to a nature-inclusive society as well as support the implementation of SFDR (on nature-related and other ESG issues) and meaningfully integrating ESG into investment strategies.
- The EU demonstrated leadership in Montreal at the UN Convention on Biological Diversity COP15, significantly contributing to the adoption of an ambitious Global Biodiversity Framework. Target 15 of the Framework has been described by many as potentially one of the most transformative, as governments have committed to requiring all large businesses and financial institutions to assess and disclose their risks, impacts, and dependencies on nature, through their operations, supply and value chains, and portfolios. Such an ambitious outcome was achieved because of the support from leaders such as the EU and reinforced by more than 400 companies, with combined revenues of \$2 trillion calling to make assessment and disclosure on nature mandatory (<https://www.businessfornature.org/make-it-mandatory-campaign>).

#### Impact, risk and opportunity management

##### Disclosure Requirement related to ESRS 2 IRO-1 Description of processes to identify and assess material biodiversity and ecosystem-related impacts, risks, dependencies and opportunities

16a:

- Note that assessing actual impacts is a challenge, since impacts will often be the result of multiple drivers induced by multiple stakeholders in the same landscape. What are the 'assessment criteria'? Should there be a reference to attribution rules commonly applied by international frameworks like the Partnership Biodiversity Accounting Financials (based on Partnership Carbon Accounting Financials)?

16b:

- Ecosystem services used are not necessarily located at the undertaking's own site (e.g. using water from water catchments far from the production location). Better to speak of dependencies of an undertaking's own production processes and the processes of value chain partners
- What about the dependencies of other stakeholders, like local communities? They are not mentioned here, but will be key to identify to assess transitional risks. See also 16e and 21f.

16eiii:

- "ecosystem services of relevance to affected communities in its own operations". What is meant here? Communities in an undertaking's operations? If so, why this limitation? What about impacts on priority ecosystem services of relevance to communities outside an undertaking's operations?
- What about avoidance first and what if mitigation is not enough? Should an undertaking also report on potential compensating measures, e.g. to take responsibility for a reduction in income by local communities?

16, Scenario analysis, {c} (correct numbering is missing):

- Considering also including expectations of local communities and local experts. This can be very relevant from a location-specific perspective.

17a:

- 'Biodiversity-sensitive areas' should be defined.
- Negatively affect should also read 'potentially negatively affect'. It may not be certain if activities will negatively affect an area, but this can be more or less likely (expectation, potential). In case of actual impact the harm is already done

17ai:

- Key point. Why are only protected areas mentioned? A 'biodiversity-sensitive area' could also be a Key Biodiversity Area which is not protected. See also 22a.
- Key point. P. 135, para 34. Add the wording: 'other effective area-based conservation measures (OECMs)': ...near these protected areas, OECMs, or key biodiversity areas. This is in line with the language used in the GBF and it completes the list of biodiversity-sensitive areas

17aii:

- This is difficult to read. There is an opening bracket before 'Directive', but not a closing bracket? Consider revising the text.

17bii:

- Is this also about dependencies? 17a only refers to negatively affecting biodiversity-sensitive areas. Requiring a breakdown of sites according to impacts and dependencies is confusing.
- Explain 'ecological status'. Does this refer to an official status like 'protected area' or to indicators like the Ecosystem Integrity Index or Biodiversity Intactness Index?
- Explain 'with reference to the specific ecosystem baseline level'. Level of what? The ecological status before impact?
- Explain 'where they are located'. Does this mean GPS coordinates, country or region?

17biii:

- Explain 'specifying the biodiversity-sensitive areas'. The location is already disclosed under 17bii?

17c:

- Note that SFDR does not talk about material negative impacts, just about 'the activities of which cause...'. Maybe remove 'material' or explain?

17d:

- This disclosure is limited to an undertaking's own operations, similar as the requirement in the SFDR. One could argue that this should also apply to threatened species affected in value chains.
- Include the definition of threatened species, for example from SFDR (reference to IUCN red list).

#### Disclosure Requirement E4-2 – Policies related to biodiversity and ecosystems

19:

- Key point. Does 'and/or' mean they can leave out one or more of these topics from their policy? It seems most desirable to have "and".

21c:

- Suggest to separate 'impacts', 'dependencies' and 'risks and opportunities'. This is also In line with the work done by the Taskforce on Nature-related Financial Disclosures.

21d:

- Suggest to also add dependencies here. The term 'significant' is used, instead of 'material'. It will be important to explain the difference.

21e:

- Production 'in'. Managed by the undertaking and/or value chain partners?

22:

- To what extent should also SBTN's Science Based Targets on fresh water and land be referenced here?

Disclosure Requirement E4-3 – Actions and resources related to biodiversity and ecosystems

26:

- To what extent should also information be provided on 'Transformation' related actions (e.g., referred to by SBTN)? Not necessarily part of the mitigation hierarchy, but important from a transition perspective.

26bii:

- Financing effects can also include direct and indirect cost savings or financial benefits. For example, when nature conservation activities are important to the company (like pollination services or water purification). Suggest to include this.

26biii:

- What is meant by 'area', 'type' and 'quality criteria'? Different undertakings may have different interpretation.

Disclosure Requirement E4-4 – Targets related to biodiversity and ecosystems

30a:

- The disclosure shall include whether ecological thresholds and allocations of impacts to the undertaking were applied when setting targets. What is meant by 'allocations of impacts to the undertaking'? Attribution?

30b:

- To what extent should planetary boundaries be referenced in the list of required information as well (even though translating these to the level of an undertaking may be challenging)?

31:

- It is mentioned that the undertaking may disclose whether ecological thresholds and allocations of impacts to the undertaking were applied when setting targets. This seems to be contradictory to 30a, which states that it is mandatory to disclose if ecological thresholds were applied when setting targets.

Disclosure Requirement E4-5 – Impact metrics related to biodiversity and ecosystems change

35:

- Key point. Note that this may result in a 'sector average' land-use depending on the input data of the LCA. Better to ask for actual land-use data for an undertaking's own operation and allow LCA based land-use data in value chains.
- Mention is made of 'or impact on the extent and condition of ecosystems'. This impact can also be linked to impact drivers other than land-use change. However, the disclosure only refers to the disclosure of land-use. Why?

37:

- If the undertaking has concluded that it directly contributes to the impact drivers of land-use change, freshwater-use change and/or sea-use change, it shall report relevant metrics. Because the metrics can be freely selected it will be difficult to compare disclosures by companies. Would it be possible to come up with a set of 'core metrics'? For

example, based on metrics suggested by the Taskforce on Nature -related Disclosures (TNFD) or Global Reporting Initiative (GRI)?

38:

- Why make this optional? The introduction of invasive alien species can an important impact driver and disclosure of how introduction is managed should not be so difficult. There is a lot of knowledge on this already. IPBES is currently compiling this information in its assessment on invasive alien species, including how introduction can be managed. IAS is a key driver of biodiversity loss.

39:

- Why make this optional? The state of species is considered a key part of the Global Biodiversity Framework. Reporting on the presence of threatened species according to IUCN's Red list for an undertaking's own sites can be quite useful (see 39d)

40:

- Why is this not mandatory for a selection of metrics (e.g., starting with 40a) for an undertaking's own operations/sites? By making this mandatory more data become available for more accurate impact assessments.

#### Disclosure Requirement E4-6 – Anticipated financial effects from material biodiversity and ecosystem-related impacts, risks and opportunities

42:

- Sentence is repeated twice.

43:

- What about the financial effects on other stakeholders? The monetary value of changes in ecosystem services can also be quantified (e.g., using the Ecosystem Services Valuation Database) and provides insight in other stakeholders affected and related transitional risks and opportunities. It is recommended to at least refer to the financial effects on other stakeholders.

44:

- Also refer to the methodology used to quantify the effects? Or is this captured under the 'critical assumptions'?

#### Appendix A Disclosure Requirement E4-1

##### Transition plan and consideration of biodiversity and ecosystems in strategy and business model

- Also see the feedback provided earlier. The transition plan must be mandatory in case biodiversity is deemed material for the company.

R1d:

- 'How it contributes to biodiversity and ecosystem impact drivers'? How it contributes to addressing .....

AR1e:

- Key point. 'Whether the mitigation hierarchy was considered should be 'how the mitigation hierarchy was considered'. The mitigation hierarchy should not be optional. All steps in the mitigation hierarchy should be applied before allowing any biodiversity offsets

#### Disclosure requirements related to ESRS 2 IRO-1 – Description of the processes to identify and assess material biodiversity and ecosystem-related impacts, risks and opportunities

AR6:



- Maybe add, 'not necessarily in that order'. Especially financial institutions will often use the Evaluate, Locate, Assess order (ELAP).

AR8ci/AR8cii:

- Or close to?

AR8d:

- Note that for classifying ecosystems, the Taskforce on Nature-related Financial Disclosures (TNFD) follows the UN SEEA EA classification instead of the CICES classification.

Disclosure Requirement E4-2 – Policies related to biodiversity and ecosystems

AR12a:

- Is this limited to direct contributions or does this also include indirect contributions by suppliers to suppliers?

AR12b:

- How are 'recognised standards' defined? Following ISO definitions of certifications and/or ISEAL recognized standards? See also AR17.

AR12c:

- Have been managed or are managed?

AR16:

- Why is this not mandatory to enable users of the disclosure to understand the reasoning behind the policy with regard to managing negative impacts (and dependencies?)?

AR16a:

- It is not clear how this links to the sentence before.

AR16b:

- What is meant by 'cleared' ecosystems? Like clearing a forest?

Disclosure Requirement E4-3 – Actions and resources related to biodiversity and ecosystems

AR18a,b,c:

- This seems to refer to infrastructure projects. Avoidance can also result from, for example, product design where raw materials with a relatively high impact are removed or substituted and where product functioning is altered to avoid impacts.

AR19:

- What are 'key actions'? Actions with the highest avoidance/mitigation potential? The disclosures below seem to be somewhat random.

Disclosure Requirement E4-4 – Targets related to biodiversity and ecosystems

AR22:

- Clarify that this needs to be done for each material impact. What about dependencies?

AR23:

- The difference between AR22 and AR23 is not completely clear. AR22 refers to material impacts, AR23 to potentially material sustainability matters but refers to AR4, where impact drivers, impacts, dependencies etc. are mentioned. Is the difference material versus potentially material?

A24:

- Seems randomly selected. This could be more systematic, e.g. a focus on impact drivers, on the state (extent, condition and function) of ecosystems, on habitats, species, etc. This would help undertakings to disclose in a structured way.

Disclosure Requirement E4-5 – Impact metrics related to biodiversity and ecosystems change

AR25:

- Since describing the methodologies, metrics and data used is voluntary, it will not be clear if they were considered (which is mandatory). Moreover, if an undertaking does not disclose the methodologies, metrics and data used, including assumptions and limitations, users of the disclosure end up with 'black box' assessments of impact which cannot be interpreted. See also 'Disclosure Requirement IRO-1 - Description of the process to identify and assess material impacts, risks and opportunities', paragraph 53.

AR26:

- 'Shall be considered' and 'may disclose' will make it difficult to verify if this was considered (see also AR25).
- What is meant by 'data and mechanisms used should be supported by well-established organisations'?
- (What does 'must be' mean? Shall be? Including disclosure?)

AR28c:

- Also refer to the importance of modelled data in cases where location data is missing and/or where the number of locations/data points to be included in the assessment is too large to handle. An important example is the use of modelled data in the value chain.

Disclosure Requirement E4-6 – Potential Anticipated financial effects from material biodiversity and ecosystem-related risks and opportunities

AR38:

- If the disclosure of products and services at risk and critical assumptions are not disclosed, it will be difficult to interpret the potential anticipated financial effects.