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Social Standards: Definitions of affected stakeholder groups Issue Paper

Objective

- 1 The objective of this paper is to analyse and propose enhancements to the definitions of the affected stakeholder groups that underly the social standards ESRS S1 to S4; specifically, these are the definitions of own workforce, workers in the value chain, affected communities, and end-users/consumers. This analysis takes into account feedback received from the public consultation and improves alignment with international frameworks and standards.

Background - Structure of the Social standards

- 2 Art. 19 a) 2 e) of the Corporate Sustainability Reporting Directive (CSRD) states that the information to be disclosed by undertakings shall contain a description of “principal actual or potential adverse impacts connected with the undertaking’s own operations and with its value chain, including its products and services, its business relationships and its supply chain”.
- 3 In line with the recommendations of the EFRAG PTF on non-financial reporting, the social standards were structured to meet the requirements of the CSRD (i.e. Art 19 a) 2 e) and Art 29 b) 2 b)) by defining affected stakeholder groups particularly relevant for social and human rights matters and reporting requirements on the due diligence process aligned with international instruments (UN Guiding Principles on Business and Human Rights, the OECD Guidelines for Multinational Enterprises and the OECD Due Diligence Guidance for Responsible Business Conduct). Consequently, the social standards have taken a stakeholder-centred approach, focusing on the affected stakeholders ‘own workforce’ (ESRS S1), ‘workers in the value chain’ (ESRS S2), ‘affected communities’ (ESRS S3) and ‘consumers and end-users’ (ESRS S4). The approach adopted in developing the social standards is aligned with that of the Draft Report on the Social

Taxonomy¹. The latter is also structured along the same stakeholder groups as the most commonly impacted stakeholders by undertakings with regards to social matters: workers (own and value chain), communities and consumers.

- 4 GRI has issued a number of topical standards that cover social and human rights factors and correspond to the stakeholder groups identified by the ESRS: i) workforce (e.g. GRI 401-406), ii) local communities (e.g. GRI 413) and iii) customers (e.g. GRI 416 – 418). Therefore, the ESRS structure is compatible with GRI.

EFRAG Secretariat analysis

- 5 Some comments received through the public consultation suggest possible enhancements which would strengthen the understanding of key concepts and avoid misinterpretation of related disclosure requirements. Given that these concepts are critical and define the scope of the social standards, a decision was taken to prepare this paper.
- 6 Based on the feedback received from the public consultation and organizations responsible for international frameworks and standards, the aim of the proposed amendments is to fine tune the definitions of a limited selection of critical terms, in support of clear guidance for users of the ESRS.

Feedback from the consultation

ESRS S3- Definition of affected communities

- 7 Respondents² suggest specifying the definition of affected communities in the draft ESRS S3 in order to improve its clarity and support the disclosure of accurate information. The main comments are summarised as follows:
 - (a) *Unclear definition of affected communities*: respondents note that the definition is unclear and should be more precise. They propose including further guidance around its scope (affected communities include e.g. communities located adjacent to the organisation's operations as well as those located at a distance).
 - (b) *Risk of omission of actually and potentially affected communities*: respondents are concerned that the current definition may lead to challenges in identifying all communities affected by an undertaking and suggest including guidance on how to define the scope of application.

¹ Platform on Sustainable Finance (2021). Draft Report by Subgroup 4: Social Taxonomy. [sf-draft-report-social-taxonomy-july2021_en.pdf \(europa.eu\)](#).

² Responses to survey 1 and survey 2.

- (c) *Definition of local communities*: respondents suggest adding a definition of local communities.

8 GRI made the following three recommendations:

- (a) To align the GRI definition on affected communities by specifying that both communities and indigenous people form part of the definition.
- (b) Replace the expression ‘affected communities’ with ‘local communities’, to ensure alignment with GRI and avoid misinterpretation of the terms;

ESRS S4- Definitions of consumers and end-users

9 Respondents³ suggest clarifying the above terms in order to address possible confusion and overlaps:

- (a) *Unclear definitions of ‘consumers’ and ‘end-users’*: respondents note that the current definitions of consumers and end-users overlap, which risks creating confusion and complicating the implementation of the standard. Respondents recommend clarifying the scope of S4 disclosures and providing supporting guidance.
- (b) *Lack of a common definition at EU level*: respondents suggest engaging in the development of a common definition of ‘consumers’ and ‘end-users’ at European level to facilitate the implementation of the reporting obligations, while considering the specificities of respective sectors (e.g. the insurance sector).
- (c) *Distinction between consumers and end-users on the one hand, and customers on the other hand*: respondents highlight that there are differences between the leverage undertakings have on consumers and end-users as opposed to B2B customers.

ESRS S1-S2 Definitions of Own Workforce and Value Chain Workers

10 One of the comments received on the definition of own workforce and value chain workers was that the definitions should be aligned with the definitions that GRI uses. ESRS and GRI are partially aligned in that both ESRS S1/S2 and GRI divide the workforce up into three categories, and both share an identical category “own employees”. However, the category “non-employee workers” differs between the two. Whereas GRI includes all non-employee workers whose “work or workplace is controlled by the undertaking”, ESRS S1 has a somewhat narrower definition which includes:

- (a) self-employed workers contracting their labour to the undertaking; and
- (b) workers supplied by employment agencies to the undertaking.

³ Responses to survey 1 and survey 2.

This definition was chosen by the EFRAG TEG because the feedback from preparers was that the GRI notion of “control of work or workplace” was difficult to operationalize, leading to uncertainties in the audit process. In addition to being operationalizable and providing legal certainty, the ESRS S1/S2 definition includes types of workers for which the undertaking should be able to obtain certain kinds of sustainability information, such as whether they receive a fair wage. In addition, the ESRS definition of own workforce was drafted to ensure comparability across companies in term of categorisation of employees, whereby the performance metrics in ESRS S1 clearly describe which datapoints are to be disclosed for own employees and non-employee workers. Finally, this definition offers a clear boundary between workers covered by S1 and S2.

- 11 The other comments on the workforce definition focused on the need for more extensive application guidance, including providing examples. Reference was made to GRI Standard 403 on Occupational Health and Safety, which provides some examples clarifying the GRI approach based on “control of work or workplace”.

Proposed changes

ESRS S3- Definition of affected communities

- 12 In order to address concerns around unclear definitions and related implications, the EFRAG Secretariat proposes enhancing the definition of affected communities, clarifying its interchangeability with the expression “local communities”, and specifying the inclusion of indigenous peoples under such a concept. Please refer to the below table (*Specific Definitions Proposed Amendments*) for the proposed wording for amendments to the definitions of affected communities and indigenous people.
- 13 With regards to the request to include guidance and examples of groups that may fall under affected communities, the EFRAG Secretariat highlights that a number of examples are already provided under paragraph AG 9 of ESRS S3. No further amendments are proposed.

ESRS S4 - Definitions of consumers and end-users

- 14 In order to address concerns regarding clarity of the definitions, the EFRAG Secretariat proposes amending the definition of ‘consumers’ to specify that end-users are a sub-group of consumers (i.e. no trade relationship), as proposed in the below table. Nevertheless, the distinction between these two groups remains important, as they refer to different types of individuals addressed by the standard. It should be noted that consumers are retail consumers, and corporate consumers are either in scope of the ESRS Set 1 or SME standards (i.e. no double reporting). Please refer to the below table (*Specific Definitions Proposed Amendments*) for the proposed wording.

- 15 The definition of consumers within EU regulations stems from the Consumer Rights Directive⁴ and is aligned with the ESRS definition. It is also to be noted that consumer protection forms part of the EU Charter of Fundamental Rights (Art 38) which is referred in Art 29 b) 2 b) iii) within the human rights and social factors section.
- 16 With regards to the request to include guidance to clarify the scope of consumers and end-users, the EFRAG Secretariat highlights that a number of examples are already provided under paragraph AG 9 of ESRS S4. No further amendments are proposed.

Definitions of Own Workforce and Value Chain Workers

- 17 In order to address concerns regarding clarity of the definitions, the EFRAG Secretariat proposes adding a number of examples within the Application Guidance of ESRS S1 and S2. Such examples have been drafted using GRI as a basis to support existing GRI reports in this exercise. Please refer to the table below (*Specific Definitions Proposed Amendments*) for the proposed wording.

Table: Specific Definitions Proposed Amendments

- 18 Having considered the feedback received from the public consultation as well as international frameworks and standards, the EFRAG Secretariat suggests the below wording changes for key definitions:

Defined terms	Draft definition	Definition in international frameworks and standards	Proposed amendments
Affected communities (ESRS S3)	A group living or working in the same area that has been or may be affected by a reporting undertaking’s operations or through its value chain. The local community can range from those	GRI: Individuals or groups of individuals living or working in areas that are affected or that could be affected by the organization’s activities. The local community can range from those living	A group living or working in the same area that has been or may be affected by a reporting undertaking’s operations or through its value chain. The local community Affected communities can range from those living adjacent to the organisation’s operations

⁴ European Commission (2011). Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance. [Link](#).

	living adjacent to the organisation’s operations to those living at a distance.	adjacent to the organization’s operations to those living at a distance.	to those living at a distance. Affected communities includes actually and potentially affected Indigenous peoples.
Consumer (ESRS S4)	Individuals who acquire, consume or use goods and services for personal use, either for themselves or for others, and not for resale or commercial purposes.	<p>GRI:</p> <p>Customers are understood to include end-customers (consumers) as well as business-to-business customers.</p> <p>European Union</p> <p>Consumer rights directive European Commission (europa.eu)</p> <p>According to Article 2(1), ‘consumer’ is any natural person who, in contracts covered by the Directive, is acting for purposes which are outside his/her trade, business, craft or profession. It follows from that provision that two cumulative conditions must be satisfied in order for a person to fall within the scope of that concept, namely that: (i) the person is a natural person, and (ii) the persons acts for non-professional purposes. (Guidance Publications Office (europa.eu))</p>	Individuals who acquire, consume or use goods and services for personal use, either for themselves or for others, and not for resale or commercial purposes. Consumers include actually and potentially affected end-users.
End-user (ESRS S4)	Individuals who ultimately use or are intended to ultimately use a particular product or service.	-	-

<p>Own Workforce (ESRS S1)</p>	<p>‘Own workforce’ includes workers who are in an employment relationship with the undertaking (‘employees’) and non-employee workers who are either individual contractors supplying labour to the undertaking (‘self-employed workers’) or workers provided by undertakings primarily engaged in “employment activities” (NACE Code N78).</p>	<p>GRI provides definitions for employee: “an individual who is in an employment relationship with the organization according to national law or practice”</p> <p>And for “workers who are not employees”: “workers who are not employees and whose work or workplace is controlled by the organization”</p>	<p>Additions to AG:</p> <p>Examples of contractors (self-employed persons) in own workforce include:</p> <ul style="list-style-type: none"> . Contractors hired by the undertaking to perform work that would otherwise be carried out by an employee - Contractors hired by the undertaking to perform work in a public area (e.g., on a road, on the street). - Contractors hired by the undertaking to deliver the work/service directly at the workplace of a client of the organization. <p>Examples of workers employed by a third party engaged in ‘employment activities’ but whose work is controlled by the undertaking include:</p> <ul style="list-style-type: none"> - Workers who perform the same work that employees carry out, including: <ul style="list-style-type: none"> • workers who fill in for employees who are temporarily absent (due to illness, holiday, parental leave, etc.) • workers performing work additional to regular employees • workers who are dispatched temporarily from another EU member state to work for the undertaking (‘posted workers’)
<p>Workers in the Value</p>	<p>An individual performing work in the value chain of an</p>	<p>GRI provides a definition in the context of GRI 403 Occupational Health and</p>	<p>Additions to AG:</p>

<p>Chain (ESRS S2)</p>	<p>undertaking, regardless of the existence or nature of any contractual relationship with that undertaking. In the ESRS, the following is included in the scope of workers in the value chain: all workers in the undertaking's upstream and downstream value chain who are or can be materially impacted in connection with the undertaking's products, services and activities. This also includes all non-employee workers whose work and/or workplace is controlled by the undertaking but are not included in the scope of "Own Workforce" ("Own Workforce" includes workers who are in an employment relationship with the undertaking ('employees') and non-employee workers who are either individual contractors supplying labour to the undertaking ('self-employed workers') or workers provided by undertakings primarily engaged in 'employment activities' (NACE Code N78)).</p>	<p>Safety: "All workers who are not employees and whose work and workplace are not controlled by the organization, but the organization's operations, products, or services are directly linked to significant occupational health and safety impacts on those workers by its business relationships."</p>	<p>Examples of Workers in the Value Chain</p> <ul style="list-style-type: none"> - Workers of a supplier contracted by the undertaking who work on the supplier's premises using the supplier's work methods. - A worker for a 'downstream' firm which purchases goods or services from the undertaking - Workers of an equipment supplier to the undertaking who, at a workplace controlled by the undertaking, perform regular maintenance on the supplier's equipment (e.g., photocopier) as stipulated in the contract between the equipment supplier and the undertaking.
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Questions for SR TEG

- 20 Does EFRAG SR TEG agree with the general approach for ESRS S1-S4?
- 21 With regard to ESRS S1, does the EFRAG SR TEG have suggestions for extending the number of groups in 'non-employee workers in own workforce'? does the EFRAG SR TEG agree with the enhanced AG proposed in the paper?
- 22 With regard to ESRS S3, does the EFRAG SR TEG agree with the updated definitions?
- 23 With regards to ESRS S4, does the EFRAG SR TEG agree with the clarification regarding the relationship between consumers and end-users?
- 24 Does the EFRAG SR TEG have any other comments on this proposal?

Appendix 1: References

- 25 European Commission (2011). Directive 2011/83/EU of the European Parliament and of the Council of 25 October 2011 on consumer rights, amending Council Directive 93/13/EEC and Directive 1999/44/EC of the European Parliament and of the Council and repealing Council Directive 85/577/EEC and Directive 97/7/EC of the European Parliament and of the Council Text with EEA relevance. [EUR-Lex - 32011L0083 - EN - EUR-Lex \(europa.eu\)](#).
- 26 European Commission (2019). Directive (EU) 2019/2161 of the European Parliament and of the Council of 27 November 2019 amending Council Directive 93/13/EEC and Directives 98/6/EC, 2005/29/EC and 2011/83/EU of the European Parliament and of the Council as regards the better enforcement and modernisation of Union consumer protection rules. [EUR-Lex - 32019L2161 - EN - EUR-Lex \(europa.eu\)](#).
- 27 European Commission (2021). Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market. [Commission Notice – Guidance on the interpretation and application of Directive 2005/29/EC of the European Parliament and of the Council concerning unfair business-to-consumer commercial practices in the internal market \(europa.eu\)](#).
- 28 European Commission (2021). Guidance on the interpretation and application of Directive 2011/83/EU of the European Parliament and of the Council on consumer rights. [EUR-Lex - 52021XC1229\(04\) - EN - EUR-Lex \(europa.eu\)](#).
- 29 European Commission (2020). New Consumer Agenda – Strengthening consumer resilience for sustainable recovery. <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:52020DC0696&from=EN>.
- 30 European Commission (2020). Regulation of the European Parliament and of the Council on a Single Market For Digital Services (Digital Services Act) and amending Directive 2000/31/EC. [EUR-Lex - 52020PC0825 - EN - EUR-Lex \(europa.eu\)](#).

