

## Approach to materiality assessment in ESRS

### Supporting material

#### Objective of this meeting and of this paper

- 1 EFRAG run a consultation on 13 sector-agnostic ESRS prepared by the EFRAG ESRS PTF from the 29 April 2022 to 8 August 2022. The analysis of the feedback of the consultation is currently in progress and will be presented to the EFRAG SRB in a future meeting.
- 2 One of the key recurring comments received in the outreach events relate to the approach to materiality, the use of a rebuttable presumption and the associated number of disclosure requirements in the sector-agnostic level.
- 3 The purpose of this meeting is for the EFRAG SRB to discuss the materiality in the sector agnostic ESRS, including the assessment of the number of disclosure requirements and the possible phase-in options.
- 4 No decisions will be taken during this meeting.
- 5 This paper provides supporting material for this discussion.

#### CSRD principles and contents

- 6 When commenting the current status of the sustainability reports resulting from the current guidelines under the NFRD, the CSRD recital (32) states:

“... The guidelines can therefore not ensure on their own the comparability of the information disclosed by different undertakings, or the disclosure of all information that users consider relevant. That is why there is a need for mandatory common reporting standards to ensure that information is comparable and that all relevant information is disclosed. Building on the double-materiality principle, standards should cover all information that is material to users. ...”
- 7 CSRD Article 29b Sustainability reporting standards No. 2 requires for sustainability topics:

“... The sustainability reporting standards shall ...

  - (a) specify the information that undertakings are to disclose about the following **environmental factors**: ...
  - (b) the following **social and human rights factors**: ...
  - (c) the following **governance factors**. ...”
- 8 CSRD Article 19a Sustainability reporting No. 2 requires:

“The information referred to in paragraph 1 shall contain:

  - (a) a brief description of the undertaking's business model and **strategy**, ...
  - (b) a description of the time-bound **targets** related to sustainability matters ...
  - (c) a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and ...
  - (d) a description of the undertaking's **policies** in relation to sustainability matters ...

- (e) a description of ... (iii) any **action taken** by the undertaking, and the result of such actions, ...
  - (f) a description of the principal risks to the undertaking related to sustainability matters, including ...
  - (g) **indicators** relevant to the disclosures referred to in points (a) to (f).”
- 9 CSRD recital (25) clarifies in respect of the “double materiality” principle:  
“... It is therefore necessary to clarify that undertakings should consider each materiality perspective in its own right, and should disclose information that is material from both perspectives as well as information that is material from only one perspective.”
- 10 CSRD recital (33) clarifies:  
“No existing standard or framework satisfies the Union’s needs for detailed sustainability reporting by itself. Information required by Directive 2013/34/EU needs to cover information relevant from each of the materiality perspectives, **needs to cover all sustainability matters and needs to be aligned, where appropriate, with other obligations under Union law to disclose sustainability information**, including obligations laid down in Regulation (EU) 2020/852 and Regulation (EU) 2019/2088. ...”
- 11 Appendix III to the cover note to the public consultation illustrates the detail of which DR in the ESRS do implement the CSRD requirements.
- 12 This appendix can be found at the link below:  
[https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FED\\_ESRS\\_AP2.pdf](https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FED_ESRS_AP2.pdf)
- 13 Appendix 2 to this paper reports the contents of Articles 19 a and 29 b of the CSRD (June 2022) where the reporting areas and the sustainability topics are respectively covered.

### SFDR required indicators

- 14 CSRD article 29 b, 3b: *When adopting delegated acts pursuant to paragraph 1, the Commission shall to the greatest extent possible take account of the information that financial market participants need to comply with their disclosure obligations laid down in Regulation (EU) 2019/2088 and the delegated acts adopted pursuant to that Regulation.*
- 15 In order to comply with this requirement, the Principal Adverse Impact indicators of the SFDR have been incorporated in the text of the ESRS EDs.
- 16 Appendix III to the cover note to the public consultation illustrates the detail of where these indicators are referenced in the DRs of ESRS. The appendix can be found at the link below:  
[https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FED\\_ESRS\\_AP3.pdf](https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2FED_ESRS_AP3.pdf)

### The rebuttable presumption in ED ESRS 1

- 17 *The paragraphs below summarise the reasoning of the ESRS PTF that led to define the approach proposed in ESRS 1.*
- 18 Whatever the approach to the materiality assessment that supports the identification of material impacts, risks and opportunities (IROs), in order to be compatible with the characteristics of quality required by the CSRD, the standard setting approach has to grant that all the material IROs need to be disclosed.

- 19 In order to implement this principle, the ESRS PTF considered different approaches, including two extremes in the spectrum:
- a) Assessment fully at the initiative of the standard setter with no room for judgement – Approach 1 below;
  - b) Assessment fully at the initiative of the undertaking, with standards as a mere (indicative or mandatory) reference for disclosure – Approach 5 below.
- 20 The rebuttable presumption has been introduced by the ESRS PTF to adopt an intermediary position:
- (a) the standards as an implicit matrix of sector-agnostic IROs;
  - (b) the pivotal role of the undertakings materiality assessment which requires:
    - (i) the exclusion of standardised disclosures in relation to topics or groups of DRs that are not material for the undertaking and
    - (ii) the addition of disclosures on material IROs that are not (yet) covered by standards;
  - (c) an explicit disclosure of which ESRS/topics or groups of DRs have been omitted as not-material for the undertaking;
  - (d) an implicit assumption that below ESRS/topics and groups of DRs (explicitly disclosed) an item of information or a DR that is not disclosed is deemed not material.
- 21 However, the outreach feedback indicates that the wording in the ED needs at least clarification, as the substance of the requirement is not always understood, including the need to better connect the rebuttable presumption with the disclosure on the IRO materiality assessment.
- 22 Excluding the requirement to explicitly disclose the topics/groups of DR that have been omitted as not material, the substance of the requirement in ESRS 1 is not different from the one adopted for financial reporting, where standards mandate disclosures but leave the undertaking to determine if they are all material. Beyond substance, in financial reporting the exercise the outcome of judgement is implicit and, therefore, under the control of governance and auditors (under reasonable assurance), while in sustainability reporting the outcome of the materiality assessment is semi-explicit and semi-implicit and also, under the CSRD, under the control of governance and auditors (under limited assurance to start with).
- 23 The relevant text of ESRS 1 is presented the Appendix 1 to this paper.

### **Concerns with the current approach to materiality**

- 24 *The following paragraphs describe the main comments that have been expressed during the consultation. As the analysis of the comments is still ongoing, the present summary is not exhaustive, but only indicative; the comments are derived from the outreach and from a sample of comment letters.*
- 25 Too many disclosure requirements:
- (a) ESRS are too granular, will result in unfocused reporting and overload, costs exceed benefits. EFRAG should reduce the scope of the standards as much as possible, within the CSRD requirements and focus on the key priorities such as consistency with SFDR. Trim down to CSRD minimum in the first batch and include additional requirements subsequently;
  - (b) it is important that EFRAG carefully assesses whether, due to their granularity, some of the proposed topical requirements are relevant mainly for certain sectors;

- (c) apart from identifying sector-specific requirements, EFRAG should reconsider reducing the number and level of granularity of disclosures requirements.
- 26 Specific items to be material in all cases:
- (a) climate-related information should always be considered to be material, and the climate standard (ESRS E1) should accordingly be deemed to be material by default to all undertakings;
  - (b) key DRs in E1 (e.g. GHG emissions, net zero targets and transition plans), due diligence information for undertakings in the scope of the Due Diligence Directive, ESRS S1, SFDR);
- 27 Mixed views on the role of judgement:
- (a) [Preparers] Companies are best placed to know which information is material, and they should be able to decide on this for themselves;
  - (b) [Civil society] There should be no space for companies' judgement on what is to be reported, ESRS should mandate a list of requirements valid in all circumstances.
- 28 Views against the rebuttable presumption:
- (a) The rebuttable presumption may be conducive to a 'checklist' approach: the starting point should not be the assessment of materiality of each disclosure requirement, but the identification of the sustainability-related impacts, risks and opportunities and assessing the materiality of the information that would result from the reflection of these events through the application of the disclosure requirements included in the ESRS;
  - (b) in financial reporting there is a simple requirement not to disclose immaterial information, while the rebuttable presumption places more emphasis on the determination and disclosure why something is not material;
  - (c) as the materiality assessment will be subject to an audit, there is no need to justify why certain sustainability topics are not material. If a sustainability topic is not material, the preparer should not have to disclose and document on that at all;
  - (d) materiality assessment is not intended to pursue proportionality purposes;
  - (e) it may encourage the disclosure of non-material information: some undertakings may tend to disclose immaterial information to avoid the development of more burdensome supporting documentation necessary to justify the non-disclosure of that information;
  - (f) undertakings should conduct a robust double materiality assessment and, based on this, determine material topics that need to be reported on. The ESRS should provide a list of topics covered by the standards that will serve as the starting point for the undertaking's materiality assessment.
- 29 Views in support of the rebuttable presumption:
- (a) The rebuttable presumption is a compromise between an entirely mandatory approach and a materiality approach that allows the continuity of the current materiality assessment (with space for judgement);
  - (b) the undertaking needs to determine anyhow what is material and what is non-material. Therefore, it is unavoidable for the undertaking to assess for all sustainability matters (mandated under the CSRD requirements) whether they are material or not. ED ESRS 2 currently only requires to explicitly disclose what is "non-material". This requirement can easily be dropped;
  - (c) those that support the rebuttable presumption to help scope the topics a company needs to report on and to what level of granularity, suggest to make

it implicit that if a standard or set of disclosure requirements are not disclosed, they have been assessed by the company as not material, similar to the existing approach in financial reporting. Some of them also encourage that the thresholds and/or criteria used to determine when a disclosure requirement is “not material for the undertaking” should not have to be explicitly disclosed by the company;

- (d) the rebuttable presumption has been associated with a “comply or explain approach” or a “voluntary approach” or labelled as “escape clause”. This ignores the fact that if a sustainability topic is material a related disclosure requirements is compulsory.

## A. Possible decision-making scenarios

To support the SRB discussion in this meeting, the EFRAG Secretariat has developed few possible scenarios that could be considered in the next decision-making phase. They are illustrated below.

### Approach 1: “Materiality assessment only at standard-setter level” Only mandatory requirements / no rebuttable presumption – no materiality assessment at level of the undertaking

<p>Description:</p> <p>The standard-setter defines what is material on a sector-agnostic and sector-specific level. The assessment is made based on the standard-setters’ understanding of a representative / typical sector-agnostic respectively sector-specific undertaking what is material on any of those levels. Because the materiality assessment is done by the standard setter, no materiality assessment is needed at the level of the undertaking.</p> <p>In terms of next steps, should it be decided that a reduction is needed, a criterion on how to reduce the number of current disclosure requirements is needed, in order to inform a robust analysis of relevance of each Disclosure Requirement (which could be delegated to SR TEG), which would ultimately lead to the identification of the final list.</p> <p>As an illustration, during the consultation, the following has been suggested as a possible list of mandatory items: CCS, SFDR, Climate, Workforce, for the other topics: report IROs/policies/action plans and few KPIs.</p>	
<p>Advantage</p> <ul style="list-style-type: none"> <li>• Comparability is achieved.</li> <li>• Facilitating the implementation at the level of the undertaking.</li> <li>• Addresses the concerns of the rebuttable presumption being an ‘escape route’ to omit relevant disclosure.</li> </ul>	<p>Disadvantage</p> <ul style="list-style-type: none"> <li>• As the representative, typical sector-agnostic / sector-specific undertaking might be different from the wide array of undertakings and business models in practise this approach might miss some material sustainability topics respectively might lead to some disclosures that are not material for all undertakings.</li> <li>• If taken to the extreme this approach will result in excessive disclosure requirements as the standard-setter will try to reduce the risk of not capturing all possible disclosures from a sector-agnostic or sector-specific materiality perspective.</li> <li>• The absence of judgement could be seen as conflicting with the focus that the CSRD puts on materiality considerations.</li> <li>• The absence of judgement is not compatible with the ISSB approach.</li> </ul>

**Approach 2: “Materiality assessment at standard-setter level plus voluntary disclosures”**

**same as approach 1 plus voluntary additional disclosures**

<p>Description:</p> <p>Same as above but the standard-setter leaves room for voluntary disclosures. These voluntary disclosures could become mandatory in later years (see below “phase-in” options).</p> <p>In terms of next steps, should it be decided that a reduction is needed, a criterion on how to reduce the number of current disclosure requirements is needed, in order to inform a robust analysis of relevance of each Disclosure Requirement (which could be delegated to SR TEG), which would ultimately lead to the identification of the final list.</p>	
<p>Advantage</p> <ul style="list-style-type: none"><li>• Same as above (for the mandatory component)</li><li>• The additional list of voluntary disclosures would to some extent promote consistency (while limiting the burden compared to additional mandatory items) and encourage best practices.</li></ul>	<p>Disadvantage</p> <ul style="list-style-type: none"><li>• Same as above (for the mandatory component)</li><li>• Limited comparability (for the voluntary component)</li></ul>

**Approach 3: “Materiality assessment by both the standard-setter and the undertaking”**

**Some mandatory disclosure requirements (not subject to materiality assessment) / all other subject to materiality assessment (rebuttable presumption)**

**Same as approach 1 plus rebuttable presumption on additional DRs**

<p>Description:</p> <p>A number of DRs would be mandatory in all cases. Companies would still have space for materiality assessment (using the rebuttable presumption) for a pre-defined list of additional DRs.</p> <p>This is similar to what is currently proposed for the ESRS 2 and SFDR disclosure requirements.</p> <p>This approach could be combined with an “implicit” or “explicit” approach for non-material items (see Option 4 below).</p> <p>A criterion needs to be defined in order to identify the list of non-rebuttable items: in terms of next steps, should it be decided that a reduction is needed, a criterion on how to reduce the number of current disclosure requirements is needed, in order to inform a robust analysis of relevance of each Disclosure Requirement (which could be delegated to SR TEG), which would ultimately lead to the identification of the final list.</p>	
<p><b>Advantage</b></p> <ul style="list-style-type: none"> <li>• Being a modular approach, it allows to achieve comparability for the mandatory component and at the same time it gives space for the undertaking’s materiality assessment (rebuttable presumption).</li> <li>• With an appropriate calibration of the mandatory component, this approach may grant high level of comparability.</li> <li>• Reduces the scope for materiality assessment exercise of the undertaking; in this way it mitigates concerns about the rebuttable presumption being an ‘escape route’.</li> </ul>	<p><b>Disadvantage</b></p> <ul style="list-style-type: none"> <li>• For the scope of the rebuttable presumption, concerns that this is subtracting items from a mandatory list instead of adding from it in a materiality assessment.</li> </ul>



#### Approach 4: Modify / enhance the materiality assessment / rebuttable presumption

Description:

A number of amendments have been suggested so far. They can to a certain extent be combined with the approaches 1 – 3 and 5.

**a: Move from “explicit approach” to “implicit approach”**

The disclosure requirement to disclose the list of non-material items (ESRS 2 – IRO 2) would be eliminated.

The approach supports to focus on the materiality assessment itself to assess material impacts, risks and opportunities and not on disclosures that are not material based on the rebuttable presumption.

**b: clarify materiality assessment is for sustainability matters and aspects of a sustainability topic and not for materiality of disclosure requirements**

Concern has been raised that the rebuttable presumption is conducive to a checklist approach since ESRS 1 refers to materiality *of the disclosure requirements* and not to materiality *of the information* (see ESRS 1 para 57-62 above).

**c: clarify that rebuttable is only based on “the materiality assessment” and not on other factors (e.g. based on costs for the undertaking)**

Concern has been raised that the rebuttable presumption is dependent upon not only the materiality assessment but also other unspecified facts and circumstances. The standard indicates that *‘all mandatory disclosure requirements established by ESRS shall be presumed to be material’* but *‘to consider the undertaking’s facts and circumstances and the outcome of its assessment process, such a presumption is rebuttable based on reasonable and supportable evidence’* (see ESRS 1 para. 57 above). It thus seems the presumption can be rebutted on grounds that go beyond the materiality assessment based on factors that are not specified. For example, undertakings might try to rebut the presumption based on facts/circumstances related to costs.

**d: Clarify that the materiality assessment is not intended to pursue proportionality purposes**

The rebuttable presumption is introduced *‘to manage the amount of mandatory disclosure requirements’* (see ESRS 1. BC 57), i.e., to ensure proportionality. This risks creating confusion between the materiality assessment and cost-benefit considerations which may ultimately reduce the quality of sustainability reporting.

While it might be obvious that an increase in the volume of disclosures is detrimental to the attention each disclosure receives from knowledgeable users, similar to financial reporting materiality considerations never have the reduction of the reporting burden as their primary objective.

**e: Combine the aforementioned options with a phase-in approach as explained below**

Proportionality could be achieved via other means, such as allowing for the gradual phasing-in of certain requirements, reducing the complexity of the requirements themselves and deferring some disclosure requirements to the later development of industry-specific standards.

Advantage	Disadvantage
<ul style="list-style-type: none"> <li>• Supports the view that the starting point of the materiality assessment is the undertaking's own materiality assessment and not the list of mandated ESRS disclosure requirements. (a)</li> <li>• A listing of non-material items would by extension constitute immaterial information. (a)</li> <li>• Reduction of information overload. (a)</li> <li>• Amount of supporting documentation why something is not material can be reduced. (a)</li> <li>• Clarifies that the materiality assessment is not a checklist exercise, but an assessment of the material impacts, risks and opportunities of the undertaking based on proper due diligence. (b)</li> <li>• Approach is the proper materiality assessment, i.e., starting from the identification of relevant events/transactions and assessing the materiality of the information that would result from the reflection of these events/transactions through the application of the disclosure requirements. (b)</li> <li>• Clarification can be implemented easily. (a – e)</li> <li>• Addresses the concern of constituents (a – e)</li> </ul>	<ul style="list-style-type: none"> <li>• No information on why certain information is immaterial for one undertaking as compared to its peers. (a)</li> <li>• Concerns that this is 'subtracting' items from a mandatory list instead of adding from it in a materiality assessment. (b)</li> </ul>

**Approach 5: “free materiality assessment”**

<p>Description</p> <p>The materiality assessment is entirely left to the judgement of the undertaking; once the undertaking has identified a material IRO, the disclosures are identified on the basis of an ESRS, when it exists.</p>	
<p><i>Advantage</i></p> <ul style="list-style-type: none"> <li>• Alignment with ISSB.</li> </ul>	<p><i>Disadvantage</i></p> <ul style="list-style-type: none"> <li>• It would not be compatible with the CSRD as it doesn't identify a list of mandatory topics as a starting point for the materiality assessment. It would not allow to overcome the limits of the current NFRD disclosure.</li> </ul>

**B. Possible phase-in options**

- 30 One of the possible ways to facilitate the implementation of the ESRS is the phase-in of its contents, i.e. the identification of selected disclosure requirements or information that would be still present in the ESRS text delivered to the EC in November 2022 and issued as Delegated Act in June 2023, but applicable after the initial application date of Set 1 standards, such as from the second, third or fourth year. The inclusion in the text of such disclosure requirements would allow for proper preparation.
- 31 The CSRD requirements will enter into application with a phase-in approach, thereby already facilitating a gradual incorporation of the new requirements:
- (a) **NFRD companies:** FY 2024 (first reports published 2025)
  - (b) **Other large companies:** FY 2025 (reports 2026)
  - (c) **Listed SMEs:** FY 2026 (reports 2027)
  - (d) **Non-EU companies with branches/subsidiaries:** FY 2028 (reports 2029)
- 32 The postponement of an entire topic (e.g. circular economy postponed after the first year of application) is not compatible with the requirements of the CSRD as all the relevant subjects have to be covered from the beginning.
- 33 The CSRD recognises the difficulty to collect data from entities in the upstream and downstream value chain:
- For the first three years of the application of this Directive, in the event that not all the necessary information regarding the value chain is available, the undertaking shall explain the efforts made to obtain the information about its value chain, the reasons why this information could not be obtained, and the plans of the undertaking to obtain such information in the future.*
- 34 In addition, the CSRD has introduced a sort of ‘cap’ to the information that the ESRS may require on the undertakings in the value chain, so that such information do not exceed the corresponding requirements in the standard for listed SMEs. EFRAG will develop the standard for listed SMEs as part of Set 2 and the advice of EFRAG TEG to the SRB is to prepare an amendment to Set 1 to be issued jointly with Set 2 in order to fine tune any possible requirement in Set 1 that may need to be modified in order to implement the ‘cap’.
- 35 The SRB decided to include in the consultation’s survey a number of detailed questions to collect input from constituents on how to structure the phase-in

transition provisions. The analysis of the survey's responses is still ongoing and the outcome is not available in time for this discussion.

- 36 The following possible criteria have been mentioned in previous discussions (they can be considered as indicative but for a detailed discussion it will be necessary to wait for the completion of the analysis of the survey's responses):
- (a) Priority goes to the SFDR data to allow timely implementation;
  - (b) Priority goes to the data that are already available (e.g. own operations as opposed to value chain);
  - (c) Priority goes to the data for which reporting methodologies are already common practice/mature (e.g. for value chain ESRS may be complemented by specific application guidance in subsequent years);
  - (d) Postponement of the value chain information will also support an orderly implementation of the 'cap';
  - (e) Topics that are normally not covered under the NFRD by the majority of the undertakings in all the sectors and as such ESG policies are not necessarily developed or implemented, could be postponed to year two/tree/four;
  - (f) Gradual application of the full ESRS: Cross cutting (including IROs), SFDR, ESRS E1, and a number of KPIs per each ESRS in the first year of application, the rest postponed by one or two years.

#### **Some implementation questions on impact materiality**

- 37 The discussions (outreach and preliminary EFRAG SR TEG discussions) during the consultation period have revealed the following areas for clarification, which could ultimately have an effect on the implementation of the materiality principle.
- (a) Should decision-usefulness be always a necessary attribute of material information? For impact materiality, should decision-usefulness play a less relevant (or no) role compared to financial materiality?
  - (b) Is the quantitative element of materiality assessment equally important in impact and financial materiality? For example, some consider that disclosure about workforce is to be provided irrespective of materiality consideration (e.g. if an undertaking has only 15 employees the disclosure about gender gap would be equally important than for an undertaking with 15.000 employees; having only one child exposed to child labor in the value chain out of thousands of workers involved would be material). Other consider that materiality should be assessed per each DRs and for some of them undertaking shall be able to conclude that the info is not material.

**Questions to SRB**

- 38 Do you consider that there are other possible approaches to materiality than those illustrated in this paper? Please explain.
- 39 Do you agree with the advantages and disadvantages of the approaches to materiality illustrated in this paper? Have you identified other advantages or disadvantages? Please explain.
- 40 Should it be decided that a reduction of the DRs in the EDs is necessary, which criterion/criteria should inform such reduction?
- 41 Which criteria should be followed to identify the information to be postponed and implement the phasing-in?
- 42 Do you have suggestions on how to structure the next decision-making phase and the technical analysis that would support it? Which technical advices should the SRB asks the SR TEG to develop, in order to inform the decision making?
- 43 Do you have any other comment or observation on the subject of this paper?

## APPENDIX 1

44. The below text is a copy of ESRS 1 para 57- 62:  
(to note: no AG paragraphs on this section).

### *Relationship of double materiality and mandatory disclosure requirements*

- 57 Sector-agnostic and sector-specific ESRS mandate disclosure requirements for all undertakings or for all undertakings in a particular sector reflecting double materiality. Therefore, all mandatory disclosure requirements established by ESRS shall be presumed to be material and, therefore, to justify a full disclosure in accordance with the relevant ESRS. However, to consider the undertaking's facts and circumstances and the outcome of its assessment process, such a presumption is rebuttable based on reasonable and supportable evidence.
- 58 The undertaking shall establish explicit thresholds and/or criteria to determine when a disclosure is complied with through a statement "not material for the undertaking".
- 59 Consequently, the undertaking shall assess (see Disclosure Requirements 2-IRO) for each ESRS and, when relevant, for a group of disclosure requirements related to a specific aspect covered by an ESRS if the presumption is rebutted for:
- (a) all of the mandatory disclosures of an entire ESRS, or
  - (b) a group of disclosure requirements related to a specific aspect covered by an ESRS
- based on reasonable and supportable evidence, in which case it is deemed to be complied with through an explicit statement that:
- (a) the ESRS or
  - (b) the group of disclosure requirements
- is "not material for the undertaking".
- 60 To illustrate the principle in paragraph 59, consider ESRS S1 on "Own workforce" on the sub-sub-topic "Other work-related rights" covering the following specific aspects of the sub-sub-topic:
- (a) freedom of association and collective bargaining;
  - (b) child labour;
  - (c) forced labour;
  - (d) privacy; and
  - (e) adequate housing.
- Based on its materiality assessment described in ESRS 2 the undertaking could conclude that "child labour" and "forced labour" are aspects with material impact and / or risk to the undertaking but the other aspects of "other work-related rights" are not. It therefore complies with (i) all disclosure requirements related to "child labour" and "forced labour" and (ii) with the disclosure requirements related to "freedom of association and collective bargaining", "privacy" and "adequate housing" with a statement that these specific aspects are "not material for the undertaking".
- 61 The rebuttable presumption is not applicable to the disclosure requirements related to Disclosure requirements 2-SBM, 2-GOV and 2-IRO.

- 62 In addition to the implementation of paragraph 59, an individual disclosure requirement, or an individual datapoint mandated by a disclosure requirement, of a topical or sector-specific standard that is below materiality criteria / thresholds and that is not part of an ESRS or a group of disclosure requirements for which the presumption has been rebutted may be omitted and therefore considered implicitly disclosed as “not material for the undertaking”.

A. The below text is a copy of ESRS 1 basis for conclusion para BC54- BC63:

*Relationship between double materiality and mandatory disclosure requirements*

54. Considering the relationship of materiality and mandatory disclosure requirements in the context of sustainability reporting two extremes could be envisaged:

- a. no mandatory disclosure requirements from the standard-setter’s perspective and determination of disclosures deriving exclusively from the materiality assessment of the undertaking (approach 1); or
- b. mandatory disclosure requirements determined by the standard-setter on a sector-agnostic or sector-specific basis leaving no room for materiality assessment by the undertaking (approach 2).

55. [Draft] CSRD recital 32 elaborates why current sustainability reporting (under the Non Financial Sustainability Directive) in the European Union can be more closely associated with approach 1, and therefore lacks comparability and concludes that “there is a need for mandatory common reporting standards to ensure that information is comparable and that all relevant information is disclosed. Building on the double-materiality principle, standards should cover all information that is material to stakeholders. Common reporting standards are also necessary to enable the audit and digitalisation of sustainability reporting and to facilitate its supervision and enforcement.” However, exclusively following approach 2 (a) may result in excessive information requirements and, impose an excessive burden on preparers, (b) may reduce or eliminate the importance of the undertaking’s materiality assessment with the associated underlying exercise of judgement and responsible decision-making and (c) may as a consequence result in information overload and/or gaps for users and affected stakeholders, and therefore be detrimental to the development of sustainability reporting.

56. For these reasons, it has been decided to combine both approaches by:

- a. developing at standard-setter’s level the assessment of which mandatory disclosure requirements to prescribe for all sustainability matters at sector agnostic level and at sector-specific level;
- b. requiring undertakings to apply a materiality assessment based on double materiality for those mandatory requirements (see paragraph 57). Under this assessment the undertaking thereby shall consider its specific facts and circumstances combined with explicit thresholds and/or criteria to determine when the disclosures mandated by an entire ESRS or by a group of disclosure requirements are not material for the undertaking based on a rebuttable presumption principle. The rebuttable presumption principle gives the undertaking the possibility, if justified, to not disclose an individual disclosure requirement or an individual datapoint mandated by a disclosure requirement (see paragraph 62); and
- c. requiring the undertaking to determine the entity-specific disclosures that are necessary to give a fair representation of its sustainability-related impacts, risks and opportunities beyond the mandatory sector-agnostic and sector-specific disclosures and in accordance with its unique set of facts and circumstances.

57. The “rebuttable-presumption principle” - the statement “not material for the undertaking” (leading to not disclosing certain mandatory individual disclosure requirements or data points) and the determination of entity-specific disclosures are considered necessary and appropriate to manage the amount of mandatory disclosure requirements under ESRS.

58. The above two possible approaches were carefully considered when setting the approach that an undertaking has to follow in order to assess which information is material and as such should be included in its sustainability statements. The objective has been to foster comparability, as reflected by the mandatory nature of disclosure requirements under ESRS, and a considered exercise of judgement by the undertaking, allowing for certain disclosure requirements to be determined “not material for the undertaking”.

59. Both the above approaches entail the use of judgement. In both cases the governing bodies of the undertaking take the responsibility to assess what is material or not material

and to embed the assessment in the undertaking's governance and internal controls. Both approaches require the availability of reasonable and supportable evidence to corroborate the results of the assessment and, as such, the rebuttable presumption (as designed in this [draft] Standard) is not expected to result in additional efforts or costs compared to a system where materiality has to be assessed without having a pre-defined list of material requirements as a starting point.

60. A specific advantage of the approach based upon the use of the rebuttable presumption principle is that it supports a higher level of comparability across different undertakings. Assessing a disclosure as “not material for the undertaking” following a proper assessment process is a valuable information in itself. In addition, as the presumption of materiality has to be rebutted, there is a reasonable and proportionate evidence hurdle to overcome and this is expected to mitigate the risk of relevant information being omitted, compared to the fully entity-specific approach.

61. To reduce the operational burden of producing reasonable supportable evidence, substantial flexibility has been added in the proposed approach: instead of having to document that each disclosure requirement or datapoint may be omitted as not material, an undertaking may rebut the presumption at a higher level of aggregation, for all the disclosure requirements in a [draft] ESRS or for a group of disclosure requirements related to a specific aspect covered by an ESRS.

62. Compared to an approach where all the disclosure requirements or datapoints have to be covered in all cases (and there is no rebuttable presumption), the proposed approach limits the risk of a ‘tick-the-box’ mentality, as it requires to exercise judgement in assessing which information is not material and can be omitted. It also fosters an environment of responsible decision-making and transparency.

63. The rebuttable presumption is not applicable to ESRS 2 Disclosure Requirements SBM, GOV and IRO as those disclosures being a fundamental basis for sustainability reporting are considered material for all undertakings.



## APPENDIX 2

The text in bold is the same as in the CSRD text released in June 2022.

### 1.REPORTING AREAS IN THE CSRD

<p>Article 19 a  1</p>	<p>Large undertakings <b>referred to in Article 3 point (4) and</b> small and medium-sized undertakings <b>as defined in Article 3(2) and 3(3)</b> which are undertakings referred to in Article 2, point (1), point (a) <b>and which are not micro-undertakings as defined in Article 3(1)</b>, shall include in the management report information necessary to understand the undertaking's impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking's development, performance and position. <b>This information shall be clearly identifiable within the management report, through a dedicated section of the management report.</b></p>
<p>Article 19 a  2a</p>	<p>The information referred to in paragraph 1 shall contain:</p> <p>(a) a brief description of the undertaking's business model and strategy, including:</p> <p>(i) the resilience of the undertaking's business model and strategy to risks related to sustainability matters;</p> <p>the opportunities for the undertaking related to sustainability matters;</p> <p>(iii) the plans of the undertaking, <b>including implementing actions and related financial and investment plans</b>, to ensure that its business model and strategy are compatible with the transition to a sustainable economy and with the limiting of global warming to 1.5 °C in line with the Paris Agreement <b>and the objective of achieving climate neutrality by 2050 as established in Regulation (EU) 2021/1119 (European Climate Law), and where relevant, the exposure of the undertaking to coal, oil and gas-related activities;</b></p> <p>(iv) how the undertaking's business model and strategy take account of the interests of the undertaking's stakeholders and of the impacts of the undertaking on sustainability matters;</p> <p>(v) how the undertaking's strategy has been implemented with regard to sustainability matters</p>
<p>Article 19 a  2b</p>	<p>a description of the <b>time-bound</b> targets related to sustainability matters set by the undertaking, <b>including where appropriate absolute greenhouse gas emission reduction targets at least for 2030 and 2050, a description</b> of the progress the undertaking has made towards achieving those targets, <b>and a specification of whether the undertaking's targets related to environmental matters are based on conclusive scientific evidence;</b></p>
<p>Article 19 a  2c</p>	<p>a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, <b>and of their expertise and skills to fulfil this role or access to such expertise and skills;</b></p>
<p>Article 19 a  2d  2da</p>	<p>d) a description of the undertaking's policies in relation to sustainability matters;</p> <p>da) <b>information about the existence of incentive schemes offered to members of the administrative, management and supervisory bodies which are linked to sustainability matters;</b></p>

<p>Article 19 a 2e</p>	<p>a description of:</p> <p>(i) the due diligence process implemented <b>by the undertaking</b> with regard to sustainability matters, <b>and where applicable in line with EU requirements on undertakings to conduct a due diligence process;</b></p> <p>(ii) the principal actual or potential adverse impacts connected with the undertaking's <b>own operations and with its value chain, including</b> its products and services, its business relationships and its supply chain, <b>actions taken to identify and track these impacts, and other adverse impacts which the undertaking is required to identify according to other EU requirements on undertakings to conduct the due diligence process;</b></p> <p>(iii) any actions taken <b>by the undertaking</b>, and the result of such actions, to prevent, mitigate, <b>remediate or bring an end to</b> actual or potential adverse impacts;</p>
<p>Article 19 a 2f</p>	<p>a description of the principal risks to the undertaking related to sustainability matters, including the undertaking's principal dependencies on such matters, and how the undertaking manages those risks;</p>
<p>Article 19 a 2g</p>	<p>indicators relevant to the disclosures referred to in points (a) to (f). █</p>
<p>Article 19 a 2</p>	<p>Undertakings shall report the process carried out to identify the information that they have included in the management report in accordance with paragraph 1█. <b>The information listed under paragraph 2 shall █ include information related to short, medium and long-term time horizons as applicable.</b></p>
<p>Article 19 a 3</p>	<p>Where █ <b>applicable</b>, the information referred to in paragraphs 1 and 2 shall contain information about the undertaking's █ <b>own operations, and about its value chain, including</b> products and services, its business relationships and its supply chain. <b>For the first three years of the application of this Directive, in the event that not all the necessary information regarding the value chain is available, the undertaking shall explain the efforts made to obtain the information about its value chain, the reasons why this information could not be obtained, and the plans of the undertaking to obtain such information in the future.</b></p> <p>Where █ <b>applicable</b>, the information referred to in paragraphs 1 and 2 shall also contain references to, and additional explanations of, other information included in the management report in accordance with Article 19 and amounts reported in the annual financial statements.</p> <p>Member States may allow information relating to impending <b>developments</b> or matters in the course of negotiation to be omitted in <b>exceptional</b> cases where, in the duly justified opinion of the members of the administrative, management and supervisory bodies, acting within the competences assigned to them by national law and having collective responsibility for that opinion, the disclosure of such information would be seriously prejudicial to the commercial position of the undertaking, provided that such omission does not prevent a fair and balanced <b>understanding</b> of the undertaking's development, performance, position and impact of its activity.</p>
<p>Article 19 a 4 and 4b</p>	<p>4. Undertakings shall report the information referred to in paragraphs 1 to 3 in accordance with the sustainability reporting standards referred to in Article █ <b>29b.</b></p> <p>4b. <b>The management of the undertaking shall inform workers' representatives at the appropriate level and discuss with them the relevant information and the means of obtaining and verifying sustainability</b></p>

	<b>information. Their opinion should be communicated, where applicable, to the relevant administrative, management or supervisory bodies.</b>
Article 19 a 5	<p>By way of derogation from Article 19a, paragraphs 2 to 4, <b>and without prejudice to paragraphs 7 and 7a</b>, small and <b>medium-sized</b> undertakings referred to in <b>paragraph 1, small and non-complex institutions as defined in Article 4(1), point (145) of Regulation (EU) No 575/2013, and captive insurance undertakings as defined in Article 13 (2) of Directive 2009/138/EC and captive reinsurance undertakings as defined in Article 13(5) of Directive 2009/138/EC may limit their sustainability reporting to the following information:</b></p> <p><b>(a) a brief description of the undertaking’s business model and strategy;</b></p> <p><b>(b) a description of the undertaking’s policies in relation to sustainability matters;</b></p> <p><b>(c) the principal actual or potential adverse impacts of the undertaking with regard to sustainability matters, and any actions taken to identify, monitor, prevent, mitigate or remediate such actual or potential adverse impacts;</b></p> <p><b>(d) the principal risks to the undertaking related to sustainability matters and how the undertaking manages those risks;</b></p> <p><b>(e) key indicators necessary to the disclosures referred to in points (a) to (d).</b></p> <p><b>Small and medium-sized undertakings, small and non-complex institutions and captive insurance and reinsurance undertakings that use this derogation shall report in accordance with the sustainability reporting standards for small and medium-sized undertakings referred to in Article 29c.</b></p>
Article 19 a 5a	<b>By way of derogation from paragraph 1 and until 2028, small and medium-sized undertakings which are undertakings referred to in Article 2, point (1), point (a), may decide not to include in their management report the information referred to in paragraph 1. The undertaking shall however provide a statement in its management report declaring briefly why the sustainability reporting was not provided</b>
Article 19 a 6	Undertakings that comply with the requirements set out in paragraphs 1 to 4 <b>and undertakings making use of the derogation in paragraph 5</b> shall be deemed to have complied with the requirement set out in the third subparagraph of Article 19(1).
Article 19 a 7	<p>An undertaking (<b>‘the exempted subsidiary undertaking’</b>) which is a subsidiary undertaking shall be exempted from the obligations set out in paragraphs 1 to 4 if that undertaking and its subsidiary undertakings are included in the consolidated management report of a parent undertaking, drawn up in accordance with Articles 29 and 29a. An undertaking that is a subsidiary undertaking from a parent undertaking that is established in a third country shall also be exempted from the obligations set out in paragraphs 1 to 4 where that undertaking and its subsidiary undertakings are included in the <b>sustainability reporting</b> of that parent undertaking and where <b>this sustainability reporting of the parent undertaking</b> is drawn up in <b>accordance with the sustainability reporting standards adopted pursuant to Article 29b or in a manner equivalent to those sustainability reporting standards determined in accordance with Commission’s decisions on the equivalence of sustainability reporting standards</b> adopted pursuant to Article 23(4), <b>third subparagraph</b> of Directive 2004/109/EC of the European Parliament and of the Council.</p>

**The exemption in the first subparagraph is subject to the following conditions:**

**(i) the management report of the exempted subsidiary undertaking contains all of the following information:**

**(a) the name and registered office of the parent undertaking that reports information at group level in accordance with this Article, or in a manner equivalent to sustainability reporting standards adopted pursuant to Article 29b of this Directive, determined in accordance with Commission's decisions on equivalence of sustainability reporting standards adopted pursuant to Article 23(4), third subparagraph;**

**(b) the web links to the consolidated management report of the parent undertaking or to the consolidated sustainability reporting where applicable, referred to in the first subparagraph and to the opinion referred to in Article 34(1), second subparagraph, point (aa) of this Directive or the opinion referred to in point (ii) of this subparagraph;**

**(c) the fact that the undertaking is exempted from the obligations set out in paragraphs 1 to 4 of this Article.**

**(ii) when the parent undertaking referred to in the first subparagraph is established in a third country, its consolidated sustainability reporting and the opinion based on a limited assurance engagement given by one or more person(s) or firm(s) authorised to give an opinion on the assurance of sustainability reporting under the national law governing the undertaking which drew up that consolidated sustainability reporting or separate report, shall be published in accordance with Article 30, in the manner prescribed by the law of the Member State by which the exempted subsidiary undertaking is governed.**

**(iii) when the parent undertaking referred to in the first subparagraph is established in a third country, the disclosures laid down in Article 8 of Regulation (EU) 2020/852, covering the activities carried out by the exempted subsidiary undertaking(s) established in the EU and its subsidiary undertakings, are included in one of the following reports: a) in the management report of the exempted parent undertaking,**

**or**

**b) in the consolidated sustainability reporting prepared by the parent undertaking established in a third country referred to in the first subparagraph.**

**The Member State by which the exempted subsidiary undertaking is governed, may require that the consolidated management report or consolidated sustainability reporting where applicable of the parent undertaking is published in a language that it accepts, and that any necessary translation into those languages is provided. Any translation not certified shall include a statement indicating the translation was not certified.**

**Undertakings which are exempted from preparing a management report according to Article 37 of this Directive, need not to provide the information of points (a), (b) and (c) of point (i) of the second subparagraph, provided they publish the consolidated management report referred to in the first subparagraph of this paragraph in accordance with Article 37 of this Directive.**

**For the purposes of the first subparagraph, and where Article 10 of Regulation (EU) No 575/2013 applies, credit institutions referred to in Article 1, point (3), point (b) of this Directive that are permanently affiliated to a central body which supervises them under the conditions laid down in that same article shall be treated as subsidiaries of the central body.**

**For the purposes of the first subparagraph, insurance undertakings referred to in Article 1(3), point (a) of this Directive that are part of a group**

	<p><i>on the basis of a relationship referred to in Article 212(1)(c)(ii) of Directive 2009/138/EC which is subject to group supervision in accordance with Article 213(2), points (a), (b) and (c) of that Directive shall be treated as subsidiaries of the parent undertaking of that group.</i></p> <p><b>6</b></p> <p><i>7a. The exemption of paragraph 7 shall also apply to public interest entities subject to the requirements of this Article, unless that public-interest entity is a large undertaking falling under point (1)(a) of Article 2.</i></p>
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Article 29 a sets the correspondent content for the consolidated sustainability reporting.

## 2.SUSTAINABILITY TOPICS IN THE CSRD

<p>Article 29 b 2</p>	<p><i>The sustainability reporting standards referred to in paragraph 1 shall ensure the quality and relevance of reported information, by requiring that it is understandable, relevant, verifiable, comparable and is represented in a faithful manner. The standards shall avoid disproportionate administrative burden on undertakings, including by taking account to the greatest extent possible the work of global standard-setting initiatives for sustainability reporting as required by paragraph 3, point (a).</i></p> <p><i>The sustainability reporting standards shall, taking into account the subject matter of a particular standard:</i></p>
<p>Article 29 b 2 a</p>	<p><i>specify the information that undertakings are to disclose about the following environmental factors:</i></p> <p><i>(i) climate change mitigation, including emissions on scope 1, scope 2 and, where relevant, scope 3 greenhouse gas emissions;</i></p> <p><i>(ii) climate change adaptation;</i></p> <p><i>water and marine resources;</i></p> <p><i>(iv) resource use and circular economy;</i></p> <p><i>(v) pollution;</i></p> <p><i>(vi) biodiversity and ecosystems;</i></p>
<p>Article 29 b 2b</p>	<p><i>specify the information that undertakings are to disclose about the following social and human rights factors:</i></p> <p><i>(i) equal treatment and opportunities for all, including gender equality and equal pay for work of equal value, training and skills development, the employment and inclusion of people with disabilities, measures against violence and harassment in the workplace, and diversity;</i></p> <p><i>(ii) working conditions, including secure employment, working time, adequate wages, social dialogue, freedom of association, existence of work councils, collective bargaining, including the rate of workers covered by collective agreements, the information, consultation and participation rights of workers, work-life balance and health and safety;</i></p> <p><i>(iii) respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, including the UN Convention on Persons with Disabilities, the UN Declaration on the Rights of Indigenous Peoples, the International Labour Organization's Declaration on Fundamental Principles and Rights at Work and the ILO fundamental conventions, the European Convention of Human Rights, the revised European Social Charter, and the Charter of Fundamental Rights of the European Union.</i></p>
<p>Article 29 b</p>	<p><i>specify the information that undertakings are to disclose about the following governance factors:</i></p>

2 c	<p><i>(i) the role of the undertaking's administrative, management and supervisory bodies with regard to sustainability matters, and their composition, and their expertise and skills to fulfil this role or access to such expertise and skills;</i></p> <p><i>(i)a the main features of the undertaking's internal control and risk management systems, in relation to the sustainability reporting process;</i></p> <p><i>(ii) business ethics and corporate culture, including anti-corruption and anti-bribery, the protection of whistle-blowers and animal welfare;</i></p> <p><i>(iii) engagement of the undertaking to exert its political influence, including its lobbying activities;</i></p> <p><i>(iv) the management and quality of relationships with customers, suppliers and communities affected by the activities of the undertaking, including payment practices, especially with regard to late payment to SMEs;</i></p> <p><i>(v) the main features of the undertaking's internal control and risk management systems, in relation to the sustainability reporting and decision-making process.</i></p>
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