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EFRAG

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EFRAG consultation: ESRS for certain non-EU undertakings (ESRS-40a Exposure Draft)

Position statement by Ethos Foundation

Established in 1997 by and for Swiss pension funds, the Ethos Foundation aims to enable them to invest sustainably and responsibly. The Ethos Foundation currently represents over 250 Swiss pension funds, insuring more than 2.5 million people in Switzerland and managing assets totalling over 440 billion Swiss francs.

Through Ethos Services we provide institutional investors with services dedicated exclusively to responsible investment. In this role, we analyse hundreds of listed companies. We are therefore directly affected by the CSRD / ESRS requirements and have practical experience in applying them.

Ethos welcomes the opportunity to comment on the ESRS-40a Exposure Draft, which sets out the sustainability reporting standards for non-European Union (EU) groups with significant activities in the EU under Article 40a of the Accounting Directive. According to EFRAG's preliminary estimates, between 100 and 150 Swiss groups could fall within its scope, many of which are held by our members. Our response, submitted through EFRAG's online questionnaire, covers four areas: the implementation of Article 40a, the proposed "mixed approach", the definition of EU-related impacts and the usefulness of the resulting reports for investors.

1. Implementation of Article 40a and deletion of RORD-related disclosures

In line with Article 40a, ESRS-40a focuses exclusively on material sustainability impacts: it excludes disclosures on risks, opportunities, resilience and dependencies (RORD) and financial effects, while retaining financial information that helps users understand impacts and how they are managed. Financially material sustainability information is expected to be covered by the reporting requirements of the parent company's jurisdiction, for instance on the ISSB standards.

Ethos partially supports the overall alignment of the ESRS-40a Exposure Draft with the revised ESRS. We support using the revised ESRS as the basis and deleting only RORD-related datapoints, as this ensures consistency with EU reporters and supports a level playing field on transparency about impacts, provided that there is an equivalent standard (e.g. ISSB), that it is adopted by the jurisdiction of the ultimate parent company, and that this standard is recognised by the EU.

We welcome the retention of financial information where it helps users understand impacts and how they are managed, for example the resources allocated to actions. We also support keeping the "fair presentation" objective (paragraph 5), which remains essential for an impact-only report to be useful to investors.

2. Mixed approach

Ethos does not support the inclusion of a "mixed approach" option, which allows undertakings to limit disclosures to EU-related impacts only for some topics. In our view, the option fails to secure a level playing field for EU companies; it does not provide investors and other stakeholders with relevant and complete information as it allows for mixed scopes within the same report, making the information difficult for users to understand and use. This will result in a lack of comparability across companies.

Groups in scope of Article 40a are large international companies with global operations whose most significant impacts on people and the environment might arise outside the EU, in production sites and upstream supply chains. Institutional investors invest in the company as a whole, not solely in its EU activities. Their investment, voting and engagement decisions therefore require a complete picture of the company's material impacts on people and the environment, wherever they occur. An impact that is excluded from the report because it is not "EU-related" can still be severe, can still lead to reputational, legal or operational consequences for the group, and remains relevant to the investor. Applying different reporting boundaries across topics, sub-topics or groups of impacts would obscure important information.

If the mixed approach is retained despite these concerns, Ethos recommends at minimum that:

(i) human rights-related topics (S1–S4) be excluded from the mixed approach, particularly those related to the undertaking's own workforce, and always be reported on a global scope;

(ii) undertakings identify one additional impact topic that is particularly material for them in light of their core business activities and report on it on a global scope;

(iii) for other impact topics, the mixed approach option only be applied at topic level, not at sub-topic or group-of-impacts level; and

(iv) undertakings disclose the approximate share of their global operations and value chain covered by the EU-related scope.

3. Definition of EU-related impacts

Ethos does not agree with the formulation in paragraph 28(a) of ESRS-40a 1, which defines EU-related impacts (customer component) as "impacts that arise from products and services that were or can be reasonably assumed to be sold or provided in the EU market, including by third parties (downstream value chain actors such as distributors and traders)".

The notion of products and services that "can be reasonably assumed" to be sold in the EU is too vague to ensure consistent and verifiable application. Particularly where goods are sold through global distributors, traders or commodity markets, their final destination is not tracked. This might lead to a wide range of interpretations.

4. Understandability and comparability for users

Ethos does not expect users to be able to understand and compare a sustainability report that applies different reporting boundaries (e.g. global vs EU-related scope) across topics or sub-topics, despite the transparency requirements in paragraph 4(a) and AR 1 of ESRS-40a 2 and the provisions in paragraphs 28–30, AR 6 and AR 7 of ESRS-40a 1.

The use of different reporting boundaries under the mixed approach would increase the cost of analysis. To build a complete view, investors would have to rely on estimates from external data providers and reconcile them with self-reported information. Comparability across companies within peer groups will be extremely difficult. Overall, the approach would undermine the usefulness of the ESRS-40a report for the very users it is meant to serve.