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The content of each Explanation has been drafted to provide an answer to a specific technical question and cannot be directly extended by analogy to a different fact-pattern.

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.

Log of draft explanations

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Cross-Cutting

ID 787 – Sustainability reporting rules for consolidation?

Information for the SRB

The EFRAG SR TEG approved this version, however after the approval we received a written dissent by a TEG member.

Based upon discussions with SRB WG I, EFRAG Secretariat propose to change the categorisation of this question into 'rejected already answered' and refer to 'IG VC section 2.3 From own operations to value chain'. While the text agreed upon by the EFRAG SR TEG is educational, the concepts are already covered in IG 2.

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. This requirement does not apply where the reporting undertaking is not required to draw-up financial statements or where the reporting undertaking is preparing consolidated sustainability reporting pursuant to Article 48i of Directive 2013/34/EU.'

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.

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:

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- (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, also noting the situations when these requirements do not apply as per the last sentence of 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 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.

Log of explanations

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 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 (ESRS E1 paragraph 50 (b)) - metric;
- (b) the amounts of pollutants (ESRS E2, paragraph 29) - metric; and
- (c) for the disclosure of the list of material sites in (ESRS 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 paragraph AR 40 further details that ‘In 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.’

To note: Operational control does not apply to ESRS S1-S4 (see IG 2 *Value chain* paragraphs 60 and 61).

Financial control without operational control

Consistent with the basic principle being to report impacts, risks or opportunities 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

Category

Cross-cutting

Question asked

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

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 submitter asked a second question: '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?' This question will be addressed in a [forthcoming] Implementation Guidance on leasing.

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. This requirement does not apply where the reporting undertaking is not required to draw-up financial statements or where the reporting undertaking is preparing consolidated sustainability reporting pursuant to Article 48i of Directive 2013/34/EU.'

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
- (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 m³; ...'

Note to SRB members

The present draft has been approved by the SR TEG members that attended the meeting in which it was discussed, with the dissent of Julia Kolzer (Allianz). She thinks that the following addition is not strong enough to stress the need for industry specific principles (e.g. financial institutions): 'Own operations are usually understood to correspond to the assets and liabilities included in the consolidated financial statements, unless they are not included but there is operational control (limited to E1-6, E2-X, E4-X). Sector standards may define specific provisions to define own operations and upstream and downstream value chain considering the peculiarity of transactions in that sector. For financial institutions see ID 41 Financial institutions – scope of reporting boundary.'

Answer

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 assets and liabilities included in the consolidated financial statements, unless they are not included, but there is operational control (limited to E1-6, E2-4, E4 Disclosure Requirement SBM 3). Sector standards may define specific provisions to define own operations and upstream and downstream value chain considering the peculiarity of transactions in that sector. For financial institutions see ID 41 *Financial institutions – scope of reporting boundary*.

See also ID 787 – *Sustainability reporting rules for consolidation?*

Operational control

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 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. Operational control does not apply to ESRS S1-S4 (see IG 2 *Value chain* paragraphs 60 and 61).

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).

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: ...

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- (d) 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
- (e) 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, 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 financial effects and anticipated financial 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 been recognized 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.

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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.

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 for which there is a significant risk of a material adjustment within the 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 incorporate disclosures using cross-references to the respective part in the financial statements to avoid repetitions. As a reminder in the context of financial effects, undertakings shall include in their sustainability statement based on thresholds of materiality references to the financial statements for monetary amounts or other quantitative data (see ESRS 1 paragraphs 124 and 125), respectively for significant data, assumptions, and qualitative information (see ESRS 1 paragraphs 126 – 128) (reference to ESRS 1 chapter 9.2 *Connected information and connectivity with financial statements*). Incorporation by reference may be considered (reference to ESRS 1 chapter 9.1 *Incorporation by reference*).

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

Yes. 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.

Reference is made to ID 1019 – *Sustainability matter expected to become material in the future.*

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 mandatory to make an explicit reference in the sustainability statement to the specific Disclosure Requirement (and when applicable datapoint of a Disclosure Requirement) when incorporating by reference. At the same time, it is also necessary to clearly identify in the source document (i.e., the document that the sustainability statement refers to) the content that the undertaking intends to incorporate by reference, as the information that correspond 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 all 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 reference in the sustainability statement only – for example, as part of the ‘content index’ as required by ESRS 1 paragraph 56 - to the sections that are incorporated by reference is not sufficient to meet the ESRS 1 paragraph 120 (a) requirement. A statement in the document incorporated by reference (i.e., for example in another section of the management report or the financial statements) addressing the relevant Disclosure Requirement or the datapoint is also needed.

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 normally 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 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).

The Annex II *Acronyms and Glossary of terms* defines ‘marine resources’ and ‘natural resources’.

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. 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;
- (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 (see background section) 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 undertakings to set targets only on a quantitative basis, except when explicitly specified (see e.g., ESRS E1 Disclosure Requirement E1-4).

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.

As such, the examples provided by the submitter 'alignment in the next 2 years with EU Biodiversity 2030 Strategy' can be considered as a target in the context of ESRS E4 as well as 'engage with value chain workers through annual surveys' in the context of ESRS S2.

If the qualitative target 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.'

ESRS 2 paragraph AR 5 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 – Length of transitional provisions 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.

Information for the SRB

An additional question has been raised by an SRB member regarding voluntary consolidated reporting due to late transposition by a member state (i.e. undertakings have one additional year to apply CSRD requirements compared to timetable stipulated in the CSRD) and the potential impact on phase-in requirements. We will inquire with the EC, and keep you duly posted.

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 has a policy in place how to reach the target. Accordingly, an undertaking might have a target without establishing a policy on how to get there. However, this may not be efficient: 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.

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 – including entity-specific disclosures

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

The undertaking is in any case required to provide information on the total amounts of substances of concern within those products, if it concludes that pollution is material. In addition, depending on its specific circumstances, the undertaking may conclude that it is also material to disclose the amounts of products containing such substances .

Under E2-5, paragraph 34, the undertaking that produces, uses, distributes, commercialises and imports/exports 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.

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 programmes 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). However, this does not rule out that some interpretation by the reporting undertaking may be needed when compiling the information, for example when laws about health insurance in a country in which the undertaking operates are not perfectly clear about the kinds of illness that are covered.

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. The disclosure templates in ESRS S1 AR 55 correspond to Disclosure Requirement S1-6 therefore contain these three categories, as well as a provision for reporting about countries that do not legally recognise a third gender category. Unless otherwise stated, these three categories must be used whenever Disclosure Requirements in ESRS S1 require, or give the option of, the

disaggregation of a quantitative indicator by gender, provided that the reporting undertaking reports the three categories already under Disclosure Requirement S1-6.

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, AR 62; 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).’

ESRS S1 paragraph AR 62 provides the following examples: ‘Examples of contractors (self-employed people) in the undertaking’s own workforce include: contractors hired by the undertaking to perform work that would otherwise be carried out by an employee; contractors hired by the undertaking to perform work in a public area (for example, on a road, on the street); and contractors hired by the undertaking to deliver the work/service directly at the workplace of a client of the organization. Examples of people employed by a third party engaged in ‘employment activities’ whose work is under the direction of the undertaking include: people who perform the same work that employees carry out, such as people who fill in for employees who are temporarily absent (due to illness, holiday, parental leave, etc.); people performing regular work at the same site as employees; and workers who are dispatched temporarily from another EU member state to work for the undertaking (‘posted workers’). Examples of value chain workers (and thus of workers not in the undertaking’s own workforce and reported under the scope of ESRS S2) include: workers for a supplier contracted by the undertaking who work on the supplier’s premises using the supplier’s work methods; workers for a ‘downstream’ entity which purchases

goods or services from the undertaking; and workers of an equipment supplier to the undertaking who, at one or more of the undertaking's workplaces, perform regular maintenance on the supplier's equipment (for example, photocopier) as stipulated in the contract between the equipment supplier and the undertaking.'

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.' ESRS S1 paragraph AR 62 also provides examples of both non-employees and value chain workers.

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), (e)

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), (e) states: 'The disclosure required by paragraph 86 shall include the following information, where applicable broken down between employees and non-employees in the undertaking's own workforce: (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, (e) with regard to the undertaking's employees, the number of days lost to work-related injuries and fatalities from work-related accidents, work-related ill health and fatalities from ill health.'

Answer

The datapoints mentioned by the submitter relate to the SFDR principal adverse impacts.¹

¹ The applicable datapoint relates to SFDR Indicator number 3 Table #3 of Annex I.

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 ESRS S1 Disclosure Requirement S1-12, on persons with disabilities as well as ESRS S1 Disclosure Requirement S1-14 d) on work-related ill health and e) on the days lost to work-related ill health and fatalities from ill health. For these datapoints, where there is a conflict with national data protection law, it is not necessary to report on the relevant datapoints Contextual information as described in ESRS 1 AR76 can be added for more transparency.

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). 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.