

Consultation_Ad personam mandate on potential need for changes to the governance and funding of EFRAG

A joint response on behalf of Frank Bold and Shift Project

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Please note that our response reflects shared views with WWF

Q1 - DUE PROCESS

Do you agree that the above reflects the key due process steps for open and transparent non-financial standard setting? If not, which other steps would you advise me to consider or to remove?

Overall, the suggested process is sound, open and transparent. Nevertheless, there are several aspects of non-financial reporting that should be considered in adapting the process designed for financial standards.

First, unlike financial reporting, non-financial reporting serves several purposes as reflected in the double materiality principle. The information which is highly relevant from the perspective of 'impact' is not always perceived as material by financial users of the information. Similarly, the expertise in various sustainability reporting matters is unequally distributed among different types of stakeholders. The views on priorities gathered through a consultation thus cannot be easily summed up and weighed against each other. The consultation should reflect all relevant needs, and take into account the different information needs and roles of different stakeholders, as well as priority topics from the perspective of relevant public authorities which should be engaged in setting the focus of the consultation.

Second, expertise and experience in many non-financial matters is not yet widespread, in particular with respect to impacts and risks in supply chains and their management. This is of particular importance in human rights, use of natural resources and biodiversity matters. Therefore, in addition to an *additional broad consultation*, the due process should include a stage of identification and in-depth engagement of leading experts in a given matter.

Third, consideration of views of relevant (global) non-financial reporting initiatives should take into account not only the "standard-setting bodies" (GRI, SASB), but as suggested in your wording, other reporting initiatives working on corporate transparency, holding unique expertise which is critical for the right decisions to be made. Important examples include Shift, as regards human rights reporting, Future Fit Business Benchmark, as regards targets setting and reporting on planetary boundaries, and the World Benchmarking Alliance.

Additionally, the process needs to ensure the adherence of non-financial reporting standards to quality principles which are different to those applicable to financial reporting standards. The specific challenges of non-financial reporting standardisation include, for example, the issue of measurability, data reliability, capability to indicate impact or exposure to risk. The application of such quality principles should be considered at all stages of the process; they should be specified and addressed in agenda consultations, implementation of the project and evaluation of the final proposal.

Q2 - MEMBER STATES AND NATIONAL PUBLIC AUTHORITIES

Considering the proposed new governance structure (see section 5 EFRAG proposed new core structure) at what level do you consider that the relevant national authorities should be involved and should they be members or observers:

- EFRAG General Assembly?
- The EFRAG Board responsible for the oversight of the Non-Financial Reporting Board (see diagram in the Preliminary Report)?
- The Non-Financial Reporting Board?
- TEG for Non-Financial Reporting?

Should a Consultative Forum (similar to the Consultative Forum of Standard Setters in the Financial Reporting pillar) or any other form of advisory committee; be created for the Member States and national public authorities?

Given the multitude of public interests to which non-financial reporting is connected, national public authorities should be closely involved in the process of non-financial reporting standards at the level of the TEG. However, effective engagement is complicated by the fact that the number of potentially concerned national authorities is very high, due to the diverse range of sustainability matters that should be addressed by the non-financial reporting standards. In this regard, the engagement of national authorities should not be limited to those responsible for the oversight of companies' implementation of non-financial reporting rules.

To address this challenge, the governance structure should provide a parallel body designed specifically for the engagement of the national authorities that would be closely intertwined with and complement the work of the TEG.

Q3 - EUROPEAN INSTITUTIONS AND AGENCIES

Considering the proposed new governance structure (see section 5 EFRAG proposed new core structure) at which level do you consider European institutions and agencies should have representatives and should they be members or observers:

- The EFRAG Board responsible for the oversight of the Non-Financial Reporting Board (see diagram in the Preliminary Report)?
- The Non-Financial Reporting Board?
- TEG for Non-Financial Reporting?
- The Working Groups?

Should a Consultative Forum or any other form of advisory committee; be created for European Institutions and Agencies to provide input to the TEG for Non-Financial Reporting and the Non-Financial Reporting Board?

Similarly to the national authorities, European institutions with relevant expertise in issues that will be covered by the standards, those mandated to develop technical standards relevant for reporting or having other relevant mandates should be engaged at the level of the TEG, and where relevant in the specific working groups, as observers. As there is obviously a strong need for ensuring discussion, coordination and ultimately policy coherence among different European institutions, the governance structure could also provide a special consultation forum for this purpose.

Additionally, the European Commission should be represented as a member in the Non-Financial Reporting Board to ensure that all relevant public interests are reflected in the selection of the TEG.

Q4 - PRIVATE SECTOR AND CIVIL SOCIETY

Considering the proposed governance structure (see section 5), at which level do you consider private sector and civil society ought to have representatives:

- The EFRAG Board responsible for the oversight of the Non-Financial Reporting Board (see diagram in the Preliminary Report)?
- The Non-Financial Reporting Board?
- TEG for Non-Financial Reporting?
- The Working Groups?

Civil society and trade unions should be strongly engaged in the governance of the EU Standard Setter at the level of the Non-financial Reporting Board reflecting the diversity of issues and interests which the non-financial reporting standards are meant to reflect. The composition of the TEG and the Working Groups should include leading subject matter experts to ensure both (a) a balanced representation of different stakeholder groups with relevant expertise and legitimate interests and (b) the right level of knowledge which is necessary given the technical nature of the work. This is critical for the development of meaningful standards. The selection of members and stakeholder balance in the Working Groups should reflect distribution of expertise and knowledge for the various themes.

Q5 - SMEs

Considering the proposed governance structure (see section 5), at which level do you consider SMEs (SMPs) should be represented:

- The EFRAG Board responsible for the oversight of the Non-Financial Reporting Board (see diagram in the Preliminary Report)?
- The Non-Financial Reporting Board?
- TEG for Non-Financial Reporting?
- A SME- focused Working Group?

Would it be sufficient to seek input of SMEs/SMPs in the public consultation and outreaches rather than involve them in the governance bodies?

This should really depend on the scope of the proposal presented by the European Commission. Should SMEs from specific high-risk sectors be included in the personal scope of the revised Directive, they should be involved in the governance body at the same level of the other private sector representatives. Should that not be the case, it might be sufficient to seek input of SMEs/SMPs in the public consultation phases and outreaches.

In any case, participation of SMEs at the level of the TEG and Working Groups should be based on subject matter expertise. For the success of this work, it will be critical to ensure participation of SMEs that represent best practice.

Q6 - COOPERATION WITH OTHER STANDARD SETTERS AND INITIATIVES

What do you see as main features of cooperation with the (global) reporting initiatives? What kind of involvement could you consider?

The global standard-setters should not be part of the governance of the EU body due to conflicts of interest. The EU Standard Setter should involve them instead by means of consultation aimed at understanding how to best utilise them, and to what extent their respective frameworks are aligned on the priority topics being addressed in the EU standardisation process.

The design and purpose of this consultation should take into account that no existing standard, nor

the combination of existing initiatives together, would provide a sound framework for corporate transparency on social and environmental risks and impacts. Simply aligning the work of the EU Standard Setter and existing initiatives would not lead to a meaningful outcome.

As noted in the response to the question on due process, the process of engagement of reporting initiatives should not be limited to the global “standard-setting bodies” such as GRI and SASB. There are several other initiatives that hold unique expertise and that should be engaged to ensure a plurality of experience and perspectives, including Shift (human rights reporting), Future Fit Business Benchmark (targets setting and reporting against planetary boundaries), and World Benchmarking Alliance.

Q7 - EFRAG BOARD

What in your view should be the maximum size of the new EFRAG Board? Which stakeholders should be represented and in which proportion?

If there would be separate Financial and Non-Financial Reporting Boards, the issue of stakeholder representation is more important to be addressed at the level of the Non-Financial Reporting Board. In such a case, the size of the EFRAG Board can be limited. Since it is impossible to ensure a balanced representation of all stakeholders at this level, it might be considered to limit the composition to EFRAG’s President, the Vice-Presidents of the two Reporting Boards and representatives of European Public institutions. National standard-setters and stakeholders with relevant competence and expertise can be then duly engaged in the two reporting boards and TEGs.

Should there be observers? If so, who should be the observers?

There does not seem to be a particular need for engagement of observers at the level of the EFRAG Board, at least for the purpose of the development of the non-financial reporting standards. Engagement of relevant observers, in particular public institutions, is more needed at the level of the TEG and in the working groups.

Do you foresee any obstacles that may arise were the EFRAG Board charged with oversight to include representatives of the Non-Financial Reporting Board and the Financial Reporting Board?

The main challenge will lie in ensuring a balanced composition of the Non-Financial Reporting Board, beyond the traditional stakeholders represented in financial reporting standard setting, whilst ensuring relevant expertise.

Should the EFRAG Board appoint the members of both TEGs and the European Lab, or should this be done by their respective Boards (Non-Financial Reporting Board and the Financial Reporting Board)?

Since it would be very difficult to ensure a balanced representation of stakeholders and expertise in the EFRAG Board directly, whilst keeping the number of the Board members to a manageable level, the appointment of the TEG and the European Lab should be done by the Non-Financial Reporting Board. In this regard, there should be clear requirements as regards the composition of these two bodies, and subject-matter expertise of their members. The EFRAG Board should oversee adherence to these requirements.

Q8 - THE NON-FINANCIAL REPORTING BOARD

What in your view should be the maximum size of the new Non-Financial Reporting Board?

The main role of the Non-Financial Reporting Board should be to ensure that the process of standard setting is followed correctly. In this regard, it is necessary to ensure that all concerned stakeholder groups are represented and that the composition is balanced in such a way that civil society is not marginalized. Therefore the size of the Board should be relatively small, at maximum 15 members.

Which stakeholders should be represented and in which proportion?

Given that non-financial reporting serves multiple interests, including the European public good dimension, and since the primary role of the Non-Financial Reporting Board should be to oversee that due process and key quality principles are followed, representatives of the private sector, civil society and public institutions should be equally represented. For this purpose, these three broad groups should be understood as a whole, rather than broken down into subgroups.

Should there be observers? If so, who should be the observers?

A category of observers could be created in case the national authorities and a broader range of the European institutions with relevant mandates would like to be involved at this level. Their involvement, however, is more important at the level of the TEG.

Should the Non-Financial Reporting Board members be appointed by the EFRAG General Assembly on recommendation of the EFRAG Board or directly by the EFRAG Board?

The members of the NFR Board should be appointed directly by the EFRAG Board. The EFRAG General Assembly is not well suited to have a decision-making authority in this matter because the diversity of its composition does not reflect the diversity requirements for the Non-Financial Reporting Board.

How can the interconnectivity between the Financial Reporting Board and the Non-Financial Reporting Board be ensured?

The interconnectivity of the Financial Reporting Board and the Non-Financial Reporting Board should be ensured in two steps.

First, the European Corporate Reporting Lab or a working group nominated by both the NFR and FR TEGs should organise a project to explore the connectivity and develop recommendations for the development of the reporting standards in this regard.

Second, both Boards should at least once a year discuss the recommendations of this and future projects in a joint session and decide on the priorities and division of work between the respective TEGs.

Q9 - TEG FOR NON-FINANCIAL REPORTING

What in your view should be the maximum size of the new Non-Financial Reporting TEG?
Which stakeholders should be represented and in which proportion?

The TEG should include a balanced representation of NGOs and trade unions, investors and banks, and corporations for each sustainability theme for which standards will have to be developed, as specified in the revised Non-Financial Reporting Directive and the European Commission's mandate (e.g. environmental matters, human rights and social issues, anti-corruption). It is important that each stakeholder group is represented by a person with long-standing experience in the particular thematic

area.

If such thematic-expertise approach is followed, it is not necessary to think of size as a starting point. Instead, the size should be determined by the number of topics and types of expertise that will have to be covered.

In this regard, the Project Task Force on Non-Financial Reporting standards potentially provides a workable model.

Should there be observers? If so, who should be the observers?

Yes, the observer status should be granted to European institutions and agencies with relevant mandates. Additionally, the national authorities could be engaged in the work of TEG by means of a special adjacent body.

Do you agree that EFRAG TEG members are recommended by the EFRAG Non-Financial Reporting Board but appointed by the EFRAG Board rather than be appointed by the EFRAG Non-Financial Reporting Board?

The answer to this question depends on the composition of both boards. EFRAG's Board's involvement may be necessary if the composition of the Non-Financial Reporting Board would not include a strong representation of European public institutions.

How can the interconnectivity between the Financial Reporting TEG and the Non-Financial Reporting TEG be ensured?

The two reporting boards should liaise directly regarding questions of connectivity as they arise in their respective work. The interconnectivity between both TEGs should be further ensured by means of special projects of the European Corporate Reporting Lab, as suggested in the answer to Q8. After the first set of the non-financial reporting standards is adopted, the European Corporate Reporting Lab or a joint working group of the FR and NFR TEG can undertake a new project to examine how these standards can be reflected in the financial reporting standards.

Q10 - ACTIVITIES OF THE EUROPEAN LAB

Do you agree that there is a need for a European Lab activity in the revised EFRAG governance structure? Do you agree that the European Lab could address both non-financial reporting and financial reporting activities? Do you have other comments or suggestions regarding the activities of the European Lab?

Yes, the European Lab will continue to have a very important role, in particular as regards exploring topics for which there is a lack of clarity on if and how to proceed with standardisation, and thus providing critical input to the work of the Non-Financial Reporting Board and TEG as well as the European Commission. See, for example, the above suggestions on the role that the Lab can play in exploring the interconnections between financial and non-financial reporting standards.

Q11 - FUNDING

Considering the proposed governance structure in this consultation document:

Should the majority of the funding, or even all the funding, be provided by the European Commission and the Member States? Is it important that the private sector contributes to the funding and why? Should the public-private sector partnership model also be reflected in the funding? Would a levy at national or European level be feasible? What alternative financing mechanism would you suggest

being considered?

It is critically important that the development of non-financial reporting standards should be publicly funded, given the multitude of public interests that these standards should serve.

Moreover, participating in the NFR Board and the respective TEG should not be subject to a financial contribution.

This is critical to avoid conflicts of interest, and ensure appropriate NGO representation.