Swiss Finance Council's comments on draft ESRS Delegated Act

1. General comments

The Swiss Finance Council (SFC) supports and advocates for a strong and ambitious response to climate change, as demonstrated by our members' commitment to transparency through the alignment of their climate disclosures with the Task Force on Climate-Related Financial Disclosures (TCFD) 's recommendations and embedding sustainability into their business strategy and practice. SFC's members have committed to achieving net zero emissions across their operations, supply chain, and financing activities. Furthermore, SFC's members are working with their clients to support their transition to low-carbon business models and are developing sustainable finance solutions and products that contribute to the realisation of the UN Sustainable Development Goals (SDGs).

We strongly support international efforts to improve the availability, reliability, comparability, and interoperability of sustainability data. As recognised by the G20 and G7, it is essential to have an effective framework for sustainability reporting to maximise the interoperability of jurisdictional reporting standards, minimising fragmentation and overlap of requirements for internationally active companies. In this context, the international standards developed by the International Sustainability Standards Board (ISSB) have the potential to become the global baseline of sustainability reporting, allowing jurisdictions to build on this foundation while facilitating interoperability of local initiatives and increasing the comparability of sustainability reporting.

While we commend the European Commission and EFRAG for the impressive work done on the Corporate Sustainability Reporting Directive (CSRD) and the draft European Sustainability Reporting Standard (ESRS), we would like to stress once again that the extraterritorial scope of application of the CSRD will impact a large number of international non-EU companies which will be required to report according to the ESRS in addition to their jurisdictional reporting frameworks. These companies will need to navigate multiple standards with potentially substantial differences, such as the scope of the assurance requirements, the disclosure location, and materiality-related definitions, that may be difficult to reconcile and will result in burdensome compliance complexity and costs. Similarly, internationally active EU companies will likely be required to report according to foreign sustainability disclosure regimes on top of their EU requirements. The interoperability and comparability of the ESRS with the ISSB global baseline of sustainability disclosures are thus crucial to avoid a double reporting burden for reporting companies and confusing disclosures for investors.

We appreciate that the final text of the CSRD explicitly requires the Commission to take account of the work of global standard setters such as the ISSB "to the greatest extent possible" when adopting the final ESRS. In this respect, compared to the Exposure Drafts, EFRAG and the Commission made considerable progress in adopting the TCFD structure and aligning key concepts, terminology, and metrics with the ISSB standards and the Global Reporting Initiative (GRI) standards, particularly on materiality and value chain.

Finally, we would like to note that the given four-week timeframe is inadequate for providing comprehensive feedback on such extensive standards. It is also regrettable that very little time was available to analyse the proposed final ESRS in view of the final ISSB standards that were published on 26 June. As a result, our comments are restricted to the areas that our experts could analyse within this tight timeframe.

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

While we welcome the Commission's efforts to streamline the ESRS disclosure requirements and data points aimed at ensuring proportionality and facilitating the correct application of the standards by companies, we note the importance of ensuring that this simplification does not affect financial institutions' ability to effectively comply with their reporting obligations under other EU legislation (in particular SFDR and EBA Pillar 3 ESG risk disclosures).

3. Specific comments on Annex I

Standard	**Paragraph or AR number or appendix**	**Comment**
ESRS 1	*Para 29, 36*	The apparent **contradiction between ESRS1 §29 and ESRS1 §36** raises concerns and necessitates clarification from the Commission. While ESRS1 §29 states that companies should disclose information required by ESRS 2 General Disclosures regardless of the outcome of the materiality assessment, ESRS1 §36 suggests that companies can omit disclosures listed in Appendix B of ESRS 2 if deemed immaterial. Given this discrepancy, we request the Commission to provide further clarity and guidance on this matter to ensure consistent interpretation and application of the standards.
ESRS 1	*Para 11, 30, 34, 35, 116. Chapter 10.1*	We invite the Commission to clarify the meaning of the term **"entity-specific".** It would be beneficial to specify whether "entity-specific" pertains to the same reporting entity that is responsible for preparing the financial statements.
ESRS 1	*Para 45, 51*	ESRS1 §45 explains that the scale, scope, and irremediability of adverse impacts are the determinants of the **materiality assessment.** Moreover, ESRS 1 §51 indicates that the materiality of risks and opportunities is assessed based on a combination of the likelihood of occurrence and the size of the potential financial effects. However, ESRS 1 does not explain the sequence of the steps of the materiality assessment and does not elucidate how the same materiality assessment is

		expected to inform the related disclosure requirements in ESRS 2. We believe that the current ESRS 1 leaves excessive room for interpretation to reporting companies with regard to the implementation of the materiality assessment process. As noted by the EBA in its Opinion on the ESRS, the lack of guidance to determine the "severity" and the "likelihood" of the impact may lead to inconsistent materiality assessment across entities. Moreover, there is a risk of a disconnect between the level of transparency envisaged in ESRS 2 on how the materiality assessment is conducted and how the outcome of this assessment feeds into the relevant disclosures in ESRS 2. **We recommend the Commission include additional detail in ESRS 1 on the materiality assessment and/or request EFRAG to provide further and more granular guidance.**
ESRS 1	*Para 63*	As regards value chain reporting, we urge the Commission to provide **clear guidance on establishing the "reporting boundary" and determining the appropriate "degrees of separation" between the reporting entity and stakeholders impacted in the upstream and downstream value chain**. The current lack of clarity in these areas could give rise to the following issues: • Inconsistent approaches: the absence of specific guidelines may result in companies adopting disparate approaches, thereby impeding comparability between their reporting practices. Establishing a standardised framework would promote uniformity and facilitate meaningful comparisons. • Information accessibility challenges: companies may encounter difficulties in obtaining sufficient, relevant, and reliable information if the reporting boundary and degrees of separation are not clearly defined. Clear instructions from the Commission would aid companies in collecting the necessary data and ensure the reliability of the reported information. Furthermore, we recommend the Commission provide a **comprehensive explanation of the term "indirect business relationship".** This clarification would promote a shared understanding of the concept and avoid any ambiguity or misinterpretation in its application. Finally, we would like to draw the Commission's attention to the importance and urgency of providing the financial sector with (i) a **clear definition of the scope of financial institutions' value chain** – **if possible, still in the final ESRS** (Annex 2 – Table 2 Terms defined in ESRS) – and (ii) **special bespoke guidance on value chain reporting for financial institutions which takes into consideration the specific situation of non-EU financial institutions with securities listed on EU regulated markets**. **As regards the definition of the value chain scope for financial institutions**, we would recommend **limiting the disclosures to the first level of direct relationship of the upstream/downstream value chain** (e.g. Bank A is lending money to a cement company B. Bank A would consider the impacts of the cement company B on water, air and land, but would not have an

		obligation to look at the downstream impacts caused by a construction company C that purchases and distributes the cement), and **in the case of GHG emissions, we recommend limiting the disclosures to Scope 3**. This approach could be further refined when specific guidance for the financial sector is available. In this respect, we would like to note that, ideally, **to ensure consistent and accurate reporting by financial institutions subject to the CSRD**, **the optimal approach would be to allow financial institutions to report on own operations only until the respective Financial Institution Sector Standard is agreed**. This temporary approach would be simpler and less confusing for investors than the transitional provision related to Chapter 5 Value Chain (ESRS 1 Section 10.2 p. 21), while financial institutions would continue in the meantime to provide disclosures on financial portfolios, as required by their existing sector specific legislation (e.g. SFRD, EBA Pillar 3 ESG risk disclosures). This temporary approach would allow addressing the specific challenge that financial institutions are facing with respect to the application of the proposed ESRS while a specific Financial Institution Sector Standard is developed. For example, SFDR entity level adverse impact reporting was targeted at asset managers only and not banks (with the exception of banks which provide portfolio management); however, the ESRS makes those adverse impact indicators mandatory across "value chains" for all banks subject to the CSRD, where for banks such value chains include lending. Likewise, only banks meeting certain specific criteria were made subject to EBA Pillar 3 ESG risk disclosure requirements; however, the ESRS applies those requirements to all banks subject to the CSRD. This challenge is particularly acute for non-EU financial institutions with securities listed on EU regulated markets which are facing reporting requirements currently referred to in the ESRS which are derived from other EU legislation (e.g. SFDR entity level reporting, EBA Pillar 3 ESG risk disclosures) and which are not mandatory for non-EU financial institution issuers. Therefore, **we support the AFME recommendation that the Commission clarifies that reporting requirements currently referred to in the ESRS which are derived from other EU legislation are not mandatory for non-EU issuers**.
ESRS 1	*Para 67*	We invite the Commission to provide a practical example to clarify the last sentence of ESRS 1 §67, which states, "'*In this case, when determining impact metrics, the data of the associate or joint venture are not limited to the share of equity held, but shall be taken into account on the basis of the impacts that are directly linked to the undertaking's products and services through its business relationships*". The inclusion of a practical example would greatly enhance understanding and help companies correctly interpret and apply this provision within their reporting practices. By illustrating a concrete scenario, companies would be better equipped to assess the impact metrics of their associate or joint venture and consider the relevant impacts that are directly associated with their own products and services through business relationships.

ESRS 1	*Para 69*	According to ESRS 1 §69, there are circumstances where the company cannot collect information about its upstream and downstream value chain *"after making reasonable efforts to do so"*. In these circumstances, ESRS 1 §69 allows reporting companies to use estimates, sector-average data, and other proxies. We find the concept of “reasonable effort” extremely vague and potentially subject to a high degree of subjective interpretation. As noted by the EBA in its Opinion, ESRS 1 is not precise enough to determine whether a financial institution has made reasonable efforts to collect data from actors in the value chain. Such lack of clarity could potentially lead to implementation challenges as well as problems in auditing the information disclosed. **We recommend clarifying the term "reasonable efforts" to improve the clarity and auditability of sustainability disclosures.**
ESRS 1	*Para 73*	ESRS 1 §73 requires companies to report their sustainability disclosures at the same time and for the same reporting period as their related financial statements, without acknowledging that practical realities of sustainability-related data collection and reporting do not cleanly line up with financial reporting cycles. In particular, certain climate-related disclosures require companies to collect and aggregate data from various internal and external sources, and certain information might not be available in time for the publication of the financial statements. The additional reliance on assumptions and estimates to calculate certain metrics in time for the financial statements will likely affect the quality of sustainability-related disclosures. The ISSB recognised this issue and provided a transitional relief in IFRS S1 E4 that will permit companies to report their sustainability-related disclosures after their financial statements (at the time of their H1/Q2 earnings) during the first year of reporting. We suggest that the Commission introduce a transitional period allowing companies to report sustainability-related information after the publication of the financial statement. During the transitional period, giving issuers more time after the deadline of their management report to prepare the sustainability information required will increase the quality and accuracy of the climate-related information that investors receive. In this regard, **we recommend the Commission grant a transitional period of one year, allowing companies to report their sustainability-related disclosures after their financial statements in alignment with the ISSB.**
ESRS 1	*Para 108*	We recommend the Commission provide clarification on the term **"currently being pursued"** as stated in ESRS 1 §108. The current wording of this requirement is unclear and impractical, making it challenging for companies to determine how to classify an opportunity as "currently being pursued." In order to improve the clarity and practicality of this provision, we recommend that the Commission specifies the types of evidence or criteria needed to classify an opportunity as "currently being pursued."
ESRS 1	*Para 132*	The sentence *“when disclosing information on policies, actions and targets in accordance with ESRS2 and other ESRS, the undertaking may limit value chain information to information available in-house, such as data already available to the*

		undertaking and publicly available information" appears to be unclear and, to some extent, contradictory. In fact, publicly available information might not be already available in-house. To address this issue, we recommend either removing the phrase **"available in-house"** to avoid any potential misinterpretation that could discourage companies from gathering additional data. Alternatively, if the Commission intends to retain the term "in-house," it should be more explicitly defined to encompass publicly available information.
ESRS E2	*Para 28*	According to ESRS E2 §28, companies have to disclose the consolidated amount of each pollutant listed in Annex II of the E-PRTR Regulation (European Pollutant Release and Transfer Register). However, the extensive nature of the list and the low thresholds set for most pollutants pose challenges. This is particularly true for industries like the financial sector, which are not direct contributors to pollution. In light of these difficulties, **we propose the implementation of thresholds specifically tailored for industries that do not have direct contributions to pollution**. By establishing these thresholds, the reporting requirements can be adjusted to focus on industries where pollution impacts are more significant. This approach would ensure a fair and practical reporting framework, taking into account the unique circumstances of non-direct contributors to pollution while still maintaining the integrity of pollution-related disclosures.
ESRS E2	*Para 29*	There is a lack of clarity in ESRS E2 §29 regarding whether the term **"assets"** exclusively pertains to physical assets or includes other types of assets as well. To enhance understanding and avoid any ambiguity, we recommend that the Commission provides clarification on this matter.
ESRS S1 *ESRS S2* *ESRS S3* *ESRS S4*	*AR 45* *AR 43* *AR 43* *AR 38*	We invite the Commission to offer additional clarity regarding the definition of **"external developments".** It would greatly benefit reporting entities to have specific examples provided, demonstrating the types of developments that fall under this category. By providing practical illustrations, companies would gain a clearer understanding of what constitutes external developments, enabling them to appropriately identify and disclose relevant information in their reporting.

4. Specific comments on Annex II

Defined term	Comment