

ESA CALL FOR EVIDENCE ON GREENWASHING AFEP POSITION PAPER

Afep members welcome the opportunity to contribute to the call for evidence of the European Supervisory Authorities (ESAs) on better understanding greenwashing. **Afep gathers over 110 non-financial and financial undertakings** operating in France and worldwide. Afep members thus cover a wide spectrum of activities and participants in the investment chain including large listed and non-listed companies, credit institutions and insurance companies.

Afep members consider that **addressing greenwashing via specific legislation is not a priority**. The priority should be to **finalize the regulatory framework regarding sustainable finance and sustainability reporting** to ensure that it is fit for purpose. As a matter of fact:

- **Technical standards adopted under the Sustainable Finance Disclosure Regulation (SFDR) apply since 1 January 2023 and many concerns have been raised** on some fundamental concepts of said regulation. In this regard Commissioner MacGuinness mentioned early December 2022, during an exchange of views with the ECON and ENVI Committees of the European Parliament, that the Commission services are working on a comprehensive assessment of SFDR.
- **Implementation of the Taxonomy Regulation is still work in progress** considering that technical screening criteria have been adopted only for the first 2 climate objectives (climate change mitigation and climate change adaptation), alignment of economic activities with the taxonomy will be reported for the first time in 2023 by non-financial companies and the Commission has published 5 FAQ documents including 289 questions related to the interpretation and implementation of this regulation, illustrating the complexity of the EU Taxonomy...with implementation of 4 additional environmental objectives pending.
- Under the Corporate Sustainability Reporting Directive (CSRD), **the first set of European Sustainability Reporting Standards should be adopted in June 2023** by the European Commission for first publication only in 2025.

As long as the regulatory framework is not finalized and stabilized and the new requirements not fully understood by both entities subject to these requirements and regulators in charge of their enforcement, **risks of non-compliance can arise from diverging interpretations and practices** which could be seen as greenwashing by certain stakeholders. **Only a robust, clear, comprehensible and stabilized framework can eventually prevent diverging interpretations or practices**. Such a framework is also necessary to ensure that companies are not discouraged from setting sustainability-related targets and reporting on sustainability-related actions or products for fear of being accused of greenwashing.

Afep members consider that it is **not relevant to establish a definition of greenwashing**. Taking into account, as mentioned above, that the regulatory framework is not yet finalized and that there are many interpretation issues, it seems very **difficult to draw the line between misinterpretation of existing rules that would result in non-compliance with requirements and greenwashing**. The ESAs should also take into account the fact that risks of errors are greater when reporting in particular on environmental topics (use of estimates, longer time horizons with significant uncertainties...). The ESAs should **adopt a flexible and pragmatic approach regarding**

the enforcement of such reporting until such time as data gaps have been plugged and sequencing issues between different new laws resolved. Furthermore, **many practices listed in the questionnaire could be addressed by existing legislation**: e.g. dissemination of misleading ESG information related to a company or by a company could fall in the scope of the Market Abuse Regulation when such information has an impact on the price of securities. Also, any unfair business-to-consumer commercial practices during and after a commercial transaction related to a product – especially misleading practices – are covered by the Unfair Commercial Practices Directive. EU Commission guidance on the Directive from 2021 includes a section on application to environmental claims. **The ESAs should not create new rules that could conflict with existing legislations, complexify the existing regulatory framework or add burden to market participants.** Moving forward, the ESAs could reflect on an indicative list of practices which could put market participants at risk in order to provide guidance to practitioners.

Afep members consider that it is not possible and relevant to rate, as requested by the ESAs, the role of market participants (eg. trigger, spreader, receiver) nor the topics or assets more exposed to greenwashing practices. Afep members however insist again on the fact that **ESG rating agencies have clearly not reached a sufficient level of maturity and comparability**. As methodological choices are not sufficiently disclosed, investors are not in a position to make truly informed decisions, making it necessary for them to compare several ESG ratings and conduct their own research in parallel, often using raw ESG data. The fact that ESG rating agencies sometimes reach opposite conclusions in certain categories regarding one and the same company necessarily leads to uncertainty and confusion about ESG in general, and ESG performance of specific companies in particular. Companies acknowledge that ESG rating is constantly evolving and that innovation in this field must remain possible. Therefore, they do not ask for a standardisation of methodologies, except where this is justified and possible, such as for example on the calculation of CO² emissions in certain sectors. However, they call for an increased transparency and quality of ratings and better prevention of conflicts of interests. **Afep members would therefore welcome an initiative to bring more transparency to the market and introduce rules on ESG rating agencies' operations.**

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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 over 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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