

Invest Europe's response to the Open Public Consultation on the European Sustainability Reporting Standards (ESRS) for Certain Non-EU Undertakings in Accordance with Article 40a of the Accounting Directive

This document addresses only the consultation questions for which answers have been provided

PART 2 – SURVEY QUESTIONS – HIGH LEVEL FEEDBACK

TOPIC 1: Revised ESRS as basis for ESRS-40a ED; approach to deleting datapoints or reformulating paragraphs as required by CSRD

21. Do you agree with the way EFRAG has implemented the provisions of the Accounting Directive (Articles 40a–40d), particularly in deleting RORD-related disclosures and financial effects, as well as maintaining financial information that provides useful contextual information to understand impacts and how they are managed?

	Answer
Yes	X
No	

24. If yes, please specify why

Comments:

We support EFRAG's approach to adapting the revised ESRS to the specific scope of Article 40a to avoid creating reporting requirements for third-country groups that go beyond the mandate of the Accounting Directive, and in particular, the removal of disclosures relating to risks, opportunities, resilience, dependencies and financial effects, while retaining contextual information where this is necessary to understand material impacts and how they are managed.

TOPIC 2: Mixed approach: option to limit the ESRS-40a sustainability report transparency to EU-related impacts only (paragraphs 28–30 of the ESRS-40a 1 ED)

25. Do you support the inclusion of a 'mixed approach' option in the ESRS-40a ED, which allows limiting disclosures to EU-related impacts only for some topics?

	Answer
Yes	X
No	

26. If yes, please select from this list of reasons (choose one or more):*

	Answer
It captures impacts that have a link with the EU	X
It provides a proportionate approach to third-country groups without imposing excessive costs connected to global reporting for all topics	X
It provides relevant information thanks to the condition in AR 6 for paragraph 29 (ESRS-40a 1 ED)	X
It does not impair comparability and auditability of sustainability reporting	
Other reasons (please specify):	

Please explain your reasoning behind each selection and, if applicable, provide suggested improvements

Comments:

We support retaining the mixed approach as an optional and proportionate solution. It reflects the connection between Article 40a reporting and significant activities in the EU while avoiding disproportionate global reporting requirements for third-country groups.

The approach is appropriate, however, where a company can meaningfully identify impacts linked to products and services supplied to the EU market or to its EU activities. Its practical application should not require artificial EU/non-EU attribution where impacts, business activities or value chains are managed globally and reliable territorial disaggregation is not available.

The ESRS 40a framework already accepts that reasonable and supportable assumptions and estimates are an essential part of sustainability reporting and do not undermine usefulness when properly explained. The application of the mixed approach should be read consistently with this general principle. Accordingly, where direct attribution of impacts or metrics to EU-related activities is not practicable, despite the safeguards provided in AR 6 for paragraph 29 of ESRS 40a 1, companies should be able to use reasonable and supportable assumptions, estimates, proxies or allocation methodologies, accompanied by transparent disclosure of the methodology and material assumptions used, as illustrated by AR 1 for paragraph 4(a) of ESRS 40a 2. A similar addition could be introduced in AR 6 for paragraph 29 of ESRS 40a 1.

Practical guidance and examples would help ensure consistent application, particularly for global groups and integrated or decentralised business models where activities and value chains do not map neatly onto EU and non-EU boundaries.

30. Please specify why and which challenges you anticipate

Comments:

The main implementation challenge will be the attribution of impacts between EU-related and non-EU activities where groups operate through integrated global business models and value chains. A global company may know its overall impacts, but it may not naturally track them as “EU impacts” versus “non-EU impacts”, it may not have data neatly split that way. Forcing these companies to rebuild their systems just to create this split is not the solution.

31. Definition of EU-related impacts. Paragraph 28(a) of the ESRS-40a 1 ED refers to EU-related impacts (customer component) as: ‘impacts that arise from products and services that were or can be reasonably assumed to be sold or provided in the EU market, including by third parties (downstream value chain actors such as distributors and traders)’. Do you agree with this formulation, which remains at the principles-based level?

	Answer
Yes	X
No	

36. For users, considering the transparency requirements for applying the mixed approach in paragraph 4(a) and AR 1 of the ESRS-40a 2 ED, and the specific provisions added in paragraphs 28–30, AR 6 and AR 7 of the ESRS-40a 1 ED, do you expect to be able to understand and compare a sustainability report that applies different reporting boundaries (e.g. global vs EU-related scope) across topics or sub-topics?

	Answer
Yes	X
No	

PART 3 – SURVEY QUESTIONS – DETAILED FEEDBACK

TOPIC 1: Revised ESRS as the basis for the ESRS-40a ED and approach to deleting datapoints or reformulating paragraphs as required by the CSRD

39. Despite the focus on impacts and the deletion of RORD, do you agree with the reference to fair presentation in the reporting objective of the ESRS-40a ED in paragraph 5 of the ESRS-40a 1 ED: ‘the objective of the ESRS-40a ED sustainability report, taken as a whole, is to present fairly (see Chapter 2) all the undertaking’s material sustainability-related impacts and how the undertaking manages them’? For further considerations, please refer to the Basis for Conclusions (BC87–BC 90).

	Answer
Yes	X
No	

TOPIC 2: Mixed approach: option to limit the ESRS-40a ED sustainability report transparency to EU-related impacts only (paragraphs 28–30 of the ESRS-40a 1 ED

43. Under the ED, companies can limit the disclosure to EU-related impacts without considering whether the impacts can be geographically contained (both in terms of where the impacts occur and where their effects are experienced). Do you agree with this approach? (see the Basis for Conclusions, sub-chapter detailed discussions of key topics, BC46–BC61)

	Answer
Yes	X
No	

44. Please explain, also with reference to the specific circumstances you have in mind.

Comments:

Requiring impacts to be geographically contained could make the mixed approach difficult to apply in practice and could exclude relevant impacts. For global groups, impacts linked to products and services sold in the EU may arise elsewhere in the value chain, including in third countries. The relevant question should be whether there is a meaningful connection to EU activities, products or services, rather than where the impact physically occurs.

Always considering that, at the same time, identifying the EU-related share of an impact may not always be straightforward. Appropriate safeguards, as above-mentioned, should be implemented.

45. Do you think that fair presentation can be achieved under the mixed approach? (see Basis for Conclusions, sub-chapter detailed discussions of key topics, BC46–BC61)

	Answer
Yes	X
No	

46. Please explain

Comments:

The objective should, indeed, be and remain faithful representation of the relevant EU-related impacts rather than mechanically imposing global reporting where this is not required by Article 40a. And fair presentation can be achieved under the mixed approach provided that the company applies the conditions for meaningful identification of EU-related impacts consistently and transparently explains the reporting boundary, methodologies, assumptions and any material limitations.

47. Do you agree with the flexible formulation of the option, which allows companies to choose the scope of reporting (global or EU-related impacts) at topic, sub-topic or group-of-impacts level, irrespective of how other topics, sub-topics or groups of impacts within the same topic are treated?

	Answer
Yes	
No	X

48. Please explain

Comments:

We support flexibility in applying the mixed approach at topic and sub-topic level. However, we would not support an unrestricted ability for undertakings to define groups of impacts on an ad hoc basis.

If companies can determine their own groupings without clear parameters, similar impacts may be grouped and reported differently across companies, reducing comparability and making it more difficult for users to understand changes in reporting scope over time.

The option to apply the mixed approach to groups of impacts should reflect how impacts are actually identified, managed or monitored by the company, be applied consistently, and be clearly explained.

55. ESRS-40a 2 ED BP-1, paragraph 4(a), requires the undertaking to disclose whether the sustainability report has been prepared using the mixed approach and, if so, to explain – per topic, sub-topic, or group of impacts – how EU-related impacts were determined and how the conditions set out in the ESRS-40a 1 ED, paragraphs 29 and 30, and AR 6 have been met. Do you consider these requirements to be clear, feasible and sufficient to ensure proper understanding of when and how the mixed approach is applied?

	Answer
Yes	X
No	

57. Do you agree with the specifications in the ESRS-40a 2 ED that provide guidance on how to apply this Standard when reporting on EU-related impacts?

	Answer
Yes	X
No	

Topic 3: Interoperability, presentation and incorporation by reference

66. Do you agree with the presentation requirements in ESRS-40a ED?

	Answer
Yes	X
No	

69. Do you agree with the provisions in Chapter 9.3 on incorporation by reference, including as a possible way to achieve efficient reporting and to deal with double reporting when the group prepares a sustainability report in accordance with jurisdictional requirements based on IFRS S1 and IFRS S2, or in accordance with IFRS S1 and IFRS S2?

	Answer
Yes	X
No	

76. Do you find the requirements for incorporation by reference sufficient to lead to an understandable and auditable report?

	Answer
Yes	X
No	

Topic 4: References to EU laws and regulations and their feasibility

80. ESRS-40a 2 ED BP-1, paragraph 7, requires undertakings to disclose, where EU-derived concepts are applied to third-country operations using approximations or estimations, which disclosures are affected, how the information was prepared, what limitations arise, and which parts of the reporting boundary are concerned. Do you consider these requirements to be clear, feasible and sufficient to ensure proper understanding of how the undertaking treats differences between EU-derived concepts and other third-country concepts?

	Answer
Yes	X
No	

Topic 5: Any other comment

82. Please provide any other comments or suggested improvements on ESRS-40a ED not covered in the questions above.

Comments:

For private markets, it is particularly important to preserve the treatment of investments managed on behalf of clients reflected in ESRS-40a 1 AR 17 and AR 37. Where an undertaking manages

investments subject to a fiduciary duty on behalf of clients pursuant to an agreed mandate without retaining the risks or rewards of ownership, the undertaking should not be expected to assess impacts related to those investments or provide data on them.

Considering the scope of the ESRS 40a standard, however, the wording should be tailored to its context. The existence and legal characterisation of a “fiduciary duty” is not uniform across jurisdictions and may not technically apply to certain third-country managers even where the underlying relationship is substantively equivalent. We propose changing the provisions to refer to a “fiduciary, or similar duty.”