POSITION • JULY 2021

PROPOSAL FOR A **DIRECTIVE ON CORPORATE SUSTAINABILITY REPORTING**

AFEP (the French Association of Large Companies) considers that the revision of the current Non-Financial Reporting Directive (NFRD) is necessary in order to **harmonise and standardise sustainability reporting** and to end the proliferation of frameworks and standards.

The **"Corporate Sustainability Reporting Directive" (CSRD)** proposal introduces a new set of ambitious requirements that are, for some of them, already applicable in France, where the scope of companies covered is larger than in NFRD, the non-financial statement is already published in the management report and verified by an independent third party. However, the text significantly impacts AFEP member companies as it **introduces new reporting themes** (such as transition plans, targets, governance of sustainability, intangibles) as well as **new indicators, modifies the functioning of the Board** and provides for the **publication of sustainability reports in a digital format.**

AFEP member companies consider that the future Directive should:

- **cover all non-European companies** offering goods and services in the EU above a certain threshold of turnover, and not only non-EU companies listed in the EU or large non-EU subsidiaries based in the EU;
- **leave companies free to set appropriate targets** according to their sector and activity, and **not systematically require them to publish forward-looking information**;
- limit the information requirement on **intangibles** (human, social, intellectual capitals…) to **qualitative information rather than quantitative information**;
- **not anticipate the content of the future proposal for a European due diligence** which is to be specified in a dedicated future text;
- **ensure the compatibility** of the future EU reporting standard with international requirements and its coherence with the existing European legislation on sustainable finance;
- **clarify the requirements on digitalisation,** it being specified that only quantitative information can be "tagged" like the IFRS consolidated financial statements;
- **not extend the missions of the audit committee** to extra-financial reporting.

1. THE CORPORATE SUSTAINABILITY REPORTING DIRECTIVE PROPOSAL (CSRD) (LEVEL 1)

The EU Commission published on 21 April 2021 a Directive proposal called "Corporate Sustainability Reporting Directive" (CSRD) revising the Non-Financial Reporting Directive (NFRD) adopted in 2014. The proposal aims at reinforcing transparency requirements for companies and lays the foundation for a **European sustainability reporting standard** that the Commission shall adopt before 31 October 2022 on the basis of the **technical advice provided by the European Financial Reporting Advisory Group** (EFRAG). In this process, EFRAG will have to change its governance and financing system in order to fulfil its new function as the European sustainability reporting standard-setter.

The revision of the current Non-Financial Reporting Directive (NFRD) is deemed necessary in order to harmonise and standardise sustainability reporting **and to end the proliferation of frameworks and standards**. However, even though French companies are among those publishing the highest amount of sustainability-related information, and although many of the proposed provisions are already mandatory in France (i.e. disclosure of sustainability reporting in the management report, verification by an independent third party), this text presents the following difficulties:

- **On the scope**: many competitors of European companies are not listed in the EU and do not meet the criteria of large companies covered by CSRD because they operate for instance from third countries like Switzerland or the UK or from digital platforms. **It is essential to include such companies if they provide goods or services in the EU and exceed a certain turnover threshold to be determined.**

- **On the systematic publication of forward-looking information**, companies anticipate on the one hand legal risks, and on the other hand the risk of having to disclose commercially sensitive information while their non-European competitors, including those operating in the EU, are not subject to the same transparency obligations. Just like regarding financial reporting, where there is **no obligation to publish forward-looking information**, companies should not be obliged to publish forward-looking sustainability related information, especially since the margins of error in environmental and social matters are bigger. It is thus crucial to allow flexibility and freedom to companies in the **way they present these issues.**

- **On intangible assets:** CSRD provides for reporting requirements on intangibles, including intellectual, human, social and relationship capital. The valuation of these assets is not sufficiently mature and even when it is possible, it does not necessarily provide useful and relevant information. In the absence of a precise definition of these assets and of a robust methodology to measure them, **information on intangible assets should be purely qualitative and not quantitative**.

- **On Due Diligence, CSRD must not anticipate the future proposal of the Commission on a European due diligence duty.** The proposed Directive imposes extensive transparency requirements on companies without even defining the "due diligence process". Yet, as the negotiation of the French law on due diligence has shown, this concept is particularly complex, difficult to implement, and requires a specific debate. Therefore, CSRD should not anticipate future substantial requirements. The same issue must not be simultaneously addressed in two different negotiations/texts.

- **On the future European standard** to be elaborated by EFRAG by 31 October 2022 for a first disclosure by companies in 2024 based on the financial year 2023, AFEP member companies support this initiative, under the condition that it takes into account international initiatives (see Part 2 below).

- On digitalisation, the requirements should be clarified: companies consider that only quantitative information can be "tagged" like the IFRS consolidated financial statements.

- On governance, companies are opposed to the mandatory extension of the audit committee's competence to sustainability reporting. Indeed, it is preferable to have a flexible and transversal approach because CSR issues fall under the remit of different committees depending on the themes (e.g. the CSR committee when there is one; the compensation committee for the definition of CSR criteria for the calculation of variable remuneration; the nomination committee to assess the expertise of new directors in terms of CSR etc.).

2. THE FUTURE EUROPEAN STANDARD ON SUSTAINABLE REPORTING (LEVEL 2)

AFEP member companies' priorities are the following:

- The future European standard must be compatible with the main international initiatives to avoid multiple and competing mandatory measures that would simultaneously apply to international companies in their different major jurisdictions.

The work done at EFRAG and in the future International Sustainability Standard Board (ISSB) of the IFRS Foundation must be aligned as much as possible. A close collaboration must be pursued in order to guarantee a **highest level of influence of the EU in the development of a global ESG reporting standard.**

- The sectoral standards of SASB, which are being supported by a growing number of international investors, must be analysed to identify the indicators that can be applied as such, and those that need to be adapted to the European context and specificities, notably on social issues.

- To allow the EU to lead on ESG issues, it is up to EFRAG, the Commission and the Member States to use their influence on the EU's main international partners (USA, China…) so that they accept to take into account the European frameworks and standards.

- The future European standard must be simple and coherent. Several European texts contains ESG reporting requirements (in particular the Taxonomy and Disclosure Regulations). Their timetables, and in some cases their contents, are not aligned. It is paramount to avoid confusions, overlaps, and incoherence between different pieces of EU legislation that would hinder their implementation and impose unjustified and disproportionate constraints on companies.

- The positions of issuers must be included in the standardisation process. AFEP supports the continuation of the public/private partnership of EFRAG in order to guarantee the appropriate representation of companies and other stakeholders.

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 more than 110 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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