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This draft has not yet been subject to the English editorial review, which will be performed in the version approved by EFRAG SR TEG when submitted to EFRAG SRB.

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Cross-Cutting

ID 284 – Sustainability reporting rules for consolidation? ESRS S1 issues

[was bundled with ID 787, now they are two separate IDs]

Category

Cross-cutting

Question asked

How does the answer to question 1 relate to the requirements in ESRS S1 *Own workforce* and S2 *Workers in the value chain*?

ESRS Reference

ESRS S1 paragraph 4; ESRS S1 and S2

Key terms

Sustainability rules for consolidation; operational control; JV and associates and ESRS S1 and S2

Background

The following question was received and amended as stated above:

ID 284: How should joint venture (or associates) employees be taken into account in the sustainability statement? This question mentioned in the background provided by the submitter financial and operational control in respect of joint ventures and associates and how this relates to ESRS S1 *Own workforce* and ESRS S2 *Workers in the value chain*.

ESRS S1 paragraph 4 states: ‘This Standard covers an undertaking’s own workforce, which is understood to include both people who are in an employment relationship with the undertaking (“employees”) and non-employees who are either people with contracts with the undertaking to supply labour (“self-employed people”) or people provided by undertakings primarily engaged in “employment activities” (NACE Code N78). See Application Requirement 3 for examples of who falls under own workforce. The information required to be disclosed with regard to non-employees shall not affect their status pursuant to applicable labour law.’

Answer

- 1) *How does the answer to question 1 relate to the requirements in ESRS S1 *Own workforce* and S2 *Workers in the value chain*?*

As the sustainability statement is prepared for the same reporting undertaking as defined for (consolidated) financial statements, based on financial accounting guidance adopted for financial statements, this also sets the perimeter for own workforce, which is understood to include both employees and non-employees (see ESRS S1 paragraph 4), and for workers in the value chain under ESRS S2. As mentioned in ESRS S2 paragraph 7: ‘The reporting under this Standard shall be consistent, coherent and where relevant clearly linked with reporting on the undertaking’s own workforce under ESRS S1, in order to ensure effective reporting.’

Accordingly, material impacts, risks and opportunities of the workforce of joint operations (reference is made to the definition of joint operations in IFRS 11 and to comparable national GAAP provisions that are accounted for under proportionate consolidation) as reflected in the financial statements are considered under ESRS S1 *Own workforce* even if this might result in

fractions of workers being included (to note: fractions might also arise if an employee joins or leaves an undertaking during the year).

Joint ventures and associates that are recognized in the consolidated financial statements as a single asset (i.e. accounted for under the equity method) might be a source of material impacts, risks and opportunities to be reported, as connected with the undertaking through its business relationships in the value chain (see ESRS 1 paragraph 67) and accordingly are considered under ESRS S2 Workers in the value chain.

ID 644 - Limits of fossil fuel sector

Category

cross-cutting

Question asked

What are the limits of the fossil fuel sector?

- 1) Is the petrochemical sector included? Like ethylene production? Many industrial sectors are using products derived from oil or LNG as an input in the production of a chemical product. Will they all be part of the fossil fuel sector? What are the limits?
- 2) Should an Engineering, Procurement and Construction contractor of a Liquid Natural Gas plant include its Engineering, Procurement, and Construction revenues under this caption?

Question reworded as follows:

Which activities are in scope of the fossil fuel sector in paragraph 40 of ESRS 1?

- 1) Is the petrochemical sector included? Like ethylene production? Many industrial sectors are using products derived from oil or Liquid Natural Gas (LNG) as an input in the production of a chemical product. Will they all be part of the fossil fuel sector? What are the limits?
- 2) Should an Engineering, Procurement and Construction contractor of a LNG plant include its Engineering, Procurement, and Construction revenues under this caption?

ESRS Reference

ESRS 2 paragraph 40 d (i)

Key terms

Fossil fuel, sector, scope

Background

ESRS 2 paragraph 40 (d) states: 'where applicable, a statement indicating, together with the related revenues, that the undertaking is active in:

- (i) the fossil fuel (coal, oil and gas) sector, (i.e., it derives revenues from exploration, mining, extraction, production, processing, storage, refining or distribution, including transportation, storage and trade, of fossil fuels as defined in Article 2, point (62), of

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Regulation (EU) 2018/1999 of the European Parliament and the Council), including a disaggregation of revenues derived from coal, from oil and from gas, as well as the revenues derived from Taxonomy-aligned economic activities related to fossil gas as required under Article 8(7)(a) of Commission Delegated Regulation 2021/2178;’.

Annex II defines ‘fossil fuel’ as non-renewable carbon-based energy sources such as solid fuels, natural gas and oil. This definition corresponds to Article 2, point (62), of Regulation (EU) 2018/1999 of the European Parliament and the Council.

Commission Delegated Regulation (EU) 2022/1288 defines ‘companies active in the fossil fuel sector’ as companies that derive any revenues from exploration, mining, extraction, production, processing, storage, refining or distribution, including transportation, stor

ge and trade, of fossil fuels as defined in Article 2, point (62), of Regulation (EU) 2018/1999 of the European Parliament and the Council.

Answer

Whether the undertaking is active in the fossil fuel sector is based on ESRS 2 paragraph 40 (d) (i). Fossil fuels are understood as non-renewable carbon-based energy sources such as solid fuels, natural gas and oil. [Note: SRB working group member suggests aligning the definition with the definition in underlying regulation - EFRAG secretariat is reviewing.]

1) Is petrochemical sector included? Like ethylene production? Many industrial sectors are using products derived from oil or LNG as an input in the production of a chemical product. Will they all be part of the fossil fuel sector? What are the limits?

The petrochemical activities, such as ethylene production, can be understood as a part of fossil fuel sector, provided that they fulfil the definition of (EU) 2022/1288, as for example the ethylene production that occurs in refinery cracker to produce gasoline. Ethylene production in a cracker dedicated to producing ethylene and other petroleum gases as inputs into a chemical plant or chemical industrial park would, in principle, not fulfil the definition of (EU) 2022/1288.

[For information only: In the Oil and Gas industry, petrochemical activities often co-exist with activities related to the energy value chain. Particularly in refineries, the complexity of the highly integrated industrial processes makes it very difficult to define the boundary between energy and the petrochemical value chains, namely at the Fluid Catalytic Cracker unit (FCC). The FCC is one of the most important conversion processes in refineries and is used to convert heavier molecules into lighter (and more valuable) hydrocarbon fractions.]

2) Should an Engineering, Procurement and Construction contractor of an LNG plant include its EPC revenues under this caption?

An EPC (Engineering, Procurement and Construction) contractor of an LNG plant providing services such as the ones described in NACE 71.12 ‘Engineering activities and related technical consultancy’, or NACE division 42 ‘Civil engineering’ that includes construction of industrial facilities, e.g. refineries is not considered active in fossil fuels sector, provided that it does not derive any revenues from the activities described in the definition of (EU) 2022/1288.

ID 804 – Investment entities - scope of sustainability statements [on hold – awaiting feedback from the EC 27.8.24]

Category

Cross-cutting

Question asked

Is an entity that qualifies as an Investment Entity as per IFRS 10 required to prepare a sustainability statement with the same consolidation scope as the financial statements?

ESRS Reference

ESRS 1 paragraphs 62 and 102

Key terms

IFRS 10 investment entities; asset managers; scope of consolidation.

Background

ESRS 1 paragraph 62 states: ‘The sustainability statements shall be for the same reporting undertaking as the financial statements. For example, if the reporting undertaking is a parent company required to prepare consolidated financial statements, the sustainability statement will be for the group. ...’

ESRS 1 paragraph 102 states: ‘When the undertaking is reporting at a consolidated level, it shall perform its assessment of material impacts, risks and opportunities for the entire consolidated group regardless of its group legal structure. ...’

IFRS 10 *Consolidated Financial Statements* paragraph 4b states: ‘A parent that is an investment entity shall not present consolidated financial statements if it is required, in accordance with paragraph 31 of this IFRS, to measure all of its subsidiaries at fair value through profit or loss.’

IFRS 10 paragraph 27 states: ‘A parent shall determine whether it is an investment entity. An investment entity is an entity that:

- (a) obtains funds from one or more investors for the purpose of providing those investor(s) with investment management services;
- (b) commits to its investor(s) that its business purpose is to invest funds solely for returns from capital appreciation, investment income, or both; and
- (c) measures and evaluates the performance of substantially all of its investments on a fair value basis.’

IFRS 10 paragraph 31 states: ‘Except as described in paragraph 32, an investment entity shall not consolidate its subsidiaries or apply IFRS 3 when it obtains control of another entity. Instead, an investment entity shall measure an investment in a subsidiary at fair value through profit or loss in accordance with IFRS 9.’ This exception to consolidation is based on IASB’s conclusion that the fair value of the investments provides more relevant reporting of information used by investors in making economic

decisions (see IFRS 10 BC 317).

Answer

Yes, an investment entity in accordance with IFRS 10 *Consolidated Financial Statements* is required to prepare a sustainability statement with the same consolidation scope as the financial statements.

The sustainability statement shall be for the same reporting undertaking as the financial statements (ESRS 1 paragraph 62). This also applies to investment entities as defined in IFRS 10 paragraph 27. As an investment entity shall not present consolidated financial statements in accordance with IFRS 10 paragraph 4b, it presents its investments in subsidiaries at fair value (see IFRS 10 paragraph 31). However, these investments represent business relationships that expose the undertaking to impacts, risks and opportunities. For the consideration of the investments in subsidiaries of investment entities reference is made to IG 2 *Value Chain: FAQ 2: Are financial assets (loans, equity, and debt instruments) considered business relationships that trigger value chain information?*

More detailed guidance is expected in future sector standards.

Question to EFRAG SR TEG

As the subsidiaries of investment entities are not consolidated by the investment entity in its financial statement and accordingly are also not reflected in its sustainability statement. The subsidiary exemption of the Directive 2013/34/EU (Accounting Directive) Article 19a (9) does not apply.

The EFRAG Secretariat notes that the key reason why IFRS 11 allows for this exception to the general rule of line-by-line consolidation, is the fact that as the shares in the subsidiaries are in this case held for investment purposes. As a consequence, the recognition of the investment at fair value would be the most appropriate approach to reflect the financial performance (i.e. increase/decrease in fair value), rather than the inclusion of assets, liabilities, revenues and costs on a line-by-line basis. In addition, the operations or business model of the parent and the subsidiaries are typically different and are not integrated (e.g. financial company investing in a chemical company).

The consequence of the approach proposed in the current drafting is that the information about material IROs connected with the own operation would not include the IROs connected with the subsidiaries and that the operations of the subsidiaries would not be considered “own operations”. Similarly, impact metrics that in ESRS Set 1 are essentially limited to own operations (with the exception of Scope 3), would not include those data. At sector level this could be different as well as on an entity-specific basis. **Do members agree with the proposed approach?**

Environment

ID 400 – recycled waste

Category

Environmental

Question asked

Can we assume that recycled waste can be calculated by subtracting non-recycled waste from total waste?

ESRS Reference

ESRS Disclosure Requirement E5-5 paragraph 37

Key terms

Recycled waste

Background

ESRS E5-5, paragraph 37 states: 'The undertaking shall disclose the following information on its total amount of waste from its own operations, in tonnes or kilogrammes: (a) the total amount of waste generated; (b) the total amount by weight diverted from disposal, with a breakdown between hazardous waste and non-hazardous waste and a breakdown by the following recovery operation types: i. preparation for reuse; ii. recycling; and iii. other recovery operations; . . . (d) the total amount and percentage of non-recycled waste.'

Directive 2008/98/EC (Waste Framework Directive (WFD)), Article 4, includes recycling as part of a waste hierarchy for waste management: 'The following waste hierarchy shall apply as a priority order in waste prevention and management legislation and policy: (a) prevention; (b) preparing for re-use; (c) recycling; (d) other recovery, e.g. energy recovery; and (e) disposal'.

Answer

No, undertakings cannot assume that recycled waste is to be calculated by simply subtracting non-recycled waste from total waste as, under ESRS, the waste directed from disposal also includes other recovery operations.

Considering the operations that are part of the waste hierarchy, as per the Waste Framework Directive (WFD), additional components need to be considered in the equation of the total waste generated:

Total waste = recycled waste + reused waste + other recovery + disposed waste.

The above categories are to be understood as per definitions in the WFD:

1. **Recycled waste:** any recovery operation by which waste materials are reprocessed into products, materials, or substances. This includes the reprocessing of organic material but excludes energy recovery and reprocessing into materials used as fuels.
2. **Reused waste:** involves checking, cleaning, or repairing recovery operations by which products or components of products that have become waste are prepared to be re-used without other pre-processing.
3. **Other recovery:** any waste recovery operation that serves a useful purpose by replacing other materials. Notably, it includes energy recovery (e.g., incineration with energy recovery).
4. **Disposed waste:** waste that is not recovered (recycled or otherwise diverted from disposal) and is sent to landfill or other disposal methods.

Supporting material

Please see also [Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives](#) (Waste Directive).

ID 408 – Categorisation of waste streams

Category

Environmental

Question asked

Could you clarify the categorisation of following waste streams (whether under 37.b.iii, 37.c.ii or 37.c.iii): composting of organic waste, fermentation of organic waste and incineration of waste that results in energy production (which then is used/sold)

ESRS Reference

ESRS E5-5

Key terms

Categorisation of waste streams

Background

ESRS E5-5 states that an undertaking shall disclose information on its resource outflows, including waste, related to its material impacts, risks and opportunities.

ESRS E5 paragraph 37(b) and (c) requires breakdown by certain waste management operations, namely:

- Waste not directed to disposal operations by recovery operation type (E5 paragraphs 37(b)(i) to (iii)), which connect to the list of recovery operations in Annex II of the Waste Directive;
- Waste directed to disposal operations by Waste treatment types (E5 paragraphs 37(c)(i) to (iii)), which connect to the list of disposal operations in Annex I of the Waste Directive.

ESRS Glossary definition of Incineration: *“Incineration is the controlled burning of waste at high temperature with or without energy recovery.”*

Answer

Composting and fermentation of organic wastes are considered a form of recycling (see Directive 2008/98/EC of the European Parliament and of the Council (Waste Framework Directive, WFD), Annex II, "R3 Recycling/reclamation of organic substances which are not used as solvents (including composting and other biological transformation processes)") and a recovery operation for purposes of ESRS 5 paragraph 37(b)(ii).

According to Annex I of the WFD incineration without energy recovery is considered a disposal operation (included as "D10 Incineration on land") and is classified under ESRS E5 paragraph 37(c)(i). Annex II of the WFD, sets out the different types of recovery operations. Incineration with energy recovery is considered disposal if not meeting the criteria (as explained in the footnote to R1 of Annex II, of the WFD) to be classified under the "R1 Use principally as a fuel or other means to generate energy" operation. If classified as an "R1 Use principally as a fuel or other means to

generate energy” operation, incineration with energy recovery, can be considered under ESRS E5, paragraph 38(b)(iii) as “other recovery operations”.

Please refer also to ID 283.

Supporting material

Please see also [Directive 2008/98/EC of the European Parliament and of the Council of 19 November 2008 on waste and repealing certain Directives](#) (Waste Directive).

ID 439 – Pollutants emissions – wastewater & value chain

Category

Environment

Question asked

Pollutants to air, water and soil generated in an undertaking’s own operations shall be disclosed. Does this include emissions of the third-party wastewater treatment plants to where the wastewater was transferred to?

ESRS reference

Disclosure Requirement E2-4 paragraph 27; ESRS Glossary definition of ‘Emission’

Key terms

Pollution of air, water and soil; wastewater; IEPR

Background

[To better address the issue addressed by the submitter it was agreed to change the question received from: ‘Pollutants to air water and soil generated in its own operations shall be disclosed. Does this include emissions of the third-party wastewater treatment plants to where the waste water was transferred to?’ to the question above.]

Disclosure Requirement ESRS E2 paragraph 27 states: ‘*The objective of this Disclosure Requirement is to provide an understanding of the **emissions that the undertaking generates to air, water and soil in its own operations***’.

Disclosure Requirement ESRS E2 paragraph 28: ‘*The undertaking shall disclose the **amounts of . . . (a) each pollutant listed in Annex II of Regulation (EC) No 166/2006 of the European Parliament and of the Council (European Pollutant Release and Transfer Register “E-PRTR Regulation”)** emitted to air, water and soil, with the exception of emissions of GHGs which are disclosed in accordance with ESRS E1 Climate Change;*’.

Disclosure Requirement ESRS E2 paragraph 29 states: ‘*The amounts referred in paragraph 28 shall be **consolidated amounts** including the **emissions from those facilities** over which the undertaking has **financial control** and those over which it has **operational control**. The consolidation shall include only the emissions from facilities for which the applicable threshold value specified in Annex II of Regulation (EC) No 166/2006 is exceeded*’.

The ESRS Glossary defines emissions as ‘The direct or indirect release of substances, vibrations, heat or noise from individual or diffuse sources into air, water or soil’. ESRS 1 paragraph 11 states: ‘In addition to the disclosure requirements laid down in the three categories of ESRS, when an undertaking concludes that an impact, risk or opportunity is not covered or not covered with sufficient granularity by an ESRS but is material due to its specific facts and circumstances, it shall

provide additional entity-specific disclosures to enable users to understand the undertaking's sustainability-related impacts, risks or opportunities . Application requirements AR 1 to AR 5 provide further guidance regarding entity-specific disclosures'.

ESRS 1 paragraph 19 states: 'When preparing its sustainability statement, the undertaking shall apply: (a) the fundamental qualitative characteristics of information, i.e. relevance and faithful representation; and (b) the enhancing qualitative characteristics of information, i.e. comparability, verifiability and understandability'.

Regulation (EU) 2024/1244, Article 6(1)(c) on "**Reporting by operators to competent authorities**":
"Each operator of an installation that undertakes one or more of the activities listed in Annex I which meet or exceed the applicable capacity thresholds specified in that Annex and either releases any of the pollutants listed in Annex II in a quantity above the applicable thresholds, or exceeds the waste thresholds set out in point (b) of this paragraph, shall report annually to its competent authority at least the following information and data, unless such information or data are already available to the competent authority [...] data on **off-site transfers of any pollutant listed in Annex II in waste water destined for waste water treatment** for which the threshold value specified in column 1b of that Annex is exceeded".

Answer

Undertakings are called to disclose consolidated amounts of pollutant emissions into air, water and soil stemming from their own operations, including facilities under their financial and operational control. Emissions, as defined in ESRS Glossary, comprise both direct or indirect releases into air, water and soil.

Transfers to waste water treatment facilities would correspond to indirect releases of pollutants, meaning that they are included in the scope of ESRS E2.

The E-PRTR (referred to in ESRS E2-4), including its subsequent amendment through the [Industrial Emissions Portal Regulation](#), support the concept of off-site transfers of pollutants and waste to treatment facilities. The indirect emissions from an undertaking's perspective would then be the emissions to air, water, and soil from these treatment facilities, originating from the pollutant loads transferred by the undertaking. Such pollution loads would, however, be considered as impact metrics in the value chain and only need to be reported as entity-specific metrics if deemed material. In this case, the undertaking could take the option to either report the pollution loads transferred to the treatment facility or report the final pollution loads released by the treatment facility that could be reasonably attributed to the undertaking. The choice of which information to report should consider the "Qualitative characteristics of information" in Appendix B of ESRS 1.

Supporting material

[Regulation \(EU\) 2024/1244 of the European Parliament and of the Council of 24 April 2024 on reporting of environmental data from industrial installations, establishing an Industrial Emissions Portal and repealing Regulation \(EC\) No 166/2006.](#)

ID 456 - Policies on water treatment

Category

Environment

Question asked

What is the meaning of water treatment "as a step towards more sustainable sourcing of water"?

ESRS Reference

ESRS E3-1 Policies related to water and marine resources, paragraph 12 (a)(ii)

Key terms

Water management; water policies; sourcing of water; water treatment

Background

ESRS Annex II, Terms defined in ESRS, wastewater: *'Water which is of no further immediate value to the purpose for which it was used or in the pursuit of which it was produced because of its quality, quantity, or time of occurrence. Wastewater from one user can be a potential supply to a user elsewhere.[...]'.*

US EPA Guidelines for Water Reuse: *'Direct potable reuse (DPR): The introduction of reclaimed water (with or without retention in an engineered storage buffer) directly into a drinking water treatment plant, either collocated or remote from the advanced wastewater treatment system. Indirect potable reuse (IPR): Augmentation of a drinking water source (surface or groundwater) with reclaimed water followed by an environmental buffer that precedes drinking water treatment. Nonpotable reuse: All water reuse applications that do not involve potable reuse. Potable reuse: Planned augmentation of a drinking water supply with reclaimed water.'*;

'Water reuse: The use of treated municipal wastewater (reclaimed water).';

'Reclaimed water: Municipal wastewater that has been treated to meet specific water quality criteria with the intent of being used for a range of purposes. The term recycled water is synonymous with reclaimed water. Water reclamation: The act of treating municipal wastewater to make it acceptable for reuse.'

Regulation 2020/741/EU on minimum requirements for water reuse, para (2): (2) *'The Union's ability to respond to the increasing pressures on water resources could be improved by wider reuse of treated waste water, limiting extraction from surface water bodies and groundwater bodies, reducing the impact of discharge of treated waste water into water bodies, and promoting water savings through multiple uses for urban waste water, while ensuring a high level of environmental protection.'*

Para (6): *'In its communication of 2 December 2015 'Closing the loop – An EU action plan for the Circular Economy', the Commission committed to taking a series of actions to promote the reuse of treated waste water, including the development of a legislative proposal on minimum requirements for water reuse.'*; and

para (9): *'Reuse of properly treated waste water, for example from urban waste water treatment plants, is considered to have a lower environmental impact than other alternative water supply methods, such as water transfers or desalination.'*; and

Art. 3, Definitions: *'(4) 'reclaimed water' means urban waste water that has been treated in compliance with the requirements set out in Directive 91/271/EEC and which results from further treatment in a reclamation facility in accordance with Section 2 of Annex I to this Regulation.'*

Directive 91/271/EEC on urban waste water treatment, Art 2: *'For the purpose of this Directive: 7. 'primary treatment' means treatment of urban waste water by a physical and/or chemical*

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process involving settlement of suspended solids, or other processes in which the BOD5 of the incoming waste water is reduced by at least 20 % before discharge and the total suspended solids of the incoming waste water are reduced by at least 50 %;

8. 'secondary treatment' means treatment of urban waste water by a process generally involving biological treatment with a secondary settlement or other process in which the requirements established in Table 1 of Annex I are respected;

9. 'appropriate treatment' means treatment of urban waste water by any process and/or disposal system which after discharge allows the receiving waters to meet the relevant quality objectives and the relevant provisions of this and other Community Directives;

Circular Economy Action Plan, 2020: 'The new Water Reuse Regulation will encourage circular approaches to water reuse in agriculture. The Commission will facilitate water reuse and efficiency, including in industrial processes.'

The International Water Association Publishing, in its article [Sustainability in Water Supply](#), writes on reclaimed water: *'Reclaimed water, or water recycled from human use, can also be a sustainable source of water supply. It is an important solution to reduce stress on primary water resources such as surface and groundwater'*.

Answer

There is no definition of water treatment or of sustainable sourcing of water in the ESRS Glossary. However, in the definition of wastewater the concept of water reuse is introduced (*'Wastewater from one user can be a potential supply to a user elsewhere.'*). Only the use by external users is explicitly mentioned, while the possibility of internal reuse in the undertaking's own operation may also exist but is not made explicit. Even if not explicit in the ESRS definition, wastewater in most cases will have to undergo treatment before it can be used for a different purpose or reused for the same purpose.

Water treatment encompasses physical, chemical and biological treatments operated on water outputs (or inputs) with the purpose to meet adequate quality to a certain use, process or destination, such as drinking water quality level, preparation for another use (industrial, agricultural) or the discharge back to the natural environment.

Therefore, ESRS E3-1 para. 12(a)(ii) should be read under the assumption that policies on water treatment can promote water reuse as a sustainable source of water. In these terms, water treatment can increase sustainability of water management practices, and more specifically of water sourcing, to the extent that it can reduce the need for water withdrawal and therefore the pressure on the water environment, as well as improve the quality of water discharges, increasing the availability of high-quality, safe water for withdrawal and ecological functions. The practice can more broadly be seen as an application of circular economy principles to water management.

Supporting material

[US EPA Guidelines for Water Reuse, 2012](#)

[Regulation 2020/741/EU on minimum requirements for water reuse](#)

[Directive 91/271/EEC on urban waste water treatment](#)

[Circular Economy Action Plan, 2020](#)

[Sustainability in Water Supply | IWA Publishing](#)

ID 1060 – Pollution - affected communities consultations

Category

Environment

Question asked

(a) What does the "consultation with affected communities" – in the case of Pollution for instance – mean in terms of actions? (b) Could a company be compliant if it states that it has not done it, however, its pollution levels are under control under the current law?

ESRS Reference

Disclosure Requirement E2 IRO1 paragraph 11(b)

Key terms

Pollution; IRO; affected community; consultation

Background

[To note: to better address the issue raised by the submitter it was agreed to change the question received from: 'What does the "consultation with affected communities" – in the case of Pollution for instance – mean in terms of actions? Could a company be compliant if it states that it has not done it, however, its pollution level are under control under the current law?' to the question above.]

ESRS E2 IRO 1 paragraph 11 states: 'The undertaking shall describe the process to identify material impacts, risks and opportunities and shall provide information on . . . (b) whether and how the undertaking has conducted consultations, in particular with affected communities'.

EFRAG IG 1 Materiality assessment, paragraph 102 states: '. . . Even though the ESRS do not mandate behaviour, the undertaking is required to disclose whether and how the materiality assessment process identifies and assesses its impacts, including consultation with affected stakeholders, to understand how they may be impacted'.

ESRS E4 IRO-1 paragraphs 17(e) states that undertakings 'ii. . . shall disclose how these communities were involved in the materiality assessment . . . iii. . . how negative impacts may be avoided. If these impacts are unavoidable, the undertaking may indicate its plans to minimise them and implement mitigation measures that aim to maintain the value and functionality of priority services'.

ESRS E4 paragraph AR 20 states: '(a) . . . impacts or benefits created for affected communities, smallholders, indigenous peoples or other persons in vulnerable situations . . . '.

ESRS S3 paragraph 21 states: '. . . whether and how the perspectives of affected communities inform its decisions or activities aimed at managing actual and potential impacts on communities. This shall include . . . (a) whether engagement occurs with affected communities or their legitimate representatives directly, or with credible proxies that have insight into their situation; (b) the stage(s) at which engagement occurs, the type of engagement, and the frequency of the engagement; (c) the function and the most senior role within the undertaking that has operational responsibility for ensuring this engagement happens, and that the results inform the undertaking's approach; (d) where applicable, how the undertaking assesses the effectiveness of

its engagement with affected communities, including, where relevant, any agreements or outcomes that result’.

ESRS S3 paragraph 22 states: ‘steps it takes to gain insight into the perspectives of affected communities that may be particularly vulnerable to impacts and/or marginalised, and into the perspective of specific groups within the affected communities, such as women and girls’.

ESRS S3 paragraph 23 states: ‘Where affected communities are indigenous peoples , the undertaking shall also disclose how it takes into account and ensures respect of their particular rights in its stakeholder engagement approach, including their right to free, prior and informed consent . . .’.

ESRS S3 paragraph 24 states: ‘If the undertaking cannot disclose the above required information because it has not adopted a general process to engage with affected communities, it shall disclose this to be the case. It may disclose a timeframe in which it aims to have such a process in place’.

Answer

Answer to (a): ESRS E2 does not specify the type of actions that an undertaking is to take to consult with affected communities. In general, the ESRS does not mandate behavior. Therefore, it is up to the undertaking to identify specific actions to engage in consultations with affected communities on the topic of pollution. Nevertheless, ESRS S3-2 provides some indication as to the processes for engaging with affected communities about impacts and ESRS E4, paragraph 17(e), provides some examples of when to report on consultations conducted with affected communities.

Answer to (b): The focus of this specific disclosure requirement is specifically on consultations with affected communities, not on legal compliance with regards to pollution levels. Here, ESRS E2 only requires stating if the undertaking conducted consultations with affected communities to facilitate the pollution-related materiality assessment or not. If such consultation process was not adopted, the undertaking is to state that fact and optionally, it can also provide a timeframe in which it expects to have a consultation process (ESRS S3). Only in the case in which the undertaking did have this consultation process in place, it will also need to explain how it consulted the affected communities on the pollution-related impacts, risks and opportunities.

Supporting material

[Implementation Guidance IG 1 Materiality assessment \(EFRAG, 2023\)](#).

Social

ID 271 – Difference between work-related accident and work-related injury

Category

Social

Question asked

ID 271: What is the difference between work-related accident and work-related injury?

ID 287 (5d): What is the difference between an 'accident' and an 'injury', and how should I count a 'case'?

ESRS reference

ESRS S1 paragraph 86; ESRS S1 paragraph 88(b), (c), (d), (e); ESRS S1 paragraph AR83, ESRS S1 paragraph AR89, ESRS S1 paragraph AR91

Key terms

Work-related injuries, rate of recordable work-related accidents

Background

ESRS S1 paragraph 86 states: 'the undertaking shall disclose (...) the number of incidents associated with work-related injuries, ill health and fatalities of its own workforce. In addition, it shall disclose the number of fatalities as a result of work-related injuries and work-related ill health of other workers working on the undertaking's sites.'

ESRS S1 paragraph 88 states: 'The disclosure required by paragraph 86 shall include the following information, where applicable broken down between employees and

non-employees in the undertaking's own workforce: (...) (b) the number of fatalities as a result of work-related injuries and work-related ill health; (c) the number and rate of recordable work-related accidents, (d) (...) the number of cases of recordable work-related ill health (...), (e) (...) the number of days lost to work-related injuries and fatalities from work-related accidents, work-related ill health and fatalities from ill health.'

ESRS S1 paragraph AR 89 states: 'In computing the rate of work-related injuries, the undertaking shall divide the respective number of cases by the number of total hours worked by people in its own workforce and multiplied by 1 000 000. Thereby, these rates represent the number of respective cases per one million hours worked. A rate based on 1 000 000 hours worked indicates the number of work-related injuries per 500 full time people in the workforce over a 1-year timeframe. For comparability purposes a rate based on 1 000 000 hours worked shall be used also for undertakings with less than 500 people in the workforce.'

ESRS S1 paragraph AR 91 states: 'An undertaking shall include fatalities as a result of work-related injury in the calculation of the number and rate of recordable work-related injuries.'

The glossary defines 'recordable work-related injury or ill health' as a 'work-related injury or ill health that results in any of the following: death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness; or significant injury or ill health diagnosed by a physician or other licensed healthcare professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.'

Answer A work-related injury is one of the possible consequences of a work-related accident. This is explained in the definition provided in the glossary of 'work-related incident': 'Occurrence arising out of or in the course of work that could or does result in injury or ill health (...). An incident that results in injury or ill health is often referred to as an 'accident'. An incident that has the potential to result in injury or ill health but where none occurs is often referred to as a 'close call', 'near-miss', or 'near-hit.'

ESRS S1 paragraph 88(c) requires a disclosure of the number and rate of recordable work-related accidents, which includes accidents that result in work-related injuries and accidents that result in work-related ill health. ESRS S1 paragraph AR 89 provides guidance on how to calculate the rate of work-related injuries, based on the number of cases of work-related injuries. ESRS S1 paragraph AR 91 specifies that fatalities as a result of work-related injury should also be included in the disclosure of ESRS S1 paragraph 88(c).

To sum up, work-related incidents that result in work-related injury or ill health are work-related accidents. Work-related accidents therefore include cases of both work-related injuries, including work-related injuries that result in fatalities and cases of work-related ill health. The absolute number of recordable work-related accidents required by paragraph 88(c) must therefore include cases of both work-related injuries and work-related ill health.

asked(1) Should individuals on parental leave, long-term sick leave, or long-term special leave who receive less than their regular total annual remuneration be excluded from the calculation, considering long-term leave as a consecutive period of at least three months? (2) when computing the annual total remuneration, do we consider the same salary components for both the highest paid individual and the employees (e.g. benefits in cash/ benefits in kind)?

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ESRS Reference

ESRS S1 paragraphs 97(b), (c); ESRS S1 paragraph AR 101

Key terms

Annual total remuneration ratio

Background

ESRS S1 paragraph 97 states: ‘The disclosure required by paragraph 95 shall include: (b) the annual total remuneration ratio of the highest paid individual to the median annual total remuneration for all employees (excluding the highest-paid individual); and (c) where applicable, any contextual information necessary to understand the data and how the data has been compiled and other changes to the underlying data that are to be considered.’

ESRS S1 paragraph AR 101 states: ‘When compiling the information required by paragraph 97 (b), the undertaking shall: (a) include all employees; (b) consider, depending on the undertaking’s remuneration policies, all of the following: i. base salary, which is the sum of guaranteed, short-term, and non-variable cash compensation; ii. benefits in cash, which is the sum of the base salary and cash allowances, bonuses, commissions, cash profit-sharing, and other forms of variable cash payments; iii. benefits in kind, such as cars, private health insurance, life insurance, wellness programs; and iv. direct remuneration, which is the sum of benefits in cash, benefits in kind and total fair value of all annual long-term incentives (for example, stock option awards, restricted stock shares or units, performance stock shares or units, phantom stock shares, stock appreciation rights, and long-term cash awards).’

Answer

The remuneration ratio shall include all employees, as explicitly stated in ESRS S1 paragraph AR 101(a). The undertaking may disclose its methodology used to compute the remuneration ratio in ESRS S1 paragraph AR 102 and explain the number or percentage of individuals on leave (the ESRS do not set any specific requirements regarding types of employees to exclude from the calculation) as contextual information. ESRS S1 paragraph AR 101(b) explains further, which types of remuneration shall be included in the calculation (depending on the undertaking’s remuneration policies), the same components shall be considered for the both the highest paid individual and the median total remuneration of employees.

ID 392 – Remuneration ratio; remuneration components

Category

Social

Question asked

(1) How is base salary computed? Monthly based or other based on other time horizons? (2) When calculating variable salary components, do we consider overtime compensation, compensation for relocation (expats, short term transfers), shift and night shift work, short-term assignments abroad? Do we consider severance payments, sign-on and buy-out bonuses, retention bonus? (3) For estimating long-term incentives, do we consider fair value or face value?

ESRS Reference

ESRS S1 paragraphs 97(b), (c); ESRS S1 paragraph AR 101

Key terms

Annual total remuneration ratio

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ESRS S1 paragraph AR 101 states: ‘When compiling the information required by paragraph 97 (b), the undertaking shall: (a) include all employees; (b) consider, depending on the undertaking’s remuneration policies, all of the following: i. base salary, which is the sum of guaranteed, short-term, and non-variable cash compensation; ii. benefits in cash, which is the sum of the base salary and cash allowances, bonuses, commissions, cash profit-sharing, and other forms of variable cash payments; iii. benefits in kind, such as cars, private health insurance, life insurance, wellness programs; and iv. direct remuneration, which is the sum of benefits in cash, benefits in kind and total fair value of all annual long-term incentives (for example, stock option awards, restricted stock shares or units, performance stock shares or units, phantom stock shares, stock appreciation rights, and long-term cash awards).’

Answer

The ESRS do not specify how base salary is calculated; the undertaking may explain its methodology when providing additional contextual information under ESRS S1 paragraph 97(c). ESRS S1 paragraph AR 101 provides examples of the benefits in cash, benefits in kind and direct remuneration which the undertaking shall consider depending on its remuneration policies. The undertaking shall also consider other relevant forms of remuneration. ESRS S1 paragraph AR 101(b)(iv) furthermore specifies that direct remuneration includes the total fair value of all annual long-term incentives.

ID 689 – Gender Pay Gap; Gender

Category

Social

Question asked

Does the gender pay gap only have to be calculated for the gender's "female" and "male"? If so, where should employees who have specified a different gender be categorised? Or is the calculation based on the gender categories "female", "male", "diverse/other"?

ESRS Reference

ESRS S1 paragraph 96, paragraph 97(c); ESRS S1 paragraph AR 98

Key Terms

Gender Pay Gap; Gender

Background

ESRS S1 paragraph 96 states: 'The objective of this Disclosure Requirement is twofold: to allow an understanding of the extent of any gap in the pay between women and men amongst the undertaking's employees; and to provide insight into the level of remuneration inequality inside the undertaking and whether wide pay disparities exist.'

ESRS S1 paragraph AR 98(a) states: 'When compiling the information required under paragraph 97 (a) for the gap in pay between its female and male employees (also known as the "gender pay gap") the undertaking shall use the following methodology: (a) include all employees' gross hourly pay level.'

Answer

Yes, the gender pay gap calculation only explicitly requires the inclusion of male and female employees. There is no mention of 'other employees', as defined in ESRS S1 paragraph AR 55. Any contextual information in this regard may be provided according to ESRS S1 paragraph 97(c).

ID 690 – Gender pay gap; Pay Transparency Directive

Category

Social

Question asked

The guideline stipulates that deviations of more than 5% per employee category must be justified. How are these categories defined? "If the pay reporting demonstrates a difference in the average pay level of at least 5 % in any category of workers the employer needs to justify such a difference on the basis of objective, gender-neutral criteria - otherwise joint pay assessment necessary."

ESRS Reference

ESRS S1-16

Key Terms

Gender Pay Gap; Pay Transparency Directive

Background

ESRS S1 paragraph 97(a) states: 'The disclosure required by paragraph 95 shall include: (a) the gender pay gap, defined as the difference of average pay levels between female and male employees, expressed as percentage of the average pay level of male employees.'

Answer

ESRS S1 paragraph 97(a) requires a disclosure of the gender pay gap and does not include any requirements to conduct or report on pay assessments and it does not include any thresholds. The quote provided by the submitter stems from the Pay Transparency Directive and refers to the obligation to conduct a joint pay assessment (article 10) and it is not applicable to ESRS.

ID 730 – Type of employee, social protection

Category

Social

Question asked

What do they mean by type of employee?

Proposed rewording of the question: 'What does 'type of employee' mean for the purposes of DR S1-11 *Social Protection*'.

ESRS Reference

ESRS S1 paragraph 75, ESRS S1 paragraph 50(b)

Key terms

Type of employee; Social protection

Background

ESRS S1 paragraph 75 states: 'If not all of its employees are covered by social protection in accordance with paragraph 72, the undertaking shall in addition disclose the countries where employees do not have social protection with regard to one or more of the types of events listed in paragraph 72 and for each of those countries the types of employees who do not have social protection with regard to each applicable major life event.'

ESRS S1 paragraph 50(b) states: 'In addition to the information required by paragraph 40(a)iii of ESRS 2 General Disclosures, the undertaking shall disclose: (b) the total number by head count or full time equivalent (FTE) of: i. permanent employees, and breakdown by gender; ii. temporary employees, and breakdown by gender; and iii. non-guaranteed hours employees, and breakdown by gender.'

Answer

'Type of employee' refers to the contract type (ESRS S1 paragraph 50(b)). This includes permanent employees, temporary employees and non-guaranteed hours employees.