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CHILDREN’S RIGHTS AND DOUBLE MATERIALITY

UNPACKING CHILDREN’S RIGHTS UNDER THE EUROPEAN SUSTAINABILITY REPORTING STANDARDS

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ACKNOWLEDGEMENTS

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OVERVIEW:

There is a child rights aspect to most sustainability topics, therefore companies should consider children's rights in their double materiality assessments.

Children's rights are material to most companies, and child rights can have both financial and impact materiality. Children's rights are also highly relevant as a lens on many other sustainability topics. To understand how children's rights are material to the company, it is important to engage with children and their representatives as stakeholders in the assessment process, but certain safeguards must be put in place to ensure that children are not harmed in the process.

This guidance brief helps you identify children rights material topics that are relevant in your double materiality assessment, guide you in how to engage with stakeholders meaningfully and safely when it comes to children's rights, and determine and assess child rights material impacts.

> CHILDREN'S RIGHTS ARE MATERIAL TO MOST COMPANIES, AND CHILD RIGHTS CAN HAVE BOTH FINANCIAL AND IMPACT MATERIALITY.

DOUBLE MATERIALITY

The principle of double materiality in the context of sustainability reporting first appeared in the Non-Financial Reporting Directive (NFRD) and adopted in the ESRS. This principle recognizes the need to get a complete picture of a company's impacts by bringing together the two prevailing approaches to materiality in sustainability reporting – financial materiality, as used by the International Financial Reporting Standards (IFRS) and Task Force on Climate-Related Financial Disclosure (TCFD), and impact materiality, as used by the Global Reporting Initiative (GRI).

Financial and impact materiality under the ESRS are distinct but interrelated principles:

- Financial materiality refers to information that is necessary for decision making of the users of financial reports, usually information relevant to a company's financial performance.
- Impact materiality refers to information that is relevant to a company's environmental and social impacts.

Using double materiality, the ESRS requires companies to disclose information not only about matters that influence their financial performance, but also their environmental and social impacts that are material to both the company and broader society.[1]

Double materiality recognizes that companies have responsibilities beyond their financial bottom line and that disclosing their environmental, social and governance impacts is essential for sustainable and responsible business practices. It requires that companies report not only on financially material risks and opportunities but also material environmental, social and governance actual and potential impacts, both positive and negative. This information can help stakeholders assess the overall sustainability and long-term viability of a company.

1 ESRS 1, General Requirements, sections 3.3, 3.4 and 3.5.

CASE STUDY:
FINANCIALLY MATERIAL CHILDREN'S RIGHTS TOPICS

Most reporting on children's rights will be from an impact materiality perspective. However, it is important to note that impacts on children's rights can also be financially material for companies, particularly if looking at long term effects on financial performance. Poor management of children's rights impacts can also contribute to a range of commercial, legal, operational and reputational risks. Where children's rights are not respected, reputation loss, financial loss and legal action can have negative impacts on a company's financial performance. Examples include (non-exhaustive list):

- **Work-life balance for parents and caregivers**: There are several well-documented financial benefits to adopting decent working conditions for parents and caregivers that can have a significant impact not only on employees' children but also on business value. For instance, ensuring that employees benefit from sufficient paid maternity, paternity and parental leave can improve employee retention rates and reduce turnover.[2] Support for childcare has also been linked to financial benefits, including improving recruitment, retention and productivity.[3]
- **Marketing to children**: Companies that use children (particularly girls) in marketing materials in a way that sexualizes and objectifies them face legal (e.g., fines and sanctions) and reputational risks (e.g., consumer controversies). For instance, marketing of apparel can focus on a child's body in a way that sexualizes them. This is an increasing challenge in relation to digital marketing and the use of underage social media influencers to advertise adult apparel.[4]
- **Child labour**: companies that have been found to employ or benefit from child labour or trafficking face divestment from investors; boycotts from consumers; and legal consequences including fines and sanctions. This is a key reason why these children's rights issues are the most widely covered in sustainability reporting.

ASSESSING MATERIALITY UNDER THE ESRS

Materiality assessment is the process by which a company determines sustainability matters that are material, and therefore to be reported on.

The ESRS make clear that 'the starting point is the assessment of impacts.'[5] The materiality assessment process should be informed by due diligence processes as per the United Nations Guiding Principles (UNGPs) and OECD Guidelines for Multinational Enterprises (OECD Guidelines),[6] and by extension the Children's Rights and Business Principles (CRBPs).

A materiality assessment under the ESRS7 should include these steps:

1. Understanding the context and definition of the stakeholder engagement strategy;
2. Identification of the list of potential material sustainability matters and impacts, risks and opportunities; and
3. Determination of the final list of material matters based on an assessment of the materiality of impacts, risks and opportunities.

Materiality assessments under the ESRS are not limited to a company's own operations, but also encompass its upstream and downstream value chain, including suppliers and business partners.

See the following example for a fashion company:

- **Upstream value chain**: A fashion company sources raw materials from countries and sectors with high rates of child labour. The company's materiality assessment should therefore cover impacts and risks related to child labour.

2 See UNICEF. *Family-Friendly Policies: Redesigning the Workplace of the Future*. July 2019.
3 See, e.g., International Finance Corporation. *Tackling Childcare: The Business Case for Employer-Supported Childcare in Vietnam*. August 2020.
4 See, The Telegraph. *Crackdown on companies guilty of sexualisation of children*. 4 December 2010.
5 ESRS 1, General Requirements, section 3.3.
6 EFRAG, May 2024. EFRAG IG 01: Materiality Assessment.
7 ESRS 1, AR9.

- **Own operations**: A fashion company operates factories that manufacture its clothing and footwear. Its workforce is made up primarily of female workers of reproductive age. Long working hours and low wages reduce the amount of time that workers spend on maternity leave, reducing breastfeeding rates and pushing families into poverty. The company's materiality assessment should therefore cover impacts related to decent work for parents.

- **Downstream value chain:** A fashion company's marketing and advertising activities are managed by contracted marketing agencies. Irresponsible marketing techniques that perpetrate discrimination and stereotypes, use children (particularly girls) in ways that sexualize and objectify them, or that collect children's data for commercial purposes, impact on children's rights in an adverse way. The company's materiality assessment should therefore cover the negative impacts arising from these activities.

ASSESSING MATERIAL CHILDREN'S RIGHTS IMPACTS USING DOUBLE MATERIALITY

This section details how children's rights issues can be integrated into a materiality assessment under the ESRS. It follows the three steps set out in the ESRS for materiality assessment as set out above.

IDENTIFICATION OF THE LIST OF POTENTIAL MATERIAL CHILDREN'S RIGHTS IMPACTS

According to EFRAG IG, companies are required to list potential material sustainability matters. Companies should consider impacts in all ESRS areas and identify potentially material sustainability topics using the list of ESRS sustainability matters.[8] Companies should also identify material impacts according to the company's own system, including human rights due diligence processes.[9]

With any approach, the outcome should be a list of potentially material sustainability matters for reporting, and their related impacts, risks and opportunities. This step can be anchored in the assessment of negative impacts 'in the sustainability due diligence process' as defined by the UNGPs and related instruments. This means that companies that have already conducted human rights due diligence in line with the UNGPs will have identified the social impacts that would be material for their reporting under the ESRS.[10]

> "A FIRST KEY STEP TO IDENTIFYING POTENTIALLY MATERIAL IMPACTS IS TO IDENTIFY AND ASSESS ADVERSE IMPACTS RELATED TO GROUPS IN VULNERABLE OR DISADVANTAGED SITUATIONS, INCLUDING CHILDREN."

A first key step to identifying potentially material impacts is to identify and assess adverse impacts related to groups in vulnerable or disadvantaged situations, including children. Most material children's rights impacts will be related to broader sustainability impacts (e.g., labour rights, consumer health and safety, etc.), although some may affect children distinctly or exclusively (e.g., child labour).

How children's rights relate to the ESRS Sustainability Topics

For an overview on how children are impacted by business, please see the Guidance Brief 'Children as stakeholders at heightened risk of adverse impact'.

Under ESRS 1, when carrying out a materiality assessment, companies must consider the list of sustainability matters covered in the topic ESRS standards. Many impacts on children's rights can happen directly or indirectly, for example through working conditions for parents and caregivers. Many of these impacts will relate directly to the ESRS sustainability matters and require companies to take a child rights lens on these topics to be able to assess material risks to children.

To effectively conduct a materiality assessment, therefore, companies, must explore whether there are impacts on persons in vulnerable situations – including children – related to the ESRS sustainability matters.[16]

To assist companies in carrying out this assessment, below is a summary of selected children's rights issues as they are relevant to the ESRS sustainability matters. Reference can also be made to the table of children's rights sub-topics as they are related to the ESRS sustainability matters in Annex 1 of the Guidance Brief 'Reporting on children's rights in the social standards'. The list below should be considered as non-exhaustive.

Pollution of air, water and soil (ESRS E2)
Children are more vulnerable to health risks from exposure to pollution and toxins than adults, even at lower doses.[11] The children's rights dimension of this sustainability matter includes age-related targets,

8 In ESRS 1, AR16.
9 EFRAG, May 2024. EFRAG IG 01: Materiality Assessment.
10 Ibid.
11 UNICEF, December 2017. Danger in the air: How air pollution can affect brain development in young children.
UNICEF, *Understanding the Impacts of Pesticides on Children: A discussion paper*, Geneva, 2018.

where appropriate, related to air, soil and water pollution, as targets set for adults only may not be suitable for children.

Working conditions (ESRS S1 and S2)

Decent working conditions for parents and caregivers is an important sustainability topic for children's rights – with children impacted by factors such as work-life balance considerations (maternity and parental protections); flexible working arrangements for parents and caregivers; living wages that account for the needs of workers and their dependents; and access to good quality childcare. These conditions have a critical impact on the ability of the employee to provide an adequate standard of living for their families and adequately care for their children.[12]

Health and safety are also covered in this sustainability matter; however, children's rights aspects are often not adequately considered when companies report on health and safety matters. Important children's rights dimensions of this topic include health and safety protections for pregnant and breastfeeding workers, and specific protections for young workers who are at greater risk of injury and accidents at work.

Equal treatment and opportunities for all (ESRS S1 and S2)

Company policies and targets related to non-discrimination in the workplace are an important sustainability matter covered by the ESRS. There are provisions in the ESRS that specifically focus on gender equality and inclusion of persons with disabilities, among others.

Important children's rights dimensions of this topic include efforts to ensure non-discrimination and equal opportunities based on pregnancy, maternity and family status, which are internationally recognized but often left out of company's list of protected characteristics and diversity/inclusion policies. These protected characteristics are set out in international instruments, including ILO conventions.[13]

Other work-related rights (ESRS S1 and S2)

Child labour is arguably the most recognized labour-related child rights sustainability topic and is directly addressed in the ESRS (see Guidance Brief 'Reporting on Children's Rights under the Social Standards').

Closely related to the issue of child labour is decent working conditions for young workers (those above the minimum age of employment but below 18 years of age).14 This issue tends to be less well understood and not as well incorporated into reporting. This topic includes issues such as safeguards to protect young workers from child labour or the worst forms of child labour; safe and healthy working conditions for young workers; fair wages for young workers, who may be exempt from minimum wage regulations; and non-discrimination based on age.

Communities' economic, social and cultural rights (ESRS S3)

This sustainability matter includes sub-topics covering adequate housing, land-related impacts and security-related impacts.

Materiality assessments considering this sustainability matter should include children's rights considerations e.g., adverse impacts of resettlement on children and other people in vulnerable situations. When company operations affect land rights and access, children can often be the most vulnerable to negative impacts. For instance, displacement and resettlement can have disproportionately adverse impacts on children, particularly where education and access to basic services is interrupted for uprooted communities. Without taking steps to engage and consult children or their representatives, their needs and concerns can be overlooked in traditional FPIC and/or social impact assessment models.[15]

Children may also be particularly vulnerable to abuses by security personnel and should be given special consideration along with other people in vulnerable situations.[16]

Information related to impacts for consumers and/or end users (ESRS S4)

Consumer privacy and data protection issues are a key sustainability matter covered in the ESRS, and children's rights considerations are likely to be material for companies that develop or deploy digital technologies in ways that directly or indirectly impact children. Children's rights dimensions of privacy and data protection include additional safeguards on the storing, collecting, analysis and sale of children's data. Children are particularly vulnerable to data privacy

12 UNICEF, July 2019. Business and Family-Friendly Policies.
13 International Labour Organization, Convention No. 156 on Workers with Family Responsibilities.
14 For more details on how the ESRS defines child labour, see brief 3, p. 20
15 UNICEF, January 2017. Child Rights and Mining Toolkit.
16 UNICEF. Child Rights and Security Checklist.

concerns, and mishandling of children's data can have long-term consequences for their privacy rights.[17]

Personal safety of consumers and/or end users (ESRS S4)

Many companies already report on product safety and consumer welfare topics, particularly those in consumer goods sectors. Children's rights dimensions of this sustainability matter include measures to ensure that products are safe for children, regardless of whether they are the intended users or not, adequately labelled for children's safety and that children's access to products that may be harmful to them is limited.[18]

Children are spending more time in digital spaces than ever before. Digital experiences can have significant negative impact on children's mental health, but they can also yield benefits for children, enabling them to learn, create and develop friendships. The children's rights dimension of this sustainability matter includes measures to tackle abuse online, unintended consequences from the use of digital products, as well as measures to promote positive outcomes through the design of digital environments.

Children are increasingly recognized as a significant consumer group, with discretionary income to spend and influence on family purchases. Children's rights dimensions of this sustainability topic include measures to ensure that children under 18 are not exposed to marketing that could be harmful to the child's development, health and opinions according to their age and development.

THE STAKEHOLDER ENGAGEMENT STRATEGY: ENGAGING STAKEHOLDERS ON CHILDREN'S RIGHTS

Engaging stakeholders is a component of the materiality assessment process set out in the ESRS.[19] Materiality assessments should be informed by dialogue with affected stakeholders.[20]

The ESRS defines stakeholders as those who can affect or be affected by a company, and identifies two groups of stakeholders:

> "WHEN COMPANIES CONSULT DIRECTLY WITH CHILDREN, THIS NEEDS TO BE CARRIED OUT MEANINGFULLY, APPROPRIATELY AND ETHICALLY; THEREFORE, SAFE-GUARDS SHOULD BE PUT IN PLACE TO ENSURE THAT CHILDREN ARE ADEQUATELY PRO-TECTED DURING CONSULTATION."

1. **Affected stakeholders**, who are individuals or groups affected or possibly affected positively or negatively by a company's activities or business relationships; and

2. **Users of sustainability statements**, who are primary users of general-purpose financial reporting (including investors, lenders, creditors, and other users of sustainability statements -including business partners, trade unions, social partners, civil society and non-governmental institutions).

A key step to adopting an inclusive stakeholder engagement strategy is to identify groups who are or could potentially be in vulnerable or disadvantaged situations.[21]

As children can be affected stakeholders, companies undertaking stakeholder engagement for their materiality assessment should engage with children and other stakeholders on children's rights to understand the context where they operate and possible child rights material topics.[22] Affected stakeholders can include children, children's rights advocates, including youth organizations, civil society groups, academic experts, parents/caregivers, government agencies (e.g. ministry of education), businesses/suppliers, trade unions, professionals in contact with children (e.g., teachers, doctors, social workers), and community leaders. Companies can conduct interviews, roundtables or surveys with stakeholders to gain their insight on issues facing children.[23]

When companies consult directly with children, this needs to be carried out meaningfully, appropriately and ethically; therefore, safeguards should be put in place to ensure that children are adequately protected during consultation.[24] For example:

- Children are a key consumer group for an online gaming company. Online games are a key source of entertainment for children but can also expose them to risks of abuse (e.g., bullying or grooming), discrimination, privacy interference, and commercial exploitation, among other risks. Because of this, it is important for the company to better understand the potential and actual impacts of its products on children. It should be doing this by consulting with civil society groups, academics,

17 London School of Economics, December 2018. Children's data and privacy online: Growing up in a digital age.
18 European Child Safety Alliance, 2013. Child Product Safety Guide.
19 ESRS 1, General Requirements, section 3.1.
20 ESRS 1, General Requirements, section AR8.
21 ESRS 1, 3.1 read in conjunction with AR 6.
22 ESRS 1, AR 8.
23 UNICEF, September 2014. Engaging Stakeholders on Children's Rights.
24 UNICEF, September 2014. Engaging Stakeholders on Children's Rights.

experts with knowledge and experience of children's rights in the digital environment. In some cases, expert knowledge of the impacts of online games on children's rights is not sufficient, they should engage with children directly provided that the engagement is conducted in a safe, accessible and meaningful way.

- To understand the impacts of its operations in a country, a mining company should consult with affected communities, including children. Children can be impacted by mining operations in various ways; for example, by being displaced, having reduced access to healthcare facilities and schools, or exposure to health risks due to localized environmental impacts of mining.[25] As such, children should be identified as an affected stakeholder group and the company should consult with them - provided that is done in a safe, accessible and meaningful manner – and other stakeholders to obtain children's perspectives on their community, safety concerns, access and quality of social infrastructures (e.g. schools and healthcare facilities), their aspirations and fears.

Companies looking to follow these provisions of the ESRS, and engage affected stakeholders on children's rights, or engage children as affected stakeholders, can follow UNICEF's guidance on Engaging Stakeholders on Children's Rights.

DETERMINATION OF THE FINAL LIST OF MATERIAL IMPACTS AND ASSESSING CHILDREN'S RIGHTS IMPACTS

The last step of the impact materiality assessment process according to EFRAG IG 1[26] is to review the list of material impacts and apply objective criteria to determine which are material. Applying this step to the impacts on children's rights should be no different from addressing impacts on other human rights and sustainability.

The process involves applying objective criteria for negative impacts – including the scale, scope and irremediable nature of the impact as informed by the UNGPs. For positive impacts, the criteria are scale, scope and likelihood of impact. For financial effects, companies should apply the appropriate quantitative and/or qualitative thresholds based upon anticipated financial effects in terms of performance, financial situation, cash flows, access to and cost of capital. The sustainability risks and opportunities should be assessed based on their likelihood, magnitude and nature.

> “IN ADDITION TO SCALE AND SCOPE, OF PRINCIPAL IMPORTANCE WHEN APPLYING OBJECTIVE CRITERIA TO MATERIAL IMPACTS IS THE CONSIDERATION OF IRREMEDIABILITY OF IMPACTS ON CHILDREN.”

In addition to scale and scope, of principal importance when applying objective criteria to material impacts is the consideration of irremediability of impacts on children. One example is adverse environmental impacts on children - children are more vulnerable than adults to toxic chemicals in air, water and food, as harm to their organs that are still growing and developing can have lifelong consequences. For example, lung damage in early childhood due to air pollution can be irreparable and affect lung capacity through to adulthood; children's exposure to lead and mercury can affect their cognitive development, decrease IQ, and create a range of mental disabilities.[27]

Other examples include:

- A company's digital platform might be used to perpetrate online child sexual exploitation and abuse (OCSEA). The impact of OCSEA on children can be severe and with lifelong physical and psychological harms, as children can be re-victimized each time images are viewed, and they can be in constant worry of being recognized. The harm caused by OCSEA cannot be completely undone. The company, therefore, should consider this when assessing whether the risk of online sexual exploitation and abuse is one of its material impacts.

- An agri-food company has business partners and suppliers that use pesticides and chemical fertilizers on a plantation where there are pregnant women, nursing mothers and children living in the nearby community. Exposure to pesticides and chemical fertilizers that are leaked into the community's water supply can have irremediable impacts on both maternal and child health. Prenatal exposure to pesticides and fertilizers can lead to fetal death and birth defects, while childhood exposure can lead to cancer, poor neurological development, low birth weight and death.[28] The company should, therefore, consider the irremediability of this impact for children when assessing whether to report on it as a material impact.

Finally, stakeholder engagement is crucial for validating and ensuring completeness of the final list of material impacts, especially for scale, irremediable character determination, and likelihood estimation.

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25 UNICEF, *Children's Rights and the Mining Sector – UNICEF Extractive Pilot*, Geneva 2015.
26 EFRAG, May 2024. EFRAG IG 01: Materiality Assessment.
27 UNICEF, *The Climate Crisis is a Child Rights Crisis, Summary Edition*, New York, 2021.
28 UNICEF, *Understanding the Impacts of Pesticides on Children: A discussion paper*, Geneva, 2018.