ClientEarth

28 February 2023

TPT Consultation Survey

ClientEarth response

Contents

A. About ClientEarth
B. Key points and general comments
C. Responses to specific consultation questions

A. About ClientEarth

ClientEarth is an international non-profit environmental law organisation headquartered in London. Our team of Accountable Finance lawyers focus on the legal implications of climate change and other environmental risks and impacts for a wide spectrum of market participants, including banks, companies, investors, directors, professional advisers and regulators.

This document responds to the Transition Plan Taskforce (**TPT**) disclosure framework and implementation guidance consultation. ClientEarth has also submitted a consultation response via the TPT's online survey. This document records our key points and responses to specific consultation questions.

ClientEarth also submitted a response to the TPT's call for evidence in July 2022, which is available here.

We welcome further discussion with the TPT on any of the topics below. For any follow up questions, please contact Robert Clarke (rclarke@clientearth.org) or Megan Clay (mclay@clientearth.org).

B. Key points and general comments

A robust, science-aligned regime for transition planning is essential to drive genuine transition towards a sustainable low-carbon economy, support companies and investors to manage climate-related risk and make fully informed financial decisions, and to stamp out "greenwashing" and transition "in name only" under the guise of inadequate corporate "net zero" commitments.

In ClientEarth's view, current practice in relation to corporate net zero commitments and transition plans represents a market failure, which is perpetuated by the failure of regulators to take enforcement action in cases of misleading or otherwise inadequate disclosure. For example:

- The New Climate Institute and Carbon Market Watch found in their 2023 Corporate Climate Responsibility Monitor report that the climate strategies of 15 of the 24 companies surveyed were of low or very low integrity, and that "*their combined emission reduction commitments are wholly insufficient to align with 1.5°C-compatible decarbonisation trajectories; targets and potential offsetting plans remain ambiguous; and the exclusion of emission scopes severely undermines the targets of several companies*" (p.5).
- A report released by CDP in February 2023 found that of the 18,600+ respondents to CDP's 2022 climate change questionnaire, 4,100 disclosed that they had already developed a 1.5°C-aligned climate transition plan, but of these respondents, just 81 (representing 0.4% of total respondents) reported in sufficient detail against the 21 key indicators in CDP's climate questionnaire that align with a credible transition plan (p.3).[1]
- In October 2022, Climate Action 100+ (**CA100+**) reported the results of its interim assessments against the Net Zero Company Benchmark, finding that the increase in corporate net zero commitments is "*not matched by credible transition plans showing how they will be achieved*". Among other findings, the assessments revealed that while 82% of focus companies had set medium-term targets, just 20% had established "*ambitious medium-term targets that cover all material scopes and are aligned with a 1.5°C pathway*", and "*only 10% of focus companies have set short-term targets (up to 2025) that are aligned with a 1.5°C scenario and cover all material emissions*". In addition CA100+ found that net zero targets are often not supported by strategies to deliver them, and only half of focus companies have net zero commitments for 2050 that cover all material greenhouse gas emissions, including material Scope 3 emissions.

These findings are consistent with ClientEarth's practical experience in relation to deficient corporate net zero commitments and misleading messaging about these commitments.

While we welcome the critical role of regulator-enforced common standards for transition planning, and the rigour of the TPT's current proposals, in this context:

(A) It is crucial that the TPT's recommendations, and the regulatory framework(s) generated in response to them, provide a corrective solution to current market practice, rather than reinforcing it.

(B) The TPT's role must be to empower regulators by setting clear, forceful and ambitious standards that can be translated into effective regulation. In the prevailing context outlined above, it is

[1] It is notable that this number was down from 135 respondents in CDP's 2021 assessment. CDP attributes this reduction to "*strengthening the disclosure criteria for what constitutes a credible climate transition plan by upholding them to 1.5°C alignment*" (p.3 of CDP's 2023 report).

important for the TPT to note that any language or requirements that are overly ambiguous or permissive (including by prioritising flexibility over rigour) are likely to: (i) result in absent, weak or systemically ineffective implementation by the regulator; and / or (ii) be exploited by corporates making transition plan disclosures; and / or (iii) be subject to contested enforcement.

For there to be a fighting chance of adequate standards being upheld at each of these stages, it is imperative that the TPT's recommendations are ambitious, forceful and clear. We note that the UN High Level Expert Group (**UN HLEG**) on the net zero commitments of non-state entities recognises in its recent net zero commitment recommendations that regulation is essential to "*level the playing field and transform the groundswell of voluntary [net zero] commitments into ground rules for the economy overall*" (p. 33). The UN HLEG recommends that "*in order to ensure rigour, consistency and competitiveness, regulators should develop regulation and standards in areas including net zero pledges, transition plans and disclosure, starting with high-impact corporate emitters, including private and state-owned enterprises and financial institutions*" (p. 33). The TPT's recommendations are an essential stepping stone to the rigour, consistency and competitiveness of the UK's transition plan regime.

(C) The TPT must not create a regime that compares unfavourably to the EU disclosure regime, as this would give rise to opportunities for regulatory arbitrage – any gaps or discrepancies between standards will create confusion and be exploited. If the TPT's intention is to provide a "gold standard" for transition plan disclosure, its recommendations must not be weaker than the corresponding EU rules as set out in the November 2022 draft of the ESRS E1 Climate Change reporting standard (or, to a lesser extent because it is not regulation per se, the recommendations of the UN HLEG). We support the suggestion raised by others at the civil society roundtable held by the TPT on 10 February 2023 that the TPT should conduct a gap analysis against these frameworks before issuing its recommendations. We have focused on three key points of comparison below, but there are many others to be identified, acknowledged and addressed.

Against this background, we have identified three key issues in respect of which the TPT's recommendations must be strengthened:

1. **Science-based, Paris-aligned ambition must be mandatory**. It is crucial to the rigour of the TPT's Framework that companies are required to explain how their transition plans are compatible with scenarios which limit global warming the 1.5 °C with low or no overshoot, in line with the goals of the Paris Agreement. We note that, on a cross-sector global basis, this implies absolute emissions reductions of 45% by 2030 (corresponding to a linear annual reduction of 4.2%) against a current representative baseline. The minimum expectations for ambition should evolve with the latest climate science. To meet the minimum standard of decision-useful information, if a company's plan is not so aligned the company should clearly warn users of this fact, disclose the reasons, and explain how the company's transition plan would need to change to align with such a scenario.

   In order to address the issue of companies wrongly interpreting the Paris Agreement goal as 2°C, guidance should explain: (i) that the Paris Agreement provides a singular long-term temperature goal ("*Holding the increase in the global average temperature to well below 2°C above pre-industrial levels and pursuing efforts to limit the temperature increase to 1.5°C above pre-industrial levels, recognizing that this would significantly reduce the risks and impacts of climate*

change"); and (ii) that 'merely' aiming for keeping warming below 2°C is not in line with the Paris goal because it means rejecting a fair chance of limiting warming to 1.5°C.[2]

The Framework should also acknowledge and reflect the need for companies to explain how they are operationalizing the idea of "fair share" of global climate mitigation in order to generate greater transparency around this key concept and encourage experimentation that can lead to best practice. The Framework should encourage all entities to act on internationally agreed principles relevant to equity, justice and "fair share", and the evidence of the need for climate action to be equitable in order to be effective (including statements to this effect from the IPCC).[3] For example, as suggested in the ISO's Net Zero Guidelines, *"large organizations and those based in developed countries should aim to achieve net zero earlier (potentially well before 2050) than low-emitting countries to contribute to global efforts to limit warming to 1.5°C"*.[4]

However, in the current draft of the Disclosure Framework, the alignment of company transition plans with global and national climate commitments is relegated to a footnote (FN9) to the definition of transition plans on p. 8. Further, the language used is non-mandatory, suggesting that transition plans "*should reflect the urgency to act*"[5] and "*should be informed by*"[6] national climate targets and international climate agreements. This approach is repeated in the Implementation Guidance in a footnote (FN6) on p. 6, but no further guidance is provided. This language is not clear enough and leaves too much room for the creation (and sanction by regulators) of plans that are not robust or credible and do not deliver the benefits identified by the TPT (p. 6 of the Disclosure Framework) such as transparency and accountability around net zero targets, and enabling investors to make smarter capital allocation decisions. Moreover, such plans are likely to be inadequate both to contribute to climate change mitigation and to effectively address the climate-related risks faced by organisations.

In comparison:

- The EU's ESRS E1 Climate Change reporting standard clearly mandates the alignment of company transition plans with global climate goals. The objective of the disclosure standard is to enable users to understand ""*the undertaking's past, current, and future mitigation efforts in line with the Paris Agreement (or an updated international agreement on climate change) and limiting global warming to 1.5°C*" (para. 1(b)) and "*the plans and capacity of the*

[2] The CO_2 budget of 900 $GtCO_2$ for an 83% chance at 2°C provides only a 17% chance of limiting warming to 1.5°C. See the IPCC AR6 WG1 SPM, Table SPM.2, p. 29).
[3] The IPCC has concluded that "*Accelerating the transition to sustainability will be enabled by explicit consideration being given to the principles of justice, equality and fairness (high confidence)*" (IPCC AR6 WGIII Tech Summary, p. 147). Climate Action Tracker provides an explanation of the concept of "fair share" in the context of the Paris Agreement, available here. The introduction to the UN HLEG recommendations states that "*a net zero pledge must be a commitment by the entire entity, made in public by the leadership, and be reflective of the city, region or corporation's fair share of the needed global climate mitigation*" (p.12). In relation to the "fair share" generally, see further the Race to Zero Expert Peer Review Group's Interpretation Guide on the Race to Zero criteria (June 2022 version), at p.6 onwards.
[4] The ISO Net Zero Guidelines (IWA 42:2022(en)) provide guidance in relation to "fair share", stating that: "*The organization should take into account the principle of equity and justice (see 5.9) when determining fair share and how it should contribute to a just transition to global net zero…In determining what a fair share is for the organization, it should consider its context and take into account:*

- *resources and technology;*
- *its historical GHG emissions;*
- *historical GHG emissions of the territories it operates in;*
- *historical and current GHG emissions of the sector(s) it operates in;*
- *current socio-economic situation of the territories it operates in."*

[5] Emphasis added.
[6] Emphasis added.

undertaking to adapt its strategy business model(s) and in line with the transition to a sustainable economy and to contribute to limiting global warming to 1.5°C" (para. 1(c)). In support of this objective, disclosure requirement E1-1 requires company transition plan disclosures to include "*an explanation of how the undertaking's [GHG emissions reduction] targets are compatible with the limiting of global warming to 1.5°C in line with the Paris Agreement*" (para. 15(a)). Similarly, in relation to emissions reduction targets, the standard requires companies to "*state whether the GHG emission reduction targets are science based and compatible with limiting global warming to 1.5°C. The undertaking shall state which guidance or framework has been used to determine these targets including the underlying climate and policy scenarios*" (Disclosure Requirement E1-4, para. 32(e)).

- The UN HLEG recommendations stipulate (in Recommendation 1, p. 15) that "*A net zero pledge should … represent a fair share of the needed global climate mitigation effort. The pledge should contain interim targets (including targets for 2025, 2030 and 2035) and plans to reach net zero in line with IPCC or IEA net zero greenhouse gas emissions modelled pathways that limit warming to 1.5°C with no or limited overshoot, and with global emissions declining by at least 50% by 2030, reaching net zero by 2050 or sooner. net zero must be sustained thereafter*."

2. **Plans, targets and reporting must cover all of organisations' Scope 1-3 greenhouse gas emissions, with no material exceptions**. Companies should include in their greenhouse gas emissions inventories and targets all emissions falling into Scopes 1-3 of the Greenhouse Gas Protocol[7], unless they are non-material (meaning <1% of total). If the precise number for a particular source of emissions is unknown, companies should use best estimates and clarify any data gaps (including their size relative to known emissions). Data gaps and challenges should not be used to justify incomplete target setting or inaction, as companies must be incentivised to improve data and explore available decarbonisation levers, rather than to maintain partial targets and delay action in relation to material sources of emissions. Transparency and effectiveness demands that companies must inform users of the challenges they face in seeking to reduce emissions, not set targets which omit them. This is particularly important for sectors and organisations in respect of which Scope 3 emissions are the most significant source of emissions (such as oil and gas).[8]

   However, although the Disclosure Framework sets out the correct principle that "*any emissions reduction target should consider Scope 1, 2, and 3 emissions and should prioritise decarbonisation through direct abatement over purchasing carbon credits*" (p.9), this is watered down through caveats and flexibility provided elsewhere in the Framework. In relation to Sub-Element 1.1, for example, the Framework suggests that Scope 1-3 emissions should be included in an organisation's emissions reduction objectives, but goes on to provide that "*if the entity excludes any relevant scopes or categories of emissions from its GHG reduction targets, it should state the reason for omitting these scopes or categories and outline any steps it is taking*

[7] See the GHG Protocol Corporate Standard, here.
[8] SBTi has recently found (in a survey of c.230 organisations) that, on average, Scope 3 emissions represent >70% of corporate GHG inventories, and are included in 96% of SBTi validated science-based targets. See SBTI, *Scope 3: Stepping up science-based action* (20 February 2023), here. CDP has found that for CDP survey respondents operating in the oil and gas sector, Scope 3 emissions from the "use of sold products" comprised 81% of total Scope 1-3 emissions. See CDP, *CDP Technical Note: Relevance of Scope 3 Categories by Sector* (April 2022), at p. 37-39.

to enable target-setting for relevant scopes or categories" (p. 15). This language is far too permissive and will support the proliferation of plans that exclude material sources of emissions.

The Implementation Guidance helpfully provides that "*Where an entity is unable to calculate its Scope 3 emissions for some or all of the categories outlined in the GHG Protocol's guidance, it should still identify the relevant upstream and downstream Scope 3 emission categories relevant to it*" and "*review what steps are needed to overcome barriers to setting targets and reporting against those categories and include these steps in its strategic roadmap*" (p. 11). However, elsewhere the Guidance repeats the Framework's problematic permissiveness in relation to material sources, for example stating (p. 12) that "*where targets for relevant scopes and categories have been excluded from its objectives and priorities, an entity should also state the reason for omitting them, and the steps it is taking to enable target-setting for relevant scopes and categories (See Emissions footprinting).*"

In comparison:

- The EU's ESRS E1 Climate Change reporting standard clearly requires entities to disclose their gross Scope 1-3 emissions (see Disclosure Requirement E1-6), and states explicitly that "*for many undertakings, Scope 3 GHG emissions may be the main component of the GHG inventory and are an important driver of the undertaking's transition risks*" (p.11). In relation to climate targets, the reporting standard requires greenhouse gas reduction targets to be disclosed for Scope 1-3 emissions (para. 32(b)).
- The UN HLEG recommendations state that net zero targets "*must include emissions reductions from a non-state actor's full value chain and activities*" and that "*where data is missing for scope 3 emissions, businesses should explain how they are working to get the data or what estimates they are using*" (Recommendation 2, p.17).

3. **Greenhouse gas removals, carbon credits and avoided emissions must not be counted towards greenhouse gas emissions reduction targets**. There are many quality, permanence and equity-related concerns in relation to greenhouse gas removal projects and carbon credits, which the Disclosure Framework begins to address through disclosure requirements related to third-party verification, the type of carbon credit used, and "*any other significant factors necessary for users to understand the credibility and integrity of carbon credits intended to be used by the entity*" (See Sub-Element 4.4, p.23). However, more fundamentally, it is essential to the quality and intelligibility of emissions reduction targets that carbon credits are not counted towards targets and are reported separately from them. Allowing these concepts to be conflated deters effective mitigation[9], contributes to inadequate risk management, compromises the transparency of corporate decarbonisation plans and creates legal risk for reporting entities.[10]

[9] In relation to the "mitigation deterrence" effect, see the UK Climate Change Committee's October 2022 paper on *Voluntary Carbon Markets and Offsetting* (available here), which at p. 42 identifies "*a clear risk that 'offsetting' could lead to reduced business direct emissions reduction. The risk that 'offsetting' facilitates slower business action on emissions could have a knock-on effect on public mistrust in business and Government Net Zero action, even towards those relying on carbon credits responsibly*." There report also identifies (at p.42) the need for "*guidance and regulation for business claims (see Chapter 5) to ensure carbon credits are only used for genuinely hard to abate sectors and are only used after investing in supply chains and longer-term emissions reduction*." Research from 2020 has suggested that the "mitigation deterrence" effect of greenhouse gas removal techniques may result in net additions of CO_2 to the atmosphere equivalent to an additional temperature rise of up to 1.4°C. See Quantifying the Potential Scale of Mitigation Deterrence from Greenhouse Gas Removal Techniques - Research Portal | Lancaster University (lancs.ac.uk).
[10] ClientEarth published a briefing on the legal risks relating to 'carbon offsets' in September 2022, which is available here.

However, the Disclosure Framework is currently unclear and overly permissive on this issue. Sub-Element 4.4 (p.23) requires entities to "*disclose the intended use of carbon credits which are used by the entity to achieve progress towards [it's] strategic objectives and priorities*". Although this may not be the TPT's intention, the implication is that entities may use carbon credits to contribute to emissions reduction targets, as long as they explain how and why. Despite the TPT's comment (p.9) that transition plans "*should prioritise decarbonisation through direct abatement over purchasing carbon credits*", this recommendation is dangerously permissive and will undermine the rigour of the regulatory framework established from the TPT's recommendations. The Implementation Guidance is equally permissive, stating (on p.46 by reference to "TCFD additionality") that ""*an entity should consider disclosing why it is using carbon credits and how this use supports progress towards targets*."[11] Although this section also states that "*an entity should consider disclosing carbon credits separately from GHG emissions reduction target*"[12], this separate reporting basis needs to be mandatory. The TPT's further guidance (on p.46) is helpful, but will not be effective to ensure rigorous disclosure unless introduced on a mandatory basis: "*the entity's approach to carbon credits should be consistent with the mitigation hierarchy, outlined by the Science-based Targets initiative (SBTi), and the VCMI Code of Practice. This implies that where the entity has placed an emphasis on value chain emissions reduction within its transition plan, any purchase of carbon credits is regarded as additional and not as a replacement of these efforts. This is why metrics and targets regarding the use of carbon credits are recommended to be disclosed separately from metrics and targets used to disclose against Scope 1, 2 and 3 emissions reduction plans*."[13]

In comparison:

- The EU's ESRS E1 Climate Change reporting standard is extremely clear on this issue, stating in Disclosure Requirement E1-4 (para. 32(b)) that "*The undertaking shall not include GHG removals, carbon credits or avoided emissions as a means of achieving the GHG emission reduction targets*."
- The UN HLEG recommendations are equally clear, stating in Recommendation 3 (p.19) that "*Non-state actors must prioritise urgent and deep reduction of emissions across their value chain. High integrity carbon credits in voluntary markets should be used for beyond value chain mitigation but cannot be counted toward a non-state actor's interim emissions reductions required by its net zero pathway*."

We urge the TPT to strengthen its recommendations in relation to these and any other areas in which the requirements of the comparable frameworks of the EU and UN are stronger that those currently proposed by the TPT, for the reasons given above.

[11] Emphasis added.
[12] Emphasis added.
[13] Emphasis added.

C. Responses to specific consultation questions

This section sets out our responses to specific consultation questions, in blue text. Highlighting indicates our response to a multiple choice question.

Definition

The TPT Framework includes a definition of a transition plan. How would you describe this definition?

a) The definition is complete and provides a sound basis for transition planning.

b) Overall, the definition provides a sound basis for transition planning, but there are relevant omissions.

c) The definition does not provide a sound basis for transition planning.

d) Don't know

Please explain why you gave that answer (500 characters):

It is essential that the TPT's definition clearly mandates Paris-aligned ambition in transition planning. Relegating this principle to FN 9 on a "should" basis gives too much flexibility for companies to set targets that do not contribute a fair share to global climate mitigation, in plans that may mislead users as to the company's management of climate risks and impacts.

By contrast, both the EU's draft Climate Change reporting standard ESRS E1 (para. 1) and the UN HLEG recommendations (p. 15) clearly establish the need for plans to align with 1.5 °C pathways.

Where & how to disclose: User Feedback

If your entity is a user of transition plans, how helpful do you find these recommendations?

a. Publish a standalone transition plan

- Very helpful
- Helpful
- Neither helpful nor unhelpful
- Unhelpful
- Not sure

Please explain your selection for a, including by providing relevant information on the drawbacks and benefits of using a standalone plan:

This may help users locate and understand a company's plan, but it is equally important that plans are integrated into, and consistent with, the company's other annual reporting, including non-financial and risk disclosures and financial reporting. In particular, it is essential that users can see how the risks identified and commitments made in the transition plan are reflected in the financial statements, together with the climate-related estimates and assumptions used in the company's plans and its accounting. Misalignment may indicate greenwash and obscure financial risk.

b. Update the standalone transition plan at least every three years

- Very helpful
- Helpful
- Neither helpful nor unhelpful
- Unhelpful
- Not sure

Please explain your selection for b, including by providing relevant information on the drawbacks and benefits of using a standalone plan that is periodically updated:

Given the gathering pace of energy transition, it is just as important that plans are updated “when there are significant changes to the plan” so that updates every three years are a long-stop, as indicated on p. 12 of the Disclosure Framework. The TPT should consider providing guidance as to what could be considered “significant” to provide clarity to preparers and users.

c. Report progress against the plan and all other material content, consistent with corporate reporting norms, as part of annual TCFD- or ISSB-aligned disclosures

- Very helpful
- Helpful
- Neither helpful nor unhelpful
- Unhelpful
- Not sure

Please explain your selection for c, including by providing relevant information on the drawbacks and benefits of accessing transition plan related information in general purpose financial reporting:

Progress against the plan must be reported annually to ensure that transition plans support transition in practice and not just on paper. This is subject to the reservation that the reference to corporate reporting norms and integration with annual TCFD or ISSB reporting must not impede consideration of double-materiality in transition planning. Companies' planning, target setting and delivery should address their contribution to climate change (/ mitigation) as well as the financial risks and opportunities presented by climate change to the company.

The Framework: Overall

In the TPT Disclosure Framework we set out recommendations for entities to report against five elements and 19 sub-elements of a transition plan. Do you agree with the overall framework? Please note that there will be a chance to provide feedback on the disclosure recommendations for individual sub-elements.

a) Yes, I agree with the overall framework.

b) Yes, I broadly agree with the overall framework, but I have comments or suggestions.

c) No, I do not agree with the overall framework.

If b) or c): **Please explain why you gave that answer**:

Please see the Key Points and General Comments set out in **Section B**, above, which have been included in ClientEarth's response to this question in the online form.

<u>The Framework: User Feedback</u>

In the TPT Disclosure Framework we provide disclosure recommendations aimed to assist entities to disclose credible, useful, and consistent transition plans. If you regard yourself as a user of transition plans, please assess the extent to which you expect disclosures in line with our recommendations to be useful for informing your decisions:

		Very useful	Useful	Not useful	Don't know
Foundations	1.1 Objectives and Priorities				
	1.2 Business model implications				
Implementation Strategy	2.1 Business Planning and Operations				
	2.2 Products and Services				
	2.3 Policies and Conditions				
	2.4 Financial Planning				
	2.5 Sensitivity Analysis				
Engagement Strategy	3.1 Engagement with Value Chain				
	3.2 Engagement with Industry				
	3.3 Engagement with Government, Public Sector and Civil Society				
Metrics and Targets	4.1 Governance, Business and Operational Metrics and Targets				
	4.2 Financial Metrics and Targets				
	4.3 GHG emissions Metrics and Targets				
	4.4. Carbon Credits				
Governance	5.1 Board Oversight and Reporting				
	5.2 Roles, Responsibility and Accountability				
	5.3 Culture				
	5.4 Incentives and Renumeration				
	5.5 Skills, Competencies and Training				

All sub-elements marked as **"somewhat useful".**

Please explain: We have elected to mark all 19 sub-elements of the Disclosure Framework as "somewhat useful" on the basis that the Framework would be weaker if any of them were removed. However, we consider that improvements are possible to the recommendations made by the TPT in relation to the sub-elements, as indicated in our responses to the questions in the "*The Framework: Suggestions*" section, below.

<u>The Framework: Suggestions</u>

1. **Foundations**

Where relevant, how would you suggest we change the disclosure recommendation for 1.1 Objectives and Priorities:

Sub-Element 1.1 should require companies to explain how their transition plans are compatible with scenarios which limit global warming to 1.5 °C with low or no overshoot, in line with the goals of the Paris Agreement. The minimum expectations for ambition should evolve with the latest

climate science. If a company's plan is not so aligned the company should clearly warn users of this fact, disclose the reasons, and explain how the company's transition plan would need to change to align with such a scenario. The current treatment of alignment with global climate goals (in FN 9 to the Disclosure Framework) is too weak. The TPT Framework would be strengthened by adopting the EU's approach to this issue (see, for instance, paras. 1(b), 1(c), 15(a) and 32(e) of ESRS E1).

This Sub-Element should also reflect the need for companies to consider their "fair share" contribution to climate change mitigation, in line with established international law principles of equity.

Sub-Element 1.1 should also require that all of a company's Scope 1-3 emissions are covered by its objectives, priorities and targets, with no material exceptions. This section should clarify that data gaps and challenges are not an excuse for omissions of material sources or for inaction.

In addition, we suggest that the Sub-Element should also clarify that transition plan strategies may not unreasonably rely on unproven or uncosted negative GHG emissions and/or technology. As explained elsewhere in this response, carbon credits and in-value chain removals should not in any event be relied upon as "offsets" to achieve emissions reduction targets and should always be reported separately from emissions reduction targets and metrics.

Where relevant, how would you suggest we change the disclosure recommendation for 1.2 Business Model Implications:

In order to strengthen the link between the transition plan and the financial statements, and to aid user understanding of the financial implications of the transition plan, Sub-Element 1.2 should include a mandatory indication of how the commitments made in the transition plan have been reflected in the financial accounts, with cross-references to relevant sections of the accounts and notes.

2. Implementation Strategy

Where relevant, how would you suggest we change the disclosure recommendation for 2.1 Business planning and operations:

No specific comments provided.

Where relevant, how would you suggest we change the disclosure recommendation for 2.2 Products and Services:

In addition to changes to the entity's products and services which support the transition plan, Sub-Element 2.2 should require the entity to disclose the extent (including associated capex and revenue) of any 'high-carbon' products and services, including relative measures that show the relationship between such products and services and the totality of the products and services offered by the entity (e.g. % capex; % revenue). This would enable users of the information to assess the extent to which the entity is putting its business behind transition. In particular, entities should be required to clearly disclose and explain the extent of any products and services which are known or considered to be incompatible with progress towards global climate goals, such as the investment in or development of new fossil fuel infrastructure.

In this area, the TPT recommendations could be strengthened by reference to the approach taken in the EU's ESRS E1 Climate Change reporting standard. At para. 18(c)(ii), the EU's

reporting standard requires companies to describe "*the assessment of how its assets and business activities may be exposed to these climate-related transition events, creating gross transition risks or opportunities for the undertaking*." Application Requirement AR 13 provides further that, when making this disclosure, the company shall explain whether and how it has "*identified assets and business activities that are incompatible with or need significant efforts to be compatible with a transition to a climate-neutral economy (for example, due to significant locked-in GHG emissions or incompatibility with the requirements for Taxonomy-alignment under Commission Delegated Regulation (EU) 2021/2139)*." As recognised by the EU framework, this is information that is material to users in evaluating the climate-related risks faced by the disclosing entity and should therefore be included.

Where relevant, how would you suggest we change the disclosure recommendation for 2.3 Policies and Conditions:

No specific comments provided.

Where relevant, how would you suggest we change the disclosure recommendation for 2.4 Financial Planning:

Sub-Element 2.4 should explicitly require entities to disclose planned capex on or in relation to the transition plan, and capex on other 'business as usual' and / or incompatible activities to enable users to assess the extent to which the business is truly leaning into transition (see the related suggestions in relation to Sub-Element 2.2).

As suggested in relation to Sub-Element 1.2, Sub-Element 2.4 should incorporate mandatory links to the financial statements, including cross-references to the locations in the accounts and notes to the accounts where the impact of transition plan commitments (and the climate-related risks and opportunity identified in the plan) are reflected and explained. This is to cement the links between transition planning and accounting, and increase both the salience of transition plan-related information to financial / investment decision makers and the consistency between transition plan reporting and financial disclosures, which is essential for the integrity of the wider reporting ecosystem.

We note that the EU's ESRS E1 Climate Change reporting standard addresses the relationship between climate and financial disclosures in various ways. For example, Disclosure Requirement E1-3 requires companies to reconcile the capex and opex required to implement the climate mitigation and adaptation actions included their transition plans with "*the relevant line items or notes in the financial statements*" (para. 27(c)). Similarly, when disclosing the potential financial effects from material physical and transition risks under Disclosure Requirement E1-9, companies are required to reconcile significant amounts of assets and revenues that are affected by material physical or transition risks with the relevant line items or notes in their financial statements (para. 65). Application Requirement AR 16 requires companies to explain how the climate scenarios used in scenario planning within the transition plan are "*compatible with the critical climate-related assumptions made in the financial statements*."

Where relevant, how would you suggest we change the disclosure recommendation for 2.5 Sensitivity Analysis:

Sub-Element 2.5 should require reporting companies to disclose and explain whether the "*key assumptions and dependencies underlying the entity's business, operational and financial plans*"

are aligned with scenarios which limit global warming the 1.5 °C with low or no overshoot, in line with the goals of the Paris Agreement (for example through alignment with International Energy Agency net zero scenarios). If not, companies should be required to explain how the transition plan would be affected if such assumptions and dependencies were so aligned (i.e. provide a sensitivity analysis to Paris-aligned assumptions).[14]

To ensure consistency with the financial statements, companies should be required to explain how the assumptions and dependencies in the transition plan are consistent with those in the financial statements (see Application Requirement AR 16 of ESRS E1 for a comparable approach).

3. **Engagement Strategy**

Where relevant, how would you suggest we change the disclosure recommendation for 3.1 Engagement with value chain:

In our experience, high-emitting industries do coordinate policy engagement which seeks to oppose, weaken or delay policy measures to implement near-term emissions reductions, whilst publicly supporting long-term climate goals. Industries also issue public advertising (for example the promotion of fossil "natural" gas as a "transition" energy source) which is misaligned with decarbonisation pathways (which feature the reduction of gas production and the phase out of gas use in homes). For example, InfluenceMap analysis finds a systematic misalignment between business models and lobbying engagement of large oil and gas "supermajors" and their public relations strategies.[15] Transition planning regulation must correct this state of practice, and the TPT's recommendations must accordingly take a firm stance on this topic to help regulators set adequate standards.

The following comments apply equally to Sub-Elements 3.1, 3.2 and 3.3. As with all other elements of the transition plan, it is essential that engagement (with value chain, industry and policy-makers) supports and does not undermine the achievement of global climate goals. This is true even if a company's transition plan undershoots these goals. Therefore, Sub-Elements 3.1, 3.2 and 3.3 should all be rooted in climate science and global climate goals, in addition to the more subjective "*objectives, priorities and interim milestones*" of a particular company's transition plan.

Accordingly, the principle expressed in the second bullet of Sub-Element 3.2 should be extended to require disclosure of "*whether and how the entity ensures that the commitments and actions of the entity's trade organisation(s), and its current and planned engagement with other entities, support and do not undermine the objectives, priorities and interim milestones outlined in **1. Foundations** and the climate goals set out in the Paris Agreement [/latest international agreement on climate change]*."

For a comparable approach, see Recommendation 6 of the UN HLEG recommendations (p.25), which unequivocally requires that "*Non-state actors must align their external policy and engagement efforts, including membership in trade associations, to the goal of reducing global emissions by at least 50% by 2030 and reaching net zero by 2050. This means lobbying for*

[14] This would be consistent with repeated calls by investors for the use of 'Paris-aligned' assumptions in accounting and audit, or the provision of a sensitivity analysis based on such assumptions. See, for example, the IIGCCC's 2020 *Investor Expectations for Paris-aligned Accounts*, available here.
[15] See InfluenceMap's September 2022 report *Big Oil's Real Agenda on Climate Change 2022*, available here.

positive climate action and not lobbying against it". This recommendation goes even further, providing that "*as part of their transition plan and annual disclosures, non-state actors should outline the specific policies and regulations, including carbon pricing, that they would need to cut emissions in line with a 1.5°C scenario. This disclosure should specify the emissions reductions possible if the listed policies and regulation by authorities and jurisdictions were in place.*"

Companies should also be required to disclose the specific, practical engagement steps undertaken in each reporting period, and the impact / outcome of such engagement, to ensure accountability for delivery against any engagement plans or policies which are disclosed.

In order to make its recommendations on engagement and lobbying more practical and concrete, the TPT should have regard to existing frameworks such as the 2013 UNGC Guide for Responsible Corporate Engagement in Climate Policy[16] and the investor-led Global Standard on Responsible Climate Lobbying[17]. Such frameworks provide a great deal more specificity on best practice in responsible corporate lobbying. The TPT's Framework could require companies to explicitly disclose against these standards, or refer to them more generally as sources of guidance. Notably, these frameworks have a robust approach to practical action and misalignment issues.

In order to strengthen transparency and accountability for lobbying positions taken, the TPT should also consider developing recommendations that regulators take into account independent assessments of corporate engagement and advertising such as those produced by the NGO InfluenceMap and others, on a company, geography or sector basis in order to assess whether engagement disclosure requirements have been met, and whether they may be misleading.

Where relevant, how would you suggest we change the disclosure recommendation for 3.2 Engagement with Industry:

See the comments provided in relation to Sub-Element 3.1.

Where relevant, how would you suggest we change the disclosure recommendation for 3.3 Engagement with government, public sector and civil society:

See the comments provided in relation to Sub-Element 3.1.

4. Metrics and targets

Where relevant, how would you suggest we change the disclosure recommendation for 4.1 Governance, business and operational metrics and targets:

No specific comments provided.

Where relevant, how would you suggest we change the disclosure recommendation for 4.2. Financial metrics and targets:

No specific comments provided.

[16] Available here.
[17] Available here.

Where relevant, how would you suggest we change the disclosure recommendation for 4.3 GHG emissions metrics and targets:

Sub-Element 4.3 should clarify that absolute gross GHG emission reductions should be prioritised, in line with the TPT's framing comments on p. 9 of the Disclosure Framework. Disclosure both of absolute gross GHG emission reductions in each reporting period, and absolute gross GHG emissions reduction targets for Scopes 1-3 should be clearly expressed to be mandatory.

The Sub-Element should clarify that, while emissions intensity metrics and targets may also be disclosed, they may only be disclosed in addition to, and not instead of, gross absolute emissions reduction metrics and targets.

It is also essential to the rigour of the Framework that Sub-Element 4.3 requires companies to disclose how their emissions reduction targets align with pathways that limit global warming to 1.5°C in line with the Paris Agreement. If targets do are not so aligned, the company should be required to clearly disclose the divergence from the Paris-aligned pathway and explain the basis for the divergence. This assessment by the company should specify the pathways and scenarios used by the company to assess the alignment of its targets with Paris Agreement goals. This is essential so that users can assess whether the plan represents genuine Paris-aligned transition. For a comparable approach, see Disclosure Requirement E1-4, para. 32(e) of ESRS E1).

Sub-Element 4.3 should also be tightened to require the disclosure of all Scope 1-3 with no material exceptions (for e.g. a source of emissions comprising <1% a company's total inventory could be considered "non-material"). If the precise number for a particular source of emissions is unknown, companies should use best estimates and clarify any data gaps (including their size relative to known emissions). Data gaps or challenges should not be permitted excuses for incomplete target setting or inaction.

The current proviso that "*if the entity excludes categories of Scope 3 emissions from its metrics and targets, it should state the reason for omitting them, and any steps it is taking to improve monitoring and reporting systems and enable target setting for relevant Scope 3 emission categories*" is helpful but overly permissive. Regulation on this basis would likely result in the exclusion of significant sources of emissions from metrics and targets, particularly for companies for whom Scope 3 emissions represent the most significant source of emissions (such as oil and gas). Many excuses are currently provided for the exclusion of Scope 3 emissions in practice by such companies, and the TPT recommendations must aim to be a corrective for this market practice. It may also be helpful to add explanatory comments to the Disclosure Framework or Interpretative Guidance emphasising the distinction between metrics and targets and explaining that data gaps which prevent perfect disclosure of Scope 3 metrics do not necessarily mean that appropriate Scope 3 reduction targets cannot be set – action to reduce such emissions is still possible and required.

Where relevant, how would you suggest we change the disclosure recommendation for 4.4 Carbon Credits:

Sub-Element 4.4. should be amended to state unequivocally that a company's use of carbon credits must be reported separately from emissions absolute emissions reduction targets, and must not be counted towards achieving such targets. Allowing these concepts to be conflated

deters mitigation, contributes to inadequate risk management and creates legal risk for reporting entities.

The language used in Sub-Element 4.4 is currently unclear and overly permissive in that it implies that carbon credits can be used to achieve a company's strategic objective and priorities, as long as it explains how and why. In order to strengthen its approach, the TPT could adopt similar language to that used in ESRS E1, which stipulates (in para. 32(b)) that "*The undertaking shall not include GHG removals, carbon credits or avoided emissions as a means of achieving the GHG emission reduction targets*." We note that the UN HLEG recommendations are equally clear on this principle (see Recommendation 3, p. 19).

5. **Governance**

Where relevant, how would you suggest we change the disclosure recommendation for 5.1 Board oversight and reporting:

In order to strengthen board level accountability, Sub-Element 5.1 should require companies to designate by name a director who will be accountable for the design and implementation of the transition plan. This would help investors use the director re-appointment votes as an accountability mechanism through voting at company AGMs.[18]

Where relevant, how would you suggest we change the disclosure recommendation for 5.2 Roles, responsibility, and accountability:

No specific comments provided.

Where relevant, how would you suggest we change the disclosure recommendation for 5.3 Culture:

No specific comments provided.

Where relevant, how would you suggest we change the disclosure recommendation for 5.4 Incentives and Renumeration:

Incentives and remuneration should support and drive progress towards the achievement of global climate goals, meaning at the corporate level emission reductions and other actions which align with pathways that are projected to achieve such goals to a reasonable degree of probability. We have suggested elsewhere in this response that transition plans should be required to align with such pathways in their objectives, targets and actions. If this is done, then the alignment of incentives and remunerations would flow from changes elsewhere in the TPT's Disclosure Framework. However, for the avoidance of doubt, Sub-Element 5.4 should require companies to disclose how remuneration and incentives for employees are aligned with both the objectives and priorities of the plan, and pathways limiting global warming to 1.5°C in line with the Paris Agreement.

Where relevant, how would you suggest we change the disclosure recommendation for 5.5 Skills, Competencies and Training:

No specific comments provided.

[18] See further Sub-Indicator 8.1(b) in the CA100+ Net Zero Company Benchmark Disclosure Framework Assessment Methodology (October 2022) at p. 19, and Principle 3 of ClientEarth's 'Principles of Paris-alignment'.

The Framework: Additional comments

Are there any other comments that you would like to provide on the TPT Disclosure Framework? (Optional)

We wish to use this response to highlight two issues which appear to be underdeveloped in the TPT's Disclosure Framework: (i) the integration of nature into climate transition plans; and (ii) just transition.

The Disclosure Framework consistently refers to the transition plan's "*material interdependencies for the natural environment, the entity's workforce, value chain, impacted communities and consumers*" and related risks and opportunities. See for example, Sub-Elements 1.2 (p. 15) and 2.1 (p. 16). It is also stated in the introduction to the Framework (p. 8) that "*a good practice transition plan should cover…measures to address material risks to, and leverage opportunities for, the natural environment and stakeholders such as the workforce, supply chains, communities, or customers which arise as part of these actions*." The Implementation Guidance provides further commentary on "analysing interdependencies" (p. 10), recommending that entities consider conducting a nature impact materiality assessment consistent with TNFD methodologies, and assessing the risks to an opportunities for their workforce, suppliers, impacted communities and customers. This section also refers to various sources of guidance including TNFD, the CA100+ Net Zero Company Benchmark and others.

Nevertheless, the Framework's approach to nature and just transition appears underdeveloped overall. In particular, it is not clear what actions reporting entities are expected to undertake to embed nature and just transition principles into their transition plans, what should be disclosed, or how progress is to be measured and disclosed. Although these features are not the main focus of our response, we would support further work by the TPT in this area, and suggest that the Framework would be strengthened by including more specific guidance on what should be incorporated into the plan and disclosed.

In relation to nature, we suggest that the TPT consider the recommendations provided in WWF's recent '*Nature in Transition Plans: Why and How?*' report[19] as to how nature and "nature positive objectives" can be integrated into transition planning, and / or consider recommending that companies disclose against an appropriate selection of these recommendations. This would help preparers and users understand how to assess and disclose their material interdependencies with nature, and develop measures to manage risk and leverage opportunities relating to nature, as required by the Disclosure Framework.

Although implicit to some extent in the passages from the Disclosure Framework and Implementation Guidance mentioned above, just transition is not dealt with explicitly by the TPT. We suggest that the TPT consider how to provide users and preparers with more specific guidance and disclosure points to drive meaningful consideration of just transition principles in transition planning. The Grantham Research Institute report '*Making Transition Plans Just*'[20] offers one framework for integrating just transition principles into the foundations, implementation strategy, engagement strategy, metrics and targets and governance of transition plans. The TPT should also have regard to the guidelines for just transition established by the International Labour Organization (**ILO**) in 2015[21] and consider integrating these guidelines into the disclosure framework for companies. The ILO has also provided many sources of guidance on how just transition risks, impacts and opportunities can be approached and measured by corporates and financial institutions. See, for example, the examples of social and employment impacts

[19] Available here.
[20] Available here.
[21] Available here.

that need to be considered to support a just transition set out in Table 1 (p.15) of the ILO's 2022 '*G20 Sustainable Finance Working Paper*'[22], which include jobs created, human and labour rights risks, wages and working conditions, gendered impacts and the impacts on indigenous peoples. In the same paper, the ILO suggests that, to support transition, private sector companies should "*engage with potentially affected workers, communities, and other stakeholders*" and "*develop and implement company-level just transition plans based on social dialogue and measure and report progress using for example impact assessments*" (p. 17).

The TPT's Framework could also be strengthened by incorporating elements of the CA100+ Just Transition Indicator (indicator 9 in the Net Zero Company Benchmark[23]). For example, the framework could integrate disclosure regarding: the company's just transition policies, its commitment to retain, retrain or compensate workers affected by transition, and its process for engaging with workers, affected communities and other stakeholders in the development of the transition plan.

We note that, under the EU's sustainability disclosure regime, although disclosures relating to just transition do not feature heavily in ESRS E1, impacts on people that that may arise from the transition to a climate-neutral economy are covered under other sustainability reporting standards such as ESRS S1 (Own Workforce) and ESRS S3 (Affected communities).[24] These should be helpful sources of comparison and guidance for the TPT.

A more developed approach to this topic would align with:

- EU Taxonomy Regulation[25] requirements to demonstrate adherence to human rights and social responsibility due diligence standards in order to fulfil the applicable "Minimum Social Safeguards" criteria[26]; and
- the movement of established business and human rights principles, and related due diligence obligations, such as the UN Global Compact and the OECD Guidelines for Multinational Enterprises from "soft law" responsibilities to legally mandatory requirements in the Corporate Sustainability Due Diligence Directive[27].

The TPT should take into account that reporting entities with a connection to the EU may be in scope of such requirements, including in the course of developing and implementing their transition plans.

The Guidance: Additional comments

Are there any other comments that you would like to provide on the TPT Implementation Guidance?

We have not elected to provide specific comments on the Implementation Guidance. However, we consider that consequential changes will be required to reflect the principles set out in our general comments and our comments on the various Sub-Elements of the Disclosure Framework.

---

[22] Available here. See also the examples of client-level indicators set out at p. 39 of the ILO's 2022 *Just Transition Finance Tool for banking and investment activities,* available here.
[23] See the CA100+ Net Zero Company Benchmark Disclosure Framework Assessment Methodology, available here, at p. 22.
[24] See para. 9 of ESRS E1.
[25] REGULATION (EU) 2020/852 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088, available here.
[26] See Articles 3(c) and 18 of the EU Taxonomy Regulation. For further guidance see, for example, Step 4 of this Bloomberg Professional Services guide on "Applying the EU Taxonomy to your investments": Applying the EU Taxonomy to your investments, how to start? | Insights | Bloomberg Professional Services.
[27] See the proposal for a Directive on corporate sustainability due diligence adopted by the European Commission on 23 February 2022, available here.

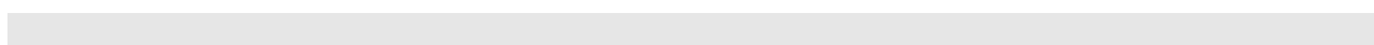
Overall Feedback

Is there any additional information that you would like to communicate to the TPT about

these consultation documents? (Optional)

We wish to use this response to emphasise the importance of "double materiality" (and in that context sustainability thresholds) to transition planning and the TPT's Framework. It is essential that the Framework captures both climate-related risks and opportunities for the reporting company, and the company's contribution to climate change and climate change mitigation, as well as the interdependencies between the two. We understand this to be the intention of the TPT's Disclosure Framework overall, in which case, this should be stated explicitly. Building absolute emissions reductions in line with the temperature goals of the Paris Agreement into the heart of the TPT's Framework (along with related concepts such as the "fair share" of climate mitigation), as we have suggested in this response, would help ensure that transition plans actually support effective climate mitigation, in addition to financial risk management for the reporting company (which itself will be always be incomplete unless it addresses the risks associated with the company's impact on the environment). Equally, the references in the Disclosure Framework to "*approaching materiality in the same way as in general purpose financial reporting*", alignment with "*wider corporate reporting norms*" and specific references to the ISSB and TCFD must not be interpreted as limiting transition planning to a financial materiality perspective. We suggest the TPT consider how this can be clarified in the final documents.

In addition, we suggest that the concept of serviced / financed emissions is addressed specifically in the Sector Neutral Framework. This concept is relevant to financed (lending, underwriting, investing) emissions, but also to the emissions of clients in sectors such as accountancy, legal, advertising, consultancy and so is relevant to many preparers of transition plans that may have regard to the Sector Neutral Framework (in addition to or before the release of any applicable sector-specific framework). The concept is also relevant to large corporate groups with investment activity somewhere in the group, and these companies may only ever apply the Sector Neutral Framework if they are not within the scope of any sector-specific guidance produced by the TPT. The Disclosure Framework should therefore require that serviced / financed emissions are addressed throughout the transition plan, including target setting and emissions inventories.[28]



Beijing Berlin Brussels London Los Angeles Luxembourg Madrid Warsaw

ClientEarth is an environmental law charity, a company limited by guarantee, registered in England and Wales, company number 02863827, registered charity number 1053988, registered office 10 Queen Street Place, London EC4R 1BE, a registered international non-profit organisation in Belgium, ClientEarth AISBL, enterprise number 0714.925.038, a registered company in Germany, ClientEarth gGmbH, HRB 202487 B, a registered non-profit organisation in Luxembourg, ClientEarth ASBL, registered number F11366, a registered foundation in Poland, Fundacja ClientEarth Poland, KRS 0000364218, NIP 701025 4208, a registered 501(c)(3) organisation in the US, ClientEarth US, EIN 81-0722756, a registered subsidiary in China, ClientEarth Beijing Representative Office, Registration No. G1110000MA0095H836. ClientEarth is registered on the EU Transparency register number: 96645517357-19. Our goal is to use the power of the law to develop legal strategies and tools to address environmental issues.

[28] See, for example, p. 4-5 of the Race to Zero Expert Peer Review Group's Interpretation Guide on the Race to Zero criteria (June 2022 version) for guidance in relation to serviced and financed emissions.