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ESRS S1 - Diversity Issue paper

Objective

- 1 The objective of this paper is to analyse and propose enhanced disclosure requirements derived from the revised text of the CSRD.
- 2 In addition, this paper summarises and addresses the feedback received from the public consultation on diversity matters.

Background

- 3 The objective section of the draft ESRS S1 defines the social and human rights factors covered by the standard, as defined in Article 29 b) of the CSRD. The factors included in the objective structure the implementation disclosures (policies, targets, action plans and resources). The current draft version of ESRS S1 describes in para 2 b) vii) discrimination on the basis of gender, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation and in para 2 b) xi) inclusion of persons with disabilities.
- 4 The revised Art 29 b) 2 b) i) includes **diversity** within the social and human rights factors to be disclosed by the undertaking, which is a change from the draft CSRD. Recital 43 provides some guidance on how to address diversity in the ESRS: *“Reporting standards that address diversity should among other things specify information to be reported on gender diversity at top management and the number of members of the under-represented sex on their boards”*.
- 5 In addition, Recital 43 describes diversity and inclusion as two aspects of the same concept. Therefore, diversity indicators are to be closely linked to the sustainability information required on inclusion.
- 6 EU legislation specifies a number of dimensions of diversity: gender, racial or ethnic origin, nationality, religion or belief, disability, age and sexual orientation. These dimensions apply to the principle of equal treatment which is a general principal of the European law, it presupposes that comparable situations or parties in comparable situations are treated in the same way.

Analysis of feedback from the public consultation

- 7 The main comments received through the public consultation are summarised as follows:
 - (a) Lack of diversity indicators. Some of the respondents concluded that diversity should also cover ethnicity whilst others indicated a lack of diversity indicators in general. A respondent suggested “proportion of women in leadership with disciplinary responsibility” as a diversity indicator.

- (b) Concerns regarding specific jurisdiction's legislation on data privacy for own workforce was raised for both EU member states and worldwide. An example of prohibitions in existing law is France which applies to quantitative indicators and measurable targets but not for policies which can be adopted with regards to the following dimensions: race or ethnic, nationality, religion or belief, disability, age or sexual orientation, in accordance with a 2007 Constitutional Council decision, GDPR And Data Protection Act. Another respondent suggests the use of "may" for additional indicators on diversity, such as ethnicity, given the jurisdiction specific laws.
- (c) Concerns with burdensomeness. A small number of respondents mentioned the difficulties in gathering data from the multiple entities of a group.

EFRAG Secretariat analysis

Current ESRS

- 8 ESRS G1 Governance, risk management and internal control addresses diversity in relation to the administrative, management and supervisory bodies. The relevant disclosure requirements are summarised below:
 - (a) ESRS G1-4 Diversity policy. This disclosure requirement requires information on the diversity policy with regard to gender, age, minority or vulnerable groups, educational and professional background.
 - (b) ESRS G1-9 Composition of the administrative, management and supervisory bodies. The diversity dimensions required are gender, age group and any other relevant diversity indicators.
- 9 Therefore, ESRS G1-4 requires a policy on a full range of diversity characteristics whereas the mandatory performance measures in ESRS G1-9 target gender and age group.
- 10 ESRS S1 addresses diversity in the following disclosure requirements described below:
 - (a) The objective section of ESRS S1 defines the social and human rights factors within the scope of the standard. Specifically, para 2 b) vii) describes "discrimination on the basis of gender, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation."
 - (b) ESRS S1-1 Policies related to own workforce. These are the policies that mirror the factors described in para 2 of ESRS S1 (see 10 a) above). In particular, AG 12 b) i) defines policies in relation to discrimination on the basis of gender, racial or ethnic origin, nationality, religion or belief, age or sexual orientation.
 - (c) ESRS S1-7 Characteristics of the undertaking's employees. As per para 51 a) the undertaking is required to provide a breakdown of gender for: permanent, temporary, non-guaranteed hours, full-time and part-time employees.
 - (d) ERS S1-9 Training and skills development indicators. The information on "the average number of training hours per person in own workforce by employee category and gender" is required in para 57 b).
 - (e) ESRS 1-13 Work-life balance indicators. The performance indicators requested in para 69 a)-c) are to be disclosed by gender. These indicators are: employees

taking family-related leave; and return to work and retention rate after taking maternity, paternity and/or parental leave.

- (f) ESRS 1-16 Pay gap between women and men. The disclosures on para 81 require both the quantitative calculation of such gap together with qualitative information on actions to reduce the gap and contextual information.
- (g) ESRS 1-18 Discrimination incidents related to equal opportunities. Para 87 describe which incidents shall be disclosed on the grounds of diversity "... the undertaking shall include, with respect for the relevant privacy regulations, work-related incidents of discrimination on the grounds of gender, racial or ethnic origin, nationality, religion or belief, disability, age, sexual orientation, or other relevant forms of discrimination involving internal and/or external stakeholders across operations in the reporting period. Discrimination can also include harassment".
- (h) ESRS 1-19 Employment of persons with disabilities. The information to be disclosed, refer to para 93 a)-c) is summarised below: i) the percentage of persons with disabilities within the own workforce, the total number of own workers with disabilities broken down by gender and any contextual information. Therefore, this particular indicator provides both data on the disability and gender characteristics.

Other reporting frameworks and guidance

- 11 GRI universal and topical standards have been revisited to identify potential additional disclosures on diversity for ESRS S1, taking into account that disclosures specifically for governance bodies are within the scope of ESRS G1. The additional datapoint on the equivalent diversity business card type of disclosures is GRI Disclosure 405-01 Diversity of governance bodies and employees. Para b. of the requirements, this is copied below:
 - (a) Percentage of employees per employee category in each of the following diversity characteristics:
 - i. Gender;
 - ii. Age group: under 30 years old, 30-50 years old, over 50 years old;
 - iii. Other indicators of diversity where relevant (such as minority or vulnerable groups)
- 12 SASB's Employee Engagement, Diversity & Inclusion include the following indicator for a number of sectors¹. The indicator is "Percentage of gender and racial/ethnic group representation for management, technical staff, and all other employees". Additionally, for a small number of sectors², the indicator is "Percentage of employees that are foreign nationals (or H-1B visa holders)". The latter cannot be seen as a sector-agnostic indicator.
- 13 The Workforce Disclosure Initiative includes a number of voluntary indicators for "Monitoring diversity and inclusion". Most of the indicators fall into the category of

¹ The SASB sectors covered are: E-commerce, Multiline and Speciality Retailers & Distributors, Asset Management & Custody Activities, Investment Banking & Brokerage, Advertising & Marketing, Professional & Commercial Services, Internet Media & Services, Software & IT Services and Hardware

² The SASB sectors covered are: E-commerce, internet media & services, semiconductors and software & IT services

implementation measures (policies, targets, action plans and resources) with the exception of the following quantitative indicators:

- (a) Provide the percentage of the company's total direct operations workforce within each age category;
- (b) Provide the percentage of the company's total direct operations workforce by race or ethnicity;
- (c) Provide the percentage of the company's total direct operations workforce in leadership positions by gender;
- (d) Provide the percentage of the company's total direct operations workforce in leadership positions by race or ethnicity.

- 14 The Dutch quota and target ratio Act³ contains two measures to promote more diversity in the boardrooms of Dutch companies: an appointment quota for the supervisory boards of listed companies and target ratios for the large public and private liability companies. The legislation also includes the following indicators for the so-called 'subtop', next to the management and supervisory board levels: "number of women in the subtop (companies are free to define their subtop)" and "target male/female ratio for subtop" and "target year for target ratio for subtop". Undertakings are encouraged to use the first and second levels below the board for subtop, however it is not prescribed by the legislation.

Analysis – Proposed approach

- 15 The conclusions of the research performed and the detailed analysis of the final CSRD text are as described below.
- (a) Diversity is a concept that includes a number of dimensions as described in para 5. Therefore, one issue for consideration for the proposal is to differentiate which diversity dimensions should be included in the ESRS S1 disclosure requirements and datapoints.
 - (b) The definition of top management is not well established in current European legislation and, where it exists, it varies at member state level. These differences are partially driven by the diversity of board systems in company law, particularly by the distinction between single-tier and two-tier board systems. Drawing on the Dutch legislation, top management is to be defined as first and second levels below the executive board /board.
 - (c) Implementation measures (ESRS S1-1 to ESRS S1-6). The scope of social and human rights factors for the policies, targets, action plans and resources are determined in the objective paragraph (paragraph 2). CSRD Art 19 a 2

³ 'Wet van 29 september 2021 tot wijziging van Boek 2 van het Burgerlijk Wetboek in verband met het evenwichtiger maken van de verhouding tussen het aantal mannen en vrouwen in het bestuur en de raad van commissarissen van grote naamloze en besloten vennootschappen' Staatsblad 2021 495 - <https://zoek.officielebekendmakingen.nl/stb-2021-495.html>

b) and d) defines the minimum information to be disclosed on sustainability matters (i.e. policies and time-bound targets). Therefore, other than adding diversity to para 2 b), no further amendments for implementation measures are proposed for the main text or Application guidance of ESRS S1. However, a definition of diversity should be added to Appendix A: Defined terms. Such definition would identify diversity dimensions as “gender, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.”

- (d) Performance metrics. The proposal is to draft an additional indicator for diversity at top management level as per CSRD Recital 43.

An analysis has been performed in the table below of the various reporting frameworks and ESRS G1, for internal consistency, for possible performance metrics.

Performance measures	Gender	Age	Racial or Ethnic groups	Minorities or vulnerable groups	Disability
GRI framework	defined	defined		to be considered	
SASB framework for a limited number of sectors	defined		defined		
ESRS G1 for the administrative, management and supervisory board	defined	defined	to be considered		
Proposed enhancements for ESRS S1	Defined for employees To be defined for top management	to be defined for own employees			Defined as a separate disclosure requirement DR 19

Defined: these are datapoints to be disclosed

To considered: these datapoints are described as “other indicators, where relevant”

Drafting proposal

- 16 ESRS S1-19 Employment of persons with disabilities is amended to change the title to Diversity indicators. Therefore the main body will be amended as follows (these are underlined):

91. The undertaking shall disclose the percentage of persons with disabilities amongst its own workforce , the percentage of women in top management and the age distribution of its own employees.

92. The principle to be followed under this Disclosure Requirement is to provide an understanding of the extent to which persons with disabilities are included in an

undertaking's workforce, the number of women in top management and the age distribution of its own employees.

93. The undertaking shall disclose:

- a. the percentage of persons with disabilities amongst its own workforce;
- b. the total number of own workers with disabilities broken down by gender;
- c. the percentage and number of women at top management amongst its own employees;
- d. the distribution of own employees by age group: under 30 years old, 30-50 years old; over 50 years old; and
- e. any contextual information necessary to understand the data and how the data has been compiled.

17 Appendix A: Defined terms.

- (a) To include the following definition for Diversity : gender, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.
- (b) To include the following definition of Top management: one and two levels below the administrative and management board (i.e. subtop).

Questions for EFRAG SR TEG

- 18 *The analysis of the EFRAG Secretariat has been performed at two different levels. On the one hand, the characteristics of diversity to be included in ESRS S1 (gender at top management and age); and, on the other hand, the specific approach for implementation and performance measures. Do you consider that there are other items that should be considered in this paper?*
- 19 *Do you have any other comments on this assessment?*