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Log of draft explanations

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Social

ID 351 – Days lost

Category

Social

Question asked

ID 351: What is the notional number of days lost in case of fatalities?

ESRS Reference

ESRS S1 paragraph 88(e), ESRS S1 paragraph AR 95

Key terms

Days lost to fatalities

Background

ESRS S1 paragraph 88(e) 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: with regard to the undertaking’s employees, 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 95 states: ‘The undertaking shall count the number of days lost such that the first full day and last day of absence shall be included. Calendar days should be considered for the calculation, thus days on which the affected individual is not scheduled for work (for example, weekends, public holidays) will count as lost days.’

Answer

The total number of days lost to work-related injuries, work-related ill health and fatalities from work-related accidents and work-related ill health can be capped at 183 calendar days. The maximum days lost to a fatality, for which the full days of absence have to be considered, is therefore 183 days.

Supporting material

Regulation 349/2011 implementing Regulation 1338/2008 on Community statistics on public health and health and safety at work defines ‘days lost’ (Article 1(i)) as ‘the number of calendar days during which the victim is unfit for work as a results of an accident at work.’ The 2013 Methodology for European Statistics on Accidents at Work measures severity as calendar days lost. Permanent
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incapacity is considered to be 183 days or more days lost. The US Occupational Safety and Health Administration provides guidance on how to count days lost and allows cases to be capped at 180 days, in case injury or illness results in more than 180 calendar days lost.

ID 388, 548 – Gender pay gap; consolidated figure

Category

Social

Questions asked

ID 388: (1) Does the gender pay gap focus only on staff members who remain employed at the end of the financial year and disregard those that left during the year? (2) How are newly recruited staff within the last three months of the financial year treated? Are they omitted from the gender pay gap analysis? (3) Do we compute the gap for each respective country the undertaking operates in? Can we then calculate the unadjusted pay gap per country and then take a weighted average over all countries?

ID 548: If one consolidated figure is reported as the global gender pay gap, should the calculation of this figure include an adjustment of purchasing power?

ESRS Reference

ESRS S1 paragraph 50(a), (d); ESRS S1 paragraph 97(a), paragraph 98; ESRS S1 paragraph AR 98, AR 99

Key terms: Gender pay gap; consolidation; purchasing power adjustment

Background

ESRS S1 paragraph 95 states: 'The undertaking shall disclose the percentage gap in pay between its female and male employees and the ratio between the remuneration of its highest paid individual and the median remuneration for its employees.'

ESRS S1 paragraph 97 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; (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 98 states: 'The undertaking may disclose a breakdown of the gender pay gap as defined in paragraph 97(a) by employee category and/or by country/segment. The undertaking may also disclose the gender pay gap between employees by categories of employees broken down by

ordinary basic salary and complementary or variable component, (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 99 states: 'When disclosing the information required under paragraph 97 (a), the undertaking shall provide any contextual information necessary to understand the data and how the data has been compiled (methodology). Information regarding how objective factors such as type of work and country of employment influence the gender pay gap may be reported.'

ESRS S1 paragraph AR 98: '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.'

ESRS S1 paragraph AR 99: 'When disclosing the information required under paragraph 97 (a), the undertaking shall provide any contextual information necessary to understand the data and how the data has been compiled (methodology). Information regarding how objective factors such as type of work and country of employment influence the gender pay gap may be reported.'

Answer

The gender pay gap is calculated based on the average gross hourly pay level between male and female employees and considers, as clearly specified in ESRS S1 paragraph AR 98, all employees. With regard to newly recruited staff and employees who left the undertaking during the year, the calculation needs to align with the methodologies used to compile the total head count of employees in ESRS S1 paragraph 50(a) and 50(d); specifically, ESRS S1 paragraph 50(d) requires a disclosure of the methodologies used to compile the total number of employees, including whether the numbers are reported at the end of the reporting period, as an average across the reporting period, or using another methodology. The average number of employees shall be calculated in line with the Accounting Directive and relevant transpositions in national law (for more information, see ID 1144).

The gender pay gap, as required by ESRS S1 paragraph 97(a) refers to the reporting entity gender pay gap. The formula to be used in the calculation is described in ESRS 1 paragraph AR98; no weighted averages are included in the calculation.

Additionally, the gender pay gap may also be broken down by employee category and/or by country or segment; the undertaking may thus also report the gender pay gap for each country in which it has employees (ESRS S1 paragraph 98). The undertaking may provide further contextual information to understand how this data has been compiled and how the country of employment influences the gender pay gap (ESRS S1 paragraph AR 99). If the gender pay gap is provided as one global figure, it may also be adjusted for purchasing power differences (even though this is not explicitly stated in ESRS S1-16, the methodology for the annual total remuneration ratio could apply to the gender pay gap).

ID 452 – Social protection; criteria for fulfilment of requirement

Category

Social

Question asked

Is the requirement only fulfilled if employees receive a payment, which has the objective to (temporarily) replace the income?

ESRS Reference

ESRS S1 paragraph 73; ESRS S1 paragraph 74; ESRS S1 paragraph AR75

Key terms

Social Protection

Background

ESRS S1 paragraph 73 states: 'The objective of this Disclosure Requirement is to enable an understanding of whether the undertaking's employees are covered by social protection against loss of income due to major life events, and, if not, the countries where this is not the case.'

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 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 AR 75 states: 'Social protection refers to all the measures that provide access to health care and income support in cases of challenging life events such as the loss of a job, being sick and in need of medical care, giving birth and raising a child, or retiring and in need of a pension.'

Answer

ESRS S1-11 aims to enable an understanding of whether the undertaking's employees are covered by social protection against loss of income due to major life events. The emphasis here is on whether employees are covered by some form of income protection, whether through public programs or

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through benefits offered by the undertaking. ESRS S1-11 does not mandate that the protection fully replaces the lost income. Undertakings are required to disclose if employees are covered by social protection for major life events (sickness, unemployment, employment injury and acquired disability, parental leave and retirement) through their contracts; the objective of this disclosure is not to identify ex gratia payments but regular benefits for the employees.

ID 489 – Is there a definition or comprehensive list of ‘severe human rights incidents’ in ESRS?

Category

Social

Question asked

Paragraph 104(a) of Disclosure Requirement S1-17 (Incidents, complaints and severe human rights impacts) requires undertakings to disclose the number of severe human rights incidents connected to the undertaking's workforce in the reporting period. Forced labour, human trafficking, and child labour are listed as examples. Is there an exact definition of severe human rights incidents? Are severe human rights incidents only those three examples or is there a full list of issues that are considered severe human rights incidents?

ESRS Reference

ESRS S1-17 paragraph 104

Key terms

Own workforce, human rights incidents, ESRS S1-17

Background

Paragraph 104 of Disclosure Requirement S1-17 (Incidents, complaints and severe human rights impacts) requires companies to disclose ‘information regarding identified cases of severe human rights incidents (*e.g.*, forced labour, human trafficking or child labour) [emphasis added]’. This includes ‘the number of severe human rights incidents connected to the undertaking’s workforce in the reporting period, including an indication of how many of these are cases of non-respect of the UN Guiding Principles on Business and Human Rights, ILO Declaration on Fundamental Principles and Rights at Work or OECD Guidelines for Multinational Enterprises’.

The EU Corporate Sustainability Due Diligence Directive (CSDDD), which, although related, must not be confused with the EU Corporate Sustainability Reporting Directive upon which the European Sustainability Reporting Standards are based, sheds more light on the question what constitutes *severe* impacts, including severe human rights impacts. Point (v) of Article 3(a) of the CSDDD says that ‘‘severity of an adverse impact’ means the scale, scope or irremediable character of the adverse impact, taking into account the gravity of an adverse impact, including the number of individuals that

are or may be affected [...] its irreversibility and the limits on the ability to restore affected individuals [...] to a situation equivalent to their situation prior to the impact within a reasonable period of time’.

Answer

There is no definition nor exhaustive list of severe human rights incidents in ESRS. The enumeration ‘forced labour, human trafficking or child labour’ in paragraph 104 of Disclosure Requirement S1-17 is merely an incomplete list of examples. As important as those examples is the enumeration of international guidelines and declarations, namely the UN Guiding Principles on Business and Human Rights, the ILO Declaration on Fundamental Principles and Rights at Work and the OECD Guidelines for Multinational Enterprises’. For example, the ILO Declaration on Fundamental Principles and Rights at Work lists freedom of association and the effective recognition of the right to collective bargaining among its principles. Therefore, violations of those rights also count as ‘severe human rights incidents’ under Disclosure Requirement S1-17. Violations of an individual worker’s human rights are also counted as ‘severe human rights incidents’ if they are work-related, i.e. connected to the fact that the individual in question belongs to the undertaking’s workforce. This can be the case when a worker who complains about working conditions or enquires about worker representation in the undertaking is threatened or harassed to discourage them from further pursuing these complaints or enquiries.

The above-quoted definition of severe impacts can be used to decide whether a work-related incident which is not connected to human trafficking, child labour or forced labour, but may well constitute a violation of other human rights of the affected worker(s), is grave enough to count as a severe human rights incident under Disclosure Requirement S1-17.

ID 562 – Non-employees, Contractors

Category

Social

Question asked

Does the definition of non-employees within own workforce include all contractor workers working on the site? If this is not the case, if you could explain.

ESRS Reference

ESRS S1 paragraph 4, AR 3; ESRS S2 paragraph 4, AR 3

Key terms

Non-employees; Contractors

Background

Non-employees are defined as ‘Non-employees in an undertaking’s own workforce include both individual contractors supplying labour to the undertaking (“self-employed people”) and people provided by undertakings primarily engaged in “employment activities” (NACE Code N78).’

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.’

ESRS S1 paragraph 5 states: ‘This Standard does not cover workers in the undertaking’s upstream or downstream value chain; these categories of workers are covered in ESRS S2 Workers in the value chain.’

ESRS S1 paragraph AR 3 states: ‘Examples of people that fall within the scope of “Own workforce” are: (a) Examples of contractors (self-employed persons) in the undertaking’s own workforce include: i. Contractors hired by the undertaking to perform work that would otherwise be carried out by an employee ii. Contractors hired by the undertaking to perform work in a public area (e.g., on a road, on the street). iii. Contractors hired by the undertaking to deliver the work/service directly at the workplace of a client of the undertaking. (b) Examples of people employed by a third party engaged in ‘employment activities’ include people who perform the same work that employees carry out, such as: i. people who fill in for employees who are temporarily absent (due to illness, holiday, parental leave, etc.); ii. people performing work additional to regular employees; iii. people who are dispatched temporarily from another EU member state to work for the undertaking (‘posted workers’).’

ESRS S2 paragraph 4 states: ‘This Standard covers all workers in the undertaking’s upstream and downstream value chain who are or can be materially impacted by the undertaking, including impacts that are connected with the undertaking’s own operations and value chain, including through its products or services, as well as through its business relationships. This includes all workers who are not included in the scope of “own workforce” (“own workforce” includes employees, individual contractors, i.e., self-employed workers, and workers provided by third party undertakings primarily engaged in ‘employment activities’). Own workforce is covered in ESRS S1 Own workforce. See AR 3 for examples of what is included in the scope of this Standard.’

ESRS S2 paragraph AR 3 states: ‘Examples of workers that fall within the scope of this Standard are: (a) workers of outsourced services working in the workplace of the undertaking (e.g., third party catering or security workers); (b) workers of a supplier contracted by the undertaking who work on the supplier’s premises using the supplier’s work methods; (c) workers for a ‘downstream’ entity which purchases goods or services from the undertaking; (d) workers of an equipment supplier to the undertaking who, at a workplace controlled by the undertaking, perform regular maintenance on the supplier’s equipment (e.g., photocopier) as stipulated in the contract between the equipment supplier and the undertaking; and (e) workers deeper in the supply chain who are extracting commodities that are then processed into components that go in the undertaking’s products.’

Answer

No, the definition of non-employees includes all individual contractors that have been employed directly by the undertaking. The definition of non-employees only includes self-employed people (also referred as contractors in ESRS 1 AR3) hired by undertaking and people provided by undertakings primarily engaged in 'employment activities', which only includes NACE Code N78. NACE Code N78 includes, for example, temporary employment agencies.

Examples of contractors include, as listed in ESRS S1 paragraph AR 3 contractors hired by the undertaking to perform work that would otherwise be carried out by an employee, contractors hired by the undertaking to perform work in a public area (e.g., on a road, on the street) and contractors hired by the undertaking to deliver the work/service directly at the workplace of a client of the undertaking.

People with a contractual relationship (i.e., contractors) with a maintenance service provider or cleaning agency contracted by the reporting company are value chain workers. One of the examples of value chain workers in ESRS S2 paragraph AR 3 includes workers of outsourced services working in the workplace of the undertaking (e.g., third party catering or security workers).

For further guidance on the definitions of non-employees and value chain workers, see ID 356 on whether 'sub-consultants' are considered own workforce or as workers in the value chain and ID 434 on the difference between non-employees and value chain workers.

ID 688 – Scope of S1-16

Category

Social

Question asked

We plan to include all active employees in our analysis (tariff i.e. employees that are covered by a collective wage agreement as well as those that are not covered by one, non-tariff employees and executives, (excluding the Group Management Board)). Passive employees, temporary workers, hourly wage earners, interns and mini-jobbers are excluded. Is this scope compliant with the directive? Furthermore, we plan to include all of the above-mentioned employees who were in an active employment relationship at the end of the financial year.

ESRS Reference

ESRS S1 paragraph 97; ESRS S1 paragraph AR 98(a), AR 101(a)

Background

ESRS S1 paragraph 97 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; (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) [emphasis added]; 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 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 [emphasis added].’

ESRS S1 paragraph AR 101(a) states: ‘When compiling the information required by paragraph 97 (b), the undertaking shall: (a) include *all* employees. [emphasis added]’

The ESRS Glossary defines an employee as an ‘individual who is in an employment relationship with the undertaking according to national law or practice’.

Answer

Both the remuneration ratio and the gender pay gap shall be calculated for all employees and for all male and female employees respectively (see ID 689 for more information on the “Other” gender in the gender pay gap calculation). Employees are individuals who are in an employment relationship with the undertaking according to national law or practice. If temporary workers or interns are in an employment relationship according to national law or practice, they cannot be excluded from either disclosure.

Furthermore, the ESRS do not specify whether employees must be in an ‘active’ or ‘passive’ employment relationship as these terms have not been defined. As explained above, some of the categories classified as ‘passive’ by the respondent are to be included as far as an employment contract exists.

The calculation of both the gender pay gap and the annual total remuneration ratio need to align with the methodologies used to compile the total head count of employees in ESRS S1 paragraph 50(a) and 50(d), see ID 388 for further information.

ID 691, 755 – Remuneration Ratio, Gender Pay Gap; remuneration basis

Category

Social

Question asked

ID 691: Can we calculate the remuneration per employee on the basis of a cut-off date, which is used to extrapolate all valid remuneration components to be included at the time to an annual period of 12 months? Annual one-off payments and variable remuneration components are also taken into account.

ID 755: Which period should be used as the measurement basis for remuneration and pay?

ESRS Reference

ESRS S1 paragraph 97; ESRS S1 paragraph AR 100, AR 101, AR 102

Background

ESRS S1 paragraph 97 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 (97); (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) (98); 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 100 states: 'The measure of the undertaking's gender pay gap shall be reported for the current reporting period and, if reported in previous sustainability reports, for the previous two reporting periods.'

ESRS S1 paragraph AR 101(b) states: 'When compiling the information required by paragraph 97 (b), the undertaking shall: 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).'

ESRS S1 paragraph AR 102 states: 'To illustrate the contextual information, the undertaking may provide an explanation to understand the data and how the data has been compiled (methodology). Quantitative data, such as the annual total remuneration ratio, may not be sufficient on its own to understand pay disparity and its drivers. For example, pay ratios can be influenced by the size of the undertaking (for example, revenue, number of employees), its sector, its employment strategy (for example, reliance on outsourced workers or part-time employees, a high degree of automation), or currency volatility.'

Answer

The Sustainability statement is prepared on an annual basis and provides information for a twelve-month period which is aligned with the financial statements. The ESRS S1 disclosures follow the same basis; therefore, both the gender pay gap and the total annual remuneration metrics are to be calculated and disclosed for twelve months. Given that payroll information is accounted for in the financial statements following the accruals principle, no differences are expected between the period covered in the financial statements and the sustainability statement from a connectivity standpoint. For further information on which types of remuneration to include, see ESRS S1 paragraph AR 101(b)

as well as ID 389 and ID 392. The methodology applied may be reported according to ESRS S1 paragraph AR 102.

Regarding the gender pay gap and the calculation of gross hourly wages, the undertaking may explain its methodology (ESRS S1 paragraph 97(c)). Applying a consistent methodology is crucial to allow for measurement of the gender pay gap over time. ESRS S1 paragraph AR 100 requires a disclosure of the undertaking's gender pay gap for the current reporting period as well as for the previous two reporting periods (provided that the gender pay gap was reported).

ID 692 – Gender Pay Gap; Pay

Category

Social

Question asked

In order to fulfil the requirements of ESRS S1-16 gender pay gap, would the following remuneration components be included: Basic salary, Fixed allowances incl. holiday/Christmas bonuses, variable remuneration (one-year/multi-year), one-off payments, commissions, Benefits in kind: only benefits granted on a negotiated basis? And the benefits that apply to all employees or are accessible to all employees according to, for example, group guidelines or works council agreements would be excluded, as no discrimination based on gender is possible here?

ESRS Reference

ESRS S1 paragraph 97(b), (c); ESRS S1 paragraph AR 98, AR 99

Background

Pay is defined as: 'The ordinary basic or minimum wage or salary and any other remuneration, whether in cash or in kind which the worker receives directly or indirectly ('complementary or variable components'), in respect of his/her employment from his/her employer. 'Pay level' means gross annual pay and the corresponding gross hourly pay.'

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

'Pay' is broadly defined to include the basic wage, i.e., minimum wage or salary, and all other kinds of remuneration that the employee receives directly or indirectly in respect of his or her employment without specifying if such other complementary components are applicable to all or a group of employees. The variable components of pay will therefore depend on specific employment relationships and vary between undertakings.

The ESRS therefore do not define the specific remuneration components that are included in pay. The definition of pay is aligned with the EU Pay Transparency Directive (which also mandates gender pay gap reporting). The Directive references the extensive case-law of the Court of Justice to explain the concept of pay (see Recital 21). Examples of variable or complementary components of pay therefore include bonuses, overtime compensation, travel facilities, housing and food allowances, compensation for attending training, payments in the case of dismissal, statutory sick pay, statutory required compensation and occupational pensions.

Supporting material

Recital 21 of the Pay Transparency Directive specifies that ‘in accordance with the case-law of the Court of Justice, the concept of pay should comprise not only salary, but also complementary or variable components of the pay. Under complementary or variable components, any benefits in addition to the ordinary or minimum wage or salary, which the worker receives directly or indirectly, whether in cash or in kind, should be taken into account. Such complementary or variable components may include, but are not limited to, bonuses, overtime compensation, travel facilities, housing and food allowances, compensation for attending training, payments in the case of dismissal, statutory sick pay, statutory required compensation and occupational pensions. The concept of pay should include all elements of remuneration due under law, collective agreements and/or practice in each Member State.’

ID 748 – Remuneration ratio; highest paid individual per country

Category

Social

Question asked

Is it the highest paid individual in an industry group (the CEO) that is supposed to be compared to the median of all employees' total remuneration (in our case 40 countries) in the industry group or is it the highest paid individual in each specific country compared to the median total remuneration in that specific country, to be disclosed?

ESRS Reference

ESRS S1 paragraphs 97(b), (c)

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 99: In relation to paragraph 97 (b), the undertaking may report this figure adjusted for purchasing power differences between countries, in which case it shall report the methodology used for the calculation.

Answer

Yes, the remuneration ratio in ESRS S1 paragraph 97(b) is the ratio between the annual total remuneration of the highest paid individual and the median annual total remuneration of all employees; however, the undertaking may consider that providing further disaggregation may be useful for the readers of the Sustainability statement and pursue this option. The remuneration ratio is an SFDR indicator (#8 Table 3 'Excessive CEO Pay Ratio').

Given that the total remuneration ratio is an unadjusted figure, an undertaking may report this global figure adjusted for purchasing power differences between countries and its methodology as per ESRS S1 paragraph 99.

ID 750 - Recordable work-related ill health

Category

Social

Question asked

Clarify the term of „work-related ill health", as there is no definition in the Glossary. Furthermore, how should data protection legislation be taken into account?

ESRS Reference

ESRS S1 paragraph 88(b), (d), (e); ESRS S1 paragraph AR 92, 93, 94

Key terms: Type of employee

Background

The question has been rephrased to better address the issue raised by the stakeholder.

ESRS S1 paragraph 88(b) states: 'The disclosure shall include (b) the number of fatalities as a result of work-related injuries and work-related ill health, (d) with regard to the undertaking's employees, the number of cases of recordable work-related ill health, subject to legal restrictions on the collection of data and (e) with regard to the undertaking's employees, 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 92: 'Work-related ill health can include acute, recurring, and chronic health problems caused or aggravated by work conditions or practices. These include musculoskeletal disorders, skin and respiratory diseases, malignant cancers, diseases caused by physical agents (for example, noise-induced hearing loss, vibration-caused diseases), and mental illnesses (for example, anxiety, post-traumatic stress disorder). For the purpose of the required disclosures, the undertaking
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shall, at a minimum, include in its disclosure those cases outlined in the ILO List of Occupational Diseases.’

ESRS S1 paragraph AR 93: ‘In the context of this Standard, work-related musculoskeletal disorders are covered under work-related ill health (and not injuries).’

ESRS S1 paragraph AR 94: ‘The cases to be disclosed in paragraph 88(d) relate to cases of work-related ill health notified to the undertaking or identified by the undertaking through medical surveillance, during the reporting period. The undertaking might be notified of cases of work-related ill health through reports by affected people, compensation agencies, or healthcare professionals. The disclosure may include cases of work-related ill health that were detected during the reporting period among people who were formerly in the undertaking’s workforce.’

The Glossary defines ‘recordable work-related injury or ill health’ as ‘work-related injury or ill health that results in any of the following: i. death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness; or ii. 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

Guidance on recordable work-related ill health is provided in ESRS S1 paragraph AR 92, AR 93, AR 94. ESRS S1 paragraph AR 92 provides a number of examples of work-related ill health, which may include acute, recurring, and chronic health problems caused or aggravated by work conditions or practices. These include musculoskeletal disorders, skin and respiratory diseases, malignant cancers, diseases caused by physical agents (for example, noise-induced hearing loss, vibration-caused diseases), and mental illness (for example, anxiety, post-traumatic stress disorder). ESRS S1 paragraph AR 92 also specifies that undertakings are required to include, at a minimum, the cases outlined in the ILO List of Occupational Diseases.

While undertakings are required to consider the cases of work-related ill health outlined in the ILO List of Occupational Diseases as a starting point, how work-related ill health is defined also depends on local/national legislation and the disclosure of cases of work-related ill health is furthermore subject to legal restrictions on the collection of data. In that regard, ESRS S1 paragraph AR 94 specifies that only cases of work-related ill health that have been notified to the undertaking, or identified by the undertaking through medical surveillance are included in this disclosure.

ID 793 - Scope of ESRS S4 – Consumers and end-users

Category

Social

Question asked

Are you allowed to apply ESRS S4 to either consumers or end-users only?

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ESRS Reference

ESRS S4

Key terms

Business-to-business customers; consumers and end-users; value chain

Background

The original wording of the question we received was ‘Does the S4 standard allows application for only consumers OR end-users?’. We changed it slightly for clarity and orthographic purposes. The individual who submitted that question also provided the following problem description: ‘Biotechnology enterprises are often not in direct connection with consumers - concept of consumers stated in annex 2 limits this stakeholder group to those who use a product or service for personal use. Products and services from biotechnology enterprises are usually for further use by clients, in most case pharmaceutical companies. This could result in exclusion of reporters given that ESRS S4 explicitly states consumers and end-users without possibility of applicability for only one of the groups. Pharma and biotechnology can have an impact on both (consumers and end-users) or only one of the groups (consumers or end-users). Impacts of the pharma and biotechnology enterprises on these stakeholders group depends on business size, business model, and diversity of products and services. Limiting the scope of applicability of the standard to both consumers and end-users could result in biased double materiality assessment and, in turn, a reduced number of preparers who report under ESRS S4.’

ESRS S4 lays down ‘disclosure requirements which will enable users of the sustainability statement to understand material impacts on consumers and end-users connected with the undertaking’s own operations and value chain, including through its products or services, as well as through its business relationships, and its related material risks and opportunities’. The ESRS define consumers as individuals ‘who acquire, consume or use goods and services for personal use, either for themselves or for others, and not for resale, commercial or trade, business, craft or profession purposes’. End-users are defined as individuals ‘who ultimately use or are intended to ultimately use a particular product or service’. (See Table 2 of Annex II of ESRS.) Consumers and end-users are therefore closely related, but distinct, stakeholder groups. Many of the paragraphs in ESRS S4 make this clear because they refer to ‘consumers *and/or* end-users’. For example, ESRS S4 paragraph 2 states that ‘this Standard requires an explanation of the general approach the undertaking takes to identify and manage any material actual and potential impacts on the **consumers and/or end-users** related to its products and/or services’ (emphasis added).

The ESRS definitions make it clear that consumers and end-users are natural persons. 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).

Answer

Yes, it is possible to apply the requirements of ESRS S4 to *either* consumers *or* end-users because these are distinct but closely related, groups of individuals. However, the above-mentioned definitions 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. The requirements of ESRS S4 therefore do not apply to customers of a business that are themselves businesses or other kinds of organisations. If, as in the example mentioned in the question, a biotech company only has business customers, the assessment of the ESRS S4 affected stakeholder groups may be focussed on end-users. This could be when the undertaking's products are part of a value chain of a good or service that is ultimately bought or consumed for personal purposes by natural persons, and if this gives rise to material impacts, risks or opportunities for the reporting biotech company.

ID 797 – Pensions S1-10, S1-16

Category

Social

Question asked

Are pensions to be included in Disclosure Requirement S1-10 *Adequate wages*? Are pensions to be included in Disclosure Requirement S1-16 *Remuneration metrics*, more specifically, the gender pay gap and the annual total remuneration ratio?

ESRS Reference

ESRS S1-10, S1-16

Background

ESRS S1 paragraph AR 72 states: 'The lowest wage shall be calculated for the lowest pay category, excluding interns and apprentices. This is to be based on the basic wage plus any fixed additional payments that are guaranteed to all employees. The lowest wage shall be considered separately for each country in which the undertaking has operations, except outside the EEA when the relevant adequate or minimum wage is defined at a sub national level.'

Wage is defined as: 'Gross wage, excluding variable components such as overtime and incentive pay, and excluding allowances unless they are guaranteed.'

Annual total remuneration is defined as: 'Annual total remuneration to own workforce includes salary, bonus, stock awards, option awards, non-equity incentive plan compensation, change in pension value, and nonqualified deferred compensation earnings provided over the course of a year.'

Pay is defined as 'The ordinary basic or minimum wage or salary and any other remuneration, whether in cash or in kind which the worker receives directly or indirectly ('complementary or variable components'), in respect of his/her employment from his/her employer.'

Answer

Occupational pension entitlements are included in the disclosures under ESRS S1-16, but not S1-10. ESRS S1-10 requires a disclosure of whether the undertaking's employees receive an adequate wage, which refers to the basic wage including any fixed additional payments guaranteed to all employees (ESRS S1 paragraph AR 72). 'Wage' is defined as the 'gross wage, excluding variable components such as overtime and incentive pay and excluding allowances unless they are guaranteed.'

ID 1074 – Workers working on the undertaking's sites

Category

Social

Question asked

Are we correct to assume that "other workers working on the undertaking's site" are neither employees or non-employees (not part of the own workforce)? We found that, in the table provided in Annex-2-Draft-ESRS-Set1-illustrative-examples-of-XBRL-reports, the table asks for the data point on other workers to be disaggregated between employees and non-employees which does not make sense to us.

ESRS Reference

ESRS S1-14 paragraph 88(b)

Key terms

Value chain workers; Workers working on the undertaking's site

Background

ESRS S1 paragraph 88(b) 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 (...) The information for (b) shall also be reported for other workers working on the undertaking's sites, such as value chain workers if they are working on the undertaking's sites.'

ESRS S2 paragraph 11(a)(i) states: 'When fulfilling the requirements of paragraph ESRS 2 SBM-3 paragraph 48, the undertaking shall disclose whether all value chain workers who are likely to be materially impacted by the undertaking, including impacts that are connected with the undertaking's own operations and value chain, including through its products or services, as well as through its business relationships, are included in the scope of its disclosure under ESRS 2. In addition, the undertaking shall provide the following information: (a) a brief description of the types of value chain workers who could be materially impacted by the undertaking, including impacts that connected with the undertaking's own operations and value chain, including through its products or services, as well

as through its business relationships, and specify whether they are: i. workers working on the undertaking site but who are not part of own workforce, i.e., who are not self-employed workers or workers provided by third party undertakings primarily engaged in employment activities (covered through ESRS S1).'

Answer

Yes, as specified in ESRS S1 paragraph 88 the number of fatalities should also be reported for all workers working on the undertaking's sites. Other workers working on site are not considered employees or non-employees, they are considered value chain workers in accordance with ESRS S2 (see ESRS S2 paragraph 11(a)(i)).

ID 1169 – Age distribution employees

Category

Social

Question asked

The disclosure of the distribution of the employees by age (under 30, 30/50, more than 50 years old) shall be performed in terms of numbers and in percentage?

ESRS Reference

ESRS S1 paragraph 66(b)

Key terms

Diversity; Age distribution

Background

ESRS S1 paragraph 66(b) states: 'The undertaking shall disclose: (b) the distribution of employees by age group: under 30 years old; 30-50 years old; over 50 years old.'

Answer

ESRS S1 paragraph 66(b) on the distribution of employees by age shall be reported either as an absolute number or proportionate share (i.e., percentage). Two options are provided for this datapoint, and these are aligned with ESRS S1 paragraph 66 (a).

ID 1208 – Gender Pay Gap; Existing legislation

Category

Social

Question asked

Are companies in countries, like Ireland, with existing Gender Pay Gap reporting legislation, where the reporting timeframe, required calculation methodologies and some metrics, are different to those specified within CSRD now required to report two annual gender pay gaps at different times, which are likely to produce different figures given the different methodologies required?

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 of the average pay level of male employees.'

Answer

ESRS S1 paragraph 97(a) is a SFDR PAI; specifically, it's number 12 in Table 1 of Appendix 1 ('Unadjusted gender pay gap'). This disclosure is also aligned with the Pay Transparency Directive.

The CSRD is a reporting obligation for undertakings that fall within its scope; and it may differ from existing national regulations that may converge with the CSRD and the Pay Transparency Directive over time.

Supporting material

The CSRD specifies that 'sustainability reporting standards that address gender equality and equal pay for work of equal value should specify, amongst other things, information to be reported about the gender pay gap, taking account of other relevant Union law' (Recital 49)