

EFRAG Informal Danish National Funding Mechanism

EFRAG
President Jean-Paul Gauzes

Via e-mail:
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Dear Jean-Paul,

Comments to the consultation document “ON the ad Personam Mandate”

We appreciate the possibility to comment on the consultation document, and we want to congratulate you with a high-calibre paper, which is easy to address.

We agree on and support many of your points and considerations, and we accept that you raise some difficult questions as open questions.

We want to reiterate our views in our letter mailed to you from June 2020:

“EFRAG is the obvious choice for a European standard setter – given a close collaboration with the stakeholders in the EU including the Commission and ESMA. • EFRAG will have to adjust its governance structure to ensure proper independence, oversight, and governance and continue to be an independent, open, transparent, due process-oriented organisation working in the European public interest • The technical work must be prepared by technically strong and specialised committees and staff”

In response to the questions in the consultation paper our main points are:

- We support the proposal to have two pillars in the future EFRAG, one pillar for Non-Financial Reporting standards and another pillar for Financial Reporting endorsement and influence of the IASB.
- The Non-Financial Reporting (NFR) standard setting activity shall be a public private partnership, and therefore the private sector shall be involved in EFRAG NFR activities as members at the General Assembly (GA), the NFR Reporting Board and the NFR TEG. The private sector must provide technical experts to the NFR Reporting Board and the TEG.
- EFRAG NFR Reporting Board must cooperate with international NFR organisations (including a potential IASCF NFR standard setting Board) who have issued guidelines and recommendations to leverage on their competence.
- In relation to the new EFRAG Board we support the board to have the governance and oversight responsibility including to appoint the members of the two Reporting boards and the Lab.
- The EFRAG Board members must be high calibre persons such as the relevant EU Commissioner, the chair or CEO of ESMA and a very high-level representative from ECB. Members shall be also private sector CFOs/board members from major EU companies, financial institutions and chairs/CEOs of EU organisations.
- **We feel strongly that the chairs and vice-chairs of the two reporting boards cannot be members of the EFRAG Board. A person cannot perform oversight and/or evaluate his or her own work, because it creates a conflict of interest. We believe it is crucial to avoid criticism of EFRAG’s standard setting activities.**
- We believe it is the role of the EFRAG Board to establish and oversee an open and transparent due process system including a public consultation process.
- For the NFR Reporting Board it is important to decide the scope of the work prior to decide the composition of the board and the exact size, and the objective should be to meet the needs of capital providers and lenders.
- We support that the funding for the NFR standard setting activity shall be provided by the EC, but the private sector shall contribute to ensure the activity is a genuine private public partnership. The private sector will also have to provide technical experts to be involved in the work.

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- It is important to have Member States and national public authorities involved in the NFR activities and the same goes for the involvement of EU Institutions and agencies. We prefer to have the above mentioned as members of EFRAG, but at least we want them to participate in advisory committees, and EFRAG should establish the relevant number of advisory committees.
- EFRAG should establish a consultative committee involving a wide group of different interests to advise the NFR Reporting Board.
- ESMA is a key player and should be involved without getting to a position where ESMA gets into - a not ideal - dual role. We support to have ESMA/ESA's involved at the oversight level (at the EFRAG Board), and as observers at the reporting board level.

Please find our detailed comments to the questions in the Appendix.

In case you have any questions or comments, please do not hesitate to contact Charlotte Jepsen cbi@fsr.dk or Stig Enevoldsen Stig@stigenevoldsen.dk (+45 40 92 36 91).

Copenhagen, 12th January 2021

Yours sincerely,

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**DANSK
ERHVERV**

DANISH
AUDITORS

FSR*



**FINANCE
DENMARK**

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APPENDIX

Question 1 - Due Process

Do you agree that the above reflects the key due process steps for open and transparent non-financial standard setting? If not, which other steps would you advise me to consider or to remove?

Response

Yes, we agree, and we find the chapter well described. We emphasize again that we believe EFRAG must continue to be an open and transparent organisation. We quote our letter to you in June 2020:

“EFRAG is the obvious choice for a European standard setter – given a close collaboration with the stakeholders in the EU including the Commission and ESMA. • EFRAG will have to adjust its governance structure to ensure proper independence, oversight, and governance and continue to be an independent, open, transparent, due process-oriented organisation working in the European public interest • The technical work must be prepared by technically strong and specialised committees and staff”

However, EFRAG might have to consider whether it wants to commit to have “Public discussions with other Non-Financial Reporting Standard Setters” and to issue “materials accompanying a standard such as project summary and education material”. The latter might be burdensome in the initial phases.

Question 2 - Member States and national public authorities

Considering the proposed new governance structure (see section 5 EFRAG proposed new core structure) at what level do you consider that the relevant national authorities should be involved and should they be members or observers:

- EFRAG General Assembly?
- The EFRAG Board responsible for the oversight of the Non-Financial Reporting Board (see diagram in the Preliminary Report)?
- The Non-Financial Reporting Board?
- TEG for Non-Financial Reporting?

Should a Consultative Forum (similar to the Consultative Forum of Standard Setters in the Financial Reporting pillar) or any other form of advisory committee; be created for the Member States and national public authorities.

Response

To answer this question, it is important to have in mind how the member states (MS) and national public authorities (NPA) will be involved in the future development of NFR information in Europe. Member states may be involved in a commentary role to the European Commission (EC) as they are for Financial reporting in the Accounting Regulatory Committee (ARC) or they might be more directly involved. We believe the EC will have to have consultations and agree many matters with MS in order to carry out the EC role, and therefore it is not easy to find the right balance for MS and NPA.

However, MS and NPA may be directly involved by having a representative group of MS and NPA at the EFRAG General Assembly (GA) (provided they also contribute directly to the funding). In that case, they may also have a representative group at the EFRAG Board. With a Representative Group we mean 3 – 5 representatives with voting rights – it could be two from big countries and three from small countries and the representatives might come from different countries representing governments and NPA respectively.

We envisage that the GA might have quite many members and therefore there might be representatives from MS and NPA. We also expect the EU Agencies including EU Supervisory Agencies (ESA) to be involved at the GA level

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and we prefer ESA having an observer at the reporting Board level. However, participation at the standard setting level must require relevant competence from the individual participant.

Persons from MS and NPA can be elected to the NFR Board and the NFR TEG if they meet the qualification criteria and are selected by the relevant body in EFRAG (see later). We do not see that MS and NPA should be guaranteed seats at the NFR Board and NFR TEG.

We recommend EFRAG to establish Consultative Bodies that EFRAG NFR Board and TEG can consult on an ad hoc and continuing basis. EFRAG may decide whether it wants to have one big consultative body or several smaller bodies.

We support to have a Consultative committee for MS and NPA (and the European institutions and agencies – see below).

We would recommend establishing a big, broad advisory committee to discuss topic of strategic interest or topics impacting more sectors/interests as it is our experience that this dialogue is important to guide the board in finding solutions that cater for wider interests and allow different stakeholders to understand and respond to other points of views. More focused consultative groups are helpful in dealing with more specific issues.

Question 3 - European institutions and agencies

*Considering the proposed new governance structure (see section 5 **EFRAG proposed new core structure**), at which level do you consider European institutions and agencies should have representatives and should they be members or observers:*

- *The EFRAG Board responsible for the oversight of the Non-Financial Reporting Board (see diagram in the Preliminary Report)?*
- *The Non-Financial Reporting Board?*
- *TEG for Non-Financial Reporting?*
- *The Working Groups?*

Should a Consultative Forum or any other form of advisory committee be created for European Institutions and Agencies to provide input to the TEG for Non-Financial Reporting and the Non-Financial Reporting Board?

Response

We acknowledge that the public sector shall take the lead in the oversight of the activities, and that this shall be carried out through membership of the EFRAG Board.

We support the EU institutions and the agencies such as the ESA's to be involved, and we prefer the agencies to be members of EFRAG and to act as other members. It means they participate on the EFRAG GA and that they may get representatives selected to the EFRAG Board competing with other representatives in order to be involved in the governance and oversight level.

We are reluctant to have the ESA's involved as voting members at the standard setting level (NFR Reporting Board and NFR TEG). We will support to have EU institutions and agencies at the EFRAG Board, and as observers at the NFR Board and NFR TEG. It may mean to have one ESA observer and one EC observer and maybe (max) one more at the NFR Board.

Having said this, it is really important to us that the ESA's only have limited influence at the standard setting process, when they have a primary role to enforce the standards. Therefore, they shall not have a dual role, but their input is important.

In addition, we support EFRAG to establish a Consultative Forum for the EU Institutions and agencies, but we will prefer to have one combined consultative body for MS, NPA, EU institutions and agencies.

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Question 4 - Private sector and civil society

Considering the proposed governance structure (see section 5), at which level do you consider private sector and civil society ought to have representatives:

- *The EFRAG Board responsible for the oversight of the Non-Financial Reporting Board (see diagram in the Preliminary Report)?*
- *The Non-Financial Reporting Board?*
- *TEG for Non-Financial Reporting?*

The Working Groups?

Response

We strongly believe the NFR standards to be developed in a Public Private Partnership (PPP), because it will get better standards and can ensure high quality standards if the standards are developed by the NFR Board with very competent and independent members and with a strong due process with oversight from high level persons from the private sector and from the public sector.

Therefore, the private sector must be heavily involved in the process, and we recommend private sector organisations to be members of EFRAG and the GA. Private sector persons shall have possibilities to be members of the EFRAG Board, the EFRAG NFR Board, the EFRAG NFR TEG and working groups. We acknowledge that the public sector shall take the lead in the oversight of the activities, and that this shall be carried out through membership of the EFRAG Board.

When we look at the list mentioned in para 4.13 in the consultation paper, we believe the list is too long and includes too many, but we understand the difficulty and we will recommend to have a reasonable number of private sector representatives without us being very specific of what that means. However, it is important to have a reasonable balance of parties involved, and we will support to have many (contributing) members at the GA level, and a much smaller number at the EFRAG Board level. The private sector may also provide technical experts to be selected for the NFR Board and even deeper experts for the TEG and working groups.

Question 5 - SMEs

Considering the proposed governance structure (see section 5), at which level do you consider SMEs (SMPs) should be represented:

- *The EFRAG Board responsible for the oversight of the Non-Financial Reporting Board (see diagram in the Preliminary Report)?*
- *The Non-Financial Reporting Board?*
- *TEG for Non-Financial Reporting?*
- *A SME- focused Working Group?*

Would it be sufficient to seek input of SMEs/SMPs in the public consultation and outreaches rather than involve them in the governance bodies?

Response

In Europe SME's are very important. However, SME's and their organisations have somewhat limited resources, and therefore we recommend having SME representatives at the working group level or perhaps at the TEG level. We will also support to have SME representatives at an advisory group level.

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Question 6 – Cooperation with other non-financial standard setters and initiatives

What do you see as main features of cooperation with the (global) reporting initiatives? What kind of involvement could you consider?

Response

We believe it is important to have established international NFR organisations, who have issued high level guidelines and recommendations to be involved in the EFRAG standard setting activities. EFRAG NFR Board, NFR TEG, working groups and EFRAG staff should establish close relationships with most important bodies and invite them to meetings and discussions. It will – most likely – be important for EFRAG to be able to build on already issued guidelines and recommendations. They should be involved as experts in the development process and EFRAG shall seek their advice in the consultations process. EFRAG shall also establish close contact to the IFRS Foundation (IFRSF) board for NFR activities, should the IFRSF establish a standard setting board.

Question 7 - EFRAG Board

What in your view should be the maximum size the new EFRAG Board?

Which stakeholders should be represented and in which proportion?

Should there be observers? If so, who should be the observers?

Do you foresee any obstacles that may arise were the EFRAG Board charged with oversight to include representatives of the Non-Financial Reporting Board and the Financial Reporting Board?

Should the EFRAG Board appoint the members of both TEGs and the European Lab, or should this be done by their respective Boards (Non-Financial Reporting Board and the Financial Reporting Board)?

Response

Chapter 5 has the key elements for the future EFRAG's governance, and it is very important to the future perception of EFRAG.

We support much of the content described for the GA in Chapter 5. In continuation of our earlier comments we foresee the GA to be a big group with representatives from many stakeholders. The stakeholders will have annual feedback and be able to give input on overall issues including on the perception of governance. Because the GA will be a bigger group, we do not believe the GA shall take responsibility for fulfilling the legal requirements as we would leave that with the new EFRAG Board. In addition, and for the same reasons, we will recommend the EFRAG Board to have the responsibility to appoint the members of the two reporting Boards.

EFRAG Board will be informed in more detail than the GA, and it will be closer to the activities, and therefore it shall be the EFRAG Board that performs oversight and has the governance responsibilities including ensures independence and appoints the members of the two reporting boards.

We also believe the members of the EFRAG Board shall be of high calibre, for instance the EU Commissioner or maybe his chef de cabinet or the relevant Director General. In addition, the other members shall also be of high calibre such as Chair or CEO of ESMA and a very high-level representative of the ECB. The private sector shall be represented by CFO's or Board members of major EU companies, financial institutions and chairs/CEOs of the major EU organisations. The composition on the EFRAG Board shall have a geographical balance and adequate gender balance.

As a minor point we think the EFRAG Board name shall be changed to a more informal one, in order to leave the Board name to the two operating boards. There shall not be confusion between the governance and oversight responsibility and the operating and standard setting responsibility. Therefore, a name could be "Governance and Oversight Committee", "Supervisory Board" or "Monitoring Group" or the like.

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It is very important that the standard setting activity is an independent operation without undue influence in its standard setting operation. Therefore, we will ask you to consider the involvement of the EU Commission in the daily operations. We believe the EC shall only operate at the EFRAG Board level and not participate in meetings of the two reporting boards or the TEGs. The role of the EC is important, and in practice the EC will be able to let EFRAG know if one of the reporting boards are in line to make a fatal flaw without being involved at a daily basis. One reason is that when a standard is approved by EFRAG, we expect it to have to be put into legislation one way or the other initiated by the EC.

In paragraph 5.9 it is proposed that the president of EFRAG and the two vice-presidents of the reporting boards can be members of the EFRAG Board. ***We do not agree, and we feel strongly about this. A person cannot perform oversight and evaluate his or her own work, because it creates a clear conflict of interest. Therefore, the persons involved in the work of the reporting boards must not serve as members of the EFRAG Board.*** It also means that if the president of EFRAG chairs the meetings of the reporting boards, he cannot be a voting member of the EFRAG Board. However, in practice both the president and the vice-chairs of the reporting boards can be observers in order to inform the board and to answer questions. (You may consider whether the future president shall have an operational role or not.) We believe this point is crucial to avoid criticism of EFRAG's standard setting activities. We strongly advice that EFRAG governance is up to good practice.

There is a question about the maximum size of the EFRAG Board, and we believe that the group should not be bigger than 20 persons including observers, and it may be smaller in order to attract the high calibre persons indicated in our response just above. The composition shall reflect the important role of the EFRAG Board, and the members shall not necessarily be representatives of the members.

We have no real view on whether the EFRAG Board should appoint the members of TEGs, but it is preferable if the Board appoints the members of the Lab.

We will mention that we will recommend the EFRAG Board also to have funding responsibility for the entire EFRAG operation.

Question 8 - Non-Financial Reporting Board

What in your view should be the maximum size of the new Non-Financial Reporting Board?

Which stakeholders should be represented and in which proportion?

Should there be observers? If so, who should be the observers?

Should the Non-Financial Reporting Board members be appointed by the EFRAG General Assembly on recommendation of the EFRAG Board or directly by the EFRAG Board?

How can the interconnectivity between the Financial Reporting Board and the Non-Financial Reporting Board be ensured?

Response

We find the description of the activities and role of the reporting boards fine and we support most of the text. Having said that, we repeat that we prefer the reporting boards to be appointed by the EFRAG Board for reasons described above (under Q7). We also believe that it is the duty of the EFRAG Board and NOT the reporting boards to establish an open and transparent due process including a public consultation process, and it is also the role of the EFRAG Board to evaluate whether the due process has worked appropriately.

We believe that it is very important that the chair and vice-chairs of the reporting boards are competent with respect to technical issues being the agenda items. We will recommend it to be considered whether the chairs and vice-chair of the two reporting boards can be a member of both reporting boards. We think not.

We believe that EFRAG will have to consider for the operating boards that the composition has a geographical balance, adequate gender balance and professional background balance.

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For the NFR Reporting Board it is important to decide the scope of the work prior to decide the composition of the board and the exact size.

In this context, we will reiterate our comment from our letter of June 2020:

“In regard of the scope of the future standards, we will at this stage prefer to aim for information issued for use by the capital providers and lenders to reduce some complexity in the set-up and to improve the value of NFI.” (NFI equals NFR)

The size of the reporting boards shall not be more than 16 plus observers and not more than 20 in all. Observers may be a representative from ESMA.

The interconnectivity between the Financial and the NFR activity is important, and EFRAG might consider having continuous meetings between the two TEGs and the two Boards, or it may be of a smaller group of the members of the Boards and/or the TEGs. The NFR side, should consult with the FR side before starting a project and before issuance of a paper.

Question 9 - Technical Expert Group for Non-Financial Reporting

What in your view should be the maximum size of the new Non-Financial Reporting TEG?

Which stakeholders should be represented and in which proportion? Should there be observers? If so, who should be the observers?

Do you agree that EFRAG TEG members are recommended by the EFRAG Non-Financial Reporting Board but appointed by the EFRAG Board rather than be appointed by the EFRAG Non-Financial Reporting Board?

How can the interconnectivity between the Financial Reporting TEG and the Non-Financial Reporting TEG be ensured?

Response

We believe the TEGs may be rather big, but of course a manageable size is preferably not much bigger than 24 - 30 persons including observers.

We have no strong views on who shall appoint the TEG members.

The interconnectivity between the TEGs shall be managed by continuous meetings between the groups.

Question 10 - Activities of the European Lab

Do you agree that there is a need for a European Lab activity in the revised EFRAG governance structure?

Do you agree that the European Lab could address both non-financial reporting and financial reporting activities?

Do you have other comments or suggestions regarding the activities of the European Lab?

Response

Yes, we agree.

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Question 11 - Funding

Considering the proposed governance structure in this consultation document:

Should the majority of the funding, or even all the funding, be provided by the European Commission and the Member States?

Is it important that the private sector contributes to the funding and why? Should the public-private sector partnership model also be reflected in the funding?

Would a levy at national or European level be feasible?

What alternative financing mechanism would you suggest being considered?

Response

We agree with the views presented in chapter 6: Funding. Therefore, we support the funding to be provided by the public sector, and the reason is that the service provided by EFRAG (the standards) is entirely in the public interest. Having said that we support the idea of EFRAG being a public private partnership, and therefore the private sector must provide some part of the funding. The private sector shall also provide a significant part of the experts as volunteers. It is important that the private sector is involved also to ensure the high quality of the issued standards. It is also important to ensure that the issued standards are accepted in practice by those companies who have to apply them when reporting.

It is difficult to come up with alternative funding systems, and we are not convinced that a levy is relevant if the standards are to be applied by other than listed companies, and in addition, we understand it is almost impossible to establish a pan-EU levy model.

Therefore, we believe that the funding model shall be based on funding from the EC supported by some private sector funding with an allocation via relation to the BNP.

There is an implicit question whether the NFR Reporting board members should be paid for their work and even be fulltime board members. It is a very difficult question in the European context, but it might be necessary to have a fulltime chair and maybe one or two fulltime vice-chairs to be able to have the necessary dialogues with the EU constituents. Some payment to the parttime board members might not be unreasonable if they are to provide say 50% of their time.