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Response to questionnaire related to the “Ad personam mandate on Non-Financial Reporting Standard Setting”

Nantes, October 30th, 2020

Dear Mr Gauzès,

I am happy to submit input to your questionnaire related to the “Ad personam mandate on Non-Financial Reporting Standard Setting”, below. I have based my answers on my own knowledge of the field, as well as academic research in that matter.

Best regards,

Professor Delphine GIBASSIER

Questions

1. Governance – Structure and due process

1.1 Standards need to be developed in the public interest and no individual category of stakeholder may exercise undue influence: How can it be best ensured that standards are developed based on an inclusive and transparent due process? What should be the characteristics of such a due process?

For a due process to ensure a decision-based rational and unrestrained consideration of all alternatives, it must include a number of procedural principles (Richardson, 2008), including:

- a. Non-exclusion of those who can make a contribution
- b. Equal opportunities for participation, such as the right/ability to;
 - Question any claim made;
 - Introduce claims into the debate;
 - Express attitudes, desires and needs;
- c. A requirement that participants mean what they say
- d. Elimination of any motivation/force except a desire for better decisions/reasons”

To ensure procedural legitimacy, three key elements are needed:

- a. Inclusiveness (with equal and fair rights of participation for all stakeholders who must be legitimate representatives of their constituencies)
- b. Deliberation
- c. Democratic control (accountability, transparency and responsiveness)

To be more precise, Richardson and Berkard (2011) focus on the procedural dimension of rule-making prominent at the transnational level and introduce the following additions to the points made above:

- a. First is the principle of transparency – transparency is a fundamental pre-requisite for the proper operation of all the three principles.
- b. Quality of input or participation (degree of inclusiveness) as an important indicator of the quality of deliberation, which is difficult to observe and assess in itself.
- c. Accountability as a hallmark of “systemic and sound rule-making”.
- d. Power-sharing as the fourth dimension to reflect the opportunity of “checks and balances” that comes with the multiple-actor constellation at the transnational level.”

I would like to add to the points made above the criticisms that Richardson and Berkard make of the IASB due process that would be interesting not to repeat in a future non-financial standardizing body:

- a. “The major area of concern is equal access and opportunities for participation and special interest influence. Lobbying by well-funded interests such as industry associations and accounting firms, or by powerful public constituencies such as SEC or the EU commission may in practice trump evidence-based decision making. The IASB due process does not offer any financial or other assistance to less well-resourced groups such as NGOs to use the comment process. Collective action problems may leave users (investors), whose needs are purportedly the primary focus of IASB activities, less well represented”. How can the future standard setting body make sure that well-funded interests such as industry associations and accounting firms do not trump evidence-based decision making? Can the future standard setting body provide financial or other assistance to less well-resourced groups such as NGOs?
- b. “Another criticism is that decisions to add a certain topic to discussion are based on a majority vote, whereas the later stages (exposure draft and final decisions) require supermajorities. “Given the crucial importance of agenda setting in any decision-making process, this is surprising.” Should the future standard setting body focus on consensus -based approach to decision making/agenda introduction vs voting?

In addition, here is an evaluation of SASB’s expert-based procedural legitimacy (book chapter Gibassier, 2018):

- a. SASB has been less widely adopted than GRI due to its expert-based procedural legitimacy, which is diametrically opposite to that of GRI’s inclusive model. Vast majority of the possibilities for interaction are restricted to ‘experts’ from a restricted number of interest groups, thereby excluding NGOs, governmental bodies or non-listed companies. Their vision of inclusiveness is very different – GRI has sought to include all stakeholders within its board, council and working groups, whereas the SASB’s conception of inclusiveness embraces only the group of stakeholders concerned by the industry-specific standards and, within it, the ‘most important’ and ‘most relevant’ experts leading to multiple accountability disorder (short-sighted because the definition of the right group of stakeholders might evolve over time). The concept of sustainability defended by the GRI is reflected in its vision of what non-financial reporting metrics should be, while the output of the SASB reflects its initial commitment to focus on materiality and investors’ need.
- b. It is important to understand whether the rules of measurement and calculability, especially in the case of sustainability, could be defined by dominant stakeholder groups such as worldwide industry unions, the elite, or a group of experts, thereby silencing dissident voices from marginalised actors such as SMEs, NGOs, civil society or academia. The keys to output legitimacy are a clear commitment to inclusiveness, sound deliberation process, and governance, combined with adherence to transparency and accountability

principles as opposed to legitimacy based on expert input, closed membership, and restricted participation.”

1.2 Relevant European institutions and agencies shall be invited to be fully involved in the development of future standards, including the European Securities and Markets Authority (ESMA): How can these European Institutions and agencies be involved in the development of future standards and in the standard setter? Should there a particular role for ESMA?

I do not believe there should be any particular role for ESMA, see answer above for equal representation of constituencies and stakeholders. Investors’ needs should not be overrepresented, this is not in the public interest. To this, see the critic of Loft, Humphrey and Turley (2005) who comment that “international organizations will always struggle to live up to the aims of ideal democratic systems. This perspective places emphasis on undertaking empirical evaluations of commitments to democratic participation under second-best conditions – public interest engagement relies on a model of oversight and consultation and on representation from financial market regulatory interests rather than broader civil society.” I guess this is not what Europe is about, and should not emphasize financial market regulatory interests rather than broader civil society.

1.4 Should private sector and civil society representatives be involved in the standard setting work? If so, what would be suitable options for doing so in a balanced way? Which stakeholder¹ should be involved? Should the standard setting pillar be a **public-private partnership like in the financial reporting pillar?**

Suggestions are made to include NGOs from outside the EU representing affected communities across other geographies, especially producer countries; industry associations of not just the top sectors for which this standard applies, but also those of major upstream and downstream industries (suppliers and customers), representations from consumer groups (to include public interest), trade union representation from producer countries

(Example of to do : “ISO 26000 nor-setting process is very inclusive process and provides mechanisms for the articulation of voice. Consensus building is the declared goal of the process and the participating stakeholders are to be selected and organized in a fair and representative manner and have access to all the information. Furthermore, it puts emphasis on the necessity to take into account the stakeholders’ interests as well as of accountability and transparency. There is a high level of participation by experts who are also future norm addresses and or catalysts. Focus on consensus building among various groups of stakeholders and equal access to all information” Mueckenberger, U., Jastram, S. (2010))

In ISO 26000, stakeholder representation group was as flow: Industry (25%), Government (18%), Consumer (11%), Labor (7%), NGO (17%), Service Support Research and Others SSRO (21%).

Balzarova and Castka (2012) propose that stakeholder involvement can be described by 5 distinguishable processes – “stakeholders attempt to 1) eliminate issues that are controversial and may lead to consequences perceived by stakeholders as undesirable (eliminating) 2) link and integrate the standard into a network of other documents and standards (linking) 3) seek consensus by highlighting areas for further dialogue or by addressing exclusion from the standards development (consensus seeking) 4) reinforce issues that are important (reinforcing) 5) improve the content of a new standard (standards improving). “

1.5 If there were to be **SME** standards derived from the future EU non-financial reporting standards, how should the SME angle be addressed in the governance and in the standard setting process?

I would like to suggest reading the working paper written on marginalized actors in standardizing processes (based on the experience of environmental labelling in France) here: <https://drive.google.com/file/d/1ENjQGs0Z4lysgnl-VlvqaQMbc2uRnSox/view> and to learn from this to be more inclusive of SMEs if there was any standard to be made. SME standards should not be a small subset of indicators decided by “above”.

Lessons from the GRI : Brown, Jong, Levy (2008) analyze GRI’s sustainability reporting and comment on participation of NGOs and SMEs: What not-to-do? eSince the initial years, participation of organized labor and NGOs has declined, partly owing to resource constraints (for NGOs) and partly due to limited interest. SMEs have never been visible in the GRI field. The GRI Secretariat has grown increasingly dependent on support from large companies and banks, which undermines the perception of impartiality, and on marketing the GRI brands and products, which competes with the goals of inclusiveness and widely shared public good. Generally, organized labour, local civil society organizations, and small and medium size business enterprises have been active in the GRI field”. Recognizing it as a problem of legitimacy and future growth, GRI secretariat has undertaken initiatives aimed at engaging NGOs and SMEs.

→ Make sure that NGOs and SMEs are included in the process and that they actively participate throughout.

Gilbert and Rasche (2007) analyze the opportunities and problems of standardized ethics initiatives and make the following observation:

Standard-implementation process: “The institutions that release standards often express dissatisfaction with a lack of input from academics and practitioners on the meaningful implementation of the initiatives, which is necessary to build trust in a time of growing cynicism from a range of stakeholders. Most standard-setting bodies are not very self-reflective and thus tend to obscure the problems associated with their standards. For instance, even though most standards demand ‘stakeholder dialogue’ as part of the implementation process, they only give limited advice on how these dialogical processes are supposed to be organized. The standards should offer precise information regarding how to organize the discourse and which shareholders to include.”

1.6 Which governance structure would you foresee for the EFRAG EU non-financial reporting standard setting pillar? How would this fit in the overall EFRAG governance structure? What relation would there be with the financial reporting pillar, if any?

An example of infrastructure with a common head from Richardson (2008): “1) Drawing from the three Canadian accounting and auditing standard setting bodies of Public Sector Accounting Board (PSAB), Accounting Standards Board (AcSB), Auditing and Assurance Standard Board (AASB): The three standard-setting bodies share a common administrative oversight structure. Each board reports to an oversight council which in turn reports to the Canadian Institute of chartered Accountants (CICA) Board of Governors (with the PSAB and AcSB sharing the AcSOB).”

2. Governance – Cooperation with standard setters and other initiatives

2.1 Any future possible EU non-financial reporting standards must be built on existing reporting standards and frameworks to the greatest possible extent:

- How can the relevant existing standard-setting organisations be closely associated in future standardisation work? How would you see cooperation and involvement?

The current non-financial reporting arena already has closed cooperation systems which have not operated in the public interest or towards harmonization and consensus. They have signed MoUs between themselves, written papers about how they “harmonize” (CRD) or are similar (including the recent “statement of intent”), they are in each other’s boards. However, this has not led to involvement and cooperation.

Any future possible EU non-financial reporting standard should avoid being “another” standard among others, without become the (mandatory) standard for EU. The consequence would be more standards emerging here and there and current standards continuing to develop their own, creating more issues than solving them.

Consequently, an inclusive, transparent and fair due process in the public interest is key for input, process and output legitimacy and the future possible EU non-financial reporting standards. This will allow current frameworks, initiatives and standard setting organizations to see their interest in participating and reinforcing the EU process rather than continuing to the current *mille feuille* that all have expressed fatigue about.

- More broadly, how should cooperation with existing public and/or private initiatives producing international standards and framework be established, to ensure that any future non-financial reporting standards applying in the EU build to the greatest extent possible on existing standards and frameworks?

If there is a global standard setting organization to emerge for the current turmoil, it should be one that has the same goals as the EU, that is public interest at heart (e.g. United Nations). That is the only way to ensure that the work produced at the EU level, will be of use and reach the global level.

- How can the EU non-financial reporting standard setting have a global impact?

It will, if it is in the public interest and with all specificities introduced when responding to question 1 (transparency, accountability, etc). Also, see above, if the EU works with other institutions that have the public interest at heart (e.g. UN).

2.2 How to establish an appropriate coordination between the financial and non-financial reporting so as to ensure that financial and non-financial reporting provide an integrated view of the performance, position, development and impacts of reporting companies?

It is very important that there is coordination, and a common “head” for 2 “legs” in the standardization process would be key. However, there should also be respective experts in each leg (currently, we see many non-experts interested in overtaking the non-financial world), and experts that are capable of bridging the two legs by being experts in both: currently, you can see people with accounting expertise turning to sustainability, with many years experiences in both, that could hold the role of “boundary work” that is necessary for coordination to happen.

3. Possible changes to finance of EFRAG

3.1 What ideas do you have for financing of the non-financial reporting pillar? Should the financing reflect the public-private partnership?

It would be very sound, as a process for the public interest, that the financing is reflected from the EU directly.

4. Do you have any other comments you want to share?

Let's not forget **this process is about sustainability** as defined in the Bruntland report, and with taking into account the **planetary boundaries, social foundations and the link to the Sustainable Development Goals**. We often assume that this is known, but I think this should be the foundation of all the non-financial standard setting process: the goal is about sustainability.

We should be very careful of being inclusive of science and research outputs. See the letter of academic journal editors to the IASB consultation, about how they have forgotten to taken into account 30 years of research: <https://drCarolAdams.net/open-letter-to-the-chair-of-the-IFRS-foundation-trustees-from-professors-of-accounting/>. Let's not repeat this mistake at EU level. Let's be inclusive of research outputs from 30 years, and include academics in the process.

Let's also not forget, when we talk about sustainability, that we require knowledge from accountants, but **also many other disciplines**: sustainability science, environment, sociology, human rights etc. They should all be represented in the future, if any, standard-setting process.