

27 July 2022

## EFRAG's consultation on sustainability reporting standards

### Cover letter

**Acteo** (an association whose object is to assure the participation of major French companies in the international harmonisation of accounting standards), **AFEP** (the French Association of Large Companies) and **MEDEF** (the *Mouvement des Entreprises de France*) welcome the opportunity to comment on the draft sustainability standards proposed by EFRAG. French companies are among the most transparent in the world and have 20 years of experience in sustainability reporting. They acknowledge the huge amount of work accomplished by the Project Task Force in very little time and they support the standardisation of sustainability reporting in the EU.

However, they **regret that this work was undertaken before the final adoption of the directive, setting deadlines incompatible with due process, lacking proper review of the draft standards by the EFRAG SRB before running the open consultation, resulting in drafts which in many points do not meet the requirements of CSRD, lack prioritisation and alignment with international frameworks, and do not meet the needs of companies and investors.** French companies fear that the proposed standards, because of the **level of detail** of the information to be disclosed, will **disadvantage them compared to their international competitors.**

For these reasons, the proposed standards are not acceptable in **their current form, and a major exercise of simplification and prioritisation of indicators is necessary to make them useful and practicable.** Furthermore, Acteo, AFEP and MEDEF regret that the consultation deadline was too short to conduct an in-depth analysis, in particular allowing to identify the concerns of undertakings newly targeted by sustainability reporting. Acteo, AFEP and MEDEF are highly concerned about the short timeframe left to perform the necessary structural changes in response to a consultation of such magnitude.

In the light of the fundamental reservations laid out here above, **French companies vigorously call on EFRAG SRB to take into account the following points to enable high quality reporting in practice:**

- **International comparability is essential** and interoperability between ESRS and other international standards must be prepared and aimed at, in particular by **aligning the reporting with IFRS Sustainability Standards** on the common part of financial materiality.
- Acteo, AFEP and MEDEF acknowledge that CSRD enshrines the **principle of double materiality** in order to reflect both company's activities and challenges and to respond to the needs of the users of sustainability reporting. However, **double materiality does not mean that all stakeholders must be satisfied in all their desiderata**, as this would contradict the materiality principle itself, and it is impossible in practice. **The cross-sectors disclosure requirements should therefore focus on essential information, leaving room for sectoral indicators**, which will provide a more relevant granularity. This presupposes a cross-sectoral reporting that is not as maximalist as the proposal stands.
- **The materiality assessment carried out by companies should be at the core of the application of the concept of materiality.** The ESRS disclosure obligations should flow from the prior identification of material impacts, risks or opportunities. Thus, ESRS should refer to the materiality matrix, allowing companies to prioritise stakeholders and respond to their needs and expectations.

- **In this logic, the presumption of materiality should be removed as contrary to the CSRD.** Indeed, such a presumption, even rebuttable, does not allow undertakings to focus on the most material aspects and would generate significant legal risks due to third parties likely to challenge the absence of certain indicators. The obligation to justify the absence of information would make reporting excessively cumbersome. Acteo, AFEP and MEDEF support a positive approach to materiality and favour further guidance on the concepts of probability and severity over bureaucratic negative statements justifying the lack of materiality.
- **The only presumption of materiality which is justified concerns the 18 mandatory principal adverse impacts laid down by SFDR.** French companies agree to publish these indicators independently of their materiality assessment to satisfy the needs of their investors and make the sustainable action finance plan work out smoothly in this respect.
- **ESRS should allow a good understanding of sustainability risks, opportunities and impacts, but must not lead to a sheer compliance exercise.** It should neither attempt to replace or anticipate substantial European obligations<sup>1</sup>, such as the future directive on European Corporate Sustainability Due Diligence, nor duplicate existing sectoral regulations. **CSRD sets up obligations to report and not obligations to do, meaning that the wording of some disclosure requirements has to be consequently reviewed.**
- The scope and granularity of the information requested contained in the various disclosure requirements (DRs) should be **proportionate** so as not to create irrelevant and burdensome reporting, as the number and granularity of DRs will imply more important financial and human cost for undertakings under the scope, and for small and medium-sized enterprises in their value chain.
- **The scope of financial and sustainability reporting should be aligned.**

**In particular, Acteo, AFEP and MEDEF call on EFRAG SRB :**

- Not to ask for excessively detailed information, in particular on **business models or strategic projects**, which could harm the competitiveness of European companies on global markets by disclosing strategic information.
- To affirm and extend **incorporation by reference to already existing public information and reports** to avoid duplication (e.g. financial statements, corporate governance report, remuneration report as well as other parts of Universal Registration Documents published by French companies),
- To consider the **verifiability of information**, especially as regards reporting on the supply chain which should focus on main risks and impacts,
- To take into account the **diversity of national reporting regulations** (including definitions and methodologies) in the economic, environmental and social fields which may differ especially in non-EU countries,
- To **clarify or delete the reference to the “European public good”** which is confusing in standards addressed to actors of the private sector,
- **To locate all reporting obligations in the DRs and not in the application guidance (AG) to facilitate readability and applicability of the standards.** The application guidance should only give information on how to apply the DRs without adding additional mandatory reporting

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<sup>1</sup> In the environmental field, existing EU legislation already sets up emissions or product requirements including regular reporting at installation or product level, such as the Industrial Emissions Directive (IED), the EU Emissions Trading Scheme on greenhouse gases (EU ETS), the Waste Framework Directive, the REACH Regulation and the Classification, Labelling and Packaging Regulation (CLP) and many more.

requirements. AG must not give the impression that more detailed information is mandatory regardless of the previously identified policy or material impact/risk.

- To **rewrite certain standards to simplify the reading**, especially **ESRS2**, so that a company or an auditor can effectively grasp the essence of the standards and implement the reporting obligations accordingly. ESRS should be adapted to the newly concerned and smaller sized companies and avoid ambiguity about the approach to be followed.

### **Acteo, AFEP and MEDEF propose the prioritisation and gradual implementation of DRs according to the following principles:**

- Start with information already required by the **NFRD and SFDR**, respecting the precise wording and granularity of SFDR PAI (e.g. existence of policies doesn't mean its detailed description).
- **Gradually** introduce information regarding the **supply chain**, particularly as this part of corporate reporting will be more difficult to construct, especially for new entrants in the scope.
- At last, **advance progressively on all 3 pillars** of sustainability reporting (E, S and G) whilst taking into account the inequal maturity of specific themes, notably biodiversity.

### **In addition to the above-mentioned points which apply to all the standards, there are more specific remarks Acteo, AFEP and MEDEF would like to make on each of the reporting themes:**

#### **On cross-cutting standards:**

- **ESRS 1 and 2 should be merged and streamlined.** As mentioned above, the materiality assessment should be put at the centre of the reporting exercise and ESRS 2 should not be included in the AG of the thematic standards.
- **The governance indicators** contained in the cross cutting standards **should be better articulated with the ESRS G1 standard.** In line with the directive, the reporting standards should not be extended beyond corporate officers. References to "senior management", "senior executives" or "key personnel", which are not defined elsewhere, should be deleted.
- **Reporting on sustainability topics dealt with by boards should be limited to general topics**, referring to public information, to prevent the risk of having to disclose confidential information on ongoing projects.

#### **On governance standards:**

- The role, composition, expertise, skills and responsibilities of the administrative, management and supervisory bodies with regard to sustainability are addressed by ESRS 2 as required by CSRD.
- **G1 goes beyond the mandate of CSRD** which only provides for information concerning diversity policy (g) in relation to the undertaking's administrative, management and supervisory bodies. It is not desirable to go further as this would entail that non listed companies have to make a corporate governance report which is not foreseen by European law. Therefore, all DR on the general governance structure and composition, corporate governance code or policy, nomination process, evaluation, remuneration policy have to be deleted.
- The disclosure regarding diversity policy has to be revised. Indeed, disclosures such as creed, ancestry, ethnic origin may lead in countries such as France to constitutional problems.
- In general, the **standards should not contradict the laws of the Member States or should provide for exceptions where the information to be disclosed is contrary to national laws.**

### On environmental standards:

- Reporting on the **climate issue** should be **prioritized** by asking companies to focus on the **metrics that can be collected or calculated at an acceptable cost, specifying the level of uncertainty** associated with them.
- Obliging all companies to comply **individually** with a 1.5°C objective is not realistic as activities face very different constraints and opportunities. Therefore, companies should indicate their best efforts to **contribute** to the objectives of the Paris Agreement, including the “**well below 2°C**” and not only the “1.5°C” objective.
- Their transition action plans should **distinguish provisions that fall within their decision-making power and provisions that require coordination with other players** in the sector (upstream, downstream, private and public partners).
- For **climate and biodiversity**, DRs should **not create direct result responsibility** for companies when international legal frameworks enact a responsibility defined at Member State level. DRs should neither refer to international objectives when they have not yet been approved (e.g., the “**no net biodiversity loss**” for Member States has not yet been endorsed by COP 15) and nor create a direct responsibility for companies when these objectives have not even been defined at the level of the Member States (for example for 2030 in terms of biodiversity).
- DRs should be focused on information which can **stimulate environmental transition investment decisions**.
- Regarding **pollutions and water and marine resources**, it is not possible to consider that a consolidated reporting on sum of absolute emissions will reflect the level of risks. Unlike for climate change where greenhouse gases have a cumulative impact, regardless of the place of emissions, other **pollutants have to be dealt with for their local effects** and are regulated at the level of each facility to set emission limit values compatible with good conditions for their neighbouring environment, and not at the level of the company as a whole. **Global reporting on these pollutants therefore makes little sense insofar as local reporting already exists and can be accessed within the EU.**
- Finally, for the other four environmental themes excluding climate change, it is therefore important to set **more progressive reporting** by focusing on data that makes sense at the global level of the company according to available internationally recognized methodologies among which ISO standards.

### On social standards:

- The disclosure requirements of **ESRS S1** are far **too complex**, requiring information that is too detailed, repetitive and sometimes irrelevant. **Problems of scope** (particularly regarding non-employees), **definitions** which are not currently used in European or international legislation (living wage, fair wage...) or **consolidation of data** which depends on national social policies are numerous.
- **ESRS S2/S3/S4** address valid issues but **go beyond CSRD which only mentions, in the governance factors, the “management and quality of relationships” with affected communities, customers (not consumers and end-users) and suppliers**. Therefore, the ESRS S2/S3/S4 should be reviewed and considerably simplified to respect the wording of CSRD which does not justify extensive DR on policies, targets and impacts.
- Each indicator relating to customers, suppliers or affected communities must be carefully calibrated to provide **information on the supply chain which is feasible and does not create duplication**.