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Sent by email:
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Brussels, 14 September 2021

Subject: EFRAG's Public Consultation Paper – Due Process Procedures for EU Sustainability Reporting Standard-Setting

Dear Mr Gauzès,

Accountancy Europe welcomes the European Financial Reporting Advisory Group (EFRAG)'s *Consultation Paper: Due Process Procedures for EU Sustainability Reporting Standard-Setting* (CP). A robust, inclusive and transparent due process underpins standard-setting and helps legitimise standards.

We broadly agree with the CP's proposals on the due process procedures to be followed by EFRAG in its role as technical advisor to the European Commission (EC) in developing draft European Sustainability Reporting Standards (ESRS) or draft amendments of ESRS. However, we provide some comments for further consideration as per the sections below.

CHAPTER 1: OBJECTIVE

A transparent and inclusive due process every step of the way

- (1) Accountancy Europe supports EFRAG's proposals in paragraph 1.6 of the CP on adopting a due process composed of core and additional steps: the core and mandatory steps outlined in paragraph 5.1 of the CP and the additional ones in paragraph 5.2. of the CP. The possibility to apply an accelerated due process fits the urgency and rapidly changing priorities on many sustainability topics, whilst always ensuring robustness of the due process.
- (2) Whilst paragraphs 5.3 and 3.10 of the CP predict cases where the mandatory steps of the due process may not be met, we suggest these deviations be rare and one-off cases. In such cases, these deviations and the new proposed process should be approved by the Administrative Board upon the advice of the Due Process Committee (DPC) to ensure that the principles of the due process are met either way.
- (3) We cannot emphasise enough the need to:

- a. ensure **transparency** in all the steps of developing ESRS or draft amendments of the ESRS, as well as
 - b. allowing for an **adequate public consultation period** with stakeholders (not less than 60 days as provided in paragraph 5.1.b) of this CP).
- (4) The above will be particularly important for the ongoing interim technical work of the Project Task Force on European sustainability reporting standards (PTF-ESRS), as the pressing deadline for EFRAG to deliver the first set of standards to the EC by 15 June 2022 approaches.¹ Whilst drafting is ongoing, the respective governance and due process changes may take some time to finalise at EFRAG. This may risk making a choice between meeting the EC deadline or ensuring a robust due process for the first set of EU sustainability reporting standards. We believe that there is a middle ground as long as the due process principles provided in this document in Chapter 2 apply to this interim work as well.
- (5) On another note, we welcome regularly reviewing the due process procedures as noted in paragraph 1.8 of the CP. This would be a good practice in the beginning of the standard-setting journey of EFRAG as it is important to account for any developments or changes in sustainability topics and the ESRS respectively. Therefore, we suggest such reviews take place every 3-5 years as it is common with other standard setters in this field.

A two-way cooperation approach to standard setting

- (6) Accountancy Europe suggests the EFRAG ESRS due process embeds principles of a two-way cooperation with other sustainability standards and framework setters. This is important to contribute to global convergence of sustainability reporting standards and to comply with the EC's proposal for a Corporate Sustainability Reporting Directive (CSRD)². For more details, please refer to paragraphs 40 – 46 of our response.

Addressing other bodies in EFRAG

- (7) We note that this CP mainly addresses considerations on the governance and due process concerning the sustainability reporting pillar. The current EFRAG board is also expected to undergo changes, i.e., dismantling it from its oversight and governance responsibilities.
- (8) Therefore, we suggest addressing all the existing and new bodies of EFRAG by clarifying their roles and remits as well as the respective due processes applied in each of the pillars. The EFRAG financial reporting pillar and sustainability pillar will engage in very different activities: the former advising the EC on endorsement of financial reporting standards and the latter in developing EU sustainability reporting standards. Therefore, it is reasonable to expect differences in the due processes applied in each pillar.
- (9) In addition, we note that advising on endorsing standards and developing standards require different skillsets. Therefore, it is important to ensure stable standard-setting skills in the sustainability reporting pillar.
- (10) As per the above, we suggest EFRAG addresses the due process and governance of all of its bodies, including those in both pillars in one document, i.e., the Due Process Handbook. The Due Process Handbook should specify the roles and remits of the respective bodies, voting systems in each type

¹ European Commission (2021), Letter from Commissioner Mairead McGuinness, see: <https://www.efrag.org/Assets/Download?assetUrl=%2Fsites%2Fwebpublishing%2FSiteAssets%2F210512%2520Commissioner%2520McGuinness%2520to%2520EFRAG%2520on%2520sustainability.pdf>

² Proposal for a Directive of the European Parliament and the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting, see: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0189>

of decision-making (i.e., agenda-setting, exposure drafts, approving the Technical Advice), interactions between different bodies with one-another.

Prescriptive language of the due process for the ESRS

- (11) We note that the due process for the ESRS as per this CP is sometimes described at a very high-level using language such as “may” or “can”. This is different from the current state of play in the due process of financial reporting standard setting, where a very specific language is used, e.g., in the International Financial Reporting Standards (IFRS) Due Process Handbook.³ Therefore, we suggest EFRAG to be as clear as possible in prescribing the due process for ESRS to ensure all stakeholders have confidence in the process.

CHAPTER 2: PRINCIPLES

- (12) Accountancy Europe supports extending the current EFRAG principles of transparency, public consultation and impacts to the sustainability reporting pillar. However, the following considerations may further enable these principles and are particularly relevant to the future sustainability reporting pillar of EFRAG.

Transparency for Working Groups

- (13) We strongly suggest that the meetings of the sustainability reporting (SR) Working Groups be held in public. We note that under paragraph 2.7 of the CP, such meetings are expected to be held in closed form. However, engaging with working groups will be of paramount importance in the sustainability reporting pillar.
- (14) The members of the EFRAG SR Technical Expert Group (TEG), responsible for developing standards, cannot be expected to have comprehensive knowledge in all sustainability topics. Therefore, they would need to rely on feedback from different Working Groups composed by experts in a specific topic.
- (15) To this end, we strongly recommend EFRAG makes public the membership of each Working Group, the Working Group’s technical meetings/calls as well as the respective agendas and documentations in these meetings/calls.

Recordings and agenda papers

- (16) We suggest publicly storing the audio and video recordings of the EFRAG Sustainability Reporting Board (SRB) and SR TEG for at least two years after the implementation of the respective standard. Based on the financial standard-setting experience, stakeholders find the recordings of discussions very useful, particularly in the first periods applying the new standard.
- (17) As a result, we suggest amending paragraph 2.10 of the CP as it is not convenient for these recordings to be made available ‘on demand’ after just one year of holding the respective meeting. We note that technological progress and low costs of storage would easily allow archiving and making available on an ad hoc basis audio and video recordings for a longer time.
- (18) Finally, we suggest that as a general rule to ensure transparency, all agenda papers on technical discussions in the EFRAG SRB, SR TEG and SR Working Groups be public. On the other hand, it is reasonable to keep private agendas and respective papers on closed sessions of the bodies, e.g., on topics such as governance and funding.

³ IFRS Foundation, *International Accounting Standards Board and IFRS Interpretations Committee Due Process Handbook*, see: <https://www.ifrs.org/content/dam/ifrs/about-us/legal-and-governance/constitution-docs/due-process-handbook-2020.pdf>

- (19) We note that paragraph 2.12 of the CP foresees the possibility for the EFRAG SRB and SR TEG to withhold from making public some agenda papers. In principle, we do not agree to withhold from making public papers on technical discussions. However, if absolutely needed for a particular reason, we suggest the respective body reports to the EFRAG Administrative Board on the underlying reasons of this decision.

CHAPTER 3: DUE PROCESS OVERSIGHT

- (20) Accountancy Europe agrees that the EFRAG Administrative Board should be responsible for governance and oversight. This allows the bodies in each pillar to focus on delivering the respective technical advice to the EC and ensuring these are conducive of the European public good.
- (21) To this end, we suggest revising the wording in paragraph 3.5 of the CP as it creates confusion on whether the EFRAG Administrative Board would consult on agenda-setting and post-implementation reviews (PIR) for standards or the due process.
- (22) We think that the financial reporting board and the SRB should consult on their own agenda-setting. These are the decision-making bodies in their respective pillars and are responsible to deliver the respective output to the EC.

Due Process Committee

- (23) We support creating a DPC as a subcommittee of the EFRAG Administrative Board to support it in overseeing the due process of the EFRAG SRB and SR TEG. Nonetheless, in line with our comments in paragraphs 7 –10, we suggest the DPC extends their activities also to the financial reporting pillar of EFRAG.
- (24) However, we do not agree with paragraph 3.4 of the CP as we think the DPC should not have any decision-making power. Instead, it should only advise the Administrative Board, which should be the only decision-making body on any due process matters.

Scope of standards

- (25) We strongly suggest clarifying the responsible body at EFRAG to ensure that the EU sustainability reporting standards developed are within the scope of the CSRD.
- (26) The CSRD notes that ESRS should address information needs to meet the disclosure requirements of items 1-3 of Article 19a and Article 29a, i.e., defining the scope of ESRS. To this end, the CSRD lists subject matters of the ESRS in item 2 of Article 19b.
- (27) Adequate oversight on the scope of the ESRS being developed at EFRAG would confirm that the information needs of the CSRD are met as well as EFRAG resources are safeguarded from developing standards out of the intended scope of the CSRD.

CHAPTER 4: AGENDA-SETTING

- (28) Accountancy Europe acknowledges the challenge of delivering Technical Advice on the first set of sustainability reporting standards by June 2022. However, we strongly suggest this Technical Advice should also consider feedback received from a public consultation. Please refer to our comments in paragraphs 3 – 4 and paragraph 39.

- (29) Paragraph 4.4 of the CP creates confusion on whether the EFRAG SRB, in consultation with the Administrative Board, will review the due process or the contents of the first set of sustainability standards. As currently worded, it could be understood as if these bodies will:
- a. review if and how the Project Task Force on Preparatory work for the elaboration of possible EU nonfinancial reporting standards (PTF-NFRS) recommendations⁴ have been followed, and
 - b. decide whether further input is needed from stakeholders (or not).
- (30) Therefore, we suggest clarifying this paragraph and in line with the principles in Chapter 3 to include the need for a public consultation even in the initial phase of developing ESRS.

EFRAG Lab and interconnectivity

- (31) We note that it is unclear on whether the EFRAG Lab would continue to be a formal body within the organisation or not. In addition, it is unclear on what the role of this body would be. The EFRAG President's recommendations on governance changes⁵ and paragraphs 4.10 – 4.12 of the CP create confusion on whether the EFRAG Lab's role is to:
- a. identify good practices and stimulate innovation (for both the financial and sustainability reporting pillars), for which it could create ad-hoc task forces on a project basis, or
 - b. ensure interconnectivity, for which stable and formal resources are needed.
- (32) Accountancy Europe suggests the EFRAG Lab's role to be stimulating innovation and debate and allowing for experimentation to develop best practices in corporate reporting, which includes both financial and sustainability reporting.
- (33) We urge EFRAG to address connectivity more specifically than what is currently provided in the CP. It is important to ensure interconnected standards due to the impact-dependency relationship between sustainability topics and financial performance. In addition, the PTF-NFRS lists connectivity as a conceptual guideline to be considered when developing ESRS.
- (34) Specifying how connectivity will be achieved at EFRAG would also clarify the roles of the respective bodies in both pillars. We understand that the future ESRS to be developed in the EFRAG sustainability reporting pillar will use a double-materiality⁶ perspective. Particularly, we urge EFRAG to lay out how financially material sustainability disclosures will be addressed within the organisation:
- a. on the one hand, the EFRAG SRB and SR TEG are expected to develop such additional requirements in view of ESRS
 - b. on the other hand, the current financial reporting TEG and Board may need to provide endorsement advice on potential IFRS amendments that address sustainability factors

⁴ European Lab PTF NFRS (2021), *Proposals for a Relevant and Dynamic EU Sustainability Reporting Standard-setting*, see: <https://www.efrag.org/Lab2>

⁵ Jean-Paul Gauzès (2021), *Final Report on the adpersonam mandate on Potential Need for Changes to the Governance and Funding of EFRAG*, see: <https://www.efrag.org/Activities/2010051124018235/Ad-personam-governance-mandate>

⁶ Please refer to paragraph 25 of the *Proposal for a Directive of the European Parliament and the Council amending Directive 2013/34/EU, Directive 2004/109/EC, Directive 2006/43/EC and Regulation (EU) No 537/2014, as regards corporate sustainability reporting*, see: <https://eur-lex.europa.eu/legal-content/EN/TXT/?uri=CELEX:52021PC0189>.

as part of their standards. The latter is a project Accountancy Europe⁷ and EFRAG⁸ call for in their respective feedback to the International Accounting Standards Board's Request for Information: Third Agenda Consultation.⁹

- (35) Therefore, formalising how the topic of connectivity will be dealt with operationally within EFRAG will also clarify the roles of the respective bodies in overlapping areas and could potentially avoid any conflict between IFRS endorsed in the European Union (EU) and ESRS.

CHAPTER 5: STANDARD-SETTING

Consultation period

- (36) Accountancy Europe agrees with the categorisation of the due process steps that will always be mandatory and those that can be considered but are not mandatory. This allows for an agile, yet robust due process in standard-setting. Therefore, we welcome paragraphs 5.1 – 5.3 of the CP.
- (37) However, we express a word of caution on paragraph 5.1.b) of the CP regarding the possibility of reducing the consultation period to no less than 60 days, from the normal 120 days. Whilst flexibility is important as sustainability reporting standards are needed urgently, receiving enough and appropriate stakeholder feedback must always be prioritised.
- (38) A 60-day consultation could be appropriate for smaller and urgent amendments, or when stakeholders have been appropriately informed of the subject matter and potential contents in advance. However, it may not be feasible for ESRS consultations where no other documents or information on the project and its contents have been made public in advance.
- (39) We reiterate our comments in paragraph 2 – 4 of our response and note that stakeholders should be given an appropriate consultation period, particularly on the first set of ESRS. This will be the first time stakeholders read such standards, and may need more time to deliberate the proposals and provide high-quality input as part of the due process.

Principles of a two-way cooperation

- (40) We agree that consulting with the *Consultative Forum of National Authorities and sustainability reporting standard setters* (Consultative Forum) be a mandatory step in the due process. This will enable a constructive two-way cooperation between the European standard setter and other international initiatives to advance towards global sustainability standards.
- (41) However, the CP only provides the SR TEG consults with the Consultative Forum. We suggest clarifying that the SR Board will also engage with the Consultative Forum in its standard-setting activities.
- (42) On another note, we encourage EFRAG elaborates the principles of this two-way cooperation in order to maximise resource efficiencies. This is also stipulated in the CSRD: EFRAG needs to build on the work of international standard setters and work together with them in a constructive manner.

⁷ Accountancy Europe (2021), *Consultation Response: IASB's third agenda consultation, EFRAG's draft comment letter and own proactive research agenda consultation*, see: <https://www.accountancyeurope.eu/consultation-response/iasbs-third-agenda-consultation-efrags-draft-comment-letter-and-own-proactive-research-agenda-consultation/>

⁸ EFRAG (2021), *EFRAG Consultation on IASB Agenda and EFRAG Research Agenda*, see: <https://www.efrag.org/Activities/1910280941382847/IASB-Third-Agenda-Consultation>

⁹ IFRS (2021), *International Accounting Standards Board's Request for Information: Third Agenda Consultation*, see: <https://www.ifrs.org/projects/work-plan/2020-agenda-consultation/#published-documents>

- (43) Therefore, it is important to include this element in the ESRS due process, including on agenda-setting (Chapter 4 of the CP) and standard-setting (Chapter 5 of the CP) to operationalise the CSRD commitments. Our Views publication *A constructive two-way cooperation to sustainability reporting standard-setting*¹⁰ provides some principles and ideas on how this collaboration could be operationalised.
- (44) A two-way cooperation between the SRB/SR TEG and other international organisations will be particularly important in the inception phase due to the tight deadlines and resource needs.
- (45) We welcome EFRAG's statement of cooperation with the Global Reporting Initiative (GRI).¹¹ GRI has extensive experience in developing sustainability reporting standards and could provide critical feedback, particularly when developing standards that address the wider impact lens of materiality.
- (46) However, we recommend EFRAG elaborates principles to guide such collaborations and any future Memorandum of Understandings (MoU) with other organisations.

Working Groups

- (47) We encourage EFRAG to elaborate more on the role of the Working Groups and how the SR TEG will interact with them. Working Groups will be key to provide feedback to the SR TEG as noted in paragraph 14 of our response.
- (48) In addition, Working Groups are an important part of the governance structure as noted in the EFRAG's President's recommendations on governance changes.

Digitalisation considerations

- (49) We note that the digital considerations provided in paragraphs 5.15 – 5.16 of the CP are quite high level. Therefore, we suggest EFRAG clarifies what it is expected to do and how it will deliver on digitalisation. For example, paragraph 5.16 is unclear on whether EFRAG would develop standards that are digitally friendly, or whether it is expected to develop a taxonomy as well.
- (50) If the latter, we suggest EFRAG closely collaborates with the European Securities and Markets Authority (ESMA) and leverages their European Single Electronic Format (ESEF) experience. This would help the connectivity between the digitalisation of financial and sustainability reporting and further maximise resource efficiencies.

Decision-making procedure

- (51) Accountancy Europe notes that paragraphs 5.17 - 5.18 and Annex 2 of the CP create confusion on what Technical Advice to submit to the EC in cases of disagreements between the SRB and SR TEG. Would it be the version the SRB will edit themselves, or the SR TEG version with any SRB qualifications (in this case the EC will arbitrate)?
- (52) We suggest EFRAG clarifies that the SRB is the decision-making body of the sustainability reporting pillar and that the Technical Advice submitted to the EC only consists of what the SRB approves. We note that the SRB will decide on draft standards elaborated by the SR TEG, thus already giving due consideration to their proposals.

¹⁰ Accountancy Europe (2021), *A constructive two-way cooperation to sustainability reporting standard-setting*, see: <https://www.accountancyeurope.eu/publications/a-constructive-two-way-cooperation-to-sustainability-reporting-standard-setting/>

¹¹ EFRAG, *EFRAG & GRI Landmark Statement of Cooperation*, see: <https://www.efrag.org/News/Project-508/EFRAG--GRI-landmark-Statement-of-Cooperation>

- (53) In addition, we suggest that EFRAG SRB clearly agrees the Technical Advice delivered to the EC – no output should be submitted to the EC otherwise. This will avoid any arbitration by the EC in cases of disagreements between the SR TEG and SRB.
- (54) In case the SRB cannot reach a decision, we suggest re-deliberating at EFRAG rather than arbitrating by the EC. In this case, we suggest undertaking the following steps:
- a. the SRB lays out the majority (which do not make a qualified majority) and minority views to the SR TEG
 - b. the SR TEG reconvenes to provide a technical solution to the split views
 - c. the SR TEG delivers the new version of the standards to the SRB
 - d. the SRB reconvenes to decide on the new version of standards.
- (55) On another note, Appendix 2 of the CP notes that the SRB would operate by consensus, or in the worst-case scenario by qualified majority. On the other hand, the SR TEG would operate by simple majority.
- (56) We suggest the SR TEG also operates by consensus, and if the latter cannot be reached, use a qualified majority, i.e., two-thirds. A qualified majority in the SR TEG would help achieve consensus easier in the SR Board. Such an approach would also ensure generally accepted sustainability reporting standards.
- (57) Furthermore, we suggest that both the SR TEG and SR Board function with a two-third quorum. This will ensure that the Technical Advice delivered has been agreed by the majority of the memberships in both bodies.
- (58) The suggestions in paragraphs 52 – 57 above would only be applicable to the sustainability reporting pillar of EFRAG. Considering that the financial reporting pillar will continue on its endorsement advisory role, we suggest not changing the current decision-making structure.

SME considerations

- (59) Accountancy Europe suggests elaborating a specific due process for SMEs. SME sustainability reporting standards will consider SME characteristics, such as their governance model and resource constraints. Therefore, the respective standard-setting should also be adapted to consider their particularities. This approach is different from the one in financial reporting standard setting, where the SME standard is a simplified version of the comprehensive reporting standards.
- (60) We appreciate the considerations stated in paragraphs 5.6 – 5.7 of the CP. We emphasize that particularly for SMEs, field-testing will be critical to understand if SME sustainability reporting standards are fit-for-purpose.
- (61) However, based on the experience in financial reporting standard-setting, it is very difficult to get SMEs to participate in fieldwork. Therefore, EFRAG should invest more in getting SMEs to adequately participate in the fieldworks on its SME sustainability reporting standards.

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Please do not hesitate to contact Jona Basha (jona@accountancyeurope.eu) in case of any questions or remarks.

Sincerely,



Myles Thompson
President



Olivier Boutellis-Taft
Chief Executive

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