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Log of draft explanations

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Environment

ID 350 – Gross risk

Question asked

ESRS E1 paragraph 20 b (ii) and 20 c (ii) make reference to "Gross" risk, yet "Gross Risk" (or comparable) is not included in the ESRS Glossary (i.e. is not clearly defined). Is it correct to say that climate risk and scenario analysis/assessments processes should be done on an inherent/gross (i.e. pre control/mitigation strategy) risk (not a residual/net risk - post control/mitigation) basis?

ESRS reference

ESRS E1 paragraph 20 b (ii), ESRS E1 paragraph 20 c (ii)

Background

ESRS E1 paragraph 20 b (ii) states that the undertaking shall describe the process to identify and assess climate-related impacts, risks and opportunities. This description shall include its process in relation to:

(b) climate-related physical risks in own operations and along the upstream and downstream value chain, in particular:

ii. the assessment of how its assets and business activities may be exposed and are sensitive to these climate-related hazards, creating **gross physical risks** for the undertaking.

(c) climate-related transition risks and opportunities in own operations and along the upstream and downstream value chain, in particular:

ii. the assessment of how its assets and business activities may be exposed to these climate-related transition events, creating **gross transition risks** or opportunities for the undertaking.

IRO-1 details the processes to identify and assess climate-related impacts risks and opportunities. It requires the assessment of gross material risks. This process allows to respond to SBM-3 which introduces the description of business resilience in relation to climate change. The actions and resources to mitigate material risks will lead to a residual, net risks. The climate risk and scenario analysis/assessments processes should be done on a gross basis.

Answer

As stated in ESRS E1 paragraph 20, the undertaking shall describe the process to identify and assess climate-related impacts, risks and opportunities. This assessment refers to gross physical and transition risks. The gross risks means that the undertaking should not consider the effects of the actions and resource to mitigate the material risk, when assessing it.

When disclosing the information required under ESRS E1 paragraphs 20 (b) and 20 (c), the undertaking shall explain how it has used climate-related scenario analysis, including a range of climate scenarios, to inform the identification and assessment of physical risks and transition risks and opportunities over the short-, medium- and long-term.

The assessment of material climate-related impacts, risks and opportunities is performed looking at the gross risk, i.e. before any mitigating actions. The same apply to scenario analysis when they are used to support the identification and assessment of material impacts, risks and opportunities.

ID 432 – Net zero target and GHG removals

Question asked

This paragraph mentions the words "after approximately 90-95% of GHG reduction". I have the following 2 questions regarding interpretation: 1. Does this mean that under ESRS, my claim to net-zero will not be recognized if I neutralize 20% of my total reduction target to reach net-zero through removal techniques. 2) Is capturing and storing CO2 emitted through my own operations considered to be "reduction" or "removal"?

ESRS Reference

ESRS E1 paragraph

ESRS EA paragraph 56 (a)

Glossary: Net-zero target definition, GHG removal and storage definition

Background

Regarding the net-zero target, ESRS E1 paragraph 60 states that in the case where the undertaking discloses a net-zero target in addition to the gross GHG emission reduction targets in accordance with Disclosure Requirement E1-4, paragraph 30, it shall explain the scope, methodologies and frameworks applied and how the residual GHG emissions (after approximately 90-95% of GHG emission reduction with the possibility for justified sectoral variations in line with a recognised sectoral decarbonisation pathway) are intended to be neutralised by, for example, GHG removals in its own operations and upstream and downstream value chain.

In the glossary, the net-zero target is defined as followed: Setting a net-zero target at the level of an undertaking aligned with meeting societal climate goals means (1) achieving a scale of value chain emissions reductions consistent with the depth of abatement at the point of reaching global net-zero in 1.5°C pathways, and (2) neutralizing the impact of any residual emissions (after approximately 90-95% of GHG emission reduction) by permanently removing an equivalent volume of CO2.

Regarding GHG removals, ESRS E1 paragraph 56 a) states that the undertaking shall disclose: (a) GHG removals and storage in metric tonnes of CO2eq resulting from projects it may have developed in its own operations, or contributed to in its upstream and downstream value chain.

In the glossary, GHG removal is defined as followed: Removals refer to the withdrawal of GHGs from the atmosphere as a result of deliberate human activities. These include enhancing biological sinks of CO2 and using chemical engineering to achieve long-term removal and storage. Carbon capture and storage (CCS) from industrial and energy-related sources, which alone does not remove CO2 in the atmosphere, can reduce atmospheric CO2 if it is combined with bioenergy production (BECCS). Removals can be subject to reversals, which are any movement of stored

GHG out of the intended storage that re- enters the surface and atmosphere. For example, if a forest that was grown to remove a specific amount of CO₂ is subject to a wildfire, the emissions captured in the trees are reversed.

Answer

As stated in the glossary, the net-zero target means that neutralizing the impact of any residual emissions (after approximately 90-95% of GHG emission reduction) by permanently removing an equivalent volume of CO₂. As such, neutralizing 20% with carbon removals would not qualify to a claim of achieving a net-zero target in accordance with ESRS definition.

Regarding the question whether capturing and storing CO₂ emitted through the undertaking's operations would be a removal or not (see definition of GHG removal and storage in Glossary), if the CO₂ is of biogenic origin, it represents a removal as, for example, BECCS (Bio Energy with Carbon Capture and Storage). If the CO₂ is of fossil origin, this does not represent a removal, but simply capture and storage of CO₂.

Social

ID 340 – Entitlement family-related leave

Question asked

Does the metric "family-related leave" presume that an employee is entitled to every concept of family-related leave?

ESRS Reference

ESRS S1-15 paragraph 93, ESRS S1 paragraph AR96, ESRS S1 paragraph AR97

Key terms: Work-Life Balance; Entitlement to take family-related leave

Background

Family-related leave is addressed in Disclosure Requirement S1-15, specifically ESRS S1 paragraph 93 requires a disclosure of "(a) the percentage of employees entitled to take family-related leave."

The relevant definitions can be found in ESRS S1 paragraph AR96, explaining that "family-related leave include maternity leave, paternity leave, parental leave, and carers' leave that is available under national law or collective agreements. For the purpose of this Standard, these concepts are defined as:

- a) maternity leave (also called pregnancy leave): employment-protected leave of absence for employed women directly around the time of childbirth (or, in some countries, adoption);
- b) paternity leave: leave from work for fathers or, where and in so far as recognised by national law, for equivalent second parents, on the occasion of the birth or adoption of a child for the purposes of providing care;
- c) parental leave: leave from work for parents on the grounds of the birth or adoption of a child to take care of that child, as defined by each Member State;

- d) carers' leave from work: leave for workers to provide personal care or support to a relative, or a person who lives in the same household, in need of significant care or support for a serious medical reason, as defined by each Member State."

Furthermore, ESRS S1 paragraph AR97 clarifies: "employees entitled to family-related leave are those who are covered by regulations, organisational policies, agreements, contracts or collective bargaining agreements that contain family-related leave entitlements and have reported their entitlement to the undertaking or the undertaking is aware of the entitlement."

Answer

Yes. Family-related leave includes maternity, paternity, parental and carers' leave that is available under national law or collective agreements (ESRS S1 paragraph AR96). Being entitled to take family-related leave would thus mean being entitled, based on national law or collective agreements to take maternity, parental and carer's leave; or paternity, parental and carer's leave. Employees entitled to family-related leave are those who are covered by regulations, organisational policies, agreements, contracts or collective bargaining agreements that contain family-related leave entitlements. The scope of family leave may vary across countries and such contextual information may be relevant to users.

Supporting material

Council Directive 92/85/EEC establishes the right to maternity leave and Directive 2019/1158 ensures minimum rights for paternity, parental and carers' leave (Member States have flexibility in how they implement these measures into national law). The definitions provided in Article 3 of the Directive are aligned with ESRS S1 paragraph AR96.

ID 341 – Conditions for Paternity, Maternity, Parental Leave

Question asked

What conditions must be met in order to consider an employee entitled to maternity- or paternity- or parental leave in the meaning of ESRS S1?

ESRS Reference

ESRS S1-15 paragraph 92, ESRS S1-15 paragraph 93, ESRS S1-15 paragraph AR96, ESRS S1 paragraph AR97

Key terms: Work-life balance; Family-related leave; Maternity leave; Paternity leave; Carers' leave

Background

The objective of Disclosure Requirement S1-15 is two-fold: "to provide an understanding of the entitlement and actual practices amongst the employees to take family related leave." (ESRS S1 paragraph 92). ESRS S1-15 paragraph 93(a) requires a disclosure of "(a) the percentage of employees entitled to take family-related leave." And "if all of the undertaking's employees are entitled to family-related leave through social policy and/or collective bargaining agreements, it is sufficient to disclose this in order to meet the requirements of paragraph 93a."

ESRS S1 paragraph AR97 explains where the entitlement to take family-related leave may derive from: "employees entitled to family-related leave are those who are covered by regulations, organisational policies, agreements, contracts or collective bargaining agreements that contain family-related leave entitlements and have reported their entitlement to the undertaking or the undertaking is aware of the entitlement."

Log of explanations

The relevant definitions, in line with EU legislation on work-life balance can be found in ESRS S1 paragraph AR96, explaining that “family-related leave include maternity leave, paternity leave, parental leave, and carers’ leave that is available under national law or collective agreements. For the purpose of this Standard, these concepts are defined as:

- (a) maternity leave (also called pregnancy leave): employment-protected leave of absence for employed women directly around the time of childbirth (or, in some countries, adoption);
- (b) paternity leave: leave from work for fathers or, where and in so far as recognised by national law, for equivalent second parents, on the occasion of the birth or adoption of a child for the purposes of providing care;
- (c) parental leave: leave from work for parents on the grounds of the birth or adoption of a child to take care of that child, as defined by each Member State;
- (d) carers’ leave from work: leave for workers to provide personal care or support to a relative, or a person who lives in the same household, in need of significant care or support for a serious medical reason, as defined by each Member State.”

Answer

Whether an employee is entitled to family-related leave depends on family-related leave provisions under national law or collective agreements (ESRS S1 paragraph AR96). Employees entitled to family-related leave are those who are covered by regulations, organisational policies, agreements, contracts or collective bargaining agreements that contain family-related leave entitlements. There are no specific thresholds regarding minimum time periods; the entitlement to take family-related leave does not depend on specific conditions. The scope of family leave may vary across countries and such contextual information may be relevant to users.

ID 352 – Work-related ill health and fatalities from ill health

Question asked

"With regard to the undertaking's employees, the number of days lost to work-related injuries and fatalities from work-related accidents, work-related ill health and fatalities from ill health": Why is "work-related" not mentioned in the last part of the datapoint (fatalities from ill health) but is attached to every other breakdown of this data point?

ESRS Reference

ESRS S1 paragraph 86, ESRS S1 paragraph 88(e)

Key terms: Days lost; Fatalities from work-related accidents; Fatalities from ill health

Background

ESRS S1 paragraph 86 summarises: “The undertaking shall disclose information on (...) the number of incidents associated with work-related injuries, ill health and fatalities of its own workforce.”

ESRS S1 paragraph 88 states: “The disclosure required by paragraph 86 shall include the following information, where applicable broken down between employees and non-employees in the undertaking’s own workforce: (e) with regard to the undertaking’s employees, the number of days lost to work-related injuries and fatalities from work-related accidents, work-related ill health and fatalities from ill health.” The definition for recordable work-related injury or ill health as provided in Annex II of the Delegated Regulation also does not repeatedly refer to “work-

related” ill health: “work-related injury or ill health that results in any of the following: i. death, days away from work, restricted work or transfer to another job, medical treatment beyond first aid, or loss of consciousness; or ii. significant injury or ill health diagnosed by a physician or other licensed healthcare professional, even if it does not result in death, days away from work, restricted work or job transfer, medical treatment beyond first aid, or loss of consciousness.”

Answer

The objective of this Disclosure Requirements defines the information to be disclosed under ESRS S1-14 and it describes that that fatalities to be disclosed are the results of work-related injuries and work-related ill health. Hence, ESRS S1 paragraph 88(e) refers to work-related ill health.

ID 356 - Sub-consultants Scope S1, S2

Question asked

Are sub-consultants included in own workforce, or are they to be included within the S2-disclosures?

ESRS Reference

ESRS S1 paragraph 4, ESRS S1 paragraph 5

Key terms: Own workforce; Workers in the value chain

Background

ESRS S1 paragraph 4: “This Standard covers an undertaking’s own workforce, which is understood to include both people who are in an employment relationship with the undertaking (“employees”) and non-employees who are either people with contracts with the undertaking to supply labour (“self-employed people”) or people provided by undertakings primarily engaged in “employment activities” (NACE Code N78). See Application Requirement 3 for examples of who falls under own workforce. The information required to be disclosed with regard to non-employees shall not affect their status pursuant to applicable labour law.”

ESRS S1 paragraph 5: “This Standard does not cover workers in the undertaking’s upstream or downstream value chain; these categories of workers are covered in ESRS S2 Workers in the value chain.”

Answer

The definition of non-employees only includes individual contractors supplying labour to the undertaking (self-employed people) and people provided by undertakings primarily engaged in employment activities (NACE Code N78). If sub-consultants (or sub-contractors) do not have a contract directly with the undertaking, they are not included in this definition, thus they shall be considered to be workers in the value chain (ESRS S2).

ID 365 – Significant Employment

Question asked

Please confirm this should be read as disclosing on countries with at least 10% of employees, not EITHER 50 OR 10%: "the total number of employees by head count, and breakdowns by gender and by country for countries in which the undertaking has 50 or more employees representing at least 10% of its total number of employees."

ESRS Reference

ESRS S1 paragraph 50(a), ESRS S1 paragraph AR54

Key terms: Significant employment; Key characteristics of employees

Background

ESRS S1-6 paragraph 50(a) requires the disclosure of the following information: "the total number of employees by head count, and breakdowns by gender and by country for countries in which the undertaking has 50 or more employees representing at least 10% of its total number of employees." ESRS S1 paragraph AR54 explains that the "number of employees in each country is also a key trigger for many information, consultation and participation rights for workers and workers' representatives, both in the Union labour acquis and in national law." This concept of significant employment is furthermore clarified in Disclosure Requirement S1-8. ESRS S1 paragraph 60(b) defines significant employment as "at least 50 employees by head count representing at least 10% of its total number of employees."

Answer

The breakdown must be disclosed for countries where both at least 10% of the undertaking's employees are employed and the number of employees is at least 50.

ESRS 1 para 50(a) requires different types of employee information: a) the total number of employees by headcount and b) breakdowns by gender and by country for countries in which the undertaking has 50 or more employees representing at least 10% of its total number of employees. As illustrated by Table 1 in AR 55 in ESRS 1, the gender breakdown applies to **all** employees, i.e. the minimum employment threshold at the country level for reporting does not apply to this. As illustrated in Table 2, the number of employees at the country level is to be reported, however, this reporting is mandatory only for countries in which both threshold conditions apply.

ID 376 – Definition Collective Bargaining

Question asked

Please provide a definition of collective bargaining agreement.

ESRS Reference

Disclosure Requirement S1-8

Key terms: Collective Bargaining Agreement

Background

Annex II of the Delegated Regulation defines collective bargaining as follows: “All negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more trade unions or, in their absence, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other, for: i. determining working conditions and terms of employment; and/or ii. regulating relations between employers and workers; and/or regulating relations between employers or their organisations and a workers' organisation or workers' organisations.”

Answer

Annex II of the Delegated Regulation provides a definition of collective bargaining based on ILO Convention 154 on Collective Bargaining:

All negotiations which take place between an employer, a group of employers or one or more employers' organisations, on the one hand, and one or more trade unions or, in their absence, the representatives of the workers duly elected and authorised by them in accordance with national laws and regulations, on the other, for:

- i. determining working conditions and terms of employment; and/or
- ii. regulating relations between employers and workers; and/or regulating relations between employers or their organisations and a workers' organisation or workers' organisations.

Collective bargaining agreements are understood as written agreements resulting from collective bargaining, as defined above (in line with ILO Collective Agreements Recommendation No. 91.)

ID 387 – Scope of ESRS S1-16

Question asked

ESRS S1-16 talks about employees but does not specify if it's only those that meet the inclusion criteria (at least 50 employees and 10% of total employment).

ESRS Reference

ESRS S1-6 paragraph 50(a); Disclosure Requirement S1-16

Key terms: Number of employees

Background

Disclosure Requirement S1-16, paragraph 95 states: “the undertaking shall disclose the percentage gap in pay between its female and male employees and the ratio between the remuneration of its highest paid individual and the median remuneration for its employees.” The key characteristics of the undertaking's employees are to be reported on in Disclosure Requirement S1-6, which serves as a basis for information required by other disclosure requirements. ESRS S1 paragraph 50(a) requires the disclosure of “the total number of employees by head count” as well as “breakdowns by gender and by country for countries in which the undertaking has 50 or more employees representing at least 10% of its total number of employees.”

Answer

Disclosure Requirement S1-16 and its accompanying Application Requirements AR 98-102 specifically refer to including **all** employees by headcount in the calculation. Undertakings **may** report additional information based on differentiating the pay gap by specific employee groups or country/segment, as specified in paragraph 98; however, there is no employment threshold specified for the voluntary reporting of this additional information.

Governance

ID 444 – Payment practices

Question asked

Regarding the DR on payment practices in G1-6, is the information on payment practices expected regarding SMEs only, or a wider range of suppliers?

ESRS reference

ESRS G1-6

Key terms: Payment practices; SMEs

Background

ESRS G1 paragraph 2 presents the list of matters covered in the standard. Paragraph (2) (b) clarifies “the management of relationships with suppliers, including payment practices, especially with regard to late payment to small and medium-sized undertakings” is covered.

Disclosure Requirement G1-6 paragraph 31 states that “*the undertaking shall provide information on its payment practices*”.

ESRS G1 paragraph 32 states that “The objective of this Disclosure Requirement (G1-6) is to provide insights on the contractual payment terms and on its performance with regard to payment, especially as to how these impact SMEs and specifically with respect to late payments to SMEs.”

Answer

The information on payment practices is expected to cover a wider range of suppliers, not limited to SMEs. The requirement to separately provide data on payments for SMEs was considered while developing the standard, but not finally retained, as this information may not be easily available. However, the list of “shall” datapoints in ESRS G1 33 has to be read in the context of the disclosure objective, which refer “especially” to SMEs. Undertakings are expected, as part of ESRS G1 para. 33 (d), to provide complementary information necessary to provide sufficient context and this may include information on payment practices specific for SMEs.