

## **COMPARISON: EFRAG DRAFT ESRS AND EUROPEAN COMMISSION'S DRAFT DELEGATED ACT (DA) – ESRS S4 CONSUMERS AND END-USERS**

**16 JUNE 2023**

### DISCLAIMER

This paper below contains the EFRAG draft **ESRS S4 Consumers and end-users** which has been modified in track changes to match the version the EC proposed in the DA.

This document does not represent Accountancy Europe's views or analysis of these changes. It is a comparison run automatically by IT tools (including WordCompare) available to us.

It is an Accountancy Europe's working document in view of preparing our feedback to their EC draft delegated act with the first set of European Sustainability Reporting Standards (ESRS).

Accountancy Europe makes this document available to help other stakeholders understand the detailed changes of the standards and help them in their own feedbacks to the European Commission.

## **CONSUMERS AND END-USERS**

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## Objective

1. The objective of this ~~[draft]~~ Standard is to specify disclosure requirements which will enable **users** of the **sustainability statements statement** to understand material impacts on **consumers** and/or ~~end-users caused or contributed by the undertaking, as well as material impacts which are directly linked to~~ **end-users connected with** the undertaking's own operations, ~~and value chain, including through its~~ products or services, ~~as well as~~ through its business relationships, and its related material risks and opportunities, including:
  - (a) how the undertaking affects the consumers and/or end-users of its products and/or services (referred to in this ~~[draft]~~ Standard as "consumers and end-users"), in terms of material ~~positive and positive~~ **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 negative impacts, **and to address risks and opportunities**;
  - (c) the nature, type and extent of the undertaking's material risks and opportunities related to its impacts and **dependencies** on consumers and/or end-users, and how the undertaking manages ~~them~~ **such risks and opportunities**; and
  - (d) the **financial effects** on the undertaking over the short-, medium- and long-term time horizons of material risks and opportunities arising from the undertaking's impacts and dependencies on consumers and/or end-users.
2. In order to meet the objective, this ~~[draft]~~ Standard requires an explanation of the general approach the undertaking takes to identify and manage any material actual and potential impacts on the **consumers** and/or **end-users** related to its products and/or services in relation to:
  - (a) information-related impacts ~~for~~ on consumers and/or end-users (for example, privacy, freedom of expression and access to (quality) information);
  - (b) personal safety of consumers and/or end-users (for example, health and safety, security of ~~a person~~ **a person** and protection of children);
  - (c) social inclusion of consumers and/or end-users (for example, non-**discrimination**, access to products and services and responsible marketing practices).
3. This ~~[draft]~~ Standard also requires an explanation of how such impacts, as well as the undertaking's **dependencies** on **consumers** and/or **end-users**, can create material risks or opportunities for the undertaking. For example, negative impacts on the reputation of the undertaking's products and/or services can ~~deteriorate~~ **be detrimental to** its business performance, while trust in products and/or services can bring business benefits, such as increased sales or widening of the future consumer base.
4. [The unlawful use or misuse of the undertaking's products and services by consumers and end-users fall outside the scope of this standard.](#)

## Interaction with other ESRS

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- 4.5. This ~~[draft]~~ standard applies when material **impacts** on and/or material **risks** and **opportunities** related to **consumers** and/or **end-users** have been identified through the **materiality** assessment process ~~laid out~~ **laid out** in ESRS 2 *General disclosures*.
- 5.6. This ~~[draft]~~ Standard shall be read in conjunction with ESRS 1 *General requirements*, and ESRS 2, as well as ESRS S1 *Own workforce*, ESRS S2 *Workers in the value chain* and ESRS S3 *Affected communities*.

## Disclosure Requirements

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### **ESRS 2 General Disclosures**

6.7. The requirements of this section should be read in conjunction with the disclosures required by ESRS 2 on Strategy (SBM). The resulting disclosures shall be presented alongside the disclosures required by ESRS 2, except for SBM-3 *Material impacts, risks and opportunities and their interaction with strategy and business model(s)*, for which the undertaking has an option to present the disclosures alongside the topical disclosure.

## Strategy

### Disclosure Requirement related to ESRS 2 SBM-2 – Interests and views of stakeholders

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7.8. When responding to ESRS 2 SBM-2, paragraph 4443, the undertaking shall disclose how the interests, views, and rights and expectations of ~~(actual or potential) materially affected~~ its **consumers** and/or **end-users**, including respect for their human rights, inform its strategy and business model(s). Consumers and/or end-users are a key group of affected **stakeholders**.

### Disclosure Requirement related to ESRS 2 SBM-3 – Material impacts, risks and opportunities and their interaction with strategy and business model

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8.9. When responding to ESRS 2 SBM-3 paragraph 48, the undertaking shall disclose:

- (a) whether and how actual and potential impacts on **consumers** and/or **end-users** as identified in Disclosure Requirements ESRS 2 IRO-1 *Description of the processes to identify and assess material impacts, risks and opportunities*: (i) originate from or are connected to the ~~undertaking's strategy~~ **undertaking's strategy** and business ~~models~~ **model**, and (ii) inform and contribute to adapting the undertaking's strategy and business model(s), and
- (a) the relationship between its material risks and opportunities arising from impacts and **dependencies** on consumers and/or end-users and its strategy and business model(s).

9.10. When fulfilling the requirements of paragraph 46 (a) and (c), 48, the undertaking shall disclose whether all **consumers** and/or **end-users** who ~~can~~ **are likely to** be materially impacted by the undertaking, including impacts ~~caused or contributed by~~ **connected with** the ~~undertaking or directly linked to its undertaking's~~ own operations, ~~and value chain, including through its~~ products or services, ~~as well as~~ through its **business relationships**, are included in the scope of its disclosure under ESRS 2. In addition, the undertaking shall ~~provided~~ **disclose** the following information:

- (b) a brief description of the types of consumers and/or end-users subject to material impacts ~~by its~~ **by its** own operations or through its value chain, and specify whether they are:
  - i. consumers and/or end-users of products that are inherently harmful to people and/or increase risks for chronic disease;
  - ii. consumers and/or end-users of services that potentially negatively impact their rights to privacy, ~~to~~ **have** their personal data protected, ~~to~~ **freedom** of expression and ~~to~~ **non-discrimination**;
  - iii. consumers and/or end-users who are dependent on accurate and accessible product- or service- related information, such as manuals and product labels, to avoid ~~potentially damaging~~ **potentially damaging** use of a product or service;
  - i. consumers and/or end-users who are particularly vulnerable to health or privacy impacts or impacts from marketing and sales strategies, such as children or financially vulnerable individuals;
- (b) in the case of material negative impacts, whether they are ~~either (i)~~ **widespread** or systemic in contexts where the undertaking ~~operates or~~ **sells** or provides its products or services (for example, state surveillance that affects the privacy of service users), or ~~whether they are (ii)~~ **related** to individual **incidents** (for example, a defect linked to a

- particular product) or to specific business relationships (for example, a business partner uses marketing that inappropriately targets young **consumers**);
- (c) in the case of material positive impacts, a brief description of the activities that result in the positive impacts (for example, product design that improves its accessibility for persons with disabilities) and the types of consumers and/or end-users that are positively affected or could be positively affected, including their geographic location; the undertaking may also disclose whether the positive impacts occur in specific countries or regions; and
- (d) any material risks and opportunities for the business arising from impacts and dependencies on consumers and/or end-users.

2. In describing the main types of **consumers** and/or **end-users** who are or may be negatively affected, based on the **materiality** assessment set out in ESRS 2 IRO-1, the undertaking shall disclose whether and how it

10.11. has developed an understanding of how consumers and/or end-users with particular characteristics, or those using particular products or services, may be at greater risk of harm.

11.12. The undertaking shall disclose which, if any, of its material risks and opportunities arising from impacts and **dependencies** on **consumers** and/or **end-users**, are impacts or relate to specific groups of consumers and/or end-users (for example, particular age groups or particular products and/or services) rather than impacts that affect all consumers and/or end-users. Such circumstances arise when a material impact on consumers and/or end-users could lead to **financial effects** for the undertaking. For, for example, if some consumers and/or end-users boycott a product or service following a health scare or a major data privacy breach.

### **Impact, risk and opportunity management**

#### **Disclosure Requirement S4-1 – Policies related to consumers and end-users**

12.13. **The undertaking shall describe its policies that address the management of its material impacts of its products and/or services on consumers and end-users, as well as associated material risks and opportunities; and provide a summary of the content of the policies.**

13.14. The objective of this Disclosure Requirement is to enable an understanding of the extent to which the undertaking has policies that address the identification, assessment, management and/or **remediation** of material impacts on **consumers** and/or **end-users** specifically, as well as policies that cover material risks or opportunities related to consumers and/or end-users.

14.15. The disclosure required by paragraph 4213 shall contain summarised the information on the undertaking's policies that address the management of to manage its material impacts, risks and opportunities related to **consumers** and/or **end-users** (as required by in accordance with ESRS 2 DGM DR-P Policies adopted to manage material sustainability matters). In addition, the undertaking shall specify if such policies covers specific groups or groups or all consumers and/or end-users.

15.16. The undertaking shall describe its human rights **policy commitments**<sup>4</sup>commitments<sup>97</sup> that are relevant to **consumers** and/or **end-users**, including those processes and mechanisms to monitor compliance with the UN Global Compact principles Guiding Principles on Business and the Human Rights, ILO Declaration on Fundamental Principles and Rights at Work or OECD Guidelines for Multinational Enterprises, in. In its disclosure it shall it shall focus on those matters that are material, as well as the general approach in relation to to<sup>98</sup>:

- (a) respect for the human rights of consumers and/or end-users;
- (b) engagement with consumers and/or end-users; and
- (c) measures to provide and/or enable **remedy** for human rights impacts.

16.17. The undertaking shall disclose whether and how its policies with regard to **consumers** and/or **end-users** are aligned with internationally recognised standards instruments relevant to

consumers and/or **end-users**, including United Nations (UN) Guiding Principles on Business and Human Rights. The undertaking shall also disclose the extent to which [violations in relation to the UN Global Compact principles and the cases of non-respect of the UN Guiding Principles on Business and Human Rights, ILO Declaration on Fundamental Principles and Rights at Work or OECD Guidelines for Multinational Enterprises that involve consumers and/or end-users have been reported in its downstream value chain](#) and, if applicable, an indication of the nature of such cases<sup>99</sup>

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<sup>97</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 (“Lack of a human rights policy”).

<sup>298</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>3</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”) and benchmark administrators to disclose ESG factors subject to Regulation (EU) 2020/1816 as set out by indicator “Number of benchmark constituents subject to social violations (absolute number and relative divided by all benchmark constituents), as referred to in international treaties and conventions, United Nations principles and, where applicable, national law” in section 1 and 2 of Annex 2.



## **Disclosure Requirement S4-2 – Processes for engaging with consumers and end-users about impacts**

- 3.2.** *The undertaking shall disclose its general processes for engaging with consumers and end-users and their representatives about actual and potential material impacts on them.*
- 4.3.** The objective of this Disclosure Requirement is to enable an understanding of whether and how the undertaking engages, as part of its ongoing **sustainability** due diligence process, with **consumers** and/or **end-users**, their legitimate representatives, or with **credible proxies**, about material actual and potential positive and/or negative impacts that do or **may be likely to** affect them, and whether and how perspectives of consumers and/or end-users are taken into account in the decision-making processes of the undertaking.
- 17.18.** The undertaking shall disclose whether and how the perspectives of **consumers** and/or **end-users** inform its decisions or activities aimed at managing actual and potential **material** impacts on consumers and/or end-users. This shall include, where relevant, an explanation of:
- (a) whether engagement occurs with affected consumers and/or end-users or their **legitimate representatives** directly, or with **credible proxies** that have insight into their situation;
  - (b) the stage(s) at which engagement occurs, the type of engagement, and the frequency of the engagement;
  - (c) the function and the most senior role within the undertaking that has operational responsibility for ensuring this engagement happens, and that the results inform the undertaking's approach; and
  - (d) where applicable, how the undertaking assesses the effectiveness of its engagement with consumers and/or end-users, and, where relevant, any agreements or outcomes that result **from such engagement**.
- 18.19.** Where applicable, the undertaking shall disclose the steps it takes to gain insight into the perspectives of consumers and/or end-users that may be particularly vulnerable to impacts and/or marginalised (for example, people with disabilities, children, etc.).
- 19.20.** If the undertaking cannot disclose the above required information because it has not adopted a general process to engage with **consumers** and/or **end-users**, it shall disclose this to be the case. It may disclose a timeframe in which it aims to have such a process in place.

## **Disclosure Requirement S4-3 – Processes to remediate negative impacts and channels for consumers and end-users to raise concerns**

- 20.21.** *The undertaking shall describe the processes it has in place to provide for or cooperate in the remediation of negative impacts on consumers and end-users that the undertaking **has identified it has caused or contributed to** is **connected with**, as well as channels available to consumers and end-users **users** to raise concerns and have them addressed.*
- 22.** The objective of this Disclosure Requirement is to enable an understanding of the formal means by which **consumers** and/or **end-users** can make their concerns and needs

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<sup>99</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"\) and benchmark administrators to disclose ESG factors subject to Regulation \(EU\) 2020/1816 as set out by indicator "Number of benchmark constituents subject to social violations \(absolute number and relative divided by all benchmark constituents\), as referred to in international treaties and conventions, United Nations principles and, where applicable, national law" in section 1 and 2 of Annex 2.](#)

known directly to the undertaking, and/or through which the undertaking supports the availability of such channels (for example, ***grievance mechanisms***) by its business relationships, how follow up is performed with these consumers and/or end-users regarding the issues raised, and the effectiveness of these channels.

21-23. The undertaking shall describe:

- (a) its general approach to and processes for providing or contributing to ***remedy*** where it has identified that it ~~has caused or contribute to~~ is connected with a material negative impact on ***consumers*** and/or ***end-users***, including whether and how the undertaking assesses that remedy provided is effective;
- (b) any specific channels it has in place for consumers and/or end-users to raise their concerns or needs directly with the undertaking and have them addressed, including whether these are established by the undertaking itself and/or through participation in third-party mechanisms;
- (c) ~~its~~ the processes through which the undertaking supports or requires the availability of such channels by its business relationships; and
- (d) how it tracks and monitors issues raised and addressed, and how it ensures the effectiveness of the channels, including through involvement of ***stakeholders*** who are the intended users.

22-24. The undertaking shall disclose whether and how it assesses that ***consumers*** and/or ***end-users*** are aware of and trust these structures or processes as a way to raise their concerns or needs and have them addressed. In addition, the undertaking shall disclose whether it has policies in place ~~regarding the protection of~~ to protect individuals ~~that use them against~~ from retaliation ~~when they use such structures or processes.~~

23-25. 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 may disclose a timeframe in which it aims to ~~have such~~ have such a channel or processes in place.

***Disclosure Requirement S4-4 – Taking action on material impacts on consumers and end- users, and approaches to mitigating/managing material risks and pursuing material opportunities related to consumers and end-users, and effectiveness of those actions***

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24-26. The undertaking shall disclose ~~its approaches to taking~~ how it takes ~~action on~~ to address material impacts on consumers and end-users, and to ~~mitigating/managing~~ material risks and ~~pursuing/pursue~~ material opportunities related to consumers and end-users, and effectiveness of those actions.

25-27. The objective of this Disclosure Requirement is twofold. Firstly, it is to provide an understanding of any ~~processes, actions and~~ initiatives or engagements through which the undertaking seeks to ~~improve consumers and/or end-users' lives, whether by:~~

- (a) ~~working to~~ prevent, mitigate and remediate the negative material impacts on consumers and/or ***end-users***, and/or
- (b) ~~seeking to~~ achieve positive material impacts for consumers and/or end-users.

Secondly, ~~it is to~~ provide/enable an understanding of the ways in which the undertaking is addressing the material risks and pursuing the material opportunities related to consumers and/or end-users.

~~26-1. In relation to material impacts, the undertaking shall describe:~~



28. ~~what~~ The undertaking shall provide a summarised description of the action plans and resources to manage its material impacts, risks, and opportunities on its own workers as per [ESRS 2 MDR-A Actions and resources in relation to sustainability matters](#).

29. In relation to material impacts, the undertaking shall describe:

- (a) ~~is~~ [actions taken](#), planned or underway to prevent, mitigate or remediate material negative impacts on **consumers** and/or **end-users**;
- (b) [whether and how it has taken action to provide or enable remedy in relation to an actual material impact](#);
- ~~(b)~~(c) any additional [actions or initiatives](#) ~~or processes~~ it has in place with the primary purpose of positively contributing to improved social outcomes for consumers and/or end-users; and
- ~~(e)~~(d) how it tracks and assesses the effectiveness of these ~~actions, programmes and processes~~ [initiatives](#) in delivering intended outcomes for consumers and/or end-users.

27-30. In relation to paragraph [27-28](#), the undertaking shall describe ~~its approaches to~~:

- (a) ~~identifying the processes through which it identifies~~ what action is needed and appropriate in response to a particular actual or potential ~~material~~ negative impact on **consumers** and/or **end-users**;
- (b) [its approaches to](#) taking action in relation to specific material negative impacts on consumers and/or end-users, including any action in relation to its own practices regarding product design, marketing or sales, as well as whether wider industry or collaborative action with other relevant parties ~~will be~~ [will be](#) required; and
- (c) ~~ensuring how it ensures~~ that processes to provide or enable **remedy** in the event of material negative ~~impacts are~~ [impacts are](#) available and effective in their implementation and outcomes.

28-31. In relation to material risks and opportunities, the undertaking shall describe:

- (a) what action is planned or underway to mitigate material risks for the undertaking arising from its impacts and **dependencies** on **consumers** and/or **end-users** and how it tracks ~~effectiveness in~~ [effectiveness in](#) practice; and
- (b) what action is planned or underway to pursue material opportunities for the undertaking in relation to consumers and/or end-users.

29-32. The undertaking shall disclose whether and how it ~~ensures that its own practices do not cause~~ [takes action to avoid causing](#) or ~~contribute~~ [contributing](#) to material negative impacts on **consumers** and/or **end-users** [through its own practices](#), including, where relevant, ~~its practices~~ in relation to marketing, sales and data use. This may include disclosing what approach is taken when tensions arise between the prevention or mitigation of material negative impacts and other business pressures.

30-33. When preparing this disclosure, the undertaking shall consider whether severe human rights issues and **incidents** connected to its **consumers** and/or **end-users** have been reported and, if applicable, disclose ~~these~~ [these](#)<sup>100</sup>.

5. ~~The~~ [Where the](#) undertaking ~~shall provide a summarised description of the~~ [evaluates the effectiveness of an](#) action ~~plans and resources to manage its material impacts, risks and opportunities by setting a target~~, in relation to consumers and/or end-users ~~shall as per ESRS DC-A Actions and resources in relation to sustainability matters. In addition, disclosing the information required under paragraph 32 (c), the undertaking shall describe the approaches and processes through which it tracks the effectiveness of the actions it takes to address material impacts (see consider ESRS 2 DCMDR-T Tracking effectiveness of policies and actions through targets)~~.

~~31.34.~~ ~~In the event of actual material negative impacts on consumers and/or end-users during the reporting period, the undertaking shall disclose whether and how it was taken action to provide or enable remedy in relation to the actual material impact where the undertaking has caused or contributed to it.~~

~~32.35.~~ The undertaking shall disclose what resources are allocated to the management of its material impacts with ~~specific and detailed~~ information that enables ~~readers~~users to gain an understanding of how the material impacts are managed.

### **Metrics and targets**

#### ***Disclosure Requirement S4-5 – Targets related to managing material negative impacts ,advancing positive impacts, and managing material risks and opportunities***

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~~33.36.~~ The undertaking shall disclose the time-bound and outcome-oriented targets it may have set related to:

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<sup>100</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”).

- (a) **reducing negative impacts on consumers and/or end-users; and/or**
- (b) **advancing positive impacts on consumers and/or end-users; and/or**
- (c) **managing material risks and opportunities related to consumers and/or end-users.**

34-37. The objective of this Disclosure Requirement is to enable an understanding of the extent to which the undertaking is using time-bound and outcome-oriented **targets** to drive and measure progress in addressing material negative impacts, and/or advancing positive impacts on **consumers** and/or end- users, and/or in managing material risks and opportunities related to consumers and/or **end-users**.

35-38. The summarised description of the **targets** to manage its material impacts, risks and opportunities on **consumers** and/or **end-users** shall contain the information requirements defined in ESRS 2 ~~DC~~MDR-T.

36-39. The undertaking shall disclose the process for setting the **targets**, including whether and how the undertaking engaged directly with **consumers** and/or **end-users**, their legitimate representatives, 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, if any, lessons or improvements as a result of the undertaking's performance.

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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").

## Appendix A: Defined terms Application Requirements

This appendix is an integral part of the [draft] ESRS S4 and has the same authority as the other parts of the [draft] Standard.

<b>Consumer</b>	Individuals who acquire, consume or use goods and services for personal use, either for themselves or for others, and not for resale or commercial purposes. Consumers include actually and potentially affected end-users.
<b>End-users</b>	Individuals who ultimately use or are intended to ultimately use a particular product or service.

This appendix is an integral part of the [draft] ESRS S4 Consumers and end-users. It supports the application of the requirements set for in paragraphs 6-40 and has the same authority as the other parts of out in this [draft] Standard standard and has the same authority as the other parts of the standard.

### Objective

- AR 1.— The undertaking may highlight special issues relevant to a material impact for a shorter period of time, for instance initiatives regarding the health and safety of **consumers** and/or **end-users** in relation to contamination of a product or severe breach of privacy due to a massive data leak.<sup>7</sup>
- AR 2.— The overview of social and human rights matters provided in paragraph 2 is not meant to imply that all of these issues should be disclosed in each Disclosure Requirement in this [draft] Standard. Rather, it provides a list of matters that the undertaking shall consider in its **materiality** assessment (ref. to ESRS 1 chapter 3 *Double materiality as the basis for sustainability disclosures* and ESRS 2 IRO-1) related to **consumers** and/or **end-users** and, subsequently, disclose as material impacts, **risks and risks and** opportunities within the scope of this [draft] Standard.

### ESRS 2 General disclosures

#### Strategy

#### Disclosure Requirement related to ESRS 2 SBM-2 – Interests and views of stakeholders

- AR 3. ESRS 2 SBM-2 requires the undertaking to provide an understanding of if and how it considers whether its strategy and business model(s) play a role in creating, exacerbating or (conversely) mitigating significant material impacts on **consumers** and/or **end-users**, and

whether and how the business model and strategy are adapted to address such material impacts.

AR 4. While **consumers** and/or **end-users** may not be engaging with the undertaking at the level of its strategy or business model(s), their views can inform the undertaking's assessment of its strategy and business model(s). The undertaking ~~shall consider disclosing~~ may disclose the views of the (actual or potential) materially affected consumers and/or end-users' **legitimate representatives** or those of **credible proxies** that have insight into their situation.

#### **Disclosure Requirement related to ESRS 2 SBM-3 – Material impacts, risks and opportunities and their interaction with strategy and business model**

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AR 5. Impacts ~~of~~ on **consumers** and/or **end-users** can originate in the undertaking's business model(s) or strategy in a number of different ways. For example, impacts may relate to the undertaking's value proposition (for example, providing online platforms with potential for online and offline harm, ~~providing products that harm when overused, misused or when used as intended~~), its **value chain** (for example, speed in developing products or services, or delivering projects, with risks to health and safety), or its cost structure and the revenue model (for example, sales-maximising incentives that put consumers at risk).

AR 6. Impacts on **consumers** and/or **end-users** that originate in the strategy or business model(s) can ~~also bring~~ also bring material risks to the undertaking. For example, if the undertaking's business model(s) ~~depends on the use of facial recognition technology in its products, where these capabilities are misused by third parties to track and persecute individuals, the undertaking may face reputational risk or have to abandon or invest in changing its technology to address regulator, investor or consumer concerns. If the undertaking's business model(s)~~ is premised on incentivising its sales force to sell high ~~volumes of~~ volumes of a product or service (for example, credit cards or pain medicine) at speed, and this results in large-scale harm to consumers, the undertaking may face lawsuits and ~~public opprobrium~~ reputational damage affecting its future business and credibility.

AR 7. Examples of particular characteristics of **consumers** and/or **end-users** that may be considered by ~~the undertaking~~ the undertaking when responding to paragraph ~~40 relate to~~ 11 include young consumers and/or end-users ~~that may be who maybe~~ more susceptible to impacts on their physical and mental development, or ~~they who~~ lack financial literacy and may be more susceptible to exploitative sales or marketing practices, ~~or they are women in~~. They may also include women in a context where women are routinely discriminated against in their access to particular services or in the marketing of particular products.

AR 8. \_\_\_ With regard to paragraph ~~44~~ 12, the business risks, which can lead to material risks, could also arise because of the undertaking's dependency on **consumers** and/or **end-users** where low likelihood but high impact events may trigger **financial effects**, for example, where a global pandemic leads to severe impacts on certain consumers' livelihoods resulting in major changes in patterns of consumption.

#### **Impact, risk and opportunity management**

#### **Disclosure Requirement S4-1 – Policies related to consumers and end-users**

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- AR 9. The [summary description](#) shall include the key information necessary to ensure a faithful representation of the policies in relation to **consumers** and **end-users**, and therefore, the undertaking shall consider explanations of significant changes to the policies adopted during the reporting year (for example, new expectations for business customers, new or additional approaches to [sustainability](#) due diligence and remedy).
- AR 10. The **policy** may take the form of a stand-alone policy regarding **consumers** and/or **end-users** or be included in a broader document such as a code of ethics or a general sustainability policy that has already been disclosed by the undertaking as part of another [\[draft\] ESRS](#). In those cases, the undertaking shall provide an accurate cross-reference to identify the aspects of the policy that satisfy the requirements of this Disclosure Requirement.
- AR 11. In disclosing its alignment of its policies with the UN Guiding Principles on Business and Human Rights, the undertaking shall consider that the Guiding Principles refer to the International Bill of Human Rights, which consists of the Universal Declaration of Human Rights and the two [Covenants that](#) [Covenants that](#) implement it, and may disclose its alignment with these [underlying standards instruments](#).
- AR 12. When disclosing how external facing policies are embedded, the undertaking may, for example, consider internal-facing sales and distribution policies and alignment with other policies relevant to **consumers** and/or **end-users**. The undertaking shall also consider its policies for safeguarding the veracity and usefulness of information provided to potential and actual consumers and/or end-users, both before and after sale.
- AR 13. ~~As~~ [The undertaking may provide](#) an illustration of the types of communication of its policies to those individuals, group of individuals or entities for whom they are relevant, either because they are expected to implement them (for example, the undertaking's **employees**, contractors and ~~business customers~~), [suppliers](#), or because they have a direct interest in their implementation (for example, ~~consumers and/or end-users own workers~~, investors), ~~or both. To help ensure that the policy is accessible and that they understand its implications, the undertaking~~. [It](#) may disclose communication tools and channels (for example, flyers, newsletters, dedicated websites, social media, face to face interactions, ~~consumer representative organisations~~) and / or the identification and removal of ~~workers' representatives~~, aimed at ensuring that the **policy** is accessible and that different audiences understand its implications. [The undertaking may also explain how it identifies and removes](#) potential barriers for dissemination, such as through translation into relevant languages or the use of graphic depictions.

#### **Disclosure Requirement S4-2 – Processes for engaging with consumers and end-users about impacts**

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- AR 14. **Credible proxies** who have knowledge of the interests, experiences or perspectives of **consumers** and **end-users** could include national consumer protection bodies for some consumers.
- AR 15. When describing which function or role 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 may 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 may state so, and whether any capacity~~



[building activities have been offered to support the staff to undertake engagement. If it cannot identify such a position or function, it may state that this is the case. This disclosure could also be fulfilled by making reference to information disclosed according to ESRS 2 GOV-1 The role of the administrative, management and supervisory bodies.](#)

AR 16. When preparing the disclosures described in paragraph 4920 b) and c), the following illustrations ~~may be~~ considered:

- (a) for stage(s) at which engagement occurs, examples could be in determining ~~mitigation approaches~~ [mitigation approaches](#) or in evaluating their effectiveness;
- (b) for type of engagement, these could be participation, consultation and/or information;
- (c) for the frequency of the engagement, information may be provided on whether engagement occurs on a regular basis, at certain points in a project or business process, as well as whether it occurs in response to legal requirements and/or in response to stakeholder requests and whether the result of the engagement is being integrated into the undertaking's decision-making processes; and
- (d) for the role with operational responsibility, whether ~~the undertaking~~ [the undertaking](#) requires ~~relevant staff to have~~ certain skills ~~of~~, or ~~whether it~~ provides **training** or capacity building to relevant staff to undertake engagement.

AR 17. To illustrate how the perspectives of **consumers** and/or **end-users** have informed specific decisions or activities of the undertaking, the undertaking may provide examples from the current reporting period.

**Disclosure Requirement S4-3 – Processes to remediate negative impacts and channels for consumers and end-users to raise concerns**

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AR 18. In fulfilling the requirements set out by the disclosure criteria of ESRS S4-3, the undertaking may be guided by the content of the UN Guiding Principles on Business and Human Rights and the OECD Guidelines for Multinational Enterprises focused on **remediation** and **grievance mechanisms**.

AR 19. Channels for raising concerns or needs, include **grievance mechanisms**, hotlines, ~~trade unions (where workers are unionised)~~, dialogue processes or other means through which **consumers** and/or **end-users** or their **legitimate representatives** can raise concerns about impacts or explain needs that they would like the undertaking to address. This could include channels provided by the undertaking directly and is to be disclosed in addition to any other mechanisms the undertaking may use to ~~gain insight~~ [gain insight](#) into the management of impacts on consumers and/or end-users, such as compliance audits. Where the undertaking is relying solely on information about the existence of such channels provided by its **business relationships** to answer this requirement, it may state that.

AR 20. To provide greater insight into the information covered in ESRS S4-3, the undertaking may provide insight into whether and how **consumers** and/or **end-users** 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.

AR 21. Third party mechanisms could include those operated by the government, NGOs, industry associations and other collaborative initiatives. With regard to the scope of these mechanisms, the undertaking may disclose whether these are accessible to all **consumers**

and/or **end-users** who ~~maybe~~ 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 negative impacts, and through which consumers and/or end-users (or individuals or organisations acting on their behalf or who are otherwise in a position to be aware of negative impacts), can raise complaints or concerns related to the undertaking's own activities.

AR 22. In relation to the protection of individuals that use the mechanisms against the retaliation, the undertaking may describe whether it treats grievances confidentially and with respect to the rights of privacy and data protection; and whether they allow for **consumer** and/or **end-users** to use them anonymously (for example, through representation by a third party).

AR 23. —In disclosing whether and how the undertaking knows that **consumers** and/or **end-users** are aware of and trust any of these channels, the undertaking may provide relevant and reliable data about the effectiveness of these channels from the perspective of consumers and/or end-users themselves. Examples of sources of information are surveys of consumers and/or end-users that have used such channels and their levels of satisfaction with the process and outcomes. To illustrate the usage level of such channels, the undertaking may disclose the number of complaints received from consumers and/or end-users during the reporting period.

AR 24. In describing the effectiveness of channels for **consumers** and/or **end-users** to raise concerns, the undertaking may be guided by the following questions, based on the “effectiveness criteria for nonjudicial ***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 known and accessible to **stakeholders**?
- (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) do the channels offer transparency by providing sufficient information both to complainants and where applicable, to meet any public interest at stake?
- (f) do the outcomes achieved from the channels 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 S4-4 – Taking action on material impacts, and approaches to mitigating material risks and pursuing material opportunities related to consumers and end-users and effectiveness of those actions and approaches***

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- AR 25. It may take time to understand negative impacts and how the undertaking may be involved with them through its downstream value chain, as well as to identify appropriate responses and put them into practice). Therefore, the undertaking shall consider:
- (a) Its general and specific approaches to addressing material negative impacts;
  - (b) its initiatives 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.
- AR 26. Appropriate action can vary according to whether the undertaking causes or contributes to a material impact, or whether the material impact is directly linked to its own operations, products or services through a business relationship.
- AR 27. Given that material negative impacts affecting **consumers** and/or **end-users** that have occurred during the reporting period may ~~not be caused or contributed by the undertaking alone and may be linked also~~ be linked to entities or operations outside its direct control, the undertaking may disclose 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 proper product use or sale practices to business relationships) or collaborative leverage with peers or other actors (such as initiatives aimed at responsible marketing or product safety).
- AR 28. ~~When the undertaking discloses its participation in an industry or multi-stakeholder initiative as part of its **actions** to address material negative impacts, the undertaking may disclose how the initiative, and its own involvement, is aiming to address the material impact concerned. It may disclose under ESRS S4-5 the relevant **targets** set by the initiative and progress towards them.~~
- AR 29. When disclosing whether and how it considers actual and potential impacts on **consumers** and/or **end-users** in decisions to terminate **business relationships** and whether and how it seeks to address any negative impacts that may result from termination, the undertaking may include examples.
- AR 30. In disclosing how it tracks the effectiveness of **actions** to manage material impacts during the reporting period, the undertaking may disclose any lessons learned from the previous and current reporting periods.
- AR 31. Processes used to track the effectiveness of **actions** can include internal or external auditing or verification, court proceedings and/or related court decisions, impact assessments, measurement systems, stakeholder feedback, **grievance mechanisms**, external performance ratings, and benchmarking.
- AR 32. Reporting on effectiveness is aimed at enabling the understanding of the links between **actions** taken by the undertaking and the effective management of impacts.

AR 33. With regard to initiatives or processes the undertaking has in place that are based on affected **consumers** and/or **end-users'** needs and their level of implementation, the undertaking may disclose:

(a) \_\_\_\_\_ information about whether and how consumers and/or end-users and

**legitimate representatives** or their **credible proxies** play a role in decisions regarding the design and implementation of these programmes or processes; and

(a)(b) \_\_\_\_\_ information about the intended or achieved positive outcomes for consumers and/or end-users of these programmes or processes.

AR 34. The undertaking may disclose whether any initiatives or processes whose primary aim is to deliver positive impacts for **consumers** and/or **end-users** are designed to also support the achievement of one or more of the UN Sustainable Development Goals (SDGs). For example, through a commitment to advance UN SDG 3 to “ensure healthy lives and promote well-being for all at all ages” the undertaking may be actively working to make its products less addictive and harmful to physical ~~and psychological health, which can benefit both the consumers and/or end-users themselves, but also their families and communities~~ and psychological health.

AR 35. When disclosing the intended positive outcomes of its **actions** for **consumers** and/or **end-users** a distinction is to be made between evidence of certain activities having occurred (for example, that x number of consumers have received information about healthy eating habits) from evidence of actual outcomes for consumers and/or end-users (for example, that x number of consumers have ~~changed their adopted healthier~~ eating habits ~~and improved their overall health~~).

AR 36. When disclosing whether initiatives ~~of~~ processes also play a role in mitigating material negative impacts, the undertaking may, for example, consider programmes that aim to support heightened digital awareness of the risk of online scams, ~~that have led leading~~ to a reduction in the number of cases of **end-users** experiencing breaches of data privacy.

AR 37. When disclosing the material risks and opportunities related to the undertaking's impacts or **dependencies** on **consumers** and/or **end-users**, the undertaking may consider the following ~~business risks that could lead into material risks and business opportunities~~:

- (a) ~~business~~ risks related to the undertaking's impacts on consumers and/or end-users may include ~~the~~ reputational or legal exposure where poorly designed or defective products result in injuries or deaths;
- (b) ~~business~~ risks related to the undertaking's dependencies on consumers and/or end-users may include the loss of business continuity where an economic crisis makes consumers unable to afford certain products or services;
- (c) business opportunities related to the undertaking's impacts on consumers and/or end-users may include market differentiation and greater customer appeal from offering safe products or privacy-respecting services; and
- (d) business opportunities related to the undertaking's dependencies on consumers and/or end-users may include the achievement of a loyal future consumer base by ensuring, for example, that LGBTQI ~~communities~~ people are respected and ~~included in that the undertaking's selling practices do not exclude such people from~~ the products or services offered by the undertaking it offers.

AR 38. When disclosing whether **dependencies** turn into risks, the undertaking shall consider external developments.

AR 39. When disclosing policies, action and resources and **targets** related to the management of material risks and opportunities, in cases where risks and opportunities arise from a material impact, the undertaking may cross-reference its disclosures on policies, action and resources and **targets** in relation to that impact.

AR 40. The undertaking shall consider the extent to which its processes to manage material risks related to **consumers** and/or **end-users** are integrated into its existing risk management processes and how.

AR 41. When disclosing the resources allocated to the management of material impacts, the undertaking may disclose which internal functions are involved in managing the impacts and what types of action they take to address negative and advance positive impacts.

### **Metrics and targets**

#### **Disclosure Requirement S4-5 – Targets related to managing material negative impacts, advancing positive impacts, and managing material risks and opportunities**

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AR 42. When disclosing **targets** in relation to **consumers** and/or **end-users**, the undertaking shall ~~consider disclosing, where applicable~~ may disclose:

- (a) the intended outcomes to be achieved in the lives of consumers and/or end-users, being as specific as possible;
- (b) that these are measurable/verifiable;
- (c) their stability over time in terms of definitions and methodologies to enable comparability; and/or
- (d) references standards or commitments on which the **targets** are based are to be clearly defined in the reporting (for instance codes of conduct, sourcing policies, global frameworks or industry codes).

AR 43. — **Targets** related to material **risks** and **opportunities** may be the same as or distinct from targets tied to material **impacts**. Therefore, no distinction is to be made per se, but what the target is aiming at is to be disclosed (i.e., material impact and/or risks and opportunities). For example, a target to ensure equal access to finance for underserved **consumers** could both reduce **discrimination** impacts on those consumers and enlarge the undertaking's pool of customers.

AR 44. The undertaking may also distinguish between short, medium and long-term **targets** covering the same **policy** commitment. For example, the undertaking may have as a main objective to make its online services accessible to people with disabilities, with the long-term goal of having adapted 100% of its online services by 2025, and with the short-term objective of adding x number of accessible features every year up and until 2025.

AR 45. When modifying or replacing a target in the reporting period, the undertaking may explain the change by cross-referencing it to significant changes in the business model or to broader changes in the accepted standard or legislation from which the target is derived to provide contextual information as per ESRS 2 BP-2 *Disclosures in relation to specific circumstances*.