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## NESRS: mixed scope consultation questionnaire Issues Paper

### Objective

1. The objective of this paper is to set out a possible approach to the mixed scope for the ESRS for Non-EU Groups ('NESRS') in the consultation.

### SR TEG on mixed scope approach

2. SR TEG members were presented with the mixed scope approach as set out in paragraph 18B of ESRS 1 at the meeting on 7 November 2024. However, members disagreed with the scope for the following reasons:
  - (a) Some were concerned about the legal basis, but a European Commission member pointed out that this had been tested internally and found to be compliant;
  - (b) There were concerns about the impacts of separating PAT for products or services between European and non-European consumption (i.e. so-called clean products for Europe but not for the rest of the world);
  - (c) Specifically there was a concern that creates loopholes for non-EU groups which is not what the legislation intended;
  - (d) Paragraph 18B would not create a level playing field for EU companies with their peers;
  - (e) The auditability of a report under paragraph 18B under the NESRS was questioned.
  - (f) An SR TEG member noted that paragraph 18B of NESRS1 could result in the loss of numerous human rights metrics and disclosures. They emphasized the importance of considering both reputational and political implications in this context.
  - (g) Another SR TEG member highlighted that sustainability is a holistic issue and, accordingly, the NESRS should adopt an equally comprehensive approach, encompassing all relevant topics.
3. One SR TEG member also questioned the perceived climate first approach evidenced in paragraph 18B and another had concerns around the interaction with CSDDD.
4. The EFRAG Secretariat notes the following:
  - (a) The mixed scope attempts to avoid or minimise concerns about extraterritoriality as well as third country groups restructuring which may result in less options for EU consumers;
  - (b) Requiring 'Climate change' to be covered by global operations is leveraging the global acceptance of IFRS S2; and

- (c) CSDDD interacts with ESRS in the area of transition plans and care has been taken not to cause any disruption here. The behavioural aspects of CSDDD apply whether there are reporting requirements under ESRS or not.

#### Proposed approach for NESRS ED consultation

- 5. The strategic direction of the EFRAG SRB is to consult on the mixed approach, next to the global scope.
- 6. Given the strong resistance from SR TEG on the mixed scope approach, the EFRAG Secretariat has prepared a separate document to support the consultation on the mixed approach, in case the EFRAG SR TEG final orientation would be to eliminate the mixed approach from the Exposure Draft in their advice to SRB. In this consultation document, the EFRAG Secretariat improved the drafting and added other requirements to overcome the concerns mentioned in the summary above for the documents for 18 November.
- 7. The EFRAG Secretariat removed the relevant paragraphs from the NESRS for this meeting and proposes the following consultation section on the topic.

#### NESRS ED consultation on mixed scope approach

- 8. The Accounting Directive does not specify in detail the perimeter for the information to be covered by the article 40a report. However, recital 20 of the CSRD indicate: “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.”
- 9. There are at least the following options with respect to the perimeter:
  - (a) Global operations: Reporting on the impacts of the whole third-country group (in the paragraphs below we call this “Global scope”); or
  - (b) Mixed approach: Covering the impacts of the whole group (i.e., global operations) with an option for third country groups to limit some of the disclosures to impacts connected with the provision of products and services to EU customers (referred to as an ‘EU scope’).
- 10. DG FISMA has requested that EFRAG focusses on an approach to the perimeter that covers the impacts of the whole group (i.e., global operations referred to as a global scope in this document) with an option for third party companies to limit some of the disclosures to impacts connected with the provision of products and services to EU customers.
- 11. The EFRAG SRB preferred a default of reporting related to the ‘global operations’ with an option to apply an ‘EU-specific scope’ for topical standards other than NESRS E1 *Climate change*. The relevant paragraphs related to this mixed scope approach would read as follows:

#### NESRS 1 General requirements

- 12. 18B Regardless of the provisions of paragraph 18A, the undertaking has the option to prepare the NESRS sustainability report and exclude information about the impacts of sales of goods or provision of services to natural and legal persons outside the European Union. This only relates to reporting pursuant to the disclosure requirements in the topical standards other than NESRS E1 *Climate change*. If the undertaking makes such a decision, it shall state this clearly as required in ESRS 2 BP 2 – *Disclosures in relation to specific circumstances*.
- 13. 37A Where the undertaking has exercised the option under paragraph 18B in terms of the perimeter of its disclosures, its materiality assessment for topics other than NESRS E1 *Climate change* has to be performed with the aim to identify material impacts of sales of

goods or provision of services to natural and legal persons in the European Union. For NESRS E1 the scope of the materiality assessment should cover the entire operations of the group.

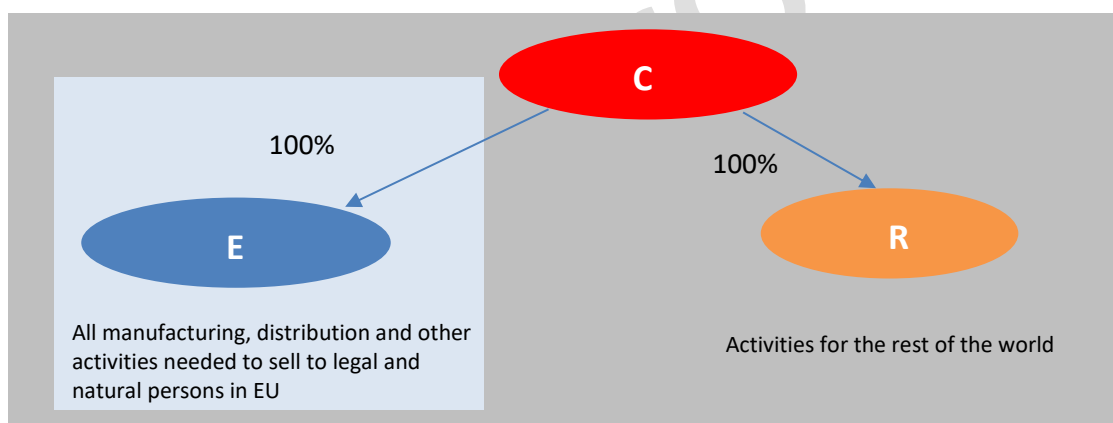
14. 62A Where the undertaking has exercised the option under paragraph 18B, the sustainability report shall include information about the upstream and downstream value chain related to the products and services provided to natural and legal persons in the European Union, irrespective of the location of the upstream and downstream actors. Also refer to AR 16A in NESRS 2 for dealing with impacts related to intra-group transactions.
15. 125. ... This is particularly relevant for sustainability reports prepared under paragraph 18B of this standard.

*NESRS 1 Appendix A Application requirements*

*Perimeter of disclosures*

AR 5A The following examples reflect possibilities for the perimeter of disclosures that would be relevant for consideration of the choice under paragraph:

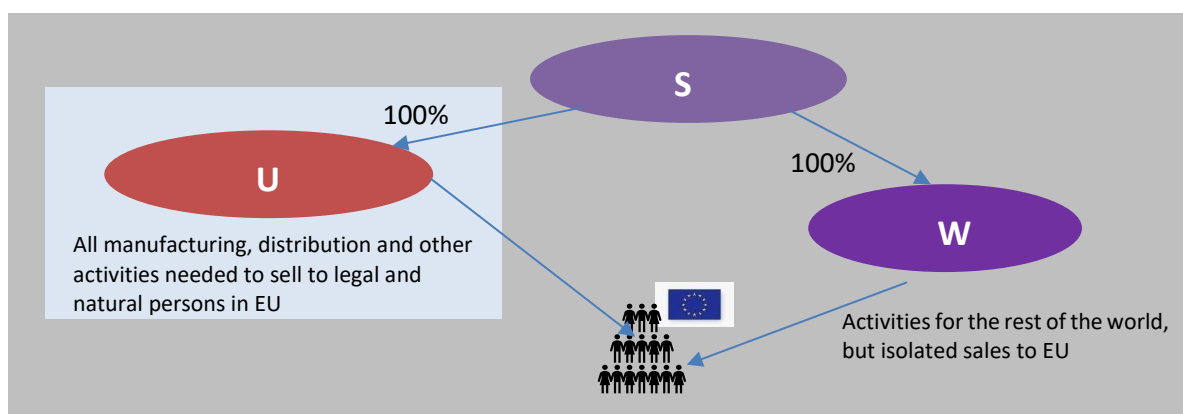
- (a) A Canadian headquartered group, named C, with such activity in the EU that an EU subsidiary undertaking has to report under article 40a for the group. Also assume that the Canadian parent has two intermediate holding companies: One for production and distribution of sales of products to the EU, called E and one for the rest of the world, called R.



If C follows paragraph 18A, the perimeter of all disclosures will correlate to the area in grey. The related value chains are those outside the area in grey.

If C follows paragraph 18B, the perimeter for the disclosures in NESRS 2 and NESRS E1 will correlate to the area in grey. For the other topical standards, the information would cover the activities in the blue. The related value chains remain those outside the area in grey. For impacts related to intra-group transactions, AR 16A may be relevant.

- (b) A South African headquartered group with such activity in the EU that an EU subsidiary undertaking has to report under article 40a for the group. This parent, called S, has manufacturing plant and distribution units in Europe for its sales to EU customers under a European subsidiary named U, but there are also some isolated transactions with some EU clients directly from South Africa via an intermediate holding company called W. In this case, the sustainability report under article 40a would also capture the impacts related to these isolated transactions (on the assumption that the related sustainability matters are material).



If S follows paragraph 18A, the perimeter of all disclosures will correlate to the area in grey. The related value chains are those outside the area in grey.

If S follows paragraph 18B, the perimeter for the disclosures in NESRS 2 and NESRS E1 will correlate to the area in grey. For the other topical standards, the information would cover the activities in the grey unless R is able to separate the impacts of activities related to the isolated sales to the EU which would then be included with the blue area. For impacts related to intra-group transactions, AR 16A may be relevant.

- (c) A third example is that of an integrated manufacturing and distribution system which does not differentiate in their value chain and operations between the location of customers during the manufacturing phase. In this case, preparers using option 18B would have to perform a materiality assessment for topics beyond climate designed to capture impacts (also arising outside Europe) when they are connected with EU sales of goods or provision of services. This would also mean for example a quantification of the metrics for impacts, wherever they emerge, when connected with sales/services to the EU. Climate metrics, such as scope 1 to 3 of GHG emissions would be measured/estimated for the whole group. Other environmental metrics could be apportioned on a relevant basis, but such estimations and the basis thereof would need to be explained carefully. Apportionment of metrics for the Social and Governance topical standards are not appropriate.
- (d) A Brazilian headquartered group with such activity in the EU that an EU subsidiary undertaking, E, has to report under article 40a for the group. In this case, E does not sell any of its products in the European Union but exports all production to third parties in other countries. While E may have reporting obligations under CSRD article 19a or 29a, where the group has chosen to report under paragraph 18B of NESRS 1, for topics beyond NESRS E1, it would not have to disclose any further information.

*NESRS 2 General disclosures*

16. 17C Where the undertaking chooses to provide information on the basis in NESRS 1 paragraph 18B, it shall clearly reflect this. It shall also disclose the assumptions, input used to develop estimates in order to exclude information about impacts of sales of goods or provision of services to natural and legal persons outside the European Union, for disclosure requirements in the topical standards other than NESRS E1 *Climate change*, as well as the resulting accuracy.
17. 65A Where the undertaking has selected to prepare information on the basis of NESRS 1 paragraph 18B, it shall explain whether and how its policies with respect to products or services provided to natural or legal persons in the European Union differ to those delivered outside of the European Union.
18. 69A Where the undertaking has selected to prepare information on the basis of NESRS 1 paragraph 18B, it shall explain whether and how its actions with respect to products or services provided to natural or legal persons in the European Union differ to those delivered outside of the European Union.
19. 79A Where the undertaking has selected to prepare information on the basis of NESRS 1 paragraph 18B, it shall explain whether and how its targets with respect to products or services provided to natural or legal persons in the European Union differ to those delivered outside of the European Union.

*NESRS Topical standards*

20. Inclusion of AR in each standard cross referencing to NESRS 2 paragraphs 65A, 69A and 79A.

**Questions for constituents that will participate to the consultation**

21. The intent of the mixed scope approach is to focus the reporting requirements on impacts connected with EU sales. Do you support this approach? Please explain your answer.
22. If you do not support this approach, what alternative would you propose considering the need to establish a level playing field for European companies with third country peers?
23. Do you consider that the preparation of the reporting under the mixed approach would be feasible and produce meaningful information? Please illustrate the challenges you have identified and if applicable differentiate between issues arising from policy/actions/targets disclosure and from metrics disclosure.
24. If the undertaking has the same supply chain and the same operations for the manufacturing and sale of goods and services to both EU and non-EU clients, how should the undertaking estimate the share of the impacts that are to be reported when applying the mixed approach for topics beyond climate in reporting metrics? Would the approach have to be different for environmental and for social topics?
25. Is there additional guidance that should be provided to support the preparation of the information required under the mixed approach?

**Questions for EFRAG SR TEG**

26. Does EFRAG SR TEG have comments on this paper or other proposals for questions in the consultation?