21 October 2019

NGO's concern on industry letter trying to delay the Disclosure Regulation's timeline

Dear Mr. Guersent,

The undersigned civil society organizations would like to take this opportunity to address our insight and concerns in relation to the letter addressed to you on September 19th by AFME, AIMA, AMICE, EACB, EBF, EFAMA, Insurance Europe and PensionsEurope ("industry letter") regarding a delay in the implementation of the Regulation on Disclosures relating to sustainable investments and sustainability risks ("Disclosure Regulation").[1]

We welcome and support the clear response from the European Commission on October 2nd, which emphasized that a delay in the application of the Regulation will not take place. Nonetheless, we would still like to take the opportunity of this exchange to strongly stress the importance of Disclosure Regulation being implemented on time and the financial industry complying with that timeframe.

The forthcoming green finance strategy, together with the Sustainable Europe Investment Plan are key priorities for the incoming Commission. The political guidelines[2] explicitly mention *'We need to tap into private investment by putting green and sustainable financing at the heart of our investment chain and financial system.*' which makes clear the necessity of the financial industry to increase efforts in this regard.

In light of these commitments, we are concerned about the industry's demand.

In terms of the concrete issues at hand:

As the industry's letter recognizes in some of the wording linked to the graphs it includes, the application of the Regulation will broadly influence market participants at three different timelines:

(a) 15 months after entry-into-force, i.e. the date on which the Regulation will be published in the Official Journal, for financial market participants and advisers that do not meet the 500-employee threshold, and who may apply the requirements on a comply-or-explain basis;
(b) 18 months after entry-into-force, for financial market participants who meet the 500- employee threshold, as per Article 4 (3), (4);
(c) 36 months after entry-into-force, for product-level disclosure requirements.

The ESAs Joint Committee will have to submit draft regulatory technical standards (RTS) to the Commission 12 months after the entry-into-force (for climate and environment-related adverse impacts), and 24 months after the entry-into-force (for social and employee matters, respect for human rights, anti-corruption, and anti-bribery) which indeed leaves a few months before the date of application for financial market participants with less than 500 employees, more leeway for those with over 500 employees, and significantly more leeway for additional product-level disclosures. As a first observation, **we believe that the implications and flexibility provided by the differing timelines were not adequately accounted for in the aforementioned letter.**

Considering these provisions, we would like to offer three reasons why we agree with the Commission's approach of maintaining the current timeframe:

[1] Publication in the Official Journal of the European Union forthcoming.

[2] Political guidelines for the next European Commission (2019-2024) - 'A Union that strives for more'

1) There is no necessity for the entire Disclosure Regulation to become applicable one year after the publication of **all** the RTS, as is suggested in the letter, considering that the RTS covering climate and environmental-related adverse impacts will have been submitted for scrutiny 12 months **before** those covering social, employee and other matters. This is all the more valid considering the differing application timelines for different market participants, as well as those covering entity vs. product level disclosures, as previously shown.

2) Secondly, the absence of the indicators that will comprise the RTS would not prevent a financial market participant from adequately complying with the Disclosure Regulation. In cases where financial market participants do not consider themselves able to comply in the absence of the RTS, the Regulation clearly allows them to do so upon the release of a **clear and reasoned** explanation, as per Article 4.1 (b) and subsequent Articles linked to that section. These explanations would of course need to be of the highest quality, transparent, based on empirical evidence, and set a clear timeline and intentions for a financial market participant's or adviser's position vis-à-vis the requirements of the Disclosure Regulation.

   We would thus imagine that the concern expressed in the letter applies to those actors who want to comply, as per 4.1 (a), or those that have to comply as per Article 4 (3) & (4), but who may feel unable to do so in the absence of the RTS. It is our reading of the Regulation that those actors would still be able to adequately provide due diligence statements and explanations as to their current efforts and future intentions, as expressed above. Combined with the draft RTS, we believe that the Regulation allows for compliance, while the indicators developed in the RTS would add much-needed granularity at a later stage.

3) Thirdly, we find it difficult to understand the notion that investor confidence will be undermined if the current application timeline is to be respected. It is within the capabilities of the financial market participants covered in the Regulation to ensure high-quality, transparent and clear statements explaining instances when they believe they cannot comply. They are able to engage constructively and deploy the full range of the industry expertise and innovation of their members, through the ESA's public consultation in January 2020, to ensure that the RTS be developed in a timely manner. This will exhibit to end-investors that those entrusted with their savings, or who contract others to manage their savings, are proactive and committed to ensuring that they have the information necessary to determine whether their investments are aligned with the goals of the Paris Agreement and Agenda 2030. This will allow them to make informed decisions pre-contractually, as well as be able to review their choice of provider or other intermediary. **We would consider this to form the core of investor confidence.**

It is thus not so much the ESAs that need to use the time available to them, but the financial market players and advisers covered in the Regulation, **who must exhibit maximum engagement with the process in a constructive manner.**

We do not preclude the necessity for interim guidance to steer compliance in the absence of the RTS, but insist, as per the explanations above, that this would not be necessary to ensure that the requirements of the Regulation are met upon its current date of application.

We congratulate the European Commission for maintaining the current timeframe, and look forward to engaging in the next steps in the development of the RTS.

Yours sincerely,

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