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ESRS for non-EU Groups ED Approval

Cover Note

Objective

The objective of this session is for the SRB to finalize the approval of the ESRS for Non-EU Groups ('NESRS') Exposure Draft (ED) for consultation.

In this Cover Note, the EFRAG Secretariat has summarized only the changes agreed or expected following the pre-approval session at the SRB meeting on 12 December 2024.

Background

On the SRB meeting 12 December 2024, the EFRAG SRB approved the NESRS ED for consultation, including 18B mixed approach, however a few changes were requested and are presented in this meeting.

Expected revised drafting of the option (para. 18B and others)

- (a) Paragraphs 18B and 18C
- (b) Enhancement of the wording used to identify the perimeter of the impacts linked to EU sales: use systematically 62A in the doc for the definition: *Impacts that arise in the undertakings' own operations or upstream and downstream value chain in connection with goods/products and services destined to EU;*
- (c) No apportionment of metrics but tainting: SRB members rejected the proposal in the EFRAG SR TEG version of the ED to adopt an apportionment of quantitative metrics when the same product is sold either in Europe or outside Europe. They recommended instead to report the global overall impacts, in those cases where it would not be meaningful to separate the impacts between those arising from goods and services destined to EU and the others;
- (d) Include in the AR an example of sales through a third-party distributor (this is to clarify that a company that produces outside Europe and sells to a distributor that ultimately sells to Europe, will consider the impacts as connected with products destined to EU).

Changes agreed upon on the 12 December SRB

- (e) Keep the example in Appendix A (example D), to "tease out" all technical challenges;
- (f) The SRB asked to reformulate the following paragraph, which was added upon request of one SRB member in the previous meeting:

38A While NESRS requires undertakings to report on impacts only, these impacts generally result also in financial risks and opportunities. However, NESRS does not allow the voluntary reporting of risks and opportunities as the related standardised disclosures were not included in these standards and neutrality of such reporting is essential to avoid biased reporting. As noted in paragraph 3A above, if undertakings want to report on risks and opportunities, they can apply full ESRS.

This has been amended now as follows:

38A While NESRS requires undertakings to report on impacts only, this does not exclude reporting on impacts that do or may result in financial risks and opportunities.

38B As noted in paragraph 3A above, if undertakings want to report on risks and opportunities, they can apply full ESRS. If an undertaking also prepares under local frameworks sustainability information that cover risks and/or opportunities, to provide a comprehensive overview to users, their ESRS sustainability report under Article 40a may refer to that information, however it should neutrally depict the impacts of the group, giving fair prominence to positive and negative elements.

- (g) Add a question in the public consultations questionnaire whether there are other ways to make the cut EU/non-EU impact;
- (h) Incorporation by reference (see next para).

Incorporation by reference

The ED recommended for approval by EFRAG SR TEG did not allow for “Incorporation by reference”, pending the outcome of the consultations on the practical challenges linked to it. The SRB disagreed with the removal. The Cover note prepared for the 12 December SRB meeting proposed the content to be included in the ED for this topic.

On the 12 December, it was agreed to modify it as per the below:

119A. Provided that the conditions in paragraph 120A are met, information prescribed by NESRS may be incorporated in the sustainability report under article 40a by reference to other regulated information available to users of the financial statements on the same terms as the financial statements and earlier or at the same time. Examples include:

- a. the management report or similar document;*
- b. the financial statements;*
- c. the corporate governance statement (if not part of the management report);*
- d. remuneration reports required by local regulation; and*
- e. public disclosures under local regulation covering similar topics to Regulation (EU) No 575/2013 of the European Parliament and of the Council (Pillar 3 disclosures) (11) of such a parent. If the consolidation perimeter of such document is different from the reporting entity used for the ESRS sustainability report, the undertaking shall ensure that the information matches the scope of consolidation used for the ESRS sustainability report, by complementing the incorporated information with additional elements as necessary.*

120A. *The undertaking may incorporate information by reference to the documents, or part of the documents, listed in paragraph 119A, provided that the disclosures incorporated by reference:*

- (a) constitute a separate element of information and are clearly identified in the document concerned as addressing the relevant Disclosure Requirement, or the relevant specific datapoint prescribed by a Disclosure Requirement;*
- (b) are published before or at the same time as the sustainability report under article 40a;*
- (c) are prepared in one of the European languages or translated into such a European language;*
- (d) are subject to at least the same level of assurance as the ESRS sustainability report.*

122. *In the preparation of its ESRS sustainability report using incorporation by reference, the undertaking shall consider the overall cohesiveness of the reported information and ensure that the incorporation by reference does not impair the readability of the sustainability statement. Appendix G Example of incorporation by reference of this Standard is an illustrative example of incorporation by reference (See NESRS 2 BP-2).*

Items agreed to be specifically covered in the consultation

It was agreed, next to the general questions on the content of the ED, to consult specifically on the following:

- (a) ESRS Set 1 as basis for NESRS ED (reasons, benefits);
- (b) Approach to removing paragraphs as required by CSRD (to exclude risks and opportunities);
- (c) Perimeter of disclosure: Global and Mixed approach highlighting feasibility challenges and concerns about the Mixed approach, also including examples as illustration of scenarios;
- (d) Approach to the internationalisation of EU references (i.e. no internationalisation as a general rule);
- (e) Connectivity and financial information providing context to impacts;
- (f) Transitional provisions;
- (g) Incorporation by reference;
- (h) Additional paragraph and clarification on reporting on impacts (point e in the list of changes agreed above); and
- (i) Examples of impacts that would not be captured by 18 B (company producing in the EU and selling outside).

These will all be subject to specific questions in the consultation questionnaire. However, the consultation will not reopen discussions about set 1 data points.

Questions for EFRAG SRB members

In their directional vote on the content of the ED on the 12 December 2024, 22 members participated in the vote (including proxies).

15 were supportive and approved, out of which 3 approved with reservations (People in favor: Patrick de Cambourg, Kerstin Lopatta, Begona Giner, Monika Brom, Roderik Meeder, Luc Vansteenkiste, Charlotte Söderlund, Grégoire de Montchalin, Thomas Roulland, Salvador Marin, Marcello Bianchi and Maria Dolores Urrea Sandoval; 3 with reservations: Laurence Rivat, Christina Saporetti, Kristian Koktvedgaard).

4 of them expressed the intention to abstain (Simon Braaksma, Ruben Zandvliet, Wim Bartels, Alexander Bassen), 2 people abstained in the sense that they requested to see a new version related to perimeter option (Filip Gregor and Mariyan Nikolov).

1 person to dissent (Isabelle Schoemann).

Since in this directional vote, the ED was approved subject to the onboarding of some editorial remarks and to reviewing the drafting of the option in para. 18B:

1. Do the EFRAG SRB approve the new wording related to the options: 18B, 18C (points from a) to d) above) and the examples in the appendix?
2. Do the EFRAG SRB approve the other changes introduced (described in paragraphs above), as reflecting the suggestions made and agreed upon on the 12 December?

Do EFRAG SRB members agree with the proposed areas for consultation questions or would like to add/change anything?

Next steps

Following the approval, the EFRAG Secretariat will finalise the basis for conclusions that will accompany this ED and draft the consultation questionnaire and field test procedures.

Written input of EFRAG SR TEG and SRB will be sought on the Basis for Conclusions and Consultation questionnaire.

Agenda papers

In addition to this Cover note, and the updated NESRS 1, agenda papers for this session are the same as for the approval initiation Board meeting (3 December) and we are discussing the earlier referred to as "with 18B" versions as final ED. No changes have been made in the other papers.

- (a) Agenda paper 06-02 NESRS 1 General requirements ED - new;
 - (b) Agenda paper 06-02A NESRS 1 General requirements ED compared to 12 December SRB - new;
 - (c) Agenda paper 06-03 NESRS 2 General disclosures ED – same as 3 December;
 - (d) Agenda paper 06-04 NESRS E1 Climate change ED - same as 3 December;
 - (e) Agenda paper 06-05 NESRS E2 Pollution ED - same as 3 December;
 - (f) Agenda paper 06-06 NESRS E3 Water and marine resources ED - same as 3 December;
 - (g) Agenda paper 06-07 NESRS E4 Biodiversity and ecosystems ED - same as 3 December;
 - (h) Agenda paper 06-08 NESRS E5 Resource use and circular economy ED - same as 3 December;
 - (i) Agenda paper 06-09 NESRS S1 Own workforce ED - same as 3 December;
 - (j) Agenda paper 06-10 NESRS S2 Workers in the value chain ED - same as 3 December;
 - (k) Agenda paper 06-11 NESRS S3 Affected communities ED - same as 3 December;
 - (l) Agenda paper 06-12 NESRS S4 Consumers and end-users ED - same as 3 December;
- and

- (m) Agenda paper 06-13 NESRS G1 Business conduct ED - same as 3 December.