

Mr. Jean-Paul Gauzès
**President of the European Financial
Reporting Advisory Group Board**
Square de Meeûs 35B
1000 Brussels
Belgium

Paris, 15 September 2021

**Public Consultation Paper – Due process procedures for EU Sustainability
Reporting Standard-Setting**

Dear Mr. Gauzès,

Mazars is pleased to comment on EFRAG’s Public Consultation Paper issued in June 2021 on the proposed Due Process Procedures for EU Sustainability Reporting Standard-setting.

We overall agree with the proposals made by EFRAG which aim at setting the due process applicable to the provision of technical advice to the European Commission in the form of fully prepared draft sustainability reporting standards (the so-called “ESRS”) or draft amendments to these standards. We believe the related proposed standard-setting due process establishes the appropriate framework in order to ensure that the standards issued are of a high quality and widely accepted by stakeholders in Europe. Actually, these proposals are largely based on well-established due processes such as that of the IASB for the publication of IFRS and thus build on all the necessary features of rigor and transparency in order to issue reference standards in the field of non-financial reporting.

In detail, however, we have the following comments:

- 1. Pending EFRAG updated Statutes and Internal Rules and the resulting new organisation and governance that will be put in place once the Corporate Sustainability Reporting Directive (CSRD) has been issued, the due process procedures cannot currently be fully assessed.**

As mentioned under § 1.7, EFRAG Statutes and Internal Rules will be updated as EFRAG will move ahead with the governance reforms based on the recommendations made by Jean-Paul Gauzès in its ad personam report on Potential need for changes to the governance and funding of EFRAG published in March 2021. It is therefore not currently possible to have a comprehensive overview of how EFRAG will conduct its new mission following the European Commission's proposal for a CSRD which introduces the adoption by the EU of sustainability reporting standards (ESRS). This may qualify some of the comments made in this letter.

Besides, Appendix 2 provides an overview of the elements relevant for the due process and due process oversight of EFRAG's new organisation after the envisaged governance changes to integrate its new activity of sustainability reporting standard-setting also based on the recommendations made by Jean-Paul Gauzès.

Though EFRAG's governance is not part of the public consultation itself, we would like to emphasize that it is difficult to comment on the proposed standard-setting due process alone without taking into consideration the new organisation and governance that will be set to deal with ESRS.

In this regard, we note that clarifications are needed in relation to:

- a) The role of the new Technical Expert Group (TEG) and that of the new Board:

According to § 5.18, we understand that the new EFRAG Board will make the final decision on the Technical Advice and will decide whether to submit the proposed draft standard or draft amendment to the EC. It is unclear however to understand what will happen in practice in case the Board is in disagreement with the TEG: will the Board indeed have the power to amend the technical recommendation made by the TEG as indicated in the above paragraph?

Actually, under Appendix 2 page 20 (*"The EFRAG SRB will review the EFRAG SR TEG proposals. (...)"*), it could instead be understood that the Board will not be in a position to amend the technical recommendation made by the TEG if an agreement cannot be reached between the TEG and the Board. The latter would therefore be obliged to submit the proposed standard as it stands to the EC, accompanied by a reasoned opinion setting out why it considers that the standard does not meet the needs of the EU legislation. It is indicated that in such situation, it would be up to the EC to provide the final arbitration about the points at issue.

We therefore recommend that the final Due Process for ESRS be very clear on the role of the new TEG and that of the new Board. We are of the opinion that the Board should ultimately be in a position to amend the draft standard prepared by the TEG if the Board remains in disagreement with the TEG despite back and forth between the two bodies and their efforts to reach a common position (as § 5.18 seems to indicate).

- b) The majority rules to be applied and the additional procedures in case of dissenting opinions:

Appendix 2 indicates that the newly formed EFRAG Board will operate *"by consensus to the maximum extent feasible, or by qualified majority (two-thirds) if there is failure to reach consensus"*. As to the new TEG, it will operate *"by simple majority decisions, but situations may be specified where a qualified majority will apply"*. We assume this will be clarified in EFRAG Statutes.

Whether it is the work of the Board or the work of the TEG, there is a balance to be struck between moving quickly and taking the time to achieve the greatest possible consensus, which is a prerequisite to ensure the quality of the standards issued. We therefore recommend clarifying situations when Board's decisions would be made without reaching consensus and when TEG's decisions would be made without requiring a qualified majority.

Besides, particularly with respect to the Board's work, it is important that the dissenting views, if any, be published so that the due process is fully transparent and all relevant information is communicated to stakeholders.

c) The date on which the Due Process Committee (DPC) will be established:

Under § 3.1 it is indicated that *"the Administrative Board may decide to establish a Committee in charge of the oversight of the due process (DPC) from amongst its members to support the due process task"*. We support the establishment of such Committee and encourage that the DPC be operational from the beginning, i.e. as soon as the new EFRAG governance is set, given the very high stakes in the first months of the TEG and Board's works, as indicated in point 2. below. This should facilitate the EFRAG Administrative Board's mission in connection with oversight of EFRAG's new bodies.

2. The very tight and therefore demanding timetable imposed by the CSRD proposal, with the publication of a first set of sustainability standards expected by October 31, 2022, poses a serious risk to the quality of the due process that will be applied during the initial phase and therefore to the quality of the first standards to be issued.

Even if we support the commitments made at European level to respond to the urgency of having more comparable, reliable and relevant information from companies in order to better take into account sustainability aspects, it is imperative to put the necessary safeguards in place in terms of due process so that the work carried out by EFRAG during the initial phase as defined in § 4.1. a) results in ESRS that are up to the expectations of the stakeholders.

In such context we would like to point out the following uncertainties / risks we have identified in relation with:

a) The due process that will be applied to the interim technical work conducted by the PTF-ESRS:

As indicated above, we note that the new EFRAG's organisation and governance is not yet in place. In the meantime, interim technical work is being conducted by the Project Task Force (PTF-ESRS) following the request to EFRAG made by Commissioner McGuinness in May 2021.

Page 4 of the public consultation indicates that *"The Due Process Procedures that are set out in this consultation document will therefore to the extent possible and practicable be applied as well to the interim technical work that is undertaken on a project basis."*

It is added that *“The development of the draft standards will be built on the recommendations contained in the Project Task Force on preparatory work for the elaboration of possible EU non-financial reporting standards (PTF-NFRS) Report.”* and that *“Depending on when the draft standard development work will be handed over to the EFRAG revised governance structure for the sustainability reporting standards activity, it is envisaged that at least the following steps would be undertaken (see descriptions of the steps in Chapter 5)”, notably “Public consultation (with shortened consultation periods) on exposure drafts on the draft standards and making comment letters received publicly available on the EFRAG website”.*

Our comments are therefore:

- No due process has been applied to the PTF-NFRS Report and its appendixes issued in February 2021. In particular, no invitation to comment has been made on a draft version of all or part of the documents published by the PTF. However this report, written in a short period of time, is considered to be the reference base for all the work that will be carried out between now and the issuance of ESRS.
- Can you clarify how EFRAG will ensure that a robust and transparent due process is applied including to the work conducted by the PTF-ESRS since its establishment in July 2021? It is our understanding that no invitation to comment will be made on this work until the new organisation and governance have been put in place.
- It should be made very clear that the due process to be applied especially to the first set of sustainability standards expected by October 31, 2022 will be irreproachable, despite the very tight deadlines and the work already conducted by the PTF. Said differently, though we agree with the accelerated procedure envisaged under § 5.1 b) according to which the issuance for public comment of exposure drafts shall respect minimum comment periods of no less than 60 days after obtaining approval from the Administrative Board, we recommend that the usual period of 120 days be retained for this first set, all the more so in a context where stakeholders will have to comment on many new texts at the same time. What is at stake is Europe's credibility in issuing quality standards in a context of "competition" for non-financial standard-setting at international level.
- EFRAG's new Board should carefully consider the agenda-setting for the initial phase and amend, where necessary, the roadmap drawn up by the PTF-NFRS. Therefore, we consider the proposal under § 4.4 is key.

- b) The resources / skills available so as to ensure the quality of the writing of the standards:

According to § 5.11, the new Board and TEG are supported by the EFRAG Secretariat in all stages of their proceedings.

We would like to point out that drafting standards is a very demanding and new task for EFRAG, which until now has provided technical advice on standards drafted by the IASB. It is therefore crucial that EFRAG Secretariat be made up of people with experience in this field even if EFRAG will at least be able to build on the knowledge and expertise of the Global Reporting Initiative (GRI), following the cooperation agreement signed between EFRAG and GRI.

What actions have EFRAG taken or will EFRAG take to ensure that there are people in the Secretariat with the right skills to write standards? Though it is obvious that the PTF-ESRS members (and tomorrow TEG and Board members) have great experience and expertise in the field of non-financial reporting, the standard-setting work requires specific skills in order to make sure that the standards are properly drafted and will thus not require too frequent or too extensive maintenance work.

c) The objectives and content of the impact analyses to be conducted by EFRAG: According to § 5.31, EFRAG will provide its Technical Advice in the form of a proposal of fully prepared draft standards and/or amendments to ESRS complete with their bases for conclusions and impact analyses (including cost-benefit analysis and impacts on sustainability matters) and accompanied by the proposed digital guidance. From § 2.24, we understand that EFRAG will gain insight on the likely impacts of its Technical Advice through the exposure of proposals, and through consultation with stakeholders and field testing. We also understand, according to § 5.2 d), that undertaking fieldwork is a non-mandatory step in EFRAG Due Process Procedures for ESRS.

We therefore recommend clarifying the nature of the work that EFRAG will have to carry out to meet the CSRD's requirements in terms of impact analyses. It is essential that this work be precisely defined (in terms of objectives and content) in order to ensure its relevance and not to jeopardize the timetable for the adoption of the first set of standards.

3. In the long run, European due process procedures applied to the issuance of ESRS should be exemplary in order for the EU to be a credible actor in this field and thus to have a lasting influence on sustainability standard-setting.

Given the numerous initiatives underway to standardize non-financial information published by companies, the EU must succeed in demonstrating its ability to move forward quickly, but above all to produce standards that will be indisputable in the long term. An essential prerequisite is that the due process applied in Europe be at all times both transparent and robust.

In this regard, we would like to draw your attention on the following additional comments:

- a) We note that the current proposals seem to offer some kind of flexibility to the new Board in terms of due process. § 1.5 actually indicates that *“all the steps described in this document may not need to be applied mechanically or sequentially in all instances. In some circumstances, an accelerated due process may be appropriate whereby a core of necessary due process steps will be defined”*. In this regard, we note under Chapter 5 that some steps of the due process have been identified as mandatory whereas others are non-mandatory. Though we overall agree with the split that has been made under § 5.1 and § 5.2, we recommend clarifying what is meant by “accelerated due process” and in which circumstances such specific due process would be applicable. Can you confirm that in practice this would mean deciding not to undertake a non-mandatory step for a specific standard-setting project (as mentioned under § 3.10)? In such case we would agree with that.

- b) Furthermore, we reiterate that the comment period for EDs should be 120 days unless there is a duly justified exception (for instance, the call for comment deals with minor amendment to a standard).
- c) The role of the EFRAG Administrative Board is key in overseeing the due process of the new TEG and the new Board with the help of the DPC, especially in order to ensure that if the Board has decided to adopt an accelerated due process or to delegate some of its responsibilities to the TEG (as made possible according to § 5.13) adequate due process oversight has been provided by the DPC. However, since the DPC is composed of members from the Administrative Board, we suggest clarifying that the DPC will not have any specific powers and will only issue advisory opinions to the Administrative Board.
- d) Besides, we note that the new TEG may receive inputs from working groups, advisory panels and task forces. Such groups, their composition and their works should be made public as much as possible so that stakeholders have the most complete overview of how EFRAG's work is proceeding and can anticipate calls for comments.
- e) Finally, EFRAG should put available on its website its work plan and a precise progress report for each active project, as the IASB does for its own work plan.

Please do not hesitate to contact us should you want to discuss any aspect of our comment letter.

Yours sincerely,



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Head of Financial Reporting Advisory



Jean-Luc Barlet

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