

## Corporate environmental reporting

### Compatibility of Due Diligence laws and the European Sustainability Reporting Standards (ESRS)



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## 1 Context

The Corporate Sustainability Reporting Directive (CSRD – 2022/2464/EU) requires large European undertakings to create transparency on their sustainability-related impacts, risks and opportunities and how they are managed. The centrepiece of the Directive are European Sustainability Reporting Standards (ESRS) which formulate specific disclosure requirements for environmental, social and governance matters.<sup>1</sup> Recently, the European Commission adopted the first set of ESRS, which contains two cross-cutting (ESRS 1: General requirements and ESRS 2: General disclosures) and ten topical reporting standards (environmental, social and governance) applicable for all sectors.<sup>2</sup> The environmental standards include ESRS E1 “Climate change”, ESRS E2 “Pollution”, ESRS E3 “Water and marine resources”, ESRS E4 “Biodiversity and ecosystems” and ESRS E5 “Resource use and circular economy”. In the future these will be complemented by sector-specific standards.

The purpose of this factsheet is to examine the compatibility of the environmental reporting requirements introduced by the first set ESRS with reporting requirements of selected due diligence laws.

Three European and one national law are considered:

- ▶ European Corporate Sustainability Due Diligence Directive (CSDDD)<sup>3</sup>
- ▶ European Regulation on batteries and waste batteries<sup>4</sup>
- ▶ European Regulation on deforestation-free products<sup>5</sup>
- ▶ German Act on Corporate Due Diligence Obligations in Supply Chains (BGBl. I 2021 p. 2959) - Lieferkettensorgfaltspflichtengesetz (LkSG)<sup>6</sup>

<sup>1</sup> [https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/corporate-sustainability-reporting-directive\\_en](https://finance.ec.europa.eu/regulation-and-supervision/financial-services-legislation/implementing-and-delegated-acts/corporate-sustainability-reporting-directive_en)

<sup>2</sup> For all references to reporting requirements of the ESRS: [https://ec.europa.eu/finance/docs/level-2-measures/csrd-delegated-act-2023-5303-annex-1\\_en.pdf](https://ec.europa.eu/finance/docs/level-2-measures/csrd-delegated-act-2023-5303-annex-1_en.pdf)

<sup>3</sup> Directive on Corporate Sustainability Due Diligence and amending Directive (EU) 2019/1937 and Regulation (EU) 2023/2859, Council agreement at level of COREPER, March 2024

<sup>4</sup> Regulation (EU) 2023/1542 of the European Parliament and of the Council of 12 July 2023 concerning batteries and waste batteries, amending Directive 2008/98/EC and Regulation (EU) 2019/1020 and repealing Directive 2006/66/EC.

<sup>5</sup> Regulation (EU) 2023/1115 of the European Parliament and of the Council of 31 May 2023 on the making available on the Union market and the export from the Union of certain commodities and products associated with deforestation and forest degradation and repealing Regulation (EU) No 995/2010.

<sup>6</sup> Act on Corporate Due Diligence Obligations in Supply Chains (Gesetz über die unternehmerischen Sorgfaltspflichten in Lieferketten), 16. July 2021, Bundesgesetzblatt (BGBl.) I, p. 2959.

The guiding questions for the analysis are:

- ▶ What are the reporting requirements regarding adverse environmental impacts of the considered due diligence laws?
- ▶ Can the environmental reporting requirements of the due diligence laws in principle be integrated in the ESRS reporting? If so, where can they be reported?
- ▶ To what extent does a reporting based on the requirements of ESRS only ensure compliance with the environmental reporting requirements under the due diligence laws?

The information presented in this factsheet can be useful to several groups of actors. It can support:

- ▶ Standard setters, particularly the European Financial Reporting Advisory Group (EFRAG) and the European Commission, in their work towards better compatibility and interplay among reporting standards and different due diligence laws
- ▶ Policy makers in further negotiations on the development of the overall environmental reporting landscape on due diligence
- ▶ Companies to develop an aligned and efficient reporting that accounts for existing intersections among the ESRS and due diligence laws

## 2 Profile of the due diligence laws under consideration

Comparing the reporting requirements of the ESRS with the abovementioned due diligence laws requires an understanding of their regulatory purposes (2.1), scope (2.2) and the types of reporting requirements provisions (2.3).

### 2.1 Regulatory purpose and subject of regulation

The main purpose of the CSRD/ESRS is to create transparency on a company's sustainability impacts, risks and opportunities and how these are managed. The target group of the information are financial market participants and other stakeholders of the company. The first set of ESRS contains reporting requirements on environmental, social and governance topics that are applicable to companies regardless of their activities, business models and products. Due to the generic character of the first set of ESRS, the information required can apply to any company. However, as the CSRD/ESRS aim to create transparency the level of detail required in reporting is quite high. As part of the ESRS, companies are required to report on their due diligence processes. The ESRS are open for the inclusion of additional and more specific information, provided that certain information quality requirements are met.<sup>7, 8</sup> For example, a company can include specific information on its due diligence process for batteries or deforestation-free products in its ESRS report even though this is not specifically required by the respective standards.

While the CSRD/ ESRS mandate transparency only, the main purpose of due diligence laws considered in this study is to oblige companies to *conduct* due diligence. The due diligence laws can be distinguished in overarching company-related and more specific product-related laws.

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<sup>7</sup> ESRS 1, paragraph 11 allows to include additional sustainability information in the ESRS report if this information is considered material by the company but not explicitly covered by the ESRS disclosure requirements (so-called "entity-specific disclosures").

<sup>8</sup> ESRS 1, paragraph 114 allows to include additional sustainability information in the ESRS reporting stemming from other legislation.

The CSDDD and LkSG are company-related laws. They contain generic requirements for implementing a due diligence process and taking adequate action to mitigate adverse human rights and environmental impacts at company-level, independent of the activity of a company. The EU Regulation on batteries and waste batteries and the EU Regulation on deforestation-free products contain due diligence requirements for companies dealing with specific products with the aim to reduce adverse impacts of these products on the environment and/or human rights. In all due diligence laws, the obligations to *conduct* due diligence are complemented by information and reporting requirements.

The reporting requirements under company- and product-related due diligence laws are formulated in rather general terms<sup>9</sup>. The reason for this is that the reporting requirements are not the main focus of the law. They rather aim at creating transparency on the company’s due diligence processes, how due diligence obligations are fulfilled, and are also the basis for enforcement by supervisory authorities. Overall, the different approaches taken – the *obligation to report* imposed by the ESRS and the *obligation to conduct* due diligence in the respective laws – complement each other. However, regulatory purposes and thus the required information and level of detail in reporting requirements differ.

## 2.2 Scope of Due Diligence laws

The companies affected by the CSRD and the due diligence laws considered in this study overlap to a certain degree but are not identical. Table 1 summarizes the personal scope of the laws.

**Table 1: Personal scope of the CSRD and due diligence laws**

Law	Companies in scope
Corporate Sustainability Reporting Directive (CSRD) <sup>10</sup>	<ul style="list-style-type: none"> <li>• large undertakings that fulfill two of the following three criteria: &gt; EUR 25 million balance sheet total, &gt;EUR 50 million net revenue, &gt; 250 employees</li> <li>• listed small and medium enterprises (excl. micro-enterprises)</li> <li>• third country undertakings with &gt;EUR 150 million net turnover in the EU with large subsidiaries or branches that generate &gt; EUR 40 million net turnover</li> </ul>
European Corporate Sustainability Due Diligence Directive (CSDDD)	<ul style="list-style-type: none"> <li>• companies &gt;1000 employees and worldwide net turnover &gt;EUR 450 million</li> <li>• third country undertakings with &gt;EUR 450 million net turnover in the EU</li> </ul>
German Act on Corporate Due Diligence Obligations in Supply Chains (LkSG)	<ul style="list-style-type: none"> <li>• Companies with &gt;1.000 employees</li> </ul>
EU Regulation on batteries and waste batteries	<ul style="list-style-type: none"> <li>• Economic operators placing batteries that contain certain raw materials on the market or putting them into service with &gt;EUR 40 million net turnover<sup>11</sup></li> </ul>
EU Regulation on deforestation-free products	<ul style="list-style-type: none"> <li>• Operators and traders, introducing and making available on the EU market as well as the export from the EU of relevant commodities and products associated with global deforestation and degradation: cattle, cocoa, coffee, oil palm, rubber, soy and wood.</li> </ul>

<sup>9</sup> Art. 11 draft CSDD, § 10 (2) LkSG  
<sup>10</sup> Note: The scope is gradually expanded from 2024 to all types of undertakings mentioned  
<sup>11</sup> This relates to the due diligence obligations in Chapter VII of the Regulation, other parts of the Regulation affect further entities

There are also differences in how far the obligations of the laws extend into the value chain, which inter alia also determines the extent of information a company has to report on. The CSRD and ESRS apply a broad definition of the value chain and require the inclusion of information for material issues connected with the undertaking through its direct and indirect business relationships in the upstream and/or downstream value chain.<sup>12</sup> Although most metrics that have to be reported are limited in scope (i.e. on own operations of the company), the materiality assessment and most qualitative disclosure requirements as well as selected metrics, such as Scope 3 GHG emissions relate to the whole value chain. The due diligence obligations of the CSDDD are also based on a broader understanding of the value chain, including direct and indirect upstream and downstream business partners (Art. 3 e, f), although not all activities regarding downstream are covered (Art. 3 g). The LkSG has a narrower understanding. The due diligence obligations only include the upstream value chain (i.e. supply chain). Within the supply chain the law is focusing on direct suppliers. Indirect suppliers must only be included if the company has ‘substantiated knowledge’ that the violation of an environment- or human rights-related obligation at indirect suppliers may be possible (§ 9 (3) LkSG). The due diligence requirements of the two product-related laws are also limited to the supply chain. The battery regulation lays down, among others, obligations for economic operators for “identifying, preventing and addressing actual and potential social and environmental risks linked to the sourcing, processing and trading of the raw materials and secondary raw materials required for battery manufacturing, including by suppliers in the chain and their subsidiaries or subcontractors” (Art. 3 (42), in connection with Art. 50 (1))<sup>13</sup>. The EU Regulation on deforestation-free products is also focused on the upstream supply chain of the products in question, particularly the production of the commodities (cattle, cocoa, coffee, oil palms, rubber, soya and wood).

## 2.3 Overview of environmental issues covered and associated reporting requirements

The ESRS contain reporting requirements for five overarching environmental topics, i.e. climate change (ESRS E1), pollution (ESRS E2), water and marine resource (ESRS E3), biodiversity and ecosystems (ESRS E4) and resource use and circular economy (ESRS E5). These topics are further subdivided in various sub- and sub-sub-topics. See Appendix A.1 for an overview of the environmental topics and related sub-topics covered by the ESRS and A.2 for an overview of the structure and disclosures. For those topics that are material, a company has to provide, among others, the following information:

- ▶ how strategies and business model link with impacts, risks and opportunities,
- ▶ governance structures and processes,
- ▶ policies, actions and targets to manage the impacts, risks and opportunities, and
- ▶ selected metrics for performance evaluation.

In addition, the cross-cutting standard ESRS 2 requires companies to disclose information about the materiality assessment process, including how the company has identified and assessed adverse environmental impacts based on severity and what the material environmental impacts are. The standards explicitly state that the core elements of the due diligence process are reflected in the abovementioned disclosure requirements.<sup>14</sup> To facilitate the understanding of

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<sup>12</sup> Art. 19a (3) CSRD and ESRS Delegated act, Annex II, Term “Value Chain”

<sup>13</sup> It is important to note that other parts of the Battery Regulation also relate to the downstream value chain (e.g. the reuse, recycling and disposal phase). These are not considered here since this paper is focused on the Battery Regulation’s due diligence obligations.

<sup>14</sup> Cf. ESRS 1 paragraph 61

the company’s due diligence process(es), ESRS 2 requires to provide a mapping of all due diligence related information throughout the report.<sup>15</sup>

With regards to the due diligence laws, Table 2 shows the environmental issues companies have to consider when conducting due diligence, the respective provisions on the due diligence process as such and the associated reporting requirements.

**Table 2: Environmental issues, due diligence process and associated reporting requirements**

Law	Environmental issues	Due diligence process	Reporting requirements
CSDDD	<ul style="list-style-type: none"> <li>Specific hazardous substances (mercury, persistent organic pollutants, ozone depleting substances, other chemicals), hazardous waste, biodiversity, wetlands, natural heritages, pollution from ships and of the marine environment (defined in Annex 2, Part II)</li> <li>Climate change (Art. 15)<sup>16</sup></li> </ul>	<ul style="list-style-type: none"> <li>Outlined in Art. 4 and specified in Art. 5-10; covering the steps defined by the OECD Due diligence Guidance for Responsible Business Conduct<sup>17</sup></li> </ul>	<ul style="list-style-type: none"> <li>Art. 11 (1) requires reporting on the matters covered by the Directive by publishing an annual statement. According to Art. 11 (2), this does not apply to companies that are subject to the CSRD/ESRS.</li> </ul>
LkSG	<ul style="list-style-type: none"> <li>Defined in § 2 (3): Hazardous waste and specific hazardous substances (mercury and persistent organic pollutants)</li> </ul>	<ul style="list-style-type: none"> <li>Outlined in § 3 and specified in § 4-9; covering the steps defined by the OECD Due diligence Guidance for Responsible Business Conduct<sup>18</sup></li> </ul>	<ul style="list-style-type: none"> <li>§ 10 (2) sets out a reporting requirement on the fulfillment of due diligence obligations and process, including environmental and human rights risks and violations and how they have been addressed</li> </ul>
EU Regulation on batteries and waste batteries	<ul style="list-style-type: none"> <li>Generic environmental risk categories described in Annex X, (2) a (air, water, soil, biodiversity, hazardous substances, noise and vibration, energy use, waste and residues)</li> </ul>	<ul style="list-style-type: none"> <li>Outlined in Art. 48-50; covering requirements on the economic operator’s due diligence policy, management system and risk management</li> </ul>	<ul style="list-style-type: none"> <li>Art. 52 (3) sets out disclosure requirements on the due diligence process, specifically the disclosure of the battery due diligence policy, including findings of significant adverse impacts in the risk categories and how they have been addressed</li> </ul>

<sup>15</sup> Cf. ESRS 2 Disclosure requirement GOV-4

<sup>16</sup> Climate change is not part of the due diligence obligations as such, but regulated in a separate approach.

<sup>17</sup> 1. Embed responsible business conduct into policies and management systems, 2. Identify and assess actual and potential adverse impacts associated with the enterprise’s operations, products or services, 3. Cease, prevent and mitigate adverse impacts, 4. Track implementation and results, 5. Communicate how impacts are addressed, 6. Provide for or cooperate in remediation when appropriate (OECD 2018)

Law	Environmental issues	Due diligence process	Reporting requirements
EU Regulation on deforestation-free products	<ul style="list-style-type: none"> <li>Prohibition of commodities and products on plots of land that have not been deforested, degraded or converted after 2020</li> <li>Production in accordance with relevant national legislation, including concerning environmental protection</li> </ul>	<ul style="list-style-type: none"> <li>Outlined in Art. 8-13; covering provisions on information requirements, risk assessment and risk management</li> </ul>	<ul style="list-style-type: none"> <li>Art. 12 (3) and (4) set out reporting requirements on the operator's due diligence systems, including, among others, the conclusions risk assessment and measures undertaken</li> </ul>

### 3 Comparison of the due diligence laws with the ESRS

This section provides an in-detail comparison on:

- the reporting requirements of the due diligence laws and the corresponding reference points in the ESRS, where this information could be reported, and
- the extent to which reporting based on the ESRS only, ensures compliance with the reporting requirements under the due diligence laws.

The comparison distinguishes between the adverse environmental impacts covered by the due diligence laws (section 3.1, Table 4 and Table 5) and the process required for companies to meet their due diligence obligations (section 3.2, Table 6 and Table 7).

The comparison tables are structured as follows:

- ▶ In the second column, the requirements of the due diligence laws concerning adverse environmental impacts/due diligence process are listed.
- ▶ In the third column, the reference point in the ESRS is indicated, i.e. whether and where these requirements can be reported in the ESRS. The reference point is typically a whole ESRS or, if there is a direct counterpart, a specific disclosure requirement or data point. Due to the possibility of including additional sustainability information in the ESRS report, either because it is considered material but not explicitly covered by the ESRS disclosure requirements<sup>19</sup> or stemming from other legislation<sup>20</sup>, it is assumed that information to be reported under the due diligence laws can generally be integrated in the ESRS report.
- ▶ In the fourth column, if there is a reference point in the ESRS, the degree of compatibility is indicated, i.e. to what extent the ESRS requirements alone already fulfill the reporting requirements of the due diligence laws and allow to understand the implementation of the respective due diligence process. For this purpose, the evaluation categories in Table 3 are used.

<sup>19</sup> Cf. ESRS 1, paragraph 11 on so-called "entity-specific disclosures"

<sup>20</sup> Cf. ESRS 1, paragraph 114

**Table 3: Categories used to evaluate compatibility**

Evaluation	Description
Not covered	There is no reference point in the ESRS where information required by the due diligence law can be reported <sup>21</sup> .
Medium compatibility	The disclosure requirements of the ESRS only partially allow to understand the implementation of the requirements of the due diligence laws (e.g. ESRS do not <i>explicitly</i> ask for the specific environmental impacts that the due diligence law covers but this impact is part of the environmental topics covered by the ESRS).
High compatibility under specific conditions	The disclosure requirements of the ESRS are equivalent to those in the due diligence laws or fully allow to understand the implementation of the due diligence obligations provided that ESRS reporting is carried out with the necessary level of detail. <sup>22</sup>
High compatibility	The ESRS disclosure requirements are equivalent to those in the due diligence laws or fully allow to understand the implementation of the due diligence obligations.

<sup>21</sup> A company may in those cases still be able to include the respective information as “entity-specific disclosures” according to ESRS 1, paragraph 11.

<sup>22</sup> This intermediate category is introduced for the compatibility assessment between the ESRS and product-related due diligence laws. To discern whether the due diligence obligations in product-related due diligence laws have been fulfilled, it is necessary to understand whether information provided by a company applies to the implementation of a product-related due diligence law. The ESRS report needs to provide detailed information of the product or value chain in question. For example, to enable an understanding whether the batteries regulation has been fulfilled, companies would need to provide specific information on the context in which environmental impacts occur, e.g. whether they occur during the extraction of a raw material used for batteries that are later placed on the EU market or put into service there, in line with the Batteries regulation.

### 3.1 Adverse environmental impacts

**Table 4: Requirements concerning adverse environmental impacts (company-related laws), ESRS reference points and compatibility assessment**

Due diligence law	Requirements	ESRS reference point	Degree of compatibility
Corporate Sustainability Due Diligence Directive (CSDDD)	Transition plan in line with the Paris Agreement (Art. 1 (1) c, Art. 15 (1))	E1-1	ESRS Transition plan for climate change mitigation in line with the Paris Agreement
	GHG emission reduction objectives and objective of achieving climate neutrality including its intermediate and 2050 climate neutrality targets (Art. 15 (1) a)	E1-4, E-1-6	ESRS: Disclosure of climate-related targets in line with the Paris Agreement and with the objective of achieving climate neutrality by 2050 to manage material climate-related impacts, risks and opportunities, specifically GHG emission reduction targets
	Integration of transition plan and emission reduction objectives into remuneration systems (Art. 15 (3))	E1 related to ESRS 2 GOV-3	ESRS: Integration of GHG emission reduction targets and climate-related considerations into remuneration, no explicit link to the integration of the transition plan in remuneration systems
	Avoid or minimize adverse impacts on biodiversity in accordance with the Convention on Biological Diversity and the Cartagena and Nagoya Protocol (Annex 2, Part II, 1.)	E4 E4-2, E4-3, E4-5	ESRS: General coverage of impacts on biodiversity, but not with specific reference to the Convention on Biological Diversity. No specific disclosures on living modified organisms and Access to Genetic Resources, no reference to the Cartagena and Nagoya Protocol or respective EU implementing legislation
	Prohibition to import/export/re-export or introduce from the sea endangered species of wild fauna and flora (CITES) (Annex 2, Part II, 2.)	E4-5	ESRS: Impacts on the state of species (e.g. threat status of species, changes in the relevant habitat). No disclosure on import/export re-export or introduce from the sea of endangered species, no reference to CITES or respective EU implementing legislation
	Manufacture, import and export of mercury-added products and use of mercury and mercury compounds in manufacturing processes according to the Minamata Convention (Annex 2, Part II, 3. + 4.)	E2 E2-5 (own operations and procurement)	ESRS: Information on the production and use of substances of (very high) concern (own operations and procurement), based on REACH <sup>23</sup> and CLP-Regulation <sup>24</sup> , but no reference to Minamata Convention or the EU Mercury Regulation <sup>25</sup>

<sup>23</sup> Regulation (EC) No 1907/2006 concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals (REACH)

<sup>24</sup> Regulation (EC) No 1272/2008 on the classification, labelling and packaging of substances and mixtures (CLP Regulation)

<sup>25</sup> Regulation (EU) 2017/852 on mercury



Due diligence law	Requirements	ESRS reference point	Degree of compatibility
	Unlawful treatment of mercury waste according to the Minamata Convention and EU mercury regulation (Annex 2, Part II, 5.)	E5 E5-5 (own operations)	ESRS: Disclosure on total amount of waste diverted from disposal and waste directed to disposal, broken down by hazardous waste and non-hazardous waste (own operations), no reference to Minamata Convention or the EU Mercury Regulation
	Production and use of Persistent Organic Pollutants (POPs) according to Stockholm Convention on POPs and EU POP Regulation (Annex 2, Part II, 6.)	E2 E2-5 (own operations and procurement)	ESRS: The definition of soil pollution includes POPs, but there is no specific disclosure requirement on use of POPs. Reference to REACH and CLP-Regulation for substances of (very high) concern (Annex 2), but no reference to Stockholm Convention on POPs or the EU POP Regulation <sup>26</sup>
	Handling, collection, storage and disposal of waste (POPs) according to Stockholm Convention on POPs and EU POP Regulation (Annex 2, Part II, 7.)	E5 E5-5 (own operations)	ESRS: Disclosure on total amount of waste diverted from disposal and waste directed to disposal, broken down by hazardous waste and non-hazardous waste (own operations); no reference to Stockholm Convention on POPs or the EU POP Regulation
	Importing/Exporting of Hazardous Chemicals and Pesticides according to Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) (Annex 2, Part II, 8.)	E2 E2-5 (own operations and procurement)	ESRS: Information on import/export of substances of concern and substances of very high concern (own operations and procurement), based on REACH and CLP-Regulation, but no reference to Convention on the Prior Informed Consent Procedure for Certain Hazardous Chemicals and Pesticides in International Trade (UNEP/FAO) or respective EU implementing legislation <sup>27</sup>
	Unlawful production, consumption, import and export of controlled substances that deplete the ozone layer according to Vienna Convention and its Montreal Protocol (Annex 2, Part II, 9.)	E2 E2-5 (own operations and procurement)	ESRS: Information on the production and use of substances of concern (own operations and procurement). Substances of concern include substances that have a harmonized classification as hazardous to the ozone layer according to the CLP-Regulation.
	Import/export of hazardous (or other) waste according to Basel Convention and EU regulation on shipments of waste (Annex 2, Part II, 10.-12.)	E5 E5-5 (own operations)	ESRS: Disclosure on total amount of hazardous waste diverted from disposal and waste directed to disposal (own operations). No reporting requirements on transboundary movements of

<sup>26</sup> Regulation (EU) 2019/1021 on persistent organic pollutants

<sup>27</sup> Regulation (EU) Nr. 649/2012 on import and export of hazardous chemicals

Due diligence law	Requirements	ESRS reference point	Degree of compatibility
			hazardous wastes (import/export), no reference to Basel convention or respective EU implementing legislation <sup>28</sup>
	Avoid or minimize adverse impacts on natural heritages according to the Convention Concerning the Protection of the World Cultural and Natural Heritage in line with the World Heritage Convention (Annex 2, Part II, 13.)	E4 E4-2, E4-3, E4-5	ESRS: Disclosure on activities on sites negatively affecting biodiversity-sensitive areas (limited to own operations, not concerning value chain), including UNESCO World Heritage sites (Annex 2). No reporting requirements specifically on natural heritages
	Avoid or minimize adverse impacts on wetlands according to the Convention on Wetlands of International Importance in line with the Ramsar Convention (Annex 2, Part II, 14.)	E4 E4-2, E4-3, E4-5	ESRS: General coverage of impacts on ecosystems, but not specifically on wetlands. Definition of ecosystems refers to IUCN Global Ecosystem Typology 2.0. which includes wetlands (Annex 2)
	Prevent pollution from ships according to the International Convention for the Prevention of Pollution from Ships of 2 November 1973, as amended by the Protocol of 1978 (MARPOL 73/78) (Annex 2, Part II, 15.)	E2 E2-4 (own operations)	ESRS: General coverage of pollution of water and oceans, but not specific on pollution from ships or with reference to the International Convention for the Prevention of Pollution from Ships
	Prevent, reduce and control pollution of the marine environment by dumping according to the United Nations Convention on the Law of the Sea of 10 December 1982 (UNCLOS) (Annex 2, Part II, 16.)	E2	ESRS: General coverage of pollution of water and oceans, but not specific on dumping or with reference to the United Nations Convention on the Law of the Sea
Act on Corporate Due Diligence Obligations in Supply Chains (Lieferketten-	Manufacture of mercury-added products and use of mercury and mercury compounds in manufacturing processes according to the Minamata Convention (§2 (3) 1. and 2.)	E2 E2-5 (own operations and procurement)	ESRS: Information on the production and use of substances of (very high) concern (own operations and procurement) based on REACH and CLP-Regulation, but no reference to Minamata Convention or the EU Mercury Regulation
	Treatment of mercury waste according to the Minamata Convention (§2 (3) 3.)	E5 E5-5	ESRS: Disclosure on total amount of waste diverted from disposal and waste directed to disposal, broken down by hazardous waste

<sup>28</sup> Regulation (EC) No 1013/2006 on shipments of waste

Due diligence law	Requirements	ESRS reference point	Degree of compatibility
sorgfaltspflichten-gesetz, LkSG)	Production and use of chemicals according to Stockholm Convention on POPs (POPs) (§2 (3), 4.)	E2 E2-5 (own operations and procurement)	and non-hazardous waste (only for own operations), no reference to Minamata Convention or the EU Mercury Regulation  ESRS: Definition of soil pollution includes POPs, but there is no specific disclosure requirement on use of POPs. Reference to REACH and CLP-Regulation for substances of (very high) concern (Annex 2), but no reference to Stockholm Convention on POPs or the EU POP Regulation.
	Handling, collection, storage and disposal of waste (POPs) according to Stockholm Convention (§2 (3), 5.)	E5 E5-5 (own operations)	ESRS: Disclosure on total amount of waste diverted from disposal and waste directed to disposal, broken down by hazardous waste and non-hazardous waste (own operations); no reference to Stockholm Convention on POPs or the EU POP Regulation
	Exports of hazardous waste and other wastes; export and import of hazardous wastes according to Basel Convention (§2 (3), 6.-8.)	E5 E5-5 (own operations)	ESRS: Disclosure on total amount of hazardous waste diverted from disposal and waste directed to disposal (own operations). No reporting requirements on transboundary movements of hazardous wastes (import/export), no reference to Basel convention or EU implementing legislation

**Table 5: Requirements concerning adverse environmental impacts (product-related laws), ESRS reference points and compatibility assessment**

Due diligence law	Reporting requirements	ESRS reference point	Degree of compatibility
EU Regulation on batteries and waste batteries	Environmental risk category: (i) Air, including air pollution such as greenhouse gas emissions (Annex X, (2) a)	E1, E1-6 E2, E2-4 (own operations)	ESRS: Risk category generally covered in environmental standards (climate change, pollution)
	Environmental risk category: (ii) Water, including i.a. marine environment, water pollution, water use (Annex X, (2) a)	E2, E2-4 (own operations and procurement), E3	ESRS: Risk category generally covered in environmental standards (pollution of water, water and marine resources/water consumption)

	Environmental risk category: (iii) Soil, including soil pollution and erosion, land use and degradation (Annex X, (2) a)	E2, E2-4 (own operations and procurement), E4	ESRS: Risk category generally covered in environmental standards (pollution of soil, biodiversity and ecosystems)
	Environmental risk category: (iv) Biodiversity, including damage to habitats, wildlife, flora and ecosystems (Annex X, (2) a)	E4	ESRS: Risk category generally covered in environmental standards (biodiversity and ecosystems)
	Environmental risk category: (v) hazardous substances (Annex X, (2) a)	E2	ESRS: Risk category generally covered in environmental standards (pollution – substances of concern and substances of very high concern)
	Environmental risk category: (vi) noise and vibration (Annex X, (2) a)	E2	ESRS: Noise and vibrations are generally defined as pollutants, but no disclosure requirement covering noise or vibrations explicitly
	Environmental risk category: (viii) energy use (Annex X, (2) a)	E1	ESRS: Risk category generally covered in environmental standards (Climate/Energy consumption and mix)
	Environmental risk category: (ix) waste and residues (Annex X, (2) a)	E5	ESRS: Risk category generally covered in environmental standards (waste)
EU Regulation on deforestation-free products	<p>Definition of Deforestation Art. 2 (13): Commodities and products produced and manufactured on plots of land, not being subject to deforestation or forest degradation after 31 December 2020</p> <p>Prohibition of placing commodities/ relevant products on the market unless they are: Art. 3: (a) deforestation- and degradation-free; (b) produced in accordance with the relevant legislation of the country of production (including on environmental protection, Art. 2 (40)); (c) covered by a due diligence statement</p>	E4-2, E4-5	ESRS: Policies to address deforestation and metrics that measure land-use conversion over time (e.g. deforestation) can be reported. Specific understanding of 'deforestation' (not having been subject to deforestation after 31 December 2020) is not referenced in the ESRS, neither is production in compliance with relevant legislation in the country of production.

### 3.2 Due diligence process

In the following, the two company-related laws (Table 6) and the two product-related laws (Table 7) considered are grouped together, since their requirements concerning the Due diligence process are similar. The tables are structured along the generic steps defined by the OECD Due diligence Guidance for Responsible Business Conduct<sup>29</sup>.

**Table 6: Requirements concerning the Due diligence process (company-related laws), ESRS reference points and compatibility assessment**

Due diligence process element	Requirements proposed CSDDD	ESRS reference point	Degree of compatibility	Requirements LkSG	ESRS reference point	Degree of compatibility
1) Strategy and integration	Art. 5: Integration of due diligence in all relevant policies and risk management systems and having in place a due diligence policy	ESRS 2 GOV, ESRS 2 MDR-P	ESRS: Processes, controls and procedures to monitor, manage and oversee sustainability matters; policies to manage material sustainability matters	§4: Risk management must be enshrined in all relevant business processes	ESRS 2 GOV	ESRS: Processes, controls and procedures to monitor, manage and oversee sustainability matters
2) Impact assessment	Art. 6 (1): Appropriate measures to identify and assess actual or potential adverse human rights and environmental impacts in own operations and those of their direct and indirect business partners	ESRS 2 IRO-1 ESRS 2 SBM-3	ESRS: Identify and assess material adverse impacts in own operations and value chain	§5: Adequate risk analysis to identify environmental and human rights risks in own operations and at direct suppliers § 9: ad-hoc risk analysis for indirect suppliers	ESRS 2 IRO-1 ESRS 2 SBM-3	ESRS: Identify and assess material adverse impacts in own operations and value chain
	Article 6a: where appropriate, prioritization of adverse impacts	ESRS 2 IRO-1	ESRS: Criteria of severity and likelihood included in materiality assessment	§5 (2): Weighting and prioritization of risks	ESRS 2 IRO-1	ESRS: Criteria of severity and likelihood included in materiality assessment; LkSG also includes extent of

<sup>29</sup> 1. Embed responsible business conduct into policies and management systems, 2. Identify and assess actual and potential adverse impacts associated with the enterprise's operations, products or services, 3. Cease, prevent and mitigate adverse impacts, 4. Track implementation and results, 5. Communicate how impacts are addressed, 6. Provide for or cooperate in remediation when appropriate (OECD 2018)

Due diligence process element	Requirements proposed CSDDD	ESRS reference point	Degree of compatibility	Requirements LkSG	ESRS reference point	Degree of compatibility
	Art. 3 (q): Degree of severity and likelihood of the adverse impact					business activities, ability of influence and causal contribution
3a) Measures: Prevention	Art. 7 Preventing potential adverse impacts	ESRS 2 MDR-A	ESRS: Actions taken and resources used	§ 6 (3) and (4): Prevention measures (for own business unit, direct suppliers, indirect suppliers)	ESRS 2 MDR-A	ESRS: Actions taken and resources used
3b) Measures: Mitigation and remediation	Art. 8: Bringing actual adverse impacts to an end and minimizing their extent (requirement to take specific actions)	ESRS 2 MDR-A	ESRS: Actions to prevent, mitigate and remedy adverse impacts	§7: Remedial actions (measures for own business unit, direct suppliers, indirect suppliers)	ESRS 2 MDR-A	ESRS: Actions to provide provision of remedy adverse impacts
4) Grievance mechanism	Art. 9: Establishing and maintaining a complaints procedure	No reference point in the environmental ESRS	ESRS: Only in social standards	§8 Complaints procedure (establishment, performance criteria, effectiveness)	No reference point in the environmental ESRS	ESRS: Only in social standards
5) Monitoring effectiveness	Art. 10: Monitoring the effectiveness of due diligence policy and measures	ESRS 2 MDR-T, ESRS 2 MDR-M	ESRS: Tracking effectiveness through targets and metrics; processes, controls and procedures to monitor and oversee sustainability matters	§6 (5), § 7 (4): Review of effectiveness of preventive and remedial measures	ESRS 2 MDR-T, ESRS 2 MDR-M	ESRS: Tracking effectiveness through targets and metrics; processes, controls and procedures to monitor and oversee sustainability matters

**Table 7: Requirements concerning the Due diligence process (product-related laws), ESRS reference points and compatibility assessment**

Due diligence Process	Reporting requirements EU Regulation on batteries and waste batteries	ESRS reference point	Degree of compatibility	Reporting requirements EU Regulation on deforestation-free products	ESRS reference point	Degree of compatibility
1) Strategy and integration	Art. 49 (1) (a)-(e): Due diligence policy as well as management and control system	ESRS 2 GOV, ESRS 2 MDR-P	ESRS: Processes, controls and procedures to monitor, manage and oversee sustainability matters; policies to manage material sustainability matters			
2) Impact assessment	Art. 49 (2): Steps taken to comply with information requirements (e.g. country of origin, information on supplier)	No reference point		Art. 9 (1) a-c: Summary of information requirements (product description, quantity, country of production)	No reference point	
	Art. 50 (1) (a): Steps taken to identify significant adverse impacts in categories of Annex X (2) and related findings	ESRS 2 IRO-1 ESRS 2 SBM-3	ESRS: Identify and assess material adverse impacts in own operations and value chain	Art. 10: Conclusions of risk assessment, information and evidence obtained and used to assess the risk  Art. 10: Specific criteria for deforestation and related products	ESRS 2 IRO-1 ESRS 2 SBM-3	ESRS: Identify and assess material adverse impacts in own operations and value chain  ESRS: Criteria of severity and likelihood included in materiality assessment; EU regulation on deforestation includes e.g. assignment of risk to the relevant country, risk of mixing with products of unknown origin

Due diligence Process	Reporting requirements EU Regulation on batteries and waste batteries	ESRS reference point	Degree of compatibility	Reporting requirements EU Regulation on deforestation-free products	ESRS reference point	Degree of compatibility
3) Measures: Mitigation	Art. 50 (1) (b): Significant adverse impacts and how they have been addressed	ESRS 2 MDR-A	ESRS: Actions taken and resources used	Art. 11: Measures undertaken	E4-3	ESRS: Actions related to biodiversity and ecosystems, but no specific measures on deforestation.
4) Grievance mechanism	Art. 49 (1) (f): Steps taken to establish a grievance mechanism	No reference point in environmental ESRS	ESRS: Only in social standards			
5) Monitoring effectiveness	Art. 50 (1) (b) (iii): Monitoring and tracking performance of risk mitigation efforts	ESRS 2 MDR-T, ESRS 2 MDR-M	ESRS: Tracking effectiveness through targets and metrics; processes, controls and procedures to monitor and oversee sustainability matters			



## 4 Conclusion

### Reporting requirements on adverse environmental impacts:

- ▶ For all **environmental impacts** addressed by the due diligence laws there are at **least generic reference points** in the ESRS, which implies that the information to be reported under the due diligence laws can in principle be integrated in an ESRS report.

Specifically, the ESRS reporting requirements on the materiality assessment process (ESRS 2 IRO-1) and its outcome (ESRS 2 SBM-3) as well as on policies and action (topical ESRS) can include information on due diligence, as they also relate to the value chain. The metrics required by the environmental ESRS are mostly limited to companies' own operations and in a few cases to procurement (e.g. disclosure requirements E2-5, E5-5 in relation to pollution and waste). They only allow limited connections to the due diligence process.

In practice, however, companies would have to evaluate whether including all information from the due diligence laws in the management report serves the target group of this report or if it is more useful to publish separate but interlinked reports.

- ▶ Even though the information required by the due diligence laws can be reported there, the **ESRS often require other information** than that required by due diligence laws. Thus, the information necessary to understand whether due diligence laws have been implemented well cannot necessarily be discerned by following the ESRS disclosure requirements only.

In the case of the LkSG and CSDDD, the environmental impacts that companies need to consider are derived from international environmental conventions and treaties. The ESRS refer to generic environmental topics which cover the impacts addressed by the due diligence laws. However, in the ESRS-requirements the explicit reference to the international treaties or the EU legislation which implements them is in most cases missing (e.g. the EU Mercury Regulation for the Minamata Convention, the EU POP Regulation for the Stockholm Convention or the EU Regulation on waste shipments for the Basel Convention). Hence, it is not automatically ensured that the information reported according to the ESRS allows to understand if the requirements of the LkSG or CSDDD have been implemented correctly.

- ▶ **The more generic** the definition of adverse impacts in the due diligence laws are, **the more likely** it is that the reporting requirements of the ESRS are **fully compatible** with those of the due diligence laws. For example, the generic environmental risk categories of the due diligence requirements in the EU Regulation on batteries and waste batteries (Annex X (2a), excluding noise and vibration) can also be found in the ESRS. However, in the context of product-related due diligence laws the full compatibility is only given, when companies break down their environmental impacts in ESRS-reporting to the specific activities and products from where they occur, as required by ESRS 2 SBM-3, and for what purpose they occur. Such product-based differentiation is a prerequisite to understand whether product-related due diligence requirements have been fulfilled.
- ▶ **The climate change**-related requirements of the **CSDDD** follow to a large extent the reporting requirements of ESRS E11 (transition plan for climate change mitigation). In contrast, the adverse environmental impacts defined in Annex I of the CSDDD through a

reference to international treaties or EU law are not explicitly covered by the ESRS. However, they generally fall within the scope of ESRS E2, E4 or E5.

#### Reporting requirements on due diligence processes:

- ▶ The due diligence elements related to **strategy and integration into business processes**, the **measures to address adverse environmental impacts** and the **monitoring of effectiveness**, imposed by the company-related due diligence laws, are well covered by the provisions of the ESRS.
- ▶ The requirements to **assess adverse environmental impacts** are to a large degree compatible. However, the assessment criteria can differ. The ESRS, like the CSDDD, do not include criteria beyond severity and likelihood for assessing the materiality or (as in the CSDDD) for prioritising impacts. The LkSG and the EU Regulation on deforestation-free products consider further criteria. Whereas the criteria of the EU Regulation on deforestation-free products<sup>30</sup> are more specific, the LkSG criteria<sup>31</sup> allow more room for interpretation because, for example, the possibility of exerting influence can also be taken into account. The Battery Regulation does not contain specific assessment criteria.
- ▶ Certain product-related information requirements (e.g. description, origin and quantity of raw material and products) of the **product-related regulations do not have reference points** in the ESRS.
- ▶ A **Grievance mechanism** is required by company-related laws (CSDDD and LkSG) as well as the EU regulation on batteries and waste batteries. The ESRS only require disclosure on grievance mechanisms **in the social but not in the environmental standards**.

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<sup>30</sup> Art. 10 (2): Specific criteria for deforestation and related products (e.g. assignment of risk to the relevant country, risk of mixing with products of unknown origin)

<sup>31</sup> §5 (2). § 3 (2): 1. The nature and scope of the company's business, the company's ability to influence, and the nature of its contribution to causation.

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## Appendix

### A.1 Overview of the topics covered by the environmental ESRS

**Table 8: Overview of topics covered by the environmental ESRS**

ESRS	Structural element	Sub-topic	Sub-sub-topics
ESRS E1	Climate change	Climate change adaptation Climate change mitigation Energy	
ESRS E2	Pollution	Pollution of air Pollution of water Pollution of soil Pollution of living organisms and food resources Substances of concern Substances of very high concern Microplastics	
ESRS E3	Water and marine resources	Water Marine resources	Water consumption Water withdrawals Water discharges Water discharges in the oceans Extraction and use of marine resources
ESRS E4	Biodiversity and ecosystems	Direct impact drivers of biodiversity loss  Impacts on the state of species	Climate Change Land-use change, fresh water-use change and sea-use change Direct exploitation Invasive alien species Pollution Others  Examples: Species population size Species global extinction risk
		Impacts on the extent and condition of ecosystems	Examples: and degradation Desertification Soil sealing
		Impacts and dependencies on ecosystem service	
ESRS E5	Circular economy	Resources inflows, including resource use Resource outflows related to products and services Waste	

Source: ESRS 1, Appendix A, AR 16

## A.2 Overview of the environmental ESRS and their disclosure requirements

**Table 9: Overview of the environmental ESRS and their disclosure requirements**

ESRS	Structural element	Disclosure requirement	
<b>E1 - Climate change</b>	Governance (GOV) Strategy and Business Model (SBM)	ESRS 2 GOV-3 Integration of sustainability-related performance in incentive schemes	
		E1-1 Transition plan for climate change mitigation	
	Impact, Risk and Opportunity management (IRO)	Disclosure requirement related to ESRS 2 SBM-3 – Material impacts, risks and opportunities and their interaction with strategy and business model	
		Disclosure requirement related to ESRS 2 IRO-1 – Description of the processes to identify and assess material climate-related impacts, risks and opportunities	
		E1-2 – Policies related to climate change mitigation and adaptation	
		E1-3 – Actions and resources in relation to climate change policies	
		E1-4 – Targets related to climate change mitigation and adaptation	
		E1-5 – Energy consumption and mix	
	Metrics and Targets (MT)	E1-6 – Gross Scopes 1, 2, 3 and Total GHG emissions	
		E1-7 – GHG removals and GHG mitigation projects financed through carbon credits	
E1-9 – Anticipated financial effects from material physical and transition risks and potential climate-related opportunities			
<b>E2 - Pollution</b>	Governance (GOV) & Strategy and Business Model (SBM)	General requirements of ESRS 2 apply	
		Disclosure requirement related to ESRS 2 IRO-1 – Description of the processes to identify and assess material pollution-related impacts, risks and opportunities	
	Impact, Risk and Opportunity management (IRO)	E2-1 – Policies related to pollution	
		E2-2 – Actions and resources related to pollution	
		Metrics and Targets (MT)	E2-3 – Targets related to pollution
			E2-4 – Pollution of air, water and soil
	E2-5 – Substances of concern and substances of very high concern		

ESRS	Structural element	Disclosure requirement
		E2-6 – Anticipated financial effects from material pollution-related impacts, risks and opportunities
<b>E3 - Water and marine resources</b>	Governance (GOV) & Strategy and Business Model (SBM)	General requirements of ESRS 2 apply
	Impact, Risk and Opportunity management (IRO)	Disclosure requirement related to ESRS 2 IRO-1 – Description of the processes to identify and assess material water and marine resources-related impacts, risks and opportunities
		E3-1 – Policies related to water and marine resources
		E3-2 – Actions and resources related to water and marine resources
	Metrics and Targets (MT)	E3-3 – Targets related to water and marine resources
		E3-4 – Water consumption
		E3-5 – Anticipated financial effects from material water and marine resources-related impacts, risks and opportunities
<b>E4 - Biodiversity and ecosystems</b>	Governance (GOV) & Strategy and Business Model (SBM)	General requirements of ESRS 2 apply
		E4-1 – Transition plan and consideration of biodiversity and ecosystems in strategy and business model
		Disclosure requirement related to ESRS 2 SBM-3 – Material impacts, risks, and opportunities and their interaction with strategy and business model(s)
	Impact, Risk and Opportunity management (IRO)	Disclosure requirement related to ESRS 2 IRO-1 – Description of processes to identify and assess material biodiversity and ecosystem-related impacts, risks, dependencies and opportunities
		E4-2 – Policies related to biodiversity and ecosystems
		E4-3 – Actions and resources related to biodiversity and ecosystems
	Metrics and Targets (MT)	E4-4 – Targets related to biodiversity and ecosystems
		E4-5 – Impact metrics related to biodiversity and ecosystems change
		E4-6 – Anticipated financial effects from material biodiversity and ecosystem-related impacts, risks and opportunities
<b>E5 - Resource use and circular economy</b>	Governance (GOV) & Strategy and Business Model (SBM)	General requirements of ESRS 2 apply

ESRS	Structural element	Disclosure requirement
	Impact, Risk and Opportunity management (IRO)	Disclosure requirement related to ESRS 2 IRO-1 – Description of the processes to identify and assess material resource use and circular economy-related impacts, risks and opportunities
		E5-1 – Policies related to resource use and circular economy
		E5-2 – Actions and resources related to resource use and circular economy
	Metrics and Targets (MT)	E5-3 – Targets related to resource use and circular economy
		E5-4 – Resource inflows
		E5-5 – Resource outflows
		E5-6 – Anticipated financial effects from material resource use and circular economy-related impacts, risks and opportunities

Source: Matušek et al. (2023, p. 37)