

2This paper has been prepared by the EFRAG Secretariat for discussion at a public meeting of EFRAG SR TEG. The paper forms part of an early stage of the development of a potential EFRAG position. Consequently, the paper does not represent the official views of EFRAG or any individual member of the EFRAG SRB or EFRAG SR TEG. The paper is made available to enable the public to follow the discussions in the meeting. Tentative decisions are made in public and reported in the EFRAG Update. EFRAG positions, as approved by the EFRAG SRB, are published as comment letters, discussion or position papers, or in any other form considered appropriate in the circumstances. The content of each Explanation has been drafted to provide an answer to a specific technical question and cannot be directly extended by analogy to a different fact-pattern.

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.

Log of draft explanations

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Cross-Cutting

ID 1019 – Sustainability matter expected to become material in the future

Category

Cross-cutting

Question asked

- 1) Consider an undertaking that has a business plan approved by on a 3-year duration. The undertaking expects a given impact or risk to arise in 4-5 years. Is the matter material for the reporting period?
- 2) Consider a matter that is not assessed to be material over the short-, medium- or long-term horizon as of the reporting date, but - if assessed in 4-5 years - it will most probably become material. Should the undertaking consider this topic as not-material or as material?

ESRS Reference

ESRS 1 paragraphs 43 and 49

Key terms

Sustainability matter only material in the future

Background

The question received by the submitter: 'Our judgment is that one topic is not material for our enterprise, but that it will most probably become material within 4-5 years. Should we state the topic as non-material, or as material (the business plan approved by the shareholders and sent to banks is on a 3-year duration)?' was split into two questions and rephrased to the above to better separate the issues asked. As a framing the submitter gave the following background information to the question: 'Water consumption will most probably become a material topic in Southern Europe for many preparers, within 5-10 years. ...'.

ESRS 1 paragraph 43 states: 'A sustainability matter is material from an impact perspective when it pertains to the undertaking's material actual or potential, positive or negative impacts on people or the environment over the short-, medium- or long-term. ...'

ESRS 1 paragraph 49 states: 'A sustainability matter is material from a financial perspective if it triggers or could reasonably be expected to trigger material financial effects on the undertaking. This is the case when a sustainability matter generates risks or opportunities that have a material influence or could reasonably be expected to have a material influence, on the undertaking's development, financial position, financial performance, cash flows, access to finance or cost of capital over the short-, medium- or long-term. ...'

Answer

- 1) *Consider an undertaking that has a business plan approved by on a 3-year duration. The undertaking expects a given impact or risk to arise in 4-5 years. Is the matter material for the reporting period?*

Yes, materiality assessment is not limited to business plan time-horizon.

Log of explanations

The submitter clarifies that the topic in question was water consumption that will most probably become a material topic in Southern Europe for many preparers, within 5-10 years, which is a time horizon longer than the one used in the approved business plan.

The key question for the assessment of materiality from a financial point of view is whether water consumption generates for the undertaking risks or opportunities that have a material influence, or could reasonably be expected to have a material influence, on the undertaking's development, financial position, financial performance, cash flows, access to finance or cost of capital over the short-, medium- or long-term (ESRS 1 paragraph 49). This is not limited to material influence within the time horizon of the last approved business plan of the undertaking.

Reference is made to ID 1039 – *Time horizon – only long-term material*.

- 2) Consider a matter that is not assessed material over the short-, medium- or long-term horizon as of the reporting date, but - if assessed in 4-5 years - it will most probably become material. Should the undertaking consider this topic as not-material or as material?**

The matter is not material as of the reporting date.

As stated in Implementation Guidance 1 – *Materiality assessment* FAQ 7 *How frequently should an undertaking update its sustainability materiality* 'the materiality assessment is a dynamic process subject to the inherent evolution of the undertaking and needs to be considered for an update on an ongoing basis.' Acknowledging that dynamic process it is possible that a matter assessed today is not material from an impact and/or a financial perspective but that this assessment will change some time in the future.

Environment

ID 713 & ID 928 – Microplastics - definition and REACH update

Category

Environment

Question asked

Is there any recommended definition/regulation dedicated to microplastics to use in reporting according to ESRS E2 (e.g., Regulation 2023/2055 amending the REACH)?

ESRS Reference

ESRS Disclosure Requirement E2-4 paragraphs 28(b); ESRS Disclosure Requirement E2-4 paragraphs AR 20; Annex II, Acronyms and Glossary of Terms

Key terms

Microplastics; definition; REACH; Regulation 2023/2055

Background

To note: to better address the issues raised by the submitters, the questions received 'What is the basis (regulation) for the definition of mikroplastik. Is there any recommended definition/regulation dedicated to microplastic to use in reporting according to ESRS E2?' (ID 928) and 'Are microplastic defined as in Regulation EU 2023/2055 and concur with the regulation?' (ID 713) have been combined and changed to the question above.

ESRS Glossary defines 'microplastics' as 'Small pieces of plastics, usually **smaller than 5mm**. A growing volume of microplastics is found in the environment, including the sea, and in food and

drinking water. Once in the environment, microplastics do not biodegrade and tend to accumulate, unless they are specifically designed to biodegrade in the open environment. Biodegradability is a complex phenomenon, especially in the marine environment. There are increasing concerns about the presence of microplastics in different environment compartments (such as water), their impact on the environment and potentially human health’.

ESRS E2-4 paragraph 28(b) states: ‘The undertaking shall disclose the **amounts of . . . microplastics generated or used** by the undertaking’.

ESRS E2-4 paragraph AR 20 states that ‘The information to be provided on microplastics under paragraph 28(b) shall include microplastics that have been generated or used during production processes or that are **procured**, and that **leave** the undertaking’s facilities **as emissions, as products, or as part of products or services**. Microplastics may be **unintentionally** produced when larger pieces of plastics like car tires or synthetic textiles wear and tear or may be **deliberately** manufactured and added to products for specific purposes (e.g., exfoliating beads in facial or body scrubs)’.

Regulation (EU) 2023/2055, Annex XVII, entry 78 of Column 1 provides a definition of ‘**Synthetic polymer microparticles**’: ‘polymers that are solid and which fulfil both of the following conditions: (a) are contained in particles and constitute at least 1 % by weight of those particles; or build a continuous surface coating on particles; (b) **at least 1 % by weight of the particles** referred to in point (a) fulfil either of the following conditions: (i) **all dimensions of the particles are equal to or less than 5 mm**; (ii) **the length of the particles is equal to or less than 15 mm and their length to diameter ratio is greater than 3**. The following polymers are excluded from this designation: (a) polymers that are the result of a polymerisation process that has taken place in nature, independently of the process through which they have been extracted, which are not chemically modified substances; (b) polymers that are degradable as proved in accordance with Appendix 15; (c) polymers that have a solubility greater than 2 g/L as proved in accordance with Appendix 16; (d) polymers that do not contain carbon atoms in their chemical structure’.

Regulation (EU) 2023/2055, recital 18 explains that ‘derogations from the ban on placing on the market are proposed where the risk from releases is expected to be minimised because synthetic polymer microparticles are contained by technical means, such as those in chromatography columns, water filtering cartridges or printer toners, or permanently lose their particle form because, for example, they swell or form a film, like in diapers, nail polish or paint, or are permanently enclosed in a solid matrix during end use, such as fibres added to concrete or pellets used as feedstock for moulded articles’.

Regulation (EU) 2023/2055, Annex XVII, entry 78 of Column 2, paragraphs 4 and 5 clarify the above mentioned exceptions to the scope of the market ban of certain microplastics: ‘**4.** Paragraph 1 shall not apply to the placing on the market of: (a) synthetic polymer microparticles, as substances on their own or in mixtures, for use at industrial sites; (b) medicinal products within the scope of Directive 2001/83/EC and veterinary medicinal products within the scope of Regulation (EU) 2019/6 of the European Parliament and of the Council (*1); (c) EU fertilising products within the scope of Regulation (EU) 2019/1009 of the European Parliament and of the Council (*2); (d) food additives within the scope of Regulation (EC) No 1333/2008 of the European Parliament and of the Council (*3); (e) in vitro diagnostic devices, including devices within the scope of Regulation (EU) 2017/746 of the European Parliament and of the Council (*4); (f) food within the meaning of Article 2 of Regulation (EC) No 178/2002, not covered by point (d) of this paragraph, and feed as defined in Article 3(4) of that Regulation. **5.** Paragraph 1 shall not apply to the placing on the market of the following synthetic polymer microparticles, as substances on their own or in mixtures: (a) synthetic polymer microparticles which are contained by technical

means so that releases to the environment are prevented when used in accordance with the instructions for use during the intended end use; (b) synthetic polymer microparticles the physical properties of which are permanently modified during intended end use in such a way that the polymer no longer falls within the scope of this entry; (c) synthetic polymer microparticles which are permanently incorporated into a solid matrix during intended end use.'

Regulation (EU) 2023/2055, recital 2 states that 'A big part of microplastic pollution forms **unintentionally**, for example as a result of the breakdown of larger pieces of plastic waste, or the wear and tear of tyres and road paint, or the washing of synthetic clothes. However, tiny fragments of synthetic or chemically-modified natural polymers are also **manufactured to be used as such or added to products**'.

Answer

The definition on microplastics to use in ESRS reporting is that of the Commission Delegated Regulation (EU) 2023/2772 (Annex II and Disclosure Requirement ESRS E2-4 paragraph AR 20).

The definition of microplastics in the ESRS does not reference the REACH update, which provides a physical definition of microplastics which is more extensive (at least 1 % by weight of the particles has: 1. dimensions $\leq 5\text{mm}$, or 2. particle length $\leq 15\text{mm}$ and length/diameter > 3) that the one in the ESRS (particle dimensions $\leq 5\text{mm}$).

Moreover, the REACH update is related to very specific uses of microplastics intentionally added to products (REACH restrictions), while there are many other sources of microplastic releases into the environment, which the definition under ESRS focuses on. Therefore, a distinction needs to be made depending on when the release happens.. Microplastics are to be considered pollutants only when released to the environment (e.g. at the end of the life of the product containing microplastics), which is when the ESRS stipulates that they must be reported by the reporting entity. The disclosure of this value chain information mostly relies on the use of estimates.

The REACH update presents additional criteria under which microplastics in products are not to be considered pollutants (mainly referring to use of microplastics as material input to certain sectors and polymer characteristics).

It is to be noted that legislation on the matter of microplastics is currently evolving; hence, more defined requirements may be expected in the future.

Supporting material

[Commission Regulation \(EU\) 2023/2055 of 25 September 2023 amending Annex XVII to Regulation \(EC\) No 1907/2006 of the European Parliament and of the Council concerning the Registration, Evaluation, Authorisation and Restriction of Chemicals \(REACH\) as regards synthetic polymer microparticles \(Text with EEA relevance\).](#)

ID 776 – Pollutants emissions – granularity

Category

Environment

Question asked

- (1) Could you clarify the level of detail required in measuring pollutants (including microplastics)?

(2) When is it possible to resort to estimations?

(3) Do all the pollutants listed in the E-PRTR and all microplastics need to be measured?

ESRS Reference

Disclosure Requirement E2-4 paragraph 28

Key terms

Pollution of air, water and soil; microplastics; granularity

Background

To better address the issue addressed by the submitter it was agreed to change the question received from: 'The level of detail required in measuring pollutants is very unclear, could you please clarify?' to the question above.

ESRS E2 Disclosure Requirement E2-4 paragraph 28 (a) states: '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; (b) microplastics generated or used by the undertaking.'

ESRS E2 Disclosure Requirement E2-4 paragraph 29 states: '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.'

ESRS E2 Disclosure Requirement E2-4 paragraph 31: 'When an inferior methodology compared to direct measurement of emissions is chosen to quantify emissions, the reasons for choosing this inferior methodology shall be outlined by the undertaking. If the undertaking uses estimates, it shall disclose the standard, sectoral study or sources which form the basis of its estimates, as well as the possible degree of uncertainty and the range of estimates reflecting the measurement uncertainty.'

ESRS E2 Disclosure Requirement IRO-1 paragraph 11: 'The undertaking shall describe the process to identify material impacts, risks and opportunities and shall provide information on: (a) whether the undertaking has screened its site locations and business activities in order to identify its actual and potential pollution -related impacts, risks and opportunities in its own operations and upstream and downstream value chain , and if so, the methodologies, assumptions and tools used in the screening; (b) whether and how the undertaking has conducted consultations, in particular with affected communities.'

Answer

(1) Could you clarify the level of detail required in measuring pollutants (including microplastics)?

The selection of pollutants that the undertakings will need to disclose will depend on the pollutants (including microplastics) that are material for their specific operations (ESRS E2 Disclosure Requirement IRO-1). Therefore, the undertaking will need to conduct a materiality assessment, including screening its site locations and business activities, considering the pollutants they emit, the quantities, and the associated impacts of those emissions, as well as consulting with the communities that are affected by its operations, where appropriate.

(2) When is it possible to resort to estimations?

Estimations are considered a less preferable measuring methodology compared to direct observations. However, should the undertaking be compelled to resort to reporting by estimation, it should ensure to provide an explanation as well as a description of the methodologies, assumptions and tools used.

(3) Do all the pollutants listed in the E-PRTR and all microplastics need to be measured?

The European Pollutant Release and Transfer Register (E-PRTR) provides an indication of the pollutants that undertaking can consider in their materiality assessment and, if deemed material, shall report on. However, it is to be noted that only undertakings that operate facilities that meet E-PRTR thresholds are required, in any case, to report on the E-PRTR pollutants. As per the specific Disclosure Requirement E2-4 paragraph 28(a), it prompts undertakings to report on each material pollutant, irrespective of whether their facilities fall under the E-PRTR scope or not. Please also refer to ID 441 for further information on microplastics, and to ID 440 for an understanding on the disaggregation level when reporting on pollutant emissions.

Social

ID 453 – Social protection; parental leave

Category

Social

Question asked

Is the requirement (d) concerning parental leave in Disclosure Requirement S1-11 only fulfilled if both female and male employees are granted this kind of leave?

ESRS Reference

ESRS S1-11; ESRS S1 paragraph 74(d); ESRS S1 paragraph AR96(c)

Key terms

Parental leave

Background

ESRS S1 paragraph 74 states: 'The undertaking shall disclose whether all its employees are covered by social protection, through public programs or through benefits offered by the undertaking, against loss of income due to any of the following major life events: (a) sickness, (b) unemployment starting from when the own worker is working for the undertaking; (c) employment injury and acquired disability, (d) parental leave; and (e) retirement. If so, stating this is sufficient to fulfil this disclosure requirement and no further information is needed.'

ESRS S1 paragraph AR 96 states: 'Family-related leave include maternity leave, paternity leave, parental leave, and carers' leave that is available under national law or collective agreements. For the purpose of this Standard, these concepts are defined as: (c) parental leave: leave from work for parents on the grounds of the birth or adoption of a child to take care of that child, as defined by each Member State.'

Answer

Yes, the requirements of S1-11 are only fulfilled if both female and male employees are covered by social protection provisions for parental leave programs (either public or offered by the undertaking) on the grounds of birth or adoption of a child. By definition, parental leave is granted to parents on the grounds of the birth or adoption of a child to take care of that child (who is considered to be a parent depends on national law). For more information on family-related leave, including parental leave, see Disclosure Requirement S1-15 and the related ID 340 'Entitlement to family-related leave.' that has been published.

Supporting Material

Directive (EU) 2019/1158 on work-life balance for parents and carers ensures minimum rights for paternity, parental and carers' leave. Parental leave is defined in Article 3(b) as 'leave from work for parents on the grounds of the birth or adoption of a child to take care of that child.' Member States have the competence to define marital and family status and to establish who is considered to be a parent, a mother and a father (Recital 18).

ID 573 - Persons with disabilities – definition

Category

Social

Question asked

Disability is the umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual (with a health condition) and that individual's contextual factors (environmental and personal factors). Given this definition, could it then be interpreted that one must not report on persons with disabilities if they e.g., have a desk job and their physical difficulties do not impact their work?

ESRS Reference

ESRS S1 paragraph 79

Key terms

Persons with disabilities

Background

The glossary defines 'Persons with disabilities' as: 'Persons who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.' The definition provided by the submitter in the question is derived from the Draft ESRS S1 (which is also based on the UNCRPD).

ESRS S1 paragraph 79 states: 'The undertaking shall disclose the percentage of persons with disabilities amongst its employees subject to legal restrictions on the collection of data.'

Answer

No, the undertaking shall disclose the percentage of its own employees with disabilities as defined in the ESRS glossary. The undertaking is not expected to assess whether or how an employee's disability might interfere with the particularities of the employee's tasks for the purpose of this datapoint.

While the definition included in the glossary is derived from the UN Convention on the Rights of Persons with Disabilities (UNCRPD), it is not intended as criteria for employers to assess individual employees. Disability status depends on national legal definitions of persons with disabilities and the specific assessments of disabilities vary between Member States. The definitions and data collections provisions are regulated at national level.

The UNCRPD definition of 'persons with disabilities' is intentionally broad to highlight the possible barriers persons with disabilities face that hinder their full and effective participation in society.

Supporting material

The preamble of the UNCRPD recognises disability as 'an evolving concept' that 'results from the interaction between persons with impairments and attitudinal and environmental barriers that hinders their full and effective participation in society on an equal basis with others.'

Article 1 UNCRPD defines 'persons with disabilities' as 'those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others.'

ID 685 and 686 – Must subsidiaries be included in the consolidated sustainability report regardless of their size? Must all subsidiaries report individually?

Category

Cross-cutting

Questions asked

ID 685: If a group has more than 250 employees, should all subsidiaries be included in the reporting regardless of their number of employees or should each subsidiary be considered separately with regard to its number of employees? How should subsidiaries with fewer than 150 employees be handled?

ID 686: How detailed must the reporting be? For example, does a group have to report a total figure for all subsidiaries or does each subsidiary also have to report a separate figure? Can the calculation procedure defined for the group also be applied with regards to the separate reportings [sic] per subsidiary and country or are there individual requirements per country?

ESRS Reference

ESRS 1, chapters 5.1 and 7.6

Key terms

Consolidation, subsidiaries, subsidiary exemption

Background

ESRS 1 paragraph 62 states: 'The sustainability statement 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.' Similarly, ESRS 1 paragraph 102 states that when a undertaking reports at consolidated level 'it shall perform its assessment of material impacts, risks and opportunities for the entire consolidated group. It shall ensure that all subsidiaries are covered in a way that allows for the unbiased identification of material impacts, risks and opportunities.'

Regarding consolidated sustainability reporting under ESRS, paragraph 9 of Article 19a of the EU Accounting Directive exempts companies that are subsidiaries from the obligation to publish an ESRS sustainability statement, provided that certain conditions are met (so-called 'subsidiary exemption'). Most importantly, the subsidiary must be included in the consolidated sustainability report of its parent company, and the parent's sustainability report must be drawn up in accordance with ESRS or in accordance with a reporting framework that has been recognised as equivalent with ESRS for use in the European Union.

Answer

If the subsidiary exemption is exercised and a group decides to report on a consolidated basis it must include all its subsidiaries in the group sustainability report. This is regardless of the subsidiaries' size in terms of the number of employees. Therefore, the information to be disclosed on ESRS S1 metrics is for the whole group and calculated under this basis.

Certain disclosure requirements in ESRS require a disaggregation of sustainability-related information by country at reporting unit level, regardless of whether the sustainability report is drawn up on an individual or consolidated basis. Examples include ESRS S1 Disclosure Requirement S1-6 (Characteristics of an Undertaking's Employees) or ESRS S1 Disclosure Requirement S1-8 (Collective bargaining coverage and social dialogue). Whenever necessary, specific provisions on disaggregation by country are provided in the respective disclosure requirements.

Supporting material

See also Question ID 148 - *Scope of consolidation for non-EU and unconsolidated subsidiaries*.

ID 1026 – Definition of end-users

Category

Social

Question asked

Does the definition of end-users include workers at the client?

ESRS Reference

ESRS S4, ESRS Annex II (Acronyms and glossary of terms) Table 2

Key terms

Accidents, work-related; business-to-business customers; consumers and end-users; workers in value chain

Background

The ESRS define end-users as individuals ‘who ultimately use or are intended to ultimately use a particular product or service’. A value chain worker is defined as an ‘individual performing work in the value chain of the undertaking, regardless of the existence or nature of any contractual relationship with the undertaking’. This includes ‘all workers in the undertaking’s upstream and downstream value chain who are or can be materially impacted by the undertaking’. (See Table 2 of Annex II of ESRS.)

The ESRS definition of ‘end-users’ is closely related to that of ‘consumers’. Both make it clear that consumers and end-users are natural persons who purchase or consume a good or service for their own personal, rather than commercial or professional, purposes. This is in line with relevant EU law. For example, the EU Consumer Rights Directive defines a consumer as ‘any natural person who, in contracts covered by this Directive, is acting for purposes which are outside his trade, business, craft or profession’ (Article 2, point (1), Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights).

The individual who submitted the question above also provided the following example/problem description: ‘If a company sells products B2B, is the potential impact on those individuals to be assessed under S2 or S4? For example a harbor has ferry services and a truck driver, who in his/hers job needs to use the ferry to deliver goods, gets injured because of lacking security in the harbor. Is the impact on that driver to be assessed under S2 (because the truck driver is considered to be a worker in the downstream value chain) or S4 (because the truck driver is considered an end-user)?’

ESRS S1 Own Workforce, Disclosure Requirement S1-14 deals with reporting requirements for work-related injuries and work-related cases of ill health, including those that involve workers from companies other than the reporting undertaking as well as cases of work-related injuries and ill health that happen during travel for working purposes. ESRS S1 paragraph 86 states that, apart from cases of work-related injury and ill health among its own workforce, the reporting undertaking must ‘also 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**’ (emphasis added). ESRS S1 paragraph AR 84 states that an undertaking must also report incidents that happen to its workforce while travelling for work, i.e. outside the undertaking’s own premises: ‘With regard to travelling for work purposes, injuries and ill health that occur while a person is travelling are work-related if, at the time of the injury or ill health, the person was engaged in work activities ‘in the interest of the employer’. Examples of such activities include travelling to and from customer contacts; conducting job tasks; and entertaining or being entertained to transact, discuss, or promote business (at the direction of the employer).’

Answer

No, the ESRS definition of ‘end-users’ does not include workers of a business customer of the reporting undertaking. Those workers may use the services or consume the goods sold by the undertaking, but they do so in the context of providing a service or producing a good on behalf of their employers. In other words, they do so for commercial or other professional purposes. Typically, such workers should be considered value chain workers.