

## **[Draft] European Sustainability Reporting Standard S3 Equal Opportunities**

### **DISCLAIMER**

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*This working paper should therefore not be interpreted in any way whatsoever as representing the views of the PTF-ESRS as a whole at this stage, nor the position of relevant co-construction partners. Also, the content of this working paper is the sole responsibility of the PTF-ESRS and can under no circumstances be regarded as reflecting the position of the European Union or European Commission DG Financial Stability, Financial Services and Capital Markets Union (DG FISMA).*

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## **[Draft] European Sustainability Reporting Standard S3 Equal Opportunities**

### **Objective**

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1. The objective of this [draft] standard is to specify additional Disclosure Requirements for undertakings to report on how they approach and manage the issues of equal opportunities, discrimination, and inequalities; and how they are affected by their own workforce on these, in terms of material impacts, risks and opportunities. The disclosure scope of this [draft] standard covers rights related to equal opportunities and includes performance measures on:
  - (a) pay inequalities between men and women and between the highest paid individual and the median-paid employee;
  - (b) discrimination incidents and the provision of employment opportunities to persons with disabilities;
  - (c) access to benefits regardless of type of employment contract.
2. This [draft] standard derives from the [draft] CSRD, which states that sustainability reporting standards shall specify information to be disclosed related to equal opportunities and equal treatment, topics that have been prioritised by EU policy.
3. This [draft] standard builds on international and European human rights instruments and norms, including the UN Guiding Principles on Business and Human Rights and the OECD Multinational Guidelines, EU policy priorities as set out by the European Pillar of Social Rights, and EU legislation, including the EU labour law acquis and the EU taxonomy for sustainable activities, especially regarding “do no significant harm” criteria and minimum safeguards.
4. This [draft] standard is applicable to the undertaking’s ‘own workforce’, which is understood to include both employees, i.e. those persons in an employment relationship with the undertaking, and non-employee workers engaged in a undertaking’s core business, i.e. persons who are not in an employment relationship with the undertaking, but whose work is controlled by it and perform roles that are the same as or similar to those of its employees or are otherwise engaged in the undertaking’s core business (“non-employee workers in own workforce”). Thus, an undertaking’s ‘own workforce’ is clearly distinguished from ‘value chain workers’, which includes workers for whom neither work nor workplace are controlled by the undertaking (‘typical value chain workers’), as well as workers whose workplace is controlled by the undertaking but perform non-core services for it (‘non-core contractors’). The terms ‘own workforce’ and ‘own workers’ are used interchangeably in this [draft] standard.
5. All disclosures under performance measures in this [draft] standard shall be reported separately for both employees and non-employee workers in their own workforce, unless the disclosure requirement prescribes that the information is to be disclosed for employees only. If an undertaking is not able to include information on non-employee workers in their own workforce using its best efforts, such information may be omitted. This is expected to occur in rare circumstances. In this case the undertaking shall disclose the reasons for the omission and describe the limitation of the scope of the relevant disclosures.

### **Interaction with other ESRS**

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6. This [draft] standard prescribes the performance measures for undertakings to report on and it is complementary to ESRS S1, which defines the Disclosure Requirements for policies, targets, action plans and resources, with regard to equal opportunities of the undertaking’s own workforce listed in paragraph 1.
7. This [draft] standard shall be read in conjunction with the crosscutting presentation standard (ESRS 1), the standard on Strategy and Business Model (ESRS 2), the standard requiring disclosure of the impacts, risks, and opportunities, including materiality assessments, of the

undertaking (ESRS 4), as well as the other Social Pillar ESRS standards for own workforce (ESRS S1, ESRS S2 and ESRS S4).

## **Disclosure requirements**

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### **Performance measures**

#### **[Disclosure requirement 1] Ratio of basic salary and remuneration of women to men**

8. **The undertaking shall disclose the ratio of basic salary and remuneration of women to men.**
9. The principle to be followed under this Disclosure Requirement is to provide an understanding of the extent of any gap in the basic salary and remuneration of women to men amongst the undertaking's employees. This Disclosure Requirement supports the information needs of financial market participants subject to the Sustainable Finance Disclosure Regulation (EU) 2019/2088 (SFDR).
10. The undertaking shall disclose the following information:
  - (a) the unadjusted ratio of the basic salary and remuneration of women to men in percentage terms;
  - (b) the ratio of the basic salary and remuneration of women to men for each employee category, by country; and
  - (c) any contextual information necessary to understand the data and how the data has been compiled.

#### **[Disclosure requirement 2] Annual total compensation ratio**

11. **The undertaking shall disclose the ratio between the remuneration of its highest paid individual and the median compensation for its employees.**
12. The principle to be followed under this Disclosure Requirement is to provide an understanding of the level of compensation inequality inside the undertaking, whether wide pay disparities exist and how such disparities have evolved over time.. This Disclosure Requirement supports the information needs of financial market participants subject to the Sustainable Finance Disclosure Regulation (EU) 2019/2088 (SFDR).
13. The undertaking shall disclose the following information:
  - (a) the ratio of the annual total compensation ratio of the highest paid individual to the median annual total compensation for all employees (excluding the highest-paid individual);
  - (b) the ratio of the percentage increase in annual total compensation for the undertaking's highest-paid individual to the median percentage increase in annual total compensation for all employees (excluding the highest-paid individual); and
  - (c) any contextual information necessary to understand the data and how the data has been compiled.

#### **[Disclosure requirement 3] Discrimination incidents**

14. **The undertaking shall disclose the number of work-related discrimination incidents and any corrective actions taken during the reporting period.**

15. The principle to be followed under this Disclosure Requirement is to provide an understanding of the incidence of work-related discrimination, including sexual and non-sexual harassment, and the corrective actions that the undertaking has taken for its own workforce.
16. When compiling the information specified in paragraph 14, 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, defined as a course of comments or actions that are unwelcome, or should reasonably be known to be unwelcome, to the person towards whom they are addressed.
17. The undertaking shall report the following information:
  - (a) a description of any complaint or grievance mechanism to report alleged cases of discrimination;
  - (b) the total number of incidents of discrimination, including harassment, during the reporting period;
  - (c) the status of the incidents and actions taken with reference to the following:
    - (i) incidents reviewed by the undertaking;
    - (ii) remediation plans being implemented;
    - (iii) remediation plans that have been implemented, with results reviewed through routine internal management review processes;
    - (iv) incidents no longer subject to action.
  - (d) any contextual information necessary to understand the data and how the data has been compiled;
  - (e) how the undertaking assesses the extent to which own workers feel informed, enabled and protected with regard to the raising of complaints or grievances about discrimination, including harassment.

#### **[Disclosure requirement 4] Employment of persons with disabilities**

18. **The undertaking shall disclose the percentage of persons with disabilities amongst its own workforce.**
19. The principle to be followed under this Disclosure Requirement is to provide an understanding of the extent to which this group is included in an undertaking's workforce and its breakdown by gender.
20. 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; and
  - (c) any contextual information necessary to understand the data and how the data has been compiled.

#### **[Disclosure requirement 5] Benefits not provided to employees with temporary, part-time and zero-hour contracts**

21. **The undertaking shall disclose information on benefits which are standard for full-time employees but are not provided to employees with temporary, part-time and zero-hour contracts.**
22. The principle to be followed under this Disclosure Requirement is to provide an understanding of the extent to which employees with temporary, part-time and zero-hour contracts do not receive the same benefits as full-time employees.
23. The information required by paragraph 21 shall include the following benefits:

- (a) life insurance;
  - (b) health care;
  - (c) disability and invalidity coverage;
  - (d) parental leave;
  - (e) retirement provision;
  - (f) stock ownership;
  - (g) training and skills development;
  - (h) other benefits.
24. The information required by paragraph 21 shall be reported for each country in which the undertaking has significant employment. If employees with temporary, part-time, and zero-hour contracts in a country receive the same benefits as full-time employees, the undertaking shall disclose this information.

**[Disclosure requirement 6] Violations of equal opportunities rights**

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- 25. The undertaking shall report on the violations of its own workers' equal opportunities rights where it is financially material to the undertaking.**
26. The principle underlying this disclosure requirement is to understand the extent to which violation of its own workers' rights to equal opportunities has been financially material to the undertaking.
27. The disclosure required by paragraph 25 shall include a report of whether (and if so, to what extent) the financial position of the undertaking has been affected by negative and positive impacts on workers' equal opportunities rights, for each of the matters described under the objective in paragraph 1:
- (a) the total amount of fines, penalties, and compensation for damages as a result of violations regarding own workers' equal opportunities rights as specified under the objectives section.
  - (b) if no such material penalties have been suffered, the undertaking may also state this.

The undertaking shall reconcile the monetary amounts disclosed with the most relevant amount presented in the financial statements.

**Application provisions**

28. ESRS S3 Equal Opportunities will become effective in line with the respective CSRD requirements and timelines. None of the Disclosure Requirements ESRS S3 Equal Opportunities is supposed to be applied with deferral by one year.

## **Appendix A: Defined terms**

This appendix is an integral part of the [draft] ESRS S3 Equal opportunities.

<p><b>Basic salary</b></p>	<p>Fixed, minimum amount paid to an employee for performing his or her duties.</p> <p>Note: Basic salary excludes any additional remuneration, such as payments for overtime working or bonuses.</p>
<p><b>Benefit</b></p>	<p>Direct benefit provided in the form of financial contributions, care paid for by the undertaking, or the reimbursement of expenses borne by the employee.</p> <p>Note: Redundancy payments over and above legal minimums, lay-off pay, extra employment injury benefit, survivors' benefits, and extra paid holiday entitlements can also be included as a benefit.</p>
<p><b>Discrimination</b></p>	<p>Discrimination is defined as an act of treating persons unequally by imposing unequal burdens or denying benefits instead of treating each person fairly on the basis of individual merit.</p>
<p><b>Equal opportunities</b></p>	<p>Equal opportunities refers to an equal distribution, among individuals, of opportunities for education, training, employment, career development and the exercise of power without their being disadvantaged on the basis of criteria such as gender, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.</p>
<p><b>Equal pay for work of equal value</b></p>	<p>Equal pay for work to which equal value is attributed without discrimination with regard to all aspects of pay and conditions of remuneration.</p>
<p><b>Equal treatment</b></p>	<p>The principle of equal treatment is a general principle of European law which presupposes that comparable situations or parties in comparable situations are treated in the same way. There shall be no direct or indirect discrimination based on criteria such as gender, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation. In the context of the present standard, own workforce has the same rights to receive the same treatment and not to be discriminated against on the basis of criteria such as gender, racial or ethnic origin, nationality, religion or belief, disability, age or sexual orientation.</p>
<p><b>Grievance mechanisms</b></p>	<p>Grievance mechanisms refer to any routinized, state-based or non-state-based, judicial or non-judicial processes through which stakeholders can raise grievances and seek remedy. Examples of state-based judicial and non-judicial grievance mechanisms include courts, labour tribunals, national human rights institutions, National Contact Points under the OECD Guidelines for Multinational Enterprises, ombudsperson offices, consumer protection agencies,</p>

	<p>regulatory oversight bodies, and government-run complaints offices.</p> <p>Non-state-based grievance mechanisms include those administered by the organisation, either alone or together with stakeholders, such as operational-level grievance mechanisms and collective bargaining, including the mechanisms established by collective bargaining. They also include mechanisms administered by industry associations, international organisations, civil society organisations, or multi-stakeholder groups.</p> <p>Operational-level grievance mechanisms are administered by the organisation either alone or in collaboration with other parties and are directly accessible by the organisation's stakeholders. They allow for grievances to be identified and addressed early and directly, thereby preventing both harm and grievances from escalating. They also provide important feedback on the effectiveness of the organisation's due diligence from those who are directly affected.</p> <p>According to UN Guiding Principle 31 [14], effective grievance mechanisms are legitimate, accessible, predictable, equitable, transparent, rights-compatible, and a source of continuous learning. In addition to these criteria, effective operational-level grievance mechanisms are also based on engagement and dialogue. It can be more difficult for the organisation to assess the effectiveness of grievance mechanisms that it participates in compared to those it has established itself.</p>
<p><b>Harassment incident</b></p>	<p>Harassment is defined as a course of comments or actions that are unwelcome or should reasonably be known to be unwelcome, to the person towards whom they are addressed. Harassment occurs when one or more employees are deliberately abused, threatened and/or humiliated in circumstances relating to work. Harassment may be carried out by one or more employees, with the purpose or effect of violating the employees' dignity, affecting [their] health and/or creating a hostile work environment.</p>
<p><b>Incident</b></p>	<p>An 'incident' refers to a legal action or complaint registered with the undertaking or competent authorities through a formal process, or an instance of non-compliance identified by the undertaking through established procedures. Established procedures to identify instances of non-compliance can include management system audits, formal monitoring programs, or grievance mechanisms.</p>
<p><b>Persons with disabilities</b></p>	<p>Persons with disabilities include those who have long-term physical, mental, intellectual or sensory impairments which in interaction with various barriers may hinder their full and effective participation in society on an equal basis with others. Disability is the umbrella term for impairments, activity limitations and participation restrictions, referring to the negative aspects of the interaction between an individual (with a</p>



	health condition) and that individual's contextual factors (environmental and personal factors)
<b>Remedy / remediation</b>	Means to counteract or make good a negative impact or provision of remedy. Examples: apologies, financial or non-financial compensation, prevention of harm through injunctions or guarantees of non-repetition, punitive sanctions (whether criminal or administrative, such as fines), restitution, restoration, rehabilitation.
<b>Remuneration</b>	Basic salary plus additional amounts paid to a worker. Note: Examples of additional amounts paid to a worker can include those based on years of service, bonuses including cash and equity such as stocks and shares, benefit payments, overtime, time owed, and any additional allowances, such as transportation, living and childcare allowances.

## **Appendix B: Application Guidance**

This appendix is an integral part of the [draft] ESRS S3 Equal Opportunities. It describes the application of the requirements set for in paragraphs 8 to 27 and has the same authority as the other parts of this [draft] ESRS S3 Standard.

### **[Disclosure requirement 1] – Ratio of basic salary and remuneration of women to men**

AG 1. When compiling the information required under paragraph 10(a) for the unadjusted ratio of the basic salary and remuneration of women to men (also known as 'gender pay gap') the undertaking shall:

- (a) include all employees' basic salaries;
- (b) apply the following formula to calculate the unadjusted gender pay gap

$$\frac{\text{(Average basic salary and remuneration of male employees - average basic salary and remuneration of female employees)}}{\text{Average basic salary and remuneration of male employees}} \times 100$$

Average basic salary and remuneration of male employees

AG 2. For countries in which the undertaking has significant employment (i.e. 50 or more employees), the undertaking shall report this ratio broken down by employee category, which is defined by level (such as senior management, middle management) and function (such as technical, administrative, production).

AG 3. When disclosing the information required under paragraph 10, the undertaking shall provide any contextual information necessary to understand the data and how the data has been compiled (methodology). For example, information regarding how the groupings of employees have been performed in terms of level and function or the concept of full time equivalent applied for this calculation.

AG 4. The measure of the undertaking's ratio of basic salary and remuneration of women to men shall be reported for the current reporting period and, if reported in previous sustainability reports, for the previous two reporting periods.

### **[Disclosure requirement 2] – Annual total compensation ratio**

AG 5. When compiling the information required by paragraph 11, the undertaking shall:

- (a) include all employees;
- (b) consider, depending on the undertaking's remuneration policies, all of the following:
  - (i) base salary, which is the sum of guaranteed, short-term, and non-variable cash compensation;
  - (ii) total cash compensation, which is the sum of the base salary and cash allowances, bonuses, commissions, cash profit-sharing, and other forms of variable cash payments;
  - (iii) direct compensation, which is the sum of total cash compensation and total fair value of all annual long-term incentives (e.g., stock option awards, restricted stock shares or units, performance stock shares or units, phantom stock shares, stock appreciation rights, and long-term cash awards).

(c) apply the following formula for the annual total compensation ratio:

Annual total compensation for the undertaking's highest paid individual

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Median employee annual total compensation (excluding the highest-paid individual)

(d) apply the following formula for the change in annual total compensation ratio:

% change in annual total compensation for the undertaking's highest-paid individual

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median employee % change in annual total compensation (excluding the highest paid individual)

AG 6. When disclosing the information required under paragraph 13, the undertaking shall provide any contextual information necessary to understand the data and how the data has been compiled (methodology). Quantitative data, such as the annual total compensation ratio, may not be sufficient on its own to understand pay disparity and its drivers. For example, pay ratios can be influenced by the size of the undertaking (e.g., revenue, number of employees), its sector, its employment strategy (e.g., reliance on outsourced workers or part-time employees, a high degree of automation), or currency volatility.

### **[Disclosure requirement 3] - Discrimination incidents**

AG 7. In the context of this disclosure, an 'incident' refers to a legal action or complaint registered with the undertaking or competent authorities through a formal process, or an instance of non-compliance identified by the undertaking through established procedures. Established procedures to identify instances of non-compliance can include management system audits, formal monitoring programs, or grievance mechanisms.

AG 8. When compiling the information required related to corrective actions, the undertaking shall consider the following:

- (a) an incident is no longer subject to action if it is resolved, the case is completed, or no further action is required by the undertaking. For example, an incident for which no further action is required can include cases that are withdrawn or where the underlying circumstances that led to the incident no longer exist;
- (b) remedial action is typically (and should be) directed toward the alleged harasser and the alleged victim. Remedial action toward the victim may include offering to pay his/her expenses for counselling sessions, offering the victim some paid time off, offering to reinstate sick/vacation days if the victim has incurred any expenses due to the harassment (such as having used sick or vacation days);
- (c) remedial action toward the harasser may include giving the harasser a verbal and/or written warning, mandating anti-harassment counselling or sending the harasser to an appropriate seminar, harassment awareness and prevention training. A suspension without pay may also be an option. If the harasser has been disciplined earlier but his/her harassment does not cease, then more serious discipline may be required.

**[Disclosure requirement 4] - Employment of persons with disabilities**

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AG 9. When disclosing the information required in paragraph 18, the undertaking shall provide any contextual information necessary to understand the data and how the data has been compiled (methodology). For example, information should be included on the impact of different legal definitions of persons with disabilities in the different countries in which the undertaking has operations.

**[Disclosure requirement 5] - Benefits not provided to employees with temporary, part-time, and zero-hour contracts**

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AG 10. The undertaking shall exclude in-kind benefits such as provision of sports or child day care facilities, free meals during working time, and similar general employee welfare programs.

AG 11. As standard benefits for employees may vary widely across countries in which the undertaking has operations in, the undertaking shall report this information broken down by country for countries in which the undertaking has significant employment.

**[Disclosure requirement 6] - Violations of equal opportunities rights**

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AG 12. If the undertaking has suffered penalties as a result of such violations, the undertaking shall report on the total amount of monetary losses suffered.

AG 13. The undertaking may disclose any corrective action taken in response to such violations.

**Basis for Conclusions**

[ Forthcoming ]

WORKING PAPER