

Proposed methodology for determining material topics in sector-specific ESRS

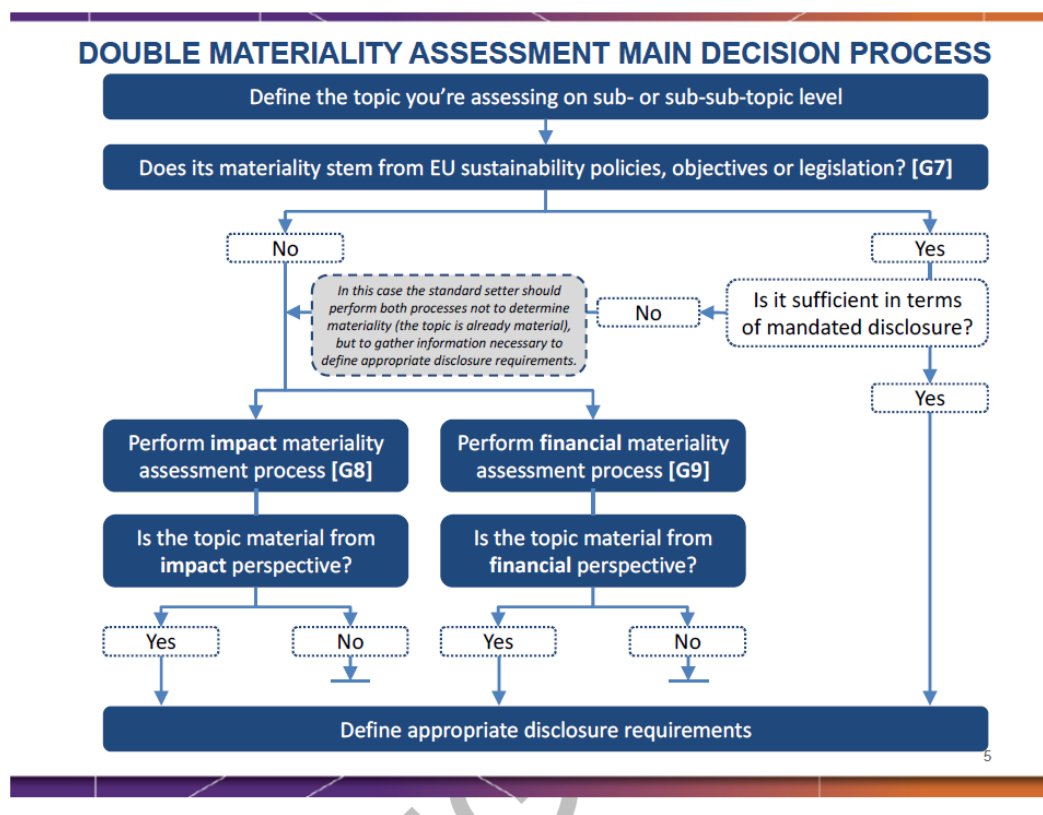
Background

- 1 The CSRD states that, in addition to a set of ‘sector-agnostic’ standards and disclosure requirements for Set 1 ESRS, EFRAG is to develop a set of ‘sector-specific’ standards. This paper proposes a methodology for developing sector-specific disclosure requirements, based on the CSRD.
- 2 This paper covers the following topics:
 - (a) the general ESRS approach to materiality determination and DR development;
 - (b) the ‘three layer’ approach and the relationship of sector-agnostic to sector-specific standards;
 - (c) the example of materiality determination in ‘working time’, a social subtopic under the CSRD with distinct sub-subtopic aspects.

General ESRS approach for materiality and disclosure requirement (DR) development

- 3 This methodology paper proposes to adopt the following steps to be followed by the standard setter when developing reporting requirements (see Figure 1):
 - (a) Step 1: define the matter (sub-topic or sub-sub topic) to be assessed for materiality. The CSRD defines an ‘exclusive’ list of sustainability factors categorized in E, S and G to be covered by the ESRS (cf. Art 29b (2)). Therefore, the disclosure topics to be developed by the standard setter must either be a sustainability factor explicitly mentioned in the CSRD or clearly fall under one of the sustainability factors as noted in the CSRD.
 - (b) Step 2: analyze EU sustainability policies, objectives or legislation that relate to the matter under scrutiny. As there may be numerous relevant policies, objectives or legislation, an analysis needs to be done of whether they contain clear mandates for sustainability reporting – examples being the SFDR, Taxonomy Regulation and the [draft] CSDDD. If this is the case, EFRAG should design appropriate disclosure requirements. If this is not the case, the matter addressed by the policy, objective or legislation should be subject to the ‘double materiality’ analysis outlined in step 3.
 - (c) Step 3: If the topic is determined in Step 2 to not be ‘EU policy material’, because the analysis of ‘policies, objectives or legislation’ does not identify a direct mandate for disclosure under the CSRD/ESRS, an additional two procedures are to be followed:
 - (i) Assessment of the topic from an impact materiality perspective
 - (ii) Assessment of the topic from a financial materiality perspective
 - (d) If the answers to either 2), 3a) or 3b) are positive, appropriate disclosure requirements are to be developed.

Figure 1



The three-layer approach: levels of applicability

4 While the guideline above outlines the general approach to materiality assessment for the standard setter, EFRAG has also adopted a three-layer approach to the scope of specific disclosure requirements. Disclosure requirements should be tailored to the 'layer' in which a sustainability topic is material:

- (a) Sector agnostic – applicable to all undertakings
- (b) Sector specific – applicable to undertakings in a specific sector
- (c) Entity specific – applicable only to a specific undertaking.

5 The 'layer' to which 'EU policy materiality' applies should be apparent from the mandate of that policy, objective or legislation:

- (a) Sector-agnostic – applicable to undertakings regardless of which sector they are in
- (b) Sector-specific – applicable only to undertakings in a specific sector(s).

6 If the first is the case, addressing this topic in a sector-agnostic standard (i.e. Set 1) is necessary, if the second is the case, then the topic will have to be addressed in one or more sector-specific standards.

7 In addition to the appropriate layer defined in the 'EU policy materiality' procedure outlined above, the appropriate layer for DRs based on impact materiality and financial materiality is also to be determined based on the following criteria:

- (a) Sector agnostic – applicable to all undertakings – if a topic is material for the majority of undertakings

- (b) Sector-specific – applicable to all undertakings in a sector – if a topic is material for the majority of undertakings in that sector
 - (c) Entity specific – applicable to a specific undertaking – if a topic is material for that undertaking but not for the majority of undertakings (overall or in that sector).
- 8 A key issue for the functioning of this approach is the definition of sectors. If a sector is too ‘broad’, then matters which are material for undertakings in a portion of that sector (sub-sector) may nevertheless not be material for a majority of undertakings in the broad sector; the consequence would be that the topic may ‘fall’ to the entity specific level and thus not be covered in the sector-specific standard. An example is the sector ‘transport’ which has at least five distinct sub-sectors: road transport, rail transport, air transport, water transport and transport infrastructure. To illustrate this concept: a number of these sub-sectors have specific working-time legislation applying to them or have specific impact or financially material issues. In the case of working time, for example, there is specific working-time legislation for the three (sub)-sectors rail, road and sea transport. In the case where there are distinct sub-sectors within a sector, the materiality of the sustainability matter is checked at the sub-sector level and if common with other sub-sectors within that sector it can be combined in a different / additional chapter to the main standard for the sector.

The three-layer approach: levels of applicability

- 9 This methodological approach assumes that Set 1, of topical standard, as resulting from the ongoing re-deliberation process following the public consultation, contains DRs that are ‘sector-agnostic’, i.e. material for the majority of the undertakings across all the sectors.
- 10 The three steps defined above would be applied to identify (sub-/sub-sub-) topics which are material at the sectoral level:
- (a) The topic is material due to sector-specific EU sustainability policies, objectives or legislation and there is a clear mandate for reporting in the ESRS;
 - (b) The topic is material for the majority of undertakings in that sector:
 - (i) From an impact materiality perspective and/or
 - (ii) From a financial materiality perspective.
- 11 If a determination is positive for either 10a, 10b(i) or 10b(ii), the topic should be included in the sector-specific standard, with two options:
- (a) As an additional disclosure requirement in case the topic is not covered by the sector-agnostic ESRS, or
 - (b) As application guidance to the relevant disclosure requirements in sector-agnostic standards.

Methodology to identify disclosures in the sector-specific standards

- 12 In a series of sectoral workshops, a set of SASB-based financially material topics and possible disclosure requirements have been validated. Furthermore, workshop participants have been asked to give input on a number of questions, including identifying sector-specific legislation and initiatives and material issues from either a financial or impact materiality perspective.
- 13 In order to supplement the financial materiality perspective in sector-specific standards, it is proposed that two further steps be performed, to ensure a consistent and full consideration of social, environmental and governance matters:
- (a) An inventory of sector-specific legislation and initiatives should be made. Examples of sector-specific legislation include the Road Transport Working Time Directive, the Conflict Minerals Regulation, and the Timber Regulation. These should be

examined for a reporting mandate and considered as part of the impact and financial materiality assessment process.

- (b) An inventory of sector-specific material impacts should be made and, based on the SASB disclosures, any gaps in the analysis of sector-specific risks and opportunities should be filled.

14 The following sources should be drawn up for these two inventories and input for the development of sector-specific disclosure requirements and application guidance:

- (a) DG EMPL and, if appropriate, the relevant DGs for the specific sector (e.g. DG MOVE for transport, DG AGRI for agriculture)
- (b) The database on the sectoral social dialogue should be consulted for the main impacts identified
- (c) The social partners (European sectoral trade unions and employers' associations) should be consulted
- (d) Sector-specific reporting standards (e.g. GRI Oil+Gas, Coal, Agriculture exposure draft)
- (e) Sector-specific initiatives (tripartite, bipartite, unilateral)
- (f) Data analysis
 - (i) Own workforce e.g. Eurofound Working Conditions Survey, EU-OSHA ESENER survey – note that these generally only cover 19 NACE-one digit sectors
 - (ii) Other data sources

(g) Risk assessments prepared by financial institutions/investors

(h) Relevant academic studies.

15 A minimum of two additional workshops should be organized for each sector:

- (a) a workshop with GRI (for sectors where GRI has developed a sector-specific standard or has made significant progress in developing one)
- (b) a workshop to verify/discuss the two inventories of sector-specific EU legislation, policies + initiatives and of material topics and related impacts
- (c) a workshop to discuss the draft sector-specific standard.

16 An effort should be made to ensure that the relevant stakeholders (e.g. the social partners in sectoral social dialogues) are informed of the workshops significantly ahead of time and that the barriers of entry to participation in the workshops are low.

17 In order to effectively tap the knowledge of stakeholders and experts, a questionnaire should be sent to the participating stakeholders prior to the workshop on material topics. This questionnaire would focus on key sector-specific EU policies, objectives and legislation, material sector-specific topics, and identification of relevant studies and data. The workshop would start with a preliminary analysis of the input of stakeholders and experts to kick off the discussion.

18 **Materiality determination: the example of working time** Working time is a social sub-topic specifically mentioned in the CSRD. However, 'working time' has a number of dimensions which can be seen as sub-sub-subtopics:

- (a) excessive working time (generally seen as an average of more than 48 hours' work in a specific reference period);
- (b) evening and night work, work on weekends and holidays;
- (c) adequate breaks during working days and between working days;

- (d) split shifts (e.g. division of the workday in two or more parts with extensive breaks in between);
- (e) adequate advance notice of work schedules;
- (f) seasonal work;
- (g) working time arrangement in employment contract – full-time, part-time, zero-hours contract.

EU policies, objectives and legislation

- 19 The (sub)topic ‘working time’ is included in the list of social sustainability issues to be reported on in the CSRD as a key aspect of working conditions. As summarized on the DG EMPL website, the topic ‘working time’ clearly qualifies as ‘EU policy, objective or legislation’.
- 20 Minimum standards for working time are set out both in sector-agnostic legislation (the Working Time Directive (2003/88/EC)) and sector-specific legislation.

Working Time Directive

The right to fair working conditions is set out in:

- the [European Pillar of Social Rights](#)
 - **Principle 10.: Healthy, safe and well-adapted work environment and data protection:** Workers have the right to a high level of protection of their health and safety at work. [...]
- and in the [Charter of Fundamental Rights of the European Union](#)
 - **Article 31: Fair and just working conditions**
 1. Every worker has the right to working conditions which respect his or her health, safety and dignity.
 2. Every worker has the right to limitation of maximum working hours, to daily and weekly rest periods and to an annual period of paid leave.

The EU’s [EU’s Working Time Directive \(2003/88/EC\)](#) requires EU Member States to guarantee the following rights for all workers:

- a limit to weekly working hours
 - the average working time for each seven day period must not exceed 48 hours, including overtime;
 - depending on national legislation and/or collective agreements, the 48 hour average is calculated over a reference period of up to 4, 6 or 12 months
- a rest break during working hours if the worker is on duty for longer than 6 hours
- a minimum daily rest period
 - in every 24 hours a worker is entitled to a minimum of 11 consecutive hours of rest
- a minimum weekly rest period
 - for each 7-day period a worker is entitled to a minimum of 24 uninterrupted hours in addition to the 11 hours’ daily rest
- paid annual leave of at least 4 weeks per year
- extra protection in case of night work

- average working hours must not exceed 8 hours per 24-hour period,
- night workers must not perform heavy or dangerous work for longer than 8 hours in any 24-hour period,
- night workers have the right to free health assessments and, under certain circumstances, to transfer to day work.

21 Due to the special working time requirements of the transport (sub)sectors, sector-specific working time legislation has been implemented for air, rail, sea and road transport.

Air

Minimum standards for working time in the civil aviation sector are laid down in an EU Directive ([2000/79/EC](#)). Implementing an agreement between the main employer and employee organisations at European level, the directive provides for:

- a maximum annual working time of 2000 hours, with the total flight time limited to 900 hours, spread as evenly as practicable throughout the year
- a certain number of days free of all service (7 days/month and at least 96 days per year)
- at least four weeks' paid annual leave
- a free health assessment before employees are assigned, and then at regular intervals
- an obligation on the employer to adapt the pace of the work to the worker
- health and safety protection appropriate to the nature of the work.

Rail

Working time conditions are defined by a Directive ([2005/47/EC](#)), which implements an agreement between the social partners in the various sectors at European level. The agreement entitles workers to a daily rest period of 12 consecutive hours and breaks of between 30 and 45 minutes. It limits daily driving time to 9 hours on a day shift and 8 hours on a night shift. It also gives employers greater flexibility. Under exceptional circumstances, they can shorten the daily rest periods to 9 hours instead of the 11 provided for in the Working Hours Directive.

Sea

Working times for seafarers on ships registered in the territory of an EU Member State and ordinarily engaged in commercial maritime operations are regulated by an agreement reached between maritime employers and labour at the European level in 1998. An EU Directive ([1999/63/EC](#)) implements this agreement, giving it the force of law in the EU.

The agreement sets minimum standards. More favourable determination of seafarers' hours is possible at the national level, by collective agreement. The working hours standard for seafarers under the European agreement is an 8-hour day, with one day of rest per week and rest on public holidays. The limits on hours of work or rest are *either*

maximum hours of work which shall not exceed:

- 14 hours in any 24-hour period; and
- 72 hours in any 7-day period;

Or minimum hours of rest which shall not be less than:

- 10 hours in any 24-hour period; and
- 77 hours in any 7-day period.

Hours of rest may be divided into no more than two periods, one of which shall be of at least six hours in length, and the interval between consecutive periods of rest shall not exceed 14 hours. Night work is generally banned for seafarers aged under 18.

There are some exceptions to all of these provisions, notably in the case of an emergency at sea.

The International Labour Organisation's Maritime Labour Convention, 2006 sets minimum global standards for seafarers' working conditions. To ensure its application within the EU, the European maritime social partners signed a further agreement in 2008. This is implemented by a new Directive, which amongst other things amends the previous Directive ([1999/63/EC](#)). However, it does not change the core provisions summarised above.

Under the current provisions, minimum annual leave for EU seafarers is to be calculated on the basis of a minimum of 2.5 calendar days per month of employment and pro rata for incomplete months.

Road

An EU Directive ([2002/15/EC](#)) sets the framework for the organisation of working time for mobile workers in road transport activities and self-employed drivers.

- 22 The conclusion from the assessment of 'EU policies, objectives and legislation' is that there is both a sector-agnostic dimension (reasonable working time as a 'human right' and an aspect of decent work, as well as a sector-agnostic Working Time Directive which implements this right) and sector-specific working time regulations. However, the working time legislation does not clearly define a reporting mandate for undertakings. Therefore, a double-materiality analysis ('Step 2' under the methodology section above) should be performed to determine which working time sub-subtopics should be included in sector-specific standards.

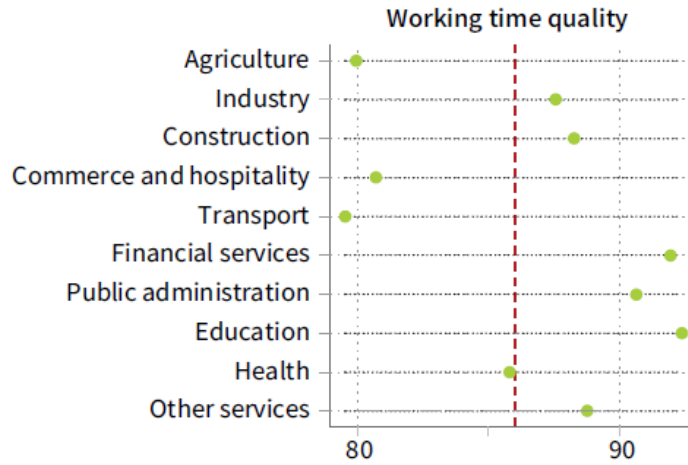
Working-time: impact materiality

- 23 This section describes a number of sources which could be used to analyse impact materiality.

Quantitative data

- 24 A number of large-scale individual or company-level surveys exist in the area of working conditions, including Eurofound's Working Conditions Survey and European Company Survey, EU-OSHA's ESENER data base, etc. As demonstrated by various studies, the materiality of the different aspects of working time varies widely across sectors.
- 25 Eurofound (2020: 20) lists a number of critical issues in working time, which it includes in its 'working time quality' index:
- (a) Duration
 - (i) Number of working hours per week
 - (ii) Long working days (10 hours/day or more).
 - (b) Atypical working time
 - (i) Night work
 - (ii) Saturday work
 - (iii) Sunday work
 - (iv) Shift work.
- 26 Eurofound's working time quality index shows that, based on its sectoral classification scheme, Agriculture, Commerce/hospitality and Transport are the sectors with the lowest working time quality. It should be noted that 1) this is an

overall index, thus specific aspects of working time may be particularly material in some of the other sectors, and 2) the Eurofound sectoral classification is less granular than the EFRAG sectoral classification, and thus may obscure particularly material working time issues that exist in more narrowly defined sectors.



Source: Eurofound (2020: 22)

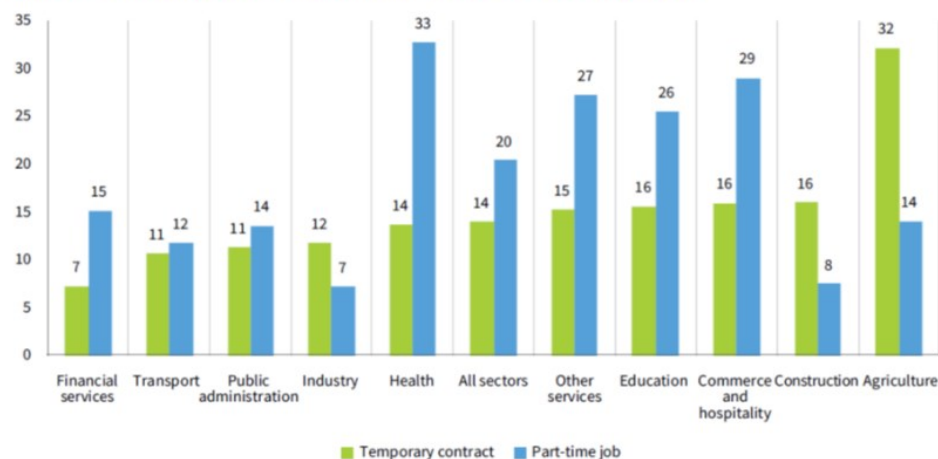
27 Figure 3: Frequency of working time issues by 1-Digit NACE Code

	Night work	Sunday work	G.T. 10 hour day	L.T. 11 hour break	interfere with family life
Sector (1-digit NACE)					
Agriculture, forest, fisheries	19%	55%	42%	30%	38%
Mining and quarrying	28%	35%	27%	21%	33%
Manufacturing	22%	20%	31%	18%	35%
Electricity, gas, steam	28%	32%	40%	20%	38%
Water supply; sewer	22%	25%	33%	18%	33%
Construction	9%	17%	40%	24%	37%
Wholesale and retail	8%	30%	27%	19%	37%
Transportation and storage	37%	40%	39%	28%	41%
Accommodation and food service	43%	69%	39%	34%	43%
Information and communication	24%	34%	49%	31%	39%
Financial and insurance	7%	12%	34%	18%	37%
Real estate activities	8%	22%	33%	18%	34%
Professional, scien	16%	24%	42%	26%	37%
Administrative and support services	20%	29%	28%	22%	33%
Public administration	23%	29%	35%	22%	32%
Education	9%	20%	26%	17%	33%
Human health and social services	29%	50%	36%	25%	40%
Arts, entertainment	25%	53%	31%	27%	32%
Other service activities	10%	23%	27%	17%	33%

Source: Own analysis of Eurofound Working Conditions Survey 2015

- 28 Figure 3 displays a more detailed own analysis of the frequency of working time issues as identified in the Eurofound 2015 Working Conditions Survey. This analysis shows that the distribution of working time issues across 19 1-digit NACE codes varies greatly. For example, night work is an issue for roughly two fifths of workers in transportation and accommodation/food services; it is rare in financial services, real estate, construction and education. Sunday work is also quite prevalent in accommodation/food services, arts/entertainment, agriculture and human health/social services. However, each sector seems to have at least one working time issue of concern; e.g. in finance/insurance long working days (greater than 10 hours) are an issue for one third of workers. When asked if working time interferes with their family life at least “sometimes”, the variance across sectors is lower; it is an issue for at least one third of workers in each sector.
- 29 The Eurofound study also examines the distribution of part-time and temporary employment across sectors, with temporary contracts being particularly prevalent in Agriculture, and part time employment in Health, Commerce/hospitality, Education and Other Services.

Figure 9: Proportion of part-time and temporary employment by sector, 2015 (%)



Note: This figure displays the share of non-standard forms of contract entered into by employees by sector.
Source: EU-LFS 2015

Source: Eurofound 2020:

- 30 Note that part-time work and zero-hours contracts are also an aspect of working time, which is included in the exposure draft ESRS S1-7 DR.

Sectoral studies

- 31 In addition to quantitative studies, sector-specific studies can verify and illuminate the relevance of quantitative data as well as identify additional material aspects. For example, a study of driver fatigue in the road transport sector (Vitols/Voss 2021) identifies short notice of scheduling as a major factor impacting working conditions and work-life quality, as well as night and weekend work and long hours (aspects identified by the Eurofound study above. UNI Europa identifies “zero-hour contracts, part-time work, split shifts and night-time cleaning” as particularly impacting the quality of work and work-life balance in the building cleaning sector.

Sectoral social dialogue

- 32 The sectoral social dialogue, which is run by DG EMPL, has been running for more than 20 years and brings together the European and national social partners in specific sectors (currently 43 sectors are covered. These dialogues identify particularly pressing issues in their sector, and in many cases studies have been commissioned as input into the dialogues. There is an online database of the meetings, documents and results of the sectoral social dialogues.
- 33 Specific aspects of working time have been identified by a number of these dialogues as particularly pressing issues, for example:
- (a) Agriculture: the situation of seasonal workers
 - (b) Construction: seasonal and variable demand
 - (c) Industrial cleaning: nighttime and split-shift work
 - (d) Road transport: EU driving and rest time rules.

Financial materiality

- 34 This section describes a number of sources which could be used to analyse financial materiality.
- 35 An analysis of SASB indicates a lack of specific disclosure requirements on working time (indicators on time lost due to health and safety issues is not directly relevant here). Drawing on the data used for the analysis of impact materiality, an assessment of sector-specific financial impacts of certain risks and dependencies

could be. For example, business models in certain sectors may be built on the availability of certain kinds of working-time arrangements (seasonal labor, night work, flexible shifts, split shifts, etc.). The acute lack of (post)-Covid labour availability in certain sectors where working time has been identified as an issue from an impact-materiality perspective (transport, hospitality,...) illustrates such a dependency. Inputs from a financially-material perspective from the sectoral workshops that have been organized to date by EFRAG could indicate whether working time as a subtopic and its respective sub-subtopics are financially material issues.

In summary

- 36 Working time is a sub-topic under the CSRD, under which several specific sub-subtopics can be identified (quantity of work, rest periods, scheduling, etc.). Although there is both sector-agnostic and sector-specific legislation (Working-Time Directive and sector-specific legislation in transport sub-sectors), these do not contain clear mandates for sustainability reporting disclosure requirements. However, an analysis of data and studies shows that working time is a topic with impact materiality which is particularly concentrated in specific sectors (particularly agriculture, commerce/hospitality, transport). On this basis, the sector-agnostic standard ESRS S1 should ensure that 'working time' is included as a subtopic which undertakings need to consider in the due diligence procedure (ESRS S1-1 through S1-6) and in the description of own workforce (ESRS S1-7 breakdown of employees full time/part time/zero hours contracts and ESRS S1-8 most important types of non-employee workers in own workforce). Furthermore, the inclusion of disclosure requirements on specific aspects of working time should be considered for sector-specific standards for the sectors mentioned above (agriculture, commerce/hospitality, transport).

Conclusion

- 37 This working paper has described the guidance provided by the CSRD and ESRS 1 for an approach to assessing materiality for topics for sector-specific standards, using the example of working time. A number of inputs have been proposed for an appropriate methodology, including an analysis of sector-specific policies, objectives and legislation, and an analysis of quantitative data, qualitative studies and input from the sectoral social dialogues. A final step would be to assess if the material sub-subtopics identified should be included as application guidance to sector-agnostic standards, or as new disclosure requirements in the sector-specific standards. This approach could be repeated for the different social, environmental and governance subtopics.

Questions to EFRAG SEB members and observers

- 38 Do you agree with the methodology proposed in this paper?
- 39 Do you have any specific suggestion on how to improve the proposed methodology?