

EFRAG Administrative Board

Due Process for Set 2 and Lessons Learned form Set 1

Objective

- 1 The objectives of the session are
 - (a) To discuss the lessons learned from the application of the due process to Set 1 and how identified improvements for Set 2 have been implemented (Part 1 of the paper); and
 - (b) To discuss and approve the proposed consultation periods for Set 2 (Part 2 of the Paper)

Background

- 2 At its 9 December and 25 January meetings, the EFRAG Administrative Board Due Process Committee (EFRAG DPC) discussed possible improvements to the application of the due process procedures arising from the experience with Set 1 and made a number of recommendations.
 - (a) The first part of this paper discusses how the recommendations were implemented.
 - (b) The second part considers the specific question of the consultation of Set 2 and follows up on the previous discussions at the EFRAG Administrative Board and the EFRAG DPC in 2022. The final recommendation of the EFRAG DPC on the matter is contained in paragraphs 46 and following.

Part 1 - Lessons learned from the application of the due process to Set 1 and identified improvements for Set 2. Item 1

Timeliness of schedule of meetings

Issue at stake

- 3 Due to the timeline constraints and pressure and longer than anticipated discussions, a lot of meetings in 2022 had to be scheduled at the last moment and were only announced to the public shortly before the meeting date.

EFRAG DPC discussion and recommendation

- 4 The EFRAG DPC considered that timeliness of the announcements of EFRAG's public meetings and predictability of its upcoming activities for the general public and stakeholders are considered essential.
- 5 Defining and clearly and regularly communicating on EFRAG's work plan and activities, including a calendar for planned discussions, would help achieve that objective.

Actions to address the issue

- 6 In December 2022, EFRAG established a schedule of all the EFRAG SR TEG and EFRAG SRB meetings until March 2023 which was published into the public agenda on the website.
- 7 The running orders to the different meetings are publicly announced as soon as available (without waiting for the meeting agenda papers) and uploaded generally at least a week before the meeting. A reminder is sent in case of a long period between the meeting announcement and the upload of the meeting agenda papers indicated that all the papers are available.
- 8 It has to be noted that currently, the running orders uploaded to the public website only provide information on the topics discussed in open sessions. Unlike the pdf agenda made available to members, the running order does not contain a depiction of the objective of the sessions but only present the name of the topics, the start and end time and the presenter names and the links to the meeting papers. The pdf agenda also includes a reminder of the forthcoming meetings scheduled for the next month. Three options were considered going forward:
 - (a) Continue current practice to only upload to the public website the running order for open sessions; or
 - (b) Consider also uploading the pdf agenda, as a meeting paper, with only the topics covered at open sessions; or
 - (c) Consider also uploading the complete pdf agenda, as a meeting paper, with the list of topics covered at both closed and open sessions.
- 9 At their 25 January meeting, members of the EFRAG DPC discussed the above options and supported the publication of the full agenda (option c).
- 10 Further improvements could be considered in the future as EFRAG's Internal Rules¹ provide that meetings of the EFRAG SRB are held 'in accordance with a schedule agreed a year in advance.'
- 11 Consistent with the above, the EFRAG SRB discussed possible improvements in that regard at its 27 January meeting. It was suggested in particular that the EFRAG SRB and EFRAG SR TEG could:
 - (a) identify and plan in advance recurring meetings based on a fixed monthly pattern (e.g. every first Thursday of the month) with additional meetings planned on an as-needed basis and announced as soon as possible.
 - (b) Publish the full agenda (covering both open and closed sessions) to the public meeting papers.
 - (c) Include as a fixed agenda item the summary of the discussions at prior closed sessions.
 - (d) Always start the public sessions at the exact time indicated in the public agenda (in the past some delays have been sometimes reflected due to longer than expected discussions in close sessions).

¹ Internal Rules Article 33 for EFRAG SRB and Article 40 for EFRAG SR TEG.

- 12 It has to be noted that due to the high number of issues to be considered and unpredictable number of hours that may be needed in EFRAG SR TEG and EFRAG SRB discussions to agree on appropriate contents of the EDs and final draft standards, changes to the tentative agendas are very frequent, meetings may be shortened when there is not sufficient progress in the EFRAG Secretariat preparation work and more meetings may be absorbed by the same topics, differently from what initially was envisaged.
- 13 Furthermore, next to the yearly 'save the date', a quarterly detailed schedule of the tentative topics to be discussed (including indicative dates for the decision making) is provided to EFRAG SR TEG and the EFRAG SRB for their respective discussions. Monthly updates are also provided.
- 14 Cancellations and additional meetings are to be announced as soon as decided (and without waiting for all the agenda papers to be ready) and, to the extent possible, at least a week (five working days) before the meeting dates.

Item 2 Discussions in public of technical matters

Issue at Stake

- 15 A number of meetings held by the EFRAG SR TEG and the EFRAG SRB in the second half of 2022 were not held in public. Closed meetings were justified by the necessity to build consensus on some matters or because the meeting was focused on editorial changes.
- 16 Paragraph 2.6 of EFRAG's Due Process Procedures (DPP) provides that the meetings of the EFRAG SRB and EFRAG SR TEG are open to the public. However, the two bodies may, at their discretion hold certain discussions in closed sessions. When technical discussions are held in private, the EFRAG Reporting Board Chair informs the EFRAG Administrative Board DPC including providing a justification for this choice.

EFRAG DPC discussion and recommendation

- 17 The EFRAG DPC discussed the matter at its 9 December 2022 and 25 January 2023 meetings.
- 18 EFRAG DPC members agreed that private meetings of the EFRAG SRB or EFRAG SR TEG were sometimes needed to build consensus or discuss editorial changes. The chair of the EFRAG DPC noted that he had been duly informed beforehand unless in a few situations the decision to hold an extra meeting was taken overnight.
- 19 Members noted that the improvement already implemented by the EFRAG SRB to have a summary of the discussion and decisions made in closed sessions or meetings presented at the beginning of the following meeting or session held in public (either orally or in writing). They invited the SR TEG to consider the same approach. .
- 20 Additionally members supported the other improvements identified by the EFRAG SRB listed in paragraph 11 above.
- 21 In particular EFRAG DPC members agreed with the need for the EFRAG SRB and EFRAG SR TEG to define more clearly the criteria for the recourse to closed meetings (which should be, by principle, limited in number and respect the general principle in the EFRAG Internal Rules and DPP that technical discussions are held in public.). Controversial topics should in principle be discussed in public as it was important for stakeholders to understand how the final positions were reached. There was also a need

for more transparency about the reasons for meetings to be held in closed sessions as part of the updates provided in public meetings. Such reasons could be the meeting or session being drafting-only, initial overview a topic to find out if it is ready for standard setting, sounding informally members' initial view on a matter to understand initial positions and foster future consensus building in public sessions.

- 22 Members also suggested that the EFRAG Secretariat follows-up and regularly updates the EFRAG DPC on the recourse to closed meetings (topics covered, reasons for the meetings to be closed and statistics on the proportion of open vs closed meetings...).

Action undertaken to address the matter

- 23 The EFRAG SRB discussed at its 27 January meeting possible improvements to its modus operandi (in full respect of the existing Internal Rules and Due Process Procedures) including in particular the recourse to closed meetings. Members were informed of the ongoing discussions at the EFRAG DPC and they generally concurred with the suggested improvements regarding:
- (a) The timely publication of agenda on EFRAG's website covering both open and closed session
 - (b) The need to explain the reasons for the closed sessions or meetings and to provide a summary of the discussions held in closed sessions/meetings at the next public meeting.
 - (c) The need to have internal guidelines to better define criteria for recourse to closed meetings in full respect of the general principle contained in the Internal Rules and Due Process Procedures. These could be part of agreed upon internal good practice guidelines of the EFRAG SR TEG and SRB.

Item 3 - Availability of agenda papers

Issue at Stake

- 24 Due to the time constraints and pressure and the planning of last moment additional meetings, agenda papers were not always put at the disposal of members (and published to the website) sufficiently in advance to allow a proper preparation for the meeting. In some instances papers were made available overnight or at the same day as the meeting.
- 25 Uploads to public website have also been consequently late.

EFRAG DPC discussion and recommendation

- 26 EFRAG's Internal Rules² provide that agenda and meeting papers must both be made available at least 5 working days in advance.

Action undertaken to address the matter

- 27 For the EFRAG SRB and EFRAG SR TEG meetings held since the beginning of 2023, agenda papers have generally been made available at least **four days** before the

² Internal Rules Article 33 for EFRAG SRB and Article 40 for EFRAG SR TEG.

meeting. This shorter period is the result of a practical arrangement with members in light of the tight deadlines and limited resources available.

Part 2 – Due process for Set 2

Background

- 28 The EFRAG Due Process Procedures (paragraph 5.4-d) provide that exposure drafts (“EDs”) of new ESRS (or amendments to ESRS) are exposed for public comments ‘for a period of a minimum of 120 calendar days which may be reduced to no less than 60 calendar days (in case of an accelerated process) after obtaining approval from the EFRAG Administrative Board’.
- 29 At its August 2022 meeting the EFRAG SRB agreed to request the EFRAG Administrative Board supported by its DPC to allow for a 90-day consultation period.
- 30 The DPC discussed the request several times at its 30 August, 13 October and 9 December meetings. The EFRAG Administrative Board also discussed the matter at its 6 September and 17 October meetings. While understanding the rationale for the request, members considered that to make a final informed decision, they would need to see the work plan underpinning the development of Set 2 and better understand the resource constraints of EFRAG.
- 31 At their 9 December meeting DPC members did not discuss in detail the approach for the consultation periods for Set 2 of draft ESRS as the discussions on the final composition of this set, in relation to EFRAG’s resources, were still ongoing and the work plan was not finalised yet.
- 32 At its meeting on 15 December 2022, considering the resources constraints (both in terms of EFRAG SRB and EFRAG SR TEG working hours and in terms of EFRAG Secretariat resources available), the EFRAG SRB decided to limit to 5 the number of sectoral standards to be delivered as part of Set 2. In addition, Set 2 will also encompass the SME standard(s), the standard on sector classification (SEC 1) and the consideration of topics left from Set 1 (such as Value Chain for Financial Institutions and Ethnicity).
- 33 DPC members suggested the following at their previous meetings:
- (a) Consider a staggered approach for the consultation periods (considering both the start and end dates of the consultations).
 - (b) Maximise stakeholder engagement as much as is possible in the development of the EDs and draft ESRS.
 - (c) Communicate early and effectively with the public on timelines for consultations.

Public consultation for Set 2

- 34 EFRAG’s revised workplan for Set 2 is presented in agenda paper 06-02. On the basis it is proposed for Set 2 to have the consultations staggered into two batches.
- (a) A consultation period of 100 days for 3 standards: Coal and Mining, Oil and Gas, Sec 1 (from 3 April to 11 July)
 - (b) A consultation period of 3 months (90 days) for 3 standards: Listed SMEs, Agriculture, Road Transport (from 2 May to 1 August).

Maximising stakeholder engagement

35 In order for the EFRAG Secretariat to develop a first drafts of the sectoral exposure-drafts of draft ESRS for discussion at the EFRAG SR TEG and EFRAG SRB, it is necessary to first engage with stakeholders and experts of the considered sectors to allow for the development of initial drafts of sector standards that meet the quality requirements. To that effect, the EFRAG Secretariat has conducted a wide range of sector workshops. The first workshop for each sector covered sustainability matters/topics and relevant regulations and the second workshop for each sector covered proposed disclosure requirements to be considered for possible inclusion in EDs. Both workshops were partly public (final 40 minutes sharing summary information and insights from closed sessions).

36 The following workshops have been held already for the sectoral standards

ESRS - Sector	Workshop 1	Workshop 2
Mining and Coal Mining (2 standards)	17 Oct	21 Nov
Oil & Gas (Upstream and Downstream – 2 standards)	18 Oct	25 Nov
Agriculture, Farming and Fishing	26 Oct	22 Nov
Textiles, Accessories, Footwear, Jewellery	15 Nov	21 Nov
Energy Production & Utilities	8 Nov	30 Nov
Food & Beverages	17 Nov	28 Nov
Motor Vehicles	24 Oct	7 Nov
Road Transport	10 Nov	24 Nov

37 The insights from the workshops are subsequently being used to inform the first drafting of the sectoral ESRS exposure-drafts which will then be submitted to the EFRAG SR TEG and the EFRAG SRB as soon as sufficiently ready for a public discussion, starting from January 2023. The discussions of December were dedicated to the definition of methodology and general approach preliminary to the definition of the content of the standards.

38 This necessary initial outreach has an impact on the date at which the EDs can be made available for discussion by EFRAG SR TEG and subsequently the EFRAG SRB. This in turn determines when the EDs can be ready for public consultation and henceforth the period over which the public consultation can reasonably be conducted.

Community Groups

39 Following a call for applications in September 2022, EFRAG has created 10 Community Sector Groups (8 for sector-specific standards³, one for listed SMEs and one for non-listed SMES), to allow a diverse range of external stakeholders to provide input, contribute and support their work in the development of Sector specific draft ESRS. The Community Sector Groups gather a diverse group of stakeholders including preparers,

³ Agriculture, Farming and Fishing, Coal Mining & Mining, Energy and Utilities, Food and Beverages, Motor Vehicles, Oil and Gas Mid to Downstream & Oil and Gas Upstream , Road Transport, Textiles, Accessories, Jewelry and Footwear

preparer organisations, civil society organisations, social partners, investment organisations or other stakeholders that have a direct interest in the respective sector(s). As part of the ongoing work on sector standards currently going through SR TEG and SRB reviews (Mining & Coal Mining, Oil & Gas, Road Transportation and Agriculture, Farming and Fishing sectors) additional (more targeted) meetings are / will be scheduled with key stakeholders to supplement and gain additional feedback. This will continue in the coming months leading up to the public consultation period.

- 40 Following a call for applications in December 2022, EFRAG has also created two communities for SMEs :
- (a) an LSME community to accompany the development of draft European Sustainability Reporting Standard for listed SMEs;
 - (b) a VSME community to accompany the development of a draft Voluntary Sustainability Reporting Standard for non-listed SMEs.
- 41 Those communities are created next to the already existing expert working group on SMEs which will continue to be in operation.

Communicating early and effectively with the public on timelines for consultations

- 42 As already mentioned at the October 2023 DPC meeting, both the EFRAG SRB and EFRAG SR TEG agreed that EFRAG's public consultations should be announced early to the public and any shortening of the consultation period should be well explained every time.
- 43 It was also noted that beyond the public consultations, involvement of the relevant stakeholders' communities in the development of the draft standards, will be ensured with dedicated outreach events/Q&A.
- 44 It is also important to note that for the draft sector standards, the consultation is not targeted to the general reporting audience but to the specific sector communities. This means that targeted events are more effective than general consultations (see also above the description of workshops open to the public).
- 45 As soon as the consultation periods are known with enough certainty they will be communicated (including if applicable reasons for shortened periods). This communication could be done through:
- (a) The monthly publication of EFRAG Update: EFRAG could pre-announce in each publication the forthcoming consultations of the following month. This could be done in addition to dedicated news items issued closer (e.g. a week before) to the launch of the consultation.
 - (b) Social media;
 - (c) Specific news items published on the EFRAG website announcing upcoming consultations; and
 - (d) outreach events etc, Community Groups work progress.

EFRAG DPC Recommendation to the EFRAG Administrative Board

- 46 Members of the EFRAG DPC discussed the proposed timelines for the consultations periods of Set 2.

- 47 In consideration the obligations imposed by the CSRD and the resource constraints of EFRAG, members reluctantly agreed to recommend to the EFRAG Administrative Board the shortened consultation periods contained in paragraph 34 that is:
- (a) A consultation period of 100 days for 3 standards: Coal and Mining, Oil and Gas, Sec 1 (from 3 April to 11 July)
 - (b) A consultation period of 3 months (90 days) for 3 standards: Listed SMEs, Agriculture, Road Transport (from 2 May to 1 August).
- 48 However, it was agreed that:
- (a) The EFRAG SRB and EFRAG SR TEG would make best efforts to extend the consultation period for the Listed SMEs standard to at least 100 days, to the extent feasible. This may imply that the listed SMEs standard is consulted upon separately from the batches of sector specific standards.
 - (b) The EFRAG DPC should be regularly informed of the execution of the work plan and possible adaptations.
- 49 Some members questioned again the inclusion of non-standard setting activities in the work plan of EFRAG (i.e. interpretations, research, responding to the ISSB consultation...) and considered that, in times of resource constraints, absolute priority should be given to fulfilling the standard setting obligations under the CSRD and allowing sufficiently long consultation periods for its stakeholders whilst recognising the importance of the other activities.
- 50 The Chairs of the EFRAG SR TEG and EFRAG SRB gave reassurance that, although it was impossible to commit to a particular volume, initial drafts prepared by the staff would be reviewed with the view to streamline and avoid redundancies to the maximum extent possible.

Questions to the EFRAG Administrative Board

- 51 Do members of the EFRAG Administrative Board have comments on the summary of identified improvements and actions undertaken?
- 52 Do members identify other possible changes to either make the due process closer to actual practices or conversely the need to change practices to make them close to standard due process?
- 53 Do members approve the proposed consultation periods for Set 2 (as recommended by the EFRAG DPC and described in paragraph 34 and following) that is:
- (a) A consultation period of 100 days for 3 standards: Coal and Mining, Oil and Gas, Sec 1 (from 3 April to 11 July); and
 - (b) A consultation period of 3 months (90 days) for 3 standards: Listed SMEs, Agriculture , Road Transport (from 2 May to 1 August).