

‘DGFP // WISSENSWERT’ ESG AND HUMAN RESOURCES MANAGEMENT

Publisher

German Association for Human Resource Management (DGFP)
Deutsche Gesellschaft für Personalführung e. V.

‘DGFP // WISSENSWERT’ - a publication of the German Association for Human Resource Management (DGFP)

With the publication ‚DGFP // WISSENSWERT‘ the German Association for Human Resource Management (DGFP) publishes expert knowledge on specific HR management issues.

DGFP // Wissenswert – ESG and Human Resources Management

by Dr. Guido Zeppenfeld, LL.M., Dr. Hagen Köckeritz, LL.M. oec. int. and Marcel Hörauf

I. Introduction

The term **ESG** (*Environment Social Governance*) has gained a great deal of popularity. In the business sections of the daily press, one reads almost daily that ESG is increasingly a key subject for companies, both in the financial sector and in the real economy. In terms of regulations, the EU precedes the rest of the world. This is due to the comprehensive political sustainability agenda of the EU, which ultimately focuses on aligning the private sector with environmental and social sustainability goals. So far, the main focus of these regulatory initiatives has been on the concept of sustainable finance, which is based on the fundamental assumption that the appropriate alignment of private financial flows is the most efficient way to achieve politically set environmental and social goals. Correspondingly, the EU strategy for corporate social responsibility has already been promoted for years through regulatory requirements on non-financial information in corporate reporting. Increasingly, objectives other than ecological ones have come to the fore in this context. In other words: Increasingly, the discussion also centers on the “S” and the “G” in ESG.

Consequently, alongside other social aspects, employee matters are becoming an increasingly important basis not only for investors when making investment decisions or voting at annual general and shareholders’ meetings. A convincing performance with regard to ESG- relevant social and governance aspects as well as meaningful reporting on these aspects play an increasingly important role for the external image of the company and its attractiveness for customers and employees. In view of the regulatory dynamic, especially in the EU, companies - in all sectors and regardless of their capital market orientation - can no longer avoid the social and governance criteria of ESG in the short-to medium-term.

For human resources management (**HR Management**), the question arises in theory as to what role *human resources* can or must play in this context and what contribution that practical human resources work, and the managers responsible for it, can make to achieve the strategic ESG goals within the corporate organization. This is precisely the subject of this issue of the *DGFP // Worth*

Knowing series. With regard to selected non-financial corporate reports, the working hypothesis seems to suggest that the alignment of practical HR work with ESG-relevant criteria can generally be described as heterogeneous at best. The same finding applies to the sustainability reporting system per se. With respect to the increasing importance of the topic of ESG, however, there are opportunities in HR management which, at least up to now, appear to have been insufficiently exploited.

II. Orientation on existing regulatory and standardization initiatives

ESG-oriented HR management requires clearly defined criteria and targets based on these criteria. The good news is that a wide range of regulatory and standardization initiatives on social and governance aspects already exist at EU level, which provide fairly concrete guidance for ESG-oriented human resources work. These initiatives essentially serve to implement the EU’s political sustainability agenda, which is also enshrined in the EU Treaties. This, in turn, is in line with the United Nations’ 2030 Agenda that was adopted in 2015, which sets out a catalog of no fewer than 17 *Sustainable Development Goals (SDGs)* for the global community. It should be noted that the EU has so far been much more ambitious in undertaking this global project, particularly in the social and governance aspects of sustainability, than any other state or legal community. Therefore, concrete indications of the practical significance of ESG in the area of human resources can best be gained from the current regulatory and standardization initiatives at the EU level.

Regulatory initiatives by the EU legislator in this area mainly relate to non-financial reporting requirements for companies and transparency requirements for a sustainable financial economy. As a result, numerous standardization initiatives and best practices have been developed, some of which provide very detailed criteria for personnel management under ESG signs. For practical purposes, it seems useful to examine the contents of these guidelines and initiatives in order to then define company-specific criteria for the company’s HR management.

The following section therefore first provides an overview of the relevant requirements for the “S” and the “G” at EU level. On this basis, implementation topics for the human resources area are defined and specific measures for practical HR management under the ESG umbrella are proposed.

III. Relevant EU requirements for ESG and HR management

1. Non-financial reporting requirements

1.1. NFRD / CSR-Directive

As early as 2014, the EU adopted the so-called *Non-Financial Reporting Directive (NFRD)* or *CSR-Directive* (where *CSR* stands for *Corporate Social Responsibility*), a directive expanding the reporting requirements of large capital market-oriented companies, credit and financial services institutions and insurance companies with more than 500 employees. Pursuant to this, companies concerned must include information on non-financial aspects in their management reports, i.e., in particular on environmental aspects, social concerns of employees and other working conditions, human rights, anti-corruption and diversity issues. The German legislator has implemented the directive in Sections 289b et seq. of the German Commercial Code (Handelsgesetzbuch - **HGB**) and Sections 315b et seq. HGB into national law.

As a guideline and best-practice recommendation for the practical application of the NFRD requirements, the EU Commission published corresponding guidelines in 2017 (and, with a focus on climate-related information, in 2019). The *Guidelines on Non-Financial Reporting (2017)* are intended to provide guidance to concerned companies on how to disclose the required information in an appropriate and comparable manner. For this purpose, they provide various examples of information considered worthy of disclosure in the context of non-financial reporting in the management report. Regarding the areas relevant to human resources management, a wide range of topics and performance indicators for sustainability reporting are described in this context, in particular:

- Implementation of the fundamental conventions of the International Labor Organization
- Diversity concerns such as gender diversity
- Employment and working conditions
- Relations with trade unions, respect for trade union rights
- Employee co-determination
- Health and occupational safety
- Human capital management, including management of restructurings
- Respect for human rights
- Supply chains

Both the NFRD itself and the EU Commission’s guidelines also refer reporting companies to existing “high-quality, broadly recognised national, EU-based or international frameworks.” Under the applicable German law, this is reflected in Section 289d HGB. The following (non-exhaustive) examples are given: the United Nations Global Compact (UN Global Compact), the guiding principles of the OECD, the standard ISO 26000 of the International Organization for Standardization, the fundamental principles of the international labour organizations, and the *Global Reporting Initiative (GRI)*. Both the EU and the German legislator as well as the Commission limit themselves to a reference to the aforementioned frameworks. However, due to their high level of detail, these in particular provide valuable indications for practical ESG-relevant human resources work (for more on this, see Section V).

1.2. Draft CSRD

1.2.1. With the draft of a *Corporate Sustainability Reporting Directive (CSRD)* presented on April 21, 2021, the European Commission now aims to extend the CSR reporting obligation to large non-capital market-oriented corporations and limited liability partnerships under commercial law. De facto, in the future large parts of the German midtier will be obliged to publish a sustainability report. Also, there will be several changes in terms of content. With the new directive, non-financial statements and key figures are becoming an increasingly key focus of reporting and are thus moving closer to the financial key figures. The factors published in this context must meet similar quality standards as the key figures used in financial reporting. As a result of the CSRD, the current level of detail of the information to be disclosed will increase significantly. In the future, performance indicators shall even have such a high level of detail that investors and other financial market participants, who in turn are subject to the reporting requirements of the *EU Sustainable Finance Disclosure Regulation (SFDR)*, will be able to fulfill their reporting obligations solely on the basis of these performance indicators. The legislative process regarding the CSRD has not yet been concluded. Nevertheless, the current draft directive again provides important indications for HR management focusing on ESG goals.

- 1.2.2. The draft CSRD specifies a number of criteria for the area of social sustainability (“S”) in Art. 19b: i) equal opportunities for all, including gender equality and equal pay for equal work, training and skills development, and employment and inclusion of people with disabilities, ii) working conditions, including secure and adaptable employment, wages, social dialogue, collective bargaining and the involvement of workers, work-life balance, and a healthy, safe and well-adapted work environment, and iii) respect for the human rights, fundamental freedoms, democratic principles and standards established in the International Bill of Human Rights and other core UN human rights conventions, the International Labour Organization’s Declaration on Fundamental Principles and Rights at Work and the ILO fundamental conventions and the Charter of Fundamental Rights of the European Union.
- 1.2.3. Additionally, Art. 19b of the CSRD contains a catalog of governance factors (“G”) which companies are obliged to disclose in their sustainability reports or as part of their management report. These include: i) the role of the undertaking’s administrative, management and supervisory bodies, including with regard to sustainability matters and their composition, ii) business ethics and corporate culture, including anti-corruption and anti-bribery, iii) political engagements of the undertaking, including its lobbying activities, iv) the management and quality of relationships with business partners, including payment practices, and v) the undertaking’s internal control and risk management systems, including in relation to the undertaking’s reporting process.

In this context, the EU Whistleblowing Directive should also be mentioned, which aims to create a union-wide minimum level of protection for persons reporting violations of EU law. However, despite the deadline of December 17, 2021, this directive has not yet been implemented in German law due to differences within the grand coalition. Given the high level of detail of the directive, a direct application of its provisions could currently be considered, i.e., without having been implemented by the German legislator. Henceforth, the Federal Ministry of Justice has published a revised draft of an act of transposition (the so-called Whistleblower Protection Act (Hinweisgeber-schutzgesetz) dated April 13, 2022. If the legislative process proceeds as scheduled, the act will be promulgated before the end of 2022.

- 1.2.4. Under the conception of the CSRD, the reporting requirements on social and governance factors are to be further specified by so-called delegated acts of the EU Commission. The existing international initiatives on sustainability reporting play a central role for the requirements of the CSRD and their practical implementation by the Commission. The CSRD explicitly refers, for example, to the so-called GRI standards and the expert opinion of the *European Financial Reporting Advisory Group (EFRAG)* (for more details, see section IV).

2. Social taxonomy

Closely and structurally linked to the regulations on the recognition of social and governance aspects in non-financial reporting requirements are the EU criteria for sustainable finance, the so-called taxonomy. Again, social and governance aspects are increasingly shifting into focus. At present, the focus lies on the development of an EU social taxonomy, which will provide further important indications for the future definition of ESG criteria relevant for HR management at the EU level.

2.1. Taxonomy Regulation

One of the central regulations within the framework of the *Sustainable Finance Action Plan* of the EU is the so-called *Taxonomy Regulation* adopted in 2020, which provides (so far exclusively ecological) criteria for assessing the sustainability of economic activities. The regulation itself does not establish an obligation to operate sustainably; rather, it defines which six criteria are to be

considered when determining whether an economic activity is environmentally sustainable. According to Art. 8 of the Taxonomy Regulation, certain large companies are required to disclose in non-financial statements/reports whether and to what extent their activities are associated with economic activities that qualify as environmentally sustainable according to the Taxonomy Regulation.

2.2. Recommendations on social taxonomy

2.2.1. On February 28, 2022, an advisory body of the EU Commission, the so-called EU Platform on Sustainable Finance, published its final recommendations on the development of a social taxonomy (*Final Report on Social Taxonomy*). These include concrete recommendations on the requirements for the classification of companies or economic activities as socially sustainable applicable in the future at the EU level. On the basis of the Final Report on Social Taxonomy, the EU will make a final decision on whether to implement a social taxonomy similar to the already created environmental taxonomy.

2.2.2. The social taxonomy is to be designed in close alignment with the environmental taxonomy. The content of classification and measurement, on the other hand, is to be based primarily on international standards, since scientific approaches to social goals often do not render the desired outcome. This is another aspect in which the existing frameworks and current standardization initiatives are of essential importance for the expected specification of social and governance factors of ESG at the EU level. Drawing from this, the Final Report on Social Taxonomy provides a set of recommendations for the sustainability classification of HR issues in companies. In terms of content, these contain an explicit reference to EFRAG’s standardization initiative and propose in this respect that the “S” in ESG be defined on the basis of a *stakeholder-centric approach*.

3. EU Sustainable Corporate Governance (SCG) Initiative

In the area of corporate governance, the EU aims to improve the EU legal framework for corporate law and corporate governance as part of a so-called Sustainable Corporate Governance Initiative and to urge companies to focus on long-term and sustainable added value. As part of the initiative, a draft EU *Directive on Corporate Sustainability Due Diligence (CSDD)* was published in February 2022. Alongside this, the EU Commission has issued a communication on the promotion of decent work, which places the elimination of child and forced labor worldwide at the center of its efforts. For this purpose, the EU plans to introduce a new legal instrument to ensure that goods produced by forced labor or child labor do not enter the EU. Details of what this legal instrument will look like and how it relates to the CSRD as well as to the European regulation on supply chain due diligence pursuant to the CSDD are not yet known. Nevertheless, it should be noted that the planned EU regulations of the CSDD on the supply chain due diligence obligations of companies will significantly exceed the existing German Supply Chain Due Diligence Act (*Lieferkettensorgfaltspflichtengesetz*). This is of particular relevance for practice with regard to the “G” in ESG.

IV. ESG and HR management frameworks and standards

The indications resulting from the relevant EU regulations, recommendations and regulatory initiatives on social and governance aspects are barely suitable as a basis for ESG-oriented HR management in practice due to their limited level of detail. As outlined above, reference is made to so-called frameworks and, in some cases private, standardization initiatives with regard to the concretization for the criteria and performance indicators relevant to HR work. This is where a rather confusing variety of indicators exists. Under applicable law, such as Section 289d of the HGB, companies subject to reporting requirements decide at their own discretion which frameworks they will utilize for their non-financial reporting.

In order to achieve effective ESG-oriented HR management, it is sensible to deal with frameworks which are as informative as possible regarding so-called employee issues. Therefore, a selective overview of the most practical frameworks from an ESG point of view is presented below, due to the mentioned abundance of existing frameworks without any claim to completeness.

1. 1. International frameworks

Of relevance for ESG-oriented HR work are, to begin with, international frameworks such as the core labor standards of the *International Labor Organization (ILO)*, the OECD Guidelines for Multi-national Enterprises and the UN Global Compact. However, the requirements and standards contained in these international frameworks should be more or less a common matter for the vast majority of companies and their HR departments in practice. Nevertheless, it is, of course, sensible to confirm compliance with the relevant standards in the sustainability reports.

1.1. ILO-Frameworks

The ILO core labor standards are governed by eight international conventions, which establish the ILO’s four fundamental principles (freedom of association and the right to collective bargaining, elimination of forced labor, abolition of child labor, and prohibition of discrimination in respect of employment and occupation) in an internationally binding manner. In addition, a large number of further ILO conventions and recommendations must also be observed.

1.2. UN Global Compact

Corporations that join the UN Global Compact thereby declare their commitment to ten universal principles for the strategic establishment of sustainability and the implementation of the UN’s Sustainable Development Goals (SDGs). From the perspective of HR management, these principles contain relevant principles, including respect for human rights, recognition of freedom of association and the right of employees to collective bargaining, prohibition of forced labor and child labor, and exclusion of all discrimination in respect of employment and occupation.

1.3. OECD Guidelines

The OECD Guidelines contain a code of conduct regarding foreign investments as well as the cooperation with foreign suppliers. They describe, for example, how companies are expected to deal with trade unions or fight corruption when conducting their global activities.

2. GRI Standards

A widely used framework in sustainability reporting practice is the guidelines and standards developed by the *Global Reporting Initiative (GRI)*. Nearly three quarters of the world’s largest companies use these so-called GRI standards. As a non-profit foundation, GRI understands the standards it has published to be global best practice for non-financial reporting. These are modular, interconnected standards on ecological, economic, organizational and social aspects of corporate orientation. The modules relevant to HR management contain a detailed description of criteria, performance indicators and so-called mandatory reporting requirements on, among other things, the following topics: Employment (GRI 401), Employee-Employer Relations (GRI 402), Occupational Health and Safety (GRI 403), Training and Development (GRI 404), Diversity and Equal Opportunity (GRI 405), Non-discrimination (GRI 406), and Freedom of Association and Collective Bargaining (GRI 407), as well as additional standards on remuneration policy, human rights, supply chains, and data security.

3. ISO 26000, DNK, SASB

Among the vast number of other frameworks that can be used as a guidance to exactly define the content of the social and governance aspects of ESG-oriented HR management, only a few shall be mentioned.

One such framework is the ISO 26000 standard of the International Organization for Standardization, which provides a guideline on the consideration of social requirements for companies with the aim of providing users with guidance on sustainable development. This guideline understands its contents to be explicitly complementary to the GRI standards. Compliance with the ISO 26000 guide is not certifiable.

Several companies, especially small and medium-sized ones, are using the *German Sustainability Code (DNK)* for their sustainability reporting. While the content of the code is based on the GRI standards, it is significantly less extensive and detailed.

Less common, at least in Germany, is the use of other human capital standards, such as those of the *Sustainability Accounting Standards Board (SASB)*.

4. EFRAG Standards

The EFRAG advisory body plays a central role in defining the social and governance aspects of ESG-oriented sustainability reporting in the EU. This is an association under Belgian law which acts as an advisory body to the EU Commission.

4.1. EU Sustainability Standards

Both the draft CSRD and the current recommendations on social taxonomy contain explicit references to the sustainability reporting proposals to be developed by EFRAG. It is provided in the EU regulatory initiatives that the EU Commission will take into account the EFRAG’s proposals when adopting its delegated acts specifying the CSRD. The mandate of EFRAG, or rather its corresponding task force, is to compile proposals for *European Sustainability Reporting Standards (ESRS)* for the Commission. In the process, the standards of GRI and SASB are also to be taken into account. For this purpose, EFRAG has entered into an official cooperation with GRI.

The ESRS developed by EFRAG represent, in essence, the EU’s own path to sustainability reporting standards. This delegation of the development of formative proposals for ESRS defining the future EU sustainability reporting standards to EFRAG is criticized as an “expertocratic-technocratic

usurpation of political decision-making processes”. Notwithstanding this, and also in view of the fact that the ESRS already take into account standardization initiatives that are widespread in practice, EFRAG’s proposals are likely to gain significant importance in practice, at least in the EU, as a target and guidance for ESG-oriented HR work. This is also true because of its comparatively high level of detail, particularly on the subject of employee issues.

4.2. EFRAG Drafts

By publishing *exposure drafts* for a total of thirteen sustainability reporting standards on various non-financial corporate reporting topics on April 29, 2022, EFRAG has launched an official consultation process that was expected to be completed by August 8, 2022. Since January 2022, EFRAG *working papers* on individual ESRS have already been published. The working papers relevant to human resources have been consolidated in the exposure drafts now published by EFRAG as part of the drafts of ESRS S1 (*Own Workforce*) and ESRS G1 (*Governance, risk management and internal control*). These two standards contain central points of orientation for HR management.

Other EFRAG standards relevant to the social aspects include draft ESRS S2 (*Workers in value chain*), draft ESRS S3 (*Affected communities*) and draft ESRS S4 (*Consumers and end users*). Further governance reporting standards issued by EFRAG are contained in draft ESRS G2 (*Business conduct*) and ESRS 2 (*General, strategy, governance and materiality assessment disclosure requirements*).

4.3. ESRS S1 (*Own Workforce*)

The draft ESRS S1 contains substantial indications for an ESG-oriented practical human resources work. These provide a meaningful indication of the objectives to which sustainable *Human Capital Management* should be aligned (in the future) within an EU context. The draft contains criteria and performance indicators for the reporting, so-called disclosure requirements, as well as *application guidelines*, which are relevant for a large number of “classic” HR management topics. In particular, this involves requirements for reporting on the following points:

- Involvement of employee representatives (co-determination, collective bargaining, industrial action)
- Remuneration systems, pay equity
- Codes of Conduct
- Occupational health and safety
- Employee data protection, monitoring systems
- Work life balance
- Anti-discrimination, inclusion, diversity both in corporate bodies and in the workforce
- Personnel development, training and further education, skills development

4.4. ESRS G1 (*governance, risk management and internal control*)

The individual EFRAG drafts are to be applied “holistically” in practice, since corporate activity aimed at sustainability also logically requires organizational incorporation in the respective company. In this respect, in addition to the ESRS S1 reporting standards, the contents of EFRAG’s draft ESRS G1 are also relevant for HR management, in which reporting standards on corporate guidelines and process descriptions are proposed.

V. Need for action for practical HR management

For an HR management that is aligned with strategic ESG corporate goals, it is advisable to specifically orient itself to the foreseeable regulatory requirements for sustainability reporting and social taxonomy. It is about maximizing the added value of human resources work with regard to the, in all likelihood increasingly inevitable, mega topic of ESG. In the following, the best approach for a successful ESG-oriented HR management will be discussed.

1. 1. General need for action in HR management

As mentioned above, EFRAG’s proposals for sustainability reporting standards are a promising starting point for practical implementation. These standards must be examined and, based on them, any need for action must be identified and addressed in practice. Typical topics in this respect are described in section V.2. The following structural steps are recommended for a systematic approach by HR managers.

- **Defining ESG reporting criteria tailored to the organization:** From EFRAG’s extensive proposals for reporting on social and governance-oriented aspects, the criteria that “fit” the company in question should be identified, taking into account the respective industry-specific circumstances and strategic corporate planning. These then set the targets for ESG-oriented HR work.
- **“Gap analysis” based on national and international legal requirements:** On closer inspection, both the EFRAG standards and the recommendations on EU social taxonomy incorporated existing legal and regulatory requirements to a large extent. Thus, the first step is to identify which legal and regulatory requirements apply to those areas that have been defined as targets in the individual case. This can, for instance, be done by creating a type of legal cadastre centered on the core question of which target-standards have already been met by complying with the applicable regulations.
- **Determining and implementing specific ESG initiatives for HR:** Based on the assessment of *compliance* with the already applicable ESG-relevant regulatory requirements, it should then be determined where there is still a backlog. In addition, it can be assessed how the contribution of HR management to the strategic alignment of corporate activities with ESG can be maximized through further concrete measures and initiatives geared to the specific target standards. Of particular importance in this regard appears to be the legal framework for statutory and voluntary co-determination in Germany. The handling and involvement of employee representatives plays an important role in the standards proposed by EFRAG (see Section V.2.9). Thus, the options existing under German law to create legally binding regulations together with employees on a collective level can be an advantage from the perspective of ESG-oriented sustainability reporting. This aspect should be taken into account when defining targeted ESG initiatives in the human resources area.
- **Reflecting on ESG initiatives in the corporate organization:** ESG-oriented HR management should also be embedded in the corporate organization. This can, for example, entail addressing the topic of social sustainability in the management bodies of a company. The EFRAG standards on *corporate governance* can serve as a point of reference in this context.
- **Meaningful reporting formats:** ESG optimized HR management can only add real value to a corporate ESG strategy if it becomes a meaningful part of the sustainability report. The reporting standards proposed by EFRAG, in particular the *application guidance* contained therein, also provide specific guidelines in this regard: First, a *stakeholder-centric* approach should be adopted for non-financial corporate reporting. In addition, special attention should be paid to ensuring that the reporting formats on the company’s ESG performance with regard to employee issues are indeed accurate, balanced and understandable, comprehensive but concise, strategic and future-oriented, and consistent and coherent.

2. Typical ESG implementation topics at operational or corporate level

2.1. Sustainability in remuneration and occupational pension systems

Since the provisions of the Act Implementing the Second Shareholder Rights Directive came into force on January 1, 2020 and the associated amendment to Section 87 (1) sentences 2 and 3 Stock Corporation Act (Aktiengesetz – **AktG**), the remuneration structure for management board members of listed companies must be aligned with the “sustainable and long-term” development of the company. Sustainability requirements also play an essential role in remuneration systems subject to the Regulation on the Supervisory Requirements for Institutions’ Remuneration Systems (Institutsvergütungsverordnung). According to EFRAG’s proposals, information is to be provided in particular on the evaluation of management and supervisory bodies (ESRS G1-5) and on the criteria for variable remuneration (ESRS G1-6).

However, in view of the increased importance of social sustainability, companies are also focusing on setting sustainability targets in remuneration outside the areas already covered by regulations. Of particular relevance here is the principle of equal pay for equal work or work of equal value, irrespective of gender. An obligation in this regard already exists due to the German Pay Transparency Act (Entgelttransparenzgesetz) and the General Equal Treatment Act (Allgemeines Gleichbehandlungsgesetz – **AGG**). However, the existing regulations have so far largely affected the individual relationship between employer and employee. The new non-financial reporting requirements will ensure that any violations are made transparent.

Increasingly, the amount of variable remuneration is also linked to the achievement of sustainability targets. Traditionally, sustainability targets in the environmental area play the most important role (e.g., reduction of the ecological footprint by reducing the energy required to operate the company, digitalization of record keeping, or conversion of fuel-powered company cars to electric vehicles). In the future, however, it is expected that social and governance sustainability will also be increasingly taken into account. The definition of binding reporting standards at the European level will lead to companies naming social sustainability goals more clearly and actually measuring their achievement. Everything that can be measured (and is measured) can also be used as a measurement for remuneration. It is possible, for example, that targets could be formulated with regard to increasing the diversity of the workforce, introducing and implementing occupational health and safety measures, or conducting or participating in sustainability-related training courses. Here, a particular focus is also placed on compliance with and the granting of fair remuneration.

If a remuneration system has deficits with regard to equal treatment or if statutory / collectively agreed upon minimum wages are not granted, this can result in a considerable risk to the company’s reputation. Such violations not only entail the risk of fines. Affected companies also have to face increased employee turnover and difficulties in recruiting new qualified personnel.

In the context of company pension plans, sustainability primarily plays a role in the selection of insurance-based financing and other investments. Here, a significant shift away from investments in critical areas (e.g., armaments industry, raw materials production using child labor) or in connection with critical products (e.g., coal, petroleum, palm oil) can be observed. However, particularly in the case of historical pension commitments with high guaranteed benefits, companies often continue to rely on a corresponding return on investment, which does not always permit an investment in ESG-compliant assets.

With respect to remuneration, the EFRAG standards focus primarily on the aspects of fairness and equal treatment between all genders, as well as the transparency of remuneration systems and levels.

- With regard to fairness, for example, it is necessary to report in which countries the remuneration for employees and non-employees, broken down by gender, is below what is assessed as a fair wage. Subsequently, for each of the countries mentioned, the ratio of the lowest wage to the “fair wage” as well as the percentage of employees and non-employees whose remuneration is below this “fair wage” must be stated. The company should also indicate which fair wage benchmark it used to compare to the lowest wage in the countries in which the company operates. Based on this benchmark, the fair wage must not be less than 60% of the national median gross wage or 50% of the national average gross wage as calculated by the OECD, Eurostat, or other public or intergovernmental organization. For countries where these data are not available, the benchmark wage must not be less than the legal minimum wage (if such exists). The topic of fairness also includes disclosure of the ratio of the total remuneration of the highest paid person in the company to the median remuneration of all its employees (ESRS S-17).
- With regard to gender equality, firstly, the unadjusted percentage ratio of basic remuneration and other remuneration between men and women (the so-called *gender pay gap*) must be reported. Data must then be broken down to each employee group and per country (ESRS S1-16).
- Any corporate guidelines relevant to this topic should also be the subject of non-financial reporting (ESRS S1-1).

Works councils must be involved in matters relating to company wage arrangements, including the design of company pension schemes (Section 87 Paragraph 1 Number 10 Works Constitution Act (Betriebsverfassungsgesetz - **BetrVG**)).

2.2. Occupational health and safety

Occupational health and safety are among the most fundamental areas in which companies must ensure sustainability. It is not only a matter of recognizing and avoiding dangers to life and limb that arise directly from the occupation, but also of promoting health. An important area of occupational health and safety are federal legislations on working hours, which cover, among other things, compliance with maximum working hours, the granting of minimum breaks and rest periods, and restrictions on night work, work on Sundays and public holidays. In Germany, a very high standard already exists in the form of federal occupational health and safety law and the autonomous occupational health and safety law of the statutory accident insurance, compliance with which and monitoring of which are deeply embedded in companies, implemented by various legally mandated officers and also monitored by the authorities.

In many regions, however, the issues at stake are much more fundamental, such as access to water and sanitation at work and the prohibition of child and forced labor.

Under EFRAG standards, reporting on occupational health and safety must first identify which management level has ultimate responsibility for this topic, which bodies monitor the effectiveness of the company’s EHS management, and ultimately how it is implemented at the various levels of the company. The reporting must also include information on which occupational health and safety standards are being applied and how employee representatives are involved. In the future, the number of fatal and other occupational accidents, the number of days of absence due to occupational accidents, absence rates, and the percentage of employees who do not have access to health care services provided by the employer must also be disclosed. The report must also include information regarding the frequency of risk assessments, standards used, and measures taken to prevent and remedy hazards, including audits and certifications (ESRS S1-10, 11, 12). Any corporate guidelines relevant to this topic should also be the subject of the non-financial reporting (ESRS S1-1).

Works councils have extensive information and monitoring rights in matters relating to occupational health and safety. In addition, there is a mandatory right of co-determination in the introduction

and application of regulations on the prevention of accidents at work and occupational diseases as well as in health protection within the framework of statutory regulations and accident prevention regulations (Section 87 Paragraph 1 Number 7 BetrVG).

2.3. Anti-Discrimination, Diversity & Inclusion

Today, sustainable corporate policies must no longer be limited to the mere prohibition of discrimination on the basis of gender, race, ethnic origin, nationality, religion or ideology, disability, age or sexual orientation. On the contrary, measures must be taken that are positively oriented towards the promotion and equal participation of minorities. In addition to the provisions of the AGG, German law already contains far-reaching regulations for the protection and promotion of severely disabled persons and others of equal status.

Discrimination against certain groups in hiring, training or promotion can lead to a shortage of qualified employees for companies and can significantly damage their reputation. As a result, qualified and skilled employees may turn to other companies. Due to the external perception, it can then become increasingly difficult for affected companies to find qualified employees. On the other hand, a corporate policy that is sustainably designed to promote equality and minorities can have a positive effect on the qualification and retention of employees and strengthen the company’s reputation.

Alongside hiring and promotion opportunities, equal participation naturally also refers to equal treatment in matters of remuneration and other working conditions, as well as access to social security systems.

According to the EFRAG standards, detailed reporting obligations exist on the topic of diversity, in particular at the level of the corporate bodies (ESRS G1-4). Where entities have reporting obligations with respect to corporate reporting and whistleblowing systems, explicit statements are to be made as to whether these systems also allow notifications with respect to discrimination based on gender, race, ethnic origin, nationality, religion or belief, disability, age or sexual orientation (ESRS S1-3). Any corporate guidelines relevant to this topic should also be the subject of non-financial reporting (ESRS S1-1).

Works councils regularly have a right to information and monitoring with regard to the employer’s compliance with the prohibition of discrimination. In addition, there are mandatory rights of participation in the introduction and application of personnel selection guidelines and in connection with individual personnel measures (e.g., Section 95 and Section 99 BetrVG).

2.4. Personnel development, training and further education, skills development

The areas of personnel development, training and further education, and qualification are of great importance for sustainable corporate development. For any company, the goal must be to train and develop its own talents in a way that allows the company to pursue its strategic goals in the best possible way. For the employees themselves, this opens up opportunities to develop professionally within the company and the existing working environment, as well as to be able to remain in employment on a permanent basis. Fluctuation-related risks such as the loss of know-how and experience can be significantly reduced in this way.

The areas of training and qualification refer to all corporate initiatives aimed at maintaining and/or improving the personal skills and knowledge of employees and the further development of the company’s own workforce. Training can include various methods such as on-site training or online training.

The EFRAG standards firstly expect a description of the assessment methods and processes used to identify competence deficits as well as the training programs and measures taken to eliminate these deficits. In addition, there must be reporting on the involvement of employee representatives and on the frequency with which corresponding training measures are taken per country and region. Reporting also includes information on the percentage of employees who have access to training programs and are subject to regular performance reviews. Information on the average number of hours of training and development per person should also be provided, with a distinction made between employee categories and gender. Furthermore, a distinction should be made when reporting on the percentage of those who rotate between positions or have been promoted and those who remain static in their position. Finally, the report is expected to provide information on the average training and development costs per FTE per year (ESRS S1-9). In addition, it should be stated whether access to training and further education exists equally for all employee categories or whether, for example, temporary or part-time employees are affected by restrictions. Any corporate guidelines relevant to this topic should also be included in the non-financial reporting (ESRS S1-1).

Works councils have far-reaching participation rights in relation to training and further education (Sections 96 et seq. BetrVG).

2.5. Employee data protection

From a sustainability perspective, employee data protection firstly entails compliance with the existing far-reaching legal regulations regarding the collection, processing and use of personal data. In addition, monitoring measures should be reduced to a minimum wherever possible.

The EFRAG standards also provide for detailed reporting requirements in this regard (ESRS S1-26). For example, companies must provide detailed information on the systems used to ensure the protection of employee data. The description of these systems also includes the corresponding processes for data protection as well as the number of employees who process sensitive personal data and information on the extent to which these employees have received specific training. Information must be provided on the appointment of data protection officers and IT security officers, including a description of their respective positions and responsibilities. Finally, the average time within which data subjects receive information about requests (e.g., regarding information, deletion or correction) must be stated. Explanations must be provided on the number of data privacy violations to the extent that employee data were affected. Statements must also be made on the type and severity of the breaches, the involvement of the supervisory authorities, and any remedial measures taken. Measures regarding employee monitoring must be described from various perspectives, and the respective percentage of the workforce and categories of employees affected by such measures must be stated (ESRS S5, para. 25 ff.).

According to the EFRAG standards, the involvement of employee representatives plays an important role in the area of employee data protection. According to ESRS S1 AG 170, reports on this should be made in particular in the case of monitoring measures in the broadest sense. Works councils generally have a right to information and monitoring in data protection matters. In the case of the introduction and use of technical equipment suitable for monitoring the performance or behavior of employees, a mandatory right of co-determination additionally exists (Section 87 Paragraph 1 Number 6 BetrVG).

2.6. Work-Life Balance

Sustainable corporate governance is also characterized by measures designed to enable a balance between work and private life. These include, on the one hand, the opportunity of extended periods of absence (e.g., parental leave or sabbaticals) and, on the other hand, the offer of flexible working time models; for example enabling employees to raise and care for their children while working.

Flexibility can also include allowing mobile/agile working. Furthermore, access to childcare facilities is another important factor.

In this context, the EFRAG standards expect the company to provide information on whether, for example, it promotes the equal assumption of care responsibilities by both parents, whether it supports the return to work after a family-related absence, and the rate at which employees return to work after parental leave. The statements on this should cover at least 80 % of the workforce (ESRS S1-13). Any corporate guidelines relevant to this topic should also be the subject of non-financial reporting (ESRS S1-1).

Works councils have a mandatory right of co-determination both in the structuring of company working time systems and in the structuring of mobile work performed by means of information and communication technology (Section 87 Paragraph 1 Numbers 2 and 14 BetrVG).

2.7. Code of Conduct

Companies are required to embed their sustainability efforts through appropriate standards of conduct at all levels of the company. This is typically done by implementing ethical guidelines or codes of conduct. However, independent voluntary commitments that solely relate to the sustainability concerns of employees are also possible.

The EFRAG standards require that existing codes of conduct, where publicly available, are linked directly in the sustainability report. It must also be disclosed how a company’s sustainability strategy, insofar as it relates to employee matters, is communicated to the workforce and made easily accessible (ESRS S1-1).

Works councils must be involved in the introduction of codes of conduct insofar as issues relating to the order of the company and the conduct of employees in the company are affected (Section 87 Paragraph 1 Number 1 BetrVG).

2.8. Monitoring and auditing systems

Companies are expected to monitor the effectiveness of their efforts in matters of social sustainability. Internal or external monitoring and auditing systems are an essential instrument for this. The effectiveness of the respective measures may be monitored by means of audits or certifications, impact assessments, measurement systems, stakeholder feedback, grievance mechanisms, external performance evaluations or benchmarking.

Many areas already require monitoring and auditing measures by law. This applies, for example, to occupational health protection, where risk assessments must be carried out both regularly and on an ad hoc basis. In recent years, monitoring and auditing obligations in connection with supply chains have also become particularly important. From January 1, 2023, companies with a size of 3,000 or more employees in Germany (from 2024: 1,000) must identify and, if possible, reduce human rights and environmental risks in their supply chain.

Whistleblowing systems and internal complaints mechanisms are also becoming increasingly important. The Whistleblower Protection Act (Hinweisgeberschutzgesetz), which is currently in the legislative process, is expected to impose the obligation to install a whistleblower system in all companies with at least 250 employees. From December 2023, this obligation will also apply to companies with at least 50 employees.

Among other things, the EFRAG standards expect companies to provide information about the complaints mechanisms available to employees, including whether they are operated internally or

with the involvement of external third parties. The information must include details on who the systems are targeted (e.g., only certain categories of employees), what their specific purpose is, how they work, whether and how information is aggregated centrally, and whether reporting to external parties takes place. In addition, companies can include a number of other aspects in their reporting on this. Not only should complaints mechanisms available to employees be disclosed but also, in particular, those available to trade unions and employee representatives (ESRS S1-2, ESRS S1-3).

Works councils have far-reaching information, monitoring and participation rights in connection with whistleblowers and other monitoring systems (e.g., Section 87 Paragraph 1 Numbers 1 and 6 BetrVG).

2.9. Freedom of association, collective bargaining, industrial relations

The validity of collective working conditions (in particular collective agreements and works agreements) and the close involvement of employees, trade unions and other employee representatives in corporate and operational decision-making are of particular importance in connection with sustainable corporate management. Companies are required to respect the freedom of association and refrain from obstructing efforts by the workforce to organize.

The EFRAG standards provide for detailed statements on the involvement of trade unions and other employee representatives at various points. Information is required on the extent to which the corporate strategy recognizes the rights of employees arising from freedom of association, does not block the formation of trade unions and interest groups, recognizes trade unions and employee representatives, grants representatives an appropriate amount of time to perform their duties, respects the protection of interest representatives against dismissal and discrimination, and is committed to regular information and consultation with representatives. In this context, statements must be made regarding the type of involvement with regard to actual or potential negative or positive effects on the workforce. The time when the involvement takes place, i.e., whether it takes place before a final decision is made and which unit in the company is responsible for the involvement, must also be disclosed.

In addition, the extent to which the company is covered by collective bargaining agreements must be disclosed. If no collective bargaining agreements are in place, it must be stated whether and in what respect the employer nevertheless complies with collective-bargaining agreements (ESRS S1-22). Furthermore, information on any industrial action such as strikes and lockouts is required (ESRS S1-23).

A separate section (ESRS S1-24) is dedicated to social dialogue within the EFRAG standards. This includes, for example, the percentage of the workforce that is represented by trade unions or interest groups at the company level. Furthermore, information is required on whether agreements exist with a European or SE works council. Insofar as employee representatives are represented in company bodies (e.g., in supervisory boards), information should be provided regarding the existing rights, the selection process, and the number of employee representatives represented in such bodies. Information is also required on whether significant reorganization measures were carried out in the reporting period and how the existing rights to information and consultation in this context were safeguarded.

As far as the social and organizational dimension of sustainability reporting is concerned, given the importance placed on the relationship between the company and employee representatives (in the broadest sense) as envisaged in the EFRAG standards, it seems advisable for HR management to ensure that the applicable legal requirements (e.g., the German Collective Bargaining Act and the German Works Constitution Act as well as the rules on co-determination of employee representatives in company bodies) are implemented and documented in detail.

Autoren

Dr. Guido Zeppenfeld, LL.M. (University of Essex)

Partner

Mayer Brown LLP

gzeppenfeld@mayerbrown.com

Dr. Hagen Köckeritz, LL.M. oec. int.

Partner

Mayer Brown LLP

hkoeckeritz@mayerbrown.com

Marcel Hörauf

Counsel

Mayer Brown LLP

mhoerauf@mayerbrown.com

Ihre DGFP – Ihr HR-Kompetenz- und Karrierenetzwerk

Die Deutsche Gesellschaft für Personalführung e. V. (DGFP) ist seit 1952 das Kompetenz- und Karrierenetzwerk für HR-Professionals. Wir organisieren den Erfahrungsaustausch für Personaler, qualifizieren in HR- und Führungsthemen und sind die Stimme des Personalmanagements gegenüber Politik und Gesellschaft. In unserem Netzwerk engagieren sich DAX-Konzerne ebenso wie kleine und mittelständische Unternehmen, renommierte Wissenschaftsorganisationen und Beratungen sowie zahlreiche Persönlichkeiten aus dem Human-Resources-Management. Mit unseren Mitgliedern und Partnern arbeiten wir an aktuellen Trends und HR-Themen, begleiten Personaler in ihrer Karriere und sind die Stimme des HR-Management gegenüber Politik und Gesellschaft. Der persönliche Erfahrungsaustausch steht im Zentrum unserer Arbeit. Hier engagieren sich jährlich über 4.000 HR-Entscheider und HR-Manager in rund 100 ERFA-Gruppen. Darüber hinaus bieten wir anerkannte Aus- und Weiterbildungsprogramme zu HR- und Führungsthemen an. In unseren Studien und Publikationen bündeln wir aktuelles HR-Wissen. Gemeinsam mit unseren Mitgliedern gestalten wir so die Arbeitswelten von heute und morgen.

Impressum

**Publikationsreihe DGFP // Wissenswert
ESG und das Personalmanagement**

Herausgeber

Deutsche Gesellschaft für Personalführung e. V.

Linkstraße 2
10785 Berlin
www.dgfp.de

Kai Helfritz
Leiter Mitgliedermanagement & Kooperationen
Deutsche Gesellschaft für Personalführung e. V.
Linkstraße 2
10785 Berlin
helfritz@dgfp.de

Fon 030 8145543-70

Copyright

Der Herausgeber behält sich das ausschließliche Recht auf Vervielfältigung und Nachdruck der veröffentlichten Beiträge, auch in elektronischer Form, vor. Jede, auch die auszugsweise Veröffentlichung bedarf der Zustimmung des Herausgebers.