

OPEN LETTER – 12 October 2022

The procedure to set the European sustainability reporting standards needs to be reviewed

In addition to the replies they submitted to the consultation process, ECEG and Ceemet would like to express a number of political concerns on the (draft) European sustainability reporting standards (ESRS) developed by EFRAG, in the framework of the Corporate Sustainability Reporting Directive (CSRD). As stated in their reply to the public consultation, the organisations are extremely critical about three main aspects concerning the standards, namely:

Key messages:

1. The unusual and fallacious procedure followed for the consultation

The consultation on the standards was launched prematurely and mostly run in parallel to the trilogue negotiations, namely when the CSRD was still under discussion in the EU institutions. Moreover, the standards were drafted by an organization, EFRAG, which is outside of the co-legislative realm and without any legal basis to draft the standards – as the Directive is still neither adopted nor into force. It is therefore highly controversial and against better regulation principles to draft binding standards affecting the matters on the CSRD Directive before it is finalized and approved. Moreover, before having an agreement on important matters such as companies' liabilities and responsibilities in the value chain.

ECEG and Ceemet believe that the unusual procedure of standards' drafting is unacceptable and undemocratic and that it will increase the risk of incoherence between the Directive and the final standards themselves. Furthermore, the draft standards go far beyond the rules of the agreement between Council and European Parliament. Lack of common definitions, vague legal concepts, unclear rules and incoherent wording between the final directive, implementation standards, application guidance and the national implementation rules are likely

to happen. It will make the application of the Directive at companies' level extremely difficult.

2. The threat on Social Partners' autonomy and their freedom to negotiate

The signatories consider that the proposed standards disregard the subsidiarity principle, the role of the Member States in decision-making and social partners' rights to negotiate collective agreements.

More precisely, the topics covered by ESRS S1 and S2 (working conditions, access to equal opportunities, other work-related rights) are primarily the responsibility of Member States as part of their social and labour policies and, in some cases, are best dealt with through social dialogue at different levels, according to the different national industrial systems. Indeed, Social Partners are the best known for considering the specificities of their respective sectors as well as their interest groups when negotiating. ECEG and Ceemet therefore believe that the standards as proposed go well beyond national legislation and collective agreements.

3. The huge administrative burden on employers and companies

Disclosure requirements included in the standards are out of proportion due to the lack of clarity, legal certainty, and the detailed level of required information. ECEG and Ceemet consider that the proposed (draft) EFRAG's indicators are both far reaching and beyond the CSRD requirements. Should such indicators be considered as standards, it would lead to additional and disproportionate administrative burden and higher costs, especially for companies' departments involved in sustainability reporting. Possibly new administrative departments would need to be created or external experts hired to meet the newly adopted reporting requirements. Moreover, if we look at the section "Own workforce", many of the reporting obligations lack legal basis completely. Standard proposals which do not have any EU legal basis should not be prepared further.

The level of details required to comply with the standards is very broad, too granular and, in some cases, covers sensitive information, going even against the GDPR rules. Moreover, cost-benefit evaluations and/or impact assessments and analysis are not included in the proposal, while the added value of the proposed disclosures should have been made clear.

In conclusion, and considering the above-mentioned points, the signatories request to:

- re-consider the approach adopted for drafting the standards, especially in view of the fallacious procedure and the lack of transparency. More preparatory work, a thorough impact assessment by EFRAG and more time for stakeholders to analyse and comment are needed.
- take into consideration the fact that a big number of companies already apply numerous voluntary or binding national and international instruments covering sustainability aspects (OECD Guidelines, UN Guiding Principles on Business and Human Rights) and have signed up for sectoral initiatives.

Finally, they demand that corporate reporting requirements are coherent and manageable, and that unnecessary duplications and overlaps with other reporting obligations – e.g. those included in the Pay transparency proposal – are avoided.

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