Draft ESRS G2: next steps
Issues Paper

Objective

1 To obtain EFRAG SR TEG's views on the proposals by the EFRAG Secretariat on next steps in the context of the SR TEG's survey on G2 Business Conduct. Given the changes to CSRD, a separate discussion about G1 Governance, risk management and internal control at SRB level is required.

Background

2 This paper presents an assessment of the comments provided by EFRAG SR TEG members (in the survey). Such assessment is considered preliminary orientation, is not final (the final views will be expressed by SR TEG members following the end of the consultation) and has been prepared in order to provide EFRAG SR TEG with a basis for the discussion and to allow to identify the topics **that have to be discussed** following the consultation and those for which possible changes could be approved by EFRAG SR TEG/Board members (where appropriate) in written. Views of TEG members are preliminary at this stage and may change following the presentation of the outcome of the consultation. If feasible, for the topics identified to be amended, the EFRAG Secretariat will start preparing a markup. All the changes to the EDs will be submitted for approval by the SR TEG/SRB (where appropriate and reflecting the allocation of decisions at TEG/SRB) in written or in meetings. Comments supporting the proposals in the ED have not been reported in this paper as they do not require actions/discussions

Question for EFRAG SR TEG

3 A decision on the changes to the EDs will only be made after assessing the results of the public consultation in September. However:

a) some points of enhancements can already be identified and if feasible a markup can be already developed (on points that do not change the substance of the proposals). Those points are identified in the Secretariat assessment as '**Draft to be amended'**. For these topics a written approval procedure is proposed in order to focus the discussion on more substantial points;

b) some comments point in the direction of possible DRs/datapoints that may be considered as postponed to year 2 and they are identified as to be **considered in the phase-in**;

c) some comments point in the direction of possible actions that are not compatible with the deadline of November (e.g. additional guidance on some aspects). They are identified as **not compatible with the November deadline**. Along the same lines, some items require an assessment of their feasibility by November and as such they are identified as **Feasibility for November to be assessed**;

d) some comments require discussion as they require a possible change in the substance of the requirements. They are identified as '**to be discussed'**. In this case, the EFRAG SR TEG members are invited to provide their preliminary orientation in the meeting

4 SR TEG provided the following comments:

	Comment	**Classification**	**EFRAG Secretariat preliminary assessment**	**Conclusion**
1	This disclosure requirement is based mainly on qualitative disclosures and will be difficult to verify except for the incentives and contractual clauses.	General/ narrative	Narrative disclosures cannot be avoided	No action
2	The governance standards as a whole are rather limited, and fail to touch upon issues of privacy, anti-money laundering, tax compliance cyber security and data security, data privacy or responsible marketing/consumers protection, etc.	Proposals for additional topics	Unclear whether allowed by CSRD and not feasible for November.	Not compatible with November deadline in context of animal rights addition (and possibly whistle blower protection)
3	Disclosure requirements that refer to employees and staff should be aligned with the terminology and scope of workers used in the ESRS social standards.	Alternative drafting	To be reviewed for consistency.	Draft to be amended

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4	a) The Standard should be better aligned with EU legislation on beneficial owners, e.g. using the definitions in EU legislation. The wording in the exposure draft is too vague (e.g. no threshold is defined for which beneficial owners are to be reported on). b) Furthermore, explicit guidance should be given for the case that the identities of such owners are unknown/obscured.	Alternative drafting	Definition refers to EU regulation, therefore also no additional guidance envisaged on this topic. Will consider threshold	No action Draft to be amended
5	a) Indicated 0 for J given the fact that ISSB does not yet cover G and so alignment with most important international initiative/global baseline is not given. Indicated 1 for H as some requirements are excessively granular (e.g. on lobbying, payment practices). b) Not expected to be generally/as material across sectors (e.g. on payment practices).	International compatibility Materiality	These requirements are consistent with GRI. The impact materiality of Payment practices would need to be carefully considered. CSRD clarifies now that it relates to SMEs	Draft to be amended for changes to CSRD
6	a) Par. 2: I do not understand why Par.2 is just Referring just to "business ethics and corporate culture, including anti-corruption and anti-bribery" and not to (iii) political engagements of the undertaking, including its lobbying activities; and (iv) the management and quality of relationships with business partners, including payment practices too (see art.19b 2 c) (ii), (iii) and (iv), CSRD – page 46). Is not G2 (this document) stating the disclosures requirements for these 2 governance factors as well? See disclosures requirements G2-9 "political engagements and lobbying activities" and G2-10 "payment practices" of this document. b) Par. 3: 1. With regards to the wording, the wording of "business ethics" may be considered rather than business conduct. 2. Furthermore, "lobbying" does not have a generally agreed upon definition in the EU. As such, I suggest adding the terminology of "Interest Representation", which currently has some reporting	Alternative drafting	a)Under review for internal consistency b)2) Using the words per CSRD, not keen to change	Draft to be amended for many of these aspects To ensure consistency with CSRD, no change

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	requirements in some countries, such as the HATVP reporting in France. 3. With regards to the definition, the mention that the standards focusses on practices such as "other behaviours that often been criminalised as they benefit some in positions of power with a detrimental impact on society" seems odd, as it neither specific enough nor differentiate enough from the concepts of corruption and bribery which are already criminalized. 4. This definition seems to be relatively narrow. We suggest including other business compliance matters like data privacy or responsible marketing/consumers protection, etc. 5. We suggest considering that further topics like human rights or precautionary principle should also be included part of business conduct 6. The definition of business conduct should be included in the Appendix under 'defined terms' c) Par. 5 and 6. are generic. As such, their inclusion in each topical standards seems redundant. d) Interaction with other ESRS: • Par. 8: 1. It would make sense to explain that these disclosures should be integrated with the others – that risk assessment related to business conduct should be discussed as part of the risk assessment narrative coming from ESRS1 & 2 – not that these disclosures from G2 should be given as an overall standalone narrative regarding business conduct. e) Definitions in Appendix A should refer to existing EU definitions. Ex: anti-competitive behaviour is defined in the EU Directive, corruption is defined in the OECD anti-bribery convention definition, and lobbying is defined in the EU Representation of Interest and Lobbying definition		b3) To be omitted from next draft. b4) See 2 above b6) It is defined in the standard itself (glossary) c) To be reviewed d) Wording to be reviewed as this was always the intention. e) To be reviewed but where EU definitions exist those were used.	

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7	**G2.1:** a) Par. 12. a: The link with resilience of the strategy isn't explicit in Application Guidance 3 and may be redrafted in the future. Overall, AG 3 covers topics which are substantially covered by ESRS 2. b) The wording and perimeters can be inconsistent at times the DR seems inconsistent, such as between Par. 14 and 16 (e.g.: business conduct vs business conduct culture). c) As the wording of Par. 17 indicates matters that "shall be considered", the Par. could be placed in the applications guidelines rather than in the DR. d) Relating to Par. 17, the difference between "subjects" (17. a) and "topics" (17. c) isn't clear. If synonymous, the 17. a and 17. c may be merged. Moreover, the topics/ subjects disclosure is hidden within a disclosure on initiatives, and I suggest making topics/subject disclosure a distinct disclosure from the initiatives in place. e) Disclosures relating to communications may be merged to streamline reporting (17. b and 17. e). f) Par. 17. d seems redundant with AG 2. g) Matters covered in Par. 17. f should be addressed under a responsible procurement section. h) With regards to the Disclosure Requirements, the disclosures regarding how the culture is assessed and conclusions of the latest assessment (+ actions pertaining to these conclusions) isn't specified. To that end, AG 4 could be improved and should refer to ESRS 2 Par. 74. b on risk assessment methodology in relation to business conduct matters.	Alternative drafting	EFRAG Secretariat to review, but useful comments for harmonisation and internal consistency	Draft to be amended
8	**G2.2** a) The name of G2-2 should be changed as targets reflect quantitative aspects which are not covered by the DR.	Alternative drafting	EFRAG Secretariat to review, but useful comments for	Draft to be amended

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	b) Overall, the policies could be more strongly linked with the risk assessment process, and with existing notions such as those of the Code of Conduct (which may be specified in the AG). c) Par. 20 needs to be revised. Indeed, Par. 20 should be aligned with ESRS 1 DP1, as there is an ask for information at different levels (actions, scope and policies all constitute different disclosures). d) Par. 20. a should be place further down in ESRS G2 as it is an action not a policy. Moreover, the DR isn't specific, with regards to it being open to external stakeholders or not. Wording could also be improved "mechanism for reporting concerns" may be changed to "mechanisms for identifying and reporting concerns". Lastly, 20. a. could seem redundant with grievance mechanisms exposed in S1 and create redundancy for the preparer. e) Par. 20. b's wording can be improved. It should relate to "the scope of the undertaking's policies on anti-corruption… consistent with UN's Convention against corruption". I suggest adding the OECD Convention on Combating Bribery of Foreign Public Officials in International Business Transactions to the list of policies being referred to. f) Similarly, Par. 20. d's wording can be improved. It should relate to the scope of the business conduct policy rather than refer to its scope by what is excluded. g) Par. 20. e's focuses on "whether the undertaking is committed to investigate business conduct (including corruption or bribery) incidents promptly, independently and objectively "might not provide useful information for users. Undertakings should report on the process to investigate business conducts incidents and how these incidents are managed as required under Disclosure Requirement G2-3 – Prevention and detection of corruption and bribery and G2-4 Disclosure Requirement G2-4 – Anti-competitive behaviour prevention and detection.		harmonisation and internal consistency	

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	h) Par. 20. f's seems should be included in the results section rather than in the policies section of the ESRS. i) Par. 20. g's should be included in the "Actions plans and dedicated resources" of the ESRS. j) AG 9. should be reworded by turning "Protection of staff" into "Protection of staff from retaliation". AG. 9 could also refer to the EU's Whistleblowing directive.			
9	**G2-3:** a) DR G2-3 doesn't include aspects of "detection" (e.g.: monitoring and auditing) nor risks concepts such as risk mapping or risks assessments which may be valuable inclusions in the DR. b) Additional transparency could also be expected, (e.g.: disclosure on monitoring programs, actions stemming from the risk assessments…) and could be specified in the AG. c) With regards to wording, "investigate" and "respond" are synonymous. As such "investigate and respond" in Par. 23. is redundant. d) Par. 24. a is a good generic statement, however all following statements refer to whistleblowing mechanisms. As such, 24. a could constitute a separate Par., points 24. b to e constituting another one. e) 24. c and 24. D refer to results and should thus not be in the "Action plans and dedicated resources" of the ESRS. f) Par. 25 should be deleted as it is redundant with ESRS 1 DP1.	Alternative drafting	EFRAG Secretariat to review, but useful comments for harmonisation and internal consistency	Draft to be amended
10	**G2-4:** a) With regards to wording, prevention and detection may be seen as synonymous, and only one should be kept.	Alternative drafting	EFRAG Secretariat disagrees that prevention and detection is the same and will not change.	Some changes to be considered

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	b) The DR should clearly outline whether anti-competitive behaviour is committed by the company or in the industry against the company? As a result, we do not fully understand what the objective of these DRs is c) The disclosures required in Par. 28 and 29 aren't clear, as to what specific disclosures are required as part of this DR with little indications being given by the AG.		Will attempt to clarify, but the intention is where the entity is involved in acb or has committed anti-competitive behaviour. Requirements were derived from GRI, but will reconsider	
11	**G2-5:** a) Why training is part of performance can be put into question, as it is more of an indication of means than performance per say, although I appreciate the need for this to be measured and have regular monitoring of level of readiness of employees is necessary. The DR should also add focus on effective and relevant training to all employees, not only those at risks, which should be compared to the training to the people at risk. b) This DR mixes concepts and could gain in clarity, as parts of the DR does not relate to performance. c) Indeed, par 32. a relates to risk assessment, which is not an indication of performance. Likewise, par 32. b and c, Par. 34 and 35 refer to actions which should be covered beforehand. Only par. 24 c and D constitutes performance indicators. The number of events may be added to the DR in this section d) Par. 33 relates to G3 = Responsible Supply Chain and should be removed. e) This level of detail for par. 32 could be placed in the AG. f) With regards to par 31. "anti-corruption or anti-bribery and business conduct" should be changed to "anti-corruption or anti-bribery and other business conduct".	Alternative drafting	EFRAG Secretariat considers the proposals useful and will be considered when drafting but notes the following: d) There is no G3 and therefore the value chain needs to be included here (as per GRI). g) G2-5 para 34 says "Where … it shall consider whether…". Therefore not prescriptive. i) Training is considered an important factor in the fight against anti-corruption/bribery. Only training wrt to these two topics are covered as per GRI. Therefore, would depend on the risk assessment performed under ESRS2. Expected to be material for a small number of entities, but	Draft will be reviewed and improved except as indicated.

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	g) Par. 34 is too prescriptive and could be included par. 32. h) Par. 35 doesn't cover the frequency and assignment of training to new employees. i) Is information on training really material? There are all sorts of trainings firms are conducting. What is critical is the governance structure and policies that are actually implemented. Claims on training can be used as alibi measure / greenwashing, if simple e-learnings that often no		across various sectors as geography of operations will also play a role.	
12	**G2-6** a) It is questionable whether the requirement for public reporting of internal processes concerning employees or business partners is an appropriate requirement as these numbers could be interpreted in various ways, and the processes themselves contain private and delicate information. The requirement to disclose them publicly might create an incentive not to start those processes at all, defeating the purpose of the disclosure requirement It is not made clear what is meant with an investigation (38c-d), and whether that only relates to public legal procedures or also internal processes b) What about internal proceedings? A lot of events of corruption and bribery events are made public? But whistleblowers may try to notify compliance internally. How is this being dealt with? Statistics would be interesting. c) "Bribery event isn't defined in the DR. d) There may be legal barriers preventing the disclosure of actual violations as it could hinder internal investigation process, qualification of corruption and self-disclosure to authorities leading to actual prosecutions. The DR should indicate how to deal with those barriers.	Alternative drafting	The drafting of this DR is narrower than GRI given concerns around legal consequences of the GRI definition of 'corruption incident'. GRI has performed work on this topic and argues that non-disclosure would not be allowed. The plan is to work with them and update the DR. **Other proposals will be considered in drafting.**	To be discussed.

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	e) The disclosure could ask the undertaking to report the number of allegations to the number of violations (see par. 88 in ESRS S1 for inspiration). f) On Par. 38 a. the outcomes to be disclosed should be defined more, including settlements for potential violations. g) Par 38 b. could be more specific on the ""details"" to be disclosed. h) Par 38 c. and 38. d. incidents could be replaced by ""potential violations"". i) In par 38 c., the disclosure should be split between dismissals and disciplining, as these constitute different outcomes. Additionally, investigations which lead to neither outcome should be considered. j) Par 39 could be more specific on the insufficiencies required in the disclosures. Additionally, the DR should be directly linked to the disclosure of fines for actual violations of anti-corruption only, otherwise there is significant risk of legal exposure which are contrary to anti-corruption regulations."			
13	**G2-7** a) Reporting on on-going investigations by authorities has usually not been reported publicly, as it has been considered inside information crossing the bar for publishing of inside information until the investigation is made public by the competent authority b) Information on context would be interesting, e.g. in what type of industry the undertaking is operating and how prone this industry is to anti-competitive behaviour events. There are lots of firms that operate within oligopolies (e.g. German car industry, O&G). This should ideally be disclosed in ESRS 2. c) "Enquiries" should be added to investigations and litigations to be disclosed (such as sector enquiries).	Alternative drafting	As for G2-6, but clarifications will be included	As for G2-6

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	d) Additionally, while the considering of anti-trust compliance programs as a defence against anti-trust authorities, their inclusion in the DR should be discussed."			
14	**G2-8** a) The beneficial ownership <<< shall >>> include the identity and percentage of ownership of the largest shareholders, if applicable. b) Part A: Clearer guidance should be provided on what kinds of beneficial owners should be reported on and how to handle situations where the identity of beneficial owners is 'hidden' from the undertaking. c) Also, there are other EU regulation addressing these aspects; ESRS G2 needs to be aligned with these (see Money Laundering Directive), duplication needs to be avoided. d) This section should be reworded to refer to the Ultimate beneficiary owner of the undertaking.	Alternative drafting	This definition is in use since 2016 in the EU, therefore should not be problematic. Threshold will be considered, but the DR was considered for those who fall under sanctions, therefore a threshold may not work.	a) to be considered – to be discussed. b) As for number 4 above. c) Not clear how MLD is relevant here, so further information would be helpful d) Wording was selected per EU legislation, therefore no change envisaged.
15	**GR2-9:** a) As a general rule, companies form joint positions in their advocacy associations that are then advocated by that organization. There is no added value in each member entity to report on those activities separately. There is no definition for an in-kind contribution, allowing for wide discrepancies in how it is interpreted. It is e.g. unclear if the participation in working groups of an advocacy organization would be considered an in-kind contribution or e.g. a compliance activity	Alternative drafting	a) EFRAG Secretariat notes that the concern is where the undertaking supports one view in some parts of its lobbying activities and a different view in others/privately. Again, only where identified by the risk assessment. Secretariat notes useful requests for clarification b) Secretariat notes useful requests for clarification	To be discussed given divergent views.

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	b) Absolutely critical. Many undertakings stopped funding political activities / parties directly and focus on supporting associations, organisations or others that represent their interests in the public discourse. This disclosure requirement needs to help users understand what organisations, associations, initiatives are supported by the undertaking that position themselves on topics material to the undertaking. Staff secondments should be considered. Should be discussed in more detail within SR TEG to ensure that users get the information needed and loopholes to avoid having to disclose material information on lobbying activities are minimized. Engagement with LobbyControl and Transparency International would be valuable. c) Section should be reworded into "Political engagement, Representation of Interest and Lobbying." The DR could refer to the EU Lobby register as a basis to set forth obligations for disclosures on the matter. For 48 a, if there is no binding regulation setting obligation to the oversight of these activities within a governance, then the matter should not be disclosed. If par 48 b. i. is not standard practice, the DR may be too granular. Par 48 b. iii should not ask for internal advocacy expenses. Par. 48 and 49 should be merged, as Par. 48 only applies if the topic is already material as per ESRS 2. d) There are other European requirements in place requiring companies to report on their lobbying activities; duplications reduced cost-benefit-ratio and needs to be avoided. Alignment with other governance requirements across European legislations is essential.		c) Rewording to be done to align with CSRD, nothing else. Secretariat notes the Lobby register is only for lobbying with EU. Internal advocacy expenses are crucial to compare apples with apples, i.e. those who outsource their activities and those who do it internally. d) Unclear which are referred to here – especially in the context of the explicit requirement in CSRD.	
16	**G2-10** a) The information could be relatively simple to start collecting from existing systems, but the added value in assessing the sustainability performance of the company is questionable.	Alternative drafting	a) Secretariat notes the requirement in CSRD and that the sustainability in question is that of those	To discuss?

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	b) Requires further analysis on relevant metrics and likely coverage in sector-specific standards as these metrics are not relevant across sectors. c) "The mention of ""given the importance of timely cashflows to business partners"" seems obvious and as such, should not be included. d) Overall, this section may be a burden more than a benefit in terms of disclosure. Indeed 53 a. refers to average time to pay while payment terms may not always be under the control of the undertaking. Are there other KPIs better suited for what is being measured here?"	Note: to be updated for change in CSRD and mention SME's specifically.	companies waiting for their payments. b) Disagree – SME's cover all sectors and this will be material to them. c) Noted d) Who would control this if not the undertaking?	