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Public Consultation on EDs Draft European sustainability reporting standards (ESRS)

Objective

- 1 The objective of this session is;
 - (a) to approve the modified cover note to be published with the Exposure Drafts on the first set of draft ESRS;
 - (b) to approve the modified questions to be raised in the public consultation

Background and context

- 2 In the meeting of 22 April, the EFRAG SRB did not object an accelerated due process with a public consultation period of 100 days ending on 8 August 12.00 hrs. The EFRAG Administrative Board has been consulted and did not object to an accelerated due process in the circumstances in its public meeting on 20 April. However if the political agreement between the European Parliament, the Council and the European Commission would include a timetable on the adoption of the ESRS in the form of delegated acts extended in a way that creates additional flexibility, EFRAG would expect to have the possibility to accordingly extend its own public consultation period to the regular period of 120 days. Such an extension could be announced during the public consultation period.
- 3 The EFRAG SRB continued in the meeting of 22 April its discussions on the cover note and the questions that will accompany the Exposure Drafts on the first set of draft European sustainability reporting standards (ESRS) (EDs). The EFRAG SRB members were invited by the EFRAG Board President Jean-Paul Gauzes, in addition to the comments raised in the meeting of 22 April to provide their comments by 24 April so that the EFRAG Secretariat could work on a revision of the cover note and questions for final approval in the meeting of 28 April aiming at launching of the public consultation on 29 April.
- 4 The appendix includes an explanatory note to explain how the main comments for the revised version of the cover note and the public consultation questionnaire were addressed and clarified notably in relation to the rebuttable presumption and core/non-core disclosure requirements, proportionality and prioritisation. The presence of some of the EFRAG SRB members for the last PTF-ESRS physical meeting in the EFRAG offices allowed to clarify the issues and to find an agreed wording.
- 5 The EFRAG SRB and the EFRAG SR TEG will consider the EDs in parallel with the public consultation and following the handover by the PTF-ESRS. Together with the

input and results from the public consultation, the EFRAG SRB supported by the EFRAG SR TEG will agree the final first set of draft ESRS to be submitted to the European Commission.

- 6 In parallel with the public consultation a number of issues need still to be progressed:
 - (a) Finalisation and publication of Bases for Conclusions by the PTF-ESRS in relation to the Exposure Drafts by the end of May;
 - (b) Cost-benefit analysis: a public call for tender has been issued with as deadline 28 April with as aim to assist EFRAG in the cost-benefit analysis which need to accompany the first set of draft-ESRS. The interim report will be presented to and discussed by the EFRAG permanent bodies.
 - (c) Digital guidance to publish the ESRS compliant information in a digital format
- 7 During the public consultation outreach activities will take place. The EFRAG SRB supported by the EFRAG SR TEG will give direction and support for these outreach events and activities.

Questions for the EFRAG SRB

Do you approve the revised cover note to accompany the EDs?

Do approve the revised questions for public consultation?

Agenda Papers

- 8 In addition to this cover note, agenda papers for this session are:
 - (a) Agenda paper 08-02 – Draft revised cover note to accompany the public consultation (clean (a) and marked up (b)) and appendices
 - (b) Folder on [ShareFile](#) with documents indicating how individual detailed comments have been accommodated (not public)
 - (c) Agenda paper 08-03 – Draft revised questions for the public consultation clean (a) and marked up (b))

APPENDIX

Explanatory note for revised version of cover note and public consultation questionnaire

Main changes made to both the cover note and the survey questionnaire relate to:

Part II section 7 and related sections in the survey questionnaires (rebuttable presumption and prioritization)

Previous discussions at the EFRAG SRB highlighted the confusion introduced by the previous version of the draft between proportionality and prioritisation and the need to avoid implying that prioritisation is a way to manage proportionality.

They also highlighted a misunderstanding of the purpose of the rebuttable presumption and its role in the architecture of the ESRS, especially its effect of ESRS disclosure requirements being mandatory.

EFRAG Secretariat sought to clarify the reasons of their misunderstanding with the PTF-ESRS members who are also EFRAG SRB members and who expressed concerns about the above-mentioned issues.

1. On mandatory DRs, rebuttable presumption and core/non-core DRs

The disagreement seems to come mostly from wording and framing issues rather than fundamental and structural disagreement as the bases of the ESRS architecture and content is a combination of:

- the mandatory nature of disclosure requirements prescribed by ESRS, and
- the pivotal importance of the assessment by the undertaking of its material impacts, risks and opportunities

In other words, reporting of all ESRS disclosure requirements is mandatory, subject to entity materiality assessment. **The combination of the two is designed to make sure that the entity will report only on its material impacts, risks and opportunities, but on all of them.**

When a sustainability matter is deemed material as a result of the undertaking materiality assessment, the undertaking must apply the requirements in ESRS related to these material matters (except for the few optional requirements that are identified as such in ESRS). Conversely, disclosure requirements in ESRS that relate to matters that are not material for the undertaking are not to be reported.

The only disclosure requirements that are **always material** and therefore mandatory to be reported in all cases are the **cross-cutting standards** (on strategy, governance and materiality assessment).

The (materiality) rebuttable presumption does not contradict in any way these fundamental principles. It only aims at supporting the implementation and documentation of the undertaking materiality assessment at a granular (disclosure requirement) level, by allowing the entity to report not material where relevant to its specific situation. Confusion mainly comes from wording issues that can be fixed in the revision of the Exposure Drafts.

- ⇒ Therefore, the EFRAG Secretariat proposed to:
- rewrite the corresponding paragraph (41 in the cover note shared with the EFRAG SRB for its 22 April session) to clarify the articulation of these 2 critical principles (mandatory DRs and entity materiality assessment)
 - rewrite the introductory paragraph on rebuttable presumption in the questionnaire accordingly and for clarification purposes, and
 - redraft the questions related to the rebuttable presumption not to challenge the principle itself (which is again not challenging the principle of DRs being mandatory, subject to materiality assessment), but to ask whether its implementation will foster efficient documentation of the materiality assessment

2. On proportionality

Based on EFRAG SRB discussions and written comments received from EFRAG SRB members, it is clear that proportionality of the standards themselves derive from the fact that they prescribe

- (a) relevant (i.e. information that adequately covers the sustainability matter at hand)
- (b) sector-agnostic information (i.e. information relevant for all sectors).

- ⇒ Therefore, the EFRAG Secretariat proposed to:
- take out the reference to proportionality in the cover note (paragraph 41 in the cover note shared with the EFRAG SRB for its 22 April session) and explicit what the public consultation expects to achieve (new paragraph 44)
 - address proportionality in the survey via the questions already asked at ESRS and DR level on relevance and sector agnosticism.

3. On prioritisation

It also became apparent that prioritisation can be understood in different ways, including as meaning “drop everything that is not a priority”, which is not what EFRAG means by prioritisation.

In the context of the public consultation, prioritisation applies to the timing of implementation of the ESRS and DRs, which will have been confirmed to be proportionate (based on relevance and sector agnosticism).

As a consequence and given the clarification made on the fact that DRs are mandatory, subject to materiality assessment, the introduction of an alternative approach between core and non-core becomes irrelevant – unless non-core means optional, which is not aligned with the general approach of mandatory ESRS and DRs.

- ⇒ Therefore, EFRAG Secretariat proposed to:
- Clarify that prioritisation means phasing-in of ESRS implementation based on implementation feasibility / challenges (new paragraph 44 of the cover note)
 - Redraft the prioritisation / phasing-in questions of the survey accordingly.

ESRS SEC 1 on sector classification

Due to the need on legal clarification EFRAG decided to temporarily withdraw ESRS SEC1 on sector classification from the public consultation.

When the clarification is obtained EFRAG will reintroduce the ED in the public consultation package and the corresponding reference and questions in the cover note and survey questionnaire.

Other changes

On the very last page, EFRAG Secretariat is sharing with the SRB the specific questions to be asked on DR G2-10 on payment practices, at the request of the PTF-ESRS and EC DG Grow.

Other changes made to the cover note and survey correspond to the accommodation of comments made by EFRAG SRB members and are

- either object of comments in the documents when they were made via email
- or answered / commented directly in the word or pdf documents shared by the EFRAG SRB members.

These documents with EFRAG Secretariat response are available in [ShareFile](#).