

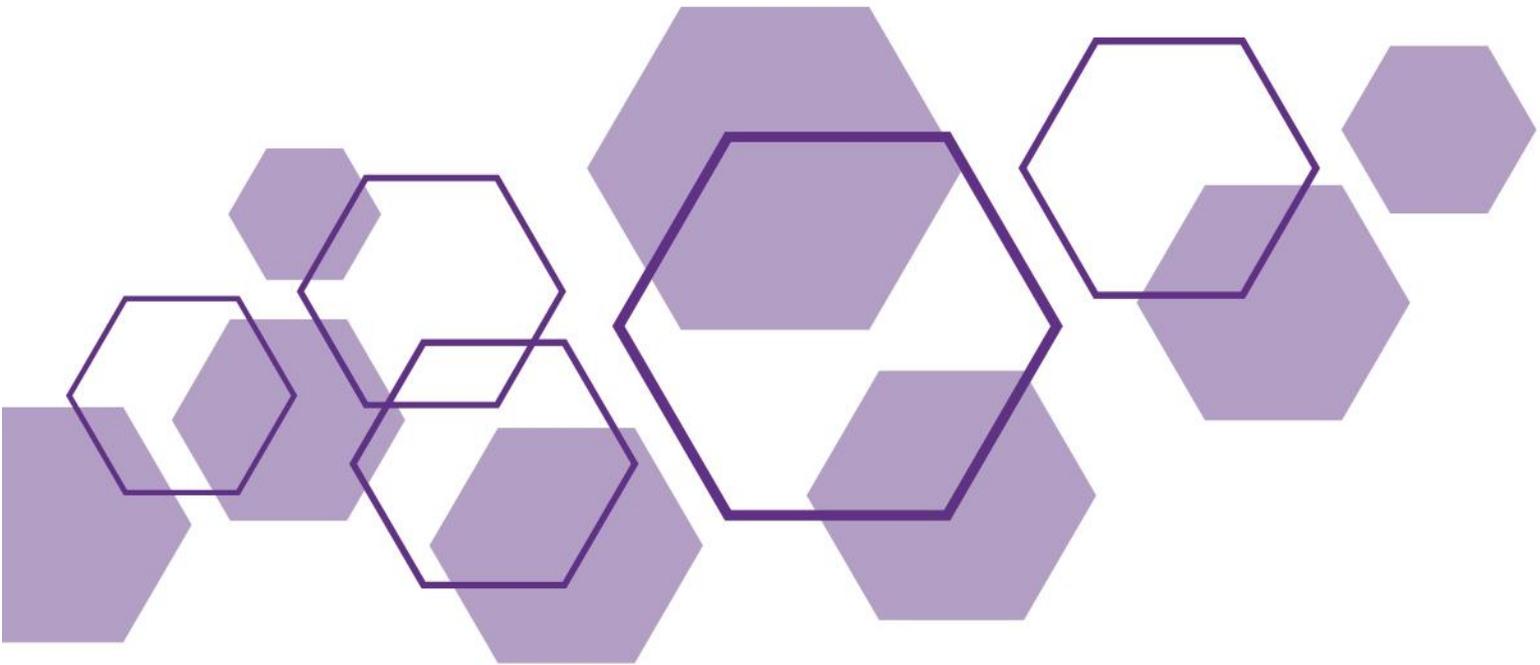
EXPOSURE DRAFT

ESRS G2

Business conduct

Basis for conclusions

May 2022



DISCLAIMER

This Basis for Conclusions accompanies but is not part of the Exposure Draft ESRS G2 Business conduct. It summarises the considerations of the EFRAG PTF-ESRS and the references to other standard setting initiatives or regulations used in developing the proposed contents of the Exposure Draft.

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Objective

BC1. The [Draft] ESRS G2 is prepared with the aim of providing information on the undertaking's business conduct, not limited to the sustainability topics, as per the [Draft] Corporate Sustainability Reporting Directive ('[Draft] CSRD'). In particular, the [Draft] Standard is based on the assumption that the integration of sustainability matters into governance structure, risk management and internal control (across all topics) is addressed in the ESRS 2 General, strategy, governance and materiality assessment. The broader information about business conduct is covered in this [Draft] Standard.

Context and reference table

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

- (a) business ethics and corporate culture, including anti-corruption and anti-bribery;
- (b) political engagements of the undertaking, including its lobbying activities; and
- (c) payment practices in respect to business partners.

BC3. 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.

BC4. Anti-competitive behaviour may "cause a misallocation of resources, which hampers the opportunities to create value and reduces the economy's total welfare. It also reduces "incentives to provide new or better products, increase efficiency and set competitive prices. Final consumers may be harmed because end-prices are higher, while enterprises may suffer due to the prices of raw materials or energy and financing costs being inflated by entities engaged in anti-competitive practices." as set out in a [Library Briefing](#) from the European Parliament in 2013. Therefore, given the high stakes, stakeholders require transparency about those instances that the undertaking may have behaved in an anti-competitive manner.

BC5. While some quantitative disclosures can be mandated for the topics in this [Draft] Standard, 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? It was observed that over time, with more information, such disclosures would be easier to evaluate on an individual basis or across an industry.

BC6. The other governance factors specified by the [Draft] CSRD are covered by other ESRS standards.

- BC7. While the [Draft] CSRD refers to business ethics, the [Draft] Standard was named business conduct to present the topic in a more neutral manner. The proposals of the [Draft] 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 most important issues (as per paragraph 3) relevant to all stakeholders and does not necessarily cover all subjects under the umbrella term of business conduct covered by GRI or other frameworks. Furthermore, information about transparency about taxation matters was concluded to be out of scope of the CSRD requirements.
- BC8. Therefore, 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 [Draft] standards.
- BC9. While the [Draft] 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.
- BC10. Anti-competitive behaviour was included as a subject given its importance and the similarity in processes and controls with that related to anti-corruption and anti-bribery.
- BC11. Beneficial ownership does not have direct links with corruption/bribery, but as explained in paragraph BC43, it improves financial transparency and corporate accountability. It also provides useful information about the ownership of the undertaking which may have been included in the [proposed] disclosure requirements in ESRS G1 Governance, risk management and internal control. However, the requirement is included only once in this [Draft] Standard.
- BC12. The following table presents the mapping of sources of each [proposed] Disclosure Requirement with EU regulation / global frameworks and other initiatives:

[Draft] ESRS G2 DRs	CSRD reference	SFDR reference	References to other frameworks including EU legislation
DR G2-1	Art. 19b 2 (c) (i) Art. 19b 2 (c) (ii)		GRI 2-12
DR G2-2	Art. 19a 2 (d) Art. 19b 2 (c) (ii)	PAI, Indicators 6 and 15 of Table 3 of Annex 1	GRI 2-23, 2-24 and 2-26
DR G2-3	Art. 19a 2 (e) (iii) Art. 19b 2 (c) (ii)		GRI 2-26
DR G2-4	Art. 19a 2 (e) (iii) Art. 19b 2 (c) (ii)		GRI 2-26
DR G2-5	Art. 19a 2 (e) (iii) Art. 19b 2 (c) (ii)		GRI 205-2

DR G2-6	Art. 19a 2 (e) (iii) Art. 19b 2 (c) (ii)	PAI, Indicators 16 and 17 of Table 3 of Annex 1	GRI 205-3
DR G2-7	Art. 19a 2 (e) (iii) Art. 19b 2 (c) (ii)		GRI 206-1
DR G2-8	Art. 19b 2 (c) (ii)		GRI 2-1, Directive (EU) 2015/849 ¹
DR G2-9	Art. 19b 2 (c) (iii)		GRI 415-1
DR G2-10	Art. 19b 2 (c) (iv)		

Disclosure Requirements

Strategy and business model, governance and organisation, impacts, risks and opportunities

Disclosure Requirement G2-1 – Business conduct culture

- BC13. 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.
- BC14. 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.
- BC15. 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.
- BC16. 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 required disclosure of a description the organisation’s values, principles, standards and norms of behaviour. Therefore, this Disclosure Requirement encompasses the requirements in GRI.

Business conduct-specific application guidance on ESRS 2, Disclosure Requirement GOV 1 to GOV 3 and IRO 1

- BC17. 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).

¹ The [proposed] disclosure requirement uses the definition of ‘beneficial ownership’ in the directive.

- BC18. 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 aid 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.
- BC19. 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.
- BC20. 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.

Policies, targets, action plans and resources

Disclosure Requirement G2-2 – Policies and targets on business conduct

- BC21. 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 should develop a policy on corruption and bribery as well the other aspects covered by this [Draft] Standard. This requirement highlights certain aspects of such policies (see paragraph 20) that should be disclosed by the undertaking to provide relevant and useful information to investors and other stakeholders.
- BC22. The additional matters to be covered in paragraph 20 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.
- BC23. 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 is embedded in the undertaking's organisation and procedures, of which part is also covered by ESRS Disclosure Requirement G2-3. 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.

- BC24. 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.
- BC25. Paragraph 20(b) and (d) of ESRS G2 supports the information needs of financial market participants related to the above indicators for SFDR.

Disclosure Requirement G2-3 – Prevention and detection of corruption and bribery

- BC26. [Proposed] Disclosure Requirement G2-3 covers quantitative metrics in terms of reported allegations and internal investigations related to corruption or bribery.
- BC27. 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.
- BC28. 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.
- BC29. The responsibility for anti-corruption/anti-bribery and anti-competitive behaviour detection may lie in one or separate areas and therefore, the [Draft] Standard distinguishes between the two. However, in some cases, if the same process is used for both or if there are large overlaps between the two, the undertaking should explain this and combine the relevant disclosures.
- BC30. 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. During the triple review process of the published working papers, the omission of prevention was detected and resolved. The requirements in this Disclosure Requirement encompasses the requirements in GRI.

Disclosure Requirement G2-4 – Anti-competitive behaviour prevention and detection

- BC31. While anti-competitive behaviour may be very different in nature and consequences to that of corruption/bribery, similar considerations, procedures and policies are often relevant here. Stakeholders also have the same need for information and therefore, the same considerations as to those related to [proposed] Disclosure Requirement G2-3 are relevant here. GRI 206-1.1 requires information about the management approach for anti-competitive behaviour. The requirements in this Disclosure Requirement encompasses those in GRI.

Performance measures

Disclosure Requirement G2-5 – Anti-corruption and anti-bribery training

- BC32. 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.
- BC33. The duties of some staff members 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 staff members so while general awareness training may be sufficient for some staff, those who are 'at-risk' should receive more in-depth training. Therefore, the requirements are focussed on those persons that have been identified as 'at-risk'.
- BC34. Undertakings are welcome to provide broader information including those members of staff or management that have been informed about the undertaking's policies and procedures on anti-corruption/anti-bribery and other topics in the [Draft] Standard, but this is not required. In a future set of standards, such disclosures may be required.
- BC35. For some undertakings other aspects of business conduct or compliance may be very important such as regulated entities in the financial sector and they may have significant other training programmes in this regard. The undertaking may also provide information such training provided on a voluntary basis.
- BC36. GRI 205-2a to c requires extensive information about communication about anti-corruption policies and procedures. For the purposes of the [Draft] Standard this is a voluntary disclosure requirement keeping in mind the scope and proportionality of the requirements for set one of the ESRS Standards. Similar to the [Draft] ESRS, GRI 205-2e requires disclosures of employees that have received training by employee category and region. The ESRS additionally requires information about the level of training provided and any assessment methodology if used.

Disclosure Requirement G2-6 – Corruption or bribery events

- BC37. This [proposed] disclosure aims to support the undertaking in being transparent about legal proceedings related to corruption or bribery during the reporting period.
- BC38. 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 these behaviours. 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.
- BC39. 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.

- BC40. The ESRS requirement is more narrowly defined than the relevant GRI standard that refers to “incidents” which are defined as “incident of corruption that has been found to be substantiated”. This Disclosure Requirement originated a discussion with different initial opinions. Some were concerned about the legal risk this may raise for preparers. On the other hand, some interpreted this 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. Therefore, the definition was updated for this [Draft] Standard to refer to “legal proceedings”. GRI 205-3 requires the same information for confirmed incidents of corruption and then additionally asks for information about public legal cases during the period.
- BC41. Paragraph 38(a) and paragraph 39 of ESRS G2 supports the information needs of financial market participants per SFDR by requiring disclosure of:
- (a) Number of convictions and amount of fines for violation of anti-corruption and anti-bribery laws; and
 - (b) Cases of insufficient action taken to address breaches of standards of anti-corruption and antibribery.

Disclosure Requirement G2-7 – Anti-competitive behaviour events

- BC42. As described under BC31, similar considerations as to those related to [proposed] Disclosure Requirement G2-6 are relevant here. GRI 206-1 requires disclosure about legal actions on anti-competitive behaviour during the period. Therefore, the Disclosure Requirement encompasses the requirements of GRI.

Disclosure Requirement G2-8 – Beneficial ownership

- BC43. Some consider the disclosure of beneficial ownership as a simple and inexpensive way to improve financial transparency to ultimately improve corporate accountability.
- BC44. The concern is that lack of information about those who benefit from ownership enables many illegal activities, including corruption, money laundering, sanctions evasion, and the financing of terrorism. The EU emphasised the relevance and importance of this with the adoption of Directive 849 of 2015 that requires the establishment of beneficial ownership registers in Member States. To help stakeholders in their quest for information, a reference to such a register may be sufficient. However, where such a register has not been established, the information should be provided. The intention is also that the use of a definition already in use would ease implementation and minimise questions in this regard.
- BC45. GRI 2-1 requires undertakings to report the nature of its ownership and legal form. Therefore, this requirement extends further than the requirements of GRI.

Disclosure Requirement G2-9 – Political engagement and lobbying activities

- BC46. The [Draft] CSRD specifies that the ESRS should cover political engagement and lobbying activities. Business organisations 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.

- BC47. However, this also potentially creates the potential for undue influence especially through constant interaction, exchange of personnel and financial contributions. This means that undertakings should provide information about these to stakeholders to allow them to understand the risk these relationships and interactions may create.
- BC48. 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.
- BC49. The ESRS requires information about internal spending as well as amounts paid to external lobbyists or business organisations to avoid arbitrage and provide comparable and relevant information on the topic of lobbying activities. 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.
- BC50. As noted in paragraph BC47, 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 in this regard about appointments to the highest governing bodies of the undertaking.
- BC51. GRI 415-1 requires the same information as in paragraph 48(b)(i) and (ii) of ESRS G2. The Standard is consistent with GRI on this topic. This standard expressly requires the same information for lobbying activities although some would say these are included in the GRI requirements.

Disclosure Requirement G2-10 – Payment practices

- BC52. The [Draft] 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.
- BC53. 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.
- BC54. When determining the relevant disclosure requirements (see paragraph 53), the most favoured indicators of the respondents in the SME Panel Consultation on Late Payments² was used. 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.

² The preliminary results are available here: <https://ec.europa.eu/docsroom/documents/47995?locale=en>

- BC55. As the requirement in paragraph 53(a) only captures invoices paid, there were some concerns that the proposed metrics do not sufficiently capture the extent to which accounts payable or creditors at period end have been outstanding. However, as the proposed disclosure include the payment of outstanding amounts at the beginning of the period, in most cases the difference (especially in the context of a year of transactions) would not be significant. Furthermore, the context to be provided per paragraph 53(c) would be important in this regard.
- BC56. Some EU member states require disclosures by public authorities about their payment terms. For example, in Spain, these include calculation with reference to amounts outstanding at the end of the period. Therefore, specific questions were added to consultation document to obtain stakeholder views or examples of alternative indicators where possible.
- BC57. There is no similar requirement under the GRI framework although there are examples in European legislation of similar disclosures by local governments.



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