

This paper has been prepared by the EFRAG Secretariat for discussion at a public meeting of the EFRAG SR TEG. 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.

Non-EU ESRS: Decision tree for standard setting

Objective

1. The objective of this paper is to illustrate the methodologic decision tree used to draft the Non-EU ESRS.

Background

2. As indicated in Recital 20 of the CSRD, the purpose of the Non-EU ESRS reporting is to provide sustainability information, especially on their impacts on social and environmental matters, in order to ensure that third-country undertakings are accountable for their impacts on people and the environment and that there is a level playing field for companies operating in the internal market.
3. The focus appears to be on impacts and level playing field, however the EFRAG Secretariat notes that “especially” is a specification and that the inclusion of information pertaining to financial materiality is not per se strictly excluded, as better illustrated in the table below.
4. As stipulated in article 40 a of the CSRD, the Non-EU ESRS have to cover the information specified in points (a)(iii) to (a)(v), points (b) to (f) and, where appropriate, point (h) of Article 29a(2) at the group level of that ultimate third-country parent undertaking.
5. For reference, the definition of the term “sustainability matters” in the ESRS set 1 Glossary is the following: “Environmental, social and human rights, and governance factors, including sustainability factors defined in Article 2, point (24), of Regulation (EU) 2019/2088 of the European Parliament and of the Council”.
6. For further information about Chapter 9 of the Accounting Directive, please consult the [Directive](#), the European Commission’s CSRD [FAQs](#) as well as the [summary](#) prepared by the EFRAG Secretariat for the 16 October 2024 SRB meeting in paper 05-01. Appendix 1 and 2 contains Chapter 9 and the related recitals.

Standard-setting approach

7. EFRAG Secretariat notes that it is not the purpose of Non-EU ESRS standards to implement proportionate requirements for Non-EU companies.
8. EFRAG Secretariat proposes to start from the full inventory of disclosure requirements and datapoints in ESRS Set 1 and deleting only the items that are to be eliminated from the scope given the exclusions from 29a. This approach seems the most appropriate to execute the mandate in the CSRD. In addition, it would have the advantage of reducing the number of EFRAG decision making discussions, as these would be limited only to discussing the merit of the exclusion, without further putting into question the relevance and granularity of the required information.
9. The public consultation would be focused on the decision tree and the merit of the exclusions, without reopening more broadly the content of Set 1.

Analysis of datapoints

10. In order to determine the content of the Non-EU ESRS, EFRAG secretariat screened ESRS Set 1 for parts that should be excluded or redrafted because they are pertaining to the concepts excluded as per Appendix 1. This screening was performed differently for ESRS 1 and for all the other ESRS.
11. For ESRS other than ESRS1, EFRAG Secretariat performed an analysis of all the datapoints, as listed in EFRAG IG3 List of ESRS datapoints, in order to ascertain whether:
 - (a) the datapoint covers an aspect pertaining to areas that should be excluded from the non-EU ESRS, such as financial materiality, financial effect, resilience, opportunities, principal risks or dependencies;
 - (b) the datapoint covers an aspect to be included as relates to impacts;
 - (c) the datapoint covers impacts, risks and opportunities. In such case the datapoint should be reformulated so that only information related to impacts are included in the non-EU ESRS.
 - (d) the datapoint relate to transitional provisions (phase-in). These are to be considered after the Exposure Draft analysis.
 - (e) the datapoints relate to EU regulation. A non-EU undertaking should comply with those datapoints if the related European regulation applies to them or to one or more of their affiliates. This is the case for instance for datapoints related to the European taxonomy Commission Delegated Regulation 2021/2139.
 - (f) the datapoint relate to revenue or connectivity with financial statements which provide information necessary to understand the related impacts.
12. The analysis above forms the basis for the decision tree for standard setting:

Number in XL	Meaning	Action for Non-EU standard setting
1	Excluded from the Non-EU ESRS	Excluded
2	Included in the non-EU ESRS	Included
3	Requirement related to Impact included (R&O to be excluded)	To be reformulated (to maintain impacts only) and included
4	Related to transitional provisions	Separate evaluation
5	Related to EU regulations	Included
6	Related to Revenue & connectivity with FS	Included

13. The decision tree was then used to analyse the IG 3 and evaluate each datapoint as set out in agenda paper 07-03 **Non-EU ESRS XL**.
14. For ESRS1, the same analysis was performed on the standard itself (as ESRS1 is not included in IG3 List of datapoints). ESRS1 provisions have been categorized (through colour coding of the paragraphs) in the same way as datapoints from ESRS2 and topical ESRS:
 - (a) Paragraphs that should be deleted (for instance chapter 3.4 Financial materiality)
 - (b) Paragraphs that should be reformulated (for instance chapter 3 Double materiality)
 - (c) Paragraphs that relate to European regulations (For instance paragraph 113 which related to the location of the disclosure on the European taxonomy (Commission Delegated Regulation 2021/2139) in the sustainability report)
 - (d) Paragraphs relating to Transitional Provisions.
 - (e) All other paragraphs are to be included in the non-EU ESRS 1.
15. The detailed analysis of ESRS1 the datapoints is presented in agenda paper 07-04 **Non-EU ESRS 1 Orientation**.

Appendix 1: Extracts from the [Accounting Directive](#)¹ 2013/34/EU

1. Below follows extracts from the Accounting Directive with emphasis added in an attempt to simplify reading the Directive.

Article 2

Definitions

- (5) 'net turnover' means the amounts derived from the sale of products and the provision of services after deducting sales rebates and value added tax and other taxes directly linked to turnover; however, for insurance undertakings referred to in point (a) of the first subparagraph of Article 1(3) of this Directive, 'net turnover' shall be defined in accordance with Article 35 and point 2 of Article 66 of Council Directive 91/674/EEC (1); for credit institutions referred to in point (b) of the first subparagraph of Article 1(3) of this Directive, 'net turnover' shall be defined in accordance with point (c) of Article 43(2) of Council Directive 86/635/EEC (2); and for undertakings falling under the scope of Article 40a(1) of this Directive, 'net turnover' means the revenue as defined by or within the meaning of the financial reporting framework on the basis of which the financial statements of the undertaking are prepared. (emphasis added)

Article 40a

Sustainability reports concerning third-country undertakings

1. A Member State shall require that a subsidiary undertaking established in its territory whose ultimate parent undertaking is governed by the law of a third country publish and make accessible a sustainability report covering the information specified in points (a)(iii) to (a)(v), points (b) to (f) and, where appropriate, point (h) of Article 29a(2) at the group level of that ultimate third-country parent undertaking.

The first subparagraph shall only apply to large subsidiary undertakings and to small and medium-sized subsidiary undertakings, except micro undertakings, which are public-interest entities as defined in point (a) of point (1) of Article 2

A Member State shall require that a branch located in its territory, and which is a branch of an undertaking governed by the law of a third country, which is either not part of a group or is ultimately held by an undertaking that is formed in accordance with the law of a third country publish and make accessible a sustainability report covering the information specified in points (a)(iii) to (a)(v), points (b) to (f) and, where appropriate, point (h) of Article 29a(2), at the group level, or, if not applicable, the individual level, of the third-country undertaking.

The rule referred to in the third subparagraph shall only apply to a branch where the third-country undertaking does not have a subsidiary undertaking as referred to in the first subparagraph, and where the branch generated a net turnover of more than EUR 40 million in the preceding financial year.

The first and third subparagraphs shall only apply to the subsidiary undertakings or branches referred to in those subparagraphs where the third-country undertaking, at its group level, or, if not applicable, the individual level, generated a net turnover of more than EUR 150 million in the Union for each of the last two consecutive financial years.

Member States may require subsidiary undertakings or branches referred to in the first and third subparagraphs to send them information about the net turnover generated in their territory and in the Union by the third-country undertakings.

¹ <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:02013L0034-20240528>

2. Member States shall require that the sustainability report **communicated by the subsidiary undertaking or branch** as referred to in paragraph 1 is drawn up in accordance with the standards adopted pursuant to **Article 40b**.

By way of derogation from the first subparagraph of this paragraph, the sustainability report referred to in paragraph 1 of this Article may be drawn up in accordance with the **sustainability reporting standards adopted pursuant to Article 29b** or in a manner equivalent to those sustainability reporting standards, as determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC.

Where the information required to draw up the sustainability report referred to in the first subparagraph of this paragraph is not available, the subsidiary undertaking or branch referred to in paragraph 1 shall request the third-country undertaking to provide them with all information necessary to enable them to meet their obligations.

In the event that not all the required information is provided, the subsidiary undertaking or branch referred to in paragraph 1 shall draw up, publish and make accessible the sustainability report referred to in paragraph 1, containing all information in its possession, obtained or acquired, and issue a statement indicating that the third-country undertaking did not make the necessary information available.

3. Member States shall require that the sustainability report referred to in paragraph 1 is published accompanied by an **assurance opinion** expressed by one or more person(s) or firm(s) authorised to give an opinion on the assurance of sustainability reporting under the national law of the third-country undertaking or of a Member State. In the event that the third-country undertaking does not provide the assurance opinion in accordance with the first subparagraph, the subsidiary undertaking or branch shall issue a statement indicating that the third-country undertaking did not make the necessary assurance opinion available.
4. Member States may inform the Commission on an annual basis of the subsidiary undertakings or branches of third-country undertakings that fulfilled the publication requirement laid down in Article 40d and of the cases where a report was published but where the subsidiary undertaking or branch has acted in accordance with the fourth subparagraph of paragraph 2 of this Article. The Commission shall make publicly available on its website a list of the third-country undertakings that publish a sustainability report.

Article 40b

Sustainability reporting standards for third-country undertakings

The Commission shall adopt by 30 June 2026 a delegated act in accordance with Article 49 supplementing this Directive to provide for sustainability reporting standards for third-country undertakings that specify the information that is to be included in the sustainability reports referred to in Article 40a.

Article 40c

Responsibility for drawing up, publishing and making accessible sustainability reports concerning third-country undertakings

Member States shall provide that the branches of third-country undertakings are responsible for ensuring, to the best of their knowledge and ability, that their sustainability report is drawn up in accordance with Article 40a, and that that report is published and made accessible in accordance with Article 40d.

Member States shall provide that the members of the administrative, management and supervisory bodies of the subsidiary undertakings referred to in Article 40a have collective responsibility for ensuring, to the best of their knowledge and ability, that their sustainability

report is drawn up in accordance with Article 40a, and that that report is published and made accessible in accordance with Article 40d.

Article 40d

Publication

1. The subsidiary undertakings and branches referred to in Article 40a(1) of this Directive shall publish their sustainability report, together with the assurance opinion and, where applicable, the statement mentioned in the fourth subparagraph of Article 40a(2) of this Directive, within 12 months of the balance sheet date of the financial year for which the report is drawn up, as provided for by each Member State, in accordance with Articles 14 to 28 of Directive (EU) 2017/1132 and, where relevant, in accordance with Article 36 of that Directive.

2. Where the sustainability report together with the assurance opinion and, where applicable, with the statement published in accordance with paragraph 1 of this Article, are not made accessible, free of charge, to the public on the website of the register referred to in Article 16 of Directive (EU) 2017/1132, Member States shall ensure that the sustainability report together with the assurance opinion and, where applicable, with the statement published by the undertakings in accordance with paragraph 1 of this Article, are made accessible to the public in at least one of the official languages of the Union, free of charge, no later than 12 months after the balance sheet date of the financial year for which the report is drawn up, on the website of the subsidiary undertaking or the branch as referred to in Article 40a (1) of this Directive.

Article 48i

Transitional provisions

1. Until 6 January 2030, Member States shall permit a Union subsidiary undertaking which is subject to Article 19a or 29a and whose parent undertaking is not governed by the law of a Member State to prepare consolidated sustainability reporting, in accordance with the requirements of Article 29a, that includes all Union subsidiary undertakings of such parent undertaking that are subject to Article 19a or 29a.

Until 6 January 2030, Member States shall permit the consolidated sustainability reporting referred to in the first subparagraph of this paragraph to include the disclosures laid down in Article 8 of Regulation (EU) 2020/852, covering the activities carried out by all Union subsidiary undertakings of the parent undertaking referred to in the first subparagraph of this paragraph that are subject to Article 19a or 29a of this Directive.

2. The Union subsidiary undertaking referred to in paragraph 1 shall be one of the Union subsidiary undertakings of the group that generated the greatest turnover in the Union in at least one of the preceding five financial years, on a consolidated basis where applicable.

3. The consolidated sustainability reporting referred to in paragraph 1 of this Article shall be published in accordance with Article 30.

4. For the purpose of the exemption laid down in Article 19a(9) and Article 29a(8), reporting in accordance with paragraph 1 of this Article shall be considered to be reporting by a parent undertaking at group level with respect to the undertakings included in the consolidation. Reporting in accordance with the second subparagraph of paragraph 1 of this Article shall be considered to fulfil the conditions referred to in point (c) of the second subparagraph of Article 19a(9) and point (c) of the second subparagraph of Article 29a(8), respectively.

Appendix 2: Extracts from Recitals

Significant activity on the territory of the Union/level playing field

(20) Third-country undertakings which have a **significant activity on the territory of the Union** should also be required to provide sustainability information, especially on their impacts on social and environmental matters, in order to ensure that third-country undertakings are accountable for their impacts on people and the environment and that there is a level playing field for companies operating in the internal market. Therefore, third-country undertakings which generate a net turnover of more than EUR 150 million in the Union and which have a subsidiary undertaking or a branch on the territory of the Union should be subject to Union sustainability reporting requirements. To ensure the **proportionality** and **enforceability** of such requirements, the threshold of having a net turnover of more than EUR 40 million should apply to the branches of third-country undertakings, and the thresholds related to being considered a large undertaking or a small or medium-sized undertaking, except micro undertakings, whose securities are admitted to trading on a regulated market in the Union should apply to the subsidiary undertakings of third-country undertakings, as such subsidiary undertakings and branches should be responsible for publishing the sustainability report of the third-country undertaking. The sustainability reports published by the subsidiary undertaking or branch of a third-country undertaking should be prepared in accordance with **standards to be adopted by 30 June 2024 {deadline subsequently moved to June 2026} by the Commission through delegated acts**.

The subsidiary undertaking or branch of a third-country undertaking should also be able to report in accordance with the **standards applying to undertakings established in the Union**, or in accordance with standards which are deemed equivalent pursuant to an implementing act. In the event that not all the information required under this amending Directive is provided by the third-country undertaking, despite the best efforts of the subsidiary undertaking or branch of that third-country undertaking to obtain the necessary information, that subsidiary undertaking or branch should provide all the information in its possession and issue a statement indicating that the third-country undertaking did not make the rest of the required information available. In order to ensure the quality and reliability of the reporting, the sustainability reports of third-country undertakings should be published accompanied by an **assurance opinion** expressed by a person or firm authorised to give an opinion on the assurance of sustainability reporting, either under the national law of the third-country undertaking or of a Member State. In the event that such an assurance opinion is not provided, the subsidiary undertaking or branch of the third-country undertaking should issue a statement indicating that the third-country undertaking did not provide the necessary assurance opinion. The sustainability report should be made accessible free of charge to the public through the central, commercial or companies registers of the Member States, or alternatively on the website of the subsidiary undertaking or the branch of the third-country undertaking.

Member States should be able to inform the Commission on an annual basis of the subsidiary undertakings or branches of the third-country undertakings that fulfilled the publication requirement and of the cases where a report was published but the subsidiary undertaking or branch of the third-country undertaking has stated that it could not get the necessary information from the third-country undertaking. The Commission should make publicly available on its website a list of the third-country undertakings that have published a sustainability report.

Equivalence of sustainability reporting

(24) Point (i) of the first subparagraph of Article 23(4) and the fourth subparagraph of Article 23(4) of Directive 2004/109/EC empower the Commission to adopt measures to set up a mechanism for the determination of equivalence of information required under that Directive, and for the establishment of general equivalence criteria regarding accounting standards, respectively. The third subparagraph of Article 23(4) of Directive 2004/109/EC also empowers the Commission to take the necessary decisions on the equivalence of accounting standards which are used by third-country issuers. In order to reflect the inclusion of the sustainability requirements in Directive 2004/109/EC, the Commission should be empowered to establish a mechanism for the determination of **equivalence of sustainability reporting** standards applied by third-country issuers, similar to what is provided for in Commission Regulation (EC) No 1569/2007 (<https://eur-lex.europa.eu/legal-content/DE/TXT/?uri=celex%3A32007R1569>) which sets out the criteria for the determination of equivalence of accounting standards applied by third-country issuers. For the same reason, the Commission should also be empowered to take the necessary decisions on the equivalence of sustainability reporting standards that are used by third-country issuers. The amendments introduced by this amending Directive will ensure consistent equivalence regimes for sustainability reporting requirements and for financial reporting requirements regarding the annual financial report.

(25) ... Member States should be able to require that the parent undertaking publish the consolidated management report in the languages they accept and that the parent undertaking provide any necessary translation in such languages. Such exemption should also apply where the parent undertaking reporting at group level is a third-country undertaking reporting sustainability information **in accordance with equivalent sustainability** reporting standards.

Directive 2004/109/EC, as amended by this amending Directive, should provide for appropriate mechanisms to determine the equivalence of sustainability reporting standards, and undertakings whose securities are admitted to trading on a regulated market in the Union and undertakings whose securities are not admitted to trading on a regulated market in the Union should be required to report in accordance with the same sustainability reporting standards. In this context, the implementing acts adopted by the Commission pursuant to point (i) of the first subparagraph of Article 23(4) and the fourth subparagraph of Article 23(4) of Directive 2004/109/EC **establishing a mechanism for the determination of equivalence of standards should be used to determine whether to exempt subsidiary undertakings of third-country parent undertakings** under the regime of Directive 2013/34/EU. Therefore, the subsidiary undertaking should be exempted when the consolidated sustainability reporting is carried out in accordance with the sustainability reporting standards adopted by the Commission pursuant to Article 29b of Directive 2013/34/EU introduced by this amending Directive or in a manner equivalent to those sustainability reporting standards, as determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC. Such exemption should not apply to large undertakings whose securities are admitted to trading on a regulated market in the Union for reasons of investor protection, in order to ensure greater transparency as regards such undertakings.