This paper has been prepared by the EFRAG Secretariat for discussion at a public meeting of EFRAG SRB. The paper forms part of an early stage of the development of a potential EFRAG position. Consequently, the paper does not represent the official views of EFRAG or any individual member of the EFRAG SRB or EFRAG SR TEG. The paper is made available to enable the public to follow the discussions in the meeting. Tentative decisions are made in public and reported in the EFRAG Update. EFRAG positions, as approved by the EFRAG SRB, are published as comment letters, discussion or position papers, or in any other form considered appropriate in the circumstances.

ESRS: Incorporation by reference
Issues Paper

Objective

1 The objective of this session is for the EFRAG SRB to discuss and approve the changes to ESRS 1 recommended by EFRAG SR TEG on the incorporation by reference.

Background

2 ESRS 1 General principles in paragraphs 135 and 136 (reproduced in Appendix 1) allows incorporation by reference of information included in the management report.

Feedback from the use test

3 Article 20(2)(b) of the Accounting Directive states that Member States may permit the information for the corporate governance statement to be published in a document on the undertaking's website to which reference is made in the management report (extract available in Appendix 1).

4 During the session on the governance module, participants pointed out that publication of a separate report is current practice in Italy. Respondents pointed out that as that this is permitted by the Accounting Directive, this should also be allowed by ESRS 1 and the EFRAG Secretariat agrees.

5 Others also argued that incorporation by reference will allow for some of the benefits of integrated reporting which is important as "[M]oving away from integrated reporting would be a major step backwards".

Feedback from consultation process

6 The feedback from a number of companies and business associations, as well as from security regulations, suggests broadening the scope of incorporation by reference to include:

(a) the corporate governance report when it sits outside the management report, as allowed by Art. 20 of the Accounting Directive;

(b) the remuneration report;

(c) regulatory information required for banks and insurances in relation to ESG risks (Pillar 3).

7 Respondents also recommend that any possibilities of cross-referencing should not impair the digital consumption of the sustainability reporting and the cross-referred information.

8 French companies have suggested the incorporation by reference in the Universal Registration Documents, which is common practice.

9 A number of respondents from the civil society have observed that the information incorporate by reference should have the same quality.

Proposal for re-drafting discussed by the SR TEG at the meeting on the 29 August 2022

10 EFRAG Secretariat suggested the scope of incorporation by reference in ESRS to include:

(a) other sections of the management report (as already foreseen in ESRS 1 ED);

(b) other sections of the financial statements (as already foreseen in ESRS 1 ED – but there is need for clarification of this aspect in the standard);

(c) the corporate governance report might sit outside the management report, as allowed by Art. 20 of the Accounting Directive (this is on top of what is already foreseen in ESRS 1 ED);

(d) the remuneration report (this is on top of what is already foreseen in ESRS 1 ED);

(e) regulatory information required for banks and insurances in relation to ESG risks (Pillar 3) (this is on top of what is already foreseen in ESRS 1 ED).

11 EFRAG Secretariat suggested including the following conditions for the incorporation by reference:

(a) such disclosures constitute a separate element of information clearly identified in the other section of the document where it is located as addressing the relevant disclosure requirement (or the relevant specific datapoint mandated by a disclosure requirement) (as already foreseen in ESRS 1 ED);

(b) such disclosures are subject to at least the same level of assurance as the sustainability standard (this is on top of what is already foreseen in ESRS 1 ED);

(c) the incorporation by reference should not impair the digital consumption of the sustainability reporting and the cross-referred information (this is on top of what is already foreseen in ESRS 1 ED).

12 The rest of the requirements in ESRS 1 would continue to be valid (i.e., without the incorporation by reference the report is incomplete; a list of the DRs or datapoints incorporate by reference shall be disclosed).

Outcome of the EFRAG SR TEG discussion on the 29 August 2022[1]

13 EFRAG SR TEG discussed the proposal above in the meeting on the 29 August and approved to recommend it to the SRB, subject to replacing the point (c) on digital reporting with the following:

(c) the disclosures incorporated by reference should be located in a document that has the same technical digitalization requirements as the sustainability statements.

14 The following main observations were noted in the meeting:

[1] Please note that at the time of preparing this paper the Summary of SR TEG decision has not yet been approved.

(a) A precondition for the incorporation by reference to a document (other than the management report and the financial statements) is that the document has the same digitalization requirements as the sustainability statements;

(b) Only documents that are legally required and regulated should be considered for incorporation by reference;

(c) A member questioned to what extent can the incorporation by reference concept be stretched to produce an integrated reporting. While the new text of the CSRD has clearly indicated that the sustainability statements are to be located in a separate section of the management report, an aggressive use of the incorporation by reference to other sections of the management report could push outside that separate section many items of information, to allow an integrated report. At that point, it would be questionable whether this is still compliant with the CSRD. However, another member considered that such a scenario would be not probable, as the level of detail of the ESRS disclosure requirements would not be compatible with the integrated reporting, that is concise and summarised.

(d) To mitigate the same concern, some members considered that incorporation by reference should only be allowed for certain DRs.

(e) The ESRS should make clear that the information incorporated by reference in addition to having the same assurance level, should be covered by the same assurance opinion. Clarity about this aspect would be welcome as depending on where the information is located, it can be audited by different providers. It was observed that ESRS cannot regulate the assurance rules.

Questions for EFRAG SRB

15 Do EFRAG SRB members agree with the EFRAG SR TEG recommendations? Please explain.

Appendix 1: Excepts from the ESRS drafts/EU Legislation

1 ESRS 1 paragraphs 135 and 136 on incorporation by reference:

"*135. Elements of information mandated by a disclosure requirement of an ESRS (including a specific datapoint mandated by a disclosure requirement) may be incorporated by reference in the sustainability statements to another section of the management report, provided that such disclosures constitute a separate element of information clearly identified in the other section of the management report as addressing the relevant disclosure requirement (or the relevant specific datapoint mandated by a disclosure requirement). Without the information incorporated by reference, the sustainability statements are incomplete. Incorporation by reference in the sustainability statements from reports other than the management report is not allowed.*

136. When the undertaking uses incorporation by reference, it has to disclose a list of the disclosure requirements of the ESRS (or the specific datapoints mandated by a disclosure requirement) that have been incorporated by reference."

2 Extract from Article 20 of the Accounting Directive:

"2. Member States may permit the information required by paragraph 1 of this Article to be set out in:

(a) a separate report published together with the management report in the manner set out in Article 30; or

(b) a document publicly available on the undertaking's website, to which reference is made in the management report.

That separate report or that document referred to in points (a) and (b), respectively, may cross-refer to the management report, where the information required by point (d) of paragraph 1 of this Article is made available in that management report."