

ESRS-40a, Public consultation questionnaire

2. (untitled)

Do you provide your consent to publish your responses? Please select 'No' below if you do not want your responses to be made public; in this case, your feedback will be treated anonymously.

Yes

3.

1. First Name:

Piotr

2. Last Name:

Biernacki

3. Name of the organisation:

MATERIALITY Sp. z o.o.

4. Country of headquarters:

Poland

5. Sector: [\[more detailed information about sector classification\]](#) - *It is possible to select multiple sectors.*

Professional, scientific and technical activities

6. Please enter your email.

piotr.biernacki@materiality.pl

7. Which of the following stakeholder types do you represent?

Consultant (including software vendor)

For preparers, are you:

If none of the above, please specify.

Please specify the country of headquarters of the ultimate parent company.

i. Please specify the country of headquarters.

ii. If you have selected point (iii) to the question for preparers above, please provide your feedback, if possible, on (these questions apply only to undertakings in scope of Article 40a of the Accounting Directive):

How many subsidiaries in your group are in scope of Articles 19a or 29a of the Accounting Directive?

iii. Please provide the location of your subsidiaries

iv. Please list the subsidiaries that are already reporting under Articles 19a or 29a of the Accounting Directive.

v. If you have selected point (iii) to the question for preparers above, do you plan to report according to ESRS (as enacted by the EC in July 2026) for the whole group (double materiality)?

vi. Please select one or more of the reasons listed below for planning to report according to ESRS (as enacted by the EC in July 2026) for the whole group (double materiality).

8. Do you/does your (or will by FY2028) ultimate parent group report in accordance with jurisdictional standards based on ISSB standards on a group level?

No.

Because you answered "Yes" to the previous question, please indicate if you report on:

9. Do you/does your (or will by FY2028) ultimate parent group report voluntarily on a group level?

Yes.

10. Because you answered "Yes" to the previous question, please indicate if you report on:

In accordance with other standards (please specify which standard):: ESRS

4.

11. 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 the impacts and how they are managed?

Yes.

12. i. Please specify why

The ED reflects the content required by Article 40a(1) of the Accounting Directive, which refers only to selected points of Article 29a(2) and focuses the report on the undertaking's impacts on people and the environment. Deleting disclosures on risks, opportunities, resilience, dependencies and anticipated financial effects is therefore consistent with the Level 1 text. We also agree that financial information remains relevant where it is needed to understand impacts and how they are managed, for example resources allocated to actions or denominators of intensity metrics. Our concerns relate to the mixed approach and are set out under Topic 2.

5.

13. Questions

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?

No.

i. Please select from this list of reasons (choose one or more):

14. i. Please select from this list of reasons (choose one or more):

It fails to secure level-playing field for EU companies.

Despite the condition in AR 6 for paragraph 29 (ESRS-40a 1 ED), it does not result in relevant and complete information, or it conflicts with faithful representation of impacts.

It results in mixed scopes in the same report (global for climate, EU-related for one or more groups of impacts/sub-topics/topics), making it difficult for users to understand and use the information;

The condition in AR 6 for paragraph 29 (ESRS-40a 1 ED) is too narrow and will have narrow application.

The flexibility in paragraph 30 (ESRS-40a 1 ED) is too broad, as impacts are managed consistently at topical level.

The flexibility in paragraph 30 (ESRS-40a 1 ED) is too broad, and it will result in lack of comparability across companies.

Reporting on EU-related impacts raises significant practical challenges.

Other reasons (please specify):: Lack of a legal basis in Articles 40a and 40b of the Accounting Directive; inconsistency with the CSDDD (explained under the level playing field and relevance reasons).

Please explain your reasoning behind selecting 'It captures impacts that have a link with EU' and, if applicable, provide suggested improvements

Please explain your reasoning behind selecting 'It provides a proportionate approach to third-country groups without imposing excessive costs connected to global reporting for all topics.' and, if applicable, provide suggested improvements.

Please explain your reasoning behind selecting 'It provides relevant information thanks to the condition in AR 6 for paragraph 29 (ESRS-40a 1 ED).' and, if applicable, provide suggested improvements.

Please explain your reasoning behind selecting 'It does not impair comparability and auditability of sustainability reporting' and, if applicable, provide suggested improvements.

15. Please explain your reasoning behind selecting 'It fails to secure level-playing field for EU companies' and, if applicable, provide suggested improvements.

We recommend deleting the mixed approach (ESRS-40a 1 ED, paragraphs 28–31, AR 6 and AR 7) and all related provisions.

Level playing field (our main concern). EU undertakings must report all their material impacts across the global consolidation scope. A third-country group applying the option could omit the information least favourable to it, such as human rights abuses or environmental damage in operations and supply chains that do not serve the EU market. Its report would then look better than that of an EU competitor in the same market. The advantage would carry over into ESG ratings and scoring systems such as EcoVadis or CDP, and so into commercial and financing decisions. EU consumers would get a distorted picture of these groups' impacts.

Legal basis. Article 40a(1) of the Accounting Directive requires a report covering the information specified in Article 29a(2) "at the group level of that ultimate third-country parent undertaking". Omnibus I (Directive (EU) 2026/470) changed only the thresholds and scope; as BC11 notes, it "has not changed the content". Article 40b empowers the Commission to adopt a delegated act "supplementing this Directive". Under Article 290 TFEU such an act may only supplement or amend non-essential elements; in our view the scope of the report set by the legislator is an essential element. Recital 20 of the CSRD requires third-country undertakings to be "accountable for their impacts on people and the environment" and refers to "a level playing field for companies operating in the internal market". The mixed approach undermines both objectives. BC26(a) records this concern without answering it.

16. Please explain your reasoning behind selecting 'Despite the condition in AR 6 for paragraph 29 (ESRS-40a 1 ED), it does not result in relevant and complete information, or it conflicts with faithful representation of impacts.' and, if applicable, provide suggested improvements.

Even where the condition in paragraph 29 and AR 6 is met, the report leaves out material impacts of the group by design. The resulting information is incomplete. Impacts on people and the environment occur wherever the group operates. The fact that a production site or supplier does not serve the EU market does not make its impacts less severe or less relevant to EU stakeholders, who deal with the group as a whole. AR 6 tests whether EU-related impacts can be separated within the undertaking's organisation. It does not test whether the separated information is relevant. The mixed approach also conflicts with paragraph 61 of ESRS-40a 1 ED, which requires the undertaking to cover the activities of its subsidiaries in a way that allows "for the unbiased identification of material impacts at group level", and with the CSDDD, which does not limit due diligence to EU-related impacts. A report drawn on a narrower boundary than the due diligence it should reflect cannot give a faithful picture. Our detailed comments on faithful representation are set out in Part 3, Topic 2.

Suggested improvement: delete the option.

17. Please explain your reasoning behind selecting 'It results in mixed scopes in the same report (global for climate, EU-related for one or more groups of impacts/sub-topics/topics), making it difficult for users to understand and use the information;' and, if applicable, provide suggested improvements.

A single report that covers climate globally and other topics, sub-topics or individual groups of impacts on an EU-related basis has no consistent reporting entity. Users would need to establish for each disclosure which boundary applies, and could not relate figures across topics, for example emissions of the whole group next to workforce metrics for an EU-related subset. Metrics with different boundaries cannot be aggregated or reconciled, while disclosures on strategy, governance and due diligence, which are group-wide by nature, would have to be read against changing boundaries. The BP-1 disclosures explain how the boundaries were drawn but cannot remove this complexity. See also our answer to the question for users below.

Suggested improvement: delete the option.

18. Please explain your reasoning behind selecting 'The condition in AR 6 for paragraph 29 (ESRS-40a 1 ED) is too narrow and will have narrow application.' and, if applicable, provide suggested improvements.

The factors listed in AR 6 (a separate business segment serving the EU, products designed for the EU, separate management of EU-related impacts, dedicated value chains) describe a business model that few third-country groups have. Most groups serve the EU from the same sites, product lines and supply chains as other markets. Applied faithfully, the condition would therefore have very limited application, and the option would add complexity to the standard for little benefit.

At the same time, the factors are only examples that the undertaking "may consider". In practice the condition is likely to be claimed in cases where it is not genuinely met, and assurance providers would have little basis to challenge such claims. Either way, the condition does not make the option workable.

Suggested improvement: delete the option rather than refine the condition.

19. Please explain your reasoning behind selecting 'The flexibility in paragraph 30 (ESRS-40a 1 ED) is too broad, as impacts are managed consistently at topical level.' and, if applicable, provide suggested improvements.

Impacts within one topic are normally governed by one policy, one due diligence process, one set of targets and one management structure for the whole group. Paragraph 30 nevertheless allows the undertaking to apply different boundaries to sub-topics or even individual groups of impacts within the same topic. The report would then not reflect how impacts are actually managed: disclosures on policies, actions and targets (GDR-P, GDR-A, GDR-T) would describe group-wide arrangements, while metrics would cover only a selected part. The ED's own example in AR 7 shows the problem: diversity and equal treatment limited to EU-related impacts, gender equality reported globally, although most organisations manage these together under one diversity and inclusion policy.

Suggested improvement: delete the option.

20. Please explain your reasoning behind selecting 'The flexibility in paragraph 30 (ESRS-40a 1 ED) is too broad, and it will result in lack of comparability across companies.' and, if applicable, provide suggested improvements.

Each third-country group could choose its own combination of global and EU-related boundaries at topic, sub-topic and impact level. Two groups in the same sector could therefore report on entirely different subsets of their impacts, and the same group could change its combination over time. Reports of third-country groups would not be comparable with one another, and none of them would be comparable with reports of EU undertakings, which must cover all material impacts of the group. Comparability is one of the qualitative characteristics required for fair presentation (ESRS-40a 1 ED, paragraph 33).

Suggested improvement: delete the option.

21. Please explain your reasoning behind selecting 'Reporting on EU-related impacts raises significant practical challenges' and specify which challenges you anticipate.

Assurance. The assurance provider has no practical means to verify where products sold through third parties end up, or whether the allocation of value chain impacts to EU-bound products is correct. Two scenarios illustrate the risk:

(a) A non-EU factory makes identical products for EU and non-EU customers. ESRS-40a S1 AR 1 includes all workers at such a site by default, but allows another allocation basis where the undertaking has "reasonable and supportable evidence". The group could argue that EU-bound output is produced on day shifts by lawfully employed, properly treated workers, while night shifts, using undeclared labour or breaching workers' rights, produce only for other markets. Those night shifts would disappear from the report, and the assurance provider could not prove otherwise.

(b) Under ESRS-40a S2 paragraph 8, there is no site-based rule at all. A supplier running separate lines or shifts "for the EU" and "for the rest of the world" would allow the same outcome for value chain workers.

Data. Suppliers outside the EU rarely track which of their inputs end up in products sold in the EU. Obtaining such data per product and per market would be very burdensome, and its quality could not be checked.

Distribution chains. Where the reporting producer sells to an intermediary, who sells to another intermediary, who sells to a retailer placing the product on the EU market, the destination of the product cannot be traced. The "can be reasonably assumed" test then becomes a matter of unverifiable judgement.

Management reality. Materiality assessments, policies, actions and targets are usually designed and run at group level, so carving out an "EU" subset would be artificial.

22.

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?

No.

23. Please recommend alternative factors to be considered by the undertaking that could be included in the Standard.

In our view no alternative wording or set of factors can fix the definition, because the problem lies in the concept itself: impacts on people and the environment do not follow the destination of products. We nevertheless note the following weaknesses of the current text:

1. "Can be reasonably assumed to be sold or provided in the EU market" is a vague test. It leaves wide discretion to the preparer and cannot be applied to multi-tier distribution chains (see the practical challenges in Part 2, Topic 2).
2. Paragraph 28 links points (a) and (b) with "and" and limits point (b) to impacts "if not already included in 28 (a)". The Glossary definition of "EU-related impact" uses "or" ("one or both of the following elements") and omits that qualifier.
3. ESRS-40a 2 ED, AR 1 for paragraph 4(a), refers to products and services "that are sold or provided in the EU", which is narrower than paragraph 28(a) and leaves out sales by third parties.
4. "EU activities" / "European Union activities" is not defined, and the ED alternates between "in the EU market" and "on the EU market".
5. Paragraph 31 refers to paragraph 52 of ESRS-40a 1 for the definition of impacts, but paragraph 52 deals with assessing severity and likelihood. Paragraph 49 refers to "the option under paragraph 27", while the option is in paragraph 28.

24. For preparers, Do you intend to apply the mixed approach?

i. To which topic/sub-topic or group of impacts do you intend to apply the mixed approach?

ii. How would you apply it?

25. 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?

Please find the paragraphs mentioned above [here](#).

No.

26. Please explain why.

We review sustainability reports of listed companies and their business partners on a daily basis. A report in which climate is covered globally while other topics, sub-topics or individual groups of impacts are limited to an EU-related boundary would be very hard to read. The reader would have to check, topic by topic, which boundary applies and what has been left out, and the disclosures under BP-1 explain how the boundary was set without showing what lies outside it.

Comparability would suffer in two directions. Reports of different third-country groups would not be comparable with each other, since each can choose its own combination of boundaries. More importantly, they would not be comparable with reports of EU undertakings. EU undertakings report all their material impacts on a group-wide basis; third-country groups applying the option would not. A user comparing an EU company with a non-EU competitor would be comparing a full picture with a selected part of it, which again shows the lack of a level playing field.

27. Please suggest possible amendments.

The only amendment that would ensure understandability and comparability is to delete the mixed approach and require all ESRS-40a reports to cover the material impacts of the group as a whole, as Article 40a requires.

6.

28. 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–BC90).

Yes

Please explain.

7.

29. Under the ED, companies can also apply the mixed approach option when reporting about human rights impacts. This means that they can restrict reporting to EU-related human rights impacts. Do you think human rights impacts should be excluded from the mixed approach and reported globally, regardless of where they occur or whether they are connected to products and services sold to the EU? (see the Basis for Conclusions, sub-chapter detailed discussions of key topics, BC46–BC61)

Yes, human rights impacts should be reported on a global scope.

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

Our primary position remains that the mixed approach should be deleted (see our answers in Part 2, Topic 2). If it is nevertheless retained, human rights impacts must at a minimum be reported on a global scope.

Human rights are universal. A standard that allows a company to report on the rights of people connected with the EU market and to stay silent about the rights of all other people affected by the same group is incompatible with the values on which the EU is founded. Severe abuses such as forced labour, child labour or unsafe working conditions are relevant to EU stakeholders wherever they occur.

The same reasoning extends to the environment. In its Advisory Opinion of 23 July 2025 on the Obligations of States in respect of Climate Change, the International Court of Justice concluded that "under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights" (para. 393). The Opinion addresses obligations of States, but it confirms that environmental protection and human rights cannot be separated. It would therefore be inconsistent to exclude human rights from the option while keeping environmental impacts within it.

For these reasons, if the option is retained, all topics concerning people and the environment (ESRS-40a E2 to E5 and S1 to S4) should be reported on a global scope.

31. 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)

No.

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

Our primary position remains that the mixed approach should be deleted (see our answers in Part 2, Topic 2). If it is nevertheless retained, human rights impacts must at a minimum be reported on a global scope.

Human rights are universal. A standard that allows a company to report on the rights of people connected with the EU market and to stay silent about the rights of all other people affected by the same group is incompatible with the values on which the EU is founded. Severe abuses such as forced labour, child labour or unsafe working conditions are relevant to EU stakeholders wherever they occur.

The same reasoning extends to the environment. In its Advisory Opinion of 23 July 2025 on the Obligations of States in respect of Climate Change, the International Court of Justice concluded that "under international law, the human right to a clean, healthy and sustainable environment is essential for the enjoyment of other human rights" (para. 393). The Opinion addresses obligations of States, but it confirms that environmental protection and human rights cannot be separated. It would therefore be inconsistent to exclude human rights from the option while keeping environmental impacts within it.

For these reasons, if the option is retained, all topics concerning people and the environment (ESRS-40a E2 to E5 and S1 to S4) should be reported on a global scope.

33. 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)

No.

34. Please explain.

Our primary position remains that the mixed approach should be deleted (see our answers in Part 2, Topic 2).

Under paragraph 32 of ESRS-40a 1 ED, faithful representation requires "a complete, neutral and accurate depiction" of the undertaking's material impacts. A report that by design omits material impacts of the group is incomplete. Where the boundary is drawn by the undertaking itself, using allocation keys and assumptions that cannot be verified, it is also unlikely to be neutral: the scenarios described in Part 2, Topic 2 (practical challenges) show how the most serious impacts can be placed outside the boundary.

Paragraph 61 of ESRS-40a 1 ED requires that the activities of subsidiaries be covered in a way that allows "for the unbiased identification of material impacts at group level". The mixed approach is incompatible with this requirement. We do not share the view in BC91 that a clearly stated reporting objective is enough to achieve fair presentation. Describing the boundary precisely does not make a report fair if the boundary excludes the impacts that matter most.

35. 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?

No.

36. i. Please explain

Our primary position remains that the mixed approach should be deleted (see our answers in Part 2, Topic 2).

The flexibility also enables selective reporting. The undertaking can report globally on those groups of impacts where its performance is good and limit to the EU those where it is poor. The ED's own example in AR 7 (diversity and equal treatment limited to the EU, gender equality reported globally) shows how easily this can be done.

Our other concerns about paragraph 30, namely its disconnection from how impacts are managed and the resulting lack of comparability, are explained in Part 2, Topic 2.

ii. SUB-QUESTION FOR PREPARERS: If you replied 'Yes.' to the above question, are you considering, within the same topic, reporting at EU-related level for some groups of impacts or sub-topics, and reporting at global level for some other groups of impacts or sub-topics?

iii. Please explain for which topic this would happen and the rationale behind this choice.

37. For preparers and assurance providers, do you anticipate implementation challenges when applying the mixed approach?

Yes.

38. i. If "Yes.", please select one or more of the following.

How to demonstrate the condition in AR 6 for paragraph 29 of ESRS-40a 1 ED

How to identify the products and services that were or can be reasonably assumed to be sold or provided in the EU market, including by third parties;

How to perform a materiality assessment focused on EU-related only impacts (chapter 3 of ESRS-40a 1 ED)

How to report on policies, actions and targets for EU-related impacts

How to identify the most appropriate allocation key and report on metrics

How to report in accordance with ESRS-40a S1 ED

How to report in accordance with ESRS-40a S2 ED

Providing transparency on the use, assumptions and results of the mixed approach (paragraph 4(a), AR 1 for paragraph 4(a) of ESRS-40a 2 ED)

39. Because you identified as a challenge 'How to identify the most appropriate allocation key and report on metrics', please specify which metrics you are referring to. Please specify why.

Metrics in ESRS-40a S1 presented by headcount or FTE, including work-related accidents, where the same sites and workers serve EU and non-EU markets (see the limit in S1 AR 2 on FTE).

Emissions of pollutants and primary microplastics under ESRS-40a E2, where one plant produces for several markets and emissions cannot be attributed to individual products.

Water and resource use and waste metrics under ESRS-40a E3 and E5, which rely only on the general allocation key in GDR-M.

Metrics under ESRS-40a G1-4 to G1-6, where the default allocation rules leave much room for "another allocation key". In all these cases the result depends on an allocation key chosen by the undertaking itself and cannot be independently verified.

40. Because you identified as a challenge 'How to demonstrate the condition in AR 6 for paragraph 29 of ESRS-40a 1 ED', please explain why and, if applicable, suggest improvements.

Demonstrating that EU-related impacts can be "meaningfully" identified, and that this enables a faithful representation, requires evidence on how operations, products and value chains are organised. The factors in AR 6 are only examples and the ED gives no threshold, so preparers will not know what evidence is sufficient and assurance providers will have no criteria to test it. As explained in Part 2, Topic 2, most groups serve the EU from shared sites and supply chains, so the condition will either rarely be met or be claimed without solid grounds.

Suggested improvement: delete the option.

41. Because you identified as a challenge 'How to identify the products and services that were or can be reasonably assumed to be sold or provided in the EU market, including by third parties', please explain why and, if applicable, suggest improvements.

Preparers usually know their first-tier customers but not the final market of goods sold through distributors, traders and further intermediaries. The test "can be reasonably assumed" leaves this to judgement, and where products pass through several intermediaries before a retailer places them on the EU market, the destination cannot be traced at all. Identical products are often sold to EU and non-EU customers from the same stock. The resulting boundary cannot be verified by assurance providers.

Suggested improvement: delete the option. The weaknesses of the wording are listed in Part 2, Topic 2 (definition of EU-related impacts).

42. Because you identified as a challenge 'How to perform a materiality assessment focused on EU-related only impacts (chapter 3 of ESRS-40a 1 ED)', please explain why and, if applicable, suggest improvements.

Chapter 3 of ESRS-40a 1 ED requires an impact materiality assessment covering own operations and the upstream and downstream value chain, and paragraph 49 asks that, for topics under the option, the assessment aims at EU-related impacts. In practice, impacts must first be identified across the group before one can tell which of them are EU-related. The undertaking would therefore carry out a global assessment anyway and then filter it, which adds cost and leaves room for arbitrary exclusions. An assessment focused on EU-related impacts also conflicts with paragraph 61, which requires an unbiased identification of material impacts at group level. In addition, paragraph 49 refers to "the option under paragraph 27", whereas the option is in paragraph 28.

Suggested improvement: delete the option.

43. Because you identified as a challenge 'How to report on policies, actions and targets for EU-related impacts', please explain why and, if applicable, suggest improvements.

Policies, due diligence processes, actions and targets are usually adopted for the whole group, not for an EU-related subset. AR 34, AR 36 and AR 52 of ESRS-40a 2 ED ask the undertaking to "focus" on those that manage EU-related impacts, but a group-wide policy cannot be split. Preparers will either describe group-wide arrangements, which do not match metrics limited to EU-related impacts, or try to isolate EU-related actions and resources, which will be arbitrary. Progress towards targets set for the group cannot be tracked with metrics that cover only part of it.

Suggested improvement: delete the option.

Because you identified as a challenge 'How to report in accordance with ESRS-40a 2 ED', please explain why and, if applicable, suggest improvements.

Because you identified as a challenge 'How to report in accordance with ESRS-40a E2 ED', please explain why and, if applicable, suggest improvements.

Because you identified as a challenge 'How to report in accordance with ESRS-40a E3 ED', please explain why and, if applicable, suggest improvements.

Because you identified as a challenge 'How to report in accordance with ESRS-40a E4 ED', please explain why and, if applicable, suggest improvements.

Because you identified as a challenge 'How to report in accordance with ESRS-40a E5 ED', please explain why and, if applicable, suggest improvements.

44. Because you identified as a challenge 'How to report in accordance with ESRS-40a S1 ED', please explain why and, if applicable, suggest improvements.

Paragraph 8(b) and AR 1 include workers at sites producing for the EU market, but allow "another allocation basis" where the undertaking has "reasonable and supportable evidence". This opens the way to separating workers by shift or production line, as illustrated in Part 2, Topic 2 (practical challenges), and assurance providers cannot test such evidence. Supporting functions such as procurement or marketing usually serve several markets; AR 1 includes them but gives no guidance on how to allocate them.

Suggested improvement: delete the option. If it is retained, the deviation in AR 1 should be removed.

45. Because you identified as a challenge 'How to report in accordance with ESRS-40a S2 ED', please explain why and, if applicable, suggest improvements.

Under paragraph 8(b), value chain workers outside the EU are covered only if they are "involved in producing inputs" to products sold in the EU, and there is no site-based rule as in S1. Preparers would need supplier-level information on which workers, lines or shifts produce inputs for EU-bound products, which suppliers generally do not track. A supplier can also separate EU production from the rest, so that abuses in the remaining production stay outside the report. Neither the preparer nor the assurance provider can verify such a separation.

Suggested improvement: delete the option. If it is retained, all workers at supplier sites producing any inputs for the EU market should be covered.

Because you identified as a challenge 'How to report in accordance with ESRS-40a S3 ED', please explain why and, if applicable, suggest improvements.

Because you identified as a challenge 'How to report in accordance with ESRS-40a S4 ED', please explain why and, if applicable, suggest improvements.

Because you identified as a challenge 'How to report in accordance with ESRS-40a G1 ED', please explain why and, if applicable, suggest improvements.

46. Because you identified as a challenge 'Providing transparency on the use, assumptions and results of the mixed approach (paragraph 4(a), AR 1 for paragraph 4(a) of ESRS-40a 2 ED)', please explain why and, if applicable, suggest improvements.

BP-1 paragraph 4(a) and AR 1 require the undertaking to describe, for each topic, sub-topic or group of impacts, the methodology, parameters, assumptions and inputs used to set the boundary, and the resulting accuracy of the estimates. Combined with the flexibility in paragraph 30, this may lead to many separate descriptions that are long and difficult for users to follow. More importantly, these disclosures explain how the boundary was drawn but not what lies outside it.

Suggested improvement: delete the option. Our proposals for additional disclosures, should the option be retained, are set out in our answer on BP-1 below.

47. 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?

No.

48. Please include your suggestions, if any, on how these requirements can be improved.

Our primary position remains that the mixed approach should be deleted (see our answers in Part 2, Topic 2). No disclosure can make up for the absence of information on the impacts left out: BP-1 tells the user how the boundary was drawn, but not what was left outside it.

If the option is nevertheless retained, BP-1 should additionally require, for each topic, sub-topic or group of impacts for which the option is applied:

- (a) the share of the group's revenue, production and workforce attributable to activities excluded from the report;
- (b) a list of the sites and countries whose activities were excluded;
- (c) whether impacts that would be material on a global basis, in particular human rights impacts, were identified in the excluded part; and
- (d) a general description of those material impacts that were left out.

In addition, AR 1 for paragraph 4(a) should use the same wording as paragraph 28(a) ("were or can be reasonably assumed to be sold or provided in the EU market, including by third parties") instead of "are sold or provided in the EU".

49. 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?

No.

50. i. If 'No.' to the previous question, please select one or more of the specifications below with which you disagree:

GOV 1 (AR 11)
I-1 (AR 23)
GDR-M (AR 44 to AR 47)

Please explain why you selected GDR-T (AR 52) and, if applicable, provide suggestions for improvement.

51. Please explain why you selected GDR-M (AR 44 to AR 47) and, if applicable, provide suggestions for improvement.

Our primary position remains that the mixed approach should be deleted (see our answers in Part 2, Topic 2). The allocation key is chosen by the undertaking on the basis of very general factors (the nature of the impact and its geographical context). The resulting metrics cannot be verified.
Suggested improvement: delete the option.

Please explain why you selected GDR-A (AR 36) and, if applicable, provide suggestions for improvement.

Please explain why you selected GDR-P (AR 34) and, if applicable, provide suggestions for improvement.

Please explain why you selected I-2 (AR 27) and, if applicable, provide suggestions for improvement.

52. Please explain why you selected I-1 (AR 23) and, if applicable, provide suggestions for improvement.

A materiality assessment aimed at EU-related impacts is in conflict with paragraph 61 of ESRS-40a 1 ED, which requires an unbiased identification of material impacts at group level.
Suggested improvement: delete the option.

Please explain why you selected SBM 3 (AR 21) and, if applicable, provide suggestions for improvement.

Please explain why you selected SBM 2 (AR 19) and, if applicable, provide suggestions for improvement.

Please explain why you selected SBM 1 and, if applicable, provide suggestions for improvement.

Please explain why you selected GOV 4 and, if applicable, provide suggestions for improvement.

Please explain why you selected GOV 3 and, if applicable, provide suggestions for improvement.

Please explain why you selected GOV 2 (AR 12) and, if applicable, provide suggestions for improvement.

53. Please explain why you selected GOV 1 (AR 11) and, if applicable, provide suggestions for improvement.

Oversight and management of impacts take place at group level. Separating an "EU" part of governance is artificial, a concern also raised within EFRAG (BC29(e) and BC105).

Suggested improvement: delete the option.

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

No.

55. i. If 'No.' to the previous question, please select the specifications below with which you disagree.

ESRS-40a E2 ED AR 4 (primary microplastics)

ESRS-40a E2 ED AR 9 and 10 (SoC and SVHC)

ESRS-40a S1 ED (paragraph 8, AR 1, AR 2, AR 20, AR 39)

ESRS-40a S2 ED (paragraph 8)

ESRS-40a G1 ED (paragraph AR 7 metric for corruption and bribery)

ESRS-40a G1 ED (paragraph AR 7 11 metric for political influence)

ESRS-40a G1 ED (paragraph AR 7 13 metric for payment practices)

56. Please explain why you selected ESRS-40a E2 ED AR 4 (primary microplastics) and, if applicable, provide suggestions for improvement.

Our primary position remains that the mixed approach should be deleted (see our answers in Part 2, Topic 2).

Where a plant produces for both EU and non-EU markets, primary microplastics manufactured, used or released cannot be reliably attributed to EU-bound products. The undertaking would have to estimate them with an allocation key it chooses itself, and the result could not be verified.

Suggested improvement: delete the option.

57. Please explain why you selected ESRS-40a E2 ED AR 9 and 10 (SoC and SVHC) and, if applicable, provide suggestions for improvement.

SoC and SVHC procured, manufactured or released at a plant producing for both EU and non-EU markets are normally used across all production. Attributing them to products sold in the EU relies on assumptions that cannot be verified.

Suggested improvement: delete the option.

Please explain why you selected 'No specifications in ESRS-40a E3 ED (specification in GDR-M applies)' and, if applicable, provide suggestions for improvement.

Please explain why you selected 'No specifications in ESRS-40a E4 ED (specification in GDR-M applies)' and, if applicable, provide suggestions for improvement.

Please explain why you selected "No specifications in ESRS-40a E5 ED (specification in GDR-M applies)" and, if applicable, provide suggestions for improvement.

58. Please explain why you selected ESRS-40a S1 ED (paragraph 8, AR 1, AR 2, AR 20, AR 39) and, if applicable, provide suggestions for improvement.

The deviation allowed in AR 1 ("another allocation basis") opens the way to excluding workers at sites that also serve the EU market (see Part 2, Topic 2, practical challenges, scenario (a)).

Suggested improvement: delete the option.

59. Please explain why you selected ESRS-40a S2 ED (paragraph 8) and, if applicable, provide suggestions for improvement.

With no site-based rule, suppliers can separate production "for the EU" from the rest, and abuses in the remaining production stay outside the report (see Part 2, Topic 2, practical challenges, scenario (b)).

Suggested improvement: delete the option.

Please explain why you selected ESRS-40a S3 ED (paragraph 7) and, if applicable, provide suggestions for improvement.

Please explain why you selected ESRS-40a S4 ED (paragraph 7) and, if applicable, provide suggestions for improvement.

60. Please explain why you selected ESRS-40a G1 ED (paragraph AR 7 metric for corruption and bribery) and, if applicable, provide suggestions for improvement.

The scope covers sanctions by EU and Member State authorities and cross-border cases "involving juridical and natural persons located in the EU". Bribery committed outside the EU by non-EU staff to win contracts for EU-bound products could fall outside the report.

Suggested improvement: delete the option.

61. Please explain why you selected ESRS-40a G1 ED (paragraph AR 7 11 metric for political influence) and, if applicable, provide suggestions for improvement.

Point (b) reads "were and can be reasonably assumed", while all other provisions use "were or can be".

If the option is retained, the wording should be aligned with the other provisions ("were or can be").

62. Please explain why you selected ESRS-40a G1 ED (paragraph AR 7 13 metric for payment practices) and, if applicable, provide suggestions for improvement.

Payment practices towards non-EU suppliers who supply production for the EU market are excluded, although late payment harms them in the same way.

Suggested improvement: delete the option.

63. Breakdown for own workforce. Do you think it would be useful for users of sustainability reports if companies that opt for the mixed approach were required to disaggregate the quantitative metrics in Disclosure Requirements S1-6 to S1-16 – e.g. health and safety metrics such as number and rate of work accidents – by workforce inside and outside the EU? (A company's workforce includes employees and non-employees.)

Yes.

64. i. If 'Yes.', should all quantitative metrics in S1-6 to S1-16 have to be disaggregated in that way or only some?

All.

ii. If for 'Only some.', please specify which ones.

65. **Questions**

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

i. If "No.", please explain why.

ii. If 'No.', please provide suggested amendments.

66. 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?

i. If 'No.', please specify if you disagree with.

ii. If "No", please explain and, if applicable, provide suggested improvements.

67. For preparers, If you are in scope of the ESRS-40a ED and, at the same time, (will) prepare (from YE2028) a sustainability report in accordance with jurisdictional standards based on IFRS S1 and IFRS S2, do you anticipate:

In this case, please specify how you plan to support understandability and identification of disclosures that meet the disclosure requirements in the respective frameworks.

Please explain why and illustrate the challenges you anticipate.

Please provide suggestions for amendments.

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

If applicable, please provide suggested improvements.

9.

69. For preparers, Do you think that referring to terms and concepts from EU legislation as the default framework is feasible?

If not, please specify which disclosure requirements you are referring to.

Please find attached an Excel file containing a list of disclosure requirements where you can provide your comments. Please note that comments are also allowed on disclosure requirements not mentioned in this file - there is a specific tab for it in the Excel file.

Please download the file [here](#).

A practical note: to correctly use the Excel file, please download it, complete the fields, and then upload the document.

Please upload the populated Excel File in this box.

70. 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?

71. If no, please explain your reasoning.

10.

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

Summary of our position on the mixed approach:

1. The mixed approach should be deleted, together with all provisions in ESRS-40a 1, ESRS-40a 2 and the topical standards that depend on it.
 2. It undermines the level playing field. EU undertakings report all material impacts of their groups, while third-country groups could omit the least favourable ones and gain an advantage in ratings and with customers and investors.
 3. It lacks a legal basis. Article 40a of the Accounting Directive requires reporting at the group level of the ultimate third-country parent undertaking, Omnibus I did not change the content of the report, and a delegated act under Article 40b cannot narrow that scope. The option also runs against the objectives in Recital 20 of the CSRD and is inconsistent with the CSDDD.
 4. It does not provide relevant, complete and comparable information, and it conflicts with fair presentation and with paragraph 61 of ESRS-40a 1 ED.
 5. The resulting information cannot be effectively assured, since the destination of products sold through intermediaries, allocation keys and the separation of workers or production lines cannot be verified.
 6. Human rights and environmental impacts are universal and cannot be divided into "EU-related" and other impacts. If the option is nevertheless retained, at a minimum all topics concerning people and the environment should be reported on a global scope, the use of the option should depend on demonstrating that impacts are geographically contained, and BP-1 should require the undertaking to disclose the scale of the activities left out and a general description of the material impacts omitted.
- Without these changes, ESRS-40a reports would give EU stakeholders an incomplete and potentially misleading picture of third-country groups operating in the internal market.

11.

Answer in Excels for Part 2 - Topic 1 - Question 1.

- 1. Would you retain any deleted datapoints?**
- 2. Do you have comments on deleted, amended or new paragraphs?**

Please note that comments are not allowed on paragraphs that remained unchanged.

A practical note, to correctly use the Excel file, please download it, complete the fields, and then upload the document.

Please download the file Excel [here](#)

NOTE: The Excel File contains several validations. Please make sure to not break those validations. Only files with intact validations and not corrupted will be considered as valid by EFRAG Secretariat.

Please upload the populated Excel File in this box.