

Reconsideration of previously made decisions on the application of the due process on Set 2

Issues Paper

Objective

- 1 The objective of the session is to reconsider previously made decisions on the due process for Set 2 in the light of EC request for EFRAG to re-prioritise its activities on implementation support for Set 1.

Background

- 2 In an opening address at the launch of 2023 PwC CEO Report delivered on 21 March 2023 ([here](#)), Commissioner McGuinness has publicly called on EFRAG to prioritise its efforts on capacity building for the implementation of the first set of ESRS over the preparatory work for the draft sector-specific standards. On 29 March 2023, EFRAG published a news item ([here](#)) referring to the opening address and indicating that EFRAG was already discussing how to put in place, with a high priority, an ESRS implementation support function.
- 3 This will entail avoiding overlapping public consultations (between the upcoming EC consultation on the Delegated Act adapting Set 1 and EFRAG's consultations on Set 2) and easing the burden on all stakeholders wanting to contribute to the sustainability agenda.
- 4 EFRAG is still adjusting its workplan to this new priority whilst carrying on under a modified timetable work on sector-specific standards and standards for SMEs.
 - (a) To address the EC concerns about overlapping consultations, no public consultations are expected to be launched on Set 2 before the complete finalisation of the legislative process for Set 1 (including scrutiny period this means no consultation on Set 2 before August 2023).
 - (b) EFRAG will need to decide when to finalise and consult on the draft ESRS for listed SMEs and the sectoral standards that are the most advanced in terms of drafting and decisions made (SEC1, Mining Quarrying and Coal, Oil and Gas...). The EFRAG DPC will need to be consulted on the conditions for the consultations if the DPP provisions are not adhered to.
- 5 The EFRAG SRB has held several meetings in March and April 2023 to discuss its approach to develop implementation guidance, considering different possible governance options and the revised work plan for the SMEs and Sectorial Standards. At the time of drafting this paper final decisions had not yet been taken.

Previously made decision on Set 2 and recommendation of the EFRAG Administrative Board Due Process Committee (EFRAG DPC)

- 6 At its 11 April 2023 meeting, the EFRAG DPC discussed the effects of the decision to reprioritise EFRAG’s activities on previously made decisions by the EFRAG Administrative Board about the due process for Set 2. As a reminder, these decisions (taken by the EFRAG Administrative Board at its 21 December 2022 meeting) concerned the following:
 - (a) A consultation period of 100 days for 3 EDs: 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 EDs: Listed SMEs, Agriculture, Road Transport (from 2 May to 1 August). The EFRAG Administrative Board also noted that 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 is feasible.
- 7 After deliberating the matter, the EFRAG DPC agreed to recommend to the EFRAG Administrative Board:
 - (a) To withdraw the previously made decision mentioned in paragraph 6, above, approving shortened consultation periods for sectoral and LSME exposure drafts contained in Set 2; and
 - (b) To call upon the EFRAG SRB and EFRAG SR TEG that the future work plan is, as a general principle, structured in such a way that consultations can meet the objectives of the DPP (120 days, combined with basis for conclusions issued at the same date).
 - (c) That any deviations from normal due process would need to be subject to a formal request addressed to the EFRAG DPC for consideration and to the EFRAG Administrative Board for final decision.
- 8 Members were informed by the Chair of the EFRAG SR TEG that a request for a shortened consultation period for the draft ESRS on listed SMEs might be considered if it is confirmed that the standard needs to be delivered by May 2024 while EFRAG is not allowed to launch a public consultation before September 2023. If confirmed a formal request will be addressed to the EFRAG DPC.
- 9 Additionally; the EFRAG DPC also identified as matters of priority for its work over the coming month:
 - (a) The review of the due process for the implementation guidance in line with the decisions to be taken on the organisational and governance aspects (including interaction with stakeholders); together with
 - (b) The performance of the one-year review of the functioning of the due process as stipulated in the footnote to article 1.8 of the Due Process Procedures for Sustainability Reporting.

Questions for the EFRAG Administrative Board

- 10 Does the EFRAG Admin Board agree to withdraw the decision made at the 21 December meeting regarding the consultation periods for Set 2?
- 11 Does the EFRAG Administrative Board agree to call upon the EFRAG SRB and EFRAG SR TEG that the future work plan is structured in such a way that consultations can meet the objectives of the DPP (120 days, combined with basis for conclusions issued at the same date)?
- 12 Does the EFRAG Administrative Board have comments on the priorities identified in paragraph 9 by the EFRAG DPC for its work in the coming months, above ? If not which alternative(s) would you suggest?