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: Bundesverband der Energie- und Wasserwirtschaft e. V. (BDEW)

1. General comments

BDEW appreciates that with its draft delegated act (DA), the European Commission has addressed the feedback provided by stakeholders on the EFRAG recommendations to increase the usability of the European Sustainability Reporting Standards (ESRS) by reducing the amount of required data points as well as the standards' overall complexity.

While BDEW and its more than 2.000 members across the entire value chain of the German energy and water sector are strong proponents of establishing an EU-wide framework for sustainability reporting, we believe this serves the objectives of the EU Green Deal best when the reporting obligations do not overburden companies. This is best done by focusing on the most relevant information, taking into account the different starting points of different companies, providing clear guidance and granting sufficient time to prepare for the new obligations.

In this context, BDEW considers the Commission draft DA to be overall positive. In particular, this concerns the following changes to the EFRAG recommendations:

- **New structure** supports readability, applicability, and implementation of companies' reporting processes.
- **New materiality approach** helps reporting organisations to focus their reporting on specific issues/topics relevant to the company and its operations.
- **Phasing-in approach** also supports reporting organisations – especially those not subject to reporting obligations under the NFRD – to focus first on most material topics. This helps stretch out reporting burdens and efforts over several years rather than forcing companies to do everything at once from 2024/ 2025.

Nevertheless, we still see room for improvement on several points:

- **Alignment with international standards like ISSB** is crucial for international Groups. Although we see some improvement, further efforts are needed to align with, e.g. ISSB. One example is the flexibility of timeframes to be reported on. When financial materiality and impact materiality can be assessed on other timeframes like “ISSB financial materiality”, this would still mean that companies also reporting in accordance with international standards are faced with double efforts in assessing risks and opportunities.

- **Reporting scope / flexibility**: The draft DA and ESRS standards introduce greater flexibility on specific reporting requirements (more tailored to company-specific circumstances) and a phasing-in. While BDEW welcomes this decision, it is important to note that this also leads to a higher degree of uncertainty and not necessarily to a total reduction of reporting requirements by 25%. Therefore, we recommend focusing on further shaping unclear definitions (e.g. on nationalities, health and safety metrics). Furthermore, developing and publishing of clear application guidelines and use cases for implementation and interpretation remains crucial to support reporting companies. In parallel, any additional reporting requirements should be left entirely out of the current DA / ESRS standards to allow an adequate re-assessment of useful reporting requirements during the first review of the CSRD / ESRS (in 3-5 years).
- **Sensitive information**: Any disclosure of sensitive data should be avoided for competitive reasons. For companies in the energy and water sector operating critical infrastructures, this must also include all non-public information that could be used by third parties to endanger such infrastructures.
- **Disaggregation of disclosures**: Unnecessary disaggregation of disclosures should strictly be limited. For reporting groups, disclosures should represent Group data without additional disaggregation, as this would extend the Sustainability Statement even more without adding value for data users. Any further disaggregation should be left to the decision of the reporting company in case it is assessed “material” for specific splitting (e.g. country-wise).
- **Integrated reporting** stands for a holistic reporting approach that gives investors and all other stakeholders a comprehensive view of the company's value creation. It helps avoid redundancies and can positively affect the integrated management of companies. Therefore, for companies that choose to do so, the possibility for integrated reporting should be expanded. This would also be a step in the right direction regarding compatibility with the ISSB standards.
- **Resource plans** to be reported should be kept on a general level. We do not see any advantages for data users to detail resource plans. In contrast, these would be disclosures requiring much internal effort.

Additionally, we welcome the Commission’s and EFRAG’s plans to provide clear **application guidelines, use cases and templates** for the implementation and interpretation of the ESRS, as those will be key for both reporting companies and auditors. In particular, this concerns the scope of the value chain and the extent to which it should be considered for the individual disclosure points. Those additional

guidelines should be published well before the first reporting year (2024) to allow companies sufficient preparation time and avoid uncertainty.

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

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3. Specific comments on Annex I

Standard	Paragraph or AR number or appendix	Comment
ESRS 1	*Appendix C*	BDEW welcomes the decision to allow smaller companies to face-in specific reporting requirements in the first year of application of the standards. This recognises that fulfilling the new reporting requirements will, in many cases, be even more challenging for companies with fewer resources than large companies already subject to reporting obligations and, therefore, have the necessary experience. In this context, we recommend lowering the threshold from companies not exceeding 750 employees on their balance sheet date to the currently applicable NFRD threshold for reporting companies (large public-listed companies with more than 500 employees) to account for the fact that companies below that threshold will have to comply with sustainability reporting obligations for the very first time under the new CSRD in 2025 and, therefore, are already facing significant challenges in their preparations to do so. Therefore, all companies not already subject to reporting obligations under the NFRD and all companies not exceeding 750 employees should be able to profit from the exemptions. Additionally, the exemption should be extended consistently from one year to two years after they apply the standards for the first time for all disclosures where exemptions are foreseen, to grant companies sufficient time to learn from their first reporting and collect additional data necessary to comply with the standards. This concerns, in particular, reporting on scope 3 emissions, which many smaller energy companies cannot yet assess appropriately due to a lack of data.

ESRS E1	*AR 41*	AR 41 is in contradiction to AR 40. AR 40 explicitly refers to the GHG Protocol Corporate Standard and allows applying both the equity share approach and the operational / financial control approach for the consolidation of all subsidiaries. However, AR 41 requires applying only the operational control approach for associates, joint ventures and unconsolidated subsidiaries. This will lead to inconsistencies between emissions reported under paragraph 45 (gross scope 1 and scope 2 emissions) and emissions reported under paragraph 51b (disaggregation of consolidated accounting group and investees). As emissions are one of the most relevant metrics in sustainability reporting, we strongly recommend avoiding any inconsistency in these figures. This could be achieved by omitting AR 41.

4. Specific comments on Annex II

Defined term	Comment
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