

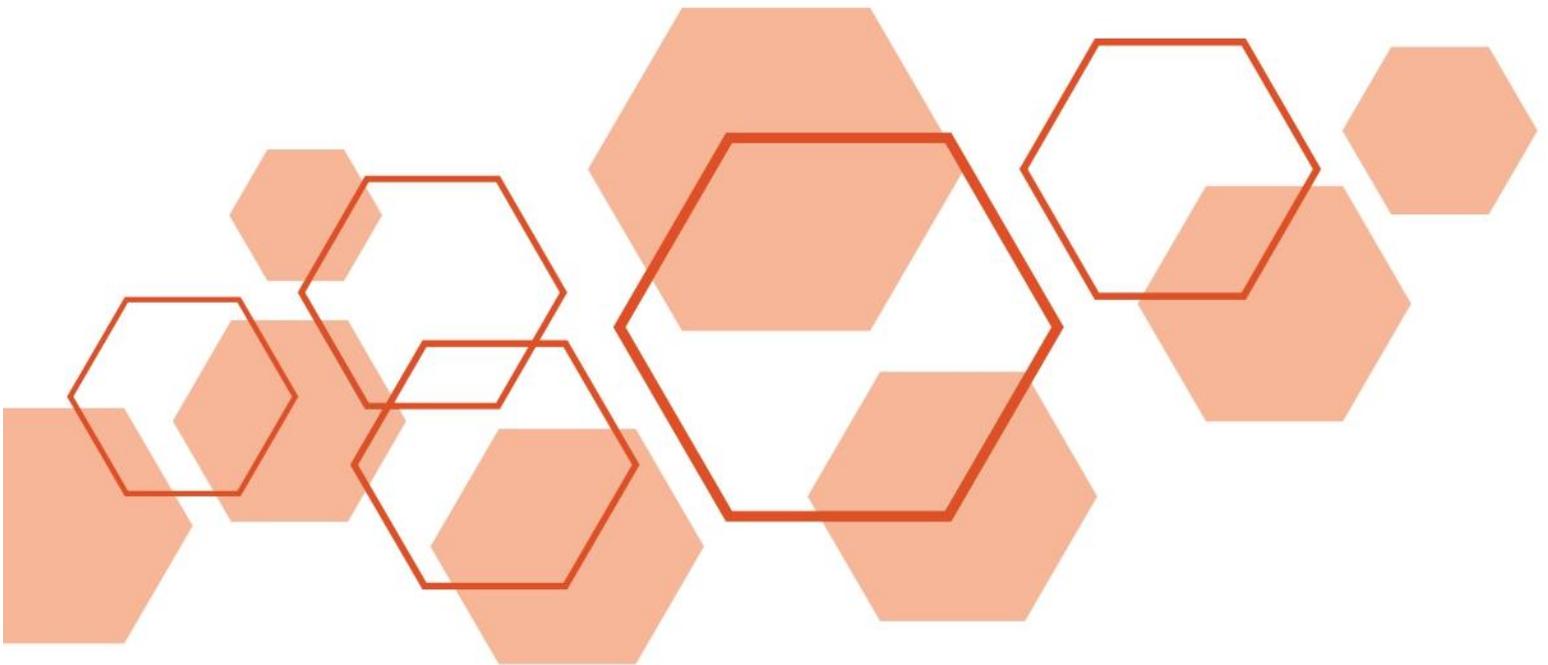
EXPOSURE DRAFT

ESRS S3

Affected communities

Basis for conclusions

May 2022



DISCLAIMER

This Basis for Conclusions accompanies but is not part of the Exposure Draft ESRS S3 Affected Communities. 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.

This Basis for Conclusions has been prepared solely under the responsibility of the EFRAG PTF-ESRS. It, therefore, does not reflect the EFRAG SRB's position at this stage, nor the position of the European Union or European Commission DG Financial Stability, Financial Services and Capital Markets Union (DG FISMA), nor the position of organisations with which the EFRAG PTF-ESRS has cooperated.

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Objective

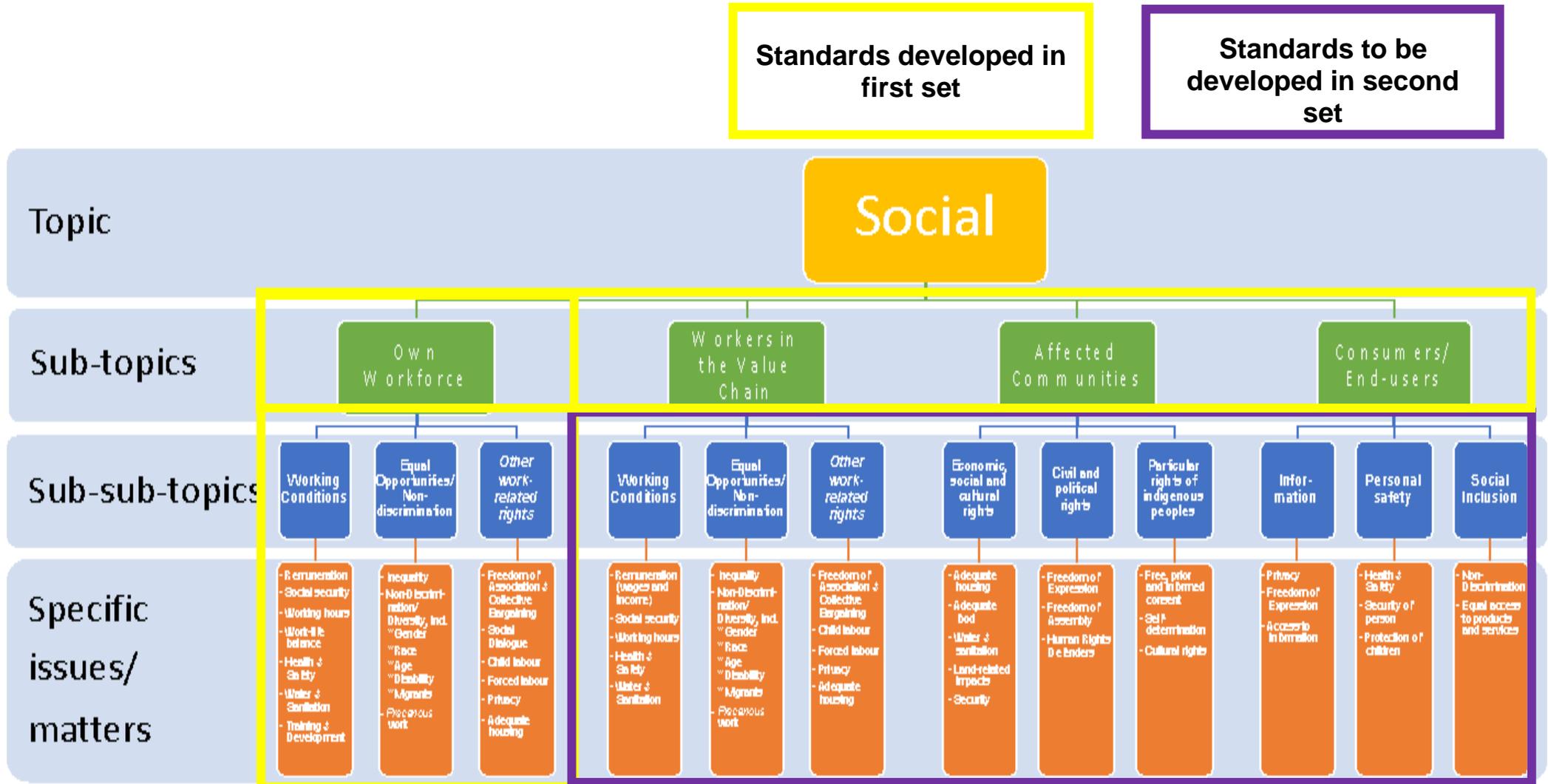
- BC1. The objective of this [draft] standard is to set disclosure requirements that cover the information required by undertakings across all sectors (subject to the rebuttable presumption in ESRS 1 paragraph 57) in order to report under a double materiality perspective. It covers in particular:
- (a) the impacts on affected communities
 - (b) the material risks and opportunities arising from the undertaking's impacts and dependencies. Such risks and opportunities are sources of financial effects;
 - (c) the actions taken to address impacts, mitigate and pursue opportunities related to affected communities and the results of those actions; and
 - (d) the effects of risks and opportunities on the undertaking's development, performance and position over the short-, medium- and long-term and therefore on its ability to create enterprise value (financial effects).

Context and reference table

- BC2. The proposal for a Corporate Sustainability Reporting Directive (CSRD) and its predecessor, the Non-Financial Reporting Directive (NFRD), as well as the Sustainable Finance Disclosure Regulation (SFDR) and the Taxonomy Regulation (EU Taxonomy) are the central components of the sustainability reporting requirements that both underpin and will advance the objectives of the EU's sustainable finance strategy. These all recognise the importance of respect for human rights, as enshrined in the Charter of Fundamental Rights of the European Union, and international instruments such as the UN Guiding Principles on Business and Human Rights (UN Guiding Principles) and the Organisation for Economic Co-Operation and Development Guidelines for Multinational Enterprises (OECD Guidelines).
- BC3. Specifically, the [draft] CSRD aims to improve the relevance, faithfulness, reliability and comparability of information about social sustainability topics. Article 19b requires disclosure on:
- (a) Equal opportunities for all, including gender equality and equal pay for equal work, training and skills development, and employment and inclusion of people with disabilities;
 - (b) Working conditions, including secure and adaptable employment, wages, social dialogue, collective bargaining and the involvement of workers, work-life balance, and a healthy, safe and well-adapted work environment; and
 - (c) Respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, the International Labour Organisation's Declaration on Fundamental Principles and Rights at Work and the ILO fundamental conventions and the Charter of Fundamental Rights of the European Union.
- BC4. In line with this [draft] CSRD requirement, the [draft] Standard, along with the other social standards, was drafted with the understanding that social topics are, in their essence, about people, as individuals, groups and societies. Based on the approach of double materiality, this includes both the perspective of undertakings' impacts on people and the perspective of business risks and opportunities that result from

undertakings' impacts and dependencies on people. The key categories of people – or affected 'stakeholders' – addressed in the ESRS are the undertaking's own workforce (ESRS S1), workers in the value chain (ESRS S2), affected communities (ESRS S3), and consumers and end-users (ESRS S4).

- BC5. The social standards, taken together, are designed to address these four categories of stakeholders. The standards include respective overarching application guidance (AG3-AG12) related to ESRS 2 - covering general, strategy, governance and materiality assessment - for each stakeholder group (ESRS S1, S2, S3 and S4) that reflects the general due diligence process defined in international guidelines and recommendations, but they do not include disclosure requirements on Policies, targets, action plans and resources nor Performance measures at this stage. This overarching application guidance included in the first set of EU Sustainability Reporting Standards, together with topical standards' disclosure requirements on Policies, targets, action plans and resources and with disclosure requirements on Performance measures and performance measures on own workforce in [draft] ESRS S1 embed human rights due diligence.
- BC6. In preparing the [draft] ESRS S2-S4 and assessing potential performance measures within the context of the value chain, the conclusion of the analysis performed is that it is the specific facts and circumstances of the undertaking's value chain that play a significant role and will help determine appropriate and meaningful performance indicators. Therefore, the diversity of value chains to be considered within the scope of drafting sector agnostic reporting standards for the first set supports the decision to further develop performance indicators as part of the second set of standards where both extensions to the sector-agnostic standards and disclosures sector-specific standards will be drafted. The same approach is to be applied to the other affected stakeholder groups such as affected communities and consumers and end-users where a similar rationale has been applied.
- BC7. The structure of the standards (social topic; sub-topics; sub-sub-topics) is set out below, with the disclosure requirements published in this first set highlighted in yellow and second set in purple.



- BC8. The [draft] CSRD highlights the particular importance of sustainability reporting standards being aligned with the UN Guiding Principles and the OECD Guidelines, including their chapters on human rights and employment and industrial relations.
- BC9. Human rights (which include labour rights) address the full range of types of negative impacts on people that can occur: economic, social, cultural, civil and political. They include the commonly understood social issues of freedom of expression, freedom of assembly, security of the person, adequate housing and food, and water and sanitation, as well as specific issues related to Indigenous Peoples, including free, prior and informed consent, and are today understood to include impacts on people resulting from climate change and broader environmental harm.
- BC10. Human rights represent a threshold: they are about impacts on people that are sufficiently acute that they undermine the basic dignity and equality of individuals. As such, human rights impacts – and in particular severe impacts on human rights – are likely to be material in terms of the impacts themselves. And these material impacts on people are in turn among the most likely to also raise material risks to the business in the short, medium or long term. This Standard focuses on the reporting of these material impacts and/or material risks.
- BC11. Additional social issues relevant for communities include the advancement of skills, knowledge and well-being for community members and other community development.
- BC12. The [draft] CSRD also makes clear that the content of reporting on due diligence should be fully aligned with the UN Guiding Principles and OECD Guidelines as per recital 27.
- BC13. In addition to recognising international and European human rights instruments, the [draft] CSRD also references the European Pillar of Social Rights (EPSR), which is a key European initiative containing 20 principles intended to serve as a “...*beacon guiding us towards a strong social Europe that is fair, inclusive and full of opportunity*”¹. The accompanying Action Plan is a set of concrete initiatives to deliver on the European Pillar of Social Rights. In accordance with the Action Plan, the [draft] CSRD aims to ensure that “*better public reporting by companies about social issues should facilitate investment flows towards economic activities with positive social outcomes. Better corporate reporting also serves to make companies more accountable for social and other sustainability*” (European Pillar of Social Rights Action Plan, Section 4).
- BC14. The disclosures in this [draft] Standard therefore align with the elements of due diligence as set out in the international instruments, and which are summarised in ESRS 1; and, in addition, to the principles of the European Pillar of Social Rights.
- BC15. The disclosures aim to reach a fair balance between the need for meaningful information regarding an undertaking’s impacts, risks and opportunities in relation to affected communities, and the need to ensure that reporting requirements are reasonable and feasible for undertakings themselves, recognising the time and resources it can take to gather and interpret the data required. Any additional requirement on undertakings flowing from the disclosures should lead to more relevant and comparable reporting, whereby resources are allocated efficiently and in a targeted manner that directly serves the objectives of the [draft] CSRD and complementary EU and international instruments.

¹ European Commission: The European pillar of Social rights in 20 principles. https://ec.europa.eu/info/strategy/priorities-2019-2024/economy-works-people/jobs-growth-and-investment/european-pillar-social-rights/european-pillar-social-rights-20-principles_en

BC16. The [draft] Standard addresses undertakings' impacts and dependencies on local communities, including Indigenous Peoples. Based on the relevant provisions from the [draft] CSRD as illustrated in Table 1 below, and other EU legislation, as well as the global standard of the UNGPs and relevant chapters of the OECD Guidelines, this [draft] Standard on Affected Communities aims to ensure that stakeholders of the reporting undertaking obtain information that enables them to understand:

- (a) How local communities can be impacted in both positive and negative ways;
- (b) The due diligence approaches taken to identify, prevent, mitigate or remediate negative impacts and assess the effectiveness of these actions;
- (c) How the voices and perspectives of local communities are integrated into these due diligence processes and through remedy channels and processes;
- (d) How undertakings contribute positively to improved social outcomes for local communities;
- (e) The nature, type and extent of the material risks or opportunities for the business which arise from the impacts described above or from their dependencies on local communities; and
- (f) The approaches taken to mitigating these risks and pursuing these opportunities.

BC17. Under the EU Taxonomy, undertakings have to meet the minimum safeguards stipulated in Article 18, according to which investments must align with the OECD Guidelines and the UN Guiding Principles including the principles and rights set out in the eight fundamental conventions identified in the Declaration of the International Labour Organisation on Fundamental Principles and Rights at Work and the International Bill of Human Rights.

BC18. Under the SFDR, the European Supervisory Authorities (ESAs) developed Regulatory Technical Standards (RTS) that are designed to align with the minimum safeguards requirements of the EU Taxonomy Regulation, as well as its Do No Significant Harm principle. The RTS contain templates for pre-contractual and periodic product disclosures that include information on whether the sustainable investment is aligned with the OECD Guidelines and UN Guiding Principles as well as the principles and rights set out in the eight core ILO conventions and the International Bill of Human Rights.

BC19. In drafting the [draft] Standards, it was endeavoured to make sure that all SFDR Principal Adverse Impact (PAI) indicators would be covered by the proposed disclosure requirements. The approach taken was to directly implement the indicators wherever possible or, when not possible, to make sure that the information needed by the financial market participants would be easily identified and found in the standards. In doing so, it was noted that in the preparation of the necessary information by preparers to enable financial market participants to meet their SFDR-related reporting obligations, questions of application and interpretation may emerge for a subset of the indicators. This [draft] standard does not provide guidelines to overcome those possible application and interpretation issues.

BC20. The Universal Declaration of Human Rights (UDHR) addresses a range of human rights that are further elaborated in the International Covenant on Civil and Political Rights and the International Covenant on Economic, Social and Cultural Rights. Taken together, these instruments constitute the International Bill of Human Rights. Human rights in the UDHR that are specifically relevant to local communities include the human rights to life, liberty and security of the person, freedom of thought, conscience and religion, freedom of opinion and expression, freedom of peaceful assembly and association, an adequate standard of living, including housing and food, and the right to freely participate in the cultural life of the community.

- BC21. The International Covenant on Economic, Social and Cultural Rights further elaborates on the right to an adequate standard of living, including adequate food, clothing and housing, and to the continuous improvement of living conditions; the right to the enjoyment of the highest attainable standard of health; the right to take part in cultural life and the right to self-determination, including the right to free, prior and informed consent of Indigenous Peoples as indicated in the UN Declaration on the Rights of Indigenous People.
- BC22. The disclosure requirements of this [draft] Standard on Affected Communities are in line with relevant provisions of these international instruments specified in the [draft] CSRD. They also take account of the SFDR RTS developed by the European Supervisory Authorities that are relevant to impacts, risks and opportunities related to affected communities. The disclosures aim to provide the information necessary to meet the requirements of those RTS disclosures. Through their alignment with the UN Guiding Principles and the OECD Guidelines more generally, they also provide context that can assist investors (and other users of sustainability reporting) in appropriately interpreting those disclosures.
- BC23. Following the architecture outlined in paragraph BC4 herein, the [draft] Standard defines how to report impacts on affected communities. The [draft] Standard is aligned with ESRS S1-S4.
- BC24. The [draft] Standard will apply for the reporting years [2023] and onwards, while more granular standards related to specific types of impact, risk and opportunity, once developed as part of the second set, will apply from [2024] and onwards. The expansion in 2024 will build on the principles outlined in the Standard and follow the architecture presented above in BC4.
- BC25. The design of the [draft] Standard has been guided by the four following considerations:
- (a) Determining disclosures that can reasonably apply to all reporting undertakings (that is, sector-agnostic disclosures);
 - (b) Complying with the requirements of the [draft] CSRD, existing EU regulation, reporting requirements and agreed initiatives in the field of sustainable finance, together with the SFDR and the EU Taxonomy Regulation;
 - (c) The need for disclosures to build on existing reporting standards and frameworks wherever appropriate, while ensuring that disclosures meet the quality of information guidelines, reflect lessons drawn from experience in the application of social indicators and disclosures, and provide relevant contextual information; and
 - (d) The importance of disclosures being reasonable and feasible for reporting undertakings at this point in time, while also helping preparers respond to the increasing demand for sustainability information by providing a coherent system of disclosures that reduces the potential for multiple requests for information in different formats.
- BC26. The [draft] CSRD aims to build on and contribute to international sustainability reporting initiatives. The reporting frameworks and standards of the Global Reporting Initiative (GRI), the Climate Disclosure Standards Board (CDSB) (now consolidated into the ISSB) the Sustainability Accounting Standards Board (SASB), the International Integrated Reporting Council (IIRC) and the UN Guiding Principles Reporting Framework are reflected, as relevant, in the [draft] Standard.
- BC27. The following table cross-references requirements of the [draft] Standard and the requirements of the [draft] CSRD, the UN Guiding Principles and OECD Guidelines, and other reporting frameworks.

[Draft] ESRS S3 Social – Affected communities

Table 1 Cross-reference of requirements of the [draft] Standard and the requirements of the [draft] CSRD, NFRD, the UN Guiding Principles and OECD Guidelines, and other reporting frameworks

[draft] ESRS S3 DRs	Required by CSRD	Required by SFDR - Principal Adverse Impacts	References to OECD Guidelines and UN Guiding Principles	References to other reporting frameworks
ESRS 2, SBM 3 and 4	Art. 19a 2 (a) (iv)			GRI 2-22 / CDSB Reporting Requirement 1 / UNGP RF A2
ESRS 2, IRO 2 and 3	Art. 19a 2 (e) (ii)		OECD IV.45 / UNGP 18, 21 and 24	GRI 3-3 and 3-2 UNGP RF B1 IR 4.25 / CDSB 3 / SASB CG-AA-440a.1
DR S3-1	Art. 19a 2 (d)	Mandatory indicator #10 in Table 1 of Annex 1 Mandatory indicator #11 in Table 1 of Annex 1 Additional indicator #9 in Table 3 of Annex 1 Additional indicator #14 in Table 3 of Annex 1	OECD IV 4 and Commentary IV para. 44 / UNGP 15 and 16	GRI 2-23 and 3-3 / UNGP RF A1, A1.3
DR S3-2	Art. 19a 2 (e) (i)		OECD II A 14 / UNGP 18	GRI 2-29 / GRI 3-3 (f) / UNGP RF C2 / CDSB 2 and 3
DR S3-3	Art. 19a 2 (e) (iii)	Additional indicator 6 in Table 3 of Annex 1	OECD IV 6 / UNGP 29, 30 and 31	GRI 2-25 / UNGP RF C6.2
DR S3-4	Art 19a 2 (b)		UNGP 20	GRI 3-3-e and 3-3-f / CDSB 2 / OECD VI 1
DR S3-5	Art. 19a 2 (e) (iii)		OECD II A and IV / OECD DD Guidance II 3.1 / UNGP 19, 20 and 22 / UNGP Interpretive Guide III B OECD II A1	GRI 3-3-d and 2-25 / CDSB Environmental and social policies and strategies / UNGP RF C4.3, C5 and C6.5 GRI 3-3 (a) / UNGC/GRI 3.1
DR S3-6	Art 19a 2 (f)		OECD MNE Guidelines Section III 1-2	SASB EM-MM-210b.1

BC28. The Basis for Conclusions includes the following information, as applicable, for each disclosure requirement:

- Relevant EU-legislations that have been referenced (e.g., CSRD, SFDR/RTS, EU Taxonomy);
- Reference to the leading international instruments as they are relevant to the standard: the UN Guiding Principles and the OECD Guidelines, and their provisions that underpin the rationale for the specific disclosure requirements;
- Relevant reporting frameworks and standards that provide for disclosures that are relevant or similar to the disclosure requirements (e.g., GRI, UN Guiding Principles Reporting Framework, SASB, CDSB); and

- (d) Additional explanation of the elements is included in each disclosure requirement.

General, strategy, governance and materiality assessment

Affected communities specific Basis for Conclusion on ESRS 2 Disclosure Requirement SBM 2 and ESRS S2 AG 3 – 5 on the views, interests, rights and expectations of stakeholders

- BC29. The [draft] CSRD requires undertakings to report on “how the undertaking’s business model and strategy take account of the interests of the undertaking’s stakeholders and of the impacts of the undertaking on sustainability matters” (Article 19 a 2 (a.iv)). This is aligned with the UN Guiding Principles and the OECD Guidelines, both clarifying the need for undertakings to inform their due diligence processes throughout by engagement with relevant stakeholders, especially those who may be adversely impacted. In line with this requirement, undertakings reporting under ESRS SBM 2 and ESRS S2 AG 3-5 should provide relevant, useful information on their engagement with local communities, and how their inputs are taken into account in the undertaking’s decision-making process and evolution of its strategy.
- BC30. The UN Guiding Principles refer to the importance of meaningful stakeholder engagement in the conduct of human rights due diligence. For example, the commentary to UN Guiding Principles 18 states that, to enable undertakings to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. It further states that in situations where such consultation is not possible, undertakings should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society. The UN Interpretive Guide to the Corporate Responsibility to Respect Human Rights defines stakeholder engagement as an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaborative approaches.
- BC31. With regards to Indigenous Peoples specifically, the UN Declaration on the Rights of Indigenous Peoples enshrines several rights including the right to free, prior and informed consent. This right allows Indigenous Peoples to give or withhold consent to a project that may affect them or their territories, which acts as a safeguard for all their other rights that may be adversely impacted by external actors. Engagement processes should take into account those rights and particularities.
- BC32. Section II.A-14 of the OECD Guidelines similarly provides that undertakings should engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making that may significantly impact them. The related Commentary adds that stakeholder engagement involves interactive processes of engagement (e.g., meetings, hearings or consultation proceedings) and that effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides.
- BC33. GRI 2-29 requires undertakings to describe their approach to engaging with stakeholders, including the categories of stakeholders they engage with, and how they are identified; the purpose of the stakeholder engagement; and how the organisation seeks to ensure meaningful engagement with stakeholders. GRI 3-3 (f) requires undertakings to describe how engagement with stakeholders has

informed the actions taken to address material impacts and how it has informed whether the actions have been effective.

BC34. The UN Guiding Principles Reporting Framework (C2) guides undertakings companies to disclose how the undertaking identifies which stakeholders to engage with in relation to each of its salient (material) issues; which stakeholders it has engaged with regarding each salient issue in the reporting period, and why; and how the views of stakeholders have influenced the undertaking's understanding of each salient issue and/or its approach to addressing it.

BC35. Requirement 2 of CDSB's Reporting Framework states that information about environmental and social policies and strategies should include confirmation of whether and to what extent policies and strategies take account of the organisation's key stakeholder relationships and perspectives including details about engagement with key stakeholder relationships and perspectives along the value chain. Requirement 3 states that information related to the identification, assessment and prioritisation of risks and opportunities is useful where it explains whether and how the processes include engagement with affected stakeholders, their legitimate representatives or subject matter experts, and the types of stakeholders engaged and the engagement methods used.

Affected communities specific Basis for Conclusion on ESRS 2 Disclosure Requirement SBM 3 and ESRS S3 AG 6 on the interaction between material impacts and the strategy and business models and SBM 4 and ESRS S3 AG 7 – 8 on the interaction between material risks and opportunities and the strategy and business model

BC36. As stated in Article 19a 2 (a) (iv) of the [draft] CSRD, undertakings should briefly describe “*how the business model and strategy take account of the interests of the undertaking's stakeholders and of the impacts of the undertaking on sustainability matters*”. While undertakings are increasingly focused on connections between business models and climate change, the features of business models that can be a source of impacts on people, including on local communities, should also be considered, when material. Research has shown the various ways in which such connections between business model, strategy and material impacts can arise.² Examples can be observed in cases where, typical mitigation strategies may be ineffective at the operational level, given that impacts are part of how the business is designed to operate, and therefore require engagement of senior leaders and governance bodies to address them effectively. This application guidance is aimed at describing such interactions with the undertaking's strategy and business model and capturing the specificities of how the business is designed to operate.

BC37. Guidance to GRI 2-22 states that undertakings should describe how their purpose, business strategy, and business model aim to prevent negative impacts and achieve positive impacts on the economy, environment, and people.

BC38. CDSB Reporting Requirement 1 states that disclosures shall describe the governance of environmental and social policies, strategies and information, and that this Disclosure Requirement will be satisfied when disclosures, inter alia, explain whether and how the Board considers how the organisation's business model and strategy may contribute to material environmental and social risks.

BC39. Question A2 of the UN Guiding Principles Reporting Framework guides undertakings to report on how they demonstrate the importance they attach to the implementation of their human rights commitment, including how the business model reflects, or has been adapted, to enable respect for human rights, as well as

² Shift, 'Business Model Red Flags', New York, 2021, <https://shiftproject.org/resource/business-model-red-flags/red-flags-about/>

how any risks to human rights associated with the business model (e.g. project timelines that undermine consultations with communities; or land use in countries where ownership may be contested) are understood among the senior leadership and the Board.

Affected communities specific Basis for Conclusion on ESRS 2 Disclosure Requirements IRO 2 and 3 and ESRS S3 AG 9-12 on the outcome of the assessment of material sustainability impacts, risks and opportunities

- BC40. Article 19a 1 of the [draft] CSRD, requires undertakings to include information “*necessary to understand the undertaking’s impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking’s development, performance and position*” in its management report (concept of double materiality). Article 19a 2 (e) (ii) of the [draft] CSRD requires a description of the “*principal actual or potential adverse impacts connected with the undertaking’s value chain, including its own operations, its products and services, its business relationships and its supply chain*” (impact materiality).
- BC41. According to UN Guiding Principle 18 and OECD Guidelines IV-45, the initial step in conducting human rights due diligence is to identify and assess any actual or potential adverse human rights impacts with which undertakings may be involved either through their own activities or as a result of their business relationships. The purpose is to understand the specific impacts on specific people, given a specific context.
- BC42. UN Guiding Principle 24 states that where it is necessary to prioritise actions to address actual and potential impacts, undertakings should first seek to prevent and mitigate those that are most severe or where delayed response would make them irremediable. The UN’s Interpretive Guide to the Corporate Responsibility to Respect Human Rights under the UN Guiding Principles refers to these as “salient” human rights, while the OECD Guidelines refer to them as the most significant. These steps within the due diligence process are further set out in ESRS1.
- BC43. The UN Guiding Principles Reporting Framework B1 and GRI 3 set out how this same prioritisation process leads to the identification of the material impacts of the organisation by determining the threshold above which the most salient/significant impacts are understood to be material. This is reflected in the application guidance on determining impact materiality, as part of double materiality, under ESRS 2.
- BC44. GRI 3-3 requires undertakings to describe the actual and potential, negative and positive impacts on the economy, environment, and people, including impacts on their human rights. Further, the undertaking should describe whether it is involved with the negative impacts through its activities or as a result of its business relationships and describe the activities or business relationships.
- BC45. In addition to disclosing material impacts on local communities, AG9 of the [draft] Standard requires disclosure on the main types of communities that are affected by those impacts (e.g., communities directly living or working around the undertaking’s operating sites; along the undertaking’s value chain; at one or both endpoints of the value chain; or communities of Indigenous Peoples). The disclosure on the types of communities provides context for understanding the nature and potential consequences of the impacts, and for assessing the potential actions that could be appropriate in response. UN Guiding Principle 21 requires that, in their external communications, undertakings should “provide information that is sufficient to evaluate the adequacy of an enterprise’s response to the particular human rights impact involved”.
- BC46. ESRS 2 Disclosure Requirements IRO 2 and 3, builds on both the current EU NFRD as well as the [draft] CSRD. Article 19a 1 of the [draft] CSRD requires undertakings

to include in the management report information “*necessary to understand how sustainability matters affect the undertaking’s development, performance and position*”. Article 19a 2 (f) of the [draft] CSRD requires “*a description of the principal risks to the undertaking related to sustainability matters, including the undertaking’s principal dependencies on such matters, and how the undertaking manages those risks*” and Article 19a 2 (a) (ii) refers to “*the opportunities for the undertaking related to sustainability matters*”. Already under Article 19a 1 (d) of the NFRD, undertakings are required to report on the principal risks related to sustainability matters and how the undertaking manages those risks.

- BC47. The Integrated Reporting Framework (4.25) highlights that an integrated report should identify the key risks and opportunities that are specific to the organisation, including those that relate to the organisation’s effects on, and the continued availability, quality and affordability of, relevant capitals in the short-, medium- and long-term. This includes both human capital and social and relationship capital, both of which could be relevant with regard to affected communities.
- BC48. Requirement 3 of the CDSB Reporting Framework for reporting environmental and social information states that disclosures shall explain the material current and anticipated environmental and social risks and opportunities affecting the organisation and the processes used to identify, assess and prioritise the risks and opportunities. The Framework defines human and social capital dependencies, which may be a source of risks or opportunities, as the human and social resources and relations that organisations need in order to create and sustain value.
- BC49. Requirement 3 of the CDSB Reporting Framework further states that information will be useful where it explains whether and how the undertaking’s processes to identify, assess and prioritise risks and opportunities include an assessment of whether business risks may result, in the short, medium, and long term, from actual or potential negative environmental and social impacts that the organisation itself may cause or contribute to or which may be linked to its operations, products or services through its business relationships; and when it explains any additional causes and sources of the material business risks and opportunities the organisation has identified, such as risks to the availability of any of the organisation’s natural, social, or human capital dependencies
- BC50. SASB Industry Standards evaluate sustainability issues for inclusion in the Standards by assessing whether a given topic is reasonably likely to materially affect the financial condition, operating performance, or risk profile of a typical undertaking within an industry. For example, standards for a number of industries require undertakings to describe the social risks associated with sourcing priority raw materials and the strategic approach the undertaking takes to manage these risks (CG-AA-440a.1), to discuss processes to manage risks and opportunities associated with community rights and interests (EM-MM-210b.1), as well as describe engagement processes and due diligence practices with respect to human rights, indigenous rights, and operation in areas of conflict (RR-FM-210a.2).

Policies, Targets, Action Plans and Resources

Disclosure Requirement S3-1: Policies related to affected communities

- BC51. As stated in Article 19a 1 (b) of the NFRD amending Directive 2013/34/EU and its non-binding guidelines, as well as Article 19a 2 (d) of the [draft] CSRD, undertakings should provide “*a description of the policies pursued by the undertaking in relation to those matters, including due diligence processes implemented*” and “*a description of the undertaking’s policies in relation to sustainability matters*”. A policy

demonstrates the nature of the commitment made by the undertaking regarding impacts, risks and opportunities related to affected communities.

- BC52. According to both UN Guiding Principle 15 and the OECD Guidelines (IV-4), undertakings should have in place policies and processes appropriate to their size and circumstances, including a policy commitment to meet their responsibility to respect human rights. UN Guiding Principle 16 states that such a policy should stipulate the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; and that it should be publicly available and communicated internally and externally to all personnel, business partners and other relevant parties. Expanding on section IV para. 4, the OECD Guidelines' Commentary on Human Rights specifies that undertakings should "*express their commitment to respect human rights through a statement of policy that: (i) is approved at the most senior level of the enterprise; (ii) is informed by relevant internal and/or external expertise; (iii) stipulates the enterprise's human rights expectations of personnel, business partners and other parties directly linked to its operations, products or services; (iv) is publicly available and communicated internally and externally to all personnel, business partners and other relevant parties; (v) is reflected in operational policies and procedures necessary to embed it throughout the enterprise*".
- BC53. GRI 2-23 requires the undertaking to describe policy commitments for responsible business conduct, including the specific policy commitment to respect human rights, the internationally recognised human rights that the commitment covers, and the categories of stakeholders, including at-risk or vulnerable groups, that the undertaking gives particular attention to in the commitment. It requires undertakings to provide links to the policy commitments if publicly available (c). GRI 3-3 also requires the undertaking to describe its policies or commitments regarding material topics (i.e., specific material impacts). This entails describing the policies or commitments the organisation has developed specifically for the topic, in addition to the policy commitments reported under Disclosure 2-23.
- BC54. The UN Guiding Principles Reporting Framework guides undertakings to report on their public commitment to respect human rights (A1) for which relevant information would include whether the public commitment covers all individuals and groups who may be impacted by the undertaking's activities or through its business relationships, and whether there are any groups to which the undertaking pays particular attention, and why. It guides undertakings to report any more specific policies they may have that address their salient (material) human rights issues. It indicates that relevant information would include clarification of whose human rights the policy or policies relate to, such as local communities. Its supporting guidance explains that specific policies may be addressed through a single provision or section within a broader document, for instance, where an undertaking adopts a stand-alone community and indigenous relationships policy.
- BC55. Disclosure Requirements S3-1 requires undertakings to summarise how the relevant policies are communicated to affected communities, business relationships and other relevant stakeholders in the undertaking's value chain. In line with UN Guiding Principle 16d and OECD Guidelines (IV-44), GRI 2-23 requires undertakings to describe how their policy commitments – including with regard to respect for human rights – are communicated to workers, business partners, and other relevant parties. In addition, the guidance to GRI 2-23 (f) suggests disclosing how the undertaking identifies and removes potential barriers to the communication or dissemination of the policy commitments, e.g., by making them accessible and available in relevant languages.
- BC56. The UN Guiding Principles Reporting Framework A-1.3 guides undertakings to report how their public commitment to respect human rights is disseminated and indicates that relevant information would include whether and how the public

commitment is disseminated in an accessible form to external stakeholders, in particular potentially affected stakeholders, for example local communities and their legitimate representatives.

BC57. The SFDR includes the following amongst the indicators financial market participants are expected to disclose:

- (a) “Lack of processes and compliance mechanisms to monitor compliance with UN Global Compact principles and OECD Guidelines for Multinational Enterprises” (indicator 11 in Table 1 of Annex 1 of the related Delegated Regulation).
- (b) The associated metric reads: “Share of investments in investee companies without policies to monitor compliance with the UNGC principles or OECD MNE Guidelines or grievance /complaints handling mechanisms to address violations of the UNGC principles or OECD MNE”.

As read above, the metric speaks to policies and grievance mechanisms, for which disclosures are included in a number of standards, in particular, [draft] ESRS S1 and [draft] ESRS S2. With regards to ESRS [draft] S3, relevant information will be disclosed in the context of Disclosure Requirement S3-1. Further relevant information will also be found in the context of Disclosure Requirement S3-3, focused on channels for affected communities to raise concerns.

The indicator itself speaks to processes and compliance mechanisms to monitor compliance, which further brings in elements of reporting under Disclosure Requirement S3-5. In particular, insights will be strengthened by looking for information under Disclosure Requirement S3-5, on how the undertaking assesses the effectiveness of its own efforts to prevent, mitigate or remedy impacts.

BC58. Disclosure Requirement S3-1, and specifically paragraph 14, supports the information needs of financial market participants of further SFDR PAI indicators, that is: “Lack of a human rights policy” (indicator 9 in Table 3 of Annex 1 of the related Delegated Regulation). In addition to the information made available through undertakings’ responses to paragraph 14 of [draft] ESRS S3, it is important to highlight that insights will be strengthened by attention to some of the accompanying disclosures under Disclosure Requirement S3-1, beyond the existence of the policy alone.

BC59. The Application Guidance of Disclosure Requirement S3-1 also supports the information needs of financial market participants under the SFDR. Paragraph AG21 relates to the SFDR PAI indicator “Number of identified cases of severe human rights issues and incidents” (indicator 14 in Table 3 of Annex 1 of the related Delegated Regulation). For relevant insights, financial market participants will in particular need to look to third party sources or further information, such as NCP (National Contact Point) cases or incidents captured by service providers.

BC60. An additional example is paragraph AG23 of the Application Guidance (in relation to DR S3-1). Through information reported under Disclosure Requirement S3-1 in line with the indications provided in the Application Guidance, financial market participants will gain insight into the SFDR PAI indicator “Violations of UN Global Compact principles and Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises” (indicator 10 in Table 1 of Annex 1 of the related Delegated Regulation). In particular, investors will need to look to third party sources on violations e.g. NCP cases, or other reported cases. With regard to human rights, the sources will be much the same as for indicator 14 in Table 3 of Annex 1 of the SFDR Delegated Regulation, which asks for the number of identified cases of severe human rights issues and incidents (see BC48). Disclosures under [draft] ESRS 3 on actual and potential material impacts may also provide some relevant information, albeit undertakings will rarely report in the

language of “violations”. The insights of financial market participants will be strengthened by also looking at reporting under Disclosure Requirements S3-2, S3-3 and S3-5 on how the undertaking responds in the event of violations.

Disclosure Requirement S3-2: Processes for engaging with affected communities about impacts

- BC61. The [draft] CSRD requires undertakings to provide “a description of the due diligence process implemented with regard to sustainability matters”. In line with the UN Guiding Principles and the OECD Guidelines, this due diligence process should throughout be informed by engagement with relevant stakeholders, especially those who may be adversely impacted.
- BC62. The UN Guiding Principles refer to the importance of meaningful stakeholder engagement in the conduct of human rights due diligence. For example, the commentary to UN Guiding Principles 18 states that, to enable undertakings to assess their human rights impacts accurately, they should seek to understand the concerns of potentially affected stakeholders by consulting them directly in a manner that takes into account language and other potential barriers to effective engagement. It further states that in situations where such consultation is not possible, undertakings should consider reasonable alternatives such as consulting credible, independent expert resources, including human rights defenders and others from civil society. The UN Interpretive Guide to the Corporate Responsibility to Respect Human Rights defines stakeholder engagement as an ongoing process of interaction and dialogue between an enterprise and its potentially affected stakeholders that enables the enterprise to hear, understand and respond to their interests and concerns, including through collaborative approaches.
- BC63. With regards to Indigenous Peoples specifically, the UN Declaration on the Rights of Indigenous Peoples enshrines several rights including the right to free, prior and informed consent. This right allows Indigenous Peoples to give or withhold consent to a project that may affect them or their territories, which acts as a safeguard for all their other rights that may be adversely impacted by external actors. Engagement processes should take into account those rights and particularities.
- BC64. Section II.A-14 of the OECD Guidelines similarly provides that undertakings should engage with relevant stakeholders in order to provide meaningful opportunities for their views to be taken into account in relation to planning and decision making that may significantly impact them. The related Commentary adds that stakeholder engagement involves interactive processes of engagement (e.g., meetings, hearings or consultation proceedings) and that effective stakeholder engagement is characterised by two-way communication and depends on the good faith of the participants on both sides.
- BC65. GRI 2-29 requires undertakings to describe their approach to engaging with stakeholders, including the categories of stakeholders they engage with, and how they are identified; the purpose of the stakeholder engagement; and how the organisation seeks to ensure meaningful engagement with stakeholders. GRI 3-3 (f) requires undertakings to describe how engagement with stakeholders has informed the actions taken to address material impacts and how it has informed whether the actions have been effective.
- BC66. The UN Guiding Principles Reporting Framework C2 guides undertakings to disclose how the undertaking identifies which stakeholders to engage with in relation to each of its salient (material) issues; which stakeholders it has engaged with regarding each salient issue in the reporting period, and why; and how the views of stakeholders have influenced the undertaking’s understanding of each salient issue and/or its approach to addressing it.

BC67. Requirement 2 of CDSB's Reporting Framework states that information about environmental and social policies and strategies should include confirmation of whether and to what extent policies and strategies take account of the organisation's key stakeholder relationships and perspectives including details about engagement with key stakeholder relationships and perspectives along the value chain. Requirement 3 states that information related to the identification, assessment and prioritisation of risks and opportunities is useful where it explains whether and how the processes include engagement with affected stakeholders, their legitimate representatives or subject matter experts, and the types of stakeholders engaged and the engagement methods used.

Disclosure Requirement S3-3: Channels for affected communities to raise concerns

BC68. UN Guiding Principle 29 states that, to make it possible for grievances to be addressed early and remediated directly, undertakings should establish or participate in effective operational-level grievance mechanisms for individuals as well as communities who may be adversely impacted. The commentary explains that operational-level grievance mechanisms are accessible directly to individuals and communities who may be adversely impacted by an undertaking; are typically administered by enterprises, alone or in collaboration with others, including relevant stakeholders; may also be provided through recourse to a mutually acceptable external expert or body; do not require that those bringing a complaint first access other means of recourse; engage the undertaking directly in assessing the issues and seeking remediation of any harm. It states that such mechanisms need not require that a complaint or grievance amount to an alleged human rights abuse before it can be raised, but specifically aim to identify any legitimate concerns of those who may be adversely impacted.

BC69. In addition, UN Guiding Principle 30 addresses the importance of industry, multi-stakeholder and other collaborative initiatives that are based on respect for human rights-related standards ensuring the availability of grievance mechanisms.

BC70. The OECD Guidelines IV-6 also recommend that when undertakings identify through their human rights due diligence process or other means that they have caused or contributed to an adverse impact, they should have processes in place to enable remediation. The Guidelines note that some situations require cooperation with judicial or State-based non-judicial mechanisms.

BC71. Both UN Guiding Principle 29 and the OECD Guidelines IV-6 underline that operational-level grievance mechanisms can be important complements to wider stakeholder engagement, which it cannot however substitute, nor should it preclude access to judicial or non-judicial grievance mechanisms.

BC72. GRI 2-25 specifically requires disclosing the grievance mechanisms that the organisation has established or participates in, as well as a description of how the stakeholders who are intended users of the grievance mechanisms are involved in the design, review, operation, and improvement of these mechanisms.

BC73. This disclosure requires undertakings to explain whether and how they know that local communities are aware of and trust these structures or processes as a way to raise their concerns or needs and have them addressed. This aligns with UN Guiding Principle 31, which states that grievance mechanisms should be legitimate, accessible, predictable, equitable, transparent, rights-compatible, a source of continuous learning and based on engagement and dialogue. The OECD Guidelines similarly state that operational-level grievance mechanisms can be an effective means of providing for remediation when they meet the core criteria of: legitimacy, accessibility, predictability, equitability, compatibility with the Guidelines

and transparency, and are based on dialogue and engagement with a view to seeking agreed solutions.

- BC74. The UN Guiding Principles Reporting Framework (C6.2) specifically guides undertakings to disclose how they know if people feel able and empowered to raise complaints or concerns, with relevant information including evidence that they are used by the intended individual or groups and feedback from those who have and have not used the channels regarding their confidence in them.
- BC75. The SFDR includes the following PAI indicator: “Insufficient whistleblower protection” (indicator 6 in Table 3 of Annex 1 of the related Delegated Regulation). Disclosure Requirement S3-3, in particular paragraph 24, focuses on providing financial market participants with the necessary insights. A whistleblower mechanism is typically at the level of the undertaking and available to its own employees/contractors. Undertakings may however open a whistleblower mechanism to wider stakeholders, including affected communities. Reporting on non-retaliation, as indicated in paragraph 24 of ESRS S3, is critical to whistleblowing, as this is relevant to any form of grievance mechanism.

Disclosure Requirement S3-4: Targets related to managing material impacts on affected communities

- BC76. Art. 19a 2 (b) of the [draft] CSRD mandates undertakings to provide a description of sustainability targets and the progress made towards achieving those targets. It contains specific disclosure requirements on targets related to sustainability matters, which include rights relevant to communities and Indigenous Peoples.
- BC77. The setting of targets provides a goal against which progress can be tracked. The Commentary to UN Guiding Principle 20 states that undertakings should make particular efforts to track the effectiveness of their responses to impacts on individuals from groups or populations that may be at heightened risk of vulnerability or marginalisation. The OECD Guidelines VI-1 also recommend that undertakings regularly monitor and verify progress toward environmental, health, and safety objectives or targets.
- BC78. With regard to tracking the effectiveness of actions taken, GRI 3-3 (e) requires undertakings to report the processes used to track the effectiveness of the actions; any goals, targets, and indicators used to evaluate progress; the effectiveness of the actions, including progress toward the goals and targets; lessons learned and how these have been incorporated into the organisation’s operational policies and procedures. Its guidance further states that reporting on goals and targets should include how the targets are set. GRI 3-3 (f) also requires undertakings to describe how engagement with stakeholders has informed the actions taken [to address impacts] and how it has informed whether the actions have been effective.
- BC79. Requirement 2 of the CDSB Reporting Framework states that disclosures shall report management’s environmental and social policies, strategies, and targets, including the indicators, plans and timelines used to assess performance. It further specifies that to meet this Requirement undertakings will need to describe their targets, timelines, and key performance indicators against which delivery of environmental and social strategies and policies is measured and resourced. Information on a social target should include whether it is a direct measure of outcomes for people or a measure of systemic changes aimed at improving outcomes for people. Information on targets should further include whether and how they are informed by engagement with affected stakeholders, their legitimate representatives and/or subject matter experts; and key performance indicators used to assess progress against targets.

Disclosure Requirement S3-5: Taking action on material impacts on affected communities and effectiveness of those actions

- BC80. Addressing the identified material impacts, as required by DR S3-5, is part of the human rights due diligence process and in line with Art 19a 2 (e) (iii) of the [draft] CSRD which calls for a description of “*any actions taken, and the result of such actions, to prevent, mitigate or remediate actual or potential adverse impacts*”.
- BC81. UN Guiding Principle 19 states that undertakings should take appropriate action in order to prevent and mitigate negative human rights impacts and that, to facilitate this, responsibility for addressing such impacts should be assigned to the appropriate level and function within the business enterprise; and internal decision-making, budget allocations and oversight processes should enable effective responses. The commentary to UN Guiding Principle 19 elaborates that an undertaking should take the necessary steps to cease or prevent any impacts it causes, may cause or to which it contributes, and should use its leverage to mitigate, to the greatest extent possible, impacts it has not contributed to, but where that impact is nevertheless directly linked to its operations, products or services by its business relationship with another entity. It states that if an undertaking lacks leverage there may be ways for it to increase it, for example, offering capacity-building or other incentives to the related entity, or collaborating with other actors.
- BC82. The OECD Guidelines (II.A and IV) similarly set out the different steps on how to address actual and potential adverse impacts. The UN’s Interpretive Guide on the Corporate Responsibility to Respect Human Rights (III B) and the OECD’s related Due Diligence Guidance for Responsible Business Conduct (II, 3.1) set out in more detail what this entails.
- BC83. The UN Guiding Principles and the OECD Guidelines also address the need for action in response to actual impacts to include steps to provide remedy. This is more general than the requirement to provide an effective grievance mechanism, while such mechanisms can provide one means through which action may be taken. UN Guiding Principle 22 states that where business enterprises identify that they have caused or contributed to adverse impacts, they should provide for or cooperate in their remediation through legitimate processes. The commentary notes that operational-level grievance mechanisms can be one effective means of enabling remediation when they meet effectiveness criteria.
- BC84. GRI3-3 (d) requires undertakings to disclose information on actions taken to manage material topics and related impacts, including actions to prevent or mitigate potential negative impacts; actions to address actual negative impacts, including actions to provide for or cooperate in their remediation; and actions to manage actual and potential positive impacts. GRI 2-25 requires undertakings to describe the processes for remediation of negative impacts and how the effectiveness of these processes is tracked.
- BC85. The CDSB Reporting Framework states that information on the undertaking’s environmental and social policies and strategies should include information about whether the organisation’s environmental and social policies and strategies involve working with entities in the value chain (upstream and downstream) and other third parties (e.g., joint venture partners, franchisees) to facilitate their management of environmental and social impacts; and information relating to actions to mitigate or remediate environmental and social impacts.
- BC86. The UN Guiding Principles Reporting Framework (C4.3) guides undertakings to report what action they have taken in the reporting period to prevent or mitigate potential impacts related to each salient (material) issue and (C6.5) whether the undertaking provided or enabled remedy for any actual impacts related to a salient (material) issue.

- BC87. UN Guiding Principle 20 states that tracking is necessary in order for undertakings to know whether their policies are being implemented optimally, whether they responded effectively to the identified impacts, and to drive continuous improvement. It further requires that tracking should be based on appropriate qualitative and quantitative indicators and draw on feedback from both internal and external sources, including affected stakeholders. Section VI.1(c) of the OECD Guidelines also recommends that undertakings regularly monitor and verify progress toward environmental, health, and safety objectives or targets.
- BC88. GRI 3-3 (e) requires undertakings to report the processes used to track the effectiveness of the actions; goals, targets, and indicators used to evaluate progress; the effectiveness of the actions, including progress toward the goals and targets; and lessons learned and how these have been incorporated into the organisation's operational policies and procedures.
- BC89. The UN Guiding Principles Reporting Framework (C5) guides undertakings to disclose how they know if their efforts to address salient (material) issues are effective in practice. It indicates that relevant information would include internal review processes, internal audit, supplier audits, surveys of employees or other workers, surveys of external stakeholders, other processes for affected stakeholders to provide feedback, including stakeholder engagement processes and grievance mechanisms, databases that track outcomes when actual impacts or complaints arise. Relevant information is also indicated as including qualitative and/or quantitative indicators used to assess how effectively each salient issue is being managed (e.g., indicators developed by the reporting undertaking or by a relevant industry association, multi-stakeholder initiative or in a more general reporting framework).
- BC90. The non-binding guidelines of the NFRD state in their key principles that the impact of an undertaking's activity is a relevant consideration when making non-financial disclosures and that impacts may be positive or adverse (3.1).
- BC91. The OECD Guidelines II.A-1 state that enterprises should contribute to economic, environmental and social progress with a view to achieving sustainable development.
- BC92. The explanatory memorandum of the [draft] CSRD puts the UN Sustainable Development Goals (SDGs) at the centre of the [draft] CSRD's objective as an EU policy. The preamble to the [draft] CSRD also highlights that the Commission has linked the SDGs to the Union policy framework to ensure that all Union actions and policy initiatives, both in and beyond the Union, take those SDGs on board at the outset.
- BC93. Step 3.1 of the UN Global Compact/GRI Practical Guide to Integrating the SDGs into Corporate Reporting guides undertakings to report on their strategy, including objectives (goals) and measurement (indicators) for contributing to their priority SDG targets, recognising that positive contributions can result from both tackling risks and providing beneficial products or services. It states that this may include providing a description of relevant company policies, systems and processes, including their engagement with stakeholders; and data that demonstrate how the undertaking is progressing towards its objectives for contributing to its priority SDG targets and any setbacks it has encountered.
- BC94. GRI 3-3 (a) guidance indicates in relation to reporting on positive impacts, that an undertaking may describe whether the positive impacts are actual or potential, the timeframe of the positive impacts (i.e. whether the positive effects are short-term or long-term and when they are likely to arise); the activities that result in the positive impact; and the stakeholders (without identifying specific individuals) that are positively affected or could be positively affected, including their geographic location.

Disclosure Requirement S3-6: Approaches to mitigating material risks and pursuing material opportunities related to affected communities

- BC95. Article 19a 2 (f) of the [draft] CSRD requires a description of the principal risks to the undertaking related to sustainability matters, including the undertaking's principal dependencies on such matters, and how the undertaking manages those risks.
- BC96. According to the OECD Guidelines III-1 and III-2 undertakings should ensure the disclosure of timely and accurate information on all material matters regarding their activities, structure, financial situation, performance, ownership and governance.
- BC97. Requirement 2 of the CDSB Reporting Framework states that information about undertakings' environmental and social policies and strategies should include the rationale for and nature of those policies and strategies, for example, to respond to the particular business risks and opportunities identified, or to contribute to national or international environmental and social ambitions (e.g., the Paris Agreement or SDGs). Under this Requirement, information should also include details of social policies and strategies, for example, whether they involve investing resources in the prevention, mitigation, and remediation of particular negative human rights impacts, the advancement of human capital, the development of beneficial products and services, etc.; information about whether the organisation's environmental and social policies and strategies involve working with entities in the value chain (upstream and downstream) and other third parties; information relating to actions to mitigate or remediate environmental and social impacts. The Requirement also calls for a description of the resources that are allocated to managing and delivering the policies, strategies, and targets, including investment and capital expenditure plans.
- BC98. SASB standards for a number of industries require undertakings to discuss processes to manage risks and opportunities associated with community rights and interests (e.g. EM-MM-210b.1).



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