Lobbying Disclosure and the EU Corporate Sustainability Reporting Directive

This paper is presented by InfluenceMap CIC in relation to the proposed European Sustainability Reporting Standards (ESRS) under development by the European Financial Reporting Advisory Group (EFRAG) as part of the Corporate Sustainability Reporting Directive (CSRD).

Table of Contents

1. Introduction

Corporate lobbying (hereafter 'policy engagement'[1]) has been identified by the *investment community* as a major risk to company-level and system risk management on climate change. Despite multi-year efforts to increase disclosure of corporate lobbying through transparency instruments and investor-led voluntary disclosure initiatives, complete information on corporate climate policy influencing activities remains largely hidden.

In its April 2021 *legislative proposal for a Corporate Sustainability Reporting Directive (CSRD),* the EU Commission identified a "widening gap between the sustainability information companies report and the needs of the intended users of that information" and set an objective to "ensure that there is adequate publicly available information about the risks that sustainability issues present for companies, and the impacts of companies themselves on people and the environment". One of the key provisions in the proposal states that companies under scope would have to report in compliance with European sustainability reporting standards (ESRS) adopted by the European Commission as delegated acts.

InfluenceMap proposes that corporate climate[2] policy engagement is a key example of this "gap" between reported and required information. This paper presents evidence of the materiality to investors of information on corporate policy engagement (Part 2) and the limitations of existing policy engagement disclosure channels (Part 3). It then recommends that mandatory company-level reporting of policy engagement, introduced as part of the upcoming European Sustainability Reporting Standards, would effectively bridge this information gap where other efforts are falling short. Detailed recommendations for disclosure requirements for consideration in the standards are set out in Part 4, briefly summarized below.

InfluenceMap proposes that companies under the Corporate Sustainability Reporting Directive should report on:

- **Policy engagement governance**: Which board and senior management representatives are responsible for oversight of climate policy engagement, and what review processes are in place to set the company's strategy for climate policy engagement.

[1] 'Policy engagement' refers to a range of activities defined by a 2013 UN protocol *Guide for Responsible Corporate Engagement in Climate Policy* which include lobbying, political contributions, the use of legal strategies, PR/advertising, research funding etc., both directly by corporations and indirectly by third party organizations.

[2] To date, climate policy engagement has been the key focus for investors and therefore InfluenceMap's work and the examples in this paper focus on this area. However, other sustainability-related policy areas, for example biodiversity policy engagement, could also be considered under the 'sustainability' reporting. In any regulatory action on policy engagement disclosure, the scope of sustainability-related polices would need to be clearly defined.

- **Policy engagement activity**: All climate advocacy positions held by the company, and what policy engagement activity has been conducted on these positions, both directly by the company and by third parties it funds and/or is a member of, such as industry associations.
- **Policy engagement alignment**: Assessments of alignment between (i) the company's overall climate strategy and its climate policy engagement and (ii) the company's direct climate policy engagement and its indirect policy engagement conducted by third parties it funds and/or is a member of. In addition, what action is being (or has been) taken to remedy misalignments identified.

The European Financial Reporting Advisory Group (EFRAG) is currently working on draft proposals for new European Sustainability Reporting Standards under the Corporate Sustainability Reporting Directive, with a view to opening them to public consultation in Q1 2022. InfluenceMap welcomes dialogue with the EFRAG Project Task Force and contributors on how policy engagement could be taken into account within the upcoming standards.

The observations and recommendations in this paper are based on InfluenceMap's world-leading platform for assessing corporate climate policy engagement (with full *methodology* and *results* available online), which has been developed and refined over the last six years through close coordination with the global investment community. InfluenceMap is a research partner to the *Climate Action 100+*, the largest ever global investor engagement initiative on climate change, now comprising 615 investors, responsible for over $60 trillion in assets under management.

2. Why Corporate Climate Policy Engagement is Material to Investors

Understanding corporate engagement with climate policy represents increasingly material information for investors. As early as 2011, researchers from Harvard Business School[3] argued that understanding physical emissions from a company represents an incomplete picture and that corporate policy impact could far outweigh that of its emissions.

Corporate performance on climate change has been on the investor agenda for over two decades, with efforts led by investor and civil society groups emerging alongside new frameworks — *Carbon Disclosure Project* (CDP), the *UN Principles for Responsible Investment* (UN PRI), *Sustainability Accounting Standards Board* (SASB), *Climate Disclosure Standards Board* (CBSD), as well as the Financial Stability Board-initiated *Task Force on Climate-Related Financial Disclosures* (TCFD). These disclosure initiatives have notably expanded their requirements to include qualitative information on policy engagement, in addition to physical emissions associated with an individual company along with its future reduction plans (scopes 1, 2, and 3 greenhouse

[3] What Environmental Ratings Miss, Auden Schendler and Mike Toffel, October 2011

gas emissions, and greenhouse gas reduction goals). These developments are a strong step in the right direction, and highlight clear appetite for this information. However, InfluenceMap's analysis shows that these voluntary-based systems to be seriously insufficient in terms of the quality of information on lobbying offered to the investment community, with companies failing to provide robust and transparent information on their policy engagement activities.

A series of recent developments bulleted below, highlight investor need for information related to corporate engagement with climate policy, especially as policy responses to climate change materialize:

- InfluenceMap's concept of a company's *Corporate Carbon Policy Footprint* (2017) and subsequent analysis has provided increasing clarity on the material impact of lobbying. For example, the 2019 report *Trade Groups and their Carbon Footprints* showed the huge economic and social impact of industry-led climate regulatory rollbacks in the US from 2016-2019, utilizing analysis from the NYU School of Law[4]. In the same year, Kyle C. Meng and Ashwin Rode[5] calculated that lobbying on the U.S. Waxman-Markey Bill in 2009 has so far resulted in $60 billion in climate costs to society. Demand from the investment community for InfluenceMap's analysis has increased dramatically in recent years, with over 900 site registrations in 2021 and over 300 meetings with the investment community (an increase of almost 300% from 2020).
- Legal action has emerged as a route to address issues of policy influence 'greenwashing'. In 2019, Massachusetts Attorney General Maura Healey filed a civil suit against ExxonMobil, *Commonwealth of Massachusetts v. ExxonMobil Corporation* (October 2019), alleging a wide range of violations of the state's consumer and investor protection laws. The lawsuit accuses ExxonMobil of intentionally misleading consumers in the state about the central role its fossil fuel products play in causing climate change and misleading Massachusetts investors about material climate-driven risks to its business, referencing InfluenceMap *research*. This followed similar approaches, for example *City of Oakland and City and County of San Francisco v. BP, Chevron Corporation, ConocoPhillips, ExxonMobil, Royal Dutch Shell (RDS)* (October 2017) and *Petition to the Commission on Human Rights of the Philippines Requesting for Investigation of the Responsibility of the Carbon Majors for Human Rights Violations or Threats of Violations Resulting from the Impacts of Climate Change* (Dec 2015).
- The automotive sector, particularly in the wake of the "Dieselgate" scandals, provides telling case studies as to how a deeper understanding of corporate policy engagement could have served to protect investors from material loss. While the Volkswagen Group presented itself as a climate and sustainability leader, its actual policy engagement represented dramatically different behavior. A lack of understanding as to how the company (along with others in the sector) was managing

[4] Climate & Health Showdown in the Courts, State Attorneys General Prepare to Fight, NYU Law School, March 2019
[5] The social cost of lobbying over climate policy, Meng, K. & Rode, A, Nature Climate Change volume 9, pages 472–476, 2019

regulatory risk shocked shareholders and resulted in an SEC lawsuit (*March 2019*). It is noted that Volkswagen chose to defraud NOx related rules to comply with increasingly stringent and climate-motivated CAFE efficiency standards in the US.

- Investor recognition of lobbying as an unaccounted risk has increased sharply, the CEO of the UN Principles of Responsible investment *stating* in August 2021 that “it’s clear the time has come to go further on reforming negative corporate climate lobbying”. In its ongoing *Inevitable Policy Response* project, the Principles for Responsible Investment (PRI) coalition of investors notes that "financial markets today have not adequately priced-in the likely near-term policy response to climate change." The launch of the *Climate Action 100+* in December 2017 established the largest ever global investor engagement initiative on climate change, now comprising 615 investors, responsible for over $60 trillion in assets under management. Focusing on 167 target companies, accounting for over 80 percent of corporate industrial greenhouse gas emissions, the initiative is specifically prioritizing lobbying disclosure in their *benchmark assessments*, using InfluenceMap analysis as part of its evaluation.

- Growing investor scrutiny on corporate lobbying behavior has resulted in companies facing increasing numbers of shareholder resolutions on climate policy engagement. The number of resolutions filed in this category has significantly increased in the last four years, becoming the most popular among the climate-relevant resolution universe monitored by InfluenceMap: 19 in 2021, compared with 17 in 2020, 13 in 2019, and 8 in 2018. InfluenceMap's data has been directly referenced in 7 of these resolutions in 2021. InfluenceMap has published a series of *investor briefings* on companies facing climate lobbying resolutions in 2021, which act as an on-going resource for investors.

- The OECD's *Lobbying In the 21st Century* report (2021) highlighted the extent of investor attention on climate policy lobbying, and found that “This higher level of scrutiny needs to be accompanied by better standards and accountability mechanisms to ensure that lobbying activities do not conflict with companies’ broader societal engagements. While numerous benchmarks are used to measure companies, if applied inconsistently, they can prevent forming a coherent and comprehensive approach, leaving too companies with too many risks and uncertainties”.

Therefore, accurate information on corporate climate policy engagement is in demand by investors for a variety of reasons and use-cases. InfluenceMap's public facing analysis and scoring of companies on climate policy engagement and its robust uptake by the global investment community suggests corporate policy engagement can be quantified and effectively used by investors. The bullets below provide examples of situations where information on corporate policy engagement is already in use by investors:

- **Company risk assessment and portfolio management**: The Volkswagen case illustrates the value of understanding accurate policy engagement behavior as a proxy for true management thinking on how the company is approaching risks/opportunities relating to climate change. This is especially true in sectors primarily or heavily driven by regulations such as the Global Industry Classification Standard top level sectors Utilities, Energy, and Materials. For example, the San Francisco Employees' Retirement System (SFERS) *utilizes InfluenceMap's metrics* to assess and manage its oil & gas holdings, and Legal & General Investment Management incorporates the metrics in its *Climate Impact Pledge scoring*.
- **Managing systemic risk**: Many large, diversified investors (such as pension funds) regard negative policy engagement as a systemic portfolio risk, given that it can lead to delays to policies deemed necessary by governments to reduce the impacts of climate change. This view has been articulated, *for example*, by a group of investors including Sweden's AP7, BNP Paribas Asset Management and the Church of England's Pension Board. AP7 notes "*The importance of climate lobbying has become firmly established as a new norm on the sustainability agenda, but there is still much to do before negative climate lobbying is brought to an end.*" The fund has blacklisted ExxonMobil, among others, based on climate policy engagement criteria.
- **The engagement process**: Engagement with companies on their climate policy engagement is a strategic element within the framework of the *Climate Action 100+* (CA100+) investor process, which comprises 615 investors with a total of over $60 trillion in signatory assets under management. Several investor-representative groups (e.g. *PRI*, *IIGCC*, *and CERES*) have formalized sets of expectations regarding how companies should manage their climate policy engagement processes. These expectations require companies to align their policy engagement with Paris targets and ensure good governance, including full disclosure of the entire policy engagement process. In its *2021 Stewardship Expectations* release, the world's largest asset manager BlackRock highlighted lobbying and trade association alignment as a priority: "*we will now seek confirmation from companies, through engagement or disclosure, that their corporate political activities are consistent with their public statements on material and strategic policy issues. Moreover, we expect companies to monitor the positions taken by trade associations of which they are active members on such issues for consistency on major policy positions and to provide an explanation where inconsistencies exist.*"
- **The shareholder resolution process**: The issue of policy engagement by companies, and the lack of transparency in this area, has driven an increasing number of shareholder resolutions. 18 climate lobbying shareholder resolutions have been submitted in 2022 so far. In 2021, 19 shareholder resolutions specifically on the topic of climate-related lobbying were filed, 7 of which directly referenced InfluenceMap's data. Of the 10 resolutions that made it onto the final AGM ballot, 8 passed. The most successful type of resolution tracked by InfluenceMap are those that request the

Board of Directors to conduct an evaluation and issue a report describing how the company's direct and indirect lobbying activities align with the Paris Agreement. Often these resolutions also ask how the company plans to mitigate risks arising from misalignment, as can be seen in the supporting statements of the resolutions filed at *United Air Lines*, *Delta Air Lines*, *ExxonMobil*, *Norfolk Southern* and *Phillips 66*.

3. Existing Disclosure Frameworks and Practices are Inadequate

Investors need specific, directly comparable information

In order to effectively undertake effective climate policy engagement stewardship, investors require comprehensive, timely and directly comparable information, provided on a company by company basis. However, while some voluntary initiatives show promise in certain areas, existing disclosure frameworks do not fulfill investor needs, providing incomplete and sporadic information across a multitude of platforms (regulated and voluntary).

Existing efforts seek to bridge these gaps and collate the available information in a format that can be used by the investment community. For example, InfluenceMap does this for 350 of the world's largest companies, supplementing disclosed policy engagement with an independent assessment of all other publicly available evidence of policy engagement. This independent analysis plays a crucial role in verifying direct company disclosures which have been found to be incomplete and often misleading.

However, this effort is fundamentally limited by i) the scope and efficacy of regulated policymaker-level lobbying registers in different geographies, (ii) the extent of participation in and quality of voluntary disclosures, and (iii) the lack of mandatory policy engagement disclosure within company reporting.

Limitations of existing regulatory policy-level disclosure systems

According to the OECD, only a *minority of countries* have addressed lobbying risks in their governance arrangements. 23 of the 41 countries analysed in its 2021 report *Lobbying In the 21st Century* provided some level of transparency over lobbying activities.

In this context, it is helpful to consider the extent of EU-level regulatory frameworks, which are advanced relative to the global picture. The key disclosure mechanisms – the EU Transparency Register (EU-TR), Access to Document Regulation 1049/2001 (ATD-R), and the "Have your say" consultation platform ("Have your say") first launched as part of the 2016 Agreement on Better Law-Making – offer moderate coverage of influencing activities targeting EU institutions, but crucial exemptions render the system as a whole largely ineffectual (see case study below).

From an investor perspective, the EU system of multiple information disclosure platforms is also rendered ineffectual by the complexity of its design. Some company-level information is collated on the EU Transparency Register profiles but not all, for example, meetings held with policymakers in the EU Commission are listed but not meetings with MEPs. To access these, the investor would need to search through individual MEP meetings disclosures. Links to formal consultation responses are listed on the Transparency Register pages, but materials shared in meetings with policymakers are not. To access these, the investor would need to file Access to Documents requests and often wait several months for a response.

Therefore, an investor seeking to build a complete company-level picture of activities via existing policy-level disclosure mechanisms would need to learn and then navigate numerous rules and disclosure routes. Stewardship managers, responsible for multiple companies, simply do not have capacity to do this for policy at EU level, let alone across the 23 countries identified by the OECD as having some sort of transparency system in place.

Comprehensive company-level lobbying disclosures are therefore needed to provide clear, comparable disclosure on a set of activities, across all key geographies where the company undertakes activities to influence policy.

Case study: limitations of EU policy-level lobbying disclosure

Exemptions to disclosure rules render the EU lobbying transparency system largely ineffective. The case studies below evidence these shortcomings, by taking two key information sources for understanding policy engagement – i) disclosure of corporate meetings with policymakers, and ii) disclosure of advocacy documents shared with policymakers – and demonstrating the limitations of the transparency system across the different EU institutions.

<u>Meetings disclosure</u>

Meetings disclosure differs between EU institutions, resulting in limited data on how policymakers are being targeted by corporate policy engagement. The patchy disclosure of meetings is furthermore misrepresentative of the reality of lobbying, whereby certain policymakers are exempt from disclosing external meetings. This is particularly the case in the Commission and Council, where technical policy leads are not included in meetings disclosure regulations.

- <u>EU Commission</u>: Up to December 2020, only Commissioners, Cabinet members, and Directors-General (250 out of 30,000 officials) were obliged to publish lobby meetings (*estimated 20% of external meetings*), at which lobbyists must be registered on the transparency register. As part of the December 2020 Inter-Institutional Agreement (IIA) on lobbying transparency, 'Heads of Service' are now included, a very minor change. This scope excludes meetings with officials responsible for the technical detail of policy who are, as a result, a far more frequent focus of influencing activities. For example, DG ENER Unit C3, lead Unit on the 'Hydrogen and decarbonised gas market package' held 30 meetings with representatives from the gas industry between February and September 2021. *This information* was accessed under Freedom of Information Request, and would not otherwise have been disclosed given the limited scope of current disclosure rules.

- EU Parliament: Under an update to the Parliament's 'Rules of Procedure' in 2019, MEPs in the role of Rapporteurs, Shadow Rapporteurs and Committee Chairs must publish meetings with lobbyists, a rule that was confirmed in the December 2020 IIA on lobbying transparency. While this rule does accurately target the most influential MEPs developing policy, it is not fully applied by MEPs, suggesting it is not rigorously enforced. For example, as of 12 January 2022, 15% (8 out of 53) of MEPs performing these roles on 'Fit for 55' files in the ENVI Committee *did not disclose their meetings*.
- EU Council: The Council is the most lacking in meetings disclosure transparency, historically only publishing meetings held by the *President of the European Council*. The December 2020 IIA on lobbying transparency included a very minor expansion of this rule to include the General Secretariat of the Council. As with the Commission's meeting disclosures, the current system avoids disclosure of meetings with the key policymakers conducting detailed work on EU legislation, such as the Council's *150+ working parties* which include an official from every member state. A series of Council Presidencies have started voluntarily publishing the meetings held by their Permanent Representatives, including the *Netherlands*, *Romania*, *Croatia*, *Germany*, *Portugal*, *Italy* and *Slovenia*. Germany, Italy and the Netherlands have continued this practice beyond their Presidencies.

Documents disclosure

Access to documents shared with policymakers for lobbying purposes is limited to the Commission, while documents shared with MEPs and Council representatives are largely inaccessible. ATD-R requests and the "Have your say" platform provide some insight on policy engagement materials shared with members of the EU Commission, but MEPs within the EU Parliament and Permanent Representatives within the Council are not subject to the ATD-R. This results in a critical lack of visibility of documents shared with the EU Parliament and Council.

- EU Commission: At Commission level, the disclosure of consultation submissions via the "Have your say" platform has potential to be highly effective. The system is user friendly and detailed, however publication of consultation responses is frequently delayed by a period of months, limiting the opportunity for external scrutiny during the timeframes of policy development. For example, the public consultation for '*Gas networks – revision of EU rules on market access*' ran from 26 March to 18 June 2021, however the responses were not made public until after the policy was adopted on 14 December. Requests for documents shared in meetings with the Commission, filed under the ATD-R, is another helpful source of policy engagement information. However, as with the "Have your say" platform, untimely responses severely hamper the efficacy of this tool. For example, *a request* filed on 30 September 2021 for documentation shared by the gas industry in 30 meetings held between February and September 2021 with DG ENER Unit C3, lead Unit on the 'Gas Package', was first extended for 15 days, further delayed beyond the extended deadline (17 November), then finally responded to on 3 December, 10 days before the policy was due to be launched.

- EU Parliament: Access to documents shared as part of policy engagement with MEPs in the European Parliament appears to be impossible. Requests have been *rejected* on the basis that ATD-R 1049/2001 only applies to documents held by an institution, and documents shared with MEPs as part of private meetings are not considered to be held by Parliament. There is no other known route to access documents shared in meetings with MEPs.
- EU Council: Access to documents shared with the EU Council is similarly highly limited. Requests for documents shared in meetings with Permanent Representatives of the Council have been rejected for multiple reasons, ranging from *not holding the information requested* to claiming that Permanent Representatives are not an EU institution and therefore are *not subject to ATD-R 1049/2001*. In *one case*, both reasons were given. *Research* by Corporate Europe Observatory into the transparency of Council Working Parties found that documents were *not always made available* under ATD-R, and that information disclosure was hampered by the fact that there is *no requirement* to produce minutes of Working Party discussions.

The limitations of voluntary company-level disclosure systems

In response to investor appetite for information on corporate policy engagement, over the last 5 years many voluntary disclosure frameworks have made efforts to include lobbying in disclosure frameworks.

Notable initiatives include the *Carbon Disclosure Project* (CDP), the *UN Principles for Responsible Investment* (UN PRI), *Sustainability Accounting Standards Board* (SASB), *Climate Disclosure Standards Board* (CBSD), as well as the Financial Stability Board-initiated *Task Force on Climate-Related Financial Disclosures* (TCFD).

For example, CDP now requests responses on the following key questions:

- C12.3. Do you engage in activities that could either directly or indirectly influence public policy on climate-related issues through any of the following? Direct engagement with policymakers, Trade associations, Funding research organizations, other.

- C12.3a. On what issues have you been engaging directly with policymakers?
- C12.3c. Enter the details of those trade associations that are likely to take a position on climate change legislation (Trade association, Is your position on climate change consistent with theirs?, Please explain the trade association's position, Howe have you influenced, or are attempting to influence their position?)

Some promising voluntary disclosures have emerged. For direct policy engagement activities, InfluenceMap finds *E.ON*, *Enel*, *Iberdrola*, *Verbund*, *BP*, and *Fortum* to be among the most transparent. These companies appear to disclose on all climate change policies relevant to their operations and clearly detail engagement activities undertaken to influence these policies. Increasing numbers of companies are also conducting industry association alignment assessments of direct and indirect climate policy engagement. InfluenceMap has conducted an *audit* of 34 industry association alignment reviews from CA100+ target companies, which aim to provide transparency on industry associations' climate change lobbying and alignment with the company's positions. Overall, 41 companies have now conducted an industry association review, up from 9 at the start of 2020, demonstrating significant uptake of this disclosure route by companies in response to investor demands. Although no review to date has been deemed 'best practice' by InfluenceMap, a number of European companies are judged to be leaders, including *Royal Dutch Shell*, *Holcim*, *Bayer*, *Engie* and *BASF*. An August 2021 InfluenceMap *briefing* highlighted where these industry association reviews demonstrated 'better practice'.

Overall, however, these initiatives are falling short. InfluenceMap's assessments of over 350 companies find that less than 5% of companies fully disclosed their policy engagement activities, while over 80% provided disclosures that were largely unsatisfactory, incomplete or hard to access. This low success rate appears to be due to a lack of an incentive structure to ensure companies disclose accurately on these questions.

Progress is being made on this front by the Climate Action 100+ initiative, which this year will combine voluntary disclosures with independent assessments by InfluenceMap to test the disclosures and verify their accuracy. This information will be used by investors, in the initiative in their engagement activities and shareholder resolutions, to drive better corporate standards on policy engagement. By combining disclosure with independent verification, this approach attempts to create an incentive structure for the companies to disclose accurately. This approach would be significantly strengthened by robust standards for policy engagement disclosure, as companies would have a regulatory incentive to disclose fully, with heightened implications if the disclosure was found by independent assessments to be incomplete.

The lack of mandatory policy engagement disclosure within company reporting

The EU Non-Financial Reporting Directive introduced a requirement for companies to report both on how sustainability issues affect their performance, position and development (the 'outside-in' perspective), and on their impact on people and the environment (the 'inside-out' perspective). The EU Commission's 2017 *guidance* on Non-Financial Reporting suggests companies conduct a materiality assessment, taking into account internal and external factors, including "Public policy and regulatory drivers: Public policies and regulation may have an effect on the specific circumstances of a company, and may influence materiality".

Under current legislation, company disclosure on climate policy engagement is generally limited to the 'outside-in' perspective - setting out risks to company activities from climate regulations. Information on 'inside-out' activities - in other words, how the company is seeking to influence the regulatory environment, is rarely fully disclosed.

As such, information on policy engagement appears to be a clear case of what the EU Commission described in its April 2021 *legislative proposal for a Corporate Sustainability Reporting Directive (CSRD)* as the "widening gap between the sustainability information companies report and the needs of the intended users of that information". The initiatives set out above, including shareholder resolutions and voluntary initiatives such as CDP, demonstrate not only the clear appetite for this information, but also the increasing inefficiencies for companies which receive numerous requests for similar information.

The CSRD proposal also highlights that "the lack of precision in the current requirements, and the large number of private standards and frameworks in existence, make it difficult for companies to know exactly what information they should report" and flags that "all of this generates unnecessary business costs".

If disclosure of policy engagement were effectively regulated, the limitations of both current lobbying disclosure mechanisms and voluntary disclosure initiatives could be greatly reduced, improving not only the information flows for interested parties, but also limiting bureaucracy and costs for the companies involved.

4. What Company-Level Disclosure is Needed

The stream-line template for disclosures below draws primarily from existing climate policy engagement expectation statements issued by investor-representative groups including *PRI*, *IIGCC*, *and CERES.* In 2020-21, Chronos Sustainability ltd, in partnership with Church of England Pensions Board, BNP Paribas and AP7, set out to further develop an investor framework for assessing responsible corporate engagement with climate policy. Organizations including the Institutional Investors Group on Climate Change (IIGCC), The Asia Investor Group on Climate Change (AIGCC), Ceres, UN Principles for Responsible Investment (UN PRI), and InfluenceMap sat on the advisory group for this work, which also involved consulting a wide range of stakeholders in the finance, corporate and civil society sectors. The *initial findings* of this process are taken into consideration for the proposal below.

All companies should disclose on:

Climate Policy Engagement Governance

1. **Governance responsibility**: Which board and senior management representatives are responsible for oversight of the company's climate change policy engagement approach and activities. These employees must be explicitly responsible for climate change policy engagement, not just general climate change-related activities or general policy lobbying-related activities.
2. **Governance process**: What monitoring and review processes are in place for climate policy engagement (both direct and indirect) and how stakeholders are consulted in the setting and review of climate policy engagement positions and activities.

Climate Policy Engagement Activity

1. **Policy positions**: A full and detailed account of company advocacy positions on all existing and potential future climate policy, regulatory and other government interventions globally that may materially impact the business, including quantification of these impacts.
2. **Direct policy engagement activities**: All corporate policy engagement activities conducted directly by the company and its subsidiaries (with engagement defined by the Guide for Responsible Corporate Engagement in Climate Policy[6]) on the positions noted in (1).
3. **Indirect policy engagement activities**[7]: The policy engagement activities on (1), similarly defined as in (2), conducted by external groups the company funds and/or is a member of (industry associations, advocacy groups, chambers of commerce etc.) Supplementary information should be provided on whether the company sits on the board or plays an active role in committees or other activities related to climate change, and how much the company pays to each of these organizations on an annual basis.

Climate Policy Engagement Alignment

[6] *Guide for Responsible Corporate Engagement in Climate Policy*, UN Caring for Climate, 2013; Page 15 Direct and Indirect activities noted including lobbying, campaign contributions, other influencing activities, PR, advertising, industry group links, revolving doors etc.
[7] Aims to address the issue of policy engagement misalignments between companies and industry associations, *identified by the OECD* as an area where "further disclosure rules designed specifically for industry associations may be necessary, so minority interests are not presented as speaking for all the members".

1. **Alignment assessments**: Policy engagement alignment assessments detailing (i) how direct corporate policy engagement aligns with the company's commitments/strategy on climate, (ii) to what extent the climate policy positions of the company's industry associations align/misalign with its own positions on climate.
2. **Alignment actions**: What action is being (or has been) taken to remedy misalignments identified in (1).

5. Why This Should Be Achieved Through the ESRS under the Corporate Sustainability Reporting Directive

Addressing The Climate Policy Engagement Information Gap Fits The Corporate Sustainability Reporting Directive Objectives

On 21 April 2021 the European Commission adopted a *legislative proposal for a Corporate Sustainability Reporting Directive (CSRD)*. The proposal contained the following acknowledgements that current sustainability reporting by companies is not fit for purpose:

"The primary users of sustainability information disclosed in companies' annual reports are investors and non-governmental organisations, social partners and other stakeholders. Investors, including asset managers, want to better understand the risks of, and opportunities afforded by, sustainability issues for their investments, as well as the impacts of those investments on people and the environment [...] ***The current legal framework does not ensure that the information needs of these users are met. This is because some companies from which users want sustainability information do not report such information, while many that do report sustainability information do not report all the information that is relevant for users. When information is reported, it is often neither sufficiently reliable, nor sufficiently comparable, between companies.*** *The information is often difficult for users to find and is rarely available in a machine-readable digital format."*

It also highlighted that the information gap in current sustainability report limits the ability of the investment community to take account of sustainability risks in decision making, thus creating systemic risks that threaten financial stability:

"There is therefore a widening gap between the sustainability information companies report and the needs of the intended users of that information. ***On the one hand, this means that investors are unable to take sufficient account of sustainability-related risks in their investment decisions. This in turn has the potential to***

create systemic risks that threaten financial stability. *On the other hand, the gap means that investors cannot channel financial resources to companies with sustainable business models and activities. This in turn undermines the achievement of the objectives of the European Green Deal. It also hampers stakeholders' ability to hold undertakings accountable for the impact they have on people and the environment, creating an accountability deficit liable to undermine the efficient functioning of the social market economy."*

It set out an objective to ensure that companies report all sustainability information considered relevant, at the least possible cost:

*"**The proposal aims to ensure that there is adequate publicly available information about the risks that sustainability issues present for companies, and the impacts of companies themselves on people and the environment.** This means that companies from which users need sustainability information should report such information, and that **companies should report all information users consider relevant**. Reported information should be comparable, reliable and easy for users to find and make use of with digital technologies."*

To deliver on this, the proposal announced that companies under scope would have to report in compliance with new European Sustainability Reporting Standards. The European Financial Reporting Advisory Group (EFRAG), the governing body responsible for drafting the legislation, is expected to deliver to the European Commission a first set of reporting standards by mid-2022, following public consultation in early 2022. The first reporting by undertakings using the standards is expected in 2024 with reference to reporting year 2023.

The ESRS Can Succeed Where Other Efforts Have Not

In light of the above acknowledgements and objective set out by the EU Commission, there is a clear opportunity for the new European Sustainability Reporting Standards to fill the current policy engagement disclosure information gap, long identified by the investment community as a key risk.

The December 2020 EU Inter-Institutional Agreement on lobbying transparency showed the complexity of regulating relevant policy engagement activity at institution-level. As set out in Part 3, critical data sources for evaluating policy engagement are still inaccessible due to the scope of transparency requirements. Furthermore, the information disclosed is not presented in a format that can be used by the investor community.

Voluntary initiatives such as the Climate Disclosure Project have sought to fill this gap, as have investor initiatives such as the Climate Action 100+, however companies lack incentives to fully disclose on policy engagement activity, and therefore the information shared through these initiatives to date has regularly been found to be incomplete by independent assessments from InfluenceMap.

By mandating policy engagement disclosures at company-level via the European Sustainability Reporting Standards, the EU could address these two critical problem areas, bringing the relevant information into a comparable format for investors, and creating the incentive structure lacking in current investor-led initiatives.

If requirements followed the structure recommended in Section 4, whereby companies would disclose on engagement activities on all relevant global climate policy, there would be a clear opportunity for the "Brussels effect" to provide access to information of international policy engagement that may be subject to far weaker disclosure regulations.

Existing Reference to Policy Engagement in the CSRD Standards Development

So far, policy engagement appears to have been identified as a potential focus area for the 'Governance+' element of the new standards under development by the EFRAG:

- In February 2021, the EFRAG project taskforce published a *report* setting out its 'Proposals for a relevant and dynamic EU sustainability reporting standard-setting'. It identified "lobbying" as a potential sub-topic within the 'Governance+' category of the future standards: "this third category (Governance+) could therefore include the following sub-topics: [...] b) Business ethics, including anti-corruption and anti-bribery, lobbying, data privacy, compliance, culture and conduct, etc".
- In November 2021, the EFRAG's *status report* suggested that this aspect may be being taken forward as part of 'Cluster 6' of the taskforce, focusing on topics including: "(a) governance, risk management and internal control; (b) responsible business practices". "Sustainability governance" is also referenced as part of the 'Cluster 1' work program on "Conceptual guidelines & cross-cutting standards", covering topics including "sustainability governance and organization" as a cross-cutting standard.
- The January 2022 draft working paper, '*ESRS3 Sustainability governance and organization'*, stated that governance information relating to "(b) political engagements of the undertaking, including its lobbying activities" would be addressed by working paper 'ESRS G1 Governance, risk management, internal control', which is yet to be published by the EFRAG.

The EFRAG is currently working on these draft proposals, releasing *draft working papers* for reference, with a view to opening them to public consultation In Q1 2022. This submission aims to highlight the critical importance of policy engagement disclosure, and invites dialogue with the EFRAG on how it could be comprehensively included in the draft standards.