

Attn: Mr Benoit Jaspar
Administrative Board President
EFRAG
35 Square de Meeûs
1000 Brussels
Belgium

29 October 2026

cc: Ms Dorota Zaliwska
Head of Unit C1, DG FISMA, European Commission
cc: Mr Kristian Koktvedgaard
Acting Sustainability Reporting Board Chair, EFRAG
cc: Ms Chiara Del Prete
Sustainability Reporting TEG Chair, EFRAG
cc: Ms Saskia Slomp
Chief Executive Officer, EFRAG

Exposure Draft ESRS for Certain Non-EU Undertakings in Accordance with Article 40a of the Accounting Directive (ESRS-40a ED)

Dear Mr Jaspar,

The European Contact Group (ECG) welcomes the opportunity to comment on the Exposure Draft ESRS for Certain Non-EU Undertakings in Accordance with Article 40a of the Accounting Directive (ESRS-40a). We acknowledge the effort undertaken by EFRAG in developing technical advice for a dedicated framework for third-country group reporting under the Corporate Sustainability Reporting Directive (CSRD).

We think it is essential that a pragmatic and decision-useful reporting framework for non-EU groups within the scope of Article 40a where the EU subsidiary or branch is obliged under the CSRD to file a sustainability report is put in place. We highlight that the proposals for a mixed approach pose some challenges. We acknowledge that EFRAG is working under a mandate from the European Commission (EC), but we believe it is within that mandate to also suggest alternatives to mitigate those challenges.

Further, we believe the final technical advice would benefit from placing greater emphasis on alignment with globally accepted sustainability reporting frameworks. In addition, we call on EFRAG to set out a clear pathway enabling undertakings reporting under ISSB-based standards to leverage their existing reporting and supplement it with the incremental disclosures necessary to meet ESRS-40a requirements. Such an approach should be capable of accommodating the continued evolution of both ESRS and ISSB standards. It would be important for those undertakings that are or will be using ISSB (based) standards, to avoid double reporting. We believe that this provision should not be limited to undertakings subject to mandatory reporting under jurisdictional laws and regulations.

We have provided detailed responses through the consultation questionnaire. This letter focuses on several overarching observations that we believe are particularly important prior to the finalisation of ESRS-40a and should be read alongside our responses to the questionnaire.

Mixed approach within an impact-only framework

We acknowledge that the impact-only focus of ESRS-40a is a result of the requirements established by Article 40a of the Accounting Directive. The exclusion of risks, opportunities, resilience, and dependencies from the reporting objective is therefore a legislative decision rather than a standard-setting choice. Accordingly, we do not object to the inclusion of an impact-only reporting objective within ESRS-40a and agree with the underlying rationale in principle.

We further understand that the inclusion of the mixed approach reflects a request from the EC, and we appreciate EFRAG's decision to consult stakeholders on this option as part of its mandate. We also recognise the effort to introduce safeguards intended to preserve transparency, faithful representation and reporting quality when applying an approach leveraging mixed reporting boundaries for different reporting areas. We additionally note the intent to introduce further relief for preparers and that some undertakings may perceive the mixed approach as useful to alleviate the reporting burden. However, notwithstanding these considerations, we share some of the concerns regarding the proposed approach and its practicability as mentioned in the Basis for Conclusions accompanying the Exposure Draft.

First, the use of different reporting scopes for different sustainability topics risks impairing understandability and comparability. This is furthered by introducing topic-by-topic, sub-topic-by-sub-topic, or impact-group-specific reporting boundaries under the mixed approach. Overall, the resulting framework may increase complexity for all stakeholders while simultaneously reducing comparability between entities.

Second, the operational feasibility of clearly identifying and separating EU-related impacts remains challenging depending on the circumstances. While the Exposure Draft includes conditions intended to support meaningful identification of EU-related impacts, the proposed basis for determining eligibility is not sufficiently clear and practical implementation is likely to be highly complex for many multinational groups with integrated operations, supply chains, and management structures.

Third, the practical and conceptual challenges of the mixed approach pose challenges in the context of a fair presentation framework (see also our views on this below).

In addition, we note from EFRAG's basis for conclusion that EFRAG SR TEG members raised concerns about the mixed approach, as 'relevant information may be lost, with a consequential risk of greenwashing, in particular as regards human rights impacts and environmental impacts, the latter of which cannot be confined to a specific geography'. EFRAG may further consider how this affects user needs.

Fair presentation

We welcome the clarity that EFRAG has provided in proposing that ESRS-40a requires fair presentation of material impacts and their faithful representation, including completeness, neutrality, and accuracy. As the

current wording clearly states that ESRS-40a is a fair presentation framework and that if a topic related to a material impact is not covered with sufficient granularity by an ESRS-40a, the undertaking shall provide entity specific disclosures, from the perspective of the assurance provider performing an assurance engagement based on ISSA 5000, ESRS-40a can be considered a fair presentation framework.

We do not consider an impact-only objective or the inclusion of primary users to be inherently incompatible with fair presentation, provided the scope and limitations of the reported information are clear. Some uncertainty nevertheless remains as to how fair presentation should be interpreted when the reporting objective is limited to impacts and when reporting boundaries vary under the mixed approach.

The Exposure Draft retains a broad user universe that includes both primary users of general-purpose financial reports and a wider set of stakeholders such as business partners, social partners, civil society organisations, and NGOs. The user population therefore remains substantially aligned with the broader ESRS framework, while the reporting objective itself is substantially narrower because risks and opportunities are excluded. This combination may create confusion regarding what constitutes a fair presentation of sustainability information.

Application of the fair presentation principle can be complex when reporting boundaries may vary by topic, sub-topic or impact group under the mixed approach. There may be a risk that material information is missing that might reasonably be expected, which might risk undermining the credibility of sustainability reports prepared in accordance with ESRS-40a.

Therefore, it will be critical to clarify that fair presentation is assessed in the context of the stated objectives and requirements of ESRS-40a. This will require a clear description of the reporting boundaries and reporting requirements, consistent identification of material impacts, transparency on significant judgments and methodologies, and inclusion of entity-specific information where necessary to understand the reported impacts.

It is also unclear who would be the responsible party for stating that information is fairly presented: the non-EU group's management that reflects the reporting boundary and may prepare the report or the EU subsidiary's or branch's management that is legally obliged to file the sustainability report. There could be asymmetry under the mixed approach and that poses challenges, also from the perspective of existing management liability regimes.

Global baseline of sustainability reporting

We acknowledge that EFRAG has sought to build on the architecture and principles of the revised ESRS framework as recently adopted by the EC while adapting the content to reflect the specific requirements of Article 40a, including the focus on sustainability impacts rather than risks and opportunities. However, we believe the development of a practical and proportionate reporting regime requires careful consideration of the evolving global sustainability reporting landscape and existing reporting obligations faced by multinational groups.

Many jurisdictions have already adopted, endorsed, or are moving towards adoption of the ISSB standards, and a growing number of companies within the scope of Article 40a are already reporting or will likely report

in the future under ISSB (based) frameworks. In our view, alignment should remain a central objective of the 40a reporting regime. We therefore encourage EFRAG to develop a clear pathway allowing undertakings that are reporting in accordance with the ISSB (based) standards to use their existing reporting and supplement with incremental ESRS40a disclosures in order to achieve compliance with the requirements in Article 40a of the CSRD and ESRS-40a respectively. This would allow non-EU groups that are reporting under ISSB (based) standards to better identify the missing information that is needed to be compliant with ESRS-40a. It would also achieve greater efficiency in the reporting process, especially as many impacts also present risks and opportunities to companies' prospects and companies would therefore be able to leverage significantly their disclosures under ISSB (based) standards to meet the requirements of an impact-only focused framework.

We welcome the important steps already taken by EFRAG towards greater alignment with ISSB standards through the expanded incorporation-by-reference provisions, which recognise the existing overlap between ESRS-40a and other sustainability reporting frameworks. However, we do not believe this provision should only be available to undertakings that are subject to mandatory reporting under jurisdictional laws and regulations. It should also be available to undertakings that voluntarily report using ISSB (based) standards assuming other general conditions for reporting regarding timing, language, etc. are met.

Finally, demonstrating how reporting entities applying ISSB (based) standards could meet the EU requirements through incremental disclosures could also support considerations on equivalency mechanisms. While we recognise that EFRAG's mandate does not extend to establishing a formal equivalence or passporting regime, such preparatory work could inform future discussions regarding equivalence and global reporting convergence with other jurisdictions. We believe starting the discussions on equivalence and passporting arrangements remains a matter of high priority as such arrangements would enable more efficient reporting by multinational undertakings.

We would be pleased to discuss our comments further and contribute to the continued development of a globally interoperable and decision-useful sustainability reporting framework.

Yours sincerely,

 A handwritten signature in blue ink, appearing to read "B. Pruvost", with a stylized flourish at the end.

Bertrand Pruvost
Chair, European Contact Group