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ON BEHALF OF THE KPMG EMA MEMBER FIRMS

EFRAG public consultation paper on due process procedures for EU sustainability standard setting

Dear Mr. Gauzès,

thank you for providing the opportunity to comment on the proposed due process procedures for EU sustainability standard setting ('the proposals').

This letter represents the views of KPMG EMA, which is registered in the EU transparency register under reference number 65515368730-59.

We welcome the fact that EFRAG has developed a draft due process document to support its proposed new role as a standard setter, which is distinctly different from its current role in financial reporting. We think this is the right approach.

In [KPMG's comment letter](#) to the IFRS Foundation in December 2020 we support a globally coherent ecosystem for sustainability reporting standards, in which global standards are focused on long-term enterprise value creation as a baseline for wider corporate reporting, while recognising the value of co-existence and interoperability with regional initiatives that address regional and jurisdictional-specific needs.

We appreciate the scale of ambition the European Commission's Green Deal has set for the EU's transition to a carbon-neutral economy by 2050, and commend the European Commission for recognising the importance of transparency and robustness in ESG reporting as an element in achieving this ambition, in addition to other policy measures. As such, we also support the development of robust European sustainability standards through EFRAG as part of a building block approach, in a model of close cooperation with international standard setters that avoids duplication between global and regional standards to the largest extent possible, for the benefit of

stakeholders and companies. Whilst EFRAG's new role is proposed to meet European public policy objectives, its success will depend on user and preparer acceptance of its work. In our view, an effective and robust due process is critical for the integrity, credibility, and acceptance of corporate reporting standards. Our comments in this letter are intended to support this.

We note that a number of key areas related to governance and funding of EFRAG's new ESRS standard setting process are covered by the *Final Report On The Ad Personam Mandate On Potential Need For Changes To The Governance And Funding Of EFRAG*, and not repeated in the due process document being consulted on. We suggest that all these matters be integrated into a single governance and due process document, to have a single reference point for all EFRAG's due process matters. This will strengthen both the operational clarity and the integrity of the standard setting process.

In benchmarking EFRAG's due process for ESRS with other proven processes, such as the IFRS Foundation's *Due Process Handbook*, we note that EFRAG's proposals are written at a higher level with less specificity, including words such as "normally", "usually", and as such provide for a much higher degree of discretion in applying due process than is reflected in the *Due Process Handbook*. Many of our comments address areas where we think the proposals would benefit from more detailed substance to make EFRAG's due process more robust.

The remainder of this letter addresses our more detailed comments. As the consultation does not pose specific questions, we have structured these comments into the four areas that we think will be key to the successful operation of EFRAG's standard-setting activities:

1) Due process alignment with the European Commission's proposals for the Corporate Sustainability Reporting Directive

We think it's essential there should be clear and demonstrable alignment between EFRAG's standard-setting work and the proposed Corporate Sustainability Reporting Directive from which it will derive its authority.

In a field of reporting that is currently characterised by many alternative approaches, we expect that the acceptance of EFRAG's work by users and preparers will depend on maintaining a clear link to the scope set out in article 19b of the proposed Directive. We think that more explicit consideration of the Directive's requirements is needed to achieve this and hence reduce the risk of challenge to both the scope and direction of EFRAG's future work.

2) Due process consideration of international standards

The feedback from stakeholder engagement on the CRSD indicated that there is a high level of public interest in how the proposed article 19b requirement to *take into account relevant developments, including developments with regard to international standards* will be addressed by EFRAG's due process. This is most important in relation to the consideration of standards designed to meet the needs of the global markets. Unwarranted deviations from these could lead to European companies needing to produce additional sustainability-related information to support their access to global capital.

The design and application of due process in relation to the consideration of international standards is likely to have a significant impact on the scale and nature of EFRAG's work, and the level of funding required to support that. In our view, this merits much greater consideration in the due process proposals.

In our view, the proposed Corporate Sustainability Reporting Directive's requirement to *take account of existing standards to the greatest possible extent*, can be best met by establishing due process procedures that support a 'building blocks' approach. Such an approach would build on, the capital-markets focused work of the TCFD or a future International Sustainability Standards Board. In doing so, it would allow EFRAG's standard-setting work to address global capital markets' needs efficiently and to constructively work with other standard setters to ensure consistency / to avoid unnecessary divergence whilst taking the lead in addressing other objectives envisaged in the Corporate Sustainability Reporting Directive.

At a more detailed level, we suggest that the due process proposals are extended to:

- a) Specify due process procedures for considering alignment with international standards, including consultation on which standards should be taken into consideration.
- b) Provide an objective basis for the ESRS Board and Technical Expert Group to determine whether deviation from internationally accepted approaches is appropriate. For example, by specifying the weight that should be given to achieving consistency/ interoperability with other standards.
- c) Require 'basis for conclusions' to explain the cost-benefit of deviations from international standards and post implementation review consideration of global developments.
- d) Establish a mechanism for reviewing EFRAG's published standards to take account of future developments in international standards.

3) Technical underpinnings for EFRAG's work

In our view, clarity of purpose is essential to the efficiency and integrity of standard setting. Whilst the scope of EFRAG's work is defined by the Corporate Sustainability Reporting Directive, we expect the EFRAG SRB and Technical Expert Group will need a basis to resolve ambiguities when deciding how a proposed standard should address the requirements of the Directive.

Specifically, we suggest that:

- A clearly defined mission set out in the due process document is needed to ensure a consistent approach for EFRAG's work. For example, a mission statement would be needed as a basis for the EFRAG SRB and Technical Expert Group to determine whether to prioritise a proposal that supports reporting transparency over one that is designed to promote behavioural change.
- A conceptual framework is needed to support the technical integrity of EFRAG's work and provide a basis for assessing the EFRAG SRB's proposals. A conceptual framework serves as a pillar on which the whole standards stand and sets out the fundamental concepts for sustainability reporting that guide the Board in developing the standards, helps to ensure that the standards are conceptually consistent and that similar components are treated the same way, so as to provide useful information for users. By analogy (and if relevant), it also assists companies in developing policies when no standard applies, and more broadly, helps stakeholders to understand and interpret the standards. This might, for example, address whether comparability or relevance should be prioritised in the design of a proposed standard.

Given the wide diversity of parties interested in sustainability-related topics, we consider that clarity over mission and conceptual underpinnings will be particularly important in applying the notion of ‘double materiality’ proposed in the Corporate Sustainability Reporting Directive. When developing standards on a topic, the EFRAG SRB and Technical Expert Group will need a basis for determining which affected proposed stakeholders and/or users’ information needs should be prioritised, and what decisions the proposed standard should be designed to support.

4) Other operational due process considerations

Below we identify a number of areas where we think more detailed due process procedures would be beneficial:

- *Initial development of the first two standards*

We recognise the urgency of EFRAG’s work in the context of the timetable for reporting envisaged by the Corporate Sustainability Reporting Directive, and agree that some acceleration in due process may be necessary to achieve this, in particular with respect to a standard on climate-related disclosures. However, this should not come at the expense of the integrity of the standard-setting process. The first set of standards EFRAG issues are likely to establish both the tone for its future work and based on that the acceptance of the standards in practice. It is therefore essential that they set the right tone.

We therefore suggest that the proposals incorporate due process protections to:

- a) Limit the circumstances in which due process ‘short cuts’ can be applied
- b) Ensure sufficient robust outreach to preparers and other practitioners to ensure the initial standards are operational
- c) Incorporate timely post-issuance review of any standards issued for which full due process has not been followed.

- *TEG decisions and dissenting opinions*

We recognise the desirability of consensus in developing EFRAG’s proposed standards as expressed in the proposals. However, we note that the Technical Expert Group is proposed to operate by simple majority voting (except in certain undefined exceptions). We recommend that decision-making in TEG is also explicitly aimed at achieving consensus, but if that is not possible, it is done by supermajority voting similar to the EFRAG SRB. In addition, we suggest that a mechanism for recognising and communicating dissenting opinions is implemented.

It would be helpful if an explicit description is included in the due process handbook regarding what majorities are required for a decision by TEG and the SRB at each stage of the standard setting process (e. g, adding to the technical workplan, issuing a discussion paper, exposure draft and technical advice for a final standard).

- *The respective roles of the Technical Expert Group and the EFRAG secretariat*

We note the critical role that the part-time Technical Expert Group is expected to play in the heavy lifting of standards development. We assume their interaction with the EFRAG secretariat will form a key part of this process. Greater clarity over how this interaction should work will be key to ensuring the integrity of the standard-setting process, and also to establishing whether the resources available to EFRAG are sufficient and appropriate to enable it to fulfil its new role.

- *Consultation and impact assessment procedures*

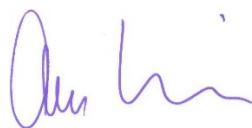
We suggest that stakeholder consultation and impact assessment procedures should be formalised in more detail than is currently set out in chapter 5 of the proposals. For example, addressing mechanisms for user and preparer consultation throughout the development process. These procedures are important both for the quality and perceived quality of the standard setting process.

- *Criteria for adopting new projects and reviewing existing projects*

We note that the criteria for adopting a new project are left to the discretion of the EFRAG Administrative Board. We suggest that a more rigorous basis and process would be needed to meet expectations of transparency. For example, this might include addressing how EFRAG's research programme should be directed to support its standard setting work, and the process for determining whether a proposed project is consistent with the scope of the Corporate Sustainability Reporting Directive.

Please contact [Mark Vaessen at vaessen.mark@kpmg.nl](mailto:vaessen.mark@kpmg.nl) if you would like to discuss any of the issues raised in this letter.

Yours sincerely,



Christian Sailer
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