

**To the attention of Mr Jean-Paul  
Gauzès, EFRAG Board President**

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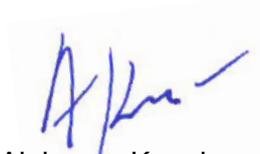
**Questionnaire on Governance & Financing of EFRAG**  
**Ad personam mandate on Non-Financial Reporting Standard Setting**  
(Ref. : GT4 LC 001/20)

Dear President Gauzès,  
Dear Jean-Paul,

With reference to your e-mail of October 5<sup>th</sup>, 2020, in which you invited CNC Luxembourg to contribute its views and input on possible changes to the governance and finance structure of EFRAG as a result of the potential addition of NFR standard-setting activities, we are pleased to provide you with our answers to your questionnaire.

We thank you for the opportunity to comment and remain at your service for any questions or comments you may have.

Yours sincerely,



Alphonse Kugeler  
Président

## QUESTIONNAIRE

### 1. Governance – Structure and due process

- 1.1 Standards need to be developed in the public interest and no individual category of stakeholder may exercise undue influence: How can it be best ensured that standards are developed based on **an inclusive and transparent due process**? What should be the characteristics of such a due process?

CNC LU considers that the very nature of EFRAG as a public-private partnership allowing for a mixed representation of stakeholders with different interests and perspectives has been in the past (financial reporting) and will remain in the future (non-financial reporting) a key foundation that enables to achieve public interest often through consensus.

While it is true that certain categories of stakeholders may exercise greater influence due in particular to more extensive expertise and/or more substantial resources (human and financial), it will be the role of the independent oversight bodies of EFRAG (to be potentially created in the new governance structure as an “independent monitoring board”) to ensure that there is sufficient right balance between stakeholders and that, in case of substantial imbalance, corrective measures and actions can immediately be taken.

As far as the due process is concerned, EFRAG has accumulated significant experience over the past 20 years in terms of due process, consultations of stakeholders, outreach events, post implementation reviews and transparency to the public. In this regard, EFRAG is obviously not starting from scratch and could replicate to a large extent the due process used for its financial reporting pillar in the area of non-financial reporting.

Now, one key difference between EFRAG’s role as a technical advisor of the EU Commission for IFRS endorsement and as EU standard setter for non-financial reporting is that while EFRAG is in a position to advise the EU Commission for IFRS endorsement since EFRAG does not develop these standards (the IASB does), EFRAG will not be in a position to recommend to the EU Commission the adoption of the NFR standards since EFRAG is acting in a standard setting capacity and will lack the independence to critically assess the NFR standards it develops.

A new endorsement process will therefore have to be set up. While it can be expected that the final vote or endorsement will take place in either a comitology group (e.g. the ARC, Accounting Regulatory Committee) or rather– considering the full implementation of the Treaty of Lisbon – in an expert group (e.g. the ADC, Accounting Directive Committee through delegated acts in accordance with article 290 of the TFEU), the question arises as to the author of the technical advice. Technically, the author of the NFR endorsement advice could probably be the EU Commission services. It could also be a newly created committee, similar to the old SARG (Standards advice review group) which was – prior to its dissolution – in charge of assessing the endorsement advices issued by EFRAG.

- 1.2 **Relevant European institutions and agencies** shall be invited to be fully involved in the development of future standards, including the European Securities and Markets Authority (ESMA): How can these European Institutions and agencies be involved in the development of future standards and in the standard setter? Should there be a particular role for ESMA?

Consistent with the public-private partnership nature of EFRAG, CNC LU is of the view that it is of key importance to associate the European institutions and agencies in the NFR standard setting process while keeping in mind that no single stakeholder or category of stakeholders should be able to exercise undue influence.

In this regard, CNC LU is of the opinion that ESAs traditionally associated to financial reporting i.e. ESMA, EBA, EIOPA, ECB should also be involved in non-financial reporting within the EFRAG structure. Ideally, such involvement would be a full involvement rather than a limited involvement in an observer capacity. In other words, the ESAs should be encouraged to actively participate in the NFR standard setting activities within EFRAG and possibly to become full members of the EFRAG General Assembly, adding a third chapter “*European institutions / agencies*” in addition to the existing two chapters i.e. “*European Stakeholder organisations*” and “*National organisations*”.

As far as the role of ESMA is concerned, CNC LU considers that it is not necessary to give a special status or particular role to ESMA distinct from that of the other EU institutions / agencies, neither to anyone of the other ESAs. ESMA will naturally take a prominent role in the NFR standard setting process within EFRAG due to its strong expertise in NFR acquired in particular through to its enforcement activities.

In line with its answers to the EU public consultation, CNC LU is of the view that other EU institutions / agencies should also be involved in the NFR standard setting due to their special focus and expertise in this subject matter (e.g. European Environment Agency (EEA), Platform on sustainable finance).

- 1.3 To permit **relevant national public authorities** to provide input about whether any future standards are responsive to the public interest, how can these authorities be included in the governance of the non-financial reporting pillar? Which authorities would be the most relevant and how should they be involved?

Consistent with its answers to the EU public consultation, CNC LU is of the view that relevant national public authorities should be able to participate to the NFR standard setting process within EFRAG. Such relevant national public authorities could include a representation of accounting national standard setters but also national environment agencies and potentially other national public authorities such as national NFR standard setters if there are any in some of the EU Member States.

A special forum could be dedicated to the national public authorities in a manner that is similar to the “Consultative Forum of Standard Setters (CFSS)” that currently exists within EFRAG for the financial reporting pillar.

- 1.4 Should private sector and civil society representatives be involved in the standard setting work? If so, what would be suitable options for doing so in a balanced way? Which stakeholders should be involved? Should the standard setting pillar be a **public-private partnership** like in the financial reporting pillar?

Again, consistent with its answers to the EU public consultation, CNC LU is of the opinion that all stakeholders’ groups having an interest in non-financial information should be offered the possibility to participate somehow to the NFR standard setting process within EFRAG.

Such stakeholders could include sustainability rating agencies, providers of ESG-related indices or benchmarks, Non-Governmental Organisations active in the areas covered by the NFRD (environment, social, human rights, bribery & corruption, etc.), Representatives of employees’ trade unions, Academics with a focus on NFR.

It is absolutely clear to CNC LU that the NFR standard setting pillar should be a public-private partnership like the Financial reporting pillar as EFRAG is one single organisation with one single philosophy.

- 1.5 If there were to be **SME** standards derived from the future EU non-financial reporting standards, how should the SME angle be addressed in the governance and in the standard setting process?

In the event where the revised NFR directive (or the new NFR regulation) provides for an SME simplified NFR standard to be developed by EFRAG then it would be of primary importance to replicate for the SME's the general approach applied elsewhere by EFRAG i.e. a multi-stakeholder approach (preparers, auditors, users) and a public-private partnership.

In practice this means that representatives of SME's (e.g. SME Europe) should be associated to the development of the SME simplified standard either directly within the NFR standard setting committee or within a dedicated working group charged with developing the standards. Similarly, accountants and auditors of SME should also be associated (e.g. EFAA) and users of SME NFR reports as well (e.g. credit rating agencies, governmental agencies, etc.).

At a minimum, these stakeholders should be heavily involved in the development of the NFR standard for SME either within the EFRAG NFR standard setting arm or within an EFRAG working group dedicated to the SME standard.

Now, from a governance viewpoint, nothing should prevent SME stakeholders (e.g. SME Europe, EFAA) to become full member organisations of EFRAG General Assembly, to contribute to EFRAG's activities (financial reporting and non-financial reporting) and to have potentially a representative appointed to the EFRAG Board.

- 1.6 Which **governance structure** would you foresee for the EFRAG EU non-financial reporting standard setting pillar? How would this fit in the overall EFRAG governance structure? What relation would there be with the financial reporting pillar, if any?

CNC LU is aware that EFRAG has always been and will always be a hybrid organisation, dedicated to the public interest but organised as a private organization (Belgian AISBL), funded partly by its private member organisations and partly by EU public funding, overseen and managed by its statutory bodies (general assembly, board, etc.) but with a significant influence of EU bodies (e.g. appointment of the EFRAG Board President by the EFRAG GA based on the recommendation of the EU Commission after consultation of EU Parliament and Council).

Now, CNC LU considers that it is also important to take in due consideration the fact that EFRAG is a single legal entity organised as an AISBL (international NFP private organisation). As such, it is of primary importance and legal relevance that all of EFRAG activities have to be ultimately carried out under the responsibility of the EFRAG Board. In other words, the EFRAG Board should be responsible for both the financial reporting activities (primarily the IFRS endorsement advice work) and the non-financial reporting activities (primarily the development of EU NFR standards based on existing international frameworks and standards). By having an EFRAG Board ultimately responsible for the two key pillars of EFRAG's activities, **co-ordination and connectivity between financial reporting and non-financial reporting** will be made much easier which is essential.

The EFRAG Board will continue to carry out its activities under the supervision of the EFRAG General Assembly. The composition of the EFRAG General Assembly would be ideally extended to include in addition to the two existing chapters (EU stakeholders organisations and National organisations) a third chapter for European supervisory authorities (including ESMA) and other EU agencies (e.g. EEA). If it is not possible for these authorities or agencies to become "full members" of the EFRAG GA, CNC LU is of the opinion that a solution should be found mid-way, for example by creating a special status for them within the general assembly (e.g. "associated membership" or "institutional membership") rather than having them only as "observers".

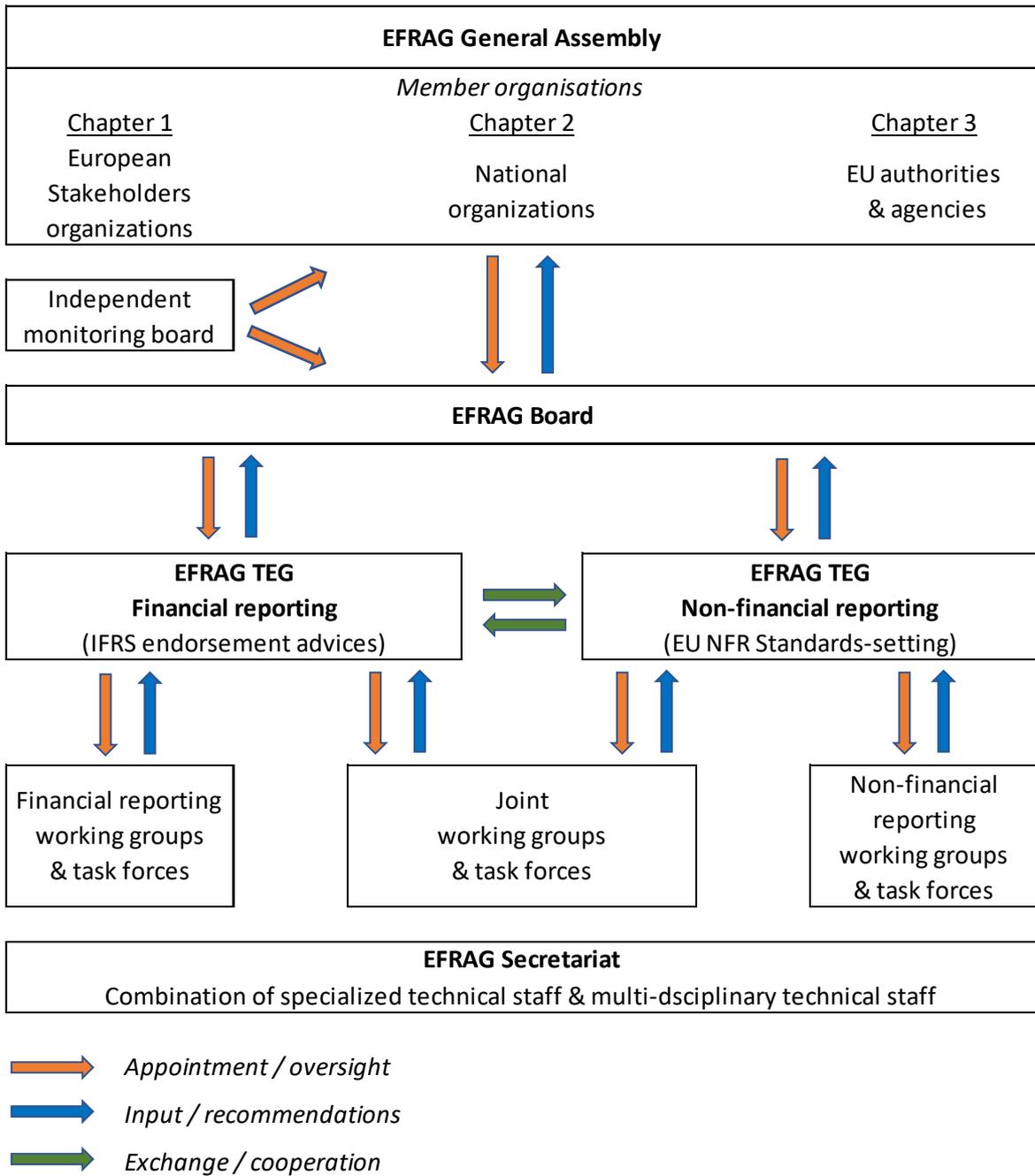
These authorities and agencies should indeed have their say – but no undue influence – in taking part in all EFRAG’s activities from the determination of EFRAG strategy and priorities, to funding and budgeting, nominations as well as technical work.

In addition, the membership to the chapter 1 (EU stakeholders organisations) and chapter 2 (National organisations) should be extended to organisations that have a direct interest in EFRAG’s expanded activities such as SME Europe or EFAA (European Stakeholders organisations).

Considering the above, the composition of the EFRAG Board should obviously be adjusted. While it is not possible for each member organisation to have a Board seat, CNC LU considers that there should be ideally some type of periodic rotation within each of the 3 chapters to allow representation within the EFRAG Board of all member organisation over time (rather than simultaneously).

Finally, as far as the NFR standard setting pillar is concerned, CNC LU is of the view that it should be structured in a way that is similar to the financial reporting pillar. In other words, there would be a technical expert group (TEG) in charge of financial reporting and a technical expert group (TEG) in charge of non-financial reporting both being overseen by the EFRAG Board. Both TEG’s would have the possibility to create working groups and task forces that would be assigned special projects and tasks (e.g. NFR standard for SMEs) and would directly report to them. Both TEG’s would operate under the leadership of a chair(woman/man) that would be part of EFRAG management team & secretariat.

**EFRAG, AISBL - REVISED STRUCTURE**



## **2. Governance – Cooperation with standard setters and other initiatives**

2.1 Any future possible EU non-financial reporting standards must be built on **existing reporting standards and frameworks** to the greatest possible extent:

- How can the relevant existing standard-setting organisations be closely associated in future standardisation work? How would you see cooperation and involvement?

Considering that the future EU NFR standards will necessarily (EU Commission's mandate) be based on existing international frameworks and standards, it is key to build cooperation and allow some type of involvement.

- Cooperation between EFRAG and NFR standard-setting organisations could take a variety of forms including informal meetings at management and technical staff levels. Now if the objective is to structure the cooperation, early participation of EFRAG in the standard setting agenda and projects of the existing standard-setting organisations could be useful. Also EFRAG and the existing standard-setting organisations could hold periodically joint meetings at all levels (Board, TEG, Working groups, Management, Technical staff). EFRAG and the existing standard-setting organisations could also work on joint technical projects with the aim of achieving both high relevance and close convergence.
- Involvement of existing standard-setting organisations within EFRAG could take place within an advisory committee or forum (similar to CFSS) where existing standard-setting organisations would be informed periodically of EFRAG NFR's activities, agenda and projects and would have the opportunity to comment and contribute.
- More broadly, how should cooperation with existing public and/or private initiatives producing international standards and framework be established, to ensure that any future non-financial reporting standards applying in the EU build to the greatest extent possible on existing standards and frameworks?

See above.

- How can the EU non-financial reporting standard setting have a global impact?

CNC LU is of the view that the primary objective for the EU should be to develop (or import or adopt) high quality NFR standards that fits the specificities and uniqueness of the EU legislative framework.

While it is important for the EU to be ambitious and to have a leading role in the fight against climate change and in the fight for energy transition to achieve a more sustainable future, CNC LU does not necessarily believe that the EU should strive to make its EU NFR standards the worldwide reference to be applied in other regions of the globe. This may of course happen over time because of the high quality and relevance of the EU NFR standards and of the EU's earlier political embracement of the need for adequate NFR disclosures.

2.2 How to establish an appropriate **coordination between the financial and non-financial reporting** so as to ensure that financial and non-financial reporting provide an integrated view of the performance, position, development and impacts of reporting companies?

As evidenced in the proposed revised structure for EFRAG (see answer to question 1.4), the coordination, connectivity and integration between the financial and non-financial reporting pillars would be ensured through the following:

- an oversight of the EFRAG Board over both the financial reporting and the non-financial reporting pillars;
- a revised composition of the EFRAG General Assembly and of the EFRAG Board that would reflect the dual nature of EFRAG's activities;
- exchange and cooperation between the EFRAG TEG dedicated to financial reporting and the EFRAG TEG dedicated to non-financial reporting;
- joint working groups and task forces;
- combination of specialized & multi-disciplinary technical staff within EFRAG Secretariat.

### 3. *Possible changes to finance of EFRAG*

3.1 What ideas do you have for financing of the non-financial reporting pillar? Should the financing reflect the public-private partnership?

Again, EFRAG AISBL is one single legal entity and – if the revised directive or new regulation as adopted by the EU co-legislators follows the EU Commission's proposal – EFRAG will have two distinct yet connected activities i.e. financial reporting (endorsement advice) and non-financial reporting (NFR standard-setting). As per point 1.4., CNC LU considers that this extension of scope should lead to an expansion of membership within the EFRAG General Assembly. As it is currently the case, EFRAG GA membership implies financial contributions by member organisations.

Member organisations regardless of their primary focus (financial reporting or non-financial reporting) should - in principle – contribute financially to EFRAG. Besides and considering the public interest dimension of EFRAG's activities, EU public funding should remain a key component of EFRAG's financing. CNC LU is therefore of the view that EFRAG financing should continue to reflect its public-private nature.

Now, CNC LU understands the complexities relating to finding a sustainable financing structure for EFRAG. However, CNC LU considers that too much time and resources are currently being spent on this issue. It is clear that an acceptable solution should be found for all, probably mid-way between a full "pay-to-play" system and an imbalanced solution that would potentially allow for excessive "free-riding".

To achieve sustainable funding, EFRAG needs clarity and visibility.

As far as clarity is concerned, it is important to determine a combination of objective factors that would allow to determine the annual contribution payable by member organisations. Various factors have been discussed in the past such as the countries' GDP, the countries' population or the size of the countries' capital markets. While those criteria may not be the right ones, it is important to agree on criterion that would be applicable to all member organisations or that would apply at least consistently within a chapter (European Stakeholders organisations, National organisations, EU authorities & agencies). To the extent possible, all member organisations should contribute financially to EFRAG. If some organisations can not contribute financially because of lack of resources or because of statutes, then a special category of membership could be created (e.g. "associated membership", "institutional membership").

Regarding, the EU public funding, it has been repeatedly noted that the current system based on a proportion of actual costs incurred by EFRAG should be changed as it is not suitable.

As far as visibility is concerned, it seems also important that member organisations actually commit for a fixed annual contribution over a reasonable period of at least 3 years. Without this 3-year minimum commitment, the issue of financing will keep coming back year after year which is detrimental to EFRAG. Now, CNC is aware that most member organisations operate on an annual budget and are themselves dependent upon private and public funding attributed to them. However, CNC is of the opinion that there should be at least a “gentlemen agreement” between member organisations and EFRAG whereby the member organisations would agree on a fixed contributions for a minimum period of 3 years and would agree not to renegotiate or to unilaterally decrease their contribution during this period.

**4. Do you have any other comments you want to share?**

At this stage, CNC LU does not have any other comments to share.

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