

EFRAG Administrative Board

Possible accelerated Due Process for the first set of draft ESRS

Objective

- 1 The objective of the session is to discuss the acceptability of the possibility for the EFRAG Sustainability Reporting Board (EFRAG SRB) to use an accelerated due process for the first set of draft ESRS and other deviations of the Due Process Procedures (DPP).

Background

- 2 The ambitious deadlines for submitting the first set of draft ESRS to the European Commission (by November 2022 at the latest) can only be met if:
 - (a) The public consultation on the Exposure Drafts on the first set of draft ESRS (the EDs) is launched as soon as possible to provide the maximum public consultation period possible (publication envisaged by the end of April 2022). The EDs are issued by the PTF- ESRS who prepared the EDs and has the responsibility for their contents under oversight of the EFRAG SRB.
 - (b) The public consultation period is envisaged to be 90 days (from May to July 2022) rather than the standard 120 days, considering the time necessary to analyse and review the feedback received from the public consultation, amend as necessary the proposed draft ESRS and meet the deadline set by the European Commission for submission of the technical advice in the form of draft ESRS to the European Commission.
- 3 The EFRAG SRB has not reviewed the EDs and therefore will not take responsibility for the contents of the EDs which were prepared solely by the PTF-ESRS. However, the EFRAG SRB ensured a certain level of oversight of the work done by the PTF-ESRS by:
 - (a) Reviewing and approving the questions raised to stakeholders in the public consultation; and
 - (b) Approving the modalities of the public consultation (including the duration of the public consultation period).
- 4 During the consultation period, the EFRAG Sustainability Reporting Board and the ERAG SR TEG will discuss the EDs after a detailed handover by the PTF-ESRS to the EFRAG SRB and EFRAG Sustainability Reporting TEG (SR TEG) has taken place. Together with the input and results from the public consultation, the EFRAG SRB supported by the EFRAG SR TEG will agree the final first set of draft ESRS to be submitted as technical advice to the European Commission. The EFRAG SRB is fully responsible for the final draft ESRS.
- 5 A cover note accompanying the publication of the EDs, will provide the necessary explanations about the due process followed, the respective responsibilities of the PTF-ESRS and the EFRAG SRB and the reasons for the accelerated consultation process. The cover note will be finalised at the EFRAG SRB meeting on 22 April.

Role of the EFRAG Administrative Board

- 6 At its 22 April meeting, the EFRAG SRB will be asked to approve the due process described above (including the accelerated consultation period) and the publication of the EDs.
- 7 Under EFRAG DPP, deviations from due process provisions in the DPP, such as shorter than standard consultation periods, must be expressly approved by the EFRAG Administrative Board. More particularly:
 - (a) Paragraph 5.1 of the DPP provides that the EFRAG Administrative Board should be consulted, in its oversight role of due process, whenever an accelerated due process is considered.
 - (b) Paragraph 5.4 of the DPP, regarding mandatory steps, further stipulates that: *'Exposure drafts and other consultation documents are issued by the EFRAG SRB open for comment for a period of a minimum of 120 calendar days which may be reduced to no less than 60 calendar days (in case of an accelerated process) after obtaining approval from the EFRAG Administrative Board'.*
- 8 Therefore, at this meeting, the EFRAG Administrative Board is asked whether they would agree, that, in anticipation of a request by the EFRAG SRB, the due process described in paragraph 2 and 3 of this paper (including the 90-day consultation period) in the current circumstances would be acceptable.

Recommendation of the EFRAG Administrative Board Due Process Committee

- 9 At its meeting on 14 April the EFRAG Administrative Board Due Process Committee (EFRAG Administrative Board DPC) discussed the above matters and agreed to recommend that although a public consultation period of 120 days would be more appropriate given the volume and importance of the EDs, in anticipation of a request for an accelerated due process by the EFRAG SRB, the EFRAG Administrative Board would not object against a 90-day consultation period for the EDs, considering the tight timetable set by the European Commission and their deadline for the submission of EFRAG's technical advice at the very latest mid-November 2022 in the form of draft ESRS.
- 10 The EFRAG Administrative Board DPC however advised that, if as a consequence of the political agreement reached in the CSRD legislative process, the timetable on the adoption of the ESRS in the form of delegated acts will be extended in a way that creates additional flexibility, EFRAG would expect to have the possibility to accordingly extend its own public consultation period to the regular period of 120 days.
- 11 The EFRAG Administrative Board DPC further advised that related to the due process:
 - (a) The consultation documents clearly set out the respective roles and responsibilities of the PTF-ESRS and the EFRAG SRB in the publications;
 - (b) The Bases for Conclusions being published in a timely manner (that is as soon as possible and aiming at the latest by the end of May); and
 - (c) Stakeholders are allowed to respond to the consultation by using the European Commission online survey tool but also by sending comment letters (either

separately or uploaded as documents to the European Commission survey tool).

- 12 The EFRAG Administrative Board DPC also considered that clear communication of the reasons for the reduced consultation period should be included in the published material.

Questions to the EFRAG Administrative Board

- Do members agree / have objections to the EFRAG SRB using a 90 days public consultation period for the EDs?
- Do members have suggestions about the drafting of the explanations to provide context for the accelerated public consultation period and where such messages/explanations should be disclosed?