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

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## Cross-Cutting

### ID 787 – Sustainability reporting rules for consolidation?

#### Category

Cross-cutting

#### Question asked

Are there sustainability reporting rules for consolidation and if so, what are they? When does financial control apply, when does operational control apply?

#### ESRS Reference

ESRS 1 paragraphs 62 and 67; ESRS E1 paragraphs 46, 50 (a), 50 (b), AR 40; ESRS E2 paragraph 29; ESRS E4 paragraph 16

#### Key terms

Sustainability rules for consolidation; operational control; joint arrangements (joint operations and joint ventures (JV) and associates)

#### Background

The following question was received and amended as stated above:

Are there precise criteria on how companies should consolidate? Is it financial or operational consolidation?

The relevant background provided with that question was: Four companies owned by the same stakeholders, same type of activities. They consolidate financially two of the four companies. But the same people operate them. Do they need to consolidate the rest?

#### **Reporting group as a starting point**

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.'

ESRS 1 paragraph 67 states: 'When associates or joint ventures accounted for under the equity method or proportionally consolidated in the financial statements are part of the undertaking's value chain for example as suppliers the undertaking shall include information related to those associates or joint ventures in accordance with paragraph 63 consistent with the approach adopted for the other business relationships in the value chain. In this case when determining impact metrics the data of the associate or joint venture are not limited to the share of equity held but shall be taken into account on the basis of the impacts that are connected with the undertaking's products and services through its business relationships.'

#### **Operational control**

Annex II Acronyms and Glossary of terms defines operational control: 'Operational control (over an entity, site, operation or asset) is the situation where the undertaking has the ability to direct the operational activities and relationships of the entity, site, operation or asset.'

Throughout ESRS, the term 'operational control' is referenced to in ESRS E1 paragraph 46, ESRS E1 paragraph 50, ESRS E2 paragraph 29, and ESRS E4 paragraph 16 as laid out below.

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ESRS E1 paragraph 46 states (Disclosure Requirement E1-6 – Gross Scopes 1, 2, 3 and Total GHG emissions): ‘When disclosing the information on GHG emissions required under paragraph 44, the undertaking shall refer to ESRS 1 paragraphs from 62 to 67. In principle, the data on GHG emissions of its associates or joint ventures that are part of the undertaking’s upstream and downstream value chain (ESRS 1 Paragraph 67) are not limited to the share of equity held. For its associates, joint ventures, unconsolidated subsidiaries (investment entities) and contractual arrangements that are joint arrangements not structured through an entity (i.e., jointly controlled operations and assets), the undertaking shall include the GHG emissions in accordance with the extent of the undertaking’s operational control over them.’

ESRS E1 paragraph 50 states: ‘For Scope 1 and Scope 2 emissions disclosed as required by paragraphs 44 (a) and (b) the undertaking shall disaggregate the information, separately disclosing emissions from:

- (a) the consolidated accounting group (the parent and subsidiaries); and
- (b) investees such as associates, joint ventures, or unconsolidated subsidiaries that are not fully consolidated in the financial statements of the consolidated accounting group, as well as contractual arrangements that are joint arrangements not structured through an entity (i.e., jointly controlled operations and assets), for which it has **operational control**.’

ESRS E2 paragraph 29 states (Disclosure Requirement E2-4 Pollution of air, water and soil): ‘The amounts referred in paragraph 28 shall be consolidated amounts including the emissions from those facilities over which the undertaking has financial control and those over which it has operational control. The consolidation shall include only the emissions from facilities for which the applicable threshold value specified in Annex II of Regulation (EC) No 166/2006 is exceeded.’

ESRS E4 paragraph 16 states (Disclosure Requirement SBM 3 – Material impacts, risks and opportunities and their interaction with strategy and business model): ‘The undertaking shall disclose:

- (a) a list of material sites in its own operations, including sites under its **operational control**, based on the results of paragraph 17(a). The undertaking shall disclose these locations by: ...’

### **Joint operations and joint ventures**

IFRS 11 Joint arrangements defines ‘Joint operations’ as: ‘A joint arrangement whereby the parties that have joint control of the arrangement have rights to the assets, and obligations for the liabilities, relating to the arrangement.’

IFRS 11 paragraph 20 defines: ‘A joint operator shall recognise in relation to its interest in a joint operation:

- (a) its assets, including its share of any assets held jointly;
- (b) its liabilities, including its share of any liabilities incurred jointly;
- (c) its revenue from the sale of its share of the output arising from the joint operation;
- (d) its share of the revenue from the sale of the output by the joint operation; and
- (e) its expenses, including its share of any expense incurred jointly.

IFRS 11 Joint arrangements defines ‘Joint ventures’ as: ‘A joint venture is a joint arrangement whereby the parties that have joint control of the arrangement have rights to the net assets of the arrangement.’

IFRS 11 paragraph 24 defines: **‘A joint venturer shall recognise its interest in a joint venture as an investment and shall account for that investment using the equity method [...].’**

**Answer**

There are no ‘sustainability reporting rules for consolidation’ besides those used for financial reporting. The sustainability statement is prepared for the same reporting undertaking as defined for the financial statements, based on financial accounting guidance adopted for consolidated financial statements (IFRS or national GAAP as the case might be). Especially, there is no such thing as an ‘operational consolidation’-concept (the term used in the question of the submitter) to determine the scope of consolidation for sustainability reporting.

However, the concept of ‘operational control’ is used in ESRS E1 and ESRS E2 for certain environmental metrics and in ESRS E4 for a narrative disclosure, as further described below; therefore it deserves special attention.

**Reporting group as a starting point**

The sustainability statement shall be for the same reporting undertaking as the financial statements (ESRS 1 paragraph 62).

For example, in financial reporting the concept of ‘control’ implies that all assets, liabilities, income and expenses of a 51 percent owned subsidiary (for which ‘control’ exists according to IFRS 10 or applicable national GAAP) are recognized in their entirety, independent of the share that the reporting parent company holds. The equity share that a parent company holds in the subsidiary could be 51 percent, more or sometimes even less. Following certain accounting procedures, the subsidiary is consolidated, i.e. fully included in the consolidated financial statements. Likewise, the sustainability statement of the group will include information about all the material IROs connected with the assets, liabilities and underlying transactions included in the (consolidated financial statements). For example: the subsidiary fully consolidated is reflected in metrics calculation for the group in its entirety (i.e. with 100 percent). See also the examples in IG 2 paragraph 144 for the metric GHG emissions in ESRS E1.

As stated in IG 2: Value chain implementation guidance ‘sometimes subsidiaries are not included in the financial reporting consolidation on the basis of materiality, for practical reasons. Such subsidiaries may still have material sustainability matters that need to be reported in the consolidated sustainability statement. Therefore, the materiality of their impacts, risks or opportunities needs to be evaluated as well.’

Please refer to EFRAG IG 2: Value chain implementation guidance chapter 2.3 ‘From own operations to value chain’ for ‘internal or intragroup transactions’.

Beyond the entities included in the accounting consolidation perimeter, investments such as joint ventures and associates recognized in the consolidated financial statements as a single asset (i.e. accounted for under the equity method) are a source of material IROs to be reported, as connected with the undertaking through its business relationships. When, in addition to the investment relationship, joint ventures (JV) and associates are also actors in the value chain (e.g. suppliers or customers) and therefore not own operations, the relevant supply chain transactions are treated as any other counterpart in the value chain (ESRS 1 paragraph 67). This means that the undertaking shall report the proportion of impacts arising from the goods or services that it buys from the JV or associate. In addition, the undertaking must consider the impacts that arise from its relationship with the JV or associate as investor (e.g. reporting GHG emissions category 15 in addition to the emissions due to the supply relationship).

The treatment of joint operations under IFRS differs to that of joint ventures or associates, in that the relevant assets, liabilities, revenues, expenses or share of such are accounted for in the separate financial statements of the joint operator per IFRS 11 par 26 and 20 to 22. Therefore, joint operations under IFRS form part of the reporting entity. Under local GAAP, the treatment may be the same as described for joint ventures/associates in the previous paragraph.

### **Operational control**

For limited **environmental** disclosures the information to be reported also includes the information of sites, assets and entities not included in the consolidated financial statements, if the undertaking exercises operational control over them. This is the case only for the following disclosures:

- (a) GHG emissions (E1, paragraph 50 b) - metric;
- (b) the amounts of pollutants (E2, paragraph 29) - metric; and
- (c) for the disclosure of the list of material sites in (E4 paragraph 16 a).

Further requirements may be added in sector specific standards.

Operational control (over an entity, site, operation or asset) is defined in the glossary as ‘the situation where the undertaking has the ability to direct the operational activities and relationships of the entity, site, operation or asset.’ ESRS E1 AR 40 further details that ‘[i]n practice, this happens when the undertaking holds the license - or permit - to operate the assets from these associates, joint ventures, unconsolidated subsidiaries (investment entities) and contractual arrangements.’

### **Financial control without operational control**

Consistent with the basic principle being to report IROs of the reporting undertaking as reflected in the (consolidated) financial statements, if the reporting undertaking does not have operational control over a subsidiary, a site or an asset included in the consolidated financial statements, the relevant amounts of GHG emissions and pollutants are nevertheless included in the sustainability statement.

**Reference is made to** further guidance on operational control in the IG 2 chapter 2.3 *From value own operations to value chain*.

Please also refer to ID 284 - How should joint venture (or associates) employees be considered in the sustainability statement?

## **ID 803 – Own operations vs operational control**

[For SR TEG information 18 June: This ID consists of two questions. The second part relates to leasing and ESRS E3. As it has been decided when finalizing IG 2 value chain to collect feedback on leasing from the public issuing an IG, this ID is split into two. The second question will be answered in the IG on leasing.]

### **Category**

Cross-cutting

### **Question asked**

1. What is the distinction between ‘own operations’ and ‘operational control’ in ESRS?

2. In ESRS E3, if a company is leasing from landlord and landlord is paying the utility bills, does the company report on that water consumption?

### ESRS Reference

ESRS E1 paragraphs 62 and 63; ESRS E1 paragraphs 46 and 50; ESRS E2 paragraph 29; ESRS E4 paragraph 16

ESRS E3 paragraph 28 (water consumption)

### Key terms

Own operations; water consumption and leased property

### Background

The submitter provided the following background information together with the question: 'We believe these own operations and operational control are separate: operational control is about the authority to implement operating policies, while own operations are about ownership and financial control. To confirm, in ESRS E3, if a company is leasing from landlord and landlord is paying the utility bills, does the company report on that water consumption?'

The Glossary of terms defines operational control: 'Operational control (over an entity, site, operation or asset) is the situation where the undertaking has the ability to direct the operational activities and relationships of the entity, site, operation or asset.'

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.'

ESRS 1 paragraph 63 states: 'The information about the reporting undertaking provided in the sustainability statement shall be extended to include information on the material impacts, risks and opportunities connected with the undertaking through its direct and indirect business relationships in the upstream and/or downstream value chain ("value chain information"). In extending the information about the reporting undertaking, the undertaking shall include material impacts, risks and opportunities connected with its upstream and downstream value chain:

- (a) following the outcome of its due diligence process and of its materiality assessment; and
- (b) in accordance with any specific requirements related to the value chain in other ESRS.'

ESRS E1 paragraph 46 states (Disclosure Requirement E1-6 – Gross Scopes 1, 2, 3 and Total GHG emissions): 'When disclosing the information on GHG emissions required under paragraph 44, the undertaking shall refer to ESRS 1 paragraphs from 62 to 67. In principle, the data on GHG emissions of its associates or joint ventures that are part of the undertaking's upstream and downstream value chain (ESRS 1 Paragraph 67) are not limited to the share of equity held. For its associates, joint ventures, unconsolidated subsidiaries (investment entities) and contractual arrangements that are joint arrangements not structured through an entity (i.e., jointly controlled operations and assets), the undertaking shall include the GHG emissions in accordance with the extent of the undertaking's operational control over them.'

ESRS E1 paragraph 50 states: 'For Scope 1 and Scope 2 emissions disclosed as required by paragraphs 44 (a) and (b) the undertaking shall disaggregate the information, separately disclosing emissions from:

- (a) the consolidated accounting group (the parent and subsidiaries); and

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- (b) investees such as associates, joint ventures, or unconsolidated subsidiaries that are not fully consolidated in the financial statements of the consolidated accounting group, as well as contractual arrangements that are joint arrangements not structured through an entity (i.e., jointly controlled operations and assets), for which it has operational control.'

ESRS E2 paragraph 29 states (Disclosure Requirement E2-4 Pollution of air, water and soil): The amounts referred in paragraph 28 shall be consolidated amounts including the emissions from those facilities over which the undertaking has financial control and those over which it has operational control. The consolidation shall include only the emissions from facilities for which the applicable threshold value specified in Annex II of Regulation (EC) No 166/2006 is exceeded.'

ESRS E4 paragraph 16 states (Disclosure Requirement SBM 3 – Material impacts, risks and opportunities and their interaction with strategy and business model): 'The undertaking shall disclose:

- (a) a list of material sites in its own operations, including sites under its operational control, based on the results of paragraph 17(a). The undertaking shall disclose these locations by: ...'

ESRS E3 paragraph 28 states (water consumption): 'The disclosure required by paragraph 26 relates to own operations and shall include:

- (a) total *water consumption* in m<sup>3</sup>;
- (b) ...'

### Answer

#### 1. What is the distinction between 'own operations' and 'operational control' in ESRS?

##### Own operations

Own operations is not a defined term in ESRS, other than not being upstream or downstream value chain (see ESRS 1 paragraphs 62 and 63). Own operations are usually understood to correspond to the perimeter of the reporting entity, i.e. they comprise assets and liabilities recognised in the (consolidated) financial statements according to the applicable GAAP. The undertaking also may or may not have operational control over those entities.

(See also ID 787)

In the Glossary of ESRS 'operational control' is defined and its application is further explained in EFRAG IG 2 Value Chain Chapter 2.3 as well as FAQ's 5 to 7.

##### Operational control

Operational control is used in ESRS to include in the measurement of metrics (in ESRS E1 for GHG emissions and in ESRS E2 for pollution) and in the list of material sites in ESRS E4 the information of sites, assets and entities that are under operational control of the undertaking but not recognised in its financial statements.

For the measurement of GHG emissions (ESRS E1 paragraphs 46 and 50 b), the measurement of the amounts of pollutants (ESRS E2 paragraph 29); and for the disclosure of the list of material sites in (ESRS E4 paragraph 16 (a)), the information to be reported includes in addition to that coming from own operations the information on sites, assets and entities not included in the consolidated financial statements, if the undertaking exercises operational control over them.



Looking at the treatment of GHG emissions from entities, sites and assets not financially controlled but 'only' under operational control, which include 'unconsolidated subsidiaries that are not fully consolidated in the financial statements of the consolidated accounting group' when the reporting entity has operational control, ESRS E1 clarifies that they are classified as scope 1 and 2 (refer to ESRS E1 paragraph 50 (b)). In this sense, despite not belonging to the consolidated group (as they are not included in ESRS E1 paragraph 50 (a)), still they are not considered as belonging to the upstream or downstream value chain (as they are not in Scope 3), as the undertaking has, the ability to direct the operational activities and relationships of the asset/site/undertaking concerned, as if they were part of own operations.

Reference is made to IG 2 Value chain paragraph 51. Operational control in the case of ESRS E1 does not only relate to investees (associates, joint arrangements and unconsolidated subsidiaries, etc.) under operational control, but also to GHG emissions of entities, assets and sites under operational control which are not included in the consolidated financial statements (e.g. when no investment relationship exists between the reporting entity and the asset or site under operational control).

**2. In ESRS E3, if a company is leasing from landlord and landlord is paying the utility bills, does the company report on that water consumption?**

[will be reclassified as an IG]

## **ID 905 – Manufacture of chemicals / pesticides and other agrochemical products**

### **Category**

Cross-cutting

### **Question asked**

There is a reference to Division 20.2 of Annex I to Regulation (EC) No 1893/2006 and I wonder if you mean Division 20 Group 20.2 which is "Manufacture of pesticides and other agrochemical products"?

### **ESRS Reference**

ESRS 2 paragraph 40 (d) (ii)

### **Key terms**

Pesticides; agrochemical products

### **Background**

ESRS 2 paragraph 40 states: 'The undertaking shall disclose the following information about the key elements of its general strategy that relate to or affect sustainability matters: ...

- (a) where applicable, a statement indicating, together with the related revenues, that the undertaking is active in: ...
  - (i) chemicals production, i.e., activities that fall under the Division 20.2 of Annex I to Regulation (EC) No 1893/2006; ...'

### Answer

Yes, the correct reference is to Division 20 Group 20.2 of Annex I to Regulation (EC) No 1893/2006 which is 'Manufacture of pesticides and other agrochemical products'.

### Supporting material

[Regulation \(EC\) No 1893/2006](#)

## ID 935 – Financial effects - current vs anticipated

### Category

Crosscutting

### Question asked

What is the difference between current financial effects in ESRS 2 paragraph 48 (d) and anticipated short-term effects ESRS 2 paragraph 48 (e)?

### ESRS Reference

ESRS 2 paragraph 48

### Key terms

Financial effects, current; financial effects, anticipated

### Background

The submitter provided the following background to the question: 'According to ESRS 1 section 6.4 paragraph 77, the short-term time horizon is defined as the reporting period (which we interpret as the current reporting period), and the medium-term horizon starts after that reporting period up to 5 years. Is the next annual reporting period included in the short-term horizon as defined by ESRS 1.77.b, and is that then the definition of anticipated short-term effects, or is it included in the medium-term horizon - but what would be the short term anticipated in that case? (In the French translation, the short-term time horizon is defined as the "période de référence" which in paragraph 75 is the equivalent of the "base year" - this adds to the confusion.)'

ESRS 2 paragraph 48 states: 'The undertaking shall disclose: ...

- (b) the current financial effects of the undertaking's material risks and opportunities on its financial position, financial performance and cash flows and the material risks and opportunities for which there is a significant risk of a material adjustment within the next annual reporting period to the carrying amounts of assets and liabilities reported in the related financial statements; and
- (c) the anticipated financial effects of the undertaking's material risks and opportunities on its financial position, financial performance and cash flows over the short-, medium- and long-term, including the reasonably expected time horizons for those effects. This shall include how the undertaking expects its financial position, financial performance and cash flows to change over the short, medium- and long-term, given its strategy to manage risks and opportunities, taking into consideration:
  - (i) its investment and disposal plans (for example, capital expenditure, major acquisitions and divestments, joint ventures, business transformation,

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innovation, new business areas and asset retirements), including plans the undertaking is not contractually committed to; and

(ii) its planned sources of funding to implement its strategy.

Annex II Acronyms and Glossary of terms defines:

- (a) financial effects: 'Effects from risks and opportunities that affect the undertaking's financial position, financial performance and cash flows over the short, medium or long term';
- (b) current financial effects: 'Financial effects for the current reporting period that are recognised in the primary financial statements'; and
- (c) anticipated financial effects: 'Financial effects that do not meet the recognition criteria for inclusion in the financial statement line items in the reporting period and that are not captured by the current financial effects'.

ESRS 1 Appendix C states in its phase-in provisions regarding ESRS 2 paragraph 48 (e): 'The undertaking may omit the information prescribed by ESRS 2 SBM-3 paragraph 48(e) (anticipated financial effects) for the first year of preparation of its sustainability statement. The undertaking may comply with ESRS 2 SBM-3 paragraph 48(e) by reporting only qualitative disclosures for the first 3 years of preparation of its sustainability statement, if it is impracticable to prepare quantitative disclosures.'

### Answer

Current anticipated effects and anticipated effects are two different concepts.

Current financial effects are defined as 'financial effects for the current reporting period that are recognised in the primary financial statements'. Anticipated financial effects are defined as 'financial effects that do not meet the recognition criteria for inclusion in the financial statement line items in the reporting period and that are not captured by the current financial effects'. Anticipated financial effects includes the financial effects that are not "current financial effects".

The distinguishing characteristic is whether the financial effect has already been recognised in the financial statements based on the recognition criteria for inclusion in the primary financial statements or not. Accordingly, the current financial effect has already occurred at or before the reporting date, whereas the anticipated effect might occur thereafter be it in the short- (within the reporting period after the balance-sheet date), medium- or long-term.

As an example, an impairment charge recognized in the current reporting period in accordance with IAS 36 Impairment of assets is a current financial effect whereas a disclosure in accordance with IAS 36 paragraph 134 (f) requiring the disclosure of a potential impairment based on 'reasonable possible change in key assumptions' is an anticipated financial effect. Connectivity with financial statements shall and incorporation by reference may therefore be considered in the context of financial effects (reference to ESRS 1 chapter 9).

The second part of ESRS 2 paragraph 48 (d) (second datapoint) requires the disclosure of '... and the material risks and opportunities for which there is a significant risk of a material adjustment within the next annual reporting period to the carrying amounts of assets and liabilities reported in the related financial statements'. This datapoint does not qualify as current financial effects but as anticipated financial effects that is of a short-term nature (i.e., next annual reporting period).

In this sense, there is an overlap as the datapoint “adjustment within the next annual reporting period” is also part of the anticipated financial effects to be reported under ESRS 2 paragraph 48 (e). The undertaking may use cross-references to the respective disclosures to avoid repetitions.

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

### **Category**

Cross-cutting

### **Question asked**

Consider an undertaking that has a business plan approved by on a 3-year duration. Consider a topic that is not material but that will most probably become material within 4-5 years from the reporting period. 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 rephrased to the above. 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**

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.

## **ID 1039 – Time horizon - only long-term material**

### **Category**

Cross-cutting

### **Question asked**

We are trying to understand how changing materiality of a sustainability matter over the three timeframes influences Disclosure Requirements. E.g. if the matter water is deemed not material for the short and medium impact materiality but material in the long-term. Does that mean the matter is deemed material and disclosure is required even though it only becomes material in the long-term?

### **ESRS Reference**

ESRS 1 paragraphs 43 and 49

### **Key terms**

Time horizon, only long-term material

### **Background**

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**

It depends whether a matter is assessed as material in the long-term or whether it is expected to become only material in the long-term.

ESRS 1 paragraph 43 states for impact materiality and paragraph 49 for financial materiality: 'A sustainability matter is material ... when it pertains to / if it triggers ... over the short-, medium- or long-term. The time horizons are connected with an 'or' meaning that the impact / financial materiality must not occur during all three time horizons. It is sufficient that materiality occurs during any of the time horizons.

If a matter is assessed as material in the long-term the matter is considered material and the related Disclosure Requirements are applicable. Attention should be paid to the possible omission of metrics when following paragraph 43 of ESRS 1.

## ID 1047 – Conditions for incorporation by reference and content index

### Category

Cross-cutting

### Question asked

Is it mandatory to make an explicit reference to the specific Disclosure Requirement when incorporating by reference or is referring to Disclosure Requirements to other parts of the annual report in the IRO-2 table sufficient?

### ESRS Reference

ESRS 1 paragraphs 119 – 120; ESRS 2 paragraph 56 (content index requirement)

### Key terms

Incorporation by reference; references to ESRS Disclosure Requirements in other parts of corporate reporting; content index

### Background

ESRS 1 paragraphs 119 and 120 state:

‘119. Provided that the conditions in paragraph 120 are met, information prescribed by a Disclosure Requirement of an ESRS, including a specific datapoint prescribed by a Disclosure Requirement, may be incorporated in the sustainability statement by reference to:

- (a) another section of the management report;
- (b) the financial statements;
- (c) the corporate governance statement (if not part of the management report);
- (d) the remuneration report required by Directive 2007/36/EC of the European Parliament and of the Council ( 9 );
- (e) the universal registration document, as referred to in Article 9 of Regulation (EU) 2017/1129 ( 10 ); and
- (f) public disclosures under Regulation (EU) No 575/2013 of the European Parliament and of the Council (Pillar 3 disclosures) ( 11 ). If the undertaking incorporates by reference information from Pillar 3 disclosures, it shall ensure that the information matches the scope of consolidation used for the sustainability statement by complementing the incorporated information with additional elements as necessary.

120. The undertaking may incorporate information by reference to the documents, or part of the documents, listed in paragraph 119, provided that the disclosures incorporated by reference:

- (a) constitute a separate element of information and are clearly identified in the document concerned as addressing the relevant Disclosure Requirement, or the relevant specific datapoint prescribed by a Disclosure Requirement;
- (b) are published before or at the same time as the management;
- (c) are in the same language as the sustainability statement;

- (d) are subject to at least the same level of assurance as the sustainability statement; and
- (e) meet the same technical digitalisation requirements as the sustainability statement.'

ESRS 1 paragraph 56 states: 'The undertaking shall include a list of the Disclosure Requirements complied with in preparing the sustainability statement, following the outcome of the materiality assessment (see ESRS 1 chapter 3), including the page numbers and/or paragraphs where the related disclosures are located in the sustainability statement. This may be presented as a content index. The undertaking shall also include a table of all the datapoints that derive from other EU legislation as listed in Appendix B of this standard, indicating where they can be found in the sustainability statement and including those that the undertaking has assessed as not material, in which case the undertaking shall indicate 'Not material' in the table in accordance with ESRS 1 paragraph 35.'

### **Answer**

Yes, it is necessary to clearly identify in the document concerned (i.e., the document that the sustainability statement refers to) the relevant ESRS Disclosure Requirement, or the relevant specific datapoint prescribed by a ESRS Disclosure Requirement.

Incorporation by reference according to ESRS 1 paragraph 119 requires that the conditions of ESRS 1 paragraph 120 are met. One of those conditions is that the disclosure incorporated by reference 'constitute a separate element of information and are clearly identified in the document concerned as addressing the relevant Disclosure Requirement, or the relevant specific datapoint prescribed by a Disclosure Requirement' (see ESRS 1 paragraph 120 (a)). A mere reference in the sustainability statement – for example, as part of the 'content index' as required by ESRS 1 paragraph 56 - to the sections that are incorporated by reference is in the sustainability statement and not in the document concerned (i.e., for example in another section of the management report or the financial statements) and therefore, not sufficient to meet the ESRS 1 paragraph 120 (a) requirement.

## **ID 1054 – Short-term time horizon**

### **Category**

Cross-cutting

### **Question asked**

Could you please specify the short-term time horizon?

### **ESRS Reference**

ESRS 1 paragraph 77 (a)

### **Key terms**

Time horizon, short-term

### **Background**

The following background to the question was provided by the submitter: 'Since the short-term time horizon is defined as "the period adopted by the undertaking as the reporting period in its financial statements", the question is whether short-term refers to the reporting period itself or the year after the reporting period and the reference does only clarify the length of the period.'

ESRS 1 paragraph 77 states: 'When preparing its sustainability statement, the undertaking shall adopt the following time intervals **as of the end of the reporting period**:

- (a) for the short-term horizon: the period adopted by the undertaking as the reporting period in its financial statements; ...'

### Answer

The short-term time horizon lasts for one year from the end of the reporting period.

The length of the short-term time horizon is defined as: the period adopted by the undertaking in its financial statement as reporting period; this period lasts as of the end of the reporting period into the future (ESRS 1 paragraph 77 (a)).

The reporting period adopted by the undertaking in its financial statements is in nearly all cases one year (and in rare cases longer if the operating cycle is longer than one year (e.g., might be the case for producers of whisky, or cigars based on the definition of operating cycle in IFRS (IAS 1)).

This short-term period lasts as of the end of the reporting period (also often called balance-sheet date) as stated in ESRS 1 paragraph 77 ('... as of the end of the reporting period: ...') for one year.

## ID 1056 – MDR-Actions, resources allocated

### Category

Cross-cutting

### Question asked

What does 'resources allocated' refer to specifically in each ESRS? Does it require, at a minimum, the disclosure of which departments or specific teams are in charge and/or the total budget allocated for that specific topic?

### ESRS Reference

ESRS 2 paragraphs 66, 69, and AR 23; ESRS E1 paragraphs 26, 28, 29 and AR 20 to 22; ESRS E2 paragraphs 16, 18, 19 and AR 14; ESRS E3 paragraphs 15, 17 to 19 and AR 21; ESRS E4 paragraphs 25, 27 and AR 18; ESRS E5 paragraphs 17 and 19; ESRS S1 paragraphs 37, 43 and AR 48; ESRS S2 paragraphs 31, 38 and AR 44; ESRS S3 paragraphs 31, 38 and AR 43; ESRS S4 paragraphs 30, 37 and AR 41

### Key terms

MDR-A; resources allocated

### Background

ESRS 2 paragraph 66 states: 'The undertaking shall apply the requirements for the content of disclosures in this provision when it describes the actions through which it manages each material sustainability matter including action plans and **resources allocated** and/or planned.'

ESRS 2 paragraph 69 states: 'Where the implementation of an action plan requires significant operational expenditures (Opex) and/or capital expenditures (Capex) the undertaking shall:

- (c) describe the type of current and future financial and other **resources allocated** to the action plan, including if applicable, the relevant terms of sustainable finance instruments, such as green bonds, social bonds and green loans, the environmental or social



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objectives, and whether the ability to implement the actions or action plan depends on specific preconditions, e.g., granting of financial support or public policy and market developments;

- (d) provide the amount of current financial resources and explain how they relate to the most relevant amounts presented in the financial statements; and
- (e) provide the amount of future financial resources.'

ESRS 2 paragraph AR 23 states: 'Information on **resource allocation** may be presented in the form of a table and broken down between capital expenditure and operating expenditure, and across the relevant time horizons, and between resources applied in the current reporting year and the planned allocation of resources over specific time horizons.'

ESRS S1-S4 state (e.g. ESRS S1 paragraph AR 48): 'When disclosing the resources allocated to the management of material impacts, the undertaking may explain which internal functions are involved in managing the impacts and what types of action they take to address negative and advance positive impacts.'

Because ESRS E1-E5, S1-S4 have numerous other references to 'resources allocated' when requiring disclosures, they are not replicated in this background section (see ESRS reference section).

### **Answer**

The amount of current and future financial resources shall be disclosed, where the implementation of an action plan requires significant operational expenditures (Opex) and/or capital expenditures (Capex). The 'departments or specific teams in charge', on the other hand, may be disclosed.

The ESRS 2 Minimum Disclosure Requirements (MDR) on actions and resources (ESRS 2 paragraphs 66 to 69) are to be applied together with the Disclosure Requirements, including the Application Requirements, provided in the relevant topical ESRS.

The term 'resources allocated' is not specifically defined in ESRS. The Annex II Acronyms and Glossary of terms however defines 'marine resources' and 'natural resources'. Based on ESRS 2 paragraph 69 'resources allocated' relates to significant Opex and Capex in terms of 'financial and other resources'. Where again 'other resources' is not defined, however, it can be assumed that human resources are one major element of 'other resources'.

The term 'total budget allocated' is not used in ESRS. However, the amount of current and future financial resources shall be disclosed by the undertaking in accordance with ESRS 2 paragraph 69 (b) and (c), when the implementation of an action plan requires significant Opex and/or Capex.

The undertaking may disclose the internal functions involved in managing material impacts in accordance with ESRS S1-S4 (e.g. ESRS S1 paragraph AR 48); this might include the 'departments or specific teams in charge' when disclosing resources allocated to the management of material impacts. There is no equivalent voluntary Disclosure Requirement in ESRS E1-E5. To note regarding Minimum Disclosure Requirements on policies (ESRS 2 paragraph 65): 'The undertaking shall disclose information about policies adopted to manage material sustainability matters. This information shall include: ...

- (a) the most senior level in the undertaking's organisation that is accountable for the implementation of a policy; ...'

## ID 1057 – Targets, only qualitative?

### Category

Cross-cutting

### Question asked

Can targets be also qualitative, if specific enough?

### ESRS Reference

ESRS 1 paragraph 33; ESRS 2 paragraphs 80-81; and definitions of ‘target’ and ‘metrics’ in Annex II Acronyms and Glossary of terms

### Key terms

Targets, only qualitative; targets; metrics

### Background

The submitter has provided the following background to the question asked: ‘In all topical ESRS, it is required to disclose the targets that the company has set. While in certain cases targets must be quantitative (e.g., ESRS E1), when in others it is not defined, could a qualitative target still be compliant? Example: • ESRS E4: Could "align in the next 2 years with EU Biodiversity 2030 Strategy" be considered a target? • ESRS S2: Could "engage with value chain workers through annual surveys" be considered a target?’

Annex II Acronyms and Glossary of terms defines **targets** as: ‘Measurable, outcome-oriented and time-bound goals that the undertaking aims to achieve in relation to material impacts, risks or opportunities. They may be set voluntarily by the undertaking or derive from legal requirements on the undertaking.’

Annex II Acronyms and Glossary of terms defines **metrics** as: ‘Qualitative and quantitative indicators that the undertaking uses to measure and report on the effectiveness of the delivery of its sustainability-related policies and against its targets over time. Metrics also support the measurement of the undertaking’s results in respect of affected people, the environment and the undertaking.’

ESRS 1 paragraph 33 states: ‘When disclosing information on policies, actions and **targets** in relation to a sustainability matter that has been assessed to be material, the undertaking shall include the information prescribed by all the Disclosure Requirements and datapoints in the topical and sector-specific ESRS related to that matter and in the corresponding Minimum Disclosure Requirement on policies, actions, and targets required under ESRS 2. If the undertaking cannot disclose the information prescribed by either the Disclosure Requirements and datapoints in the topical or sector-specific ESRS, or the Minimum Disclosure Requirements in ESRS 2 on policies, actions and targets, because it has not adopted the respective policies, implemented the respective actions or set the respective targets, it shall disclose this to be the case and it may report a timeframe in which it aims to have these in place.’

ESRS 2 paragraph 80 states: ‘The undertaking shall disclose the measurable, outcome-oriented and time-bound targets on material sustainability matters it has set to assess progress. For each target, the disclosure shall include the following information:

- (a) a description of the relationship of the target to the policy objectives;
- (b) the defined target level to be achieved, including, where applicable, whether the target is absolute or relative and in which unit it is measured;

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- (c) the scope of the target, including the undertaking's activities and/or its upstream and/or downstream value chain where applicable and geographical boundaries;
- (d) the baseline value and base year from which progress is measured;
- (e) the period to which the target applies and if applicable, any milestones or interim targets;
- (f) the methodologies and significant assumptions used to define targets, including where applicable, the selected scenario, data sources, alignment with national, EU or international policy goals and how the targets consider the wider context of sustainable development and/or local situation in which impacts take place;
- (g) whether the undertaking's targets related to environmental matters are based on conclusive scientific evidence;
- (h) whether and how stakeholders have been involved in target setting for each material sustainability;
- (i) any changes in targets and corresponding metrics or underlying measurement methodologies, significant assumptions, limitations, sources and processes to collect data adopted within the defined time horizon. This includes an explanation of the rationale for those changes and their effect on comparability (see Disclosure Requirement BP-2 Disclosures in relation to specific circumstances of this Standard); and
- (j) the performance against its disclosed targets, including information on how the target is monitored and reviewed and the metrics used, whether the progress is in line with what had been initially planned, and an analysis of trends or significant changes in the performance of the undertaking towards achieving the target.'

ESRS 2 paragraph 81 states: 'If the undertaking has not set any measurable outcome-oriented targets:

- (b) it may disclose whether such targets will be set and the timeframe for setting them, or the reasons why the undertaking does not plan to set such targets;
- (c) it shall disclose whether it nevertheless tracks the effectiveness of its policies and actions in relation to the material sustainability-related impact, risk and opportunity , and if so:
  - (i) any processes through which it does so;
  - (ii) the defined level of ambition to be achieved and any qualitative or quantitative indicators it uses to evaluate progress, including the base period from which progress is measured.'

### **Answer**

Yes, targets can be qualitative only, if specific enough.

Targets as defined in ESRS are 'measurable, outcome-oriented time-bound goals that the undertaking aims to achieve in relation to material impacts, risks or opportunities.' Metrics are used to measure results against targets. As metrics per the metrics definition can be 'qualitative and quantitative indicators that the undertaking uses to measure and report on the effectiveness of the delivery of its sustainability-related policies and against its targets over time', targets can be quantitative or qualitative.

ESRS do not require from undertakings to set targets only on a quantitative basis.

If the undertaking sets qualitative targets, they shall be specific enough to meet the Disclosure Requirements of the Minimum Disclosure Requirements - Targets MDR-T – Tracking effectiveness of policies and actions through targets and of the datapoints in the respective topical or sector-specific ESRS. Reference is made to ESRS 2 paragraph 80.

If the qualitative goal cannot be considered a measurable and outcome-oriented target, disclosures under ESRS 2 paragraph 81 and not under paragraph 80 are applicable (see also ESRS 1 paragraph 33).

## **ID 1072 – DR GOV-1 - ESG expertise of governance bodies**

### **Category**

Cross-cutting

### **Question asked**

How to document ESG knowledge and competences of the management board and supervisory board? Should it be one person from the Management Board or the Supervisory Board who has these features or the entire Management Board and the entire Supervisory Board? Can it be an attorney? Should it be a course, training or, for example, studies?

### **ESRS Reference**

ESRS 2 paragraphs 19, 20, 23 and AR 5

### **Key terms**

Sustainability-related expertise and skills; administrative, management and supervisory bodies

### **Background**

ESRS 2 paragraph 19 states: 'The undertaking shall disclose the composition of the administrative, management and supervisory bodies, their roles and responsibilities and access to expertise and skills with regard to sustainability matters.'

ESRS 2 paragraph 20 states: 'The objective of this Disclosure Requirement is to provide an understanding of: ...

- (c) the expertise and skills of its administrative, management and supervisory bodies on sustainability matters or access to such expertise and skills.'

ESRS 2 paragraph 23 states: 'The disclosure shall include a description of how the administrative, management and supervisory bodies determine whether appropriate skills and expertise are available or will be developed to oversee sustainability matters, including:

- (a) the sustainability-related expertise that the bodies, as a whole, either directly possess or can leverage, for example through access to experts or training; and
- (b) how those skills and expertise relate to the undertaking's material impacts, risks and opportunities.'

ESRS 2 paragraph 20 states: 'The description of the level of expertise or access to expertise of the administrative, management and supervisory bodies may be substantiated by illustrating the composition of the bodies, including members on whom these bodies rely for expertise to oversee sustainability matters, and how they leverage that expertise as a body. In the description, the undertaking shall consider how the expertise and skills are relevant to the undertaking's material impacts, risks and opportunities and whether the bodies and/or its members have access to other

sources of expertise, such as specific experts and training and other educational initiatives to update and develop sustainability-related expertise within these bodies.'

### Answer

ESRS do not prescribe behaviour but require disclosure.

The sustainability-related expertise and skills could be with one person or with more than that from the administrative, management and supervisory bodies or substantiated in another kind of form. ESRS 2 paragraph AR 5 provides further guidance in that respect.

## ID 1090 – Phase-in and comparative information for early adopters

### Category

Cross-cutting

### Question asked

Which year does the phase-in apply for a company that voluntarily publishes a CSRD-report one year prior to being required? What about comparative information?

### ESRS Reference

ESRS 1 paragraph 136 and 137; ESRS 1 Appendix C: List of phased-in Disclosure Requirements

### Key terms

Phase-in requirements; comparative information; early adopters

### Background

ESRS 1 paragraph 136 states: 'To ease the first-time application of this Standard, the undertaking is not required to disclose the comparative information required by section 7.1 Presenting comparative information **in the first year of preparation** of the sustainability statement under the ESRS.'

ESRS 1 paragraph 137 states: 'Appendix C List of phased-in Disclosure Requirements in this Standard sets phase-in provisions for the Disclosure Requirements or datapoints of Disclosure Requirements in ESRS that may be omitted or that are not applicable in the **first year(s) of preparation** of the sustainability statement under the ESRS.'

### Answer

The voluntary publication of sustainability statements one year earlier than required under CSRD does not affect the phase-in requirement periods granted by ESRS 1.

Voluntary early application of ESRS sustainability statement by an undertaking does not count in respect of the years of preparation under ESRS, is not recognised legally, and therefore does not affect the date from when the phase-ins should be calculated. Accordingly, in the year of mandatory application of ESRS the undertaking may present its sustainability statement without comparative information in accordance with ESRS 1 paragraph 136 even if it has prepared a voluntary sustainability statement in the preceding year.

## ID 1136 – Targets without policy

### Category

Cross-cutting

### Question asked

Is MDR-Policy a prerequisite to MDR-Target?

### ESRS Reference

Definition of ‘targets’ and ‘policies’ in Annex II Acronyms and glossary of terms; ESRS 2 paragraphs 78 – 80

### Key terms

Targets; policies

### Background

Annex II Acronyms and glossary of terms defines ‘targets’ as: ‘Measurable, outcome-oriented and time-bound goals that the undertaking aims to achieve in relation to material impacts, risks or opportunities. They may be set voluntarily by the undertaking or derive from legal requirements on the undertaking.’

Annex II Acronyms and glossary of terms defines ‘policies’ as: ‘A set or framework of general objectives and management principles that the undertaking uses for decision-making. A policy implements the undertaking’s strategy or management decisions related to a material sustainability matter. Each policy is under the responsibility of defined person(s), specifies its perimeter of application, and includes one or more objectives (linked when applicable to measurable targets). A policy is validated and reviewed following the undertakings’ applicable governance rules. A policy is implemented through actions or action plans.’

ESRS 2 paragraphs 78 – 80 state:

- ‘78. The undertaking shall apply the requirements for the content of disclosures in this provision when it discloses information about the targets it has set with regard to each material sustainability matter.
79. The objective of this Minimum Disclosure Requirement is to provide for each material sustainability matter an understanding of:
- (a) whether and how the undertaking tracks the effectiveness of its actions to address material impacts, risks and opportunities, including the metrics it uses to do so;
  - (b) measurable time-bound outcome-oriented targets set by the undertaking to meet the policy’s objectives, defined in terms of expected results for people, the environment or the undertaking regarding material impacts, risks and opportunities;
  - (c) the overall progress towards the adopted targets over time;
  - (d) in the case that the undertaking has not set measurable time-bound outcome-oriented targets, whether and how it nevertheless tracks the effectiveness of its actions to address material impacts, risks and opportunities and measures the progress in achieving its policy objectives; and
  - (e) whether and how stakeholders have been involved in target setting for each material sustainability matter.

80. The undertaking shall disclose the measurable, outcome-oriented and time-bound targets on material sustainability matters it has set to assess progress. For each target, the disclosure shall include the following information: ...

**Answer**

The Minimum Disclosure Requirement – Policies MDR-P of ESRS 2 chapter 4.2 is not a prerequisite for the Minimum Disclosure Requirement – Targets of ESRS 2 chapter 5.

ESRS stipulate disclosures but do not prescribe behaviour. Therefore, it does not prescribe for each target set, that the undertaking also uses a policy how to reach the target. Accordingly, an undertaking might have a target without establishing a policy how to get there. However, this may not be effective: While a target can be set, without a policy, there is no clear management principle, rule or guidance on how to achieve it, making it unlikely it will be met. Though more theoretical, it might be argued that setting a target without a policy and actions how to reach the target is a ‘policy’ based on the decision of doing nothing to reach the target.

If the undertaking has a target without a related policy, the description of the relationship of the target to the policy objectives as required by ESRS 2 paragraph 80 (a) shall make that clear.

To note: Minimum Disclosure Requirements - Actions MDR-A – Actions and resources in relation to material sustainability matters also mentions the situation when actions are implemented without a specific policy (see ESRS 2 paragraph 68).

**ID 1144 – Phase-in 750 employees: Calculation of average number**

**Category**

Cross-cutting

**Question asked**

In the phase-in section, companies with 750 or more employees shall start reporting from the first year. The question is how to calculate the number of employees for this, on a headcount or a full-time-equivalent basis?

**ESRS Reference**

ESRS 1 Appendix C

**Key terms**

Phase-in less than 750 employees; phase-in requirements

**Background**

The question received: ‘In the phase-in section, companies with 750 or more employees have to start reporting from the first year. The question is how to calculate the number of employees for this? For e.g., if I count in headcount a company has 800 employees. So, the company must comply with ESRS standards and start reporting from the 1st year. But, if I count employees with FTEs, it is 700. So, the company can opt for phase-out.’ was modified to be more precise to the above.

ESRS 1 Appendix C: List of phased-in Disclosure Requirements has six phase-in provisions applicable for ‘undertakings or groups not exceeding on their balance sheet dates the average number of 750 employees during the financial year (on a consolidated basis where applicable)’.

### Answer

The 'average number of employees' shall be calculated in line with the size criteria as stipulated in the Accounting Directive (Directive 2013/34/EU) Article 3.

The Accounting Directive in Article 3 used the term 'average number of employees during the financial year'. This is exactly the term also used in ESRS 1 Appendix C aligning ESRS to the wording and requirement used in the Accounting Directive. The Accounting Directive has been transposed in national laws in the member countries and it is expected that based on this transposition each country has a well-established practice how to calculate the average number of employees during the financial year. The requirements transposed in national law shall be applied to determine the number of employees for the '750 employee phase-in' provision.

Accordingly, also considering connectivity with financial statements, the number calculated for and reported in financial statements shall be consistent with that used for ESRS 1 Appendix C '750 employee criteria'.

Reference is made to ESRS 2 paragraph 17 relating to the use of '750 employee' phase-in provision' and the applicable Disclosure Requirements when making use of that provision.

## *Environment*

### **ID 648 – Substances of (very high) concern – PAT vs metrics**

#### Category

Environment

#### Question asked

If a company sells articles containing substances of (very high) concern, shall the total amounts of products containing those substances or the total amounts of substances within those products be reported?

#### ESRS Reference

Disclosure Requirement E2-5 paragraph 34

#### Key terms

Substances of concern; substances of very high concern; SoC; SVHC; PAT; metrics

#### Background

To better address the issue addressed by the submitter it was agreed to change the question received from: 'If a company sells articles containing substances of concern and substances of very high concern shall the total amount of the products containing those substances be reported or the total amount of the substances within those products?' to the question above.

Disclosure Requirement E2-5 paragraph 34 concerns the production and procurement of substances of concern, including when these leave the facilities of the manufacturing undertaking as products: '[...] total amounts of substances of concern that are generated or used during the **production** or that are **procured**, and the total amounts of substances of concern that **leave its facilities as emissions, as products, or as part of products or services** split into main hazard classes of substances of concern'.



Disclosure Requirement E2-5 paragraph 32 adds that: ‘The undertaking shall disclose information on the production, use, **distribution, commercialisation and import/export** of substances of concern and substances of very high concern, on their own, in mixtures or **in articles**’.

ESRS 1 paragraph 11 states: ‘In addition to the disclosure requirements laid down in the three categories of ESRS, when an undertaking concludes that an impact, risk or opportunity is not covered or not covered with sufficient granularity by an ESRS but is material due to its specific facts and circumstances, it shall provide additional **entity-specific disclosures** to enable users to understand the undertaking’s sustainability-related impacts, risks or opportunities . Application requirements AR 1 to AR 5 provide further guidance regarding entity-specific disclosures’.

### Answer

Under E2-5, paragraph 34, the undertaking that produces, uses, distributes, commercialises and does import/export of substances of concern and substances of very high concern, on their own, in mixtures or in articles, shall disclose ‘the total amounts of substances of concern that are generated or used during the production or that are procured, and the total amounts of substances of concern that leave its facilities as emissions, as products, or as part of products or services split into main hazard classes of substances of concern.’

Nonetheless, if the undertaking in question concludes that additional entity-specific metrics (including in connection to its value chain) are needed due to the related impacts, risks or opportunities not being covered or not being covered with sufficient granularity, by the required metric in E2-5, and that these entity-specific metrics are related to the total amount of products containing substances of concern and substances of very high concern, then it has to include also that information in its reporting.

## ID 713 – Microplastics - REACH update

### Category

Environment

### Question asked

Are microplastic defined as in Regulation EU 2023/2055 and concur with the regulation?

### ESRS Reference

ESRS Disclosure Requirement E2-4 paragraphs 28(b)

### Key terms

Microplastics; definition; REACH; Regulation 2023/2055

### Background

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

No, 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, as this would suggest that the use of microplastics in products is not considered polluting until microplastics are released to the environment. When released to the environment (at the end of the useful of a product), microplastics are to be considered pollutants and, as such, they must be reported according to the ESRS.

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).

### 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 the least preferable measuring methodology. 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 Disclosure Requirement E2-4 paragraph 28(a) 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.

## ID 928 – Microplastics - definition

### Category

Environmentl

### 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 AR 20; Annex II, Acronyms and Glossary of Terms

### Key terms

Microplastics; definition; REACH; Regulation 2023/2055

### Background

To note: to better address the issue raised by the submitter it was agreed to change the question received from: '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?' 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 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)'.

Please refer to the background of ID 713 for references to the microplastics definition in the Regulation 2023/2055 amending the REACH.

### 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, please refer to ID 713 for a further comparison with the Regulation 2023/2055 amending the REACH.

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.

## Social

### ID 339 - Use of secondary data, social protection

#### Category

Social

#### Question asked

May estimates or secondary data also be used for social topics if they concern social protection on own workforce?

#### ESRS Reference

ESRS S1 paragraph 74, ESRS S1 paragraph 75

#### Key terms

Social protection, Secondary data, Estimates

#### 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 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.'

#### Answer

No, estimates or secondary data may not be used to determine whether an undertaking's employees are covered by social protection for this non-quantitative datapoint. Whether employees are covered by social protection depends on public programs or benefits offered by the undertaking (ESRS S1 paragraph 74). This information arises from the legal frameworks of the various countries as well as contractual benefits provided by the undertaking to its employees . Therefore, this information does not relate to quantitative metrics or value chain data, for which the use of estimates may be appropriate (refer to ESRS 1 chapter 5.2 and chapter 7.2).

### ID 391 – Remuneration ratio; purchasing power, currency conversion

#### Category

Social

### **Question asked**

When computing the annual total remuneration do we account for currency conversion and purchasing power adjustment?

### **ESRS Reference**

ESRS S1 paragraphs 97(b), (c), 99; ESRS S1 paragraph AR 102

### **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 states: '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.'

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 total remuneration ratio may be adjusted for purchasing power differences between countries (ESRS S1 paragraph 99). In this case, the methodology used shall be reported. Regarding currency conversion, the undertaking should consider connectivity with its financial statement when reporting on the annual remuneration ratio (regarding employee expenses).

## **ID 430 - Definition of Gender**

### **Category**

Social

### **Question asked**

Many data points in the S1 have to be broken down by gender. Which definition of "gender" is used in the ESRS? Only the female/male categories or should answers contain a third "diverse" or more categories when breaking down information by gender?

### **ESRS Reference**

ESRS S1 paragraph 50(a), ESRS S1 paragraph AR55

### Key terms

Breakdown sex; male; female; other

### Background

ESRS S1 paragraph 50(a) requires a disclosure of “the total number of employees by head count, and breakdowns by gender (...).” ESRS S1 paragraph AR55 provides a template for presenting information on employee head count by gender (Table 1) and explains: “In some Member States it is possible for persons to legally register themselves as having a third, often neutral, gender, which is categorised as “other” in the table above. However, if the undertaking is disclosing data about employees where this is not possible, it may explain this and indicate that the “other” category is not applicable.”

### Answer

ESRS do not define gender, but they acknowledge the legal existence of three: female, male and other, at least for the purposes of Disclosure Requirement S1-6. The disclosure templates in ESRS S1 AR 55 therefore contain these three categories, as well as a provision for reporting about countries that do not legally recognise a third gender category.

## ID 434 – Difference non-employees, value chain workers

### Category

Social

### Question asked

Regarding the differentiation between non-employees and employees of the value chain (standards S1-7 and S2), could it be considered that the main difference is that non-employees carry out core activities of the company and employees of the value chain only accessory or supply activities?

### ESRS Reference

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

### Key terms

Value chain workers; non-employees

### Background

The Glossary provides the following definition of non-employees: “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).”

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. In the ESRS, the scope of workers in the value chain include all workers in the undertaking’s upstream and downstream value chain who are or can be materially impacted by the undertaking. This includes impacts that are connected to 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 in the scope of ‘Own Workforce’ (‘Own Workforce’ includes people who are in an employment relationship with the undertaking



(‘employees’) and non-employees who are either individual contractors supplying labour to the undertaking (‘self-employed people’) or people provided by undertakings primarily engaged in employment activities. (NACE Code N78).”

### **Answer**

The ESRS definition is not based on the type of activities performed by employees (i.e., “core” or “non-core”) and as such this terminology is not used in the ESRS. The definition is based on the type of contract or labour relation. Non-employees include two types of workers, self-employed workers and persons provided by undertakings primarily engaged in ‘employment activities’ for whom the undertaking should have direct access to data on these types of workers (ESRS S1 paragraph 119, see also ID 33 on ‘Definitions of non-employees’). Value chain workers include all workers who are not in the scope of “Own Workforce” and do not have a contractual relationship with the undertaking. Examples of workers in the value chain may be found in ESRS S2 paragraph AR 3, which include for example ‘workers of a supplier contracted by the undertaking.’

## **ID 453 – Social protection; parental leave**

### **Category**

Social

### **Question asked**

Is the requirement (d) parental leave only fulfilled if both female and male employees are granted this kind of leave?

### **ESRS Reference**

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, 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 473 – Restrictions due to national regulations**

### **Category**

Social

### **Question asked**

We think that disclosing (e) the number of days lost to work-related injuries and fatalities from work-related accidents, work-related ill health and fatalities from ill health of non-employees would be non-compliant and against the law in Japan. Is it not against the law under European law? How should we deal with such disclosure?

### **ESRS Reference**

ESRS S1 paragraph 79, 88(d)

### **Key terms**

Data collection; data protection; national law

### **Background**

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.'

ESRS S1 paragraph 88(d) 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: (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.'

### **Answer**

The datapoints mentioned by the submitter relate to the SFDR principal adverse impacts. In some countries (especially outside the EEA), there may be restrictions on data collection of employees. ESRS S1 acknowledges such restrictions for two specific datapoints but not as a general principle; in particular, such provision is in DR S1-12, on persons with disabilities as well as DR S1-14 d) on work-related ill health. For these two datapoints, where there is a conflict with national data protection law, it is not necessary to report on the relevant datapoints, but an explanation of the legal restrictions should be provided.

## **ID 549 – Gender pay gap; collective wage agreements**

### **Category**

Social

### **Question asked**

May non-exempt employees of an employer who are bound by a collective wage agreement be omitted when calculating the gender pay gap (at least when broken down by employee category)?

### **ESRS Reference**

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

### **Key terms**

Gender pay gap; collective wage agreements

### **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; (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 components.'

### **Answer**

No. All male and female employees have to be included in the calculation of the gender pay gap, regardless of whether they are covered by collective agreements. Collective agreements can set equal levels of wages and benefits for both male and female employees (provided that all components of the definition of 'pay' are included in the calculation, the gender pay gap broken down by employee categories would be negligible). Usually, sectors governed by collective agreements have a lower gender pay gap and collective bargaining overall can help to reduce the gender pay gap. The undertaking may explain this, when providing relevant contextual information under ESRS S1 paragraph 97(c).

## **ID 550 - Disclosure of discrimination/harassment cases found inconclusive**

### **Category**

Social

### **Question asked**

Is a company obliged to disclose a discrimination/harassment case that, upon investigation, was found to lack conclusive evidence supporting the allegations (and hence was considered closed without any supporting evidence)?

### **ESRS Reference**

ESRS S1 paragraph 103(a), ESRS S1 paragraph AR 103

### **Key terms**

Incidents, discrimination

### **Background**

ESRS S1 paragraph 103 states: 'The undertaking shall disclose: (a) the total number of incidents of discrimination, including harassment, reported in the reporting period.'

ESRS S1 paragraph AR 103 states: 'In addition to the information required by paragraphs 103 and 104, the undertaking may disclose the status of incidents and/or complaints and actions (a) incidents reviewed by the undertaking; (b) remediation plans being implemented; (c) remediation plans that have been implemented, with results reviewed through routine internal management review processes; and (d) incidents no longer subject to action.'

According to the ESRS Glossary, we talk about an 'incident' when there is 'a legal action or complaint registered with the undertaking or competent authorities through a formal process, or an instance of non-compliance identified by the undertaking through established procedures. Established procedures to identify instances of non-compliance can include management system audits, formal monitoring programs, or grievance mechanisms.'

### **Answer**

Yes, the total number of incidents of discrimination include all legal actions or complaints registered through a formal process or instances of non-compliance identified through established procedures (for example grievance mechanisms). ESRS S1 paragraph AR 103 provides the option to disclose the status of incidents and/or complaints and the actions the undertaking has taken. To note, that if the incident has been reported in the previous year, it shall not be reported again in the current year.

## **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.’

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 definition included in the glossary is derived from the UN Convention on the Rights of Persons with Disabilities and is not intended as criteria for employers to assess individual employees. Disability status depends on national legal definitions of persons with disabilities (the specific assessments of disabilities vary between Member States).

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 as the undertaking is to use the definition from the national legislation.

## 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 / Social

### 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 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 Disclosure Requirement S1-6 (Characteristics of an Undertaking's Employees) or Disclosure Requirement S1-8 (Collective bargaining coverage and social dialogue). Whenever necessary, methodological instructions for 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.