

STRENGTHENING THE EUROPEAN CONTRIBUTION TO THE INTERNATIONAL STANDARD-SETTING PROCESS PROPOSALS FOR PUBLIC CONSULTATION

FEEDBACK STATEMENT ON COMMENTS RECEIVED

1. INTRODUCTION

In July 2008 EFRAG issued its public consultation document “Strengthening the European Contribution to the International Standard-Setting Process” for comment by 22 September 2008. EFRAG received 36 comment letters from a wide variety of geographical and professional backgrounds. A list of the comment letters received can be found in Appendix I; the split by type of constituency is as follows:

Accountancy Profession	10
Banking	7
NSS	6
Regulator	3
Insurance	2
Government agency	1
Preparer	5
User	2

This feedback statement addresses the main issues raised in the comment letters and indicates how they have been addressed in arriving at the enhanced EFRAG structure that is to be implemented. An overwhelming majority of the respondents welcomed the enhancement of EFRAG and its resources in order to strengthen the European contribution to the IASB standard setting process. There was also agreement that this strengthening should be based on the existing EFRAG structure rather than by establishing a new structure.

This feedback statement discusses the issues raised on the structure of the new EFRAG as set out in section 4 of the proposals for public consultation and should be read in conjunction with the paper setting out the enhanced governance, organisation and operating procedures of EFRAG. This statement does not make reference to individual respondents.

2. FEEDBACK STATEMENT

2.1 General

Complexity

A number of respondents referred to the overall complexity of the proposed structure of EFRAG, with overlapping membership and responsibilities among the various governance and management bodies. They believe that the proposed structure will provide significant challenges in terms of efficient operation. Concern was expressed that the complexity may increase bureaucracy and so impair transparency and effectiveness. Respondents accepted, however, that the proposals reflect a practical compromise between the various requests and views, rather than necessarily an optimal solution. The structure will be subject to regular formal review, involving public consultation (see below).

Regular public review

Several respondents emphasised the need for a regular public review of the structure and operations within an appropriate time frame. Such a public review had already been considered and will be initiated two years after the new structure is in place and operational and thereafter every five years or more frequently if the circumstances require it. The first review will assess the first experiences of the new arrangements, and will in particular consider i) the effectiveness of the arrangements in securing cooperation between EFRAG and National Standard Setters and ii) the overall governance of EFRAG. The review will evaluate the scope for enhancing further the effectiveness of EFRAG's governance, organisation structure and operating procedures, in particular seeking to simplify them where possible and to ensure appropriate stakeholder representation in the Supervisory Board, including the representation of users of financial reports.

Greater focus on SME matters

Some respondents requested greater focus on SMEs at all levels in the EFRAG structure. They pointed out that financial reporting by non-listed companies is an important issue in particular because of the diversity of the SME market (from very large to very small companies). They call for EFRAG to sponsor a standing committee or working group of experts on SME financial reporting issues.

EFRAG welcomes this and has invited SME organisations to become further involved in EFRAG. It continues to dedicate time to SME matters such as the proposed IFRS for Private Entities.

EFRAG TEG establishes working groups to support its work by getting advice from experts with specific expertise needed for a well defined issue of accounting. A special SME-focused working group will be created within the EFRAG structure to advise EFRAG TEG on issues in relation to non-listed companies.

Not a European Standard Setter

Several respondents emphasised that EFRAG is not and should not become a European Standard Setter. This position is totally consistent with the objectives of EFRAG. EFRAG has no desire to become a standard setter and strongly supports global standards.

2.2 General Assembly (GA) and Governance and Nominating Committee (GNC)

Membership

European organisations and financial contributions

It was proposed in the consultation paper that the EFRAG GA should continue to consist of representatives of the member organisations of EFRAG (the statutes and internal rules of EFRAG stipulate that voting rights of members in the GA are based on the level of their contribution to the base funding of EFRAG). Some respondents questioned this approach and the possible lack of independence in selection of the SB to which it could give rise, and felt it might prevent EFRAG from being perceived as acting in the public interest. It was also noted that in-kind contributions are not recognised in determining the level of membership contribution. Other respondents emphasised the importance of appropriate involvement of the European organisations that have an interest in financial reporting and saw the proposals as providing the minimum level of involvement acceptable to European organisations in return for their financial support. Various respondents underlined the need for EFRAG to more broadly represent the interests of all European financial reporting stakeholders and to keep its pan-European legitimacy.

Liaison with all stakeholder representative groups is a key element in the activities of EFRAG. It should also be noted that the same stakeholder groups that are represented by the European organisations that are members of EFRAG are also among the ultimate stakeholders in the National Standard Setters (NSS) and to a certain extent in National Funding Mechanisms (NFM), depending on the way in which the NFM for a particular country is organised. The membership of the GA will therefore continue to be limited to European organisations.

Membership of the GA will continue to be subject to a financial contribution. EFRAG emphasises that, as in the past, additional European organisations, in particular organisations representing users, are invited to become members of EFRAG.

The minimum contribution is 50.000 euros. The GA may, exceptionally, decide on a lower contribution from certain stakeholder organisations, in particular user organisations, subject to a minimum of contribution of 25.000 euros. The GA members seek constantly to maintain a fair balance between various stakeholder groups with regard to voting rights and responsibility for financial contributions.

National Funding Mechanisms (NFM)

Some respondents questioned why it was not proposed that NFM and NSS should become members of EFRAG membership when NFM are expected to provide a significant proportion of the EFRAG funding. They feel that EFRAG should be accountable to all providers of funding and that all providers of funding should be invited to be members of the GA.

Any further changes to the membership need to be considered very carefully in order not to create undue influence by certain Member States through a direct link with the funding of EFRAG. Moreover such a fundamental revision would be too early given that most of the Member States have not yet created a NFM for their country although they have been encouraged by the EC, the Council of Ministers and EFRAG to do so. A further complexity is that under its constitution, only legal persons may be members of EFRAG and many of the NFM are not currently legal persons. Future reviews of the structure of EFRAG could include a review of the future membership of the GA, in particular when the long-term funding arrangements have been fully implemented. However, experience should first be gained with the revised structure.

SME and user organisations

Several respondents called for increased involvement in EFRAG's governance by SME organisations and family-owned businesses organisations, cooperatives organisations and a wider involvement of user organisations. EFRAG will enhance its efforts to invite user and SME and other organisations with an interest in financial reporting to become members of EFRAG (see also section 2.1 More focus on SME matters).

Associate members

The consultation document introduced the possibility of an "associate member" category in order to attract a wider range of stakeholder organisations through a lower funding contribution. Such associate members would have no voting rights. There was little support for this proposal. Some were critical of the proposal that such members would not have voting rights as in their view this would mean that associate members would not have an effective opportunity to influence the development of EFRAG. Others requested clarification of what an "associate membership" may entail and criteria for admission of such new members to the GA.

Particularly in the light of the lack of support for the proposal by organisations that would be candidates for associate membership it was decided not to proceed with the proposal. All members of EFRAG will, therefore, continue to be full members.

Governance and Nominating Committee

In the proposed arrangements, the role of the GNC is to make recommendations to the GA on the appointment of SB members. The GA will appoint the SB members. The consultation document proposed that two thirds of the members of the GNC will be appointed from amongst GA members and one third from amongst NFM.

One respondent argued that SB members should be elected by the GA based on set criteria for SB membership. Another comment was that clarification is needed on appointments of the NFM representatives in the GNC. It was suggested that a Forum of NFM hosted by EFRAG should be created for this purpose. In addition, increased representation of NFM in the GNC was requested.

Whereas currently SB members are nominated by the member organisations of EFRAG and their appointment by the GA is a formality, under the EFRAG enhancement proposals nominations for membership of the SB will be sought via public advertisement and it will be open to anyone to nominate candidates. In practice the power of appointment to the SB will rest largely with the GNC as although the GA will be able to reject proposals of the GNC it will not be able to appoint someone who has not been nominated by the GNC.

In the light of the views expressed in the comment letters, the proportion of the GNC members appointed by NFM has been increased. The GNC will consist of seven members of which four will be appointed from among GA members and three from amongst NFM, in order to create a better balance between the European organisations' representatives and the NFM representatives. One consequence of the size of the GNC is that not all EFRAG members will be directly represented on the GNC.

The process for selecting the NFM members of the GNC has not been considered and thus not been addressed in the proposals. EFRAG already organises the Consultative Forum of Standard Setters (CFSS) and could in parallel facilitate an informal consultative forum for NFM as a process to coordinate the NFM in the various countries, one of the roles of which might be to identify possible NFM nominations for membership of the GNC. Another role of the informal consultative forum might be to identify possible candidates for the SB. Although EFRAG could facilitate the setting up of such a forum, the forum, being an informal process, would set its own agenda and the NFM would decide themselves on its procedures.

2.3 Supervisory Board (SB) and its Committees

Composition of the SB

The consultative document proposed that the SB should consist of high-level persons with an appropriate balance of professional backgrounds who will commit to act in the European public interest independent of their professional or sector affiliation. It was proposed that the SB should consist of 17 members (five preparers, one SMEs, four users, three accountants and four public policy members) and one observer (EC). The size and composition of the SB would be evaluated by the GA after a two-year period.

Some respondents felt that the allocation based on backgrounds was unbalanced. Some felt that the balance was too heavily weighted towards preparers and too little weighted towards users, with the overall balance excessively weighted towards those who create and check information for the market and insufficiently weighted towards those who rely upon that information to assess the performance of management. In order to guarantee a minimum representation of users the establishment of a due process that would make users of financial reports a compulsory percentage of SB or other committees was also suggested in this respect. Others felt that insufficient seats on the SB were proposed for those with an accountancy profession or SME background.

It was also suggested that the geographical component should not be ignored. Some expressed the view that representatives of NFM should be members of the SB. One respondent questioned why NSS could not be members of the SB.

In the light of the conflicting views on this matter expressed by respondents, it was decided on balance to proceed with the SB membership structure as proposed. The appropriateness of this structure will be evaluated by the GNC and the GA in the light of experience after a period of two years as part of the wider review of the structure and operations of EFRAG. The GNC will in particular use its best endeavours to seek candidates for the SB from the user community in order to fill the four user seats on the SB.

CESR

The only observer seat on the SB proposed in the consultative document was that of the EC, as at present. In its response, however, CESR requested an observer seat on the SB for itself in view of the importance it attaches to the proper functioning of the standard setting and endorsement process in Europe. CESR also argued that EFRAG should be accountable to the European enforcers and securities regulators.

In fact, CESR was offered an observer seat on EFRAG when EFRAG was first established but declined the offer. CESR will therefore be offered an observer seat on the SB (CESR cannot in any event be a member of the SB since SB members act in personal capacity and not as representatives of organisations). Representatives of regulators and other enforcer representatives will be able to become involved in EFRAG as they would qualify for nomination as public policy members of the SB.

Size

It was proposed that the SB should consist of 17 members. Some respondents were of the opinion that this is too large and that the SB will find it difficult to operate on the basis of consensus.

It was decided to proceed with the 17-member SB as proposed and that the appropriateness of this size of SB should be evaluated after a period of two years by the GNC and the GA as described above.

Public Policy members and other forms of oversight and accountability

The four public policy members of the SB proposed in the consultative document could be drawn from public authorities or other relevant public bodies as well as from academia. Their role will be to ensure that appropriate account is taken of public policy in the deliberations and decisions of the SB. Some questioned the benefit of the introduction of public policy members. One respondent stressed that public policy members should have a sufficient experience of European affairs in order to play the role of European “ambassadors” of EFRAG. Although representatives of NFM can be appointed as SB members, one respondent was concerned that the opportunity for any individual NFM to be appointed to the SB is very limited.

The background of public policy members is different compared to the other SB members but the duties of the public policy members are no different from those of other SB members. All SB members need to be committed to act in the European public interest independent of their professional or sector affiliation. The background of public policy members gives them a good understanding of public policy aspects and puts them in a position to contribute to the SB by ensuring that appropriate account is taken of the public policy aspects. The public policy members will be nominated by the EC in liaison with the GNC of the GA.

Monitoring Group

A suggestion made by one respondent was to introduce a Monitoring Group approach, similar in concept to the monitoring exercised by the Public Interest Oversight Board over the International Federation of Accountants (IFAC) and the monitoring group proposed by the International Accounting Standards Committee Foundation (IASCF), to bring the public interest element into the structure. EFRAG believes, however, that the introduction of public policy members should ensure that appropriate consideration is given by the SB to public policy aspects and that this will in turn increase the accountability of the SB to the GA on such aspects. The proposed structure of EFRAG is already somewhat complex and it is desirable to avoid creating additional complexity by including additional bodies or layers in the EFRAG structure if at all possible. The review of EFRAG's structure and operations after two years of the new arrangements should evaluate whether, with the contribution of the public policy members of the SB, EFRAG has given sufficient consideration to the public interest or whether different oversight structures such as a Monitoring Group need to be considered. This may in addition include a review of the involvement of regulators and enforcers in EFRAG and whether it is appropriate for their involvement to be enhanced.

2.4 Planning and Resource Committee (PRC)

Composition

The consultative document proposed that the PRC will be composed of four senior NSS representatives (normally the Chairs of the NSS concerned), two members of the SB, two additional members and the TEG Chair. It was proposed that the Chair of the PRC would be the Vice Chair of the SB.

One respondent noted that participation in the PRC should be a key priority for a NSS and emphasised that only Chairs of NSS should be members of the PRC unless the NSS is represented by someone having full authority to make agenda and resource allocation decisions on behalf of the NSS. Another respondent expressed concern that combining the task of Chair of the PRC and Vice Chair of the SB would be too demanding and would make it difficult to find sufficiently high level candidates willing to fulfil such a role.

The consultative document stated that the four senior NSS representatives who are members of the PRC should normally be the Chairs of the NSS. The document setting out the revised arrangements makes it clear that if an NSS is represented on the PRC by another senior person such as the Vice-Chair, he must be able to commit the NSS concerned. As far as the chairmanship of the PRC is concerned, the Chair of the PRC will need to report on the work of the PRC at every SB meeting. It is therefore appropriate for the Chair of the PRC to be selected from amongst the SB members but he does not need to be the Vice Chair of the SB and the proposed arrangements have therefore been amended to reflect this.

Involvement of SB members

The consultative document proposes that the PRC would include two SB members and two additional members (who have other professional backgrounds or alternatively could be SB members). Some respondents questioned the involvement of SB members on the grounds that this would create a conflict of interest (SB members would monitor their own performance as PRC members and therefore would not be able to carry out their oversight function objectively). They argued that a better governance model would be based on separation of oversight and operations.

On balance and having regard to the size of the SB, EFRAG has decided not to change the proposal in this regard. The involvement of SB members in the PRC will facilitate reporting to the SB, thereby enabling the SB to exercise closer oversight of the PRC, and will assist in finding the appropriate balance in financial reporting backgrounds.

Commitment of resources

The consultative document states that NSS will provide technical resources for the pro-active work identified by the PRC. Some respondents stated that the extent and terms of the commitments required from NSS should be clearly defined in the EFRAG internal rules or in Memoranda of Understanding (MoU) between NSS and EFRAG. They suggested that the nature of the pooling of resources envisaged needed to be made more explicit.

A MoU with each NSS involved in the PRC will be negotiated by EFRAG and approved by the SB, and the MoU will be a condition for membership of the PRC. The MoU will specify the commitments of the NSS, including the extent of the staff resources the NSS will contribute to EFRAG in the form of pooling of resources and may also address other issues in relation to the pro-active work.

Pro-active Projects and technical papers

All technical papers, including the pro-active papers, will need to be approved by the TEG for issue by it and are subject to the EFRAG public consultation process. Several comments were received in relation to the pro-active projects to be undertaken. One respondent observed that common European projects should be led by EFRAG and not by individual NSS. However, another respondent felt that pro-active projects should not automatically be led by EFRAG but either by EFRAG or one of the NSS, depending on who is most qualified in relation to the particular project or who has the issue already on its agenda and has the appropriate resources available.

In EFRAG's view all pro-active projects should be undertaken under the umbrella of EFRAG TEG in order to ensure that all papers are prepared, reviewed and approved in accordance with the appropriate EFRAG due process as a basis for publication by EFRAG. Details of the pro-active work could be laid down in MoU between EFRAG and NSS as discussed above. This might for example include whether a NSS is allowed to issue a paper when EFRAG for whatever reasons decides not to publish the paper.

Involvement of other NSS in PRC

Some respondents questioned how other NSS, beyond the four NSS involved in the PRC, will be able to express their views in an efficient manner. They expressed doubt that the CFSS would be the appropriate forum in this respect.

In implementing the enhanced EFRAG arrangements, an informal Coordination Group, consisting of a wider range of NSS that are prepared to contribute resources and other input into the pro-active work of EFRAG, will be set up. The Coordination Group will support the PRC as an informal sounding board to advise on potential pro-active projects for the PRC agenda, with the aim of establishing an informal process for a wider coordination of the activities with the relevant NSS beyond the four NSS involved in the PRC. The Coordination Group would meet on an ad-hoc basis when needed. In the review of EFRAG's structure and operations that will take place after two years, the effectiveness of this mechanism will be assessed and, if appropriate, consideration given to whether a more formal structure is required.

2.5 Technical Expert Group (TEG)

Composition

No major changes were proposed in the consultative document to the work or structure of the TEG. The TEG has nine to twelve voting members together with up to three non-voting members who are normally the Chairs of the NSS concerned. In addition there are observers from the IASB, EC and CESR. Some respondents asked for four non-voting seats for NSS, by analogy with the PRC. It was also observed that it should not necessarily have to be the Chairs of the NSS who are appointed to the TEG, since the NSS Chair might also be a PRC member and the two roles taken together could prove burdensome for the same individual.

EFRAG believes that the TEG should remain limited in size and therefore it was decided not to increase the number of non-voting members. It is noted that NSS have several means of getting their voice heard, including commenting on EFRAG draft letters and draft papers, participating in the CFSS meetings, becoming involved in the pro-active work with appropriate resources and in the Coordination Group that is to be established (see section 2.4). In addition, NSS can also be directly involved in the TEG in the capacity of voting member if a NSS representative is nominated as TEG member.

EFRAG accepts that it might be too demanding to expect Chairs of NSS to participate both in TEG and PRC and attend all meetings. Ideally the Chairs of the NSS should be involved in the TEG but this can also be another senior person such as the Vice-Chair provided that he is able to commit the NSS.

Consultative Forum of NSS (CFSS)

Some NSS expressed concern about the involvement in EFRAG of the other NSS that will not participate in the PRC. The quarterly CFSS meetings between TEG and the NSS, to which all bodies in Europe are invited, will continue. In addition, the Coordination Group (described in section 2.4 above) will be created.

2.6 Consultative Group

The establishment of a high level Consultative Group was welcomed by the respondents.

2.7 Budget and funding

The proposed funding of EFRAG will consist of (1) the base funding of European organisations, (2) funding by NFM, and (3) EC funding (up to a maximum of 50% of the total EFRAG budget). Several respondents welcomed the decision by the EC to provide public funding. In addition, observations were made on the funding by the NFM, notably that the funding should be more evenly spread over the Member States. Respondents urged the EC to encourage the creation of NFM in Member States where such bodies are not yet in place. Some indicated as well that the budget and funding should include contributions in kind in a more transparent way. Concern was also expressed that business contributes directly or indirectly to both the base funding and the funding by the NFM as well as directly to the IASB. However, business is not the only stakeholder group to which this applies. One respondent suggested that the increase in EFRAG resources would be better achieved by seconding human resources rather than by providing financial contributions.

There was general support for the proposed three-tier approach to funding. The current EFRAG SB has enhanced its efforts to push for the development of NFMs in certain countries. A more detailed budget explanation will be provided in a separate document to parties that are expected to contribute to the funding and will cover also in more detail the contributions in kind.

APPENDIX I - COMMENT LETTERS RECEIVED

CL01 - Enhancement - FRC	<i>Regulator</i>
CL02 - Enhancement - FREUDENBERG&CO	<i>Preparer</i>
CL03 - Enhancement - LIBA	<i>Banking</i>
CL04 - Enhancement - FEE	<i>Accountancy Profession</i>
CL05 - Enhancement - BBA	<i>Banking</i>
CL06 - Enhancement - EY	<i>Accountancy Profession</i>
CL07 - Enhancement - WSBI ESBG	<i>Banking</i>
CL08 - Enhancement - PWC	<i>Accountancy Profession</i>
CL09 - Enhancement - DGRV	<i>Accountancy Profession</i>
CL10 - Enhancement - DELOITTE	<i>Accountancy Profession</i>
CL11 - Enhancement - AGPSB VÖB	<i>Banking</i>
CL12 - Enhancement - OIC	<i>NSS</i>
CL13 - Enhancement - FSR	<i>NSS</i>
CL14 - Enhancement - ABI	<i>Insurance</i>
CL15 - Enhancement - EBF FBE	<i>Banking</i>
CL16 - Enhancement - CESR	<i>Regulator</i>
CL17 - Enhancement - EFAA	<i>Accountancy Profession</i>
CL18 - Enhancement - ACTEO AFEP MEDEF	<i>Preparer</i>
CL19 - Enhancement - CFA Institute	<i>User</i>
CL20 - Enhancement - KPMG	<i>Accountancy Profession</i>
CL21 - Enhancement - Italian MinEFin	<i>Government agency</i>
CL22 - Enhancement - GASB	<i>NSS</i>
CL23 - Enhancement - EACB	<i>Banking</i>
CL24 - Enhancement - ACCA	<i>Accountancy Profession</i>
CL25 - Enhancement - CEA	<i>Insurance</i>
CL26 - Enhancement - FBF	<i>Banking</i>
CL27 - Enhancement - CNCC CSOEC	<i>Accountancy Profession</i>
CL28 - Enhancement - BUSINESSEUROPE	<i>Preparer</i>
CL29 - Enhancement - SFRB	<i>NSS</i>
CL30 - Enhancement - NASB	<i>NSS</i>
CL31 - Enhancement - ICAEW	<i>Accountancy Profession</i>
CL32 - Enhancement - CNC	<i>NSS</i>
CL33 - Enhancement - EUROPEAN ISSUERS	<i>Preparer</i>
CL34 - Enhancement - AGAPSM	<i>Regulator</i>
CL35 - Enhancement - CBI	<i>Preparer</i>
CL36 - Enhancement - EFFAS	<i>User</i>