

Mr. Jean-Paul Gauzès
President
EFRAG
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By mail: ESRSdueprocess@efrag.org

15 September 2021

Subject: Response to the EFRAG public consultation on ‘Due process procedures for EU sustainability reporting standard-setting’

Dear Mr Gauzès,

On behalf of the Deloitte¹ firms in the European Union (EU) and Deloitte Global, we are pleased to respond to the EFRAG consultation paper on ‘Due process procedures for EU sustainability reporting standard-setting’ (the “Consultation Paper”).

We are supportive of the proposals included in the Consultation Paper in general.

We would like to share some considerations before commenting in an Appendix to this letter in more detail on the proposed due process procedures set out in the Consultation Paper.

Importance of inclusiveness, and first sets of EU Sustainability Reporting Standards (ESRS)

As we indicated in our response of 6 November 2020 to your request for input on your ‘Ad personam mandate on Non-Financial Reporting Standard Setting’, we believe in inclusiveness for standard-setting. That is, we strongly support a due process that ensures that standard-setting is informed by the views of a broad and diverse range of stakeholders via an open consultation process that allows sufficient time for considered comments; that constituents are able to gain an understanding of the content and effect of the draft ESRS; and are afforded opportunities to share practical considerations about their impact and relevance, throughout the development period of those standards. Such due process is crucial to achieve workable and useful ESRS of quality, which enable the production of information that strikes the right balance between costs and benefits for preparers and users. The quality of the process may

¹ For more information, see the link to [Deloitte](#).

also contribute to the credibility of ESRS, allowing them to play a role for globally consistent sustainability reporting standards.

Many stakeholders will be interested in the development of ESRS by EFRAG, not only preparer companies and subsidiaries subject to the requirements of the proposed Corporate Sustainability Reporting Directive and their direct stakeholders, but also market and prudential regulators (within and outside the EU), other European Institutions, civil society, asset owners and fund managers, etc. The novelty and complexity of this level of sustainability reporting means that many stakeholders will be building their knowledge of the topics and their own reporting capacity in parallel to the standard development taking place at EFRAG. This is likely to present challenges for these stakeholders to grasp quickly and comprehensively the content and reporting implications of (in particular) the first sets of ESRS, which are expected to be developed within a constrained and ambitious timetable². We encourage EFRAG to use their normative consultation periods (e.g., 90-120 days [5.1(b)]) to allow stakeholders to provide informed and considered feedback on the ESRS exposure drafts.

For the quality of the standards, and the buy-in by stakeholders, this feedback period will be critical. For the first set of ESRS in particular, to give the maximum possible time to stakeholders to familiarise themselves with the topics being discussed, we welcome the recent approach adopted by the Project Task Force for ESRS (PTF-ESRS) of sharing some working documents, as illustrated by the release on 9 September of a 'Climate standard prototype' working paper. Allowing constituents access to some of the information made available to the PTF-ESRS and its supporting up-coming topical working groups, prior to the exposure draft phase of the ESRS, will allow stakeholders to build their knowledge and develop their thinking in parallel to the PTF-ESRS.

Organising the connectivity between sustainability reporting and financial reporting

It is not clear to us how the connectivity between the EFRAG Sustainability Reporting Board (SRB)/ Technical Expert Group (SR TEG) work on sustainability standards and the EFRAG Financial Reporting Board/Technical Expert Group work on financial reporting standards will be achieved. We recommend that the due process procedures address this point.

Clarifying the existence and use of consultative groups

We suggest specifying the role and remit of consultative groups (such as the EFRAG SR Consultative Forum mentioned in Appendix 2) and how they will be set up, given their key role in providing diverse stakeholder views and expertise.

² To be adopted by the Commission by 31 October 2022 under the proposal for a Corporate Sustainability Reporting Directive (CSRD)

Fostering convergence of sustainability reporting standards at global level

Considering the EU willingness to contribute to the convergence of sustainability reporting standards at global level, we believe that the work plan and project plans should specify how they will take account of global sustainability reporting standard development and contribute to convergence of sustainability reporting standards at global level.

Stakeholders should have clarity on when and how global standards will be considered, including transparency around the approach to and publication of the outcome of those considerations, so that stakeholders can understand the rationale for inclusion (or exclusion) of global standards in the work of EFRAG.

Clarifying the decision procedure for the Technical Advice

We understand that the EFRAG SRB rightly makes the final decision on the Technical Advice to be issued to the European Commission, as set out in principles 5.13 and 5.15. However, Appendix 2 appears to be inconsistent with this approach. We suggest that Appendix 2 be modified in line with paragraph 5.18.

If you have any questions or you would like to discuss these matters, please contact Laurence Rivat on +33 1 55 61 67 60 or David Barnes on +44 (0)20 7303 2888.

Yours sincerely,

David Barnes

Global Regulatory & Public Policy Leader



Laurence Rivat

EU Corporate Reporting Policy Leader



Appendix

Chapter 1: Objective

Point 1.5

While we understand that an agile and adaptable due process will be needed to meet urgent standard setting needs, we think that it is essential that an adequate public consultation process be followed in any event. We suggest clarifying what an ‘accelerated due process’ implies (both for development of proposals and public consultation periods), under what circumstances it could be followed, and the governance safeguards supporting that decision.

Chapter 2: Principles

Point 2.7

We understand that EFRAG SRB and TEG may need to hold certain discussions in private but meeting agendas should nevertheless be made publicly available on EFRAG’s website and technical discussions should always take place in public.

We also suggest that the working groups’ agendas should also be made publicly available, to allow stakeholders to understand what the working groups are focusing on. Given the tight schedule for preparation of the first sets of ESRS in particular, we would also suggest working groups’ working papers be shared publicly (and possibly the working groups’ meetings as well), to give stakeholders a head start in analysing the direction of travel and possible content of the exposure draft.

Point 2.10

Audio and video recordings of public sessions held by EFRAG SRB and TEG should in our view be kept available on EFRAG’s website for at least two years (if not more) after the relevant standard enters into force, rather than the one year suggested. These will be very useful sources of information for sustainability reporting preparers, users and assurance providers. These may contribute in the future in the consistent interpretation and implementation of the standards.

Point 2.16

We suggest that this point already specify minimum consultation periods, the circumstances under which shortened consultation periods may be used and the safeguards to be put in place when doing so, as well as the type of consultation activity that is to be carried out, including holding roundtables, focus groups and discussions with relevant groups.

Chapter 3: Due process oversight

Points 3.1 and 3.2

We think that creating the DPC (in charge of the oversight of the due process of the EFRAG SRB and EFRAG SR TEG) should be a requirement rather than simply a possibility for the EFRAG Administrative Board.

We also suggest specifying that the DPC reports to the EFRAG Administrative Board a summary of any matters raised about due process, the extent of stakeholder engagement and the areas in a proposed standard that are likely to be controversial.

Point 3.4

Given the critical function of the DPC in ensuring due process procedures are respected, it should normally operate on a consensus basis, or at least a qualified majority, not a simple majority basis. If no consensus is reached, the DPC should inform the EFRAG Administrative Board.

Point 3.7

It is unclear what the remit and role of consultative groups are in the due process procedures nor how these groups are set up. Given their potential key role in putting forward diverse stakeholder views and expertise, we suggest that their role and remit and how and when they would be set up should be specified.

Chapter 4: Agenda setting

We believe that this chapter should reflect how the work plan will (1) ensure connectivity between sustainability reporting and financial reporting and (2) take account of any global sustainability reporting standard development under the auspices of IFRSF and contribute to convergence of sustainability reporting standards at global level.

Stakeholders should have clarity on when and how global standards will be considered, including transparency around the approach to and publication of the outcome of those considerations, so that stakeholders can understand the rationale for inclusion (or exclusion) of global standards in the work of EFRAG.

Point 4.8

The process for post-implementation reviews needs clarification. We suggest that it be a systematic step of the ESRB, unless there is a specific decision not to undertake it, which would be agreed by the Administrative Board. In addition, as part of on-going monitoring of ESRs, the EFRAG SRB and EFRAG SR TEG should work with stakeholders or consultative groups to identify areas that need attention. Alternatively, the Commission could request that the EFRAG SRB start developing a post-implementation review at the designated time.

Chapter 5: Standard-setting

Point 5.5

We suggest specifying in (e) that EFRAG's submission of the technical advice to the European Commission is accompanied by a feedback statement (i.e. a statement explaining how feedback received from stakeholders has been considered and how EFRAG has reached its conclusions, as mentioned in 5.29 and 5.30).

Point 5.13

Regarding delegation of part of the work by the EFRAG SRB to EFRAG SR TEG, it is unclear what is meant by the EFRAG SRB determining "whether publication of draft or final documents should go through a process of approval, high-level clearance or delegation". In our view, the EFRAG SRB should be involved throughout the process, adopting decisions by consensus (or by qualified majority of two-thirds in case of failure to reach consensus, as set out on p. 20), in line with point 5.18 (see also comments below).

Points 5.15 and 5.16

We suggest providing more clarity on how a digital categorisation system for the tagging of the sustainability reporting will be developed (e.g. how will the EFRAG SR Board and EFRAG SR TEG develop technical guidance? Liaison with ESMA?). This appears to be a very challenging task which would need significant resources as well as rigorous oversight and due process.

Point 5.18

Under point 5.18, it is clear that the EFRAG SRB makes the final decision on the technical advice to be submitted to the European Commission, informing the EFRAG SR TEG as to why its recommendation was not followed or was amended, where applicable.

However, Appendix 2 (p.20) mentions that in case of a disagreement between the EFRAG SRB and EFRAG SR TEG on a proposed standard, the EFRAG SRB will submit the proposed standard to the European Commission accompanied by a reasoned opinion setting out why it considers that the standard does not meet the needs of EU legislation – we suggest that Appendix 2 be clarified in line with 5.18.

Point 5.31

We suggest that, where the Technical Advice to the European Commission has been approved by the EFRAG SRB, albeit without a consensus decision, the dissenting views of those not supporting the (qualified) majority view are explained.

The documentation of the dissenting opinions at the EFRAG SR TEG level would also contribute to good governance.

Appendix 2

We suggest specifying under what circumstances EFRAG SR TEG operates through a qualified majority rather than a simple majority (p.20).