



Undertaking obligations re disclosures on internal investigations of corruption/ bribery events

GRI & ESRS requirements for reporting corruption incidents



GRI 205-3

The reporting organization shall report the following information:

- a. Total **number** and **nature of confirmed incidents** of corruption.
- b. Total number of **confirmed incidents** in which **employees** were **dismissed** or **disciplined** for corruption.
- c. Total number of **confirmed incidents** when **contracts with business partners** were **terminated** or **not renewed** due to violations related to corruption.
- d. **Public legal cases regarding** corruption brought against the organization or its employees during the reporting period and the outcomes of such cases.

Definitions/guidance:

Confirmed incident of corruption: incident of corruption that has been found to be substantiated. Confirmed incidents of corruption do not include incidents of corruption that are still under investigation in the reporting period.

Public legal cases regarding corruption can include current public investigations, prosecutions, or closed cases.

ESRS DR G2-6

36. The undertaking shall provide information on **legal proceedings** related to corruption or bribery during the reporting period.
37. The principle to be followed under this disclosure requirement is to provide transparency on legal proceedings relating to corruption or bribery incidents during the reporting period and the related outcomes.
38. The disclosure required by paragraph 36 shall include information about the following:
 - (a) the **main outcomes of legal proceedings** related to corruption or bribery against the undertaking or its employees, **concluded** during the reporting period, including sanctions and fines. This shall include the number of convictions and the amount of fines for violation of anti-corruption and anti-bribery laws;
 - (b) details of **ongoing legal proceedings** against the undertaking and its employees related to corruption or bribery;
 - (c) the **number of investigations** into and decisions in which **employees were dismissed or disciplined** for corruption or bribery-related incidents; and
 - (d) the **number of investigations** into and decisions relating to **contracts with business partners** that were **terminated** or **not renewed** due to violations related to corruption or bribery.
39. The undertaking shall disclose where it has insufficiencies in actions taken to address breaches in procedures and standards of anti-corruption and anti-bribery.

DR G2-3 also requires the number of reported allegations of corruption or bribery received through whistleblowing channels and the number of internal investigations launched in response to allegations or incidents relating to corruption or bribery.

GRI & ESRS requirements for reporting corruption incidents



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- a. Total **number** and **nature of confirmed incidents** of corruption.
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- c. Total number of **confirmed incidents** when **contracts with business partners** were **terminated** or **not renewed** due to violations related to corruption.
- d. **Public legal cases regarding** corruption brought against the organization or its employees during the reporting period and the outcomes of such cases.

Definitions/guidance:

Confirmed incident of corruption substantiated. Confirmed incidents of corruption that are still under investigation in the reporting period.

Public legal cases regarding corruption can include current public investigations, prosecutions, or closed cases.

Gap analysis

ESRS focuses on legal proceedings only and does not require reporting confirmed incidents of corruption detected by the undertaking itself

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38. The disclosure required by paragraph 36 shall include information about the following:
 - (a) the **main outcomes of legal proceedings** related to corruption or bribery against the undertaking or its employees, **concluded** during the reporting period, including sanctions and fines. This shall include the number of convictions and the amount of fines for violation of bribery laws;
 - (b) the **number of legal proceedings** against the undertaking and corruption or bribery;
 - (c) the **number of investigations** into and decisions in which **employees were dismissed or disciplined** for corruption or bribery-related incidents; and
 - (d) the **number of investigations** into and decisions relating to **contracts with business partners** that were **terminated** or **not renewed** due to violations related to corruption or bribery.
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Legal obligations and stakeholder expectations regarding self-disclosure



- A review of literature suggests that there is **no general legal duty** to self-disclose or report known or suspected corrupt activity, including to law enforcement bodies, but it is an increasing expectation of civil society, investors and other stakeholders
- Companies and directors may have **duties imposed** on them to disclose corrupt activities to auditors, shareholders or regulators **by particular local legislation or regulations** (e.g., in the UK under the Companies Act 2006 in respect of accounting/audit matters)
- In the EU, despite the range of anti-corruption instruments that apply across the region, only three countries (France, Germany and Italy) currently impose legal obligations on larger enterprises relating to the prevention and detection of corruption
- Self-disclosure **can result in more lenient treatment** in considering whether to bring charges, and in the consequences if charges are brought

Sources:

- [https://content.next.westlaw.com/practical-law/document/I8417d3f01cb111e38578f7ccc38dcbee/What-to-do-when-you-suspect-corruption-disclosure-obligations-and-enforcement-processes-in-the-UK-the-US-Australia-and-China?viewType=FullText&transitionType=Default&contextData=\(sc.Default\)&firstPage=true](https://content.next.westlaw.com/practical-law/document/I8417d3f01cb111e38578f7ccc38dcbee/What-to-do-when-you-suspect-corruption-disclosure-obligations-and-enforcement-processes-in-the-UK-the-US-Australia-and-China?viewType=FullText&transitionType=Default&contextData=(sc.Default)&firstPage=true)
- https://transparency.eu/wp-content/uploads/2021/04/Web_The_Prevention_of_Corruption_Due_Diligence_EU-Legislation.pdf
- https://www.transparency.org.uk/sites/default/files/pdf/publications/TIUK_OpenBusiness_WEB4.pdf
- <https://www.nbim.no/en/the-fund/responsible-investment/principles/expectations-to-companies/anti-corruption/>

Best practice guidance from Transparency International



- The company should explain how it addresses material findings of bribery and corruption. It should also **publicly disclose high-level results from incident investigations** and disciplinary actions against employees and third parties.
- Possible legal risks of publishing details of alleged breaches of bribery and corruption can include regulators making their own enquiries into the incidents, and third party contractors or purchasers seeking to terminate, suspend or declare void contracts on the basis of the company's potentially illegal conduct.
- Possible legal **risks can be mitigated by limiting** the publication of alleged breaches to **general information that does not include specific details** of the parties involved.
- If the company makes clear that the alleged breaches were promptly and thoroughly investigated and that appropriate disciplinary and remedial action were taken where necessary, this will help to demonstrate that the misconduct in question was confined to the specific perpetrators and was not systemic within the company.
- The company should **also consider** making a public commitment to **reporting material findings** of active bribery and corruption to its board and **to any relevant prosecutorial authority**, as appropriate. This will indicate to external stakeholders that genuine and material criminal misconduct found within the business is treated with the appropriate seriousness, and that the company actively engages with law enforcement to investigate bribery and corruption when they occur.

Review of reporting examples

205-3 Confirmed incidents of corruption

- EU companies across different countries and sectors already report on confirmed incidents of corruption in line with GRI 205-3
- The total number of reported cases is also disclosed (as per DR G2-3 para. 24c&d), in addition to those that have been confirmed
- The number of corruption incidents is sometimes combined with data on other types of incidents (e.g., harassment)
- There is less reporting on the nature of the corruption incidents

See the Annex for reporting examples

Arguments supporting inclusion of confirmed incidents of corruption in ESRS

- Increased stakeholder expectation for companies to report this information and to report it to any relevant prosecutorial authorities
- Reporting this information demonstrates effectiveness of corruption detection systems (as required by DR G2-3) and that such incidents are treated with the appropriate seriousness
- EU companies already report such incidents in line with GRI

Recommendations for changes to DR G2-6

- Require reporting of confirmed incidents of corruption in line with GRI
- To mitigate concerns about reporting this information, including related to possible legal risks:
 - Clarify in the implementation guidance the rationale for requiring this information
 - Limit requirements on reporting the nature of the confirmed incidents, such that only general information is provided, without specific details of the parties involved

Annex – Reporting examples of 205-3 on confirmed incidents of corruption

Reporting examples



Telefónica

Main indicators on complaints

	2020	2021
Complaints received	882	955
Substantiated complaints	385	389
Termination of employment measures taken as a result of substantiated complaints	126	152
Confirmed cases of corruption	1	0
Disciplinary measures taken or terminations of contract carried out in connection with confirmed cases of corruption	3	0
Cases of discrimination detected	3	0
Disciplinary measures or terminations of contract taken in relation to confirmed discrimination cases	2	0

VMED O2 UK from June to December 2021

	O2 UK (mobile operation)	Virgin Media UK (fixed operation)
Confirmed cases of corruption	0	0

Source: <https://www.telefonica.com/en/wp-content/uploads/sites/5/2022/03/consolidated-management-report-2021.pdf>

Reporting examples



PZU

[GRI 205-3]

In the entire PZU Group, 265 cases of corruption and fraud were identified in 2020. Three situations were reported in PZU and PZU Życie that may have involved corruption (security incidents). After the legal analysis of these incidents PZU decided not to submit notifications concerning the suspected commission of a crime. 65 cases of corruption and fraud were identified in [Alior Bank](#). One instance of corruption was reported to the law enforcement authorities in the [Pekao Group](#).

Source: <https://raportroczny2020.pzu.pl/en/risk-and-ethics/preventing-corruption-and-conflicts-interest#gri-gri-205-3>

Reporting examples



STRABAG SE

Confirmed incidents of corruption and action taken

- Total number and nature of confirmed incidents of corruption: 1 - In the 2021 reporting year, there was one confirmed incident of corruption. The incident is related to business relationships with subcontractors or suppliers and is classified as embezzlement. There were no incidents of corruption in relation to clients in the reporting period.
- Total number of confirmed incidents in which employees were dismissed or disciplined for corruption: 3 - The above-stated incident led to three terminations.

[More information on fair competition is available here.](#)

Source: https://www.strabag.com/databases/internet/_public/content.nsf/web/EN-STRABAG.COM-business_compliance.html

Reporting examples



NLB

GRI STANDARD, DISCLOSURE 205-3:

We report confirmed incidents of corruption and actions taken. According to **disclosure 205-3a** we report on 10 incidents in which employees who had committed fraud were dismissed or disciplined for corruption.

According to **disclosure 205-3b** we report 8 confirmed incidents in which employees were dismissed or disciplined for corruption. One person was dismissed and seven were issued with a written/verbal warning.

According to **disclosure 205-3d** we report that in 2016 there were no public legal cases regarding corruption brought against NLB d.d. or its employees during the reporting period.

Source: <https://www.nlb.si/corporate-social-responsibility-report-2016-3>

Reporting examples



EMD Group / Merck KGaA

	2018	2019	2020	2021 The Group	2021 thereof Merck KGaA, Darmstadt, Germany
Reported compliance violations					
Total number of reported compliance violations					
Number of reported compliance incidents	72	75	81	79	6
Number of confirmed cases	19	30	41	42	3
Confirmed cases by category					
Bribery and corruption	3	9	6	1	0
Violation of cartel laws and fair competition rules	1	0	0	0	0
Fraudulent actions against the Group	5	8	11	6	0
Other violations of our Compliance Principles for the relations with business partners	1	4	0	0	0
Other violations of our values, internal guidelines or legal requirements	9	9	24	35	3

Source: https://www.emdgroup.com/en/sustainability-report/2021/facts-figures/indicators/business-ethics.html?global_redirect=1&tabc=1e4

Reporting examples



Stora Enso

A total of 76 investigations of potential non-compliance cases were completed in 2020 (40 in 2019), also including open cases from previous years. Proven cases leading to disciplinary action, legal action and/or process improvements were identified in 28 (26) of the investigations.

Based on our assessments, 10 of the proven cases can be considered relating to corruption and/or fraud (9 in 2019). All these cases resulted in employee dismissal or disciplinary process. Two of the cases resulted in the termination of business relationships.

Source: https://www.storaenso.com/-/media/Documents/Download-center/Documents/Annual-reports/2020/STORAENSO_Annual_Report_2020.pdf#page=74

Reporting examples



Volvo

The Whistleblowing and Global Investigations function is an independent unit within Group Compliance. In 2021, Group Compliance received 121 concerns through several available reporting channels. All reports were investigated. We observed an increased activity compared to the previous year. Nine of the reported cases were categorized as suspected corruption or conflict of interest of which one was closed substantiated, with appropriate disciplinary and remediation actions taken.

Source: <https://www.volvogroup.com/content/dam/volvo-group/markets/master/investors/reports-and-presentations/annual-reports/annual-and-sustainability-report-2021.pdf#page=179>

Reporting examples



H&M Group

ANTI-CORRUPTION AND BRIBERY KEY DATA

INDICATOR ¹	GOAL	2021	2020	2019
Total reported incidents of potential non-compliance with the Code of Ethics (including reported corruption cases) – employees and business partners*		24, with 5 terminations and 3 written warnings 5 cases remain open into 2022, concerning 5 employees and 2 business partners ²	16, with terminations or written warnings in 16 cases	28, with terminations or written warnings in 26 cases
Reported incidents of potential non-compliance with the Code of Ethics (including reported corruption cases) – employees* ³		19, with 5 terminations and 1 written warning for employees	9, with terminations or written warnings for 11 employees	–
Reported incidents of potential non-compliance with the Code of Ethics (including reported corruption cases) – business partners* ³		5, with 0 terminations and 2 written warnings for business partners	8, with terminations or written warnings for 6 business partners	–
Code of Ethics e-learning completion rate – employees	90% annually	See footnote 4	60	See footnote 5

* Reviewed by the company's auditors through a limited assurance process.

1) Updated KPIs will be introduced from 2022, as the company further develops its risk identification and mitigation strategy.

2) Some cases involve more than one party, including one case that involves employees and business partners.

3) The company began reporting data for business partners and employees separately in 2020.

4) Due to the company updating its Ethics & Compliance and Anti-Corruption programme, 2021 data for this KPI will not be available until 2022.

5) Accurate data are not available for 2019, due to technical issues with our learning management system for that year.

Source: <https://hmgroupp.com/wp-content/uploads/2022/03/HM-Group-Annual-and-Sustainability-Report-2021.pdf>

Reporting examples

Shell

Code of Conduct

Shell employees, contractors and third parties can report any potential breaches of the Code of Conduct confidentially through several channels, including anonymously through a global helpline, operated by an independent provider. The three most frequent categories of alleged Code of Conduct breaches raised via the Shell Global Helpline in 2021 related to harassment, conflicts of interest and protection of assets. We maintain a stringent no retaliation policy to protect any person making an allegation in good faith.

IN 2021 THERE WERE:



1,479
reports to the Shell
Global Helpline



181
confirmed breaches of
the Code of Conduct



244
employees or
contractor staff subject
to disciplinary action



67
people dismissed



6.7
million counterparties
screened for trade
compliance, anti-
bribery, anti-corruption
and anti-money
laundering on an
ongoing basis



2,444
enhanced pre-
screenings for higher-
risk contracts

Source: https://reports.shell.com/sustainability-report/2021/_assets/downloads/shell-sustainability-report-2021.pdf

Reporting examples

Siemens

Compliance indicators ¹

	Fiscal year	
	2021	2020
Compliance cases reported	394	332
Disciplinary sanctions	121	188
<i>therein warnings</i>	62	90
<i>therein dismissals</i>	49	63
<i>therein other²</i>	10	35

1 Continuing and discontinued operations

2 Includes loss of variable and voluntary compensation components, transfer, and suspension

Source: <https://assets.new.siemens.com/siemens/assets/api/uuid:4806da09-01c7-40b1-af91-99af4b726653/sustainability2021-en.pdf>