

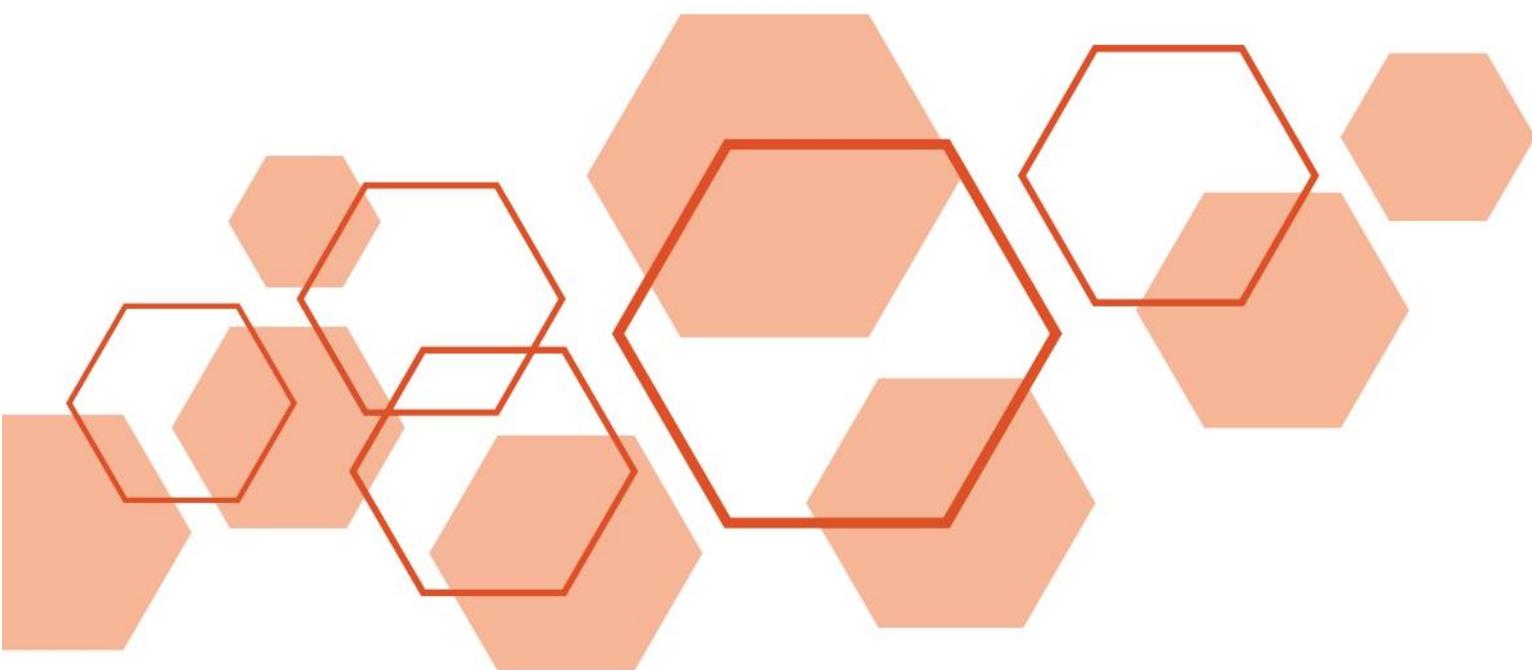
EXPOSURE DRAFT

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## **ESRS S3**

# **Affected communities**

April 2022



Open for comments until 8 August 2022

**PTF-ESRS**

Project Task Force on European sustainability reporting standards

 **EFRAG**

## DISCLAIMER

This Exposure Draft has to be read in conjunction with the cover note for ESRS public consultation. It has been prepared under the sole responsibility of the EFRAG PTF-ESRS and is submitted to public consultation by EFRAG SRB to inform the upcoming standard-setting steps. 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. The final version of the [draft] Standard will be produced by the EFRAG SRB starting from this Exposure Draft, taking into consideration the outcome of the public consultation and the requirements of the final CSRD.

[Draft] ESRS S3 Affected communities is set out in paragraphs 1–40 and Appendices A: Defined terms and B: Application Guidance. All the paragraphs, including those in the Appendices A and B, have equal authority. Each Disclosure Requirement objective is stated in a bold paragraph, followed by a paragraph that illustrates the principle to be followed in the preparation of the respective disclosures. The [draft] Standard also uses terms defined in other [draft] ESRS and should be read in the context of its objective.

## EXPLANATORY NOTE

In this first set of standards, the PTF-ESRS has focused on developing the disclosures that can be expected of all entities under the scope of the CSRD. This Standard therefore provides high-level disclosures regarding an undertaking's impacts on affected communities and related risks and opportunities, when viewed in general across an undertaking's operations and upstream and downstream value chain.

Subsequent standards are expected to expand on this [draft] Standard by providing more detailed disclosures in relation to the sub-topics and specific issues that would be identified as material through the sector-specific or entity-specific materiality determination, which will include actions to address specific impacts and risks, along with related targets and performance measures.

In developing the [draft] Standard, initiatives from the Platform for Sustainable Finance, including the announced guidance on the Minimum Safeguards, as well as the proposal for an EU Corporate Sustainability Due Diligence Directive, were taken into consideration in order to ensure that the structure of the reporting would be compatible with upcoming developments in this area.

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## Objective

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1. The objective of this [draft] Standard is to specify disclosure requirements, which will enable users of the sustainability statements to understand:
  - (a) how the undertaking affects its local communities through its own operations and its upstream and downstream value chain (including its products and services, its business relationships and its supply chain), in terms of material positive and negative actual or potential impacts;
  - (b) any actions taken, and the result of such actions, to prevent, mitigate or remediate actual or potential adverse impacts;
  - (c) the nature, type and extent of the undertaking's material risks and opportunities related to the undertaking's impacts and dependencies on affected communities, and how the undertaking manages them; and
  - (d) the effects of risks and opportunities, related to the undertaking's impacts and dependencies on affected communities, on the undertaking's development, performance and position over the short-, medium- and long-term and therefore on its ability to create enterprise value.
2. In order to meet the objective, the [draft] Standard requires an explanation of the general approach the undertaking takes to identify and manage any material actual and potential impacts on affected communities in relation to:
  - (a) impacts on communities' economic, social and cultural rights (e.g. adequate housing, adequate food, water and sanitation, land-related and security-related impacts);
  - (b) impacts on communities' civil and political rights (e.g. freedom of expression, freedom of assembly, impacts on human rights defenders); and
  - (c) impacts on particular rights of Indigenous communities (e.g. free, prior and informed consent, self-determination, cultural rights).
3. The [draft] Standard derives from the draft CSRD stating that the sustainability reporting standards shall specify the information that undertakings are to disclose about social factors in relation to affected communities.
4. The [draft] Standard also requires an explanation of how such impacts, as well as the undertaking's dependencies on local communities, can create material risks or opportunities for the undertaking. For example, negative relationships with local communities may disrupt an undertaking's operations or harm its reputation, while constructive relationships can bring business benefits, such as stable and conflict-free operations and a greater ease of recruiting locally.
5. In addition, this [draft] Standard supports the undertaking's disclosure of its alignment with the EU-Taxonomy regarding sustainable finance, especially regarding the approach and reporting needs set out by the "Minimum Safeguards".

## Interaction with other ESRS

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6. This [draft] Standard shall be read in conjunction with ESRS 1 General Principles, and ESRS 2 General, Strategy, Governance, and Materiality Assessment, as well as the ESRS S1 Own workforce, ESRS S2 Workers in the value chain and ESRS S4 Consumers and end-users.

## Disclosure requirements

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### ***General, strategy, governance and materiality assessment***

7. The provisions of this [draft] Standard shall be read in conjunction with and reported alongside the disclosure required by ESRS 2.

8. Appendix B of this [draft] Standard contains specific application guidance to report on affected communities that the undertaking shall follow when disclosing information under ESRS 2, in particular with regards to:
  - (a) the interaction between material impacts, risks and opportunities and the strategy and business model as per ESRS 2 Disclosure Requirements SBM 2, 3 and 4; and
  - (b) the outcome of the assessment of material sustainability impacts, risks and opportunities as per ESRS 2 Disclosure Requirements IRO 2 and 3.

### ***Disclosure Requirement S3-1 – Policies related to affected communities***

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9. **The undertaking shall state its policies that address the management of its material impacts on communities, as well as associated material risks and opportunities; and provide a summary of the content of the policies and how they are communicated<sup>1</sup>.**
10. The principle to be followed under this Disclosure Requirement is to provide an understanding of the extent to which the undertaking has policies that address the identification, assessment, management and/or remediation of material impacts on local communities specifically, as well as policies that cover material risks or opportunities related to affected communities, or policies that cover impacts, risks and opportunities in one policy. It also aims to provide an understanding of how both the internal organisation, and the local communities whose interests they address, are made aware of their existence and content.
11. The summary of the description of the policy shall contain the information requirements defined in ESRS 1 Disclosure Principle 1-1 – On policies adopted to manage material sustainability matters.
12. Where a policy is publicly available on a website, the undertaking may provide a link to the policy.
13. The undertaking shall highlight any particular policy provisions for preventing and addressing impacts on Indigenous communities.
14. The undertaking shall state human rights policy commitments that are relevant to communities, including policies to monitor compliance with the UN Global Compact principles or OECD Guidelines for Multinational Enterprises, as well as those that address<sup>2</sup>:
  - (a) respect for the human rights of all stakeholders;
  - (b) respect for the human rights of communities, and indigenous peoples specifically;
  - (c) engagement with affected stakeholders; and
  - (d) measures to provide and/or enable remedy for human rights impacts.
15. The undertaking shall summarise how the policy that addresses material impacts on, and risks and opportunities in relation to, affected communities (including policy commitments, code of conducts and other relevant policies as outlined above) is communicated in an accessible form to local communities, business relationships, and other relevant stakeholders in the undertaking's value chain.

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<sup>1</sup> This information supports the information needs of financial market participants subject to Regulation (EU) 2019/2088 as reflecting a mandatory indicator related to principal adverse impacts as set out by indicator #11 in Table 1 of Annex 1 of the related Delegated Regulation with regard to disclosure rules on sustainable investments ("Lack of processes and compliance mechanisms to monitor compliance with UN Global Compact principles and OECD Guidelines for Multinational Enterprises").

<sup>2</sup> This information supports the information needs of financial market participants subject to Regulation (EU) 2019/2088 as reflecting an additional indicator related to principal adverse impacts as set out by indicator #9 in Table 3 of Annex 1 of the related Delegated Regulation with regard to disclosure rules on sustainable investments (respectively "Lack of a human rights policy").

16. If the undertaking does not disclose the above required information, because it does not believe it has material impacts, risks or opportunities in relation to affected communities or it has not adopted a policy and/or objectives as outlined in ESRS 1, it shall disclose this to be the case, shall provide reasons for not having adopted a policy or objectives, and may report a timeframe in which it aims to have such policy or objectives in place.

### ***Disclosure Requirement S3-2 – Processes for engaging with affected communities about impacts***

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17. **The undertaking shall explain its general processes for engaging with affected communities and their representatives about actual and potential material impacts on them.**
18. The principle to be followed under this Disclosure Requirement is to provide an understanding of how the undertaking engages as part of its ongoing due diligence process with affected communities about material actual and potential positive and/or negative impacts that do or may affect them, and whether and how perspectives of affected communities are taken into account in the decision-making processes of the undertaking.
19. The undertaking shall explain whether and how the perspectives of affected communities inform its decisions or activities. This shall include, where relevant, an explanation of:
  - (a) whether engagement occurs with affected communities or their legitimate representatives directly, or with credible proxies that have insight into their situation;
  - (b) the stage(s) at which engagement occurs (for example, in assessing the feasibility of an activity, at the impact assessment stage, or in evaluating its effectiveness), and the type of engagement (e.g. participation, consultation, information, etc.), as well as the frequency of the engagement (e.g. quarterly, yearly, etc);
  - (c) what role or function within the undertaking has responsibility for ensuring this engagement happens and that the results inform the undertaking's approach; and
  - (d) how the effectiveness of, and, where relevant, outcomes and agreements from engagements are monitored.
20. Where affected communities are indigenous peoples, the undertaking shall also explain how it takes into account and ensures respect of their particular rights in its stakeholder engagement approach, including their right to free, prior and informed consent with regard to their cultural, intellectual, religious and spiritual property; activities affecting their lands and territories; and legislative or administrative measures that affect them.

### ***Disclosure Requirement S3-3 – Channels for affected communities to raise concerns***

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21. **The undertaking shall describe:**
  - (a) the channels it has in place for affected communities to raise their concerns or needs directly with the undertaking; and/or
  - (b) the processes through which the undertaking supports the availability of such channels by its business relationships; and
  - (c) how it monitors issues raised and addressed.
22. The principle to be followed under this Disclosure Requirement is to provide an understanding of the formal means by which affected communities can make their concerns and needs known directly to the undertaking, and/or through which the undertaking supports the availability of mechanisms by its business relationships, how follow up is done with these communities regarding the issues raised, and the effectiveness of these channels.

23. The undertaking shall describe the channels in place, together with information on how the undertaking supports or requires the availability of such channels and whether it has insight into the issues raised. The channels, for raising concerns or needs, include any grievance mechanisms, hotline, dialogue processes or other means (including any existing informal mechanisms) through which members of affected communities or their legitimate representatives can raise concerns about impacts or explain needs that they would like the undertaking to address. This could include both channels provided by the undertaking directly, and channels provided by the entities who might have an impact on local communities.
24. The undertaking shall explain whether and how it assesses that affected communities are aware of and trust these structures or processes as a way to raise their concerns or needs and have them addressed, and whether the undertaking has policies in place regarding the protection of individuals that use them against retaliation.<sup>3</sup>
25. If the undertaking cannot disclose the above required information because it has not adopted a channel for raising concerns and/or does not support the availability of mechanisms by its business relationships, it shall disclose this to be the case, it shall then also provide reasons for not having adopted such a channel or processes and may report a timeframe in which it aims to have such a channel or processes to be in place.

**Disclosure Requirement S3-4 – Targets related to managing material negative impacts, advancing positive impacts, and managing material risks and opportunities**

26. **The undertaking shall explain the outcome-oriented targets it may have related to:**
  - (a) reducing negative impacts on affected communities; and/or
  - (b) advancing positive impacts on affected communities; and/or
  - (c) managing material risks and opportunities related to affected communities.
27. The principle to be followed under this Disclosure Requirement is to provide an understanding of the extent to which the undertaking is using outcome-oriented targets to drive and measure progress in addressing negative impacts, and/or advancing positive impacts, on affected communities.
28. The undertaking shall describe any targets linked to specific material positive or negative impacts on affected communities and/or to risks or opportunities associated with affected communities.
29. The summary of the description of the targets shall contain the information requirements defined in ESRS 1 related to the Disclosure Principle 1-2 - On targets, progress and tracking effectiveness.
30. The undertaking shall disclose the process for setting the targets, including whether and how the undertaking engaged directly with affected communities, or their legitimate representatives directly, or with credible proxies that have insight into their situation, in:
  - (a) setting any such targets,
  - (b) tracking the undertaking's performance against them; and
  - (c) identifying any lessons or improvements as a result of the undertaking's performance.

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<sup>3</sup>This information indirectly and for certain elements supports the information needs of financial market participants subject to Regulation (EU) 2019/2088 as reflecting an additional indicator related to principal adverse impacts as set out by indicator #6 in Table 3 of Annex 1 of the related Delegated Regulation with regard to disclosure rules on sustainable investments ("Insufficient whistle-blower protection").

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

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31. **The undertaking shall explain:**
- (a) what action is planned or underway to prevent, mitigate or remedy material negative impacts on affected communities that are connected to its operations, products or services;
  - (b) any additional social investment or other development programmes it has in place with the primary purpose of contributing to local communities' needs;
  - (c) how it assesses the effectiveness of these actions, investments and programmes in delivering intended outcomes for affected communities.
32. The principle to be followed under this Disclosure Requirement is to provide an understanding of the types of processes, initiatives or engagements through which the undertaking (a) works to prevent, mitigate and remedy material impacts on affected communities, or (b) seeks to achieve positive impacts for affected communities, recognising that in both instances, the ultimate aim is to deliver improved outcomes for local communities' lives.
33. The summary of the description of the approaches to taking action on material impacts shall contain the information requirements defined in ESRS 1 related to the Disclosure Principle 3 – On actions, action plans and resources in relation to policies and targets.
34. The undertaking shall describe its approaches to:
- (a) identifying what action is needed and appropriate in response to a particular actual or potential material negative impact;
  - (b) taking action in relation to specific material negative impacts on communities, including any action in relation to its own practices regarding land acquisition, planning and construction, operation or closure practices, as well as whether wider industry or collaborative action with other relevant parties will be required; and
  - (c) ensuring that processes to provide or enable remedy in the event of negative impacts are available and effective in their implementation and outcomes.
35. The undertaking shall describe the approaches and processes through which it tracks the effectiveness of the actions it takes to address impacts. Where it has in place a target in relation to a material impact, as disclosed under ESRS S3-4 Disclosure Requirement, it shall explain how these efforts to track the effectiveness of its actions, including any indicators it uses, relate to the target and help the undertaking evaluate its progress.
36. The undertaking shall also describe whether it has additional social investments or development programmes in place whose primary purpose is to deliver positive impacts for affected communities, and how it tracks effectiveness of these initiatives and processes.

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

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37. **The undertaking shall explain:**
- (a) what action is planned or underway to mitigate material risks for the undertaking arising from its impacts and dependencies on local communities; and
  - (b) what action is planned or underway to pursue material opportunities for the undertaking in relation to local communities.

38. The principle to be followed under this Disclosure Requirement is to provide an understanding of the ways in which the undertaking is addressing the material risks and pursuing the material opportunities related to affected communities.
39. The undertaking shall explain how the actions it has planned or is implementing in response to material risks arising from its impacts and dependencies on local communities are expected to mitigate those risks, and how it tracks their effectiveness in practice, including any evidence to date of their success.
40. The undertaking shall explain how the actions it has planned or is implementing to pursue material opportunities for the undertaking arising from its impacts and dependencies on local communities are expected to achieve the opportunities, and how it tracks their effectiveness in practice, including any evidence to date of their success.

## **Appendix A: Defined terms**

This appendix is an integral part of the [draft] ESRS S3 Affected communities.

<b>Affected communities</b>	A group living or working in the same area that has been or may be affected by a reporting undertaking's operations or through its value chain. The local community can range from those living adjacent to the organisation's operations to those living at a distance.
<b>Indigenous peoples</b>	Indigenous peoples are generally identified as 1) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; 2) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.

## **Appendix B: Application Guidance**

This appendix is an integral part of the [draft] ESRS S3 Affected communities. It describes the application of the requirements set for in paragraphs 1-40 and has the same authority as the other parts of this [draft] ESRS S3 Standard.

### **Objective**

- AG 1. The undertaking may highlight special issues relevant to a material impact for a shorter period of time, for instance initiatives regarding the impacts on communities related to the undertaking's operations due to extreme and sudden weather conditions.
- AG 2. Undertakings shall not omit any information in relation to the value chain that they themselves possess or should be able to produce within a reasonable time frame. Reporting on most Disclosure Requirements in this [draft] Standard does not rely on data from third parties but can be responded to by referring to the undertakings' own policies, targets, action plans and resources (where available), including as they relate to their third-party business relationships.

### **General, strategy, governance and materiality assessment**

#### ***Affected communities-related specific application guidance on ESRS 2 Disclosure Requirement SBM 2 (paragraphs 38 (a) and (b)), on the views, interests and expectations of stakeholders***

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- AG 3. The Section on ESRS 2 Disclosure Requirement SBM 2 requires the undertaking to provide an understanding of if and how it considers whether its business model and strategy play a role in creating, exacerbating or (conversely) mitigating significant material impacts on local communities, and whether and how the business model and strategy are adapted to address such material impacts.
- AG 4. When responding to ESRS 2 Disclosure Requirement SBM 2 paragraphs 38 (a) and (b), the undertaking shall explain how the views, interests, rights and expectations of (actual or potential) materially affected local communities, including respect for their human rights (and their rights as indigenous peoples, where applicable), inform its strategy and business model. Local communities are a key group of affected stakeholders.
- AG 5. While local communities will often not be engaging with an undertaking at the level of its strategy or business model, their views shall inform the undertaking's assessment of its strategy and business model. Where possible, the undertaking shall also seek the views of the (actual or potential) materially affected local communities' legitimate representatives or those of credible proxies that have insight into their situation.

#### ***Affected communities-related specific application guidance on ESRS 2 Disclosure Requirement SBM 3, (paragraphs 41 (a) to (c)) on the interaction between material impacts and the strategy and the business model***

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- AG 6. When responding to ESRS 2 Disclosure Requirement SBM 3 paragraphs 41 (a) to (c), the undertaking shall explain whether and how actual and potential impacts on local communities as identified in ESRS 2 Disclosure Requirements IRO 1, 2 and 3 (a) originate from or are connected to, and (b) inform and contribute to adapting, the undertaking's strategy and business model(s). Impacts on local communities can originate in an undertaking's business model or strategy in a number of different ways. For example, impacts may relate to the undertaking's value proposition (e.g., construction or commencement of projects with timelines that do not allow sufficient time for consultation with groups affected by the projects), its value chain (e.g., land use in countries in which ownership is often contested or records are unreliable or land users such as indigenous

groups are unrecognised), or its cost structure and the revenue model (e.g., aggressive strategies to minimise taxation, particularly with respect to operations in developing countries).

***Affected communities-related specific application guidance on ESRS 2 Disclosure Requirement SBM 4 (paragraphs 47 (a) to (d)) on the interaction between material risks and opportunities and the strategy and the business model***

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- AG 7. When responding to ESRS 2 Disclosure Requirement SBM 4 paragraphs 47 (a) to (d), the undertaking shall provide an understanding of the relationship between its material risks and opportunities arising from impacts and dependencies on local communities and its strategy and business model.
- AG 8. Impacts on local communities that originate in the business model or strategy can also bring material risks to an undertaking. For example, if an undertaking's strategy involves moving into higher risk geographies in pursuit of certain commodities, if local communities resist its presence or object to its local practices, this may create extensive and costly delays, and affect the undertaking's ability to secure future land concessions or permits. Similarly, if an undertaking's business model relies on intensive water extraction at its plants, to the extent of affecting access to water for local communities' consumption, hygiene and livelihoods, this may result in reputationally-damaging boycotts, complaints and lawsuits.

***Affected communities-related specific application guidance on ESRS 2 Disclosure Requirement IRO 2 and 3 on the outcome of the assessment of material sustainability impacts, risks and opportunities***

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- AG 9. The undertaking shall ensure that all affected communities who can be materially impacted through the undertaking's own operations or in its upstream or downstream value chain by a business relationship related to the undertaking's products, services and activities are included in the scope of its reporting under ESRS 2. When responding to ESRS 2 Disclosure Requirement IRO 2 paragraph 77 (a), the undertaking shall provide the following information:
- (a) A brief description of the types of communities subject to material impacts by its operations or through its upstream and downstream value chain:
    - i. communities directly living or working around the undertaking's operating sites, factories, facilities or other physical operations, or more remote communities affected by activities at those sites (for example by downstream water pollution);
    - ii. communities along the undertaking's value chain (for example, those affected by the operations of suppliers' facilities or by the activities of logistics or distribution providers);
    - iii. communities at one or both endpoints of the value chain (for example, at the point of extraction of metals or minerals or harvesting of commodities, or communities around waste or recycling sites);
    - iv. communities of indigenous peoples;
  - (b) in the case of negative impacts, whether they are widespread or systemic in contexts where the undertaking operates or has sourcing or other business relationships (e.g., marginalised populations suffering impacts on their health and quality of life in a highly industrialised area), or whether they are related to individual incidents (e.g., a toxic waste spill affecting a community's access to clean drinking water) or to specific business relationships (e.g., a peaceful protest by communities against business operations that was met with a violent response from the undertaking's security services);
  - (c) in the case of positive impacts, a brief description of the activities that result in the positive impacts (e.g., capacity-building to support more and new forms of local livelihoods) and the

types of communities that are positively affected or could be positively affected, including their geographic location;

- (d) Any material risks and opportunities for the business arising from impacts and dependencies on local communities.

AG 10. In describing the main types of communities negatively affected following the process set out in ESRS 2 Disclosure Requirement IRO 1, the undertaking shall explain how it has developed an understanding of how communities with particular characteristics or those living in particular contexts, or those undertaking particular activities may be at greater risk of harm. For example, this may be because the community is physically or economically isolated and is particularly susceptible to introduced diseases or has limited access to social services and therefore relies on infrastructure set up by the undertaking. It may be because where land worked by women is purchased by the undertaking and payments go to male heads of households, women become further disenfranchised in the community. It may also be because the community is indigenous, and its members seek to exercise cultural or economic rights to the land owned or used by the undertaking – or by one of its business relationships – in a context where their rights are not protected by the state. Special attention should be given to the intersectionality of characteristics such as ethnicity, socioeconomic status, migrant status and gender that may create overlapping risks of harm for certain communities – or for distinct parts of those communities, since local communities are often heterogeneous in nature.

AG 11. In describing the material risks and opportunities for the business arising from impacts and dependencies on local communities, the undertaking shall explain which, if any, of those material risks and opportunities arise from its material positive or negative impacts on local communities. This could be because a material impact on local communities could affect the undertaking's future cash flows, for example, if Indigenous communities have not given their free, prior and informed consent for a project on their lands, and operations must be halted due to protests and blockades.

AG 12. The business risks could also arise because of the undertaking's dependency on local communities where low likelihood but high impact events may affect the undertaking's future cash flows, for example, where a natural disaster leads to a catastrophic industrial accident involving the undertaking's operations, resulting in severe harm to local communities.

### ***Disclosure Requirement S3-1 – Policies related to affected communities***

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AG 13. This disclosure requires the undertaking to provide a summary of the policies or commitments the undertaking has developed that are relevant to managing the undertaking's material impacts on communities and/or to the management of related risks and opportunities identified under ESRS 2 Disclosure Requirements IRO 1, 2 and 3.

AG 14. The summary shall also include the most relevant (if any) external-facing codes of conduct or similar documents that set out the undertaking's expectations about the management of impacts on communities whether through its own activities or those of its business relationships.

AG 15. The summary shall include an explanation of how the external facing policies are embedded, for example through internal-facing community engagement and resettlement policies and aligned with other policies relevant to affected communities.

AG 16. The summary shall also include which position or function within the undertaking has ultimate accountability and operational responsibility for the implementation of the policy, unless this information is already provided under ESRS 2 as part of the Governance section, in which case a cross reference will fulfil the disclosure requirement.

AG 17. The policy may take the form of a stand-alone policy regarding communities or be included in a broader document such as a code of ethics or a general sustainability policy.

AG 18. The summary shall include the key information necessary to ensure a faithful representation of the policies in relation to affected communities, including an explanation of significant changes to

the policies adopted during the reporting year (e.g., new or additional approaches to engagement, due diligence or remedy).

- AG 19. The summary shall explain whether the undertaking's policy covers all communities that could be affected by the material impacts identified under ESRS 2 Disclosure Requirements IRO 2 and 3, or whether they only cover some communities and if so, why.
- AG 20. The undertaking shall explain how its policies address the specific rights of Indigenous communities, where it has identified that impacts on indigenous communities are material.
- AG 21. The summary shall state if any material impacts are not covered by or addressed in any relevant policy and explain any plans it has to address the gap. When preparing this disclosure, the undertaking shall consider whether severe human rights issues and incidents connected to its affected communities have been reported and, if applicable, disclose these<sup>4</sup>.
- AG 22. The undertaking shall disclose whether the relevant policies are mandatory or are only recommendatory in nature for those who are expected to follow or implement them. If they are mandatory, the undertaking shall explain how it ensures adherence by staff internally and/or from its business relationships, as relevant.
- AG 23. The undertaking shall disclose the extent of the alignment of its policy or policies with internationally recognised standards relevant to communities and indigenous peoples specifically, including the standards set out in Universal Declaration of Human Rights and the two Covenants that implement it, as well as the UN Declaration on the Rights of Indigenous Peoples and/or International Labour Organisation's Convention concerning Indigenous and Tribal Peoples (ILO No. 169). The undertaking shall also state whether its policies enable it to monitor compliance with the UN Global Compact principles and/or the OECD Guidelines for Multinational Enterprises. The undertaking shall also disclose the extent to which violations in relation to the UN Global Compact principles and/or the OECD Guidelines for Multinational Enterprises that involve affected communities have been reported in its upstream and downstream value chain and, if applicable, an indication of these<sup>5</sup>.
- AG 24. Where the undertaking is, through its policy commitment, explicitly referring to alignment with the Organisation for Economic Co-operation and Development (OECD) Guidelines for Multinational Enterprises and the United Nations (UN) Guiding Principles on Business and Human Rights, it shall state so if it has not disclosed this as part of disclosures under ESRS 2.
- AG 25. The undertaking shall explain how its policies are communicated to those individuals or entities for whom they are relevant, either because they are expected to implement them (for example, the undertaking's employees, contractors and suppliers, joint venture partners), because they have a direct interest in their implementation (for example, communities, investors) or both. The undertaking shall explain if and how it tailors dissemination to different audiences to help ensure that the policy is accessible and that they understand its implications. Elements of information may include communication tools and channels (e.g., flyers, newsletters, dedicated websites, social media, face to face interactions, community representatives and organisations), or identification and removal of potential barriers for dissemination, such as through translation into relevant languages or the use of graphic depictions.

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<sup>4</sup> This information supports the information needs of financial market participants subject to Regulation (EU) 2019/2088 as reflecting an additional indicator related to principal adverse impacts as set out by indicator #14 in Table 3 of Annex 1 of the related Delegated Regulation with regard to disclosure rules on sustainable investments ("Number of identified cases of severe human rights issues and incidents").

<sup>5</sup> This information supports the information needs of financial market participants subject to Regulation (EU) 2019/2088 as reflecting a mandatory indicator related to principal adverse impacts as set out by indicator #10 in Table 1 of Annex 1 of the related Delegated Regulation with regard to disclosure rules on sustainable investments ("Violations of UN Global Compact principles and Organisation for Economic Cooperation and Development (OECD) Guidelines for Multinational Enterprises").

### ***Disclosure Requirement S3-2 – Processes for engaging with affected communities about impacts***

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- AG 26. The Disclosure Requirement focuses on how the undertaking gains insight into the perspectives of communities regarding impacts that do or may affect them, including through any relevant public participation processes carried out by competent authorities in line with recognised good practice and relevant international standards in relation to impacts of the undertaking's operations, and how the undertaking takes these perspectives into account in their activities or decisions.
- AG 27. The undertaking shall disclose whether engagement occurs directly with affected communities or their legitimate representatives, or with credible proxies who have knowledge of their interests, experiences or perspectives.
- AG 28. The undertaking shall explain any steps it takes to gain insight into the perspectives of communities that may be particularly vulnerable to impacts and/or marginalised, and into the perspectives of specific groups within communities, such as women and girls. In particular, the undertaking shall explain how the engagement includes a good faith negotiation with affected Indigenous Peoples to obtain their Free, Prior and Informed Consent (FPIC) where the undertaking affects the lands, territories or resources that Indigenous Peoples customarily own, occupy or otherwise use; or relocates them from land or territories subject to traditional ownership or under customary use or occupation; or affects or exploits their cultural, intellectual, religious and spiritual property.
- AG 29. The undertaking shall disclose the due diligence stage(s) at which engagement occurs, for example in early planning, assessing impacts, taking action on them or evaluating the effectiveness of the undertaking's approach. It shall explain whether engagement occurs on a regular basis, at certain points in a project or business process (for example, when a new construction site is built or an operation is closed following its end of life), in response to legal requirements such as permitting and/or in response to stakeholder requests, and whether the result of the engagement is being integrated into the undertaking's decision-making processes.
- AG 30. The undertaking shall describe if and how inputs from communities are taken into account in the identification of the material impacts, in particular, inputs from potentially affected communities.
- AG 31. The undertaking shall state what position or function has operational responsibility for such engagement and/or ultimate accountability, and whether it requires certain skills of, or provides training or capacity-building for, relevant staff to undertake engagement. The undertaking shall disclose whether this is a dedicated role or function or part of a broader role or function. If it cannot identify such a position or function, it shall explain why not. This requirement could also be fulfilled with reference to ESRS 2 Disclosure Requirement GOV 1.
- AG 32. Wherever possible, the undertaking shall provide examples from the reporting period to illustrate how the perspectives of communities have informed specific decisions or activities of the undertaking.

### ***Disclosure Requirement S3-3 – Channels for affected communities to raise concerns***

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- AG 33. The Disclosure Requirement focuses on information about channels for affected communities themselves to proactively raise concerns about actual or potential impacts on them and have them addressed. This shall be disclosed in addition to any other mechanisms an undertaking may use to gain insight into the perspectives of communities, such as community perception surveys.
- AG 34. The undertaking shall explain whether it operates the channels itself or participates in any third-party grievance mechanisms. Third party mechanisms could include those operated by the government, NGOs, industry associations and other collaborative initiatives. The undertaking shall explain whether these mechanisms are accessible to all communities who may be potentially or actually materially impacted by the undertaking (or individuals or organisations acting on their behalf or who are otherwise in a position to be aware of adverse impacts), through which affected

communities (or individuals or organisations acting on their behalf or who are otherwise in a position to be aware of adverse impacts), can raise complaints or concerns related to the undertaking's own activities.

- AG 35. The undertaking shall explain whether and how communities that may be affected are able to access channels at the level of the undertaking they are affected by, in relation to each material impact. Relevant channels may include hotlines or other grievance mechanisms operated by the relevant undertaking or by a third party. Where the undertaking is relying solely on information about the existence of such channels provided by its business relationships to answer this requirement, it shall state that.
- AG 36. The undertaking may explain whether these various mechanisms treat grievances confidentially and with respect to the rights of privacy and data protection and whether they allow for affected communities to use them anonymously (for example, through representation by a third party).
- AG 37. In explaining whether and how the undertaking knows that affected communities are aware of and trust any of these channels, it shall include relevant and reliable data it may have about the effectiveness of these channels from the perspective of affected communities themselves. Examples of sources of information are surveys of community members that have used such channels and their levels of satisfaction with the process and outcomes.
- AG 38. In describing the effectiveness of channels for affected communities to raise concerns, the undertaking may be guided by the following questions, based on the “effectiveness criteria for non-judicial grievance mechanisms”, as laid out in the UN Guiding Principles on Business and Human Rights. The below considerations may be applied on an individual channel basis or for the collective system of channels:
- (a) do the channels hold legitimacy by providing appropriate accountability for their fair conduct and building stakeholder trust?
  - (b) are the channels accessible?
  - (c) do the channels have known procedures, set timeframes and clarity on the processes?
  - (d) do the channels ensure reasonable access to sources of information, advice and expertise?
  - (e) are the channels transparent and providing sufficient information to meet any public interest at stake?
  - (f) does the outcome accord with internationally recognised human rights?
  - (g) does the undertaking identify insights from the channels that support continuous learning in both improving the channels and preventing future impacts?
  - (h) does the undertaking focus on dialogue with complainants as the means to reach agreed solutions, rather than seeking to unilaterally determine the outcome?

For more information, see Principle 31 of the UN Guiding Principles on Business and Human Rights.

**Disclosure Requirement S3-4 – Targets related to managing material negative impacts, advancing positive impacts, and managing material risks and opportunities**

- AG 39. This Disclosure Requirement is set to capture targets related to specific material impacts on affected communities and/or targets related to risks and opportunities associated with affected communities. Any targets reported related to impacts shall clearly relate to the intended outcomes to be achieved in the lives of affected communities.
- AG 40. Targets related to risks and opportunities may be the same as or distinct from targets tied to impacts. Therefore, no distinction is to be made per se, but what the target is aiming at shall be disclosed (i.e. impact and/or risks and opportunities). For example, a target to fully restore

livelihoods of local communities following resettlement could both reduce impacts on those communities and reduce associated business risks such as community protests.

- AG 41. The undertaking shall state any topic-specific targets it has set in relation to each material impact and explain how it arrived at those targets. Where the undertaking does not have any such targets it shall state this and explain any plans it has to address the gap.
- AG 42. The undertaking may also distinguish between short, medium and long-term targets covering the same policy commitment. For example, an undertaking may have as a main objective to employ community members at a local mining site, with the long-term goal of staffing 100% locally by 2025, and with the short-term objective of adding x percent of local employees every year up and until 2025.
- AG 43. In general, when disclosing targets in relation to communities, the undertaking shall disclose whether and the extent to which targets are defined in terms of the intended outcomes to be achieved for communities and that they are measurable/verifiable, and stable over time in terms of definitions and methodologies to allow for continuity in the datapoints derived from the targets. Any standards or commitments on which the targets are based shall also be clearly defined in the reporting (for instance code of conducts, sourcing policies, global frameworks or industry codes).
- AG 44. In relation to both overarching and specific targets, the undertaking shall explain whether and how affected communities themselves were or are involved in the process of defining the target(s), tracking performance against it/them and/or identifying lessons related to implementation.
- AG 45. Where an undertaking has changed or replaced a target in the reporting period, this shall be explained, for instance by linking it to significant changes in the business model or to broader changes in the accepted standard or legislation from which the target is derived.

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

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- AG 46. This Disclosure Requirement focuses on what measures the undertaking has in place to respond to its material negative impacts on local communities as well as those measures aimed at achieving additional positive impacts. The undertaking shall disclose whether and to what extent its measures have the ultimate aim of delivering improved outcomes in the lives of affected communities but start from the standpoint of the negative impact that they aim to prevent, mitigate or remedy. The Disclosure Requirement also enables an undertaking to disclose additional investments or development programmes through which it aims to deliver positive impacts, and which are not part of an effort to address negative impacts.
- AG 47. It takes time to understand negative impacts and how the undertaking may be involved with them through its value chain, as well as to identify appropriate responses and put them into practice. It is therefore unlikely that an undertaking will be able to show that all challenges have been addressed. Therefore, the undertaking shall explain:
- (a) its general and specific approaches to addressing material negative impacts;
  - (b) its social investment or other development programmes aimed at contributing to additional material positive impacts;
  - (c) how far it has progressed in its efforts during the reporting period; and
  - (d) its aims for continued improvement.
- AG 48. In relation to each material impact, the undertaking shall explain which internal functions are involved in managing the impact and what types of action they take to address negative and advance positive impacts. Appropriate action will vary according to whether the undertaking causes or contributes to a material impact, or whether it is involved because the impact is directly linked to its operations, products or services by a business relationship. It will also depend on

whether there are expectations in the relevant international human rights standards about outcomes in certain cases, for example compensation in the case of resettlement of Indigenous communities. Refer to ESRS 1, Appendix C for further guidance on “cause, contribute and directly linked”.

- AG 49. The undertaking shall explain whether and how it ensures that its own practices do not cause or contribute to material negative impacts on local communities, including, where relevant, its practices in relation to planning, land acquisition and exploitation, finance, extraction or production of raw materials, use of natural resources, and management of environmental impacts. This may include explaining what approach is taken when tensions arise between the prevention or mitigation of material negative impacts and other business pressures.
- AG 50. Given that material negative impacts affecting local communities may not be caused by the undertaking alone and may be linked to entities or operations outside its direct control, the undertaking shall explain whether and how it seeks to use leverage with relevant business relationships to manage those impacts. This may include using commercial leverage (for example, enforcing contractual requirements with business relationships or implementing incentives), other forms of leverage within the relationship (such as providing training or capacity-building on Indigenous rights to business relationships) or collaborative leverage with peers or other actors (such as initiatives aimed at minimising security-related impacts on communities or participating in company-community partnerships) to motivate business relationships to take action.
- AG 51. If the undertaking reports on its participation in an industry or multi-stakeholder initiative as part of its actions to address material negative impacts, the undertaking shall make clear how the initiative, and its own involvement, is aiming to address the material impact concerned. It may report under ESRS S3-4 Disclosure Requirement regarding any relevant targets set by the initiative and progress towards them.
- AG 52. The undertaking shall also explain whether and how it considers actual and potential material impacts on local communities in decisions to terminate business relationships and whether and how it seeks to address any negative impacts that may result from termination.
- AG 53. The undertaking shall explain what resources are allocated to the management of its material impacts with a level of specificity and detail that allows readers to gain a thorough understanding of how the impacts are managed.
- AG 54. Where the undertaking has caused or contributed to actual material negative impacts on local communities during the reporting period, it shall explain whether and how it has provided or enabled remedy (to the extent of its contribution).
- AG 55. Where material negative impacts have occurred during the reporting period, but the undertaking has not caused or contributed to them, it may explain whether and how it has taken a role in using its leverage to help enable remedy for the affected communities.
- AG 56. The undertaking shall explain how it tracks the effectiveness of its actions to manage material impacts during the reporting period and any lessons learned from the previous and current reporting periods. Processes used to track the effectiveness of actions can include internal or external auditing or verification, court proceedings and/or related court decisions, social or human rights impact assessments, community feedback, grievance mechanisms, external performance ratings, and benchmarking. Where there is a relationship with a target under ESRS 3-4 Disclosure Requirement, the undertaking shall explain the connection.
- AG 57. In reporting on effectiveness, the undertaking shall enable the understanding of the links between the actions it has taken and the effective management of impacts. For example, to show the effectiveness of its actions to support local communities with improving their environment and living conditions, the undertaking may report survey feedback from the community members showing that conditions have improved since the time the undertaking began addressing these issues. Additional information the undertaking may provide includes data showing a decrease in the number of incidents identified through for instance impact assessments.

AG 58. With regards to initiatives or processes whose primary aim is to deliver positive impacts for affected communities, the undertaking shall describe any social investments or development programmes it has in place that are based on affected communities' needs and their level of implementation. This description shall include:

- (a) Information about whether and how affected communities and legitimate representatives or their credible proxies play a role in decisions regarding the design and implementation of these investments or programmes;
- (b) Information about the intended or achieved positive outcomes for affected communities of these investments or programmes; and
- (c) An explanation of the approximate scope of value chain communities covered by the described social investment or development programmes, as well as the rationale for why selected communities were chosen for a given social investment or development programme's implementation.

AG 59. The undertaking may explain whether any such initiatives are designed also to support the achievement of one or more of the UN Sustainable Development Goals (SDGs). For example, through a commitment to advance UN SDG 5 to "achieve gender equality and empower all women and girls" the undertaking may be taking thoughtful measures to include local women in the consultation process with a local community to meet standards of effective stakeholder engagement, which can help empower the women in the process itself, but potentially also in their daily lives.

AG 60. The undertaking shall state the intended positive outcomes of its actions for affected communities and disclose any evidence of achievement of these outcomes. The undertaking shall be careful to distinguish evidence of certain activities having occurred (e.g., that x number of women community members have been provided with training on how to become local suppliers to the undertaking,) from evidence of actual outcomes for affected communities (e.g., that x women community members have set up small businesses and have had their contracts with the undertaking renewed year-on-year).

AG 61. The undertaking may explain whether these investments or programmes also play a role in mitigating material negative impacts disclosed under ESRS 2 Disclosure Requirements IRO 2 and 3; for example, where a programme that aims to improve local infrastructure surrounding an undertaking's operations, such as roads, has led to a reduction in the number of severe traffic accidents involving community members.

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

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AG 62. This Disclosure Requirement assumes that the undertaking has determined its material sustainability-related business risks and opportunities following the process set out in ESRS 2 Disclosure Requirement IRO 1.

AG 63. This Disclosure Requirement focuses on how the undertaking seeks to monitor, manage and mitigate business risks, and pursue business opportunities, related to its impacts or dependencies on affected communities. This disclosure shall include:

- (a) business risks related to an undertaking's impacts on affected communities might include the reputational or legal exposure, as well as operational risks, where local communities protest against resettlements or the loss of access to lands, leading to costly delays, boycotts, or lawsuits;
- (b) business risks related to an undertaking's dependencies on affected communities might include the loss of business continuity where indigenous communities decide to withdraw their consent to a project on their lands, forcing the undertaking to significantly modify or abandon the project;

- (c) business opportunities related to an undertaking's impacts on affected communities might include more easily financing projects and being a partner of choice for communities, governments and other businesses; and
- (d) business opportunities related to an undertaking's dependencies on affected communities might include the development of positive relationships between the undertaking and indigenous communities that enable existing projects to expand with strong support.

AG 64. The undertaking shall highlight external developments that influence whether dependencies turn into risks.

AG 65. The undertaking shall disclose policies, targets, action plans and resources related to the management of material risks and opportunities. Where the risks and opportunities arise from a material impact, the undertaking may cross-reference its disclosures on policies, targets, action plans and resources in relation to that impact.

AG 66. The undertaking shall explain the extent to which and how its processes to manage material risks related to local communities are integrated into its existing risk management processes.



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