

Opinion



Opinion of the German Trade Union Confederation on the draft **European Sustainability Reporting Standards** To be submitted to the Federal Ministry of Justice

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Deutscher Gewerkschaftsbund

Bundesvorstand Abteilung Grundsatz
und Gute Arbeit

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1 Introduction and summary

By letter dated 1 December 2022 the Federal Ministry of Justice asked the German Trade Union Confederation (DGB) to submit an opinion on the European Sustainability Reporting Standards (ESRS) drawn up by the European Financial Reporting Advisory Group (EFRAG).

The substantive context of these draft standards is the Corporate Sustainability Reporting Directive (CSRD) adopted by the European co-legislators in November 2022, which obliges the European Commission, in accordance with the EU directive, to adopt delegated acts to supplement the Directive in which standards are laid down for sustainability reporting.

When adopting the delegated acts the Commission shall be required, in accordance with the EU directive, under certain circumstances, to take account of the technical opinion issued by EFRAG, which on 22 November 2022 published and also submitted a first set of ESRS to the Commission.

This first set of ESRS is based on exposure drafts that EFRAG published in April 2022 and on which the DGB, for its part, has already submitted an opinion within the framework of a public consultation.

On the whole the DGB welcomes the presentation of the ESRS as a significant step towards qualitatively better sustainability reporting.

We take a critical view, however, namely that the ambitions of the new draft standards fall markedly short of the first drafts published in April 2022. EFRAG has pointed out to the European Commission that changes in relation to the exposure drafts have led, among other things, to a reduction in disclosure requirements by almost half.¹ In fact, we can assume that the desired objective of reduction was achieved. Other sources emphasise these reduction efforts and speak, for example, of a reduction of disclosure requirements from 136 to 84, and of the number of quantitative and qualitative data points from 2,161 to 1,144.²

Furthermore – in contrast to previous drafts – the obligation to disclose is now generally subject to an internal examination in accordance with the double materiality perspective, in accordance with which information must be published insofar as it relates to the impacts for people and the environment, or materially to the financial outlook, or both. Only around 400 quantitative and qualitative data points automatically count as material, so that reporting is required in each case.

Particularly evident is the backsliding as regards corporate governance, with regard to which, instead of the previous two standards there is now only one, rather narrow standard. But also in Standard ESRS S1 on the topic of 'Own workforce', which is particularly important from a trade union standpoint, elements of progressive sustainability reporting have been watered down.

It is positive, however, that the Standards (in various places) reflect the importance of human rights due diligence for sustainable value creation. Constant reference is made to the UN Guiding Principles on Business and Human Rights as a standard reference for due diligence, as well as to further standards or initiatives, such as the OECD Guidelines for Multinational Enterprises. Given the importance of the topic and considering the pending European Due Diligence Regulation (CSDDD) reporting obligations should be ambitious and binding in compliance with international standards.

A transitional period of three years (ESRS 1 para 10.2, s 24) for requesting essential information on impacts, risks and opportunities in relation to the undertaking's upstream and/or downstream value chain is not in accordance with this objective, in our view, and should be shortened.

The DGB calls on both the Federal Ministry of Justice and the European institutions to sharpen up the drafts submitted by EFRAG for the sake of effective

¹ See the letter from EFRAG dated 22.11.2022 to EU Commissioner McGuinness, available online at:

<https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2F01%2520EFRAG%2527s%2520Cover%2520Letter%2520to%2520the%2520first%2520set%2520of%2520ESRS%252022%2520November%25202022.pdf>

² Cf. Müller, Stefan (2022): EFRAG reduziert die Offenlegungspflichten in den ESRS-Entwürfen deutlich [EFRAG significantly reduces the disclosure requirements in the ESRS drafts], Haufe News 24.11.2022, available at: https://www.haufe.de/finance/jahresabschluss-bilanzierung/efrag-verabschiedet-esrs-entwurfe_188_580220.html

and ambitious reporting. We see considerable need for improvement, for example, in the areas of decent wages, executive remuneration, company codetermination (board level employee representation) and reconciliation of work and private life.

In addition, the list of reporting requirements in each case should be increased. It should be ensured in that case that all disclosure requirements arising from ESRS 1 and ESRS 2 are regarded as material, and must always be reported on in all undertakings, regardless of their size and sector or branch.

Under no circumstances should the presented standards be further weakened or diluted.

It should also be ensured that the set of further reporting standards to be published in the future – for example, the already announced branch and SME standards – should be translated into all official languages even before they are submitted to the European Commission. EFRAG should make the necessary resources available for that purpose. The availability of draft standards only in technical English, in our view, excludes broad stakeholder groups from the discussion of these issues, which are of the utmost importance for Europe's sustainable future. This tends to enhance the interests of the standard setters, representatives of undertakings, and financial market representatives that dominate the debate today.

In light of the short deadline, besides some general remarks, the DGB is focussing its response on draft standards ESRS 2 (General disclosures), ESRS S1 (Own workforce) and ESRS S2 (Workers in the value chain).

The DGB's assessment is presented in detail in the following pages. First, however, a brief appraisal of the new EU directive on sustainability reporting and the role and structure of EFRAG.

2 The new EU disclosure requirements as an important step in the right direction

In its Opinion of 7 June 2021, the German Trade Union Confederation welcomed the fact that the proposed directive on sustainability reporting (CSRD) presented by the European Commission on 21 April 2021 extended the existing provisions on non-financial reporting in several respects, but also demanded further improvements, especially with regard to the specification of social concerns and the involvement of the works council in preparing sustainability reports.³

Against this background the DGB expressly welcomes the fact that the European co-legislators were able to reach agreement on significant progress in both respects. Substantively,

³ See the Opinion of the German Trade Union Confederation on the European Commission's Proposal for a Corporate Sustainability Reporting Directive of 7 June 2021, available at: <https://www.dgb.de/-/02a>

the CSRD supplements and clarifications as regards social concerns in particular are very significant from a trade union standpoint.

For example, Article 29b para 2 lit b), ii of the new Commission directive lays down that, among other things, it should be ensured that undertakings have to report on 'working conditions, including secure employment, working time, adequate wages, social dialogue, freedom of association, existence of works councils, collective bargaining, including the proportion of workers covered by collective agreements, the information, consultation and participation rights of workers, work-life balance, and health and safety'.

As regards reporting on codetermination in the undertaking recital 49 specifies to the effect that '[s]ustainability reporting standards that address participation of workers should specify, amongst other things, information to be disclosed about the participation of workers in administrative and supervisory boards'.

Given the continuing erosion of company codetermination⁴ these disclosure requirements could in future help to uncover and document instances of legal or illegal avoidance of codetermination.

A real quantum leap was made in relation to the involvement of employees and their workplace representatives. For example, Article 19a para 5 explicitly states that '[t]he management of the undertaking should therefore inform workers' representatives at the appropriate level and discuss with them relevant information and the means of obtaining and verifying sustainability information. ... "Their opinion should be communicated, where applicable, to the relevant administrative, management or supervisory bodies."

For the DGB it goes without saying that in the German context these requirements refer to works council members and trade unions, who henceforth must already be involved during preparation of the sustainability report. As regards the appropriate national level within the meaning of Article 19a, in particular the central or group works council or the financial committee – as the case may be – fit the bill. If there are also European works councils or SE works councils in the undertaking they should also benefit from information and consultation in national committees. Any kind of consultation shall be conducted in such a way that enables workers' representatives to obtain a reasoned response, fully and in good time, before the employer has taken their decision, together with all necessary documents, and to be able to consider and discuss the planned measures within the codetermination committees and with their trade union.

With regard to public-sector banks and insurance companies the provisions shall also apply to their staff councils (employee representation in public sector/ "Personalrat").

⁴ See as a basic text: Sick, Sebastian (2020): Erosion als Herausforderung für die Unternehmensmitbestimmung [Erosion as a challenge for company codetermination], in: Mitbestimmungsreport No. 58, https://www.boeckler.de/pdf/p_mbf_report_2020_58.pdf.

Concerning submission of the opinion of the workplace interest representatives to the administrative, management or supervisory body the DGB underlines its firm opinion, with reference to the formulation 'as the case may be', that communication is not necessary only if there is no governance body, which generally speaking is the supervisory board.

The inclusion of workplace interest representatives described above represents a major step towards enhancing the quality of sustainability reporting. This is because members of works councils and staff councils are recognised as *the* experts on decent work in the undertaking, are familiar with internal processes and thus are able to contribute important information to the preparation of sustainability reports. No less valuable is their knowledge of the risks that exist in the value chain with regard to compliance with employees' rights.

The involvement of workplace interest representatives envisaged to take place 'in the course of the year' also makes sense from a practical standpoint, although experience suggests that a discussion of the sustainability report at the meeting to ratify the financial statement of the (codetermined) supervisory board will generally come too late to enable the implementation of amendments.

From the DGB's standpoint it is extremely important that these policy successes be appropriately enshrined in national legislation. In this connection, efforts should be made to restrict opportunities for opting out in the undertaking.

It is also very important to fully integrate the CSRD guidelines in the EFRAG standards and in the delegated legal acts developed by the European Commission. The standards must under no circumstances be permitted to fall short of the EU directive.

3 On the priority of European standards and the role of EFRAG

In its opinion on the CSRD the DGB criticised the adoption of 'delegated acts' and the technical preparation of the standards of sustainability reporting by the European Financial Reporting Advisory Group (EFRAG) and strongly calls on the European institutions to 'work out the criteria of sustainability reporting in a democratic process and not to pass on this key task to private organisations, which lack democratic legitimacy'.

With regard to EFRAG the DGB called for a tripartite composition of the corresponding governance structures with representatives of business, trade unions and NGOs, as well as for financing from EU funds.

A good one and a half years later it should be noted that the EU institutions have, contrary to trade union advice, held fast to the plan for delegated acts and to engaging EFRAG. And although EFRAG's governance structure with regard to sustainability reporting has been opened up to stakeholders this structure is a far cry from the tripartite composition asked for. By contrast, the European trade union movement is considerably underrepresented, with only one out of the 22 members of the EFRAG Sustainability Reporting Board.

The DGB is thus calling on the European institutions to work towards a more equitable representation of the relevant stakeholder interests and to ensure the funding needed for that purpose.

— In the face of strong voices from the business community favouring a reinforcement of international standards the DGB continues to emphasise the need for more ambitious European reporting standards on sustainability. In particular in relation to social standards the DGB takes the view that further convergence with international standards is not feasible, especially in the absence of adequate international benchmarks.

It cannot be right to impede or in effect to dilute the development of progressive European reporting standards in favour of working out less ambitious international standards.

— Even though we have called for the real involvement of co-legislators in designing reporting standards it has to be said that also the requirement of consent on the part of the European Parliament and of the Council on delegated acts facilitates democratic control, albeit weak, of the work of EFRAG and the Commission in this regard. As a result the procedures chosen by the EU of working out and publishing sustainability standards have considerably more democratic legitimation than a purely private standard setter, such as the International Sustainability Standards Board (ISSB), could claim.

To that extent the DGB's basically not uncritical position in relation to EFRAG may by no means be mistaken for support for a purely private and unregulated norm or standard setting.

4 Detailed comments

4.1 Comments on ESRS 2 (General disclosure)

4.1.1 General remarks

Art 19a para. 3 lit. c) to e) of the CSRD lays down that undertakings shall, among other things, disclose the following information in their reports within the framework of sustainability reporting:

- *'a description of the role of the administrative, management and supervisory bodies with regard to sustainability matters, and of their expertise and skills in relation to fulfilling that role or the access such bodies have to such expertise and skills;*
- *a description of the undertaking's policy on sustainability;*
- *information about the existence of incentive schemes linked to sustainability matters which are offered to members of the administrative, management and supervisory bodies.'*

From the DGB's standpoint, ambitious and adequate reporting on these aspects of good corporate governance would represent real added value for external and internal stakeholders and, at the same time, provide real incentives towards further developing the governance of individual undertakings and the development of a national corporate governance regime in the direction of sustainability.

The new German Corporate Governance Code 2022, as best business practice, has clearly articulated this objective of an increased role for sustainability in the management of undertakings. This entails proactively embedding the linking of strategy and sustainability goals. "In addition to long-term economic objectives, corporate strategy shall also give appropriate consideration to ecological and social objectives. Corporate planning shall include appropriate financial and sustainability-related objectives (A.1 GCGC)". Also in line with that the risk management and internal monitoring system, together with the compliance management system should meet sustainability-related objectives. 'This shall include processes and systems for collecting and processing sustainability-related data' (A.3 GCGC). This far-reaching linking of corporate strategy, corporate planning and risk management must also be reflected in reporting standards. The Code as a set of rules by business for business shows that this ambitious goal is in line with the views of the German business world. The EFRAG standards should not fall short here, but ambitiously measure up to the established framework.

From a trade union standpoint, however, it is questionable whether the EFRAG standards satisfy this objective, especially because the provisions still contained in the exposure drafts were subsequently reduced significantly. For example, transparency concerning the role and responsibility of the executive board and the supervisory board on sustainability issues, in its previous form, is no longer reflected in the final standards.

By contrast, the German Corporate Governance Code (DCGK) (Principle 6) provides an accurate description: 'Supervision and advice [by the supervisory board] include also sustainability issues in particular'. It emphasises especially supervisory board members' required expertise and know-how in the area of sustainability and calls for a corresponding skills profile and qualifications matrix, which should also describe sustainability qualifications in the supervisory board. This emphasises the supervisory board's prominent role and responsibility for sustainability issues. In light of that, such a narrowing of EFRAG standards is unsatisfactory.

Against this background, it is also to be welcomed that undertakings must moreover disclose the main features of their risk management and internal control frameworks in relation to processes of sustainability reporting (ESRS 2 General disclosures, 2. Governance 32–34). Already under current law – admittedly only capital market– oriented – undertakings are required to describe ‘the main features of their internal control and risk management system in relation to the accounting process’ in their (group) management reports (§§ 289 para 4, 315 para 4 HGB [German Commercial Code]). In this context it would seem prudent, in our view, to disclose the extent to which the abovementioned systems are in a position to map ecological and social risks reliably, that is, adequately and effectively, and have sufficiently accurate data available. Generally speaking, this entails a comprehensible ‘translation’ of presumably soft risks into the finance-oriented logic of a general risk management system.

In this context it would be helpful if relevant and frequently used terms such as impact, risk and opportunity (as well as the targeted management of these issues) were defined in the appropriate place (for example, Appendix VI).

4.1.2 On disclosure requirement GOV-1 – The role of the administrative, management and supervisory bodies

This disclosure requirement requires that undertakings disclose the composition of their administrative and supervisory bodies, as well as their tasks and responsibilities, and their access to technical knowledge and skills in relation to sustainability issues.

From the DGB’s standpoint it is to be welcomed that Article 19 unambiguously requires disclosure of the inclusion of employee representatives in the administrative, management and supervisory bodies, thereby transposing from the CSRD the disclosure requirement concerning company codetermination described in Section 2 of this Opinion. Beyond the specific requirements, however, a disclosure requirement should also be introduced if an undertaking ignores the national provisions on employee representation (board level employee representation) in management bodies or deliberately avoids it by exploiting legal loopholes. Furthermore, reporting should be mandatory on how codetermination rights are ensured in cases of cross-border transformation.

It should also be disclosed what committees the supervisory board has set up and their membership composition.

4.1.3 On disclosure requirement GOV-3 – Integration of sustainability-related performance in incentive schemes

In accordance with this disclosure requirement the undertaking must disclose information on the inclusion of its sustainability-related performance in monetary incentive systems. The DGB welcomes this provision, and in particular also that, in accordance with Article 27 B) the relevant proportion of variable pay must be disclosed.

It is also positive that undertakings must disclose any link with standard ESRS E1 (Climate Change), Article 12, to the extent that the reduction of greenhouse gases is an item in executive pay. It is difficult to see, however, why there is no explicit linking of executive pay with important social responsibility goals. Such a disclosure requirement would certainly have sent a positive signal.

It also remains unclear why the disclosure requirement focuses solely on 'sustainability-related performance' and exhibits no concrete relation to the sustainability strategy, as explicitly provided for in exposure draft 2-GOV 4. And in contrast to disclosure requirement G1-6 from the pre-draft explicit provisions are lacking, for example, on clawbacks or pensions of executive board members.

These disclosure requirements, however, are central to understanding executive and management pay and should therefore be incorporated in the same way in the ESRS, as a transparent 'CEO to worker pay ratio', which measures the ratio between the pay of the executive board or the management and the incomes of employees (on this see also explanations pertaining to disclosure requirements S1-16). Even if some of these transparency provisions in Germany have already been introduced with the law on implementation of the shareholders' rights directive (ARUG II) it needs to be considered that these provisions are expressly related only to listed companies, while the CSRD's scope of application is much broader.

4.2 Comments on environmental standards ESRS E1 to ESRS E5

Given the tight deadline the DGB cannot comment in detail on the climate and environmental policy standards ESRS E1 to ESRS E5.

The DGB welcomes the fact that the ESRS considers in detail the impact of enterprises on the environment and lays down corresponding disclosure requirements.

In general, however, reference should be made to the position expressed in our Opinion on the draft CSRD that it is of the utmost importance, in light of the urgently necessary sustainable conversion of economic structures, to consider the social, economic and ecological aspects of sustainability together. If sustainable changes in production and service processes lead to job losses or the precarisation of employment it will generate opposition and jeopardise acceptance of sustainable reconstruction of the European economy.

We therefore advocate that the ESRS be developed more clearly in the direction of a comprehensive overview of sustainability that takes into account social, economic and ecological aspects equally.

4.3 Comments on ESRS S1 (Own workforce)

4.3.1 Overall assessment

The DGB welcomes Standard ESRS S1 (Own workforce). Overall, the draft standard offers a credible and sound basis for the disclosure of sustainability information.

Much of the information to be disclosed within the framework of this standard will have a beneficial effect on the activities of works councils and trade unions, enabling them to act directly and purposefully when undertakings fall short of their social responsibility. External stakeholders – for example, from the financial markets or NGOs – will also find it easier in the future to assess undertakings' social responsibility with regard to their own employees and their interest representatives.

Also positive is the fact that, in accordance with paragraph 8 setting standards also involves establishing disclosure requirements in such a way that undertakings have to disclose their compliance with international and European human rights instruments and conventions. It is regrettable, however, that, in contrast to the first draft, there is no longer any mention of the EU taxonomy for sustainable activities, in particular with regard to approach and disclosure requirements concerning minimum safeguards.

Given the key importance of workers for undertakings' sustainable future in the current socio-ecological transformation, the disclosure requirements pertaining to this standard should, however – going beyond disclosure requirements S1-1 to S1-9 – all be incorporated in the list of things always subject to disclosure requirements. This absolute disclosure obligation should apply to all companies, not just larger ones. Furthermore, a series of improvements should be implemented, which are presented in the following subsections.

Above all an effort should be made to rectify where it falls short in comparison with the exposure drafts. In this context the DGB regards as particularly problematic the fact that the former disclosure requirement **S1-24 – Work stoppages** from the exposure draft is no longer found in the standard. From a trade union standpoint, however, information about strikes and lockouts clearly belongs among key social information, which should always be reported.

4.3.2 On disclosure requirement S1-7 – Characteristics of non-employee workers in the undertaking's own workforce

It is positive that this disclosure requirement will provide an insight into undertakings' employment policy. However, this view should be supplemented by a breakdown by gender and country.

4.3.3 On disclosure requirement S1-8 – Collective bargaining coverage and social dialogue

This disclosure requirement is particularly important to the DGB. Undertakings have to disclose information on the extent to which the working and employment conditions of its own workforce are covered by collective agreements and works councils and staff councils (employee representation in public sector / "Personalrat") have been formed, as well as the extent to which its employees in the European Economic Area (EEA) are included in social dialogue at workplace and European level.

Disclosure as regards collective bargaining coverage also offers the possibility that undertakings will tackle this issue long term and thus perhaps even commit themselves to collective bargaining. This would indirectly serve the policy objectives of the EU Minimum Wage Directive, whereby Member States must achieve collective bargaining coverage of at least 80 per cent.

Article 62 is particularly positive, with disclosure requirements as regards interest representation in the undertaking, as well as the disclosure of agreements with European works councils and SE or SCE works councils. Also to be welcomed is the fact that the definition of the term 'workers' representatives' in Appendix A reflects the diversity of interest representation in undertakings in Europe (and worldwide), which, depending on the country, is characterised by company trade union bodies, elected works councils or hybrid systems.⁵

However, the reporting requirements in accordance with paragraph 62(a) are restricted to countries in the EEA, which is not appropriate because there are also undertaking or trade union interest representative bodies in other states besides the EEA. In order to obtain a comprehensive overview of the existence of company interest representative bodies this disclosure requirement should thus be extended to cover all states worldwide.

4.3.4 On disclosure requirement S1-9 – Diversity indicators

This disclosure requirement contains obligations on gender distribution in figures and percentage terms at the highest level of management and on the distribution of employees by age group. This is welcome. It is notable, however, that the criterion of ethnic diversity is not included. This omission should be reconsidered.

4.3.5 On disclosure requirement S1-10 – Adequate wages

It is to be welcomed that undertakings are required to disclose whether all employees in their own workforce are paid in accordance with the fair wage benchmark or not, and if not, which groups of employees do not receive an adequate wage and what percentage of the workforce is paid below a fair wage. It is problematic, however, that the minimum

⁵ See for an overview the data available at: <http://de.worker-participation.eu/Nationale-Arbeitsbeziehungen/Quer-durch-Europa>

wage is taken as reference in the determination of a fair wage in accordance with AR 73. It is doubtful, however, that minimum wages meet the criterion of an 'adequate wage'. Minimum wages can only ever represent a lower floor, but never a sectoral and workplace-related adequate wage in each individual case.

Instead, the DGB proposes that representative collective agreements should serve as the benchmark for 'adequate pay'. Undertakings that implement collective agreements would be exempted from the disclosure requirement as regards this norm. All other undertakings would have to provide information on the proportion of employees who earn less than the pay usual in the sector in accordance with the applicable collective agreement. Furthermore, undertakings should be encouraged to disclose this information for all their workers, including those employed by subcontractors.

Given the complexity of defining an adequate wage we also regard it as critical that this disclosure requirement can be met presumptively if the undertaking considers that all employees are adequately paid.

4.3.6 On disclosure requirement S1-11 – Social protection

Also positive is the fact that undertakings are required to report whether employees are covered by social insurance against loss of income due to life's contingencies, and if not, the countries in which this is not the case, as well as the percentages in these countries who are not protected.

Given the complexity of defining social security the DGB regards it as critical that this disclosure requirement can be met presumptively.

4.3.7 On disclosure requirement S1-12– Persons with disabilities

We welcome the fact that undertakings are required to disclose the percentage of people in the workforce with disabilities. Consideration should be given, however, to making the disclosure of a gender breakdown mandatory. It is not mandatory in paragraph 77.

4.3.8 On disclosure requirement S1-13 – Training and skills development indicators

In accordance with this disclosure requirement, undertakings must disclose the extent to which they offer their employees training and qualification measures. This is welcome. Consideration should be given, however, to making this disclosure – currently characterised as voluntary ('may') – mandatory also for non-salaried employees.

4.3.9 On disclosure requirement S1-14 – Health and safety indicators

It is welcome that undertakings must disclose information on the extent to which their own workforces are covered by their occupational safety and health management system, as well as the number of incidents of work-related injuries, illnesses and deaths among its

own workers. Furthermore, the number of deaths as a result of work-related injuries and work-related illnesses of other workers working on company premises must be disclosed.

In the DGB's view, the latter information – identically to the disclosure obligations to the company's own employees – should be supplemented by the number of non-fatal injuries and illnesses. Only in this way can the disclosure obligations serve as an effective early warning mechanism with regard to the workload of, for example, workers on fixed term contracts.

It is a problem from the DGB's standpoint that Application Requirements 81 and 82 listed in Appendix B assume a standardisation and certification that the DGB regards as problematic in the area of labour protection if it goes beyond product standardisation and impinges on the area of issues to be regulated by the social partners. This should be reformulated.

On the topic of 'mental illness' (AR 88) it should be noted that there are recurring debates with employer representatives on whether psychological illnesses result from work or from private life. This is linked to an attempt to individualise the issue and to address it primarily in terms of individual 'resilience'. In response to that we argue that of course there are multiple systemic and onerous factors in the world of work that affect people psychologically. This is covered mainly by the term 'psychological risks', which we recommend be included in the disclosure requirements.

4.3.10 On disclosure requirement S1-15 – Work-life balance indicators

This disclosure requirement provides that undertakings must disclose the extent to which employees are entitled to family-related leave and take advantage of this.

In comparison with the preliminary drafts it is an adverse development that it was decided not to disclose the gender breakdown of the rate of those who returned to work after taking maternity, paternity and/or parental leave. The same applies to retention rates.

The question also arises of why it was decided against further disclosure requirements with regard to the reconciliation of work and private life, such as the provision of family-friendly working time, measures to promote women or the provision of child care.

In addition, it should be borne in mind that Article 29 para 2 lit b), ii of the CSRD expressly requires information on 'work-life balance', for which reason it is difficult to understand why this disclosure requirement is not included in the list of disclosure requirements that are mandatory under all circumstances. This decision should be reviewed.

4.3.11 On disclosure requirement S1-16 – Compensation indicators (pay gap and total compensation)

This disclosure requirement provides that undertakings must disclose the percentage wage gap between men and women, as well as the ratio between the pay of the highest paid person and the median pay of employees.

The DGB expressly welcomes both disclosure requirements.

It should be noted, however, that in contrast to the exposure drafts, it will not be mandatory to disclose what measures undertakings have implemented to narrow the gender pay gap. This key information should thus be integrated in the current standard and also extended to the general wage gap.

The disclosure requirements on the gender wage gap should also be brought fully into line with the EU Pay Transparency Directive. When the directive comes into force and is implemented every undertaking with a gender gap of 5 per cent or more will be required to analyse its pay structure. Needless to say, not every pay difference is the result of discrimination. But every gender gap is an indicator of the state of gender equality. Implementation of the directive should thus be documented in connection with the CSRD directive.

Thus with regard to the gender pay gap it would be desirable to publish the gender pay gap within the undertaking. The development of the gender ratio in individual pay grades should also be documented. The analytical tool for this purpose should be designated, because the way in which pay analysis is conducted is crucial for identifying existing inequalities: it must cover both direct *and* indirect discrimination.

With regard to the ratio between the remuneration of the highest paid person and median employee pay it is worth considering whether to make public a 'CEO to worker pay ratio', which not only discloses the ratio of one person, but provides access to structured information on the ratio between employee incomes and the remuneration of the board and central management, as well as the remuneration of top executives.⁶ In general, attention should be paid to including also retirement benefits and benefits in kind. Such a disclosure requirement could also come under GOV-3 (see above).

4.3.12 On disclosure requirement S1-17 – Incidents, complaints and severe human rights impacts and incidents

This disclosure requirement obliges companies to disclose the number of work-related incidents and/or complaints, as well as severe human rights impacts and incidents within the workforce, and all related substantial penalties or sanctions for the reporting period. The DGB expressly welcomes these disclosure requirements.

4.4 Comments on ESRS S2 (Workers in the value chain)

4.4.1 General assessment

As mentioned in the introduction, we welcome the approach whereby disclosure requirements are established in line with relevant international and European due diligence standards. In contrast to the exposure drafts, however, this objective is no longer expressly

⁶ It may be that in a few firms the highest paid person is not the CEO, but some other colleague – in banking, for example, a very successful investment banker. In that case, it would be particularly important for reporting in addition to make public a CEO to worker pay ratio.

stated. In particular the references to the EU taxonomy, especially the requirements and reporting obligations as regards social minimum standards, as well as the existing European Due Diligence Directive were dropped.

Attention must be paid in the further elaboration of standards and review of the consistency of requirements with further reporting obligations so that varying requirements are avoided.

Standard ESRS S2 (Workers in the value chain) is fundamentally convincing, with clear disclosure requirements. In contrast to other standards there were fewer compromises in comparison with the exposure drafts. This is welcome. A few suggestions for improvements can be gathered from the following remarks.

In comparison with other standards, however, it is also striking that there is no requirement on the publication of more quantifiable key performance indicators (KPIs). By all accounts this is supposed to be remedied in the sector-specific standards. In particular against the background of the upcoming European Due Diligence Regulation (CSDDD) this approach should be reconsidered. The DGB thus calls on EFRAG and European bodies to implement these requirements already in the existing standards.

Given the key importance of the employees for the sustainable future of undertakings in the present socio-ecological transformation all of the disclosure requirements of this standard should be included in the list of mandatory disclosure requirements.

4.4.2 On disclosure requirement S2-1 – Policies related to value chain workers

In accordance with this disclosure requirement undertakings must outline their policies that deal with the management of their material impacts on value chain workers, as well as associated material risks and opportunities, and provide a summary of the content of these policies.

In this context, the DGB welcomes the fact that, in accordance with paragraph 19, among other things, reporting is required on infringements of the principles of the UN Global Compact and the OECD Guidelines for Multinational Enterprises.

It is also positive that in various places disclosure requirements on child and forced labour are addressed. Given the various reports of obstacles to trade union work and to establishing trade unions, however, the matter of explicitly addressing the safeguarding of freedom of association in the disclosure requirement should be discussed, even if its relevance is fundamentally ensured through the references to the abovementioned international standards.

In contrast to the exposure drafts communication channels that enable value chain workers to become aware of directives and their contents no longer have to be specified. That is essential, however, in order to be able to make use of them or to lodge complaints about them.

4.4.3 On disclosure requirement S2-2 – Processes for engaging with value chain workers about impacts

In accordance with this disclosure requirement, which the DGB welcomes, undertakings must disclose their general procedure for engaging with value chain workers and their representatives in relation to actual and potential material impacts on them.

It is very positive that, in accordance with paragraph 22 (d), it must be stated whether there exist Global Framework Agreements (GFA) and other agreements with global trade unions in relation to human/labour rights and their functioning. In the exposure drafts, however, it was required that 'any' GFA or other agreement reached by an undertaking must be disclosed, but in the present standard the requirement is restricted by 'if applicable'. In order to establish a strong signalling effect in favour of this important and in practice often highly effective instrument we are calling for the retention of the original formulation. It is true that AR 20 sets out explicitly that this refers to an agreement reached between a multinational company and a global union federation.

4.4.4 On disclosure requirement S2-3 – Processes to remediate negative impacts and channels for value chain workers to raise concerns

The undertaking must describe the procedure that it has in place for value chain workers to be able to express their concerns about negative impacts that the undertaking has demonstrably caused or contributed to, or which helps workers to raise concerns, as well as channels available to value chain workers to express concerns and to have them remedied.

The DGB welcomes these provisions, but they should be expanded to make explicit reference to trade unions. It should be made clear that the abovementioned information channels must remain open not only to individual workers, but also to bodies such as works councils and also trade unions. There must also be reporting on this. The exposure drafts were also vague on this point, although in Article 23 it nevertheless mentioned not only value chain workers but also their 'legitimate representatives'. This should be amended.

4.4.5 On disclosure requirement S2-4 – Taking action on material impacts on value chain workers, and approaches to mitigating material risks and pursuing material opportunities related to value chain workers, and effectiveness of those actions

The undertaking must disclose its approaches to taking measures on material impacts on value chain workers, to mitigating material risks and to pursuing material opportunities related to value chain workers, as well as the effectiveness of these measures. This is welcome from a trade union standpoint.

This disclosure requirement is characterised, in trade union terms, by comprehensive and effective disclosure requirements. However, there should be a discussion on incorporating in the delegated act, with the same degree of clarity, the objective expressly described in the exposure drafts (S2-5, paragraph 32) of improving outcomes in workers' lives.



4.4.6 On disclosure requirement S2-5 – Targets related to managing material negative impacts, advancing positive impacts, and managing material risks and opportunities

The undertaking must disclose time-bound and results-oriented goals in relation to reducing negative impacts on value chain workers and/or advancing positive impacts on value chain workers; and/or the management of material risks and opportunities in relation to value chain workers.

— This is welcome from a trade union standpoint. It should be noted, however, that – in contrast to the identical disclosure requirement S2-4 in the exposure drafts – only a summary description of the abovementioned goals is necessary. There should be a discussion on reverting to the previous formulation.

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