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Invitation to contribute to the ad-personam mandate of EFRAG Board President Jean Paul Gauzes on non-financial reporting standard setting

In your opinion, if EFRAG were entrusted with the development of possible EU non-financial reporting standards in a revised NFRD, how would the following general and specific considerations, identified as relevant to the standard setting mechanism, apply if EFRAG were to be the standard setter? (NB: this does not affect EFRAG' present mission)

1. Governance – Structure and due process

1.1 Standards need to be developed in the public interest and no individual category of stakeholder may exercise undue influence: How can it be best ensured that standards are developed based on an inclusive and transparent due process? What should be the characteristics of such a due process?

The prerequisite for the development and maintenance of credible and legitimized non-financial reporting standards is a clear mandate for the standard setting body from the European Commission. The NFRD should include an authorization for the European Commission to issue such a mandate.

The mandate should include details on the scope of the standardization work, the composition of the technical working group tasked with the standard development, the appointment of experts and the chair, the governance structures of the standard setting body including the standard development process ("due process") and the role of a proper supervision body. The standard development process should include clear drafting stages, voting rights for experts on standard progression, rules for decision making, public consultations on draft standards, principles for consensus-building and standard writing, conflict resolution and escalation mechanisms, rules for meetings as well as document distribution and access. Standard setting bodies like ISO or CEN but also IFRS already have such governance systems and due processes in place, that could serve as a role model for a European non-financial reporting standard setter.

The standard should focus on clarifying how the reporting obligations under the NFRD can be fulfilled by companies. Definitions, concepts, structure, reporting elements, topics and subtopics (e.g. climate, water, circular economy, pollution, biodiversity, human rights, bribery etc.) of a future standard should be determined in the NFRD, and hence by the EU legislative process. The mandate of the standard setting body should therefore be limited to the technical work, i.e. clarification of the reporting requirements, development of specific indicators and calculation rules and methodologies within the predefined framework.
To avoid undue influence and particular interests in the standard development, a fair and transparent expert selection process (see below Question 1.4) and strict rules for impartiality of the technical working group's chair and project management team / secretariat will be key. If the impartiality is challenged by members of the technical working group, there should be an independent public supervision and conflict resolution body in place that also has the power to start a process for the reappointment of leadership and project management team. To ensure impartiality of the project management team it should be publicly funded.

In addition, clear rules for the revision and amendment of the standard or set of standards are required. These would need to include determinations for a regular review, the question of who can propose the need for a revision, differences in process for minor and major revisions and procedural rules for revising the standard(s).

The ISO Directives Part 1 and 2 or the CEN/CENELEC internal regulations Part 1 to 4 could be valuable sources of information.

1.2 Relevant European institutions and agencies shall be invited to be fully involved in the development of future standards, including the European Securities and Markets Authority (ESMA): How can these European Institutions and agencies be involved in the development of future standards and in the standard setter? Should there be a particular role for ESMA?

Public authorities on EU and member state level with high technical expertise on sustainability matters such as environment, social, human rights or corruption (e.g. EEA, FRA or environment agencies) should be directly involved in the standard setting body, i.e. the technical working group that will develop the standard. Overrepresentation of capital market regulators should be avoided in favour of technical expertise regarding the different sustainability matters.

In addition, a public authority coordination and consultation group could be useful. This group should ensure policy coherence and enforceability of the standard by aligning the standard's disclosure requirements with existing legal reporting obligations. It should be able to highlight inconsistencies and provide input to the standard setting process and consist of relevant public authorities from EU and member state level. ESMA can be a valuable source of expertise to ensure the enforceability of the standard. However, other EU authorities with technical expertise for the different sustainability matters should be involved to the same, if not greater extent (e.g. EEA or FRA). Relevant public authorities from all member states (ministries and agencies for the environment, social issues, economy and development) should be invited to send delegates to the group. Established networks and platforms, like the Network of Environmental Protection Agencies or the Platform on Sustainable Finance and its member state coordination group could also play a vital role for establishing a public authority coordination group. When deemed necessary, the group should consult with a wider range of public authorities (e.g. on the regional levels). The EEA could lead such a group and act as the central hub for coordinating with the standard setting body and the Platform for Sustainable Finance.

1.3 To permit relevant national public authorities to provide input about whether any future standards are responsive to the public interest, how can these authorities be included in the governance of the non-financial reporting pillar? Which authorities would be the most relevant and how should they be involved?

The involvement of public authorities in the development and revision of the standard(s) will be important as they can ensure compatibility with existing legal reporting requirements (policy coherence) and enforceability. Ideas how to involve the broad range of relevant public authorities are presented above in Question 1.2.

1.4 Should private sector and civil society representatives be involved in the standard

setting work? If so, what would be suitable options for doing so in a balanced way? Which stakeholders should be involved? Should the standard setting pillar be a public-private partnership like in the financial reporting pillar?

The standard setter should be a multi-stakeholder technical working group. A fair representation of different stakeholder groups and EU member states will be necessary for the acceptance and legitimacy of the standard. Experts need to have high technical expertise on sustainability reporting and the different sustainability matters covered in the standard. The following stakeholder groups should be involved:

- Reporting companies; ensure representation of different sectors (construction, industry, energy, retail, services);
- Responsible investors;
- Public authorities; covering the necessary sustainability matters (especially environment and human rights);
- Civil society; covering the necessary sustainability matters (especially environment and human rights);
- trade unions / worker representatives

There should be a fair representation of stakeholders from different EU member states. To ensure credibility of the technical working group, the expert selection process is of particular importance. It needs to be fully transparent, indicating who applied for the technical working group, who was selected and who made the selection decisions. Experts should apply in their personal capacity. The selection decision should not be in the hand of the standard setting body or a single DG of the European Commission. A selection committee with equal representation of relevant DGs (e.g. FISMA, ENV, CLIMA, DEVCO, EMPL) should be established, that selects the experts in consensus. Undue lobbying of associations, NGO and member states should be avoided. The chair of the technical working group should also be appointed by this selection committee.

1.5 If there were to be SME standards derived from the future EU non-financial reporting standards, how should the SME angle be addressed in the governance and in the standard setting process?

A potential SME standard should be organized as a separate standard development project within a standard setting body. The stakeholder group of reporting companies should then mainly include SMEs. The process should start after the general EU non-financial reporting standard has reached a certain degree of maturity in order to ensure compatibility between the SME standard and the general standard.

In order to make it possible for SMEs to participate in such a process, their time and travel cost should be compensated.

Which governance structure would you foresee for the EFRAG EU non-financial reporting standard setting pillar? How would this fit in the overall EFRAG governance structure? What relation would there be with the financial reporting pillar, if any?

In its current form EFRAG does not seem to have the necessary due processes and governance systems in place to act as a standard setter. Hence, those would need to be developed rapidly in order to qualify EFRAG as a standard setting organization. See answer to Question 1.1, what this would at least need to include.

The non-financial reporting standard setting needs to be independent from EFRAG's advisory work and projects on financial reporting. It would need a separate governance structure as described above and should publicly funded, to be independent from undue influence.

2. Governance – Cooperation with standard setters and other initiatives

2.1 Any future possible EU non-financial reporting standards must be built on existing reporting standards and frameworks to the greatest possible extent:

- ***How can the relevant existing standard-setting organisations be closely associated in future standardisation work? How would you see cooperation and involvement?***
- ***More broadly, how should cooperation with existing public and/or private initiatives producing international standards and framework be established, to ensure that any future non-financial reporting standards applying in the EU build to the greatest extent possible on existing standards and frameworks?***
- ***How can the EU non-financial reporting standard setting have a global impact?***

Currently, none of the existing standards or frameworks are sufficient to deliver relevant, comparable and reliable non-financial information from a double materiality perspective. Because of incompatibilities and differing approaches, also a combined application of existing standards does not lead to the necessary information.

The role of the EU standard-setter should not be to align voluntary reporting standards and frameworks but, based on them, develop a consistent standard or set of standards that serves the needs of EU stakeholders and is in the public interest.

The EU standard setting body could liaise with existing national and international sustainability standard setting bodies (GRI, CDP, IIRC, SASB, German Council for Sustainable Development etc.), onboarding their expertise. However, they should not be able to exert undue influence on the standard development process (e.g. they may not be appointed as members of the technical working group and hence not have voting rights). Alternatively, they could be involved on an ad-hoc basis to provide technical input when deemed necessary by the technical working group.

Global impact can be achieved foremost by being the first region worldwide to develop a comprehensive sustainability reporting standard; this could serve as a blueprint on international level.

2.2 How to establish an appropriate coordination between the financial and nonfinancial reporting so as to ensure that financial and non-financial reporting provide an integrated view of the performance, position, development and impacts of reporting companies?

In the mid-term the aim should be integrated corporate reporting, that requires companies to report on their (monetized) impacts on and dependencies from the different capitals (next to financial also natural, human and social capital). We acknowledge that for this purpose a larger amendment of the overall EU-corporate reporting legislation would be necessary. Based on the upcoming recommendations of the PTF-NFRS, the NFRD-revision should allow for good connectivity of financial and non-financial/sustainability information.

3. Possible changes to finance of EFRAG

3.1 What ideas do you have for financing of the non-financial reporting pillar? Should the financing reflect the public-private partnership?

Non-financial reporting standards should be developed in the public interest and should hence be financed publicly, to avoid undue influence of certain stakeholder groups (e.g. accountants or industry).

4. Do you have any other comments you want to share?

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