

EFRAG'S PUBLIC CONSULTATION PAPER

DUE PROCESS PROCEDURES FOR EU SUSTAINABILITY REPORTING STANDARD-

SETTING For comment by 15 September

June 2021

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PUBLIC CONSULTATION

The European Commission's proposal for a Corporate Sustainability Reporting Directive (CSRD) envisages the adoption of EU sustainability reporting standards.

EFRAG is requested to provide Technical Advice to the European Commission in the form of fully prepared draft standards and/ or draft amendments to Sustainability Reporting Standards (ESRS), accompanied by bases for conclusions and impact analyses (including cost-benefit analysis and impacts on sustainability matters). According to European Commission's proposal for a CSRD, the Technical Advice will need to be prepared with *'proper due process, public oversight and transparency, and with the expertise of relevant stakeholders, and it is accompanied by cost-benefit analyses that include analyses of the impacts of the Technical Advice on sustainability matters'*¹, contributing to the delegated acts through which the ESRS will be adopted in the European Union.

EFRAG is consulting on its proposed Due Process Procedures which stipulate the requirements to be followed in its role as technical advisor to the European Commission in the preparation of draft ESRS or draft amendments of ESRS².

The proposed EFRAG Due Process Procedures build on the recommendations contained in the report of Jean-Paul Gauzès on his ad personam mandate on [Potential need for changes to the governance and funding of EFRAG](#) published on 8 March 2021.

DUE PROCESS DURING INTERIM TECHNICAL WORK

In [a letter dated 12 May 2021](#), Commissioner McGuinness invited EFRAG to launch as soon as possible the necessary technical work to develop draft sustainability reporting standards consistent with requirements set out in the European Commission's proposal in parallel with the legislative process. The Commissioner specifically asked to foreshadow the governance reform and processes to ensure transparency and due process in the standard-setting process from the beginning. The interim steps should be taken in a pragmatic spirit to allow work to start as quickly as possible, with an appropriate handover to the EFRAG revised governance structure at the earliest opportunity.

The Due Process Procedures that are set out in this consultation document will therefore to the extent possible and practicable be applied as well to the interim technical work that is undertaken on a project basis. The development of the draft standards will be built on the recommendations contained in the Project Task Force on preparatory work for the elaboration of possible EU non-financial reporting standards ([PTF- NFRS](#)) Report. Depending on when the draft standard development work will be handed over to the EFRAG revised governance structure for the sustainability reporting standards activity, it is envisaged that at least the following steps would be undertaken (see descriptions of the steps in Chapter 5).

Comment: It is important to provide further details on how the transition from the interim work (project basis) will take place towards the final EFRAG's revised governance structure for sustainability standards. This is particularly important considering that the technical work and recommendations for draft standards will be prepared by the experts and representatives gathered in the PTF-ESRS, supportive Secretariat and Working Groups.

- Engagement with stakeholders throughout the standard-setting process
- Public consultation (with shortened consultation periods) on exposure drafts on the draft standards and making comment letters received publicly available on the EFRAG website;
- Outreaches to seek input from stakeholders during the shortened consultation period, which may include consulting with National Authorities, National Standard Setters and sustainability reporting standard setters to the extent feasible within the short timeframe;
- Comment letter analysis and publication of feedback statements.

¹ Paragraph (11) of Article 1 amending Article 49 of the Accounting Directive, laying down the conditions for empowering the Commission to adopt the delegated acts on sustainability reporting standards.

² Possible interpretations of ESRS are not yet addressed in these Due Process Procedures since interpretation issues may arise with the implementation of ESRS in 2024 and beyond. Interpretations may be addressed in the review of the Due Process Procedures that will take place at regular intervals.

EFRAG invites comments on the proposed Due Process Procedures. Comments are most helpful if they: a) indicate the specific paragraph or group of paragraphs to which the comments relate; b) contain a clear rationale; and

c) include any alternative proposals or suggestions for EFRAG to consider, if applicable.

Comments are expected no later than 15 September 2021 and should be addressed to ESRSdueprocess@EFRAG.org

CHAPTER 1: OBJECTIVE

1.1 A rigorous and transparent due process must underpin standard-setting and is critical for the long-term credibility and independence of the standard-setting. It is, however, not an end in itself but a means to an end leading to the development of high quality and proportionate standards in the public interest.

1.2 The Due Process Procedures set out the due process requirements to be followed by EFRAG in its role as technical advisor to the European Commission in the preparation of the draft EU Sustainability Reporting Standards (ESRS).

1.3 In this capacity, EFRAG is requested to prepare Technical Advice with 'proper due process, public oversight and transparency, and with the expertise of relevant stakeholders, and it is accompanied by impact analyses that include cost-benefit analyses and of the impacts of the Technical Advice on sustainability matters³, contributing to the delegated acts through which the ESRS will be adopted in the European Union.

1.4 EFRAG will provide its Technical Advice to the European Commission in the form of fully prepared draft standards and/ or draft amendments to ESRS complete with their bases for conclusions and impact analyses (including cost-benefit analysis and impacts on sustainability matters).

1.5 A robust yet agile and adaptable due process is necessary to meet urgent standard-setting needs within a rapidly moving landscape. Therefore, all the steps described in this document may not need to be applied mechanically or sequentially in all instances. In some circumstances, an accelerated due process may be appropriate whereby a core of necessary due process steps will be defined.

1.6 The Due Process Procedures therefore:

- a) Specify the minimum steps to be taken to ensure that the activities have benefited from a thorough and effective public consultation process;
- b) Identify additional non-mandatory steps to be considered by the Sustainability Reporting Board (EFRAG SRB) for each project.

1.7 The Due Process Procedures detail the requirements for the due process for the preparation of the draft ESRS as laid down in the EFRAG Internal Rules and should be read in the context of the [EFRAG Statutes and EFRAG Internal Rules](#). These Statutes and Internal Rules will be updated as EFRAG will move ahead with the governance reforms (see the new organisation of EFRAG in Appendix 2) based on the recommendations contained in the report of Jean-Paul Gauzès on his ad personam mandate.

1.8 The Due Process Procedures will be reviewed on a regular basis taking into account the developments in the ESRS process and the wider environment this standard-setting process takes place.

³ EC Proposal for a CSRD: Paragraph (11) of Article 1 amending Article 49 of the Accounting Directive, laying down the conditions for empowering the Commission to adopt the delegated acts on sustainability reporting standards.

CHAPTER 2: PRINCIPLES

2.1 EFRAG's legitimacy is built on its transparency, governance, due process, public accountability and thought

leadership. 2.2 EFRAG serves the European public interest.

2.3 The due process allows all stakeholders to put forward their views for consideration by EFRAG. It ensures that the diversity of environments (including economic) and stakeholder views are taken into account in an inclusive way in developing ESRS.

2.4 EFRAG conducts its activities in a transparent manner (Transparency); considering the perspectives of all relevant stakeholders (Public Consultation), ensuring the engagement of subject-matter experts in the process of development of the sustainability standards based on a principle of balanced representation of preparers and users of sustainability information, including investors and non-governmental organisations and social partners, and analysing the potential impacts of its proposals on affected parties, including ultimate beneficiaries of better sustainability reporting, and explains the rationale for the decisions it reached (Impacts).

Rationale for suggestion: According to the PTF-NFRS [recommendations](#), the first foundational principle the European Standard Setter should take into account is that *'[...] sustainability reporting in the EU needs to recognise and respond to the interests of an inclusive range of stakeholders [...]. This encompasses both (i) stakeholders who may be positively or negatively impacted by the company's activities and through its value chain ('affected stakeholders,' which [...] includes the environment), and (ii) stakeholders with an interest in the company's sustainability reporting ('users'), which includes (besides shareholders and other providers of capital) those charged with the enforcement of sustainability related standards, the company's employees, worker representatives (trade unions, works councils, board level employee representatives), civil society organisations, local governments, the company's customers and business partners.'*

As reflected in the double-materiality principle, and unlike financial reporting, sustainability reporting serves two main purposes. It should provide information needed by investors and banks for their decisions, as well as transparency on how a company addresses severe human rights and environmental impacts linked to its business model. The information relevant from the impact perspective may be or may quickly become financially material; however, this is not guaranteed. Therefore applying only the financial materiality perspective inevitably leads to the omission of important information from the impact perspective. The European Commission has clarified that the Corporate Sustainability Reporting Directive will require companies to apply the double materiality principle more rigorously, which future European sustainability reporting standards must be based on. In order to be able to reflect and answer all the different needs for information from various stakeholders, the stakeholder representation within the European standard setter should ensure that there is enough expertise on both financial and impact materiality.

To ensure a successful outcome, the European standard-setting process should be based on balanced multi-stakeholder engagement and appropriate subject-matter expertise. This is in line with [CSRD recital 8](#), where it is clearly stated that "the ultimate beneficiaries of better sustainability reporting by undertakings are individual citizens and savers". Therefore, the following criteria should be observed:

- There should be balanced multi-stakeholder representation in the Technical Expert Group, and at the level of the working groups. In order to ensure such balanced representation, preparers and users of sustainability data (investors and financial institutions, as well as civil society organisations, including NGOs focusing on various sustainability reporting themes and trade unions) alike must be involved;
- The primary requirement for all members of the TEG should be demonstrated subject-matter expertise in priority sustainability reporting matters and the standards they will be drafting. For example:
 - Experts working on labour and human rights related standards should have proven expertise on respectively labour rights and the UN Guiding Principles on Business and Human Rights;
 - Experts contributing to the EU standard on climate should have demonstrate knowledge of the recommendations of the Task Force on Climate-Related Financial Disclosures, relevant sources such as the IPCC report, or matters such as scenario analysis and GHG data collection methodologies;
 - Experts supporting the development of circular economy metrics should e.g. have demonstrated experience with life-cycle assessments
 - Members working on the digitisation and tagging of sustainability reporting should be able to demonstrate sufficient expertise to successfully draft relevant guidance
 - Following the double materiality principle in the CSRD, and the PTF-NFRS conclusions, the involvement of affected communities must be guaranteed
 - Anyone involved in the technical standard-setting work focused on additional CSRD themes (biodiversity, pollution, etc) must be able to demonstrate subject-matter expertise for the underlying standards.

- This is in line with Mr. Gauzès' recommendations, whose recommendations include a further requirement for experience and expertise in the drafting of standards. Unlike subject-matter expertise, it is sufficient if such experience is possessed by the TEG collectively, rather than by all members (see Section 4.49, p.21 final report).
- The working groups supporting the TEG should be open to external experts (subject to similar criteria), which is especially needed in light of the technical nature of the work and the complexity and variety of topics that will need to be covered by the European sustainability reporting standards.

2.5 The Due Process Procedures address these principles.

2.6 Appendix 2 of this consultation document provides an overview of EFRAG's organisation based on the envisaged governance changes to integrate its new sustainability reporting standard-setting activity as far as relevant for the due process and due process oversight. This organisation is based on the recommendations made by Jean-Paul Gauzès in his [ad personam report](#) *Potential need for changes to the governance and funding of EFRAG* that were fully supported by European Commissioner McGuinness in her letter dated 12 May 2021.

Comment:

We consider it important to strengthen the role of the European Commission in the process of selecting the members of the TEG. This is necessary to establish public accountability for ensuring subject-matter expertise and balanced representation of relevant stakeholders in the process of drafting sustainability reporting standards in line with the requirements and principles of the future Corporate Sustainability Reporting Directive.

This can be achieved in two ways. Either the European Commission would be responsible for nominating the members of the TEG, or at a minimum, it should approve the final TEG based on the above-listed criteria, ensuring the engagement of leading subject matter experts, corresponding to the issues and interests which the standards are designed to cover.

Similarly, safeguards must be put in place to ensure the SR TEG operates with independence while the SR Board is responsible for providing strategic guidance, input and oversight (see our response in 5.8 - 5.14 "DEVELOPMENT OF EXPOSURE DRAFTS, FINAL DRAFT STANDARDS, DIGITAL GUIDANCE AND OTHER DISCUSSION PAPERS")

TRANSPARENCY

Public meetings

2.7 EFRAG conducts its activities in a transparent manner: meetings of the EFRAG SRB and the Sustainability Reporting Technical Expert Group (EFRAG SR TEG) are public but the EFRAG SRB and EFRAG SR TEG may at their discretion hold certain discussions in private. Such private discussions would normally relate to administrative (e.g. nominations) and other non-technical matters. Meetings of working groups are generally held in closed form.

2.8 The Chair of the EFRAG SRB and the Chair of the EFRAG SR TEG can invite other sustainability standard setters or initiatives; or any other individuals/guests to the meeting and they may be accorded speaking rights during any meeting as and when appropriate.

2.9 Meetings of the EFRAG SRB and EFRAG SR TEG are planned as far in advance as is practicable and notice of the next meetings and the agenda are posted on the EFRAG website.

2.10 Public (sessions of) EFRAG SRB and EFRAG SR TEG meetings are webcast (audio and video recorded) on the internet and are later stored for on-demand viewing and available for one year through the EFRAG website. Thereafter, the recordings are archived and made publicly available on request as long as needed for internal and external research purposes.

2.11 A summary of the (tentative) decisions reached in each EFRAG SRB and EFRAG SR TEG meeting is published on EFRAG's website after each meeting.

Meeting Papers

2.12 EFRAG SRB and EFRAG SR TEG agenda papers are usually publicly available on the EFRAG website. However, the EFRAG SRB and EFRAG SR TEG may decide, at their discretion, to make selected agenda papers not publicly available. This may be the case, for instance, if it is determined that making the material publicly available would be harmful

to individual parties. However, it is expected that withholding agenda papers in such circumstances would be rare and that most papers of the EFRAG SRB and EFRAG SR TEG will be publicly available in their entirety.

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2.13 All papers and comment letters received as part of EFRAG's due process are published on the EFRAG website (unless confidentiality is requested by the respondent, in which case the name of the organisation/entity will be cited without including content of the submission).

Comment: In order to respect and encourage the engagement of all stakeholders, the use of confidentiality conditions may be understood on specific occasions. However, the list of respondents should be communicated in a transparent manner in line with the standard practice of the European Commission.

2.14 Agenda papers are normally distributed to EFRAG SRB and EFRAG SR TEG members at least seven days before they are scheduled for discussion to allow members sufficient time to consider and assess the recommendations. Exceptionally, it may be necessary to distribute technical staff papers closer to the meeting date. The agenda papers are usually at the same time made publicly available.

2.15 The EFRAG Secretariat may provide supplementary explanations and comments on the papers verbally at EFRAG SR TEG meetings and where relevant at EFRAG SRB meetings, drawing from research, consultations with consultative groups and other interested parties, and comments and information gained from outreaches, fieldwork, education sessions and comment letters.

PUBLIC CONSULTATION

2.16 EFRAG conducts a public consultation process with stakeholders on its draft Technical Advice to the European Commission to gather feedback from stakeholders on an inclusive basis.

2.17 Through open and transparent public comment periods indicated on the EFRAG website, any interested or affected party may provide comments and input.

2.18 Exposure Drafts specify the time and manner in which individuals and organisations may comment. Written comments received during the public comment periods constitute a part of the EFRAG's public file. All public comments received are posted publicly on the EFRAG's website unless confidentiality is requested (in which case the name of the organisation/entity will be cited without including content of the submission).

Comment: please refer to input provided above (2.13)

2.19 Responses received during the public comment period are considered when preparing and agreeing on the final Technical Advice.

2.20 Chapter 5 further details how public consultations are conducted.

IMPACTS

2.21 Article 49 of the proposal for a CSRD requires that EFRAG's Technical Advice is 'accompanied by cost-benefit analyses that include analyses of the impacts of the Technical Advice on sustainability matters (impact analyses).

See comment below (2.24)

2.22 The purpose of impact analyses is to permit EFRAG to understand the impacts of proposed ESRS and amendments from various stakeholders' points of view, including those of ultimate beneficiaries, on a systematic basis to enable informed judgements about how to balance the needs of competing interests, including costs and benefits but also wider impacts on sustainability matters, whilst respecting the requirement to ensure relevant disclosures concerning severe impacts on people and the environment.

2.23 Impact analyses should operate throughout the life cycle of a standard-setting project when projects to propose new or to amend draft standards are initiated, researched, developed and finally recommended to the European Commission. Impact analyses is also a feature of post-implementation reviews. (See Chapter 5).

2.24 EFRAG gains insight on the likely impacts of its Technical Advice through the exposure of proposals, and through consultation with stakeholders and field testing.

Comment: In line with the double-materiality principle, sustainability reporting serves two main purposes. It provides

investors and financial institutions with decision-useful information, as well as transparency on how companies address their severe human rights and environmental impacts. The information relevant from the impact perspective may be or may quickly become financially material; however, this is not guaranteed.

The impact part of the double-materiality principle requires that if a company's activities lead to severe negative impacts on sustainability, the related information -insofar as it meets principles of materiality and quality of information- should be reported independent of the cost of gathering related data.

As regards financially material matters and disclosures, cost-benefit analysis and balancing of competing interests can be applied more straightforwardly.

It should be made clear that the above analysis differs from the impact assessment (IA) the European Commission conducts prior to adopting the standards as delegated acts. The EC conducts impact assessments before adopting legislative proposals and delegated acts, in order to evaluate the effectiveness of EU proposals / delegated acts. As regards the CSRD proposal, the EC's IA clearly highlighted that the benefits outweigh the costs of standardised reporting. Upon adoption of the DAs, the EC will release a dedicated impact assessment for the standards.

CHAPTER 3: DUE PROCESS OVERSIGHT

3.1 The EFRAG Administrative Board is responsible for EFRAG's organisation, administration, finance, due process and oversight of all EFRAG's bodies. The Administrative Board may decide to establish a Committee in charge of the oversight of the due process (DPC) from amongst its members to support the due process task.

Comment: EFRAG Administrative Board must include a balanced representation of stakeholders, including representatives from civil society organisations, trade unions and academia. As referred to in Jean- Paul Gauzès [consultation](#): *"they should be of high calibre and ensure that EFRAG is public accountable"*. Therefore, in order to secure legitimacy of the work and representativity of relevant actors with an interest or impacted by the EU sustainability reporting standards, EFRAG must consider the constituencies and interests represented in the Administrative Board.

3.2 This DPC would be responsible for supporting the EFRAG Administrative Board in overseeing the due process of the EFRAG SRB and EFRAG SR TEG.

3.3 The DPC supports the EFRAG Administrative Board in ensuring that the EFRAG SRB and EFRAG SR TEG follow due process procedures that reflect the requirements set out in these Due Process Procedures in the context of the EFRAG Internal Rules and EFRAG Statutes.

3.4 The DPC operates on a simple majority basis in supporting the EFRAG Administrative Board in its due process oversight and due process oversight decisions.

AREAS OF RESPONSIBILITY

3.5 The EFRAG Administrative Board provides ongoing oversight over the due process throughout the development of ESRS, including agenda-setting and post-implementation reviews, when applicable.

3.6 The EFRAG Administrative Board does not review or consider technical content or sustainability reporting matters that have been recommended by the EFRAG SR TEG or decided on by the EFRAG SRB.

3.7 The due process oversight includes:

- a) Reviewing regularly, and in a timely manner, the due process activities of the EFRAG SRB and EFRAG SR TEG, including standard-setting, research activities, [engagement of subject-matter and multi-stakeholder expertise](#) and the development of materials to support the consistent application of ESRS, when applicable.

Rationale: See comment at point 2.4. In order to be able to reflect and answer all the different needs for information from various stakeholders and on the broad range of themes covered by the CSRD, the European standard setting process should ensure the engagement of adequate expertise on both financial and impact materiality.

- b) Reviewing, and proposing updates to the procedures in the Due Process Procedures so as to ensure that they continue to reflect good practice that could be subject to public consultation as part of the regular review of Due

Process Procedures.

- c) Reviewing the composition of consultative groups to ensure an appropriate balance of perspectives, [expertise](#) and backgrounds, and overseeing the monitoring activities performed by the EFRAG SRB and EFRAG SR TEG of the effectiveness of those groups.

Rationale: See comment at point 2.4.

- d) Responding to correspondence from third parties about due process matters, in collaboration with the EFRAG Secretariat.

PROCEDURE

3.8 The due process oversight occurs throughout the development of ESRS, including agenda-setting and post implementation reviews. This is achieved through periodic reporting by, and dialogue with, representatives of the EFRAG SRB, the EFRAG SR TEG and supported by the EFRAG Secretariat.

3.9 For each technical project, the EFRAG SRB and the EFRAG SR TEG first self- assesses whether it has complied with its due process requirements, and:

- a) provides evidence and evaluation of the process that was undertaken; and
- b) concludes whether applicable due process steps have been complied with;

3.10 In addition, if the EFRAG SRB decided not to undertake a non-mandatory step for a specific standard-setting project, it provides a report on the reasons why. The reports are communicated to the Administrative Board, giving it sufficient time to review them and to react in a timely manner. The Administrative Board reviews and evaluates the evidence provided by the EFRAG SRB of compliance with the established due process.

3.11 These reports are posted on the EFRAG website after clearance by the Administrative Board.

3.12 On a yearly basis, the EFRAG Administrative Board reports to the General Assembly on how the due process oversight has been carried out. On a case-by-case basis, the due process for an individual standard may be considered.

COMMUNICATION

3.13 The EFRAG Administrative Board supported by the DPC (if applicable) operates transparently and with fair consideration of the matters raised by stakeholders. The Administrative Board meets in public when addressing matters related to the due process and the related meeting papers and recordings of the meeting are made available on EFRAG's website.

3.14 The EFRAG Administrative Board responds, when appropriate, to matters raised about the due process of the EFRAG SRB and EFRAG SR TEG and ensures that such matters are addressed satisfactorily.

CHAPTER 4: AGENDA-SETTING

DEFINING THE WORK PLAN

4.1 This chapter consists of:

- a) The initial phase in which EFRAG will develop a first and second set of ESRS required under the proposal for a CSRD; and
- b) Establishing EFRAG's work plan as an ongoing process.

INITIAL PHASE – FIRST SETS OF SUSTAINABILITY REPORTING STANDARDS

4.2 The proposal for a CSRD provides that, to meet the information needs of users in a timely manner, the European Commission should adopt⁴:

a) The first set of sustainability reporting standards by 31 October 2022 that specify the information necessary to understand the companies' impacts on sustainability matters and information necessary to understand how sustainability matters affect the companies' development, performance and position. And at least specify information corresponding to the needs of financial market participants subject to the disclosure obligations laid down in Regulation (EU) 2019/2088 (SFRD).

b) The second set of sustainability reporting standards by 31 October 2023 that specify complementary information that undertakings should disclose about sustainability matters and reporting areas where necessary, and information that is specific to the sector in which an undertaking operates.

4.3 The [report issued in March 2021](#) by the Project Task Force on Preparatory work for the elaboration of possible EU non financial reporting standards (PTF-NFRS), established by EFRAG, made a number of recommendation as to what the first and second sets of priority standards should consist of and address.

4.4 Considering the urgency and short delay to prepare the first two sets of Standards, it will be up to the EFRAG SRB, in consultation with the EFRAG Administrative Board when the revised EFRAG governance is in place, to review whether and how the recommendations referred to in paragraph 4.3 have been followed and decide whether further input is needed from stakeholders to complete the agenda.

ESTABLISHING EFRAG'S WORK PLAN AS AN ONGOING PROCESS

4.5 EFRAG undertakes a public consultation on its activities and its work plan every three years (agenda

consultation). 4.6 The objective of an agenda consultation is to

a) gather views on EFRAG's strategic direction and balance of activities in the field of sustainability

reporting; b) assess the criteria⁵ for adding a project to EFRAG's work plan; and

c) identify new sustainability reporting issues that could be given priority in the EFRAG's work plan, [which need to be consulted with and approved by the European Commission](#).

Rationale: The Corporate Sustainability Reporting Directive should define the main thematic reporting requirements and quality criteria for corporate disclosure, in alignment with public interests, the need for corporate accountability for business impacts, and based on EU specific policy objectives (e.g. taxonomy, climate transition plans, climate neutrality, human rights due diligence, transparency across value chains, etc.). Defining priorities for the development of sustainability reporting standards is a political decision which must ensure alignment with EU goals. Setting the work plan for EFRAG must thus be a responsibility of the European Commission, who should provide it with a technical mandate to develop related reporting requirements and methodologies, in order to allow companies to fulfil their disclosure obligations as set out in Level 1 legislation. The European Standard Setter should act within the remit of the mandate given by the Corporate Sustainability Reporting Directive.

4.7 EFRAG SRB may also decide to undertake field tests and other forms of impact analyses before a project is included in the work plan. These include *scientific review and adequacy with EU policy* analysis, and other forms of impact analyses. These may, in particular, be relevant for SME standards to make the cost-benefit analysis.

⁴ Art 19 B on Sustainability Reporting Standards of the proposal for a CSRD COM (2021) 189 final

⁵ Appropriate criteria to identify new projects to add to the work plan will be identified by the EFRAG Administrative Board as part of its oversight of the activity of the EFRAG SRB.

4.8 The European Commission shall, at least every three years after the application date, review the standard taking into consideration the EFRAG's Technical Advice and where necessary shall [request EFRAG for advice to review](#) ~~amend~~ the standards taking into account relevant developments, including developments with regard to international standards. Such post-implementation reviews are part of EFRAG's work plan.

Rationale: See point 4.6

RESEARCH PROGRAMME

4.9 Research contributes to evidence-based standard-setting. EFRAG undertakes proactive activities in sustainability reporting with four strategic aims:

- a) Engage with stakeholders to ensure we understand their issues and how sustainability reporting affects them;
- b) Influence the development of global sustainability reporting standards;
- c) Provide thought leadership in developing the principles and practices that underpin sustainability reporting; and
- d) Promote solutions that improve the quality of information, are practical, and enhance transparency and accountability.

IDENTIFYING GOOD PRACTICES

4.10 The EFRAG SRB will ~~identify and select~~ **seek and promote** good practices to stimulate innovation in sustainability reporting. This process may involve forms of public consultation and outreaches.

Rationale: The new EFRAG structure should aim for efficiency and enhance collaboration among existing and new groups such as the European Lab and the Financial Pillar.

4.11 In doing so, the EFRAG SRB may use the European Lab activities in the form of task forces to identify good practices and stimulate innovation and debate related to sustainability reporting.

4.12 Depending on the availability of resources, the European Lab activities may also go beyond identification of good practice and consider proactive research on some topics or help with the development of education-oriented material. Through its attachment to both the Financial and Sustainability Reporting Pillars, the European Lab activities may also help to foster interconnectivity between financial and sustainability reporting.

CHAPTER 5: STANDARD-SETTING

NOTE TO STAKEHOLDERS

This section focuses on the activities to draft new standards or amendments to standards to recommend to the European Commission (Technical Advice).

Once the standards and amendments are implemented, further consideration will need to be given on how to foster consistent application including the need to issue interpretations, provide educational materials or implementation guidance such as illustrative examples to accompany the Standards and Amendments.

5.1 The due process steps that are mandatory include:

- a) debating any proposals in one or more public meetings;
- b) issuing for public comment exposure drafts of any proposed new draft Standard, proposed draft amendment(s) to a Standard respecting minimum comment periods. Exposure drafts and other consultation documents are open for comment for a period of usually 120 days which may be reduced to no less than 60 days after obtaining approval from the Administrative Board.
- c) considering comment letters received on the proposals in a timely manner;
- d) considering whether the proposals should be exposed again;
- e) consulting with the Consultative Forum of National Authorities and sustainability reporting standard setters on the draft standards and amendments ~~the work plan and work priorities;~~

Rationale: Setting priorities for the development of the standards is the result of a democratic mandate given by the European Commission and co-legislators. See 4.6.

f) Finalisation of the Technical Advice to the European Commission

g) Submission of the Technical Advice to the European Commission

Comment: see 5.9 and 5.13.

5.2 Other steps specified in the Due Process Procedures that can be considered but are not mandatory include:

- a) publishing a discussion paper for major projects before an exposure draft is developed;
- b) establishing working groups or other types of specialist advisory groups for major projects (such as with specific sectoral experience);
- c) holding outreaches and public events; and
- d) undertaking fieldwork.

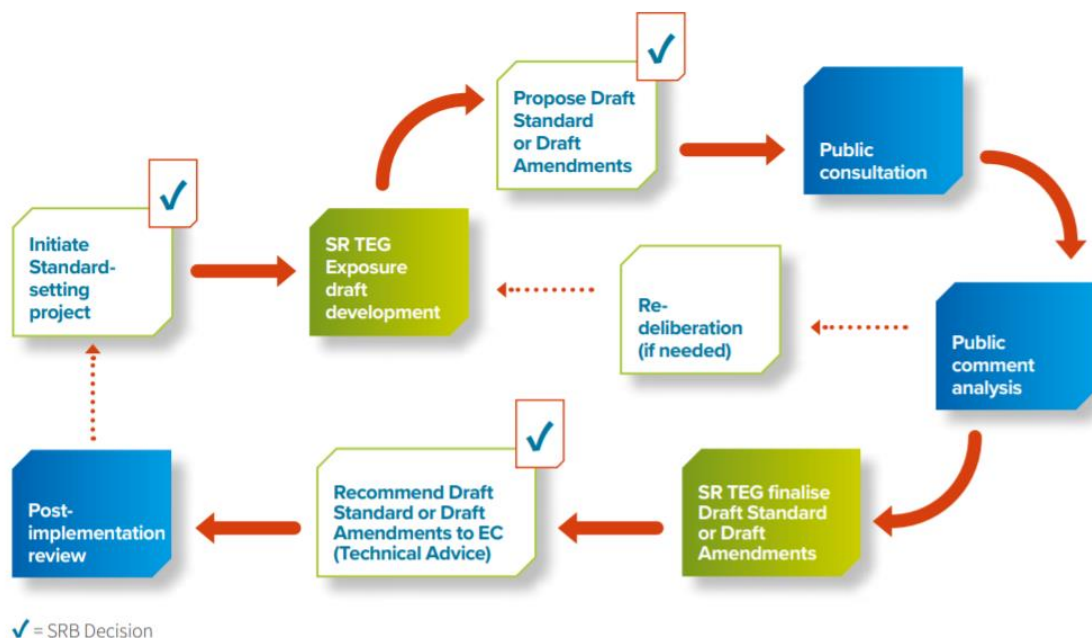
5.3 If the EFRAG SRB decides not to undertake those non-mandatory steps, it informs the EFRAG Administrative Board of its decision and reasons for not undertaking the steps in its report (see paragraph 3.10).

Required steps for new or amended draft ESRS

5.4 For all standard-setting projects, EFRAG conducts a public consultation with stakeholders with an open call for comments on an Exposure Draft of a proposed draft standard or draft amendment or any other draft position papers as appropriate.

5.5 EFRAG's due process involves a set of successive and connected activities:

- a) Exposure Draft Development;
- b) Public Consultation;
- c) Public Comment Analysis;
- d) Finalisation of the Technical Advice to the European Commission;
- e) Submission of the Technical Advice to the European Commission; and
- f) Post-Implementation Review.



5.6 The proposal for a CSRD provides that separate, proportionate standards are to be adopted for SMEs tailored for the capacities, characteristics and resources of such companies.

5.7 The due process steps presented in the following paragraphs are valid for all standards. However, to take into account the specificities of SMEs and in particular the need to develop requirements that are proportionate to their organisation and resources, field-testing of the proposals is expected to be an important step in the elaboration of sustainability reporting standards for SMEs.

DEVELOPMENT OF EXPOSURE DRAFTS, FINAL DRAFT STANDARDS, DIGITAL GUIDANCE AND OTHER DISCUSSION

PAPERS

5.8 Once EFRAG has formally decided to add a project to its agenda, it proceeds to the development of an exposure draft.

5.9 The EFRAG SR TEG is responsible for developing exposure drafts of draft standards or draft amendments (with inputs from appropriate working groups or panels and supported by the EFRAG Secretariat) ~~and for recommending these documents for approval to the EFRAG SRB. The EFRAG SR TEG recommends a draft Technical Advice to the EFRAG SR Board~~ (in the form of fully prepared draft standards and/or amendments to ESRS complete with their bases for conclusions and impact analyses and digital guidance. ~~The EFRAG SR TEG that~~ has the final responsibility for the content of the exposure drafts, draft standards and draft amendments.

Rationale: It should be made clear that the content of the proposals of the SR TEG should not be subject to deliberation by the Board. SRB is not in a position to alter the content of the draft standards, because it wouldn't implement the same due process.

5.10 In doing so, the EFRAG SR TEG:

- a) Provides its own professional judgment, arguments and technical analysis based on its technical expertise and EFRAG's due process; and
- b) Considers whether to appoint a working group or advisory panel **open to external experts with demonstrated subject-matter expertise in priority sustainability reporting matters**, and decide on the scope of their work and terms of reference. **Working groups or advisory panels must include a balanced and inclusive representation of multi-stakeholder experts.**
- c) Consult with the Consultative Forum of National Authorities **and Advisory Forum for EU institutions**, sustainability reporting standard setters and existing global initiatives on the draft standards and amendments, ~~the work plan, and work priorities.~~

5.11 ~~The EFRAG SRB and~~ EFRAG SR TEG is ~~are~~ supported by the EFRAG Secretariat in all stages of its proceedings.

5.12 The EFRAG SR TEG recommendation forms part of the agenda papers that are publicly available unless the EFRAG SRB has decided not to make related selected agenda papers publicly available (see paragraph 2.12).

~~5.13 All draft and final documents are issued under the EFRAG SRB's authority. However, the EFRAG SRB may decide to delegate part of the work to the EFRAG SR TEG, assisted by EFRAG Secretariat. The EFRAG SRB determines whether publication of the draft or final documents should go through a process of approval, high-level clearance or delegation.~~

Rationale: The SRB role should be to provide strategic guidance, input and oversee the work of the SR TEG (See 5.9). The draft and final documents should be issued as part of the SR TEG. Feedback and commentary from the SRB and EFRAG Secretariat could be published if deemed necessary. The SR TEG must review, consider and publish response to SRB input.

5.14 Publication of additional materials to support the exposure drafts (e.g., podcasts, webcasts, educational material) is the responsibility of the EFRAG Secretariat after consulting EFRAG SR TEG.

Digital guidance

5.15 Further to the proposal for a CSRD, companies will have to 'tag' their reported sustainability information according to a digital categorisation system to be developed together with the sustainability reporting standards.

5.16 The implications for the ESRS digital categorisation system are considered by the EFRAG SR Board and EFRAG SR TEG during the development and drafting of new or amended draft standards. The Technical Advice provided to the

European Commission is accompanied by the proposed digital guidance.

Rationale: Please refer to feedback at point 3.6 and Annex 2.

DECISION PROCEDURE

5.17 The EFRAG SRB will review the text of the exposure draft of standard or draft amendment proposed by the SR TEG. When necessary, the EFRAG SRB will set out why it considers that the exposure draft, draft standard or draft amendment **does not** meet the needs of EU legislation, in particular, any specific requirements of the proposal for a CSRD, or any other European public good considerations ask the SR TEG to reconsider its proposal.

Rationale: See comment at point 5.9 and 5.13

5.18 After the redeliberation of the EFRAG SR TEG, the EFRAG SRB will make the final decision on the Technical Advice and will decide whether to submit the proposed draft standard or draft amendment to the European Commission. The SRB may not alter the technical recommendation of the EFRAG SR TEG in the Technical Advice. ~~If the EFRAG SRB does not follow the technical recommendation of the EFRAG SR TEG, it provides an explanation to the EFRAG SR TEG as to why the recommendation was not followed or was amended.~~ If the EFRAG SRB decides not to submit the proposed draft standard or draft amendment to the European Commission, it must publish a justified opinion based on the reasons specified in 5.17.

Rationale: It should be made clear that the content of the proposals of the SR TEG should not be subject to deliberation by the Board. SRB is not in a position to alter the content of the draft standards, because it wouldn't implement the same due process as the TEG. This shouldn't prevent SRB from discussing and communicating to the European Commission in the Technical Advice which elements of the draft standards may require further consideration.

Comment: EFRAG SRB should decide on Technical Advice by a simple majority, rather than unanimously, to prevent a risk of paralyzing the process by a single stakeholder vetoing the standards for subjective reasons.

PUBLIC CONSULTATIONS

5.19 EFRAG runs an open consultation process, the results of which contribute to the determination by the EFRAG ~~TEG~~ **SRB** of EFRAG's Technical Advice (draft standards or draft amendments) to the European Commission.

Rationale: See comment at point 5.9 and 5.13.

5.20 EFRAG launches public consultations on its exposure drafts and discussions papers to stimulate comments and expression of views by stakeholders. Comment letters received are published on the EFRAG website unless the stakeholder concerned asked for the letter not to be made public (**in which case the name of the organisation/entity will be cited without including content of the submission**). Public consultation may include outreach events and fieldwork including field tests and surveys.

Comment: (as per 2.13): In order to respect and encourage the engagement of all stakeholders, the use of confidentiality conditions may be understood on specific occasions.. However, the list of respondents should be communicated in a transparent manner to ensure accountability and disclosure of interested parties.

5.21 Exposure drafts of draft standards or draft amendments are accompanied by a basis for conclusions, initial impact analysis and draft digital guidance. The basis for conclusions should in particular explain how proposed draft standards or draft amendments have relied on existing guidance developed by other standard setters or initiatives and which changes or elaboration have been made

Comment: Please refer to comment at point 2.24 on the need to specify the role of EFRAG's impact analysis vs. the European Commission's impact assessment.

5.22 Additional non-mandatory materials to support the exposure drafts can be issued by the EFRAG Secretariat in consultation with the EFRAG SR TEG, such as project summaries, podcasts, webcasts, other explanatory or educational material, Q&As and presentations.

5.23 EFRAG may also organise, often in coordination with other organisations, outreach events open to the public. These events are an opportunity to hear views directly from stakeholders and stimulate debate.

5.24 Summary reports of outreach events held in public are also published.

FINALISATION OF TECHNICAL ADVICE

- 5.25 After the publication of an exposure draft, EFRAG proceeds to consider stakeholders' feedback from the consultative process. In some cases, it may be decided to re-expose proposals before proceeding to a finalised pronouncement.
- 5.26 The feedback received in the public consultation and other outreach activities determines the focus priorities (if any), or may result in the project being discontinued.
- 5.27 Decisions to re-expose are taken by the EFRAG SRB, in consultation with the EFRAG SR TEG. These are only considered where either fundamental changes have occurred resulting from the consultation process that have not been subject to consultation or where something new is likely to be learned from re-exposure.
- 5.28 Once discussions have been finalised, the final draft standard (or draft amendment) will be prepared for approval by the **EFRAG TEG SRB**.

Rationale: Please see comment at point 5.9 and 5.13

PUBLIC COMMENT ANALYSIS

- 5.29 EFRAG provides feedback statements that explain how the feedback received from stakeholders has been considered and how its conclusions have been reached.
- 5.30 The feedback statements are provided to the European Commission together with the Technical Advice on the draft standard or draft amendment(s) and published on the EFRAG website.

TECHNICAL ADVICE TO THE EUROPEAN COMMISSION⁶

- 5.31 In its role of technical advisor to the European Commission in the preparation of the ESRS, EFRAG will provide its Technical Advice in the form of a proposal of fully prepared draft standards and/or amendments to ESRS complete with their bases for conclusions and impact analyses (including cost-benefit analysis and impacts on sustainability matters) and accompanied by the proposed digital guidance.

Comment: Please refer to comment at point 2.24 on the need to specify the role of EFRAG's impact analysis vs. the European Commission's impact assessment.

⁶ In accordance with proposed CSRD, Paragraph (11) of Article 1 amending Article 49 of the Accounting Directive, laying down the conditions for empowering the Commission to adopt the delegated acts on sustainability reporting standards.

- 5.32 According to the European Commission's proposal for a CSRD, the Commission's adoption process would also involve that, before adopting standards:
- a) The European Securities and Markets Authority (ESMA) provides an opinion on the Technical Advice provided by EFRAG;
 - b) The Commission consults the Member State Expert Group on Sustainable Finance, the European Banking Authority (EBA), the European Insurance and Occupational Pensions Authority (EIOPA), the European Environment Agency (EEA), the European Union Agency for Fundamental Rights (FRA), the European Central Bank, the Committee of European Auditing Oversight Bodies and the Platform on Sustainable Finance.
- 5.33 The above organisations have been closely involved in the development of EFRAG's Technical Advice to the European Commission. During these consultations, EFRAG will strive to facilitate the above reviews by providing any information or support needed.

POST-IMPLEMENTATION REVIEW

- 5.34 According to the European Commission's CSRD proposal, the Commission shall⁷, at least every three years after the application date, review the standard taking into consideration the EFRAG's Technical Advice where necessary shall amend the standards taking into account relevant developments, including developments with regard to international standards.
- 5.35 Such Post-implementation Reviews (PIRs) are conducted to identify and address potential implementation issues encountered after the adoption of standards and will form part of the EFRAG work plan.

5.36 Such PIRs will have to consider relevant requirements of EU law and be consistent with the European Commission's better regulation agenda.

⁷ Article 19 of the proposed CSRD provides that '*the Commission should review the standards every 3 years to take account of relevant developments, including the development of international standards*'.

APPENDIX 1: THE GLOSSARY OF TERMS

TERM DESCRIPTION

CSRD Corporate Sustainability Reporting Directive.

Comment letter A letter or a formal submission received by EFRAG in response to a consultation document. All comment letters are made public and can be viewed on the EFRAG website.

Discussion paper A paper issued by EFRAG that presents the analysis and collective views of the EFRAG SRB on a particular topic. The matters presented will have been discussed in the public meetings of EFRAG. Discussion papers are issued for public comment and the feedback from these consultations informs EFRAG and helps it to assess whether and how to develop a new or amended ESRS.

EFRAG SRB EFRAG Sustainability Reporting Board.

EFRAG SR TEG EFRAG Sustainability Reporting Technical Expert Group.

ESRS Sustainability Reporting Standards as applicable in the EU.

Exposure draft A draft of a proposed Standard or amendment to a Standard. An exposure draft sets out a specific proposal and includes a basis for conclusions and, if applicable alternative views. An exposure draft is a mandatory due process step.

Feedback statement A document that gives direct feedback on the comments that were submitted on the exposure draft. It identifies the most significant matters raised in the comment process and explains how EFRAG considered those matters.

Fieldwork Work (including field test, surveys...) conducted with stakeholders to help EFRAG assess the likely effects of a proposed standard or amendment to a standard. Fieldwork might include experimentally applying new proposals to individual transactions or contracts as if the proposed guidance were already in effect, asking for feedback on the proposed wording of a particular proposal or assessing the extent of system changes that would be required if the proposed guidance was implemented. Fieldwork may also include gathering examples from practice to help EFRAG gain a better understanding of industry practices and how proposed guidance could affect them.

Impact analysis A process for assessing the likely effects of a proposed ESRS, which is undertaken as the new requirements are developed, culminating in an analysis presented as part of, or with, the basis for conclusions published with a new standard or amendment to a standard that summarises the EFRAG's assessment of the likely effects of the new requirements.

Post-implementation review A review of a Standard or major amendment to a Standard after its implementation. Re-exposure A formal request for comments on a revised version of an exposure draft.

SFDR Sustainable Finance Disclosure Regulation.

Technical Advice EFRAG's advice to the European Commission consisting of fully prepared draft standards and/or draft amendments to Sustainability Reporting Standards accompanied by bases for conclusions and impact analyses (including cost-benefit analysis and impacts on sustainability matters).

APPENDIX 2: EFRAG'S NEW ORGANISATION

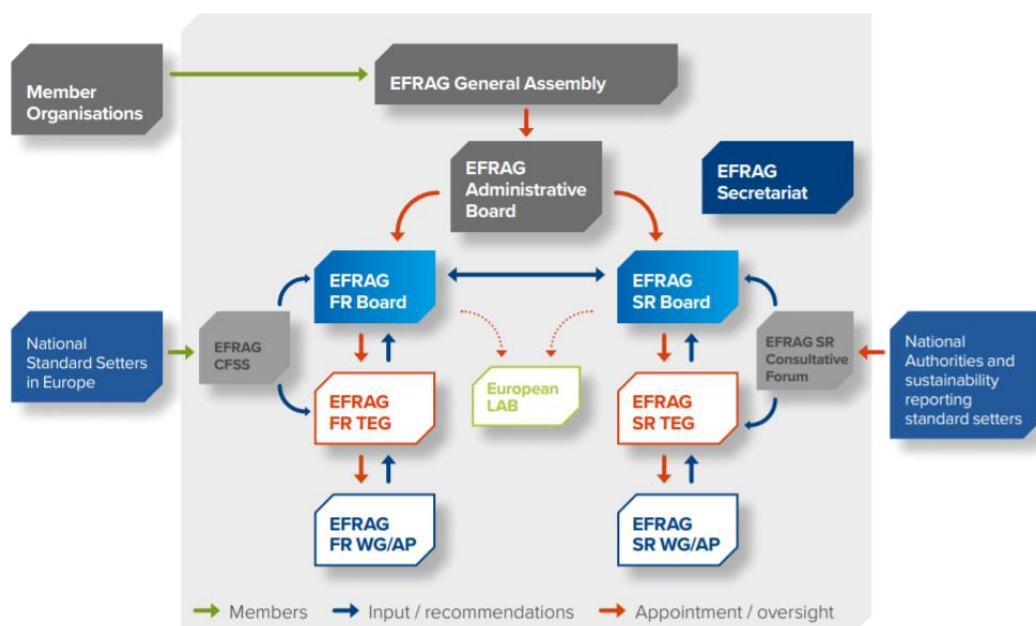
This appendix provides an overview of the elements relevant for the due process and due process oversight of EFRAG's new organisation after the envisaged governance changes to integrate its new activity of sustainability reporting standard setting. This organisation will be based on the recommendations made by Jean-Paul Gauzès in its

ad personam report on [Potential need for changes to the governance and funding of EFRAG](#) that was fully supported by Commissioner McGuinness in [a letter dated 12 May 2021](#). The full set of recommendations will be implemented in EFRAG’s governance and finance structure and detailed in the EFRAG Statutes and EFRAG Internal Rules. This implementation process will take place in parallel with the public consultation on the proposed EFRAG Due Process Procedures.

Information in this appendix is only provided for background purposes to provide context for the public consultation on the proposed EFRAG Due Process Procedures for the sustainability reporting pillar. It is not part of the public consultation itself.

OVERALL ORGANISATION

Taking into account the different nature of its missions, the technical work will be carried out under the responsibility of two separate Reporting Boards operating under the oversight of an Administrative Board as reflected in the graph below.



The **EFRAG Administrative Board** is responsible for EFRAG’s organisation, administration, finance and due process and oversight of all EFRAG’s bodies. It does not play a role in EFRAG’s technical work, including the development of the standards.

The Administrative Board may have various committees including a Nominating Committee for the preparation of the recommendation of the EFRAG Administrative Board to the EFRAG General Assembly on the appointment of the members of the two Reporting Boards, an Audit and Budget committee, a Remuneration Committee and a Due Process Oversight Committee.

The Administrative Board would approve the due process system used by the Reporting Boards and TEGs, and periodically evaluate the transparency, efficiency and effectiveness of EFRAG’s due process.

EFRAG’s technical work will be carried out under the responsibility of **two separate Reporting Boards**:

- **A Financial Reporting Board (EFRAG FRB)** that would essentially continue the current role of the existing EFRAG Board in the IFRS endorsement process and contributing to the IASB standard-setting process including research activities. The only significant change to the financial reporting pillar would be that the current EFRAG Board’s administrative tasks and responsibilities would be transferred to the Administrative Board.
- **A newly formed Sustainability Reporting Board (EFRAG SRB)** that would be responsible for all positions expressed within its area of competence, including setting the work plan and approving draft standards submitted to the European Commission. The EFRAG SRB may also develop non-binding guidance documents or other material to support the implementation of the future EU sustainability reporting standards.

Each Reporting Board would operate by consensus to the maximum extent feasible, or by qualified majority (two-thirds) if there is failure to reach consensus.

Each Reporting Board is assisted in its area of competence by a **Technical Expert Group (TEG)**. The TEG for sustainability reporting (EFRAG SR TEG) will be responsible for developing draft standards with the input from Working Groups and Advisory Panels and for recommending these draft standards for approval to the EFRAG SRB.

Each EFRAG TEG operates by simple majority decisions, but situations may be specified where a qualified majority will apply.

The EFRAG SRB will review the EFRAG SR TEG proposals. If necessary, the EFRAG SRB will set out why it considers that the draft standard does not meet the needs of EU legislation and ask the EFRAG SR TEG to reconsider its proposal. If an agreement cannot be reached, the EFRAG SRB will submit the proposed standard to the European Commission accompanied by a reasoned opinion setting out why it considers that the standard does not meet the needs of EU legislation. It would be for the European Commission to provide the final arbitration about the points at issue.

A **Consultative Forum** of National Authorities, sustainability reporting standard setters and existing global initiatives and other players will be established. This Forum will be consulted by the EFRAG SRB and the EFRAG SR TEG for advice on the draft standards.

A number of new **Working Groups/Task Forces/Advisory Panels** may be established by each TEG. Each TEG would decide on the need for and mandate for such groups and their composition. The role of Working Groups/Task Forces,/Advisory Panels is to advise and provide input to the TEGs discussions aiming at providing contributions on specific matters.

The European Lab activities will be continued in the form of task forces to identify good practices, and stimulating innovation and debate related to sustainability reporting. The European Lab activities could potentially also include work on cross-cutting issues with the financial reporting activities (or on financial reporting only).