FRENCH AMF RESPONSE TO EUROPEAN COMMISSION'S PUBLIC CONSULTATION ON THE DRAFT DELEGATED ACT RELATIVE TO EUROPEAN SUSTAINABILITY REPORTING STANDARDS

POSITION PAPER – 7th July 2023

The AMF welcomes the draft delegated act of the European Commission containing the European Sustainability Reporting Standards (ESRS), which represents a stepping-stone to the European Union's ambition to develop a robust sustainability framework for companies that serve capital markets and public interests.

As the momentum in ESG reporting continues to grow globally, in particular with the ISSB's recent publication of its sustainability-related financial standards (IFRS S1 General disclosures, and IFRS S2 Climate-related disclosures), the AMF remains fully supportive of an ambitious European approach based on the double materiality principle and covering a wide range of ESG topics. It is unquestionable that investors as well as other stakeholders need information about companies' impacts on the environment and people beyond the sole financial perspective.

Ambitious, yet progressive and proportionate framework

The AMF supports the European Commission's efforts to maintain an ambitious regulatory framework while streamlining and introducing further flexibility and proportionality in the requirements previously proposed by EFRAG. In its position paper to the EFRAG consultation in the summer of 2022, the AMF raised some concerns about the potential disclosure overload that could entail the volume and the complexity of the initial draft ESRS.

Overall, the AMF considers that the amendments to these drafts, reducing the quantity and granularity as well as phasing-in some requirements, are heading in the right direction. They are also consistent with the European Commission's political will to reduce the overall volume of reporting requirements on companies by 25%, in order to preserve their competitiveness by alleviating related costs and operational burden.

Materiality back at the center of reporting

It is of paramount importance that companies avoid performing a mere "check-list" compliance exercise when preparing their sustainability statements, but rather report on relevant and meaningful information following a proper materiality assessment. Such analysis will enable them to identify the sustainability-related impacts, risks and opportunities that are specific to their activities, as well as the information that really matters for users of the reports based on those specificities.

Hence, the AMF is supportive of the materiality approach proposed by the Commission, and is looking forward to a robust practical guidance from EFRAG to assist companies in their materiality assessment, which remains the cornerstone of the reporting. However, the AMF has a point of attention in relation to the transparency on this materiality approach, as explained below.

AUTORITÉ
DES MARCHÉS FINANCIERS
AMF

Phase-in modifications

The AMF welcomes the phase-in and optionality measures introduced by the European Commission, which provide reporting entities with some leeway to gradually become acquainted with the new disclosure requirements. These measures seem to address many of the AMF and stakeholders' initial concerns with regards to the lack of maturity of some topics and potential challenges that companies may face in collecting the relevant data, thereby ensuring better-quality reporting for the initial application of the standards.

Among those, a good illustration of the balance that has been found between fit-for-purpose standards and proportionality would be the possibility to postpone by 1 year the reporting on anticipated financial effects related to environmental matters (E1-E5), or by 2 years, for smaller companies, the reporting on social aspects related to workers in the value chain (S2), affected communities (S3) or consumers and end-users (S4).

Interoperability with ISSB standards

The AMF commends the work done by EFRAG, the European Commission and the ISSB, leading to well-balanced amendments paving the way towards dovetailing the EFRAG standards with the global baseline of the ISSB. Changes relate to definitions in climate standards, as well as key concepts and terminologies related to disclosures with a financial materiality lens.

It is of utmost importance for the AMF that the standard-setters continue to cooperate to ensure the interoperability of the corporate sustainability reporting framework as a whole, including on the definition and assessment of financial materiality, guidance materials, and particularly on the development of the upcoming sector-specific standards.

Transparency on materiality assessment for Climate issues

The AMF acknowledges the high level of maturity and extreme urgency regarding climate change mitigation and adaptation matters, together with great expectations from investors and other stakeholders on these issues.

While the AMF is fully convinced of the approach set by the European Commission to require the application of thematic standards only if the related sustainability topic is material for the company, the AMF would see merit in : (i) clarifying in the ESRS that the process of identification of material impacts, risks and opportunities related to topical standards is mandatory (this point is not clear-cut at this stage as ESRS 1 § 29 seems contradictory with ESRS 2 § 2), and (ii) requiring to disclose an explanation of the conclusions of the materiality assessment for climate topics (ESRS E1), if they are deemed non-material and the related disclosure requirements are omitted.

It is likely that investors, users and regulators would request this information anyway, so companies would benefit from being transparent from the onset on this critical climate materiality issue.

Consistency between European legislations

The AMF continues to pay attention to data needs of financial market participants (FMPs), in particular with respect to their regulatory reporting obligations under the Sustainable Finance Disclosure Regulation (SFDR).

In line with its support to the materiality approach under ESRS, the AMF would see merit in clarifying under the implementing measures of Article 4 of SFDR that in situations where information from investee companies subject to CSRD is not available because such investee companies have considered an adverse impact to be non-material, financial market participants may take into consideration this non-materiality.

In this respect, two alternatives could be explored:

- FMPs could exclude from their principal adverse impact (PAI) calculations the investments made in investee companies subject to CSRD which deem any given PAI to be non-material. Furthermore, FMPs could also disclose for each PAI indicator which proportion of their investments are concerned by this non-materiality.
- Alternatively, FMPs could take into consideration this non-materiality by allocating a figure to such investee companies that does not weigh adversely on the relevant indicators used in their reporting on adverse sustainability impacts at entity level. Depending on the PAI, this may for example imply assuming a nil value for the corresponding indicator (for instance PAI n°8 of Table 1 'Emissions to water') or allocating an average that make the investee company's contribution neutral for the PAI calculation (e.g. board gender diversity), where relevant. A case-by-case analysis of PAIs by FMPs would then be necessary.

As far as the ESRS are concerned, ESRS 2 should be fine-tuned with a requirement to disclose the list of the datapoints from EU legislation (such as PAI indicators under SFDR and ESG factors under the benchmark Regulation), that are declared non-material, thereby enabling FMPs to easily identify those datapoints that are considered non-material in their investees' reporting.

In addition, the AMF highlights the importance of clarifying the interaction and ensuring consistency between ESRS and the future directive on corporate sustainability due diligence (CSDDD) currently under negotiations by co-legislators, namely on transition plans and value chain.

Guidance materials

The AMF welcomes the emphasis placed by the European Commission as well as the first efforts undertaken by EFRAG to help out with the implementation of the first set of ESRS. The AMF encourages the pursuit of this guidance exercise, which is key to warrant the principles of the standards are usable and operational for preparers, and the outcome in reporting is purposeful and relevant for users. For instance, given the importance of the materiality analysis in preparing sustainability reporting, companies would greatly benefit from the ongoing work at EFRAG level to provide guidance on the way to assess the materiality of sustainability impacts and risks depending on the topics (e.g. nature of ecological thresholds).

Matters that could also deserve further guidance in the future include the preparation of forward-looking information (transition plans, anticipated financial effects, etc.) Such guidance could build on existing resources and tools.

Effective support and interpretation mechanism

Besides, the AMF believes that this ambitious regulatory framework must go hand in hand with building effective support and interpretation systems to address companies' current and future application challenges and enhance the comparability of reporting.

To support the implementation of the standards, the AMF encourages the Commission to consider the creation of a “transition resource or implementation group”, following the IASB’s examples during the implementation of major new accounting standards such as IFRS 15 or IFRS 17, or which is currently being implemented for IFRS S1 and S2. Such initiative would provide a public forum for stakeholders to analyse and discuss issues arising from implementation, which would then inform the Technical Expert Group’s work and the EFRAG Sustainability Board’s decisions, as well as the Commission. In addition to this temporary group, a specific and permanent mechanism for the interpretation of standards, similar to the IFRS Interpretation Committee at international level, should be put in place to facilitate a consistent application of the ESRS.

Adequate due process and governance should underpin such mechanism, which should include preparers, investors and other users, assurance providers and financial market authorities such as ESMA, to ensure that responses to the application or interpretation questions are properly and timely discussed and prepared.

Finally, assurance providers and auditors will have a key role in ensuring the quality of sustainability information – as CSRD mandates the assurance of such information. Therefore, the AMF calls for robust, high quality and timely sustainability-related assurance standards and diligence, to help build and improve investors and stakeholders’ confidence in sustainability information and in companies’ materiality (or non-materiality) assessment.

To conclude, the AMF is hopeful that this new disclosure framework will genuinely support companies in their transition to a more sustainable economy, serving both the society and the environment, and ultimately channel investments towards them.

***