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Sustainability reporting – reducing reporting requirements and ensuring compliance with international standards

Consultation of the Federal Ministry of Justice on the Draft European Sustainability Reporting Standards of EFRAG from 9 January 2023

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Introduction

The Corporate Sustainability Reporting Directive (CSRD) and the European Sustainability Reporting Standards (ESRS) will significantly change the corporate reporting landscape. By moving away from the criterion of capital market orientation in the CSRD, large, medium-sized companies as well as subsidiaries in a group of companies that are classified as large capital market-oriented PIEs (public interest entities) will in future also be subject to the sustainability reporting obligation according to the ESRS.

We welcome the following developments and revisions of the European Financial Reporting Advisory Group (EFRAG) Exposure Drafts, among others:

- Removal of the rebuttable presumption and the introduction of a new approach to materiality.
- Reduction of data points from more than 2,000 to approximately 1,000.
- Close cooperation with the International Sustainability Standards Board (ISSB) and the Global Reporting Initiative (GRI) to strive for interoperability of the respective standards.

Despite the reduction in the scope of the sustainability standards, the reporting requirements still remain overly complex and detailed. In order to make the standards more manageable and practical for companies, we propose amendments to EFRAG's draft ESRS below. These should still be taking into account in the process of adopting the Delegated Acts on the sustainability standards.

Deutsches Aktieninstitut advocates:

1. to streamline the reporting requirements and focus on relevant data.
2. to avoid duplication of content in the management report and the future sustainability chapter or to maintain an option for integrated reporting.
3. To strictly adhere to the legal reporting framework and not go beyond it.
4. To establish proportionate reporting requirements with regard to the value chain.
5. To ensure the interoperability of the ESRS with the ISSB standards in the future.

1 Comments on EFRAG's draft European Sustainability Reporting Standards

1.1 Make reporting requirements even leaner and focus on relevant data

The complexity and granularity of the first set of ESRS make it difficult for companies to produce meaningful, relevant, comparable and reliable reports for users of sustainability information. Although we welcome the fact that the number of individual disclosure requirements and data points has been reduced (sometimes significantly), the merging or shifting of the disclosure requirements is not sufficient. The standards ESRS 2 General Disclosures, ESRS E1 Climate Change and ESRS S1 Own Workforce are still mandatory for companies that employ more than 250 employees. This means that all data points of these standards are also mandatory.

Instead, it should be possible to decide which data points are to be reported within the mandatory disclosure requirements according to materiality. For example, mandatory publication by country or region appears neither practicable nor beneficial. Page-long country splits would lead to information overload. The disclosure requirements should respect the company's materiality assessment and the criteria for determining materiality. In line with the IFRS standards for the disclosure of sustainability information, only relevant key figures and disclosures should be mandatory for companies. For example, country splits only appear to make sense if there are significant differences, such as in collective bargaining coverage.

The aim of EU Sustainable Finance is to channel financial flows into sustainable activities. The European Union has committed itself to achieving climate neutrality by 2050. This requires huge investments. It is questionable whether these EU goals can be achieved with the present small-scale standards and the approximately 1,000 data points.

Many of the reporting companies will not be able to set up the necessary internal data collection and control systems that are essential for reliable reporting within the ambitious deadlines. We therefore call for a further reduction of reporting requirements so that the cost-benefit ratio of the new requirements remains proportionate. This is the only way to comply with the principle enshrined in the CSRD that the standards should not reduce disproportionate administrative burden on companies. If the disproportionate burden remains, the EU risks losing its attractiveness for businesses without any added value for the environment or human rights. Otherwise, there is also the danger that resources will have to be

spent primarily on reporting compliance and less on the underlying implementation of the sustainability strategy, especially against the background of the lack of expertise in this area.

The ESRS still leave too much room for interpretation, which will lead to uncertainty for companies when they first apply them. Companies need legal certainty, especially when it comes to very complex processes such as reporting. The more fragmented the requirements are, the more likely are legal risks from the interpretation of the reported content. ESRS still contain unclear disclosure requirements and divergent definitions. Several key terms are not clearly defined or deviate from already existing and well-established reporting standards. This leads to uncertainty, individual discussions with auditors and unclear scope of reporting.

Examples:

Examples include the divergent definition of "operational control" for disaggregated reporting of Scope 1 and Scope 2 emissions in ESRS E1, paragraph 44 compared to the GHG Protocol Standard or the KPI for Work related injuries and fatalities (ESRS E1-14). Another example is the definition of "adequate wage". How exactly are the following defined:

Basic wage? Fix additional payments? Guaranteed to all own workers? There are also no survey methods for "lost time due to ill health" or "fatalities". Here, the usefulness of publication is also questionable. The ESRS/Sustainable Finance Disclosure Regulation (SFDR) has a different definition from the Global Reporting Initiative (GRI) or the Occupational Safety and Health Administration (OSHA). It is also unclear whether reporting according to S4 should only be aimed at individual customers and users or also at B2B customers. In the case of pure B2B business, there would also be the question of whether a look-through to individual end customers is required. If these still open questions of interpretation are not clarified, this will lead to less comparability of sustainability information between companies. In addition, open questions of interpretation make an audit by the auditor considerably more difficult, even in the case of "limited assurance".

Also worth mentioning at this point is the significant uncertainty for companies in the financial sector. There is a lack of guidelines on how financial companies should report on their value chain. This should be clarified before the first application of the sector-independent ESRS, e.g. in view of the numerous difficulties with the taxonomy regulation, which requires the data collection of investment objects and aggregation of their information. In doing so, it is necessary to refrain from a general look-through approach to investments, clients and policyholders across all disclosure requirements.

Rebuttable Presumption:

We welcome the removal of the rebuttable presumption as it would have led to unnecessary and burdensome disclosures. Under no circumstances should it be reintroduced through ad hoc requirements. Since financial market intermediaries in particular base their financial decisions on a small number of financial ratios, it is questionable how dozens or even hundreds of ratios on environmental and social issues are supposed to enable comparably clear decision-making on the ESG assessment of a company.

If this is only done for companies from the EU, a clear competitive disadvantage can be expected on the capital market, especially compared to companies from the USA, which will not have to meet comparable requirements even in the foreseeable future. In highly competitive markets this can have significant consequences (e.g. if a company from Europe requires data from a key supplier, but its competitor does not). This is even taken to absurdity when even financial intermediaries from the EU are allowed to make exceptions for their investments in non-European companies due to the lack of data.

Depending on the expenses that reporting according to CSRD / ESRS is likely to lead to, it cannot be ruled out that investors (especially from the USA, which is one of the largest shareholders in Germany and the EU) could push for a relocation of company headquarters in order to avoid the reporting obligation for cost reasons.

1.2 Avoid duplication of content in the management report and the future sustainability chapter/option for integrated reporting

We explicitly welcome the adjustment to "incorporation by reference" to documents as well within as outside the management report. Extensive cross-references make sense in order not to have to report twice on overarching chapters such as business model, strategy and risk and opportunity report. Even though the final text of the CSRD states that sustainability information must be disclosed in a separate section of the management report, this option is a step in the right direction if it means that in the future, in addition to a separate presentation, the option of integrated reporting will be maintained. An integrated approach can stand for linkage and equivalence of financial and sustainability information, as well as integration of sustainability aspects throughout the organisation and down to the operational level of the company. Integrated reporting can provide a better understanding of the company's strengths, weaknesses, opportunities and threats. In addition, European companies could stand out positively in international benchmarking due to their leading position in integrated reporting and management.

1.3 Strict adherence to the legal basis for reporting requirements and coherence with the EU legal framework required

The standards must strictly adhere to the CSRD and other existing European regulations as a legal basis. They must neither deviate from it nor go beyond it (EFRAG as policy taker, not as policy maker). Information that is not required to be disclosed in the CSRD must not be addressed in the ESRS Disclosure Requirements. The ESRS should also not require to report on topics that are not (yet) defined by law.

Examples:

For example, the ESRS E1 "Climate Change" requires reporting on companies' emission targets compared to sectoral reference target values. However, there is no European legal basis for this issue. For companies with predominantly international, non-European competitors, reporting on this issue will even be factually impossible.

ESRS S1 "Own Workforce" requires information on characteristics of non-employees, whose data collection and availability are usually not the responsibility of reporting entities. Although there is an accommodation here to provide this data only one year later, this deadline will not be sufficient as long as the majority of companies in the European Economic Area do not report according to the ESRS. One year is not sufficient here.

Data for temporary workers are usually not available to companies, but are held by the temporary employment agency. Companies also do not know which employees have children. For legal reasons, this does not have to be announced by the employees. The company therefore does not know who has parental leave entitlements.

Coherence with the EU legal framework:

The EU Commission needs to check the coherence with existing and future EU legislation to avoid diverging legal requirements, such as for 'physical disabilities'. Consistency with the provisions of the General Data Protection Regulation must also be ensured. In some EU countries, certain employee-related information, such as age structure, may not be disclosed (S1-6) or may not even be requested by companies, for example "physical disabilities". In some countries, such as the USA, the collection of gender is not legally possible. This also applies to data protection for information from contractors or suppliers with regard to non-employees, workers in the value chain and environmental data from suppliers. Furthermore, the review on the part of the EU Commission should also include possible redundancies of reporting requirements with other EU directives.

Furthermore, the EU Commission should consider whether the ESRS may anticipate definitions or references to legal frameworks that are still subject to future Level 1 legislation, such as the Corporate Sustainability Due Diligence Directive (CSDDD) and the Industrial Emissions Directive (IED). For example, ESRS E2 "Pollution" provides guidance on substances of concern that anticipates forthcoming regulation through the Chemicals Strategy for Sustainability (CSS). Doubtful disclosure requirements should be deleted from the ESRS, as such definitions or references to future Level 1 legislation should not be pre-empted.

Thorough legal scrutiny will therefore be required when transposing the ESRS into delegated acts. The EU Commission should check whether each disclosure requirement has a direct reference to a requirement of the CSRD. If this is not the case, the disclosure requirement must be removed from the ESRS.

1.4 Proportionate reporting with regard to the value chain

Given the very broad definition of the value chain, it can be very difficult, if not impossible, for companies to obtain information from suppliers, especially from many SMEs that are not covered by the scope of the CSRD. Also, compliance with some ESRS requires the collection of data that companies cannot request from their business and contractual partners. This applies, for example, to ESRS S1 Own Workforce, which requires entities to disclose information about persons with disabilities.

The use of estimates instead of accurate data collection, as suggested in some ESRS for situations of this kind, leads to inaccurate reporting, reliability and comparability problems of the information and can thus undermine the credibility of corporate reporting. In addition, liability issues and litigation may potentially arise.

Expectations on ESRS reporting requirements on due diligence processes along the value chain are partly unrealistic and may not be in line with the forthcoming Corporate Sustainability Due Diligence Directive (CSDDD). Establishing a supply chain due diligence management system to adequately address key environmental and human rights risks is useful, but it cannot lead to detailed reporting on (tens of) thousands of suppliers and customers. Especially if the suppliers and customers are not allowed to publish or share this information (for example for data protection reasons). As many companies have a supplier / customer base in non-European countries, these companies may not be able to comply with the reporting obligation. In highly competitive markets, this may even have significant financial consequences, including if a company from Europe requires a key supplier to provide data but its competitor does not. In such cases, European companies could be excluded from important technologies (for example, by companies from China or the USA).

In line with a risk-based approach and based on an assessment of materiality, reporting should focus on adequately reflecting how a company addresses these risks. Financial reporting has clear boundaries when it comes to accounting. It seems contradictory for sustainability reporting to go far beyond the boundaries of companies with an "accounting approach" for the value chain.

In relation to the topic of reporting the supply chain (value chain / value chain entities), a clear definition of reporting scopes and boundaries should be included.

1.5 Ensure interoperability of ESRS with ISSB standards also in the future

Interoperability with the ISSB should be ensured - starting from EFRAG and the ISSB - via the first Delegated Acts. The aim must be that no double reporting according to ESRS and ISSB standards is necessary. European companies should comply with any requirement under the ISSB standards when reporting under the ESRS. After the ISSB has made its key decisions, EFRAG and the ISSB should use the time to support the EU Commission in accordance with interoperability of ESRS and ISSB standards from the date of first application of the CSRD. It is important to avoid exposing entities to significant uncertainties and increased implementation burden under both sets of standards when initial data is already to be collected and interoperability is still to come.

2 Annex: Examples of unnecessary reporting requirements and suggestions for adjustments

ESRS 1 General requirements

A large number of disclosure requirements and data points do not fall within the scope of the materiality assessment and must be reported on a mandatory basis. This is associated with a great deal of effort. The following data points are affected:

- ESRS 2 together with the Disclosure Requirements (including the data points),
- Data points listed in ESRS 2 Appendix C "List of datapoints in cross-cutting and [draft] topical standards that are required by EU law which stem from other EU legislation",
- ESRS S1-1 to S1-9 (including the data points).

Data points or reporting requirements must be based on EU legislative acts.

The possibility to omit sensitive information should be extended to additional types of information beyond intellectual property.

Double materiality as the basis for sustainability disclosures; 3.3 Double materiality: Double materiality is in contrast to the financial reporting requirements (see 3.5). It must be clearly defined which disclosures correspond to single/double materiality, including the links between correlated disclosures.

3.1 Stakeholders and their relevance to the materiality assessment process: Ensure that "affected stakeholders" are made known to reporting organizations to ensure that engagement can take place. This also applies to affected stakeholders who have not been identified by a reporting organization. Here it needs to be clarified whether stakeholder consultation is required or not. There is an inconsistency between ESRS 1 3.3 AR 3 "may consider involvement" and AR 4 b) "shall".

3.4 Impact materiality: "Impact", especially indirect impacts in the three ESG dimensions - for example on the value chain - may go unrecognized even though they are potentially material. The issue is linked to the stakeholder perspective (3.1). The issue is addressed in 5.2.

3.5 Financial materiality: Alignment between financial materiality and sustainability assessment is needed.

5.2 Estimation using sector averages and proxies: In international and highly competitive markets, it seems highly unlikely that competitors will jointly approach suppliers to get them to collect the required data. It is questionable whether sectoral average data is already available. Furthermore, the reference to GHG Scope 3 is questionable. It must be considered that the calculation of the data for GHG Scope 3 is the result of years (or decades) of work, which is not valid and available for other environmental topics. For GHG, there are clear criteria (through the GHG Protocol) for estimating the data (e.g. the electricity mix in a country). For other environmental topics such as pollution, water or biodiversity, these data do not exist and would have to be available at a much more granular level (e.g. region, partly district level). Also, in the vast majority of cases, the impact of an economic activity in the case of water or biodiversity is much more complex than the purchase of electricity as the basis for GHG Scope 3.

The properties of "severity" are not clearly defined. AR.6 mentions "scale, scope, irremediable character of the impact". But neither the definitions nor the difference between the three properties is clearly described or defined.

The definitions of the time periods for short, medium and long-term objectives do not correspond to the time horizons used by recognised frameworks (for example SBTi), investors and rating agencies (ESRS 1: 6.4 (together with ESRS 2, 9).

6.1 Reporting period: It is highly questionable whether data from the value chain on environmental or social issues can be submitted on time after the end of the financial year and that it will also stand up to scrutiny by auditors (even for a "limited assurance"). Experience shows that this is a short period of time (less than 6 weeks), in which the vast majority of companies are likely to have significant challenges in collecting the data of their "own operations" in a timely and audit-proof manner. For a "reasonable assurance" desired under CSRD from 2028, this will probably not be feasible due to the limits of the possible samples.

Appendix C: No distinction is made between the "users" of the information to be published by companies under the ESRS. This is a cause for concern, as there may be different groups of users: Financial market intermediaries and corresponding ESG raters who use the information to create a benefit/risk profile of a company. It will but the undifferentiated presentation puts all stakeholders on the same level, even if the purpose of an organisation is decidedly to oppose a particular business activity (bias). It is to be feared that such an equalisation with the requirements of financial intermediaries could legally hinder the business activities of companies in Europe - especially with regard to topics that are not regulated by law and where there is room for interpretation.

ESRS 2 General disclosures

SBM-1: "Market position" and other disclosure requirements are topics that should preferably be reported in the management report. These are not sustainability topics. A reference would be required here.

GOV-1, 19: According to letter e), companies should disclose the percentage of independent board members. To explain why this is included here, it says: "This information supports the needs of benchmark administrators to disclose ESG factors subject to Regulation (EU) 2020/1816 as set out by indicator "Exposure of the benchmark portfolio to companies without due diligence policies on issues addressed by the fundamental International Labour Organisation Conventions 1 to 8" in section 1 and 2 of Annex 2". EFRAG has no mandate to do this. This statement is in line with the typical content of corporate governance codes. The fact that both the old draft of the CSRD and the EFRAG standards based on it would have resulted in the same corporate governance information being subject to audit at one time and explicitly not subject to audit at another time (cf. Art. 20(4)) has led to a restriction to sustainability-related governance information in the final text of the CSRD. This would be a circumvention and should be deleted.

IRO-2, 53-56: It is an unnecessary reporting burden to list all fulfilled disclosure requirements in a table, as the content of these would be in the report anyway. It would make sense to report on omissions.

DCA, 64-67: It is not efficient to report on detailed resource plans for actions, as this will lead to a high (internal) effort and is disproportionate to the added value of this reporting requirement. Users of sustainability information are usually not interested in detailed resource plans, but rather in meaningful key figures at a higher level of aggregation. As we question the added value of this reporting requirement, we plead for its deletion. A brief description of the main features of the action plan, including an overarching indication of the resources involved, without breaking it down further, should be sufficient to inform interested stakeholders about the reporting company's actions. Disclosure of granular information could be business-critical or confidential.

ESRS E1-E5

The requirement to report issues along the value chain (regardless of materiality) is still in place, especially in the notes. It should be deleted to avoid the unintended introduction of a reporting requirement through the back door.

The mandatory standard ESRS E-1 is still quite detailed and might in parts conflict with antitrust regulations and does not consider sector-specific definitions.

Adapted changes in the standards ESRS E-3 and E-4 only led to marginal improvements and the requirements can (if at all) only be implemented with very high effort.

There are still fuzzy definitions within the standards, for example "List of Approved Certificates in the Environmental Drafts".

There are still many contradictions within and between the drafts, especially between the main part and the annex.

ESRS E1 Climate change, E2 Pollution and E3 Water and marine resources

E1-3/E2-2/E3-2 Actions and resources in relation to climate change policies: It is not efficient to report on detailed resource plans for actions, as this will lead to a high (internal) effort and is disproportionate to the added value of this reporting requirement. Users of sustainability information are usually not interested in detailed resource plans, but rather in meaningful key figures at a higher level of aggregation. As we question the added value of this reporting requirement, we advocate its deletion.

ESRS E1-6: The disclosure for emissions from "unconsolidated entities" should be critically reviewed again for cross-sectoral relevance.

The disclosure of qualitative information should also be made possible in ESRS E1.

ESRS E1-1, 15e should be aligned with the EU taxonomy to avoid ESRS requirements going beyond the provisions of the EU taxonomy. Information on plans for future alignment of revenues and CapEx go beyond the requirements of the taxonomy: "and its plans for future taxonomy alignment (revenues, CapEx and CapEx plans)". This passage should therefore be deleted.

E1-6 Gross Scopes 1, 2, 3 and Total GHG emissions: In ISSB, both operational control and equity share are allowed, whereas the latter is explicitly excluded in ESRS. Therefore, there is a difference in content to the ISSB standard.

Both the ESRS and ISSB standards are a restriction of the internationally applied GHG Protocol, since in ESRS E1-6 only operational control is decisive for the question of inclusion in one's own Scope 1&2 emissions, whereas in the GHG Protocol one can currently choose between operational control or financial control. The emissions are in fact not "lost", but are usually added to the Scope 3 emissions. This is a deviation from the international standard.

ESRS E4 Biodiversity and ecosystems

E4-3 Actions and resources related to biodiversity and ecosystems: It is not efficient to report on detailed resource plans for actions.

E4-5 Impact metrics related to biodiversity and ecosystems change: It seems somewhat excessive and burdensome to report on the very detailed KPIs required in this report. Reporting should be limited to essential topics/KPIs (as generally provided for in the ESRS). Even if biodiversity is material to a reporting entity, not all information should have to be reported.

ESRS E5 Resource use and circular economy

E5-2 Actions and resources related to resource use and circular economy: It is not efficient to report detailed resource plans for actions.

ESRS S1 Own workforce

Basically, the data points on countries that have no restriction on the number of employees are not realistic. The focus should be on "major countries", as originally intended with more than 10 percent. The threshold of 50 employees is too low.

The definitions in S1-7 (Characteristics of non-employee workers in the undertaking's own workforce) include agency workers and (based on the term "self-employed workers") also individual self-employed workers. However, there is no obligation to provide exact figures for all other types of workers with contracts for work. This should be clarified in the definitions used to avoid different interpretations.

Data availability for all other types of workers is not given. Even with a one-year extension, companies will not have this information available. Moreover, there is no legal basis for external providers having to supply this data. The S1 Own workforce standard should be limited to own workforce until the majority of companies report according to ESRS and the data is thus available.

Reporting on the company's own workforce includes information on employees and non-employees. However, this carries the risk that it could be interpreted as treating non-employees, including agency workers, as own employees, which could pose a co-employment risk to the company ("single-employment risk").

It is unclear what is meant by "type of work" or a definition is missing.

Considerable manual effort is to be expected for reporting, as the third-party data cannot be derived from the company's own IT systems. For all Disclosure Requirements directed at non-employees, the details of non-employees are not the responsibility of the reporting company. Disclosure of details of non-employees touches on sensitive issues related to the business model. The inclusion of "individual self-employed persons" in the Own Workforce is practically impossible for companies to record. It is not always clear whether this is an individual or a company. Moreover, this can change over time.

S1-8 Collective bargaining coverage and social dialogue: ESRS S1 (page 40) provides a standardised template for disclosure.

- There is a reporting requirement for all countries with more than 50 employees, which is too detailed for large multinational companies. These companies will most likely meet the threshold in every single country in which they operate (this could be well over 100 countries). Such granular and detailed disclosure does not seem to add value for external stakeholders (investors). The obligation to provide such comprehensive data for all countries in which companies operate is almost impossible to fulfil in the first year of reporting. We propose to change the calculation concept for the threshold. Instead of the number of employees in a given country, we propose to use the "percentage of the global workforce of the undertaking". 10 percent seems to be an appropriate threshold. This would ensure that only information on material subsidiaries/countries is disclosed. An alternative would be to start with the larger countries and then slowly add the other countries.

- Companies do not have data on collective agreements for non-employees. The legal basis at the EU level for collective bargaining for self-employed workers is just being established. Information on collective bargaining coverage of agency workers could possibly be collected through supplier contracts (contract with the company actually employing the agency worker), but companies are not in a position to verify this information. Therefore, the focus should be on own employees.

- The term "region" is not clearly defined. In part, the term "subnational region" is used in ESRS S1. It can be assumed that a "region" includes several countries. However, even if several countries can be combined into one region, the companies still have to collect the data at country level. The effort and burden remain the same, the only difference is that the reported value applies to the region. The term "region" should be clarified and the threshold should be set at 10 per cent of the global workforce. In addition, the term "cities" should be dropped.

S1-11 Social protection: There are very different legal bases in force worldwide and local characteristics come into play. A globally meaningful statement would be difficult or very, very detailed. The information requested would have to be collected manually, as it is not system information.

S1-11, point 73: It is impossible to provide reliable data on the five areas of social security in the form requested. Moreover, it does not comply with the CSRD.

S1-12 Persons with disabilities: Different national laws, including different definitions in the EU and beyond, make it virtually impossible to fulfil this

requirement in a meaningful way. In addition, requesting this type of personal information from employees is often prohibited by law and constitutes an invasion of privacy. Companies already comply with the legal requirements and practices that apply in the national context of their economic activity, despite limited access to verifiable information, so reporting on compliance would be redundant.

S1-13 Training and skills development indicator: modern training provision can take a variety of forms, not only face-to-face training, but also on-the-job training, social learning, coaching, peer exchange, self-directed digital learning and many other forms for which a measurement in hours and costs is not appropriate and meaningful to represent the extent of training and development.

S1-14 Health and safety indicators

- Legislation regarding the collection of medical data varies from country to country. The data on work-related injuries of employees of external companies working at the company's sites can therefore not be reliably collected. Also due to the sensitivity of the data, it is currently not possible at the international level to draw direct conclusions about the cause of absenteeism.

- This also applies to the parts of the workforce that are deployed in the company, for example through temporary employment agencies - here the corresponding rates can only be requested from the personnel service providers, a check is not possible.

- The number of "work-related illnesses" cannot be reported either due to the different definitions and legislations. There is no international definition of work-related illnesses that covers all countries. In Germany, for example, there are only work-related accidents (not work-related illness but work-related accident) and occupational diseases. Occupational diseases are a subset of work-related diseases. Occupational diseases in Germany can be collected very reliably, other work-related diseases are not, cannot and must not be recorded.

The basic legislation with regard to the collection of medical data also varies from country to country.

S1-15 Work-life balance indicators

- Companies usually do not know which employees have children; this does not have to be reported by the employees. For this reason, the company does not know who has parental leave entitlements. Data is only available for employees who have actually taken parental leave.

S1-16 Compensation indicators

- It is unclear what is meant by "gross hourly earnings". A clear and unambiguous definition is needed here. In other already implemented EU regulations (EBA guidelines for sound financial reporting), the Remuneration Policy under Directive 2013/36/EU) the term is more narrowly defined and could be followed.

- It would be important that the terms and definitions are harmonised with the just adopted EU Pay Transparency Directive[1]. A further legal and linguistic examination should be carried out once the final legal text of the EU Pay Transparency Directive is available.

- The CSRD lacks a definition of equal pay for work, for which standards are to be developed according to Art. 29 b para. 2 b) (i). In the draft EU Pay Transparency Directive, which deals with this issue in depth, "equal pay for work" is defined as "paid in a non-discriminatory manner compared to other workers in the same organisation carrying out equal work". We cannot establish any connection between this and the requirement (No. 92b) "ratio between the compensation of its highest paid individual and the median compensation for its employees" and also see no other reference point in the CSRD that could justify such a reporting obligation on the ratio. EFRAG refers here to Regulation (EU) 2019/2088 or (EU) 2022/1288, for which EFRAG has no mandate.

- It should also be noted in this context that the amended Shareholder Rights Directive (EU) 2017/828 requires under Article 9b(1)(b) the following disclosure: "the annual change in remuneration, company performance and average remuneration on a full-time equivalent basis of non-management employees of the company over at least the last five financial years, presented together in a way that enables comparison". No new average disclosures should be introduced, as otherwise different compensation ratios would have to be disclosed in the remuneration report and the sustainability report.

- AR103 b) Compensation ratio: The definition is unclear: does one number have to be reported or all three from the statement in the appendix? Each year, theoretically, a different employee could be the "highest-paid individual" in each of the individual categories mentioned. It would require an enormous effort to collect and analyse the data to identify the "highest-paid individual" on an annual basis. It would be simpler to stick to the standard (see the criticism above), for example, to basically use the

[1] Directive to strengthen the application of the principle of equal pay for equal work or work of equal value between men and women through pay transparency and enforcement mechanisms.

CEO of the company as a comparator or to stick to what is stated in the Shareholder Rights Directive.

- Pay gap between men and women

    a. Not all countries (such as the US) can use gender-specific data to conduct an analysis under North American discrimination law.

    b. Gross hourly earnings are not always applicable to the logic of companies, as they may use the logic of monthly earnings or even annual earnings for most countries.

- Ratio between the compensation of the highest paid person and the median compensation of employees.

    c. It is very difficult to report for global companies: As employees work in different countries, languages and pay grades, it is difficult to identify a meaningful KPI as companies have to consolidate different currencies and different types of remuneration elements in different markets and countries.

    d. There are unclear legal relationships/conflicts, for example GDPR restrictions regarding individualised pay disclosures. It requires permission from the "highest paid invidual" (S1-16) to collect and publish the data.

S1-17 Incidents, complaints and severe human rights impact and incidents

- There is no clear and unambiguous definition of incidents. It remains unclear what has to be reported. According to the current draft, unfounded incidents would also have to be reported. It should be clarified that only disclosure of material incidents is required. In addition, it should be clarified what is meant by material incidents. It must also be ensured that the disclosure requirements are compatible with the Minimum Safeguards test under the Taxonomy Regulation in order to avoid additional regulatory complexity.

- It should be clarified that the disclosure requirement should only relate to complaints that the company has made about its formal and official complaint management channels. The huge number of verbally addressed complaints or emails to company employees at all levels (to give just two examples) is impossible to track, collect and evaluate.

Many terms used in ESRS S1 are not unambiguous and clearly defined: "basic wage" [S 1-14: AG. 140], "earnings" [S 1-16: 81 a], "decent pay" [S 1-6: AG 83 c], "total compensation" [S 1-17: AG 148 b], "pay category" [S1 - 14: AG 140], "fixed additional payments" [S1 - 14: AG 140] and "fair wage" [S 1-14: AG. 141]. Clear definitions are necessary to comply with the Regulation. For example, "total compensation" includes the "total fair value of all annual long-term incentives" [S 1-17: AG.148] - the definition of fair value varies by country and tax law.

The full disclosure requirements of ESRS S1, which include data on temporary workers, are difficult to meet because the data is not available at the company level. Under EU data protection law, it is only available to the main employer, i.e. the temporary employment agency, and not to the company. This data cannot be shared due to data protection and the 'need to know' principle for information exchange.

There is also an unclear legal situation regarding the collection and publication of individualised wage data "highest/lowest paid individual" in the ESRS S1-16 due to the EU General Data Protection Regulation. In no human resources system are all wage figures recorded. This is based on country level. Consolidation requires legal clarification. It is questionable whether this data may be recorded in a system at all. Recording would also be necessary in order to calculate the "ratio CEO to median wage". An average value would be sufficient here. There is no added value in stating the median.

There are also legal restrictions on data collection regarding ESRS S1-12. The collection and processing of information on employee disabilities is contrary to applicable law and will certainly lead to considerable discussions with employee representatives, not only in Germany and Europe.

As the same data protection laws do not apply in all countries where the companies operate, they cannot, for example, ask for the gender of each employee in all countries. Furthermore, the definition of the different segments of the workforce varies from country to country and the data is not comparable. It would be desirable if there were a list from the European Commission of the data protection directives that apply in each country. per country are listed. This would promote legal certainty and reduce the burden on each individual company.

There is also a structural error in the Due Process Note for the data point "percentage of employees with disability breakdown by gender". This should be listed in S1-15. It is not a diversity indicator, but belongs to Diversity Indicators (S1-9). However, the data point is still listed in S1-12.

ESRS S2 Workers in the value chain

In general, it is very ambitious to cover the entire value chain. Until this data is not available in the value chain, the materiality approach should apply again.

Companies may have a high five-digit number of Tier 1 suppliers. SBM-2: Guidance on identifying "materially affected value chain workers" may be required. This would also have an impact on subsequent disclosure requirements, for example SBM-3. The question here is whether this is covered by the materiality test.

SBM-3: Much too granular disclosure requirement, especially in 11.a (i) - (v).

It is unclear whether reporting according to S2 would mean for e.g. insurers that they do not (primarily) have to report on the workers in their value chain (e.g. intermediaries), but on those of their investment objects and policyholders. This would pose significant challenges for financial companies. At the very least, reporting in granular form can only be done for their own employees.

ESRS S3 Affected communities

This standard could lead to an excessive reporting burden. If it were limited to "material" affected communities, the reporting approach seems viable from a sustainability perspective.

It is unclear whether reporting according to S3 would mean for e.g. insurers that they do not (primarily) have to report on their affected communities, but on those of their investment objects and policyholders. This would be associated with considerable challenges for financial companies. At least reporting in granular form can only be done for their own affected communities.

ESRS S4 Consumers and end-users

It is unclear whether S4 reporting should only target individual customers and users or also B2B customers. In the case of pure B2B business, it would also be questionable whether a look-through to individual end-users would be necessary. This would be challenging for both non-financial companies and financial companies. At the very least, reporting in granular form can only be done for their own clients and users.

ESRS G1 Business conduct

G1-4 23: Reporting on internally identified cases of corruption (G1-4 23. a)) should be rejected for general considerations (constitutionally questionable due to 'nemo tenetur se ipsum accusare' principle).

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