

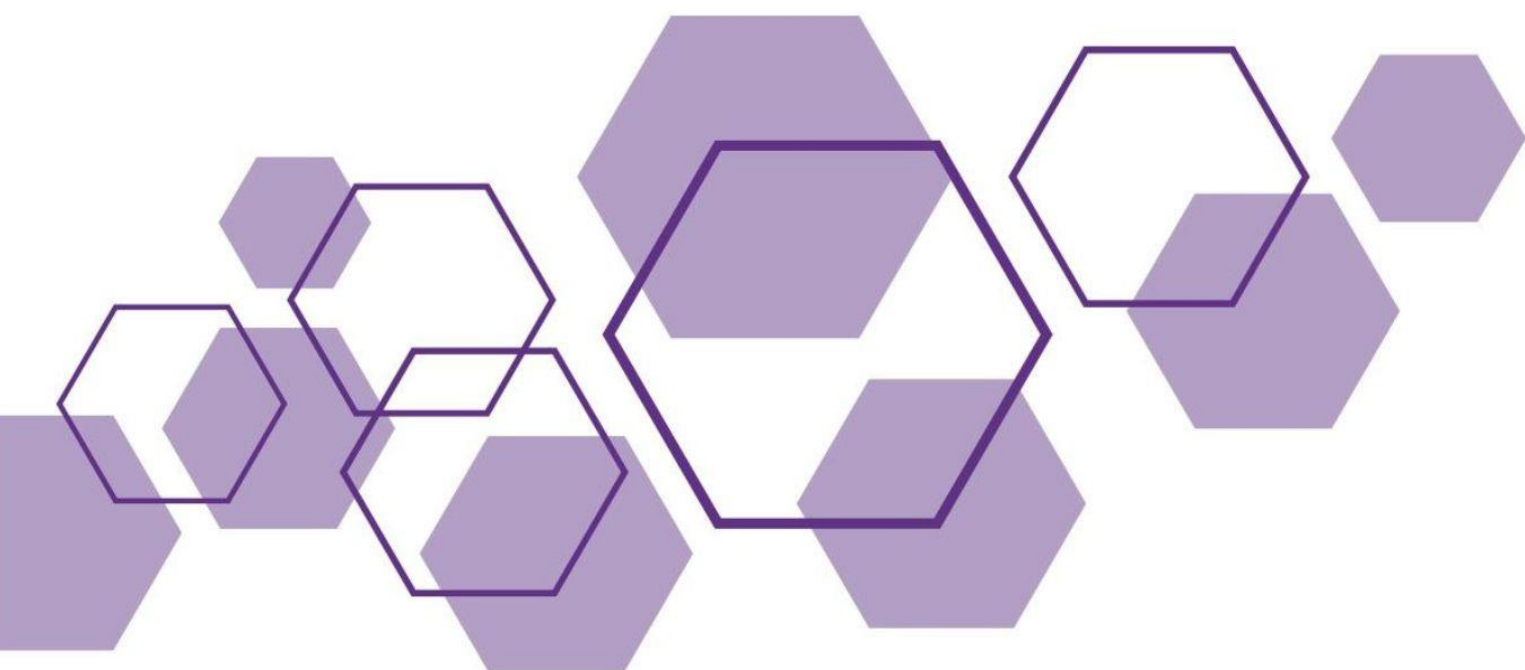
# DRAFT EUROPEAN SUSTAINABILITY REPORTING STANDARDS

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## ESRS G1

## Business conduct

### Basis for conclusions



This Basis for conclusions (March 2023) relate to the draft ESRS issued in November 2022.

This Basis for Conclusions accompanies but is not part of the [draft] ESRS G1 *Business conduct*. It summarises the considerations of the EFRAG SRB and the references to other standard setting initiatives or regulations used in developing the proposed contents of the [draft] Standard.

It does not reflect the position of the European Union or European Commission DG Financial Stability, Financial Services and Capital Markets Union (DG FISMA).

**Table of contents**

<b>Objective</b>	<b>4</b>
<b>Context and reference table</b>	<b>4</b>
<b>Disclosure Requirements</b>	<b>5</b>
<b>ESRS 2 General disclosures</b>	<b>5</b>
<b>Disclosure Requirement related to ESRS 2 GOV-1</b>	<b>5</b>
<b>Disclosure Requirement related to ESRS 2 IRO-1</b>	<b>5</b>
<b>Impact, risk and opportunity management</b>	<b>6</b>
<b>Disclosure Requirement G1-1 – Corporate culture and business conduct policies</b>	<b>6</b>
<b>Disclosure Requirement G1-2 – Management of relationships with suppliers</b>	<b>7</b>
<b>Disclosure Requirement G1-3 – Prevention and detection of corruption or bribery</b>	<b>7</b>
<b>Metrics and targets</b>	<b>9</b>
<b>Disclosure Requirement G1-4 – Confirmed incidents about corruption or bribery</b>	<b>9</b>
<b>Disclosure Requirement G1-5 – Political influence and lobbying activities</b>	<b>10</b>
<b>Disclosure Requirement G1-6 – Payment practices</b>	<b>10</b>
<i><b>Other changes from the exposure drafts</b></i>	<b>11</b>

## Objective

BC1. The [Draft] ESRS G1 is prepared with the aim of providing information on the undertaking's business conduct, as per the Corporate Sustainability Reporting Directive ('CSRD').

## Context and reference table

BC2. When drafting this [Draft] Standard, the CSRD provisions, in particular the aspects around governance factors to be disclosed, were considered:

- (a) corporate culture;
- (b) management of relationships with suppliers;
- (c) avoiding corruption and bribery;
- (d) engagement by the undertaking to exert its political influence including lobbying;
- (e) protection of whistle-blowers;
- (f) animal welfare; and
- (g) payment practices, specifically with regard to late payment to small and medium enterprises (SMEs).

BC3. Other aspects that some may consider relevant to business conduct are covered by other ESRS standards, for instance privacy is included in ESRS S4 *Consumers and end-users*.

BC4. While CSRD refers to business ethics, the [Draft] Standard was named business conduct to present the topic in a more neutral manner. The proposals of CSRD extend reporting obligations to undertakings who do not currently have obligations to this extent or on unfamiliar topics. Therefore, the focus of the [Draft] Standard is on the issues named in CSRD and does not necessarily cover all subjects under the umbrella term of business conduct covered by GRI or other frameworks.

BC5. As highlighted in the cross-cutting standards, not all the proposals are equally important to all reporting undertakings, and undertakings should provide essential disclosures while not diluting the impact of such disclosures by including other unimportant information. However, for undertakings in some sectors and/or operating in certain geographic areas, more in-depth information about a broader range of topics may be needed. Sector-specific disclosures will be developed via future dedicated standards.

BC6. The following table presents the mapping of sources of each [proposed] Disclosure Requirement with EU regulation / global frameworks and other initiatives:

	Accounting Directive reference	SFDR reference	References to other frameworks including EU legislation
<b>DR G1-1</b>	Art. 29b 2 (c) (iii) Art. 19b 2 (d)	PAI, Indicators 6 and 15 of Table 3 of Annex 1	GRI 2-12; GRI 2-23, 2-24 and 2-26 EU Whistleblowing Directive SDG 16.5 and 16.6 UNG GP 29 ICGN Global Governance principles – Principle 4
<b>DR G1-2</b>	Art. 29b 2 (c) (iv)		SDG 17 ISO 25000 Fair operating practices
<b>DR G1-3</b>	Art. 29b 2 (c) (iii)		GRI 2-26; GRI 205-2

	Accounting reference	Directive	SFDR reference	References to other frameworks including EU legislation
				SDG 16.5 and 16.6 OECD MNE Guideline III 3(a) to (c) and Guideline VII 1 to 7 UN Global Compact Principle 10 ISO 25000 Fair operating practices
<b>DR G1-4</b>	Art. 29a 2 (c) (iii)		PAI, Indicators 16 and 17 of Table 3 of Annex 1	GRI 205-3 SDG 16.5 and 16.6 OECD MNE Guideline VII 1 to 7 UN Global Compact Principle 10 ISO 25000 Fair operating practices
<b>DR G1-5</b>	Art. 29b 2 (c) (iv)			GRI 415-1 OECD MNE Guideline VII 1 to 7
<b>DR G1-6</b>	Art. 29b 2 (c) (v)			Local regulations in Spain <sup>1</sup> , Italy <sup>2</sup> and Portugal <sup>3</sup>

## Disclosure Requirements

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### ESRS 2 General disclosures

#### Governance

#### **Disclosure Requirement related to ESRS 2 GOV-1**

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BC7. The [Draft] Standard requires information about an undertaking's strategy and business model to mitigate material business-conduct-related impacts, risks and opportunities (see paragraph 12).

#### **Impact, risk and opportunity management**

#### **Disclosure Requirement related to ESRS 2 IRO-1**

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BC8. A key component of this is for an undertaking to assess the related risks when considering the business model and activities, geographical location of the activities and the inherent risks in corruption, bribery and similar behaviours. Risk assessments can help the assessment of the potential for problematic incidents related to the undertaking and assist in the design of policies and procedures to combat such behaviours. In some sectors or subsectors and/or geographies, the risks relating to these behaviours are unfortunately more prevalent and the undertaking's risk assessment should capture this. Specifically around corruption and bribery, the risk assessment should consider the risks posed by business partners (either upstream or downstream) in the value chain. This is in recognition of the fact that relationships with business partners may pose legal and/or reputational risks that need to be managed correctly.

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<sup>1</sup> Periodo Medio de Pago a Proveedores per Law 2/2012 of 27 April available [here](#) and guidance from the Spanish Ministry of Finance available [here](#) (both in Spanish).

<sup>2</sup> Art. 33, Legislative Decree of 14 March 2013, n. 33 available [here](#) and Articles 9 and 10 of the Decree of the President of the Council of Ministers of 22 September 2014 available [here](#) (both in Italian)

<sup>3</sup> As laid down in anexo à Resolução do Conselho de Ministros n.º 34/2008 available [here](#) in Portuguese.

- BC9. Furthermore, to allow stakeholders to evaluate the completeness of the assessment, and thereby draw conclusions as to the adequacy of the undertaking's policies, procedures, actions and resources, the undertaking should report information about the assessment as required by the [Draft] Standard. These [proposed] disclosures measure the extent of the risk assessment's implementation across an undertaking.
- BC10. GRI 205-1 requires disclosures around the undertaking's risk assessment related to corruption/bribery and is consistent with the requirements in this Disclosure Requirement.

***Impact, risk and opportunity management***

***Disclosure Requirement G1-1 – Corporate culture and business conduct policies***

- BC11. The so-called 'tone at the top' determines the purpose, values and strategy for any undertaking and provides guidance to employees on how to approach issues of a sensitive nature such as environmental, governance and social subjects. It is clear that the undertaking's top management structures and organisation has a profound impact in this regard.
- BC12. However, it is not possible to capture either the concept or how the culture has improved or not over the period in quantifiable metrics. Nevertheless, this was not considered a good enough reason to omit requiring qualitative disclosures in this regard.
- BC13. Therefore, disclosure about how the undertaking's leadership provide direction on the topics in this [Draft] Standard is important to stakeholders to evaluate how these topics are formed, promoted and managed throughout the organisation. This allows undertakings to provide relevant information to stakeholders even if it may not be easy to compare or in some cases verify.
- BC14. GRI 2-12(a) requires a description of the role of the highest governance body and senior executives in developing, approving and updating the organisation's purpose, value or mission statements amongst other aspects. GRI 102-16 also requires a disclosure of a description of the organisation's values, principles, standards and norms of behaviour. Therefore, this Disclosure Requirement encompasses the requirements in GRI.
- BC15. Based on the risk assessment performed by the undertaking about the risks posed to corruption or bribery by its operations and geographical areas of such operations, the undertaking may have to disclose its policies on corruption and bribery as well as for other aspects covered by this [Draft] Standard. This requirement highlights certain aspects of such policies (see paragraph 10) that should be disclosed by the undertaking to provide relevant and useful information to investors and other stakeholders.
- BC16. The additional matters to be covered in paragraph 10 are those that are important either in signalling the 'tone at the top' or providing protection for those who highlight cases where the policy may have been breached.

- BC17. GRI 2-23 requires a description of the policy commitments relating to responsible business conduct; links to where these can be found and a description as to the level where these policy commitments were approved. Other sources asked about safeguards for employees and reporting mechanisms. GRI 2-24 requires similar information to ESRS 2 on how the policies related to business conduct are embedded in the undertaking's organisation and procedures, of which part is also covered by ESRS Disclosure Requirement G1-3. Therefore, this Disclosure Requirement is consistent with GRI 2-23 and 2-24. GRI 2-26 also requires information about reporting mechanisms with respect to concerns in this area. Additionally, GRI requires information about options where the staff members can obtain advice. Given the proposed scope of the [Draft] CSRD this may not be feasible for all undertakings and so have not been included in the [Draft] ESRS.
- BC18. Based on the SFDR, financial market participants shall report information on the sustainability impacts and risks of their investment portfolios. Among other metrics, financial market participants falling under the scope of the SFDR will need to disclose:
- (a) Lack of policies on anti-corruption or anti-bribery consistent with the United Nations Convention against Corruption; and
  - (b) Lack of policies on whistleblower protection.
- BC19. These indicators are included in paragraph 10(b) and (d) of [draft] ESRS G1.

**Disclosure Requirement G1-2 – Management of relationships with suppliers**

- BC20. The June 2022 version of CSRD changed the requirements around the management and quality of relationships with business partners to specify specifically customers, suppliers and communities affected by the activities of the undertaking. Aspects related to customers and affected communities are dealt with under [draft] ESRS S3 and ESRS S4, but the relationship with suppliers were only briefly dealt with in the exposure draft and nowhere else in ESRS.
- BC21. Therefore, additional requirements were included dealing with the undertaking's strategy around its relationships with its suppliers, aspects around its selection criteria in the context of sustainability and its support to vulnerable suppliers. These were considered to be the most important aspects to cover in set 1 of the standards.
- BC22. Additionally, a requirement around late payment policies for SME's was also included given the changes in CSRD to emphasise payments to SME's in this context.

**Disclosure Requirement G1-3 – Prevention and detection of corruption or bribery**

- BC23. There are many descriptions of corruption but it has been defined by the European Commission as the abuse of power for private gain. However, it wears many guises and may include bribery, trading in influence, the abuse of functions or position, nepotism, creation of monopolies, conflicts of interest, or uncontrolled revolving doors between the public and the private sectors. The effects of corruption are serious and widespread. Corruption acts as a drag on economic growth, by creating business uncertainty, slowing processes, and imposing additional costs while impacting the EU as a whole by lowering investment levels, hampering the fair operation of the Internal Market and reducing public finances. As an enabler for crime and terrorism, it also constitutes a threat to security.

- BC24. This [Draft] Standard is intended to provide additional information apart from complaints or legal proceedings to the undertaking's stakeholders. This would be qualitative information as to the undertaking's strategy and approach, its processes and procedures as well as its performance in respect of these business practices. To help stakeholders evaluate the undertaking's response to its risk assessment as well as the effectiveness of its prevention and detection processes, the undertaking is required to provide information about its tracking, investigative and response procedures and systems.
- BC25. Information about the chain of management is an important indicator about the independence or not of the investigators from those that may be implicated by such investigations. Comprehensive and systematic root-cause analyses along with remediation plans and reports to management will help to identify causes and possible improvements to the control framework to prevent repetitions.
- BC26. GRI 205-1.1 requires disclosure of the management approach for anti-corruption. Other aspects about detection of corruption/bribery were gleaned from other sources such as the OECD anti-corruption processes. The requirements in this Disclosure Requirement encompasses the requirements in GRI.
- BC27. While CSRD does not explicitly refer to training about anti-corruption or anti-bribery behaviour, it forms part in other frameworks of the actions to reduce such behaviour. Therefore, disclosures about anti-corruption and/or anti-bribery training has to be provided.
- BC28. Training is a very important tool to raise awareness and improve knowledge of the undertaking's business conduct as well as the relevant procedures and processes. Therefore, information about the undertaking's broader training programmes may be relevant in specific cases. However, in the interests of proportionality this [Draft] Standard requires certain information about the anti-corruption and anti-bribery training programmes as a minimum.
- BC29. The duties of some own workers may increase or decrease their risk of exposure to corruption with a corresponding increase or decrease in the need for training. Therefore, it is important that the training is commensurate with the needs of the undertaking's own workers so while general awareness training may be sufficient for some workers, those who are 'at-risk' should receive more in-depth training. Therefore, the requirements are focussed on those functions that have been identified as 'at-risk'.
- BC30. Undertakings may provide broader information about its communication of its policies and procedures on anti-corruption/anti-bribery and other topics in the [Draft] Standard. This may include partners in the value chain, management or own workforce.
- BC31. Nothing in this [draft] Standard prohibits or prevents undertakings to disclose additional information about training provided on similar topics that are relevant to them.
- BC32. GRI 205-2a to c requires extensive information about communication about anti-corruption policies and procedures. For the purposes of the [Draft] Standard this has been limited keeping in mind the scope and proportionality of the requirements for set one of the ESRS Standards. GRI 205-2e requires disclosures of employees that have received training by employee category and region whereas the [Draft] Standard allows such information where the training differs on such factors and such information would be useful.



## Metrics and targets

### Disclosure Requirement G1-4 – Confirmed incidents about corruption or bribery

- BC33. While some quantitative disclosures can be mandated on this topic, it still poses a problem for stakeholders as to how to interpret such information – what is a “reasonable” number of accusations? What is the likelihood that problematic behaviours were not prevented or detected? While a single number about such confirmed incidents may not be easy to interpret, over time, such disclosures would be easier to evaluate on an individual basis or across an industry.
- BC34. Information about the consequences of investigations or actions such as dismissal or disciplinary action for employees or termination of business contracts provide clear evidence about the seriousness which the undertaking affords to the behaviours that lead to these actions (also refer to BC37). This information as well as that about the outcomes of investigations or cases against the undertaking fulfils the stewardship principle and allows stakeholders to hold management accountable for these incidents. The aim is that all of this will encourage continuous improvement of the prevention and detection mechanisms and contribute to the avoidance of the repetition of such incidents.
- BC35. There may be touchpoints with the financial statements where the legal proceedings have direct or indirect financial consequences – the latter in the form of reputational damage that would impact the financial statements only over time.
- BC36. To minimise differing interpretations, the ESRS definition of confirmed incidents is the same as in GRI 205 standard but expands on the GRI definition to clarify that:
- (a) Incidents still under investigation do not fall within the definition;
  - (b) An incident does not have to be confirmed by judgement in a court of law; and
  - (c) The determination of an incident as ‘confirmed’ can be made either internally or by an authority such as a regulator.
- BC37. By requiring that a *prima facie* case has been made that an incident of corruption or bribery has occurred, stakeholders will receive timely and relevant information, subject to the caveat that such incidents have not been confirmed by a court of law. However, requiring minimal details (and this does not include names of persons involved or other recognisable characteristics) ensures that the individual’s right to a fair trial and the presumption of innocence is respected. The limited details required also reflects that these disclosures are intended and designed not to interfere with any legal processes against the undertaking or its workers or its value chain.
- BC38. Paragraph 23(a) and paragraph 25 of [draft] ESRS G1 supports the information needs of financial market participants per SFDR by requiring disclosure of:
- (a) The number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws; and
  - (b) [Whether it has identified] cases of insufficient action taken to address breaches of standards of anti-corruption and antibribery.

***Disclosure Requirement G1-5 – Political influence and lobbying activities***

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- BC39. CSRD specifies that the ESRS should cover activities and commitments of the undertaking related to exerting its political influence, including its lobbying activities. Business undertakings and their representatives have an interest in the political landscape that shapes the business environment in the form of taxes, incentives, rules and regulation. In the regulatory framework it is important that the voice from those impacted by the regulations are heard to ensure equitable and reasonable requirements.
- BC40. However, this may create the potential for undue influence especially through constant interaction, exchange of personnel and financial contributions. This means that undertakings should provide information to stakeholders to allow them to understand the risk these relationships and interactions may create.
- BC41. Direct or indirect contributions to political causes can also present corruption risks because they can be used to exert undue influence on the political process. Many countries have legislation that limits the amount an undertaking can spend on political parties and candidates for campaigning purposes. To be as comprehensive as possible while avoiding the bypassing of existing regulations, the disclosure should include contributions indirectly through intermediaries.
- BC42. The [draft] Standard distinguishes between lobbying activities and political contributions and for the former permits the same financial information to be provided, but requires further qualitative information. This includes the topics covered and its positions on these as stakeholders want to understand (dis)alignment between its public positions and lobbying activities.
- BC43. The [draft] Standard permits voluntary information the financial cost of its lobbying activities. However, this includes both internal as well as external costs to avoid arbitrage and provide comparable and relevant information on the topic. This is true even if allocation mechanisms and estimations may be required to determine the internal costs, similar to allocated costs for inventory or other items under financial reporting.
- BC44. The exchange of personnel can also contribute to a perception of conflict of interest or undue influence of public policy. Therefore, this [Draft] Standard requires information about appointments to the administrative, management and supervisory bodies of the undertaking of persons who held comparable positions in public administration in two years preceding such appointment.
- BC45. GRI 415-1 requires the same information as in paragraph 29(b) of ESRS G1 and while the financial costs of lobbying activities may be considered as implicit in the GRI requirements, under this [draft] Standard this is voluntary.

***Disclosure Requirement G1-6 – Payment practices***

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- BC46. CSRD details that information about payment practices should be included in the [Draft] ESRS standards. The background for this is that late payments have destructive consequences on value chains and improved transparency in this area may help undertakings to detect unfair payment practices and negotiate fairer payment terms.
- BC47. While the Late Payment Directive (Directive 2011/7/EU) determines that a payment is late when the creditor has not been compensated by the end of the negotiated payment period, this may not represent the full extent of unfair payment practices. The reason for this is that undertakings may accept longer than preferred payment terms as the negotiated terms may reflect the one party's negotiating power compared to the other, such as by virtue of its size or brand.

- BC48. When determining the relevant disclosure requirements (see paragraph 31), the most favoured indicators of the respondents in the SME Panel Consultation on Late Payments<sup>4</sup> was used. This included the average time to pay invoices as well as information about the standard payment terms of the undertaking. Respondents to the public consultation of the exposure drafts considered that information about the percentage of payments aligned with such standard terms would provide useful information. In order to minimise the burden and increase the information value of the disclosure, the EFRAG SRB decided that this should be provided by main category of suppliers (i.e. in aggregated form).
- BC49. Additionally, preparers are required to provide context about the information provided. This may be relevant where the average number of days to pay an invoice or the standard payment terms differ significantly for some types of counterparties. Another example may be where the average time to pay an invoice is significantly shorter at the end of the reporting period compared to during it. Another instance where context may be important is where capturing the extent to which accounts payable or creditors at period end have been outstanding would make a significant impact. This would not be necessary where amounts at the beginning of the period and those remaining at the end of the period do not differ significantly in the context of the year's payments.
- BC50. There is no similar requirement under the GRI framework although there are examples in European legislation of similar disclosures. For example, in Spain, these include calculation with reference to amounts outstanding at the end of the period.

#### ***Other changes from the exposure drafts***

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- BC51. The exposure draft proposed requirements around prevention, detection and metrics of anti-competitive behaviour. During the rationalisation process, it was decided that these should rather form part of sector-specific standards.
- BC52. Similarly a proposal to require information about beneficial ownership was scrapped given the existence of public registers in many Member States and therefore little additional benefit for the additional cost.
- BC53. As explained above, Disclosure Requirement ESRS G1-2 was added in response to changes to CSRD. Similarly, small changes were made to Disclosure Requirement G1-5 and G1-6 to mirror the updated wording of the final CSRD.
- BC54. The exposure draft used a more narrow definition based on legal proceedings as an event of corruption or bribery. This definition originated from a discussion with different initial opinions. Some were concerned about the legal risk the GRI definition of confirmed incidents of corruption or bribery may raise for preparers. On the other hand, some interpreted incidents as being confirmed only upon resolution of a court case compared to others considering an internal investigation determining a prima facie case to be answered as sufficient to trigger disclosure. During the deliberations, it was decided that while GRI is a voluntary regime, given the examples of disclosures in this regard by EU companies, ESRS should maintain the same definition as far as possible while not increasing legal risk to preparers or interfere with legal processes and proceedings.

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<sup>4</sup> The preliminary results are available here: <https://ec.europa.eu/docsroom/documents/47995?locale=en>



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