

Yearly Report of the EFRAG Administrative Board to the EFRAG General Assembly on how the due process oversight has been carried out

Objective

- 1 The objective is to present to the EFRAG General Assembly a report on the oversight of the due process carried out by the EFRAG Administrative Board supported by its Due Process Committee (EFRAG DPC).
- 2 This paper provides a summary of the discussions and decisions held and made at the public meetings of the EFRAG Administrative Board on due process matters in 2023, as well as an overview of the discussions held by the EFRAG DPC over the same period.

Background

- 3 Article 7.3.4 of the EFRAG Statutes provides that the EFRAG Administrative Board, supported by the EFRAG DPC, is responsible for due process oversight of all technical bodies of EFRAG.
- 4 Paragraph 3.13 of the Due Process Procedures (DPP) for Sustainability Reporting requires that 'on a yearly basis, the EFRAG Administrative Board reports to the EFRAG General Assembly on how the due process oversight has been carried out'.
- 5 EFRAG Internal Rules (Article 15.4) and the Due Process Procedures (DPP) for Sustainability Reporting (Paragraph 2.9) state that the EFRAG Administrative Board must hold public sessions whenever the due process oversight is discussed. Meetings of the EFRAG Administrative Board DPC are not held in public.
- 6 Over the period from January 2023 to December 2023, the EFRAG Administrative Board had four public sessions where due process matters were discussed. In addition, two closed meetings were held to address due process related matters. A summary of the discussions and decisions was included in the EFRAG Update publications for the related months.
- 7 The following section presents the topics discussed and decisions made at each of these meetings.
- 8 Over the same period the EFRAG DPC held 6 meetings and discussed various matters, paragraphs 34 onwards present the topics discussed and recommendations made by the EFRAG DPC at these meetings.

EFRAG Administrative Board meetings

9 In 2023, the EFRAG Administrative Board discussed EFRAG Due Process Procedures for Sustainability Reporting in the following meetings.

EFRAG Administrative Board 1 February 2023 (Public session)

10 The EFRAG Administrative Board held a public session on 1 February 2023 to:

- (a) make a final decision on the consultation periods for Set 2; and
- (b) discuss possible improvements to the application of the due process and ways of addressing matters arising from the experience with the (lack of) due process of Set 1.

11 The decisions taken on the consultation period for Set 2 were subsequently amended due to the request of the European Commission to prioritise the implementation support for the first set of ESRS over the sector specific work (see below paragraph 23).

Consultation period for Set 2

12 The EFRAG Administrative Board approved the proposed shortened consultation periods for the first two batches of Set 2 that is:

- (a) A consultation period of 100 days for 3 EDs: Coal and Mining, Oil and Gas, Sec 1 (from 3 April to 11 July 2023)
- (b) A consultation period of 3 months (90 days) for 3 EDs: Listed SMEs, Agriculture, Road Transport (from 2 May to 1 August 2023).

13 The EFRAG Administrative Board 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. This might imply that the listed SMEs standard would be consulted upon separately from the batches of sector specific standards.

14 The EFRAG Administrative Board noted that the EFRAG Administrative Board DPC would be regularly informed about the execution of the work plan and the possible adaptation.

15 The EFRAG SRB Chair shared his concern to have to resort to shortened consultation periods, due to time and resource constraints. He cautioned against de-prioritising nonstandard setting activities as these were considered important in support of the implementation of the ESRS.

Lessons learned from to Set 1 and identified improvements to the due process for Set 2

16 Members generally supported the identified procedural improvements recommended by the EFRAG DPC and summarised in the meeting papers; in particular:

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- (a) Publishing the meetings' agenda on EFRAG's website covering both open and closed session;
 - (b) Always starting the public session at the indicated time in the agenda;
 - (c) Explaining the reasons for the closed sessions or meetings and providing a summary of the discussions held in closed sessions/meetings at the next public meeting; and
 - (d) Better defining criteria for recourse to closed meetings in full respect of the general principle contained in the EFRAG Internal Rules and EFRAG Due Process Procedures.
- 17 The EFRAG SRB worked in parallel on internal operational agreed-upon guidelines to improve the transparency and efficiency that would operationalise these improvements.

EFRAG Administrative Board 27 February 2023 (Public session)

- 18 At the meeting, the EFRAG Administrative Board discussed:
- (a) The updates to the DPP recommended by the EFRAG DPC to reflect the changes to the final text of the published CSRD; and
 - (b) The draft yearly report of the EFRAG Administrative Board and its DPC to the General Assembly of March 2023 on the oversight of the due process
- 19 Members approved the proposed updates to the DPP and their submission for approval to the EFRAG General Assembly with some suggested drafting improvements.
- 20 Members also approved the yearly report on the oversight of the due process, with the addition of a section indicating that EFRAG has received no correspondence from stakeholders on the due process posted directly to its online Register of Due Process Correspondence and specific email address (see section below).

Register of Due Process correspondence with stakeholders

- 21 Since 2022, EFRAG makes all due process correspondence addressed to the EFRAG Administrative Board and/or its DPC available on its website. EFRAG's Register of Due Process correspondence is accessible on its webpage [here](#).
- 22 The repository of the correspondence from stakeholders with the DPC is currently empty. Only letters submitted directly to the EFRAG Administrative Board or its DPC raising due process issues would be included.

EFRAG Administrative Board on 25 April 2023 (public)

- 23 The EFRAG Administrative Board held a public session on 25 April 2023 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.

- 24 In that meeting, the EFRAG DPC recommended 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.
- 25 Additionally, the EFRAG DPC identified as matters of priority for its work over the coming months:
- (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.
- 26 The EFRAG Administrative Board agreed to revisit and withdraw the earlier decisions of 21 December of 2022 on shorter consultation periods (shorter than 120 days) for Set 2 of draft ESRS.
- 27 The EFRAG Administrative Board agreed to call upon the EFRAG SRB and EFRAG SR TEG that best efforts should be made that the future workplan would allow for the normal public consultation period of 120 days and exposure drafts should be accompanied with bases for conclusions issued at the date of issuance of the ED.
- 28 The EFRAG Administrative Board agreed to the priorities identified by the EFRAG Administrative Board DPC for its work in the coming months as indicated above.

EFRAG Administrative Board on 28 September 2023 (public)

- 29 The EFRAG Administrative Board held a public session on 28 September 2023 to present the key elements of due process procedures for the elaboration of non-binding guidance documents or other material to support the implementation of ESRS.

- 30 In that presentation, it was explained that implementation questions received are categorised, under the responsibility of the EFRAG SRB according to the sustainability topic they relate to (Cross-cutting; Environmental; Social; Governance; Sector-specific standards; or Other).
- 31 The categorisation is formally approved by the EFRAG SRB with EFRAG SR TEG being informed on a no objection basis. Subsequently, it was explained which specific due process steps will apply to the issues submitted depending on their categorisation.
- 32 As a general rule, the decision-making process for the Implementation Guidance and Illustrative Examples will follow the normal due process described in EFRAG's Due Process Procedures for the standard setting activities of EFRAG SRB and EFRAG SR TEG to make decisions, each of the two bodies in its respective role.
- 33 Finally, all implementation questions submitted to EFRAG and their categorisation are included (on an anonymous basis) in a public issue-log published on EFRAG website. The EFRAG Administrative Board DPC in its oversight role of the overall due process, will be regularly updated on the identification and categorisation of implementation issues and on the progress in addressing the issues. For that effect, the issue-log serves both as an operational and due process documentation tool.

EFRAG Administrative Board DPC meetings

- 34 In 2023, the EFRAG Administrative Board DPC met seven times. As required by Article 19 (6) of EFRAG's Internal Rules, at least two-thirds of the members of the EFRAG Administrative Board DPC were present to have a quorum for decisions.
- 35 In 2023, the EFRAG Administrative Board DPC discussed major topics related to both financial and sustainability reporting, including:
- (a) discussions on lessons learned from the first set of draft ESRS development (*January 2023*);
 - (b) discussions on due process for the second set of draft ESRS, including the length of the consultation periods and how it addresses lessons learnt from the first set of Draft ESRS (*January 2023*);
 - (c) approval of potential updates to align the due process procedures for sustainability reporting with the published CSRD (*January and February 2023*);
 - (d) considerations on other potential updates to the due process procedures on areas not (or not fully) covered by current DPP, such as due process procedures for XBRL Taxonomy and Cost-benefits analysis (*January and February 2023*);

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- (e) considerations on the impact of the EC request for EFRAG to re-prioritize its activities (on implementation support) on the due process for the second set of draft ESRS (*April 2023*);
- (f) discussions on the due process procedures for ESRS implementation guidance and the collection of questions through the Q&A platform (*June, July and October 2023*);
- (g) discussions on EFRAG Due Process Handbook for EFRAG Financial Reporting Pillar (*October 2023*)

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