

## Annex to DSW's reply to the ESRS consultation paper – survey 1

### Question 1:

DSW notes that the gap between users' information needs and the sustainability information reported by undertakings is growing. Academic research demonstrates however that companies are reporting more often on aims and intentions rather than on actual actions and performance. (K. Opferkuch, S. Caeiro, R. Salomone, T. B. Ramos (2021): "Circular economy in corporate sustainability reporting: A review of organisational approaches", <https://onlinelibrary.wiley.com/doi/pdfdirect/10.1002/bse.2854>) Besides, there is a significant increase in demand for sustainability reporting information from undertakings which is driven by the changing nature of risks and opportunities to undertakings and growing investor awareness of the financial implications of non-financial risks and opportunities.

### Question 38:

Moreover, while ISSB requires the separate disclosure of Scope 1 and 2 emissions for consolidated accounting groups, associates, joint ventures, and subsidiaries/affiliates, the ESRS only require the disclosure of gross Scope 1 and 2 emissions. To identify where the major contributions to GHG emissions stem from within a group, DSW considers the ISSB approach to provide more meaningful information for investors in that respect.

### Question 49:

**Part I:** International and national corporate governance rules (e.g. EU SRD II) and standards go well beyond the requirements laid down in the ESRS G1 standard, which are therefore not considered to be sufficiently ambitious. Especially DR G1-4 needs to be checked against national legal provisions. For example, in France providing information on minority/vulnerable groups is prohibited by law.

### Other comments to question 49:

An understanding of an entity's governance requires that investors are enabled to understand who is responsible for what, not only in abstract terms but also concretely. G1-1 however contains mainly requirements to publish general/generic information about the relevant governance body/committee. The same holds true for the information on the governance bodies' remuneration (GR1-6). In GR1-1, for example, there is no requirement to disclose who within the body has which skills, knowledge, and experience, or why a certain member of a governance body had been chosen for appointment nor is it required to disclose the identity of the members of the governance body's committees. GR 1-3 which deals with the nomination process only requires a description of the nomination process including the criteria used for nominating members of the governance bodies. Missing is, however, how these generic requirements have been put into action in the year under review, i.e., in how far the nomination process has been followed. Any nomination process requires a review of the status quo followed by an intense evaluation of all board members. DSW wonders how an investor or any



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other stakeholder should be able to understand the role of a governance body, its members' expertise and skills without being informed about the underlying nomination or evaluation process. In our view this would counteract the general ESRS concept of information quality.

G1-4: DSW welcomes the reporting requirements on disclosure of the undertaking's diversity policy. As of today, there seems to be no EU-wide legal requirement to reporting in that respect. We note that the upcoming Directive on improving gender balance among non-executive board members ([https://ec.europa.eu/commission/presscorner/detail/en/IP\\_22\\_3478](https://ec.europa.eu/commission/presscorner/detail/en/IP_22_3478)) in its current version will require undertakings among others to report the reasons and the measures they are taking to address shortcomings with regard to the implementation of the Directive's requirements (among them being the requirement to have at least 40% of the underrepresented gender to be represented in non-executive boards of listed companies). We consider a harmonized reporting requirement on the undertaking's diversity policy which is extended to a report on the reasons and measures for non-implementation (i.e., on the outcomes) to be also stipulated in the ESRS as highly important as this Directive is not yet formally adopted nor published in the Official Journal and there will be a transposition period of two years for Member States after publication. G1-1 requires the disclosure of the independence of members. First of all, we consider it necessary to include a clarification that the independence criterion, which is a core element of good corporate governance, is required only for members of the supervisory/administrative body and not for management/executive board members. AG 5 (a) provides some guidance on the term "independence" which is however rather vague ("the absence of an interest, position, association or relationship which, when judged from the perspective of a reasonable and informed third party, is likely to influence unduly or cause bias in decision-making") and leaves too much room for interpretation. Moreover, independence criteria established in various markets may differ. DSW therefore considers it important to improve guidance to the term independence. G1-4 requires disclosure about the undertaking's diversity policy and how it has been implemented, which we welcome. We note that disclosure shall among others specify (GR1-4, para. 26 (b)) whether the diversity representation is over or above any relevant legal and regulatory requirements. To enable investors' understanding that there is a need for improvement regarding diversity, it would be more helpful if the Standard would require disclosure if diversity levels were below any relevant legal and regulatory requirements. Noting that a reference to ESRS 1, Disclosure Principle 1-2 is missing, we furthermore consider that the Standard should also require disclosure of timelines for achieving targets in para. 26 (c).

G1-6 does not include a requirement to disclose how remuneration during the year under review has actually matched sustainability- or climate-related metrics. Also, other (often regular) remuneration elements for executive board members, namely benefits in kind, remuneration from third parties, or payments agreed for post-contractual non-competition obligations are not mentioned in the draft, meaning that a full picture of the remuneration package may not necessarily be

provided. Based on the disclosure foreseen by G1, even when read in conjunction with ESRS 2-GOV 4 para. 62-64, investors will therefore not be able to thoroughly assess the remuneration policy of board members from an impact or financial perspective.

We would furthermore welcome a clarification in the accompanying guidelines (G1-6, AG 14 (a) (ii) if indeed the remuneration of senior executives shall be described, as the DR itself (unlike ESRS 2-GOV 4) does not refer to senior executives at all but only to the governance body, defined as “administrative, management and supervisory bodies” in ESRS 2.

G1-7: Disclosure of processes or policies only focus on risk **management**; a disclosure of **identifying** significant risks and opportunities and materiality assessment is not required, which is key for investors’ understanding. Also, we would consider it helpful if EFRAG would provide guidance whether compliance management is considered being part of risk management. There are different understandings in that regard in the market. Risk management processes do not necessarily include compliance management systems, on the contrary, there often is an inadequate linkage between risk and compliance, the risks of fraud are not captured by a risk management system because they are often "systemic" risks from a risk management perspective that defy formal capture (and evaluation even with simple value-at-risk methods) from a practical perspective. The Standards should therefore ensure that undertakings should also provide information on its compliance management or disclose, whether it is covered by the risk management.

G1-10 does not – despite its headline – require any disclosure on the attendance rate of individual members of governance bodies during the reporting year – anonymized information on the number of members having attended is considered sufficient by the Standard. We recommend requiring reporting on individualized disclosure of attendance rates of members of governance bodies.