

Efrag implementation guidance 2 - Value Chain

PART 1 : Notion of own operations and operational control

Our second remark concerns the notion of operational control exposed page 11-12/33 of the Draft EFRAG IG2 - Value chain, including the boxed text about “Operational control (over an asset, a site or a plant, JVs, Associates, etc.)”.

This notion of operational control is all the more important that §.44 and 45 consider the extension of this notion to other domains beyond GHG emissions.

Our understanding of the CSRD principles is that

1. All the consolidated activities are considered as “own operations”, which are supposed to be under “operational control”.
2. Beyond the scope of the consolidated activities, the undertaking should analyze potential operational control according to the principles exposed in the boxed text page 11/33 about operational control.

We would like to draw EFRAG attention on the specific and ambiguous situation of “service operators”, like those consisting in operating for example drinking water systems, wastewater treatment plants, energy systems in buildings, etc. The situation may vary completely according to the type contract and in certain cases, the statement in point 1. above may appear as not consistent and even irrelevant.

Let’s take an example to explain this point of view :

- **case 1 : Mr A. is an experienced professional driver and is hired by Mr B as personal driver**
 - “A” brings all his skills to drive safely, efficiently, to maintain and refuel the car,
 - “B” chooses the car (electric, gasoline, ...) and owns it.

The negative impact of the GHG emissions generated by the car are obviously not under the responsibility of “A”, and should fully be attributed to “B”.

- **case 2 : “A” is a taxi driver and owns his car. Mr B has a contractual agreement with him for his daily trips. In this case, “A” bears obviously the responsibility of the GHG emissions of the car.**

Coming back to environmental services providers :

- case 1 corresponds to a classic “Operate and Maintain” (O&M) contract
- and case 2 corresponds to ownership of the asset.

Both extreme cases above are part of the consolidated scope of the company and would thus automatically register as “own operations” and “operational control”, by reference to the current CSRD principles. This is contradictory with the interpretation of Case 1 above.

We observe also that between these two extreme cases, there exists plenty of contractual variants defining the role and responsibility of each party.

Therefore we would suggest that:

- The consolidated scope is not automatically qualified as “own operations” associated with the notion of “operational control”,
- Then, the criteria considered in the boxed text page 11/33 would also be applicable within the consolidated scope, in order to sort the actual operationally controlled scope.

PART 2: Operational Control for Service Concession Arrangements

1. Context and description of the issue:

The issue relates to the treatment in ESRS of GHG emissions from infrastructure operated by an operator under public-to-private **service concession arrangements** that are accounted for under **IFRIC 12** in the financial statements.

Service concession arrangements generally involve two parties: a public sector entity - the grantor, and a private sector entity - the operator. Typical features of these arrangements implying their treatment under IFRIC 12 includes the following:

- The service arrangement contractually obliges the **operator to provide** to the public, **on behalf of the grantor, services related to infrastructure** (such as roads, bridges, airports, water distribution facilities, collect and treatment of waste, etc.).
- The **operator constructs** the infrastructure (or upgrade existing infrastructure) used to provide the public services and **operates and maintains that infrastructure** for a period.
- The **operator is paid for the services** over the period of the arrangement, which is governed by a contract that sets out performance standards, mechanisms for adjusting prices, etc.
- The **operator is obliged to hand over the infrastructure** to its owner – the grantor, in a specified condition at the end of the period of the arrangement.

In accordance with IFRIC 12, in the financial statements of the operator (which could be a parent entity or a fully consolidated subsidiary):

- **The infrastructure** related to the public service concession arrangement **is not recognized as a “property, equipment, or plant” in the balance sheet** because the contractual service arrangement does not convey the right to control the use of the public infrastructure to the operator. The operator has access to operate the infrastructure to provide the public service on behalf of the grantor in accordance with the terms specified in the contract.
- However, **other assets are accounted for on balance sheet in relation to the service concession arrangements: either a financial asset** for the unconditional contractual right to receive cash from the grantor in exchange of the service, **or an intangible asset** to the extent that the operator receives a right (a license) to charge users of the public service, or a mix of both (financial asset and intangible asset).
- Revenues for the rendered service (construction, operation and maintenance of public infrastructure) and expenses incurred for performing such service are recognized on profit and loss.

In the sustainability reporting of the operator, the question raises as to **whether the GHG emissions from such operated infrastructure should be classified:**

- **In scope 1 and 2** i.e., considered as direct and indirect emissions from sources that are owned or controlled by the reporting entity (scope 1 and 2), or
- **In scope 3 category of the group**, as indirect emissions (not included in scope 2) that occur in the value chain of the reporting entity.

2. Issues raised to GHG emissions with a Service Concession arrangement

Applying ESRS requirements to IFRIC 12 service concession arrangements:

- If the entity operating the service concession arrangements is fully consolidated in the accounts, or is operationally controlled when it is a joint venture/associates/etc.: 100% of the GHG emissions from the entity will be consolidated in GHG reporting.
- **At this stage, this does not determine which emissions related to the entity operating the service concession arrangements should be classified in scope 1, 2 or 3. This is dealt with below.**

What are the direct and indirect GHG emissions related to the entity operating the infrastructure under service concessions arrangements?

3. Our view

The entity operating the infrastructure is consolidated in the financial statements and is part of reporting boundary for GHG reporting. But **the infrastructure operated by this entity is not included** as a physical asset **in the financial statements** of the operator in accordance with IFRIC 12. Instead, it records other types of assets in relation to the service concession arrangement (intangible assets corresponding to the license to charge fees to users of the facility, and/or financial assets representing the contractual right to receive specified amount of cash from the grantor in exchange of the service).

Sticking to items in financial statements, it is considered that **the infrastructure** – even if operated by the operator - **is therefore not a source owned nor controlled by the operator** for GHG emissions reporting. Hence, **the direct GHG emissions from this infrastructure** are excluded from the direct emissions of the entity – i.e., **excluded from scope 1 category**.

Instead, as per the definition of value chain in ESRS, the operated infrastructure is part of the value chain of the entity since “it represents a resource the undertaking uses and relies on in delivering the services to the public”. **Direct and indirect GHG emissions from the operated infrastructure are therefore classified in scope 3 category**, as these emissions are from sources owned and controlled by another entity that is the public entity, grantor of the concession arrangement.

The rationale here is like the one retained for leased assets. Under IFRS 16, leased assets are recognized on the balance sheet of the lessee in the form of a “right-of-use asset” (irrespective of the nature of the lease - finance or an operating lease, and except specific short-term leases). Consequently, GHG emissions from these leases that are recognized in the accounts are also fully consolidated in the GHG reporting under ESRS. To that regard, draft EFRAG guidance on value chain confirms that leased assets are part of the reporting entity.