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Paris EUROPLACE - Finance For Tomorrow
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FRANCE

Dr Kerstin LOPATTA
Acting EFRAG Sustainability Reporting Board Chair

Dear Dr Lopatta,

Paris EUROPLACE represents the Paris International Financial Centre's market players, international corporates, investors, banks, financial intermediaries, and other financial services providers. FINANCE FOR TOMORROW, its branch dedicated to sustainable Finance, aims at making the Paris Financial Center the international leader on green finance and promote sustainable finance as the new reference.

Paris EUROPLACE and FINANCE FOR TOMORROW are very supportive of the standardization work performed by EFRAG because relying on reliable, comparable and exhaustive data is key to reallocate capital flows towards a sustainable, low-carbon and inclusive economy. We therefore welcome the opportunity to comment on the draft EU Sustainability Reporting Standards (ESRS).

We recognize and appreciate the massive work carried out under tight deadlines by the members of the Project Task Force. Notwithstanding this, we would like to raise the attention of EFRAG members and the EU Commission on the following issues that seem crucial to solve in order to ensure an applicable, effective and useful framework of sustainability reporting.

As a preamble, we would like to raise two crucial points of vigilance.

First, to reach a global baseline, cooperation among major standard-setters should be enhanced. Therefore, we welcome the approach taken by EFRAG to ensure interoperability with ISSB on climate-related disclosures, which are essential.

Secondly, we would like to emphasize the necessity to promote concise and understandable sustainability reporting requirements, so as to make this set of publicly available information really valuable for all investors and the civil society. As a matter of fact, it appears to us that an excessive regulatory burden may not only weaken and endanger best efforts made by companies to successfully reach a net zero economy, but also create useless uncertainties for investors to correctly interpret enormous quantities of data and information provided by firms.

In addition, we would like to underline the important following points.

Comments on ESRS 1 and ESRS 2

- **Ensuring consistency with the EU regulation**

We appreciate the EFRAG’s efforts to ensure consistency with existing European law and initiatives. We agree with the references mentioned on the cover note: SFDR, the Benchmark Regulation, the GHG allowance directive, the EMAS regulation, the European Commission recommendation on the life cycle environmental performance of products and services. The ESRS should not however attempt to replace or anticipate substantial European obligations, such as the future directive on Corporate Sustainability Due Diligence. In addition, we believe the General Data Protection Regulation (GDPR) should also be considered, especially regarding the requirements of the social standards.

This regulatory environment is still changing. It is key to ensure that the final ESRS will be based on the final versions of these regulations/directives and their corresponding delegated acts. In particular, the three ESAs have been mandated by the European Commission to review the indicators for principal adverse impact (PAI) and should provide their input by 28 April 2023. The changes on the PAI should necessarily be reflected in the final disclosure requirements to ensure full alignment between ESRS disclosure requirements and the PAIs laid down by SFDR.

- **Simplifying the disclosure requirements**

- **regarding the materiality assessment of sustainability impacts, risks and opportunities**

It is necessary to report both on financial materiality and impact materiality to respond to the needs of users of sustainability reporting. However, double materiality does not mean that all stakeholders must be satisfied because this would contradict the materiality principle itself and is impossible in practice.

We also question the opportunity to publicly disclose the description of the full processes to identify material sustainability impacts, risks and opportunities as per the ESRS 2 – IRO 1. Indeed, the outcomes of the materiality analysis are much more useful for a user’s perspective and less burdensome to report for the reporting entity. Sustainability reporting will need to be audited according to CSRD. The diligences performed by the auditors to check the robustness of the process, data and analysis of this materiality assessment is sufficient to confer the necessary credibility to the company’s reporting on its outcome.

Moreover, **we believe that the requirements under ESRS 2 – IRO 2 and 3, focusing on the outcomes of this assessment, could be simplified, for instance by asking to publish a materiality matrix.** This tool provides guidance on the processes to identify the material impacts, risks and opportunities and has already been used by various companies to date to define their sustainability strategy and to report on it. The content and format of the materiality matrix should allow comparability. This would not deprive the undertakings to provide a contextual or dynamic concise presentation of the results of their materiality analysis.

- **amending the principle of “rebuttable presumption”**

To achieve concise, clear and relevant sustainability reporting, **we fully support the idea that undertakings should focus on their own material issues.** The application of the concept of materiality should fully rely on the materiality assessment carried out by companies. Except for ‘principal adverse impacts’ (PAI) indicators, that will have to be reported by financial institutions under SFDR, and that should be made mandatory to disclose, standards should make the disclosure obligations conditional on 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, we ask for a revision of the rebuttable presumption of materiality. Indeed, the rebuttable presumption does not allow undertakings to focus on the most material aspects and could generate a significant legal risk due to third parties likely to challenge the absence of certain indicators. Furthermore, **the requirement to provide, under this principle, an explanation for each mandatory disclosure that is considered not material by the undertaking is too burdensome and goes against the principle of conciseness.** Again, publishing a materiality matrix should be a sufficient explanation and enable the undertaking to not report justifications disclosure by disclosure. The work performed by the auditors will review the robustness of the process that has conducted the undertaking to rebut the materiality of some information.

However, given the requirements applicable to date to financial markets participants under SFDR to report on a list of mandatory principal adverse impacts (PAI) of their portfolio, with no consideration of sectoral materiality, the corresponding information within the CSRD should be applicable to all undertakings with no possibilities to opt-out.

We support an evolution of the SFDR RTS regarding the PAI that will consider sectoral materiality. In that perspective, investors would be able to consider that an indicator which is not presumed material for a given sector could be considered as neutral for companies from that sector, when aggregating data at portfolio level. Nevertheless, as long as the RTS of SFDR is not revised in that sense, the ESRS should make the disclosures supporting the reporting of PAI compulsory for all undertakings. To ensure consistency with the eventual revised RTS, we recommend to clearly state that all the disclosures required under the SFDR PAI should be reported.

- **Reducing the number of data points but being more precise on the indicators**

We believe the volume and complexity of the disclosure requirements (more than 700 datapoints) is too heavy in this first draft. The reporting exercise will be very challenging for companies that already comply with NFRD and will be even more difficult and burdensome for companies that enter for the first time in the reporting scope of the CSRD.

The objective of the standardisation, namely to ensure reliable, comparable and exhaustive ESG data, should always be analysed in the light of the final objective which is to help both corporates and investors to steer and manage their own ESG strategy. From an investor’s perspective, such a volume of data is usable only if it is comparable. To date, more than 2/3 of the disclosure requirements are qualitative and thus difficult to aggregate at a portfolio level. Focusing on less data points but being much more specific on the definition and calculation methods would be a necessary first step.

Indeed, we believe important to fully embrace the scope of ESG information. Nevertheless, to ensure an applicable framework, we encourage EFRAG to focus on quantitative information and the results of action plans rather than on descriptive information. In a nutshell, we are convinced that **the number of disclosure requirements could be reduced while being much more precise on the definition and calculation method of quantitative indicators.**

We also believe that some disclosures considered as sector-agnostic in the draft standards could be moved to the sector-specific part: this is the case of ESRS E2, E3, E4 and E5, with the exception of the mandatory indicators covered by SFDR.

- **Setting boundaries to the definition of the value chain**

Investors need to have a broad understanding of the companies they invest in and therefore of their value chain. Some controversies impacting the reputation of the company may go beyond the direct business relationships. However, we believe the requirements to assess the entire value chain question the feasibility of sustainability reporting. It implies to collect a huge amount of information, even from indirect business relationships. As the sustainability disclosures will be included in the management report, it seems difficult if not impossible to obtain such extensive data, potentially covering hundreds of thousands of suppliers and sub-contractors annually.

To help undertakings meet these requirements, **we suggest considering the level of control and influence over the business relationships, in addition to the materiality criteria, by focusing on the direct business relationship, and limit reporting on most salient risks and impacts.** The use of available proxies or factors, such as the emission factors used for the calculation of carbon footprint, should also be possible to avoid long and costly reporting processes among the whole value chain.

- **Phasing-in: giving priority to the information required under the SFDR regulation**

We appreciate the work done by EFRAG to ensure consistency with the EU legislative framework, especially with the SFDR regulation.

The mandatory principal adverse impacts (PAI) under SFDR should be the priority indicators to disclose. The materiality analysis performed by the undertaking should not enable to not report on the SFDR PAI indicators. As the financial market participants have also to report on two additional PAI within the optional list, it is necessary that these optional indicators are reported by the undertakings subject to CSRD. Therefore, they should be the next indicators to include in the phasing-in.

To allow financial institutions to comply with their requirement under the SFDR, it should be clearly stated that a financial institution may disclose a PAI equal to '0' when the company does not report on such PAI.

- **Ensuring interoperability with the ISSB standards**

We call on EFRAG to **further enhance the global cooperation on sustainability standardisation** in order to reach full convergence of standards. We appreciate EFRAG's willingness to develop interoperability with the TCFD and ISSB work. Such interoperability must be a priority to ensure that undertakings reporting under the future ESRS are also, at the same time, compliant with the international ISSB sustainability disclosure standards, to secure legal certainty, avoid a double

reporting burden for the undertakings and also provide consistent frameworks for investors operating on global markets. This is also key to enable groups with subsidiaries located different jurisdictions to produce consistent reporting. We therefore encourage the EU Commission and the EFRAG to enhance dialogue with ISSB.

Comments on ESRS E1 – Climate change

Transition plans (E1-1) are key information for the investors. These disclosures should therefore be systematically disclosed by all companies, with no possibilities to opt-out. It should be an **obligation of means and not of results**. 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.

We regret no information is required to reflect the “just transition” concept. The transition plans could have strong social and societal consequences which should be disclosed and managed by the undertakings.

Comments on ESRS E 2 – Pollution and E3 Water and marine resources

It is not possible to consider that a consolidated reporting on a 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 must be dealt with for their local effects** and be 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.

Comments on ESRS E4 – Biodiversity and ecosystems

We appreciate the EFRAG efforts to articulate the standards on biodiversity and ecosystems with the TNFD framework under development to ensure consistency. However, 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).

The mandatory PAI for investors require to disclose the share of investments in investee companies with sites/operations located in or near biodiversity-sensitive areas where activities of those investee companies negatively affect those areas. The corresponding information is not mentioned in the disclosure requirements of the draft ESRS but in the application guidance. This indicator should be required as a DR per se and not mentioned in the application guidance. Application guidance should not add other information to the one requested under the DR.

Comments on ESRS S1 – Own workforce

Some indicators are lacking to provide a comprehensive and relevant vision of the wellbeing of employees within a company. Those indicators are today broadly looked at by financial institutions and consulting firms but only some of them are covered by ESRS S1, under conditions:

- Employee turnover,
- Age structure and levels of seniority at different levels (comex, management employees)
- Participation and savings schemes: 1) Employee stock ownership schemes; 2) Profit sharing & employee savings schemes 3) Collective Occupational Retirement schemes¹

To favour comparable information, disclosure requirements should be less numerous and complex, but better defined. It is preferable to have a smaller amount of information, with more precise definitions and calculation methods, for instance, requiring the disclosure of both headcount and FTE (and not leaving the choice to the undertaking) and specifying the type of contract that should be included (ie. Inclusion or not of interns, apprentices, temporary contracts, etc.).

Comments on ESRS S2, S3 and S4

The proposal addresses valid issues, but goes beyond CSRD which only mentions, in the governance factors, the “management and quality of relationships” with customers (not consumers and end-users), suppliers and affected communities. This does not justify extensive DR on policies, targets and impacts which are unrealistic from a preparers’ perspective, as these different categories of stakeholders presented in ESRS S2 (workers in the value chain), S3 (affected communities) and S4

¹ In details, we would like to include an additional disclosure requirement with regard “workplace employee benefits”

“S1-S27 : Employee Share Ownership

119. The undertaking shall disclose :
- (a) The percentage of the share capital held by employees and former employees of the undertaking
 - (b) The percentage of employee shareholders amongst all employees of the undertaking
 - (c) The number of employee shareholders representatives in the board of the undertaking
 - (d) A description of the schemes encouraging Share Ownership Plans opened to all employees

S1-S28 : Profit Sharing Schemes

120. The undertaking shall state :
- (a) The existence of profit-sharing schemes opened to all employees (yes/no)
 - (b) The existence of matching contributions in employee savings schemes (yes/no)
 - (c) If applicable, describe the existing schemes

S1-S29 : Occupational Pension Schemes

121. The undertaking shall state :
- (a) The existence of a pension scheme opened to all employees and sponsored by the undertaking (yes/no)
 - (b) Employer contribution (yes/no)
 - (c) Employee contribution (yes/no)
 - (d) If applicable, describe the existing schemes

(consumers and end-users) cannot be all addressed in such detail. Again, the standards should not anticipate substantial requirements flowing from the future CSDDD.

With that in mind, we regret that ESRS S2 to S4 requires companies to disclose mainly qualitative information instead of comparable quantitative information. As a first step, we believe that ESRS S2 to S4 could be merge in a single ESRS in order to:

- Avoid duplication of information in companies' reporting.
- Reduce the length of the reporting and improve its readability.

Such phase-in approach should be reviewed 3-year after the implementation date to determine whether and which information should become mandatory.

Comments on ESRS G1 – Governance, risk management and internal control

Governance issues are tackled in both ESRS 2 and ESRS-G, we believe that EFRAG should ensure consistency and avoid duplications and contradictions between these two ESRS.

We note that the final text of the CSRD only requires information on governance “with regard to sustainability matters”. ESRS-G1 goes beyond the mandate of CSRD, therefore, we urge EFRAG to revise the standards to ensure consistency with level 1 requirements and not create new obligations for companies. For instance, it is not desirable to go further as this will would entail that non listed companies will have to make a corporate governance report which is not foreseen by European law.

The disclosure regarding ethnic and religious diversity has to be fully revised. Indeed, disclosure such as creed, ancestry, ethnic origin in countries such as France are in breach of the Constitution. Therefore, it has to be clear that undertakings should not be required to disclose information which contradicts national law.

Comments on ESRS G2 – Business conduct

Some information might not be accessible due to the national legislation. For instance, in France, it is not possible to disclose information on ongoing legal proceedings related to corruption or bribery (ESRS G2-6) as it is contrary to the presumption of innocence. Undertakings should be able to rebut a disclosure requirement if against the national legislative framework.

We also believe the following details could be required to complete the disclosure requirements:

- The undertaking shall specify if its policies with respect to business conduct matters (G2-2) and its system to prevent and detect corruption and bribery (G2-3) are audited.
- The record of fines over 10 years regarding anti-competitive behaviours should be disclosed as the investors are looking for this information.

We look forward to further engage with EFRAG Sustainability Reporting Board on such critical project.

Yours sincerely,

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De Bresson (Jul 29, 2022 18:57 GMT+2)

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