



EFRAG
Mr Jean-Paul Gauzès
Chairman
35 Square de Meeûs
1000 Bruxelles

2 September 2021

Dear Mr Gauzès,

BusinessEurope is pleased to provide comments on EFRAG's Consultation Paper "Due Process Procedures for EU Sustainability Reporting Standard-setting".

BusinessEurope notes that the proposed due process is dependent on EFRAG becoming the standard-setter in the EU for sustainability reporting as outlined in the EU proposal for a Corporate Sustainability Reporting Directive (CSRD). BusinessEurope's views on the CSRD proposal, including standard-setting, are expressed in our [position paper of July 14, 2021](#).

BusinessEurope does not support the proposal empowering the Commission to adopt delegated acts thereby creating mandatory sustainability reporting standards. Having said that, if EFRAG would become the standard-setter, it is of vital importance that the standard-setting process is conducted in an open, fair and transparent way.

BusinessEurope supports the objective as outlined in the EFRAG Consultation Paper to set principles for a due process for sustainability reporting standard-setting. In general, we do not have any objections to the proposed principles.

However, we are concerned about the proposed consultation process and its implications for standard-setting. EFRAG should hold itself to a more stringent procedure than it currently envisages with respect to (i) its feedback to consultation responses and (ii) when draft reporting standards have to be re-discussed and re-examined through a further round of consultation.

According to the CSRD proposal, EFRAG's technical advice on the EU sustainability reporting standards (ESRS) should be developed with "proper due process, public oversight and transparency and with the expertise of relevant stakeholders and accompanied by cost-benefit analyses that include analyses of the impacts of the technical advice on sustainability matters". This means that the Commission must carefully assess EFRAG's technical advice and can only do so if it also sees all the comments submitted by third parties, as well as EFRAG's detailed, reasoned responses to those comments. To meet the basic standards that we believe should apply to third-party bodies and agencies that hold delegated authority, EFRAG should develop its due process.



EFRAG should respond in detail and provide reasoning regarding consultation responses. The current draft only requires EFRAG to consider the comment letters and publish “feedback statements” explaining how input was considered and how EFRAG’s conclusions were reached. We believe that EFRAG should be explicitly required to conduct a detailed analysis of the consultation feedback (quantitative and qualitative) on the basis of different stakeholder categories. The analysis should identify the nature of responses, with a particular view to suggested modifications, alternative approaches, and the impact on the draft ESRS.

Further, EFRAG should publish a detailed and reasoned feedback statement that allows participants in the consultation to understand how, and to what extent, their input has been considered and to understand why certain suggestions could not be taken up in the policy formulation. EFRAG should also provide detailed indications of how its draft ESRSs are consistent with the feedback or give reasons where EFRAG ultimately disagrees with responses received from stakeholders.

The current due process suggested by EFRAG is that decisions to re-expose are “only considered where either fundamental changes have occurred resulting from the consultation process” or “where something new is likely to be learned from re-exposure”. We consider this to be inadequate. If EFRAG receives feedback which requires material revisions to the draft ESRS, EFRAG should re-discuss the draft and submit a revised draft for a further round of public consultation.

The CSRD requires EFRAG to rely on the “expertise of relevant stakeholders.” Therefore, EFRAG should allow the affected stakeholders to respond to substantial changes to the draft ESRS. Companies (and other stakeholders) will be in the best position to assess the impact and EFRAG should consult them on any material changes to the draft ESRS. Granting stakeholders an additional round of comments is necessary to protect their due process rights and to ensure transparency and oversight.

Our other main concern relates to the due process during interim technical work by the EFRAG Project Task Force on European sustainability reporting standards (PTF-ESRS), before EFRAG has amended/reformulated the structure for future sustainability standard-setting as outlined in the Consultation Paper. It is stated in the Consultation Paper that the proposed due process to the extent possible and practicable will be applied to the interim technical work that is undertaken by the PTF-ESRS. It is stated that it is envisioned that at least the following steps would be undertaken:

- Engagement with stakeholders throughout the standard-setting process,
- Public consultation (with shortened consultation periods) on exposure drafts on the draft standards and making comment letters publicly available on the EFRAG website,
- Outreaches to seek input from stakeholders (with shortened consultation periods), which may include consulting with National Authorities, National



Standard Setters and sustainability reporting standard setters to the extent possible within the short timeframe,

- Comment letter analysis and publication of feedback statements.

As expressed in our position paper regarding the CSRD proposal, we are highly critical of the proposed timing by the Commission regarding standard-setting (Commission to adopt first set of standards by 31 October 2022). It is overly ambitious and is likely to endanger high quality reporting. We understand that EFRAG cannot control the timing as set out by the Commission. However, we believe that EFRAG should take the concerns regarding the timing and the impact on the interim process, as expressed by BusinessEurope, very seriously and share those concerns with the Commission. We believe that EFRAG should take a strong stand for high quality sustainability reporting and simply not accept what in our view is an unacceptable timetable.

We therefore call for the due process proposed in the Consultation Paper to apply in its entirety during the interim technical work by EFRAG. In general, we agree with the four steps described in the Consultation Paper. However, because of the overly ambitious timetable set by the Commission, EFRAG intends to shorten the time frames for public consultations as well as for outreach to stakeholders and experts. Limiting stakeholder involvement might have a detrimental effect on the quality and the acceptance of the standards. In our view, consultation periods should not be shortened. Stakeholders should be given sufficient time to respond to and participate in the standard-setting process.

In addition, we believe that one very important part is missing. Now that the PTF-ESRS is moving into what in reality is the drafting of future sustainability reporting standards, the role of the Task Force is different than before (i.e. when the Task Force did the preparatory work for the elaboration of possible EU non-financial reporting standards, resulting in the EFRAG PTF-NFRS report). BusinessEurope therefore considers that all meetings of the PTF-ESRS should be open to the public and that all preparatory materials (i.e., agenda papers etc.) should be made publicly available. Please refer to chapter 2: Principles for transparency in the Consultation Paper. Those should also apply during the interim work performed by the Task Force.

If you require any further information upon these matters, please do not hesitate to contact us.

Yours sincerely,

Erik Berggren
Senior Adviser