

Commission Public Consultation – Sustainable Corporate Governance

AFEP POSITION

The **French Association of Large Companies (AFEP)** would like first to thank the Commission for giving the opportunity to submit comments regarding its initiative on Sustainable Corporate Governance.

Large French companies have been engaged for many years in putting CSR and responsible business conduct (RBC) at the heart of their strategies and operations. They present the highest level of non-financial information compared to companies worldwide and have made strong commitments, notably to reduce their GHG emissions, to respect human rights, to preserve biodiversity and to engage in the circular economy. Large French companies apply the French Pacte Act, Sapin 2 Act and the law on the Corporate Duty of Vigilance. AFEP member companies would like to build on this unique background and hindsight to make an experience-based contribution to the Commission's preparatory work.

1. Corporate Governance

While fully supporting the concept of sustainable corporate governance, AFEP deplores the fact that the questionnaire is based on the biased EY report without giving respondents the opportunity to express a diverging position, without being seen as opponents of sustainable governance.

In particular, it is false to state that boards of directors do not include consideration of CSR issues when defining the company's strategy. The French Pacte Act has indeed merely enshrined an already established practice.

It is also false to state that boards of directors have a short-term vision and focus primarily on the interest of shareholders to the detriment of the other stakeholders' interests. Indeed, **companies attach great importance to their stakeholders** and regularly discuss with them.

It is simplistic and reductive to oppose the consideration of financial interests (necessarily short term) to the consideration of stakeholders' interests (necessarily long term).

Finally, it is not acceptable to claim that board members are incompetent on environmental, social or human rights issues in order to justify legislative measures. In general, AFEP deplores the fact that the questionnaire seems to ignore other legislative initiatives, such as the recently revised Shareholder Rights Directive or the Non-Financial Reporting Directive (NFRD) which is currently under review.

Therefore, for the AFEP, it is **neither useful nor desirable**:

- To introduce a definition of the **notion of social interest** at the European level (which the French Pacte Act did not attempt to define) because this notion is already broadly defined in Europe.
- To create an obligation for the company to **identify its stakeholders** and to **manage risks and opportunities related to them**, an area already largely covered by the NFRD; as for imposing CSR objectives, although a certain number of companies publish such objectives on a voluntary basis, this issue seems to us to fall under the NFRD.
- To require the board of directors to "**balance the interests of all stakeholders**", which would lead to a risk of paralysing the board and management decision-making processes and of enhancing the risk of litigation.

- To impose stakeholder **information/consultation processes on the board of directors**, as it is up to companies not only to determine the stakeholders with whom they wish to engage in dialogue, but also to define the appropriate means and periodicity of such a dialogue.
- To regulate the **remuneration of executives**, when the Shareholders' Rights Directive has integrated the long-term perspective and when the subjects covered (introduction of certain CSR criteria in the variable part, obligation to hold shares, proportion of remuneration in the form of shares, etc.) are more a matter for soft law.
- To impose **CSR expertise requirements** as part of the board member recruitment process, which is one among many other fields of expertise expected of board members.
- To further regulate the practice of **share buybacks**, which is already subject to a European framework.

In our view, if the EU considers necessary to take further action on the issue of corporate governance, AFEP considers that this subject should be **better dealt with**, due to the wide diversity of corporations and practices, **in the form of Recommendations towards the Member States** in order to avoid a one size fits all approach.

2. European Due Diligence Duty

Companies support in principle the introduction of a European duty of diligence, while stressing that it must **avoid the pitfall of legal uncertainty** of the French law on the Corporate Duty of Vigilance and **distortions of competition** vis-à-vis non-European companies.

In summary, the AFEP's position is based on the following points in particular:

- The scope of the future EU legislative framework should aim at creating a **level playing field** and should apply equally:
 - to **companies established in third countries** when they supply goods or services within the EU;
 - to **any entity engaged in an economic activity** regardless of its legal status;
 - to public authorities in the framework of their calls for tender.
- The **areas covered** must be clearly circumscribed; the EU should consider a separate legislative initiative concerning the fight against Bribery modelled on the French Sapin 2 Act; also, **climate change** as a **global phenomenon** cannot be attributed to one or more actors.
- The **precise content of the due diligence** requirements must be clearly defined in order to **avoid legal uncertainty**; in concrete terms, these requirements may only concern **direct** subcontractors and suppliers, without extending to the entire value chain; only the most significant risks should be addressed, and it ought to be clear that due diligence is an **obligation of means and not of result**.
- A **system of verification of due diligence information by independent third-party bodies** would be more effective than a system of controls and supervision by nationally appointed authorities.
- The **sustainable development chapters of EU bilateral agreements** provide a means to oblige EU partners to adopt CSR legislation and/or administrative practices and to develop tools to **monitor CSR compliance** by companies established on their territory. AFEP supports the **implementation of new tools to ensure compliance with the standards developed by these chapters**, including **sanctions**, subject to competitiveness edge test.

About AFEP

Since 1982, AFEP brings together large companies operating in France. The Association, based in Paris and Brussels, aims to foster a business-friendly environment and to present the company members' vision to French public authorities, European institutions and international organisations. Restoring business competitiveness to achieve growth and sustainable employment in Europe and tackle the challenges of globalisation is AFEP's core priority. AFEP has around 111 members. More than 8 million people are employed by Afep companies and their annual combined turnover amounts to €2,600 billion.

AFEP is involved in drafting cross-sectoral legislation, at French and European level, in the following areas: economy, taxation, company law and corporate governance, corporate finance and financial markets, competition, intellectual property and consumer affairs, labour law and social protection, environment and energy, corporate social responsibility and trade.

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