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Ceemet's views on the draft European Sustainability Reporting Standards S1 and S2

In November 2022, the European Financial Reporting Advisory Group (EFRAG) published its 12 draft European Sustainability Reporting Standards in the framework of the Corporate Sustainability Reporting Directive (CSRD). For Ceemet, as an European Sectoral Employer Organisation, ESRS S1 "Own workforce" and ESRS S2 "Workers in the value chain" are of main importance. Therefore, our comments are limited to these two reports.

Ceemet's comments

- The definition and the concepts that are **not in line with the European social acquis**. Some examples in this respect:
  - **The concept "own workforce" are not in line with the European social acquis**. In the very comprehensive European employment related legislation, policies, (inter)national jurisprudence – including the case law of the European Court of Justice, legal doctrine, as well as academic literature, the concept "own workforce" refers only to persons having an employment contract or employment relationship as defined by national law and as laid down in the case law of the European Court of Justice. It is therefore unacceptable to change the European – and indeed internationally understood – definition of "own workforce" to include non-employees (self-employed) and/or contractors. We therefore suggest to delete all references of non-employees (self-employed) and contractors from ESRS S1 "Own Workforce" and change Appendix A (definition) and B (AR 3), as well as any references in ESRS 2 and its Appendix A (Defined terms – Worker in the value chain) accordingly.
  - S1-14 obliges companies to report on work-related injuries, ill health and fatalities of their own employees but also workers who are working in their plants but who are not their employees. This obligation does not take into account the fact that national systems in this area are not harmonised (e.g. the definition of work-related injuries, ill health and fatalities, the modalities for reporting claims, their recognition, etc.). Indeed, the occupational injury insurance systems are not harmonised in Europe, as the Treaties do not make it an area of competence of the European Union.
- AR 14: "undertaking's employees, contractors and suppliers": in addition to the general remark above, reference to suppliers is not in the context of ESRS 1.
- The number of disclosure requirements as regards the social standards is extremely high and moreover, the level of details of several of these disclosure requirements is excessive. Moreover, companies are supposed to report on these disclosure requirements on a yearly basis. This will cause **a disproportionate and unjustifiable administrative burden on**

About Ceemet

Ceemet represents the **metal, engineering and technology**-based **industry employers** in Europe, covering sectors such as metal goods, mechanical engineering, electronics, ICT, vehicle and transport manufacturing.

Member organisations represent **200,000 companies** in Europe, providing over **17 million direct** and **35 million indirect jobs.**

Ceemet is a recognised European **social partner** at the industrial sector level, promoting global

companies and will create a high financial cost for companies in the first reporting exercise. Some examples in this respect:

- S1 Para. 49 "key characteristics of employees". This requirement is disproportionate as to the level of all the details required and will create excessive administrative burden on companies.
- S1 Para. 61 "significant employment". The threshold of at least 50 employees in a particular country to qualify for significant employment is very low. This will create a disproportionate burden for companies that are active on the EU Single Market and this will affect the competitiveness of companies engaged in cross-border activities.
- S1 Para. 62 "global percentage". The term "global" is vague. It is not clear whether this relates to the individual company level, all companies/subsidiaries within one country, the EU/EER, or any company worldwide.
- S1 Para. 90 "pay between men and women" and Para. 92 "male-female pay gap". Companies are already required to disclose a long list of information related to the gender pay gap under the recently adopted Directive on pay transparency. To also include this information in the light of the CSRD creates an overlapping reporting obligation and a duplication of work for companies, again causing unjustified administrative burden on companies. Moreover, we note that the unadjusted pay gap does not necessarily reflect pay discrimination as certain important objective and gender-neutral factors – recognised by the Pay Transparency Directive – such as work experience, type of job etc. are not taken into account.
- S2 Para. 11 "value chain, upstream value chain, downstream value chain, geographies". These concepts are extremely vague and must be clearly and exhaustively defined. They are not mentioned at all in Appendix A.
- S2 Para 25 "processes in place to provide for or cooperate in the remediation of negative impacts on workers in the value chain". It is extremely challenging and burdensome for companies to report in a detailed manner on workers in the value chain. Large companies often have over 100.000 tier-one suppliers and more than a million sub-suppliers in their value chain which globally can include several millions of workers.

- The disclosure requirement of certain information risks to **reveal company secrets.** An example in this respect is:
  - S1 Para. 42 and 44 stating that "the undertaking shall disclose what resources are allocated to the management of its material impacts with specific and detailed information that allows readers to gain an understanding of how the material impacts are managed." To disclose this information on the resources as it could potentially reveal confidential business information such as contractual details with third party providers. This would reveal trade secrets to competitors – who do not have the same obligations if they are situated in a third country and would mean a serious competitive disadvantage for EU based companies.
- Several of the disclosure requirements are not at the disposal of the companies due to data protection law or the companies are **not supposed to disclose the information under the data protection law.** Some examples in this respect:

- S1 Para. 4 “non-employee workers”. The notion “non-employee workers” should not be included in the report on ‘own workforce’ but rather in S2 on ‘workers in the value chain’ as several disclosure requirements with regard to non-employee workers are impossible to comply with by companies due to data protection legislation. Moreover, as mentioned above, the term “own workforce” in European and international employment related laws, regulations, jurisprudence – including the case law of the European Court of Justice, legal doctrine and academic literature refers regarding “own workforce” only to persons having an employment contract or employment relationship as defined by national law and the European Court of Justice’s case law. It is therefore unacceptable to change the internationally understood definition of “own workforce” to include non-employees (self-employed) and/or contractors.
- S1 AR 72 “lowest wage”. The requirement to disclose the “lowest wage” when read in conjunction with para. 66 on “adequate wage” cannot be done in conformity with the data protection legislation as in some cases it can easily be traced back to a specific person within the company.
- S1 Para 90 “highest paid individual”. Similar to the requirement to disclose the “lowest wage”, companies cannot disclose information on the highest wage in conformity with data protection legislation as the remuneration can easily be traced back to a specific person within the company.

- **Article 290 of the TFEU** states that a legislative act may delegate to the Commission the power to adopt non-legislative acts of general application to supplement or amend certain **non-essential elements** of the legislative act. Ceemet however strongly contests that the ‘non-essential elements’ principle is abided by these draft reports. The Corporate Sustainability Reporting Directive (CSRD) requires companies to provide only information necessary to understand the undertaking’s impacts on sustainability matters, and information necessary to understand how sustainability matters affect the undertaking’s development, performance and position. Several of the disclosure requirements **go far beyond what is required in the CSRD.** Some examples in this respect:
  - S1 Para. 53 “key characteristics of non-employees”. We refer to the first general remark regarding the concept of “own workforce” that should certainly not include non-employees. This requirement is disproportionate and certainly not a “non-essential element” which is intended by Art. 290 TFEU. The required information is irrelevant for sustainability reporting and raise concerns regarding the protection of trade secrets.
  - S1 Para. 70 “social protection”. The CSRD does not mention any information related to social security to be required. It is therefore not a “non-essential element” in this regard. Furthermore, all Member States of the European Union have a social security system, hence all workers are protected. As the competence about organising their social security system and its financing is a national competence, there are differences between the Member States as regards social protection and therefore, it will not be possible to compare data between countries. MISSOC provides a very detailed description of the national social security systems.
  - S2 Para 25 “remediation of negative impacts on workers in the value chain”. The requirement goes beyond the CSRD and obviously breaches the principle provided for in Art. 290 TFEU.

- S1 Para. 6 “key characteristics”. The requirement to describe key characteristics of employee and non-employee workers goes far beyond what is required by the CSRD as this is not necessary to understand the companies’ impact on sustainable matters. Moreover, as stated above, the term “own workforce” in all European and international employment related laws, regulations, jurisprudence – including the case law of the European Court of Justice, legal doctrine and academic literature, refers regarding “own workforce” only to persons having an employment contract or employment relationship as defined by national law and the European Court of Justice’s case law. It is therefore unacceptable to change the internationally understood definition of “own workforce” to include non-employees (self-employed) and/or contractors.
- S1 Para. 17 “main types of own workers” and “workers with particular characteristics”. This requirement is disproportionate as CSRD does not require this level of specificity.
- S2 Para. 14 “policies that address the management of its material impacts on value chain workers, as well as associated material risks and opportunities”. This requirement is very detailed and exceeds the CSRD. The application guidance contains extensive additional reporting requirements in comparison to the already disproportionate disclosure requirement.

- Several notions would need to be clarified in the final report in order **to ensure legal certainty for companies.** Some examples in this respect.
  - S1 Para. 16 “Region” and “geographic location”. It is unclear whether these notions can be used interchangeably or whether they have a different meaning. As mentioned above: contractors do not form a part of “own workforce”. We suggest to leave contractors out.
  - S1 Para. 22 “Stakeholders”: the concept of stakeholders is too vague in this context. We suggest to refer to employees representatives.
  - S1 AR 34, 35 the notion “business relationship” needs to be clarified. In our point of view this shall only relate to tier 1 providers, i.e. medium to long-term direct contractual relationships between companies
- The requirements of the ESRS S1 and S2 will significantly affect the **competitiveness of European based companies**. For example:
  - S1 Para. 82 states that “The undertaking shall disclose information on the extent to which its own workforce is covered by its health and safety management system and the number of incidents associated with work-related injuries, ill health and fatalities of its own workers. In addition, it shall disclose the number of fatalities as a result of work-related injuries and work-related ill health of other workers working on the undertaking’s sites.” EU companies will have a strong disadvantage compared to their competitors in third countries as there is practically no compensation for accidents due to the lack of legal insurance at the level of those existing in the EU. The requirement to publish non-comparable insurance data without due care will give stakeholders an incorrect picture of reality by favouring companies that do not have to report claims under their local legislation. Ceemet therefore strongly believes that the report should limit itself to trend indicators, i.e. indicators that show the evolution of claims upwards or downwards, regardless of the insurance system.

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