



## **COMPARISON: EFRAG DRAFT ESRS AND EUROPEAN COMMISSION'S DRAFT DELEGATED ACT (DA) – ESRS S3 AFFECTED COMMUNITIES**

**16 JUNE 2023**

DISCLAIMER

This paper below contains the EFRAG draft **ESRS S3 Affected Communities** 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.

~~{Draft}~~ **ESRS S3**  
**AFFECTED COMMUNITIES**

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## Objective

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1. The objective of this ~~[draft]~~ Standard is to specify disclosure requirements which will enable **users** of the **sustainability statements** ~~statement~~ to understand material impacts on **affected communities** ~~caused or contributed to by the undertaking, as well as, material impacts which are directly linked to~~ 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 communities, in areas where ~~risks~~ impacts are most likely to be present and severe, in terms of material positive and negative actual or potential impacts;
  - b. any **actions** taken, and the result of such actions, to prevent, mitigate or remediate actual or potential 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 affected communities, and how the undertaking manages them; 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 affected communities.
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 **affected communities** in relation to:
  - a. communities' economic, social and cultural rights (for example, adequate housing, adequate food, water and sanitation, land-related and security-related impacts);
  - b. communities' civil and political rights (for example, freedom of expression, freedom of assembly, impacts on human rights defenders); and
  - c. particular rights of **indigenous communities** peoples (for example, free, prior and informed consent, self-determination, cultural rights).
3. This ~~[draft]~~ Standard also requires an explanation of how such impacts, as well as the undertaking's **dependencies** on affected communities, can create material risks or opportunities for the undertaking. For example, negative relationships with **affected communities** may disrupt the undertaking's own operations or harm its reputation, while constructive relationships can bring business benefits, such as stable and conflict-free operations and a greater ease of recruiting locally.

## Interaction with other ESRS

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4. This ~~[draft]~~ standard applies when material impacts on and/or material risks and opportunities related to **affected communities** have been identified through the **materiality** assessment process laid out in ESRS 2 *General disclosures*.
5. This ~~[draft]~~ Standard shall be read in conjunction with ESRS 1 *General requirements*, and ESRS 2, as well as the ESRS S1 *Own workforce*, ESRS S2 *Workers in the value chain* and ESRS S4 *Consumers and end-users*.

## Disclosure Requirements

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### **ESRS 2 General disclosures**

6. 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);<sup>2</sup> 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. When responding to ESRS 2 SBM-2, paragraph 4143, the undertaking shall disclose how the views, interests, ~~and rights~~ ~~and expectations of (actual or potential) materially affected communities~~, including respect for their human rights (and their rights as **indigenous peoples**, where applicable), inform its strategy and business model(s);<sup>2</sup> **Affected communities** 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. When responding to ESRS 2 SBM-3 paragraph 48, the undertaking shall disclose:
- whether and how actual and potential impacts on **affected communities** as identified in ESRS2ESRS2 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 and business models, and (ii) inform and contribute to adapting the undertaking's strategy and business model(s);<sup>2</sup> and
  - the relationship between its material risks and opportunities arising from impacts and dependencies on affected communities and its strategy and business model(s);<sup>2</sup>
9. When fulfilling the requirements of paragraph ~~46 (a) and (c)~~, 48, the undertaking shall disclose whether all **affected communities** who ~~can be likely to~~ be materially impacted by the undertaking, including impacts that are ~~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 provide the following information:
- a brief description of the types of communities subject to material impacts by its own operations or through its upstream and downstream value chain, and specify whether they are:
    - communities ~~directly~~ living or working around the undertaking's operating **sites**, factories, facilities or other physical operations, or more remote communities affected by activities at those sites (for example by downstream water **pollution**);
    - communities along the undertaking's value chain (for example, those affected by the operations of **suppliers'** facilities or by the activities of logistics or distribution providers);
    - communities at one or both endpoints of the value chain (for example, at the point of extraction of metals or minerals or harvesting of commodities, or communities around **waste** or **recycling** sites);
    - communities of **indigenous peoples**.
  - in the case of material negative impacts, whether they are either (i) widespread or systemic in contexts where the undertaking operates or has sourcing or other business relationships (for example, marginalised populations suffering impacts on their health and quality of life in a highly industrialised area), or ~~whether they are~~ (ii) related to individual **incidents in the undertaking's own operations** (e.g., a toxic **waste** spill affecting a community's access to clean drinking water) or ~~to~~ in a specific business

- ~~relationships~~relationship (e.g., a peaceful protest by communities against business operations that was met with a violent response from the undertaking's security services). This includes consideration of impacts on affected communities that may arise from the transition to greener and climate-neutral operations. Potential impacts include impacts associated with innovation and restructuring, closure of mines, increased mining of minerals needed for the transition ~~mineral mining~~to a sustainable economy and solar panel production;
- c. in the case of material positive impacts, a brief description of the activities that result in the positive impacts (for example, capacity-building to support more and new forms of local livelihoods) and the types of communities that are positively affected or could be positively affected, ~~including their geographic location; 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 affected communities.
10. In describing the main types of communities who are or may be negatively affected, based on the **materiality** assessment set out in Disclosure Requirement ESRS 2 IRO-1, the undertaking shall disclose whether and how it has developed an understanding of how **affected communities** with particular characteristics or those living in particular contexts, or those undertaking particular activities may be at greater risk of harm.
11. The undertaking shall disclose which, if any, of its material risks and opportunities arising from impacts and **dependencies** on affected communities, ~~are impacts on~~ relate to specific groups of affected communities rather than ~~impacts on~~ all affected communities. ~~Such circumstances arise when a material impact on affected communities could lead to financial effects for the undertaking.~~

## Impact, risk and opportunity management

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

12. The undertaking shall describe its policies that address the management of its material impacts on **affected communities**, as well as associated material risks and opportunities; ~~and provide a summary of the content of the policies.~~
13. 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 **affected communities** specifically, as well as policies that cover material risks or opportunities related to affected communities.
14. The disclosure required by paragraph 12 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 **affected communities** ~~(as required by in accordance with ESRS 2 DCM-DR-P Policies adopted to manage material sustainability matters)~~. In addition, the undertaking shall specify if such policies cover specific ~~groups~~affected communities or all affected communities.
15. The undertaking shall disclose any particular **policy** provisions for preventing and addressing ~~impacts on~~impacts on **indigenous communities** ~~peoples~~.
16. The undertaking shall describe its human rights **policy** commitments<sup>93</sup> that are relevant to affected communities, 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 focus on those matters that are material in relation to<sup>94</sup>, as well as ~~the~~its general approach ~~in relation to~~<sup>2</sup>to:
- a. respect for the human rights of communities, and **indigenous peoples** specifically;

- b. engagement with affected communities; and
- c. measures to provide and/or enable **remedy** for human rights impacts.

The undertaking shall disclose whether and how its policies with regard to **affected communities** are aligned with internationally recognised standards relevant to communities and **indigenous peoples** specifically, including the 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 affected communities have been reported in its own operations or in its upstream and downstream value chain and, if applicable, an indication of the nature of ~~these~~<sup>3</sup>such cases<sup>95</sup>.

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<sup>93</sup> This information supports the information needs of financial market participants subject to Regulation (EU) 2019/2088 as reflecting an additional indicator related to principal adverse impacts as set out by indicator #9 in Table 3 of Annex 1 of the related Delegated Regulation with regard to disclosure rules on sustainable investments (~~respectively~~ (“Lack of a human rights policy”).

<sup>94</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”).

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

17. **The undertaking shall disclose its general processes for engaging with affected communities and their representatives about actual and potential ~~material~~ impacts on them.**
18. 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 affected communities, their legitimate representatives, or with **credible proxies**, about material actual and potential positive and/or negative impacts that do or ~~may~~ **are likely to** affect them, and whether and ~~how perspectives~~ **show perspectives** of **affected communities** are taken into account in the decision-making processes of the undertaking.
19. The undertaking shall disclose whether and how the perspectives of **affected communities** inform its decisions or activities aimed at managing actual and potential ~~material~~ impacts on communities. This shall include, where relevant, an explanation of:
  - a. whether engagement occurs with affected communities or their **legitimate representatives** directly, or with **credible proxies** that have insight into their situation;
  - b. the stage(s) at which engagement occurs, 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;
  - d. where applicable, how the undertaking assesses the effectiveness of its engagement with affected communities, including, where relevant, any agreements or outcomes that result.
20. Where applicable, the undertaking shall disclose the steps it takes to gain insight into the perspectives of **affected communities** that may be particularly vulnerable to impacts and/or marginalised, and into the perspective of specific groups within the affected communities, such as women and girls.
21. Where **affected communities** are **indigenous peoples**, the undertaking shall also disclose how it takes into account and ensures respect of their particular rights in its **stakeholder engagement** approach, including their right to **free, prior and informed consent** with regard to: **(i)** their cultural, intellectual, religious and spiritual property; **(ii)** activities affecting their lands and territories; and **(iii)** legislative or administrative measures that affect them. In particular, where engagement occurs with indigenous peoples, the undertaking shall also disclose whether and how **indigenous peoples** have been consulted on the mode and parameters of the engagement (for example, in designing the agenda, nature, and timeliness of the engagement).

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<sup>953</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.

~~21-22.~~ If the undertaking cannot disclose the above required information because it has not adopted a general process to engage with affected communities, 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 S3-3 – Processes to remediate negative impacts and channels for affected communities to raise concerns**

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~~22-23.~~ The undertaking shall describe the processes it has in place to provide for or cooperate in the remediation of negative impacts on affected communities that the undertaking ~~has identified it has caused or contributed to~~ **is connected with**, as well as channels available to affected communities to raise concerns and have them addressed.

~~23-24.~~ The objective of this Disclosure Requirement is to enable an understanding of the formal means by which **affected communities** can make their concerns and needs known directly to the undertaking, and/or through which the undertaking supports the availability of such channels (for example, **grievance mechanisms**) by its business relationships, how follow up is performed with these communities regarding the issues raised, and the effectiveness of these channels.

~~24-25.~~ 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 contributed to~~ **is connected with** a material negative **impact** on affected communities, including whether and how the undertaking assesses that remedying provided is effective;
- b. any specific channels it has in place for **affected communities** 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 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 of those channels**.

~~25-26.~~ The undertaking shall disclose whether and how it assesses that **affected communities** are aware of and trust these structures or processes as a way to raise their concerns or needs and have them addressed. In addition, the undertaking shall disclose whether it has policies in place regarding the protection of individuals that use them against retaliation. ~~If such information has been disclosed in accordance with ESRS G1-1, the undertaking may refer to that information.~~

~~26-27.~~ 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 such a channel~~ by its business relationships, it shall disclose this to be the case. It may disclose a timeframe in which it aims to have such a channel or processes in place.

**Disclosure Requirement S3-4 – Taking action on material impacts on affected communities, and approaches to ~~mitigating~~ managing material risks and pursuing material opportunities related to affected communities, and effectiveness of those actions**

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~~27-28.~~ The undertaking shall disclose ~~its approaches to taking~~ **how it takes** action ~~onto~~ **address** material impacts on affected communities, and to ~~mitigating~~ **manage** material risks and ~~pursuing~~ **pursue** material opportunities related to affected communities and **the effectiveness of those actions**.

~~28-29.~~ The objective of this Disclosure Requirement is twofold. First, it is to provide an understanding of any ~~processes, actions and~~ initiatives ~~or engagements~~ through which the undertaking seeks to ~~improve affected communities' lives, whether by:~~



- a. ~~working to~~ prevent, mitigate and remediate the negative material **impacts** on affected communities; and/or ~~seeking~~ achieve positive material impacts for affected communities.

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 affected communities.

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

~~29.30.~~ In relation to material impacts, the undertaking shall describe:

- a. ~~what action is~~actions taken, planned or underway to prevent, ~~or~~ mitigate ~~or remediate~~ material negative impacts on affected communities;
- a. whether and how it has taken action to provide or enable **remedy** in relation to an actual material impact;
- b. any additional **actions or** initiatives ~~or processes~~ it has in place with the primary purpose of delivering positive impacts for affected communities; and
- c. how it tracks and assesses the effectiveness of these **actions, investments** and ~~programmes~~initiatives in delivering intended outcomes for affected communities.

~~30.31.~~ In relation to paragraph 29, 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~~potential negative impact on affected communities;
- b. its approach to taking action in relation to specific material negative impacts on communities, including any action in relation to its own practices regarding land acquisition, planning and construction, operation or closure practices, as well as whether wider industry or collaborative action with other relevant parties will be required; and
- c. ~~ensuring how it ensures~~ that processes to provide or enable **remedy** in the event of material negative impacts are available and effective in their implementation and outcomes.

~~34.32.~~ 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 **affected communities** and how it tracks effectiveness in practice; and
- b. what action is planned or underway to pursue material opportunities for the undertaking in relation to affected communities.

~~32.33.~~ 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 **affected communities** through its own practices, including, where relevant, ~~its practices~~ in relation to planning, land acquisition and exploitation, finance, extraction or production ~~of raw~~of raw materials, use of natural resources, and management of environmental impacts. This may include disclosing what approach is taken when tensions arise between the prevention or mitigation of material negative impacts and other business pressures.

~~33.34.~~ The undertaking shall also disclose whether severe human rights issues and **incidents** connected to **affected communities** have been reported and, if applicable, disclose ~~these~~<sup>4</sup>these<sup>96</sup>.

~~34.35.~~ The undertaking shall provide a summarised description of When disclosing the action plans and resources to manage its material impacts, risks and opportunities on affected communities as per ESRS 2 DC-A Actions and resources in relation to policies and targets. ~~In addition, information required under paragraph 31 (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 ESRS 2 DC consider ESRS 2 MDR-T Tracking effectiveness of policies and actions through targets)- if it~~

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<sup>96</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").

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evaluates the effectiveness of an action by setting a target.

36. The undertaking shall disclose what resources are allocated to the management of its material impacts, with information that enables **users** to gain an understanding of how the material impacts are managed.

### **Metrics and targets**

#### **Disclosure Requirement S3-5 – Targets related to managing material negative impacts, advancing positive impacts, and managing material risks and opportunities**

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

- a. reducing negative impacts on affected communities; and/or
- b. advancing positive impacts on affected communities; and/or
- c. managing material risks and opportunities related to affected communities.

**36.38.** 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 its progress in addressing material negative impacts, and/or advancing positive impacts on affected communities, and/or in managing material risks and opportunities related to affected communities.

**37.39.** The summarised description of the **targets** to manage its material impacts, risks and opportunities on **affected communities** shall contain the information requirements defined in ESRS 2 **DCMDR-T**.

**38.40.** The undertaking shall disclose the process for setting the **targets**, including whether and how the undertaking engaged directly with affected communities, 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.

## Appendix A: ~~Defined Terms~~ Application Requirements

This appendix is an integral part of the ~~[draft]~~ ESRS S3 and has the same authority as the other parts of the ~~[draft]~~ Standard.

<p><b>Affected communities</b></p>	<p>People or group(s) living or working in the same area that has been or may be affected by a reporting undertaking's operations or through its value chain. Affected communities can range from those living adjacent to the undertaking's operations (local communities) to those living at a distance. Affected communities include actually and potentially affected indigenous peoples.</p>
<p><b>Free, Prior and Informed Consent</b></p>	<p>Free, Prior and Informed Consent (FPIC) is a manifestation of indigenous peoples' right to self-determine their political, social, economic and cultural priorities. It constitutes three interrelated and cumulative rights of indigenous peoples: the right to be consulted; the right to participate; and the right to their lands, territories and resources.</p>
<p><b>Indigenous peoples</b></p>	<p>Indigenous peoples are generally identified as 1) tribal peoples in independent countries whose social, cultural and economic conditions distinguish them from other sections of the national community, and whose status is regulated wholly or partially by their own customs or traditions or by special laws or regulations; 2) peoples in independent countries who are regarded as indigenous on account of their descent from the populations which inhabited the country, or a geographical region to which the country belongs, at the time of conquest or colonisation or the establishment of present state boundaries and who, irrespective of their legal status, retain some or all of their own social, economic, cultural and political institutions.</p>

## Appendix B: Application Requirements

~~This appendix is an integral part of the [draft] ESRS S3 Affected communities. It supports the application of the disclosure requirements set for in paragraphs 6-42 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 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 **affected communities** and, ~~subsequently as appropriate,~~ disclose as material impacts, risks and opportunities within the scope of this ~~[draft]~~ Standard.
- AR 2. ~~The~~ ~~in addition to the issues listed in paragraph 2, the~~ undertaking may ~~highlight special~~ ~~also consider disclosing information about other~~ issues relevant to a material impact for a shorter period of time, for instance initiatives regarding the impacts on communities related to the undertaking's operations due to extreme and sudden weather conditions.

### **ESRS 2 General Disclosures**

#### **Strategy**

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

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- AR 3. Disclosure Requirement ESRS 2 SBM-2 requires the undertaking to provide an understanding of if and how it considers ~~whether the role that~~ its strategy and business model(s) ~~may~~ play a role in creating, exacerbating or ~~(conversely)~~ mitigating significant material impacts on affected communities, and whether and how the business model(s) and strategy are adapted to address such material impacts.
- AR 4. While **affected communities** may not be engaging with the undertaking at the level of its strategy or business model(s)<sub>1</sub>, their views can inform the undertaking's assessment of its strategy and business model(s)<sub>2</sub>. The undertaking ~~shall consider disclosing~~ ~~may disclose~~ the views of ~~the (actual or potential) materially affected communities' legitimate~~ ~~communities and affected communities'~~ 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(s)**

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- AR 5. Impacts on **affected communities** can originate in the undertaking's strategy or business model(s)– in a number of different ways. For example, impacts may relate to the

undertaking's value proposition (~~for example~~ such as, construction or commencement of projects with timelines that do not allow sufficient time for consultation with groups affected by the projects), its **value chain** (for example, land use in countries in which ownership is often contested or records are unreliable or in which land-users such as **indigenous groups/peoples** are unrecognised), or its cost structure and the revenue model (~~for examplesuch as~~, aggressive strategies to minimise taxation, particularly with respect to operations in developing countries).

AR 6. \_\_\_ Impacts on **affected communities** that originate in the strategy or business model(~~s~~) can also bring material risks to the undertaking. For example, ifwhere the undertaking's strategy involves moving into higher risk geographies in pursuit of certain commodities, and if affected communities resist its presence or object to its local practices, this may create extensive and costly delays, and affect the undertaking's ability to secure future land concessions or permits. Similarly, if the undertaking's business model(~~s~~) relies on intensive water extraction at its plants, to the extent of-affectingthat it affects access to water for affected communities' consumption, hygiene and livelihoods, this may result in reputationally-damaging boycotts, complaints and lawsuits.

AR 7. \_\_\_ Examples of particular characteristics of **affected communities** that may be considered by the undertaking when responding to paragraph 10 may be an affected community that is physically or economically isolated and is particularly susceptible to introduced diseases or has limited access to social services and therefore relies on infrastructure set up by the undertaking. It may be because where land worked by women is purchased by the undertaking and payments go to male heads of households, women become further disenfranchised in the community. It may also be because the community is indigenous, and its members seek to exercise cultural or economic rights to the land owned or used by the undertaking – or by one of the entities with which it has a relationshipsrelationship – in a context where their rights are not protected by the state. In addition, the undertaking shall consider the-intersectionality-ofwhether different characteristics overlap. For example, characteristics such as ethnicity, socioeconomic status, migrant status and gender that may create overlapping risks of harm for certain affected communities, or for distinct parts of those affected communities, since affected communities are often heterogeneous in nature.

AR 8. With regard to paragraph 11, ~~the business risks, which can lead to~~ material risks, could also arise because of the undertaking's dependency on **affected communities** where low likelihood but high impact events may trigger **financial effects**; for example, where a natural disaster leads to a catastrophic industrial accident involving the undertaking's operations, resulting in severe harm to ~~affected communities.~~ affected communities.

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

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

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AR 9. The summarydescription shall include the key information necessary to ensure a faithful representation of the policies in relation to **affected communities** and, therefore, the undertaking shall consider explanations of significant changes to the policies adopted

during the reporting year (for example, new or additional approaches to engagement, ~~sustainability~~ due diligence and remedy).

AR 10. The **policy** may take the form of a stand-alone policy regarding communities or be included in a broader document such as a code of ethics or a general sustainability policy 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~~When disclosing ~~its~~the 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 Rights, which consists of the Universal Declaration of Human Rights and the two Covenants that implement it, as well as the UN Declaration on the Rights of Indigenous Peoples, the International Labour Organisation's Convention concerning Indigenous and Tribal Peoples (ILO No. 169) and the core conventions that underpin 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 community engagement and resettlement policies and alignment with other policies relevant to affected communities.~~

AR 13. ~~As~~AR 12. 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 **suppliers**, ~~joint-venture partners~~), ~~or~~ because they have a direct interest in their implementation (for example, ~~communities own workers~~, investors) ~~or both, in order 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, ~~community representatives and 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.

AR 14. When disclosing severe human rights issues and **incidents** connected to affected communities, the undertaking shall consider any legal disputes related to land rights and to the free, prior and informed consent of **indigenous peoples**.

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

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AR 15. The undertaking shall consider how the engagement includes a good faith negotiation with affected **indigenous peoples** to obtain their **free, prior and informed consent (FPIC)** where the undertaking affects the lands, territories or resources that indigenous peoples customarily own, occupy or otherwise use; or relocates them from land or territories subject

to traditional ownership or under customary use or occupation; or affects or exploits their cultural, intellectual, religious and spiritual property.

AR 16. 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, 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 ~~so that this is the case.~~ This disclosure could also be fulfilled ~~with~~by making reference to information disclosed according to ESRS 2 GOV-1 *The role of the administrative, management and supervisory bodies.*

AR 17. When preparing the disclosures described in paragraph 20 b) and c), the following illustrations may be considered: ~~for stage(s) examples of stages~~ at which engagement occurs; ~~examples could be in~~ are i) determining the approach to mitigation ~~approaches or in~~ and ii) evaluating ~~their~~the effectiveness of mitigation;

- (a) for type of engagement, these could be participation, consultation and/or information;
- (b) 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; and
- (c) for the role with operational responsibility, whether ~~the undertaking~~ requires relevant staff to have certain skills ~~of,~~ or whether it provides **training** or capacity building to relevant staff to undertake engagement. In the case of material impacts, risks and opportunities on **indigenous peoples**, this includes training on indigenous people's rights, including on free, prior and informed consent.

AR 18.— To illustrate how the perspectives of communities have informed specific decisions or activities of the undertaking, the undertaking may provide examples from the current reporting period.

AR 19.— Explanations of how the undertaking takes into account and ensures respect of the particular right of **indigenous communities/peoples** to **free, prior and informed consent**, may include information about processes to consult with indigenous peoples to obtain their free prior and informed consent.

### **Disclosure Requirement S3-3 – Processes to remediate negative impacts and channels for affected communities to raise concerns**

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AR 20. In fulfilling the requirements set out by Disclosure Requirement ESRS S3-3, 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 21. Channels for raising concerns or needs, include ***grievance mechanisms***, hotlines, dialogue processes or other means through which ***affected communities*** or their ***legitimate representatives*** can raise concerns about impacts or explain needs that they would like the undertaking to address. This could include channels provided by the undertaking directly, ~~and is to be disclosed~~ in addition to any other mechanisms the undertaking may use to gain insight into the management of impacts on communities, 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 22. To provide greater insight into the information covered in ESRS S3-3, the undertaking may ~~provide insight into~~explain whether and how communities that may be affected are able to access channels at the level of the undertaking they are affected by, in relation to each material impact. Relevant insights include information on whether ***affected communities*** can access channels in a language they understand, and whether they have been consulted in the design of such channels.
- AR 23. 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~~The undertaking may disclose whether these are accessible to all ***affected communities*** who may be potentially or actually materially impacted by the undertaking, or individuals or organisations acting on their behalf or who are otherwise in a position to be aware of negative impacts, ~~and through which affected communities (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 24. 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 communities to use them~~the mechanisms can be used anonymously (~~for example~~for example, through representation by a third party).
- AR 25. When disclosing processes related to ~~the provision of~~providing and enabling ***remedy*** for ***indigenous peoples***, relevant information includes whether and how the undertaking has considered their customs, traditions, rules and legal systems.
- AR 26. In disclosing whether and how the undertaking knows that ***affected communities*** 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 affected communities themselves. Examples of sources of information are surveys of community members that have used such channels and their levels of satisfaction with the process and outcomes.
- AR 27. In describing the effectiveness of channels for ***affected communities*** to raise concerns, the undertaking may be guided by the following questions, based on the “effectiveness criteria for non-judicial ***grievance mechanisms***”, as laid out in the UN Guiding Principles on

Business and Human Rights, [in particular Principle 31](#). 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 clear and 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 through the channels accord with internationally recognized human rights?
- (g) does the undertaking identify insights from the channels that support continuous learning in both improving the channels and preventing future impacts?
- (h) does the undertaking focus on dialogue with complainants as the means to reach agreed solutions, rather than seeking to unilaterally determine the outcome?

[For more information, see Principle 31 of the UN Guiding Principles on Business and Human Rights.](#)

***Disclosure Requirement S3-4 – Taking action on material impacts, and approaches to mitigating material risks and pursuing material opportunities related to affected communities, and effectiveness of those actions and approaches***

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AR 28. It may take time to understand negative impacts and how the undertaking may be involved with them through its value chain, as well as to identify appropriate responses and put them into practice. Therefore, the undertaking shall consider:

- (a) its general and specific approaches to addressing material negative impacts;
- (b) its social investment or other **development** programmes aimed at contributing to additional material positive impacts;
- (c) how far it has progressed in its efforts during the reporting period; and
- (d) its aims for continued improvement.

AR 29. 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 30. Given that material negative impacts affecting communities that have occurred during the reporting period may ~~not be caused or contributed to by the undertaking alone and may also~~ be linked to entities or operations outside its direct control, the undertaking may disclose whether and how it seeks to use its leverage ~~with relevant in its~~ business **relationships** to manage those impacts. This may include using commercial **leverage** (for example, enforcing contractual requirements with business relationships or implementing incentives),

other forms of leverage within the relationship (such as providing **training** or capacity-building on indigenous rights to entities with which the undertaking has a business relationships) or collaborative leverage with peers or other actors (such as initiatives aimed at minimising security-related impacts on communities or participating in company-community partnerships).

AR 31. Impacts on communities may stem from environmental matters which are disclosed by the undertaking under the ~~[draft]~~ ESRS E1 to E5. Examples include:

- (a) ~~[draft]~~ ESRS E1 *Climate Change*: The implementation of **climate change mitigation** plans may require the undertaking to invest in **renewable energy** projects that may affect the lands, territories and **natural resources** of **indigenous peoplepeoples**. If the undertaking does not consult with the affected indigenous ~~communitypeoples~~, it could negatively impact the affected communities' right to **free, prior and informed consent**;
- (b) ~~[draft]~~ ESRS E2 *Pollution*: The undertaking may negatively impact **affected communities** by ~~, for example,~~ failing to protect them from ~~pollutingpollution~~ from a particular production ~~plants, facility~~ that ~~causecauses~~ them health-related issues;
- (c) ~~[draft]~~ ESRS E3 *Water and marine sources*: The undertaking may negatively impact the access to clean drinking water of communities ~~by failing to manage~~ polluting emissions or when operating andwhen withdrawing water in water stressed areas;
- (d) ~~[draft]~~ ESRS E4 *Biodiversity and ecosystems*: The undertaking may negatively affect the livelihood of local farmers through ~~, for example,~~ operations that contaminate **soil**. Additional examples include the sealing of land through building new infrastructure, which can eradicate plant species that are critical for, for example, local **biodiversity** or to filter water for communities; or the introduction of **invasive species** (whether plants or animals) that can impact **ecosystems** and cause subsequent harm;
- (e) ~~[draft]~~ ESRS E5 *Resource use and circular economy*: The undertaking may negatively impact the lives of communities by affecting their health through the mis- management of **hazardous waste**.

Where the connection between environmental impacts and local communities is addressed in the disclosures within the Disclosure Requirements ESRS E1-E5, the undertaking may cross-reference to those and clearly identify such disclosures.

AR 32.- 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 S3-5 the relevant **targets** set by the initiative and progress towards them.

AR 33. When disclosing whether and how the undertaking considers actual and potential impacts on **affected communities** 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 34. 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 35. 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 36. — Reporting on effectiveness is aimed at enabling the understanding of the links between **actions** taken by an undertaking and the effective management of impacts.

AR 37. With regard to initiatives or processes ~~the undertaking has in place~~ whose primary aim is to deliver positive impacts for affected communities that are based on affected communities' needs, and ~~their level of~~ with regard to progress in the implementation of such initiatives or processes, the undertaking may disclose:

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

AR 38. — The undertaking may disclose whether any initiatives or processes whose primary aim is to deliver positive impacts for **affected communities** are designed also to support the achievement of one or more of the UN Sustainable Development Goals (SDGs). For example, through a commitment to advance UN SDG 5 to “achieve gender equality and empower all women and girls” the undertaking may be taking thoughtful measures to include women in the consultation process with an affected community to meet standards of effective **stakeholder engagement**, which can help empower the women in the process itself, but potentially also in their daily lives.

AR 39. — When disclosing the intended or achieved positive outcomes of its **actions** for **affected communities** a distinction is to be made between evidence of certain activities having occurred (for example, that x number of women community members have been provided with **training** on how to become local **suppliers** to the undertaking,) from evidence of actual outcomes for affected communities (for example, that x women community members have set up small businesses and have had their contracts with the undertaking renewed year-on-year).

AR 40. When disclosing whether initiatives or processes also play a role in mitigating material negative impacts, the undertaking may for example consider programmes that aim to improve local infrastructure surrounding an undertaking's operations, such as

improvements in roads, that have led leading to a reduction in the number of severe traffic accidents involving community members.

AR 41. When disclosing the material risks and opportunities related to the undertaking's impacts or

**dependencies** on affected communities, 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 **affected communities** may include the reputational or legal exposure, as well as operational risks, where affected communities protest against resettlements or the loss of access to lands, leading to costly delays, boycotts, or lawsuits;
- (b) ~~business~~-risks related to the undertaking's dependencies on **affected communities** may include ~~the loss~~disruption of business ~~continuity~~operations where ~~indigenous communities~~peoples decide to withdraw their consent to a project on their lands, forcing the undertaking to significantly modify or abandon the project;
- (c) business opportunities related to the undertaking's impacts on **affected communities** may include more easily financing projects and being a partner of choice for communities, governments and other businesses; and
- (d) ~~business~~-opportunities related to the undertaking's dependencies on **affected communities** may include the development of positive relationships between the undertaking and indigenous ~~communities~~peoples that enable existing projects to expand with strong support.

AR 42. –In disclosing the information ~~above in AR41~~, the undertaking may consider explanations of ~~business~~ risks and opportunities stemming from environmental impacts or **dependencies** (please refer to AR 31 for further details), including related human rights (or social) impacts. Examples include reputational risks stemming from the impact on the health of communities of unmanaged polluting **discharges**; or the **financial effects** of protests that may disrupt or interrupt an undertaking's activities, for example, in response to operations in water stressed areas that may impact the lives of affected communities.

AR 43. When disclosing whether **dependencies** turn into risks, the undertaking shall consider external developments.

AR 44. 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~~actions and resources and targets in relation to that impact.

AR 45. The undertaking shall consider ~~the extent to which~~whether and how its processes to manage material risks related to **affected communities** are integrated into its existing risk management processes ~~and how~~.

AR 46. 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 S3-5 – Targets related to managing material negative impacts, advancing positive impacts, and managing material risks and opportunities**

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AR 47. When disclosing ~~the information about~~ **targets** in accordance with paragraph 38, the undertaking ~~shall consider disclosing, where applicable may disclose:~~

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

AR 48.— **Targets** related to material risks and opportunities may be the same as or distinct from targets ~~ti~~related 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 fully restore livelihoods of **affected communities** following resettlement could both reduce impacts on those communities and reduce associated business risks such as community protests.

AR 49. 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 employ community members at a local mining **site**, with the long-term goal of staffing 100% locally by 2025, and with the short-term objective of adding x percent of local **employees** every year up and until 2025.

AR 50. When modifying or replacing a target in the reporting period, the undertaking may explain the change by linking it to significant changes in the business model(s) 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*