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## Non-EU ESRS: Background information

### Objective

1. The objective of this session is to explain the EFRAG SRB direction for this project as specified in Chapter 9 of the Accounting Directive.

### Background: the key legal provisions in CSRD

2. Undertakings with (debt or equity) securities listed in the EU as well as large undertakings as defined with a parent outside the EU are in scope of the CSRD and have to apply ESRS Set 1 per the delegated act issued by the European Commission (EC).
3. In addition, non-EU groups with a branch or subsidiary in the EU and significant activity in the EU (more than EUR 150 million of net turnover generated in the EU) will also be required to provide sustainability information from the 2028 financial year, with a report published in 2029. They will have to apply specific ESRS. The EFRAG Secretariat refers to this standard as ESRS for Non-EU groups or Non-EU ESRS for short. (Chapter 9a of the Accounting Directive).
4. Chapter 9a of the Accounting Directive excludes the references to risks and opportunities in article 29a which describes the matters to be covered by Set 1.
5. An equivalence regime is envisaged by the CSRD but does not form part of EFRAG's remit and will be addressed by the European Commission. Such equivalence is to be "determined in accordance with an implementing act on the equivalence of sustainability reporting standards adopted pursuant to the third subparagraph of Article 23(4) of Directive 2004/109/EC". Also refer to article 47 empowering the EC to adopt implementing acts for those requirements it considers to be equivalent.
6. The report required by article 40a of the CSRD will be at the group level of the ultimate non-EU parent entity and accompanied by a mandatory assurance opinion. The publication of such report is the responsibility of the PIE subsidiary of a Member State or a branch if it has a net turnover of more the EUR 40m in the preceding financial year. The related assurance opinion will be in accordance with the assurance regulation of the local jurisdiction in which the opinion is issued.
7. Until 6 January 2030, a transitional measure in article 48i of the Accounting Directive allows a large unlisted EU subsidiary consolidated in a group whose ultimate parent company is based outside the EU and in scope of the ESRS to be exempted from publishing a sustainability report, if it is included in an EU "consolidated" report, i.e., comprising all EU subsidiaries of the Non-EU ultimate parent company that are in the scope of the CSRD and prepared under ESRS. The role of the entity publishing this "consolidated" report is taken by the EU subsidiary of the Non-EU group which has generated the greatest turnover in the EU in at least one of the preceding five financial years (on a consolidated basis where applicable).
8. An EU subsidiary is exempted from publishing a CSRD report at its level when the Non-EU ultimate parent company produces a consolidated sustainability report: (1) including the parent company and its subsidiaries (in the EU and outside the EU); and (2) prepared in accordance with the ESRS or in a manner equivalent to those standards (article 19a(9)).

9. In the event that not all the required information is provided, the subsidiary undertaking or branch referred shall draw up, publish and make accessible the sustainability report in article 40a, containing all information in its possession, obtained or acquired, and issue a statement indicating that the parent did not make the necessary information available. Article 40a(2) last subparagraph. The same is also applicable to the assurance opinion. Article 40a(3) last subparagraph.

### Disclosure content of non-EU ESRS

10. Disclosure content under non-EU ESRS is defined in article 40a of the Accounting Directive, by reference to article 29a. The table below illustrates starting from article 29a the points which are excluded in article 40a. This table is presented as a basis for initial discussions bearing in mind that the detailed consequences of exclusions and therefore the disclosure content remain to be assessed.
11. Article 40a says: “[...] a sustainability report covering the information specified in points (a)(iii) to (a)(v), points (b) to (f) and, where appropriate, point (h) of Article 29a(2), at the group level, or, if not applicable, the individual level, of the third-country undertaking.”

2. The information referred to in paragraph 1 shall contain:

(a) a brief description of the group's business model and strategy, including:

✗ (i) the resilience of the group's business model and strategy in relation to risks related to sustainability matters;

✗ (ii) the opportunities for the group related to sustainability matters;

(iii) the plans of the group, including implementing actions and related financial and investment plans, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1,5 °C in line with the Paris Agreement and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 and where relevant, the exposure of the group to coal-, oil- and gas-related activities;

(iv) how the group's business model and strategy take account of the interests of the group's stakeholders and of the impacts of the group on sustainability matters;

(v) how the group's strategy has been implemented with regard to sustainability matters;

(b) a description of the time-bound targets related to sustainability matters set by the group, including, where appropriate, absolute greenhouse gas emission reduction targets at least for 2030 and 2050, a description of the progress the group has made towards achieving those targets, and a statement of whether the group's targets related to environmental factors are based on conclusive scientific evidence;

(c) a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills;

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- (d) a description of the group's policies in relation to sustainability matters;
- (e) information about the existence of incentive schemes linked to sustainability matters which are offered to members of the administrative, management and supervisory bodies;
- (f) a description of:
  - (i) the due diligence process implemented by the group with regard to sustainability matters, and, where applicable, in line with Union requirements on undertakings to conduct a due diligence process;
  - (ii) the principal actual or potential adverse impacts connected with the group's own operations and with its value chain, including its products and services, its business relationships and its supply chain, actions taken to identify and monitor those impacts, and other adverse impacts which the parent undertaking is required to identify pursuant to other Union requirements to conduct a due diligence process;
  - (iii) any actions taken by the group to prevent, mitigate, remediate or bring an end to actual or potential adverse impacts, and the result of such actions;
- ✗ (g) a description of the principal risks to the group related to sustainability matters, including the group's principal dependencies on those matters, and how the group manages those risks;
- (h) indicators relevant to the disclosures referred to in points (a) to (g).