

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

This report was presented to the EFRAG General Assembly on 16 March 2023

Objective

- 1 The objective of the session 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 since the establishment of the EFRAG DPC in March 2022, 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 March 2022 to February 2023, the EFRAG Administrative Board held five public sessions where due process matters were discussed. In addition, two closed meeting held in December 2022 addressed due process related matters (see paragraphs 22 to 31). A summary of the discussions and decisions was included in the EFRAG Update publications for the related months.
- 7 The following section (from paragraphs 9 to 44) presents the topics discussed and decisions made at each of these meetings.
- 8 Over the same period the EFRAG DPC held 9 meetings and discussed the matters paragraphs 45 onwards present the topics discussed and recommendations made by the EFRAG DPC at these meetings.

EFRAG Administrative Board 20 April 2022 (Public session)

- 9 In anticipation of a request and decision of the EFRAG SRB for an accelerated due process, the EFRAG Administrative Board examined the case (the topic had been previously discussed by the EFRAG DPC at its 14 April) and tentatively did not object to an accelerated due process with as conditions:

- (1) The consultation period could not be shorter than 90 days;
 - (2) The consultation document should clearly set the responsibilities of respectively the PTF-ESRS and the EFRAG SRB; and
 - (3) The Bases for Conclusions should be published at the latest by the end of May 2022.
- 10 The EFRAG Administrative Board also advised that if, as a consequence of the political agreement reached in the CSRD legislative process the timetable would be extended in a way that creates additional flexibility EFRAG would also expect to have the possibility to extend the public consultation period to 120 days.
- 11 At an additional meeting of the EFRAG SRB held on 28 April 2022 to approve the cover note accompanying the EDs and the consultation survey (see below), the EFRAG SRB did not object to a 100-day public consultation period with a deadline set on 8 August 2022.

EFRAG Administrative Board 6 September 2022 (Public session)

- 12 The EFRAG Administrative Board held a public session on 6 September 2022 to discuss a request from the EFRAG SRB and EFRAG SR TEG to have an accelerated due process for the second Set of draft ESRS. Members were not asked to take a decision at the meeting but heard a summary of the discussion at EFRAG Administrative Board DPC.
- 13 The latter had concluded that more information was needed from the EFRAG SRB and EFRAG SR TEG about the rationale for a shortened consultation period for the second Set of draft ESRS and suggested further consideration of other alternatives and mitigating actions. A further discussion took place in October 2022 on the matter at the EFRAG Administrative Board DPC. The EFRAG Administrative Board also received an update from the Acting Chair of EFRAG SR TEG on:
- (1) the activities conducted by the EFRAG SR TEG and the EFRAG SRB since May 2022 and the activities planned until November 2022;
 - (2) the main issues identified and discussed at the meetings and how the issues will be addressed by the EFRAG SR TEG and EFRAG SRB; and
 - (3) the preliminary messages heard from the public consultation.

EFRAG Administrative Board 17 October 2022 (Public session)

- 14 The EFRAG Administrative Board held a public session on 17 October 2022 to discuss:
- (1) The feedback received from the public consultation on Set 1 of draft ESRS in relation to EFRAG's due process;
 - (2) The consultation periods for Set 2 of draft ESRS; and
 - (3) The consultation period for the draft XBRL Taxonomy.
 - (4) A request from the EC for EFRAG to also develop the Digital Guidance on the disclosures under Article 8
- 15 The EFRAG Administrative Board tentatively supported the proposed actions to address the feedback received from stakeholders in the public consultation on Set 1.
- 16 In particular, it advised to communicate how it has considered the feedback received in the consultation on the draft ESRS EDs and addressed the main concerns expressed by respondents despite the relatively short timeline to finalise the draft ESRS after the

public consultation. It was noted that the overall timeline for the issuance of the standards imposed by the CSRD is extremely challenging.

- 17 Members reminded the need to communicate clear timelines and work plan for Set 2 and on the timing of the public consultation.
- 18 They noted that timeline for the subsequent steps would depend on the resources that EFRAG can mobilise to prepare Sets 3 and 4 during the consultation/finalisation of Sets 2 and 3. With the current resources available the tasks have to be planned in sequence and there is limited ability to advance Sets 3 and 4 before the completion respectively of Sets 2 and 3. Thereafter the further sets would have to be prepared.
- 19 Members tentatively supported a staggered approach for the consultation periods of Set 2. However, before making final decisions, members suggested to look more closely at the lessons learnt from the first public consultation, to explain more clearly the resources constraints of EFRAG in order to be able to reflect on the improvements to be brought in the context of Set 2. A further discussion on the matter took place in November 2022.
- 20 Members also supported a two-months consultation period for the draft XBRL Taxonomy of Set 1, noting that this was common practice among other standard setters (in particular the IASB/ISSB). The appropriateness of the length of the public consultation process will be reviewed as part of the future review process of the DPP.
- 21 Lastly members had a first discussion on the request letter received from the EC asking EFRAG to develop the Digital Guidance on both the Set 1 ESRS and the Article 8 Delegated Act. The EC Staff presented the rationale for the request. No decisions were taken at the meeting but members asked for the EFRAG Secretariat to gather more information on the financial cost and workload implications of the Article 8 Digital Guidance.

EFRAG Administrative Board 5 December 2022 (Closed Meeting)

- 22 At the meeting, the EFRAG Administrative continued the discussion on the request received from the EC to prepare the XBRL Taxonomy for the Article 8 Disclosures.
- 23 This meeting and the following one (see below) were exceptionally not held in public as the request from the EC itself was not made public.
- 24 Members were presented with an assessment of the financial impact and expected workload effects associated with the EC request.
- 25 Members considered that prior to making a final decision on the request they would need to consider the overall workplan and resources of EFRAG consider whether the additional workload involved by the Article 8 Taxonomy can be addressed within the existing resources of EFRAG.
- 26 The meeting agenda also included a presentation of the possible due process for the monitoring review and approval XBRL Taxonomy (for both the ESRS and, if confirmed the Article 8 ones). No decision was taken at the meeting. The details of the due process steps will be discussed at future meetings of the EFRAG DPC and then the EFRAG Administrative Board.

EFRAG Administrative Board 21 December 2022 Meeting (Closed session).

- 27 Members were asked to make a final decision at this meeting about the request received from the EC to prepare the XBRL Taxonomy for the Article 8 Delegated Act
- 28 Members were first informed that on 19 December 2022 the EFRAG General Assembly approved the 2023 budget and workplan. The budget included the amount for the Article

8 Taxonomy. As far as supervision and control of the work this will be done by the same EFRAG team as the ESRS taxonomy so there is no need for additional resources.

- 29 A majority of the EFRAG Administrative Board agreed that EFRAG would undertake the work to develop the digital taxonomy as well for Art 8 of the Taxonomy Regulation on the condition that the responsibilities for the deliverables must ultimately be exclusively borne by the EC.
- 30 This was subsequently made explicit in a letter sent to the European Commission in early January 2023 explaining the concerns about the responsibilities of EFRAG given that EFRAG did not develop the contents of Article 8 and therefore cannot, different from ESRS, address content questions or even interpretations that may arise during the development of the digital taxonomy for disclosures under Article 8 Delegated Act.
- 31 Members also reviewed and approved the Terms of Reference of the Digital Reporting Consultative Forum to be included in a call for candidates that was subsequently launched on 23 December 2022.

EFRAG Administrative Board 1 February 2023 (Public session)

- 32 The EFRAG Administrative Board held a public session on 1 February 2023 to:
- (1) make a final decision on the consultation periods for Set 2; and
 - (2) discuss possible improvements to the application of the due process arising from the experience with Set 1.

Consultation period for set 2

- 33 The EFRAG Administrative Board approved the proposed shortened consultation periods for the first two batches of Set 2 that is:
- (1) A consultation period of 100 days for 3 EDs: Coal and Mining, Oil and Gas, Sec 1 (from 3 April to 11 July)
 - (2) A consultation period of 3 months (90 days) for 3 EDs: Listed SMEs, Agriculture, Road Transport (from 2 May to 1 August).
- 34 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 may imply that the listed SMEs standard is consulted upon separately from the batches of sector specific standards.
- 35 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.
- 36 Individual EFRAG Administrative Board members and observers made the following observations:
- (1) Shortened consultation periods should be considered as an exception and were not expected to be reiterated each time; and
 - (2) The sustainability reporting work plan could be more detailed and shared more regularly with the EFRAG Administrative Board. In periods of resource constraints, the priority assigned to non-standard setting activities should be considered very carefully.
- 37 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 non-standard 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

- 38 Members generally supported the identified procedural improvements recommended by the EFRAG DPC and summarised in the meeting papers; in particular:
- (1) Publishing the meetings' agenda on EFRAG's website covering both open and closed session;
 - (2) Always starting the public session at the indicated time in the agenda;
 - (3) 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
 - (4) 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.
- 39 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)

- 40 At the meeting, the EFRAG Administrative Board discussed:
- (1) The updates to the DPP recommended by the EFRAG DPC to reflect the changes to the final text of the published CSRD; and
 - (2) 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
- 41 Members approved the proposed updates to the DPP and their submission for approval to the General Assembly with some suggested drafting improvements.
- 42 Members also approved the yearly report on the oversight of the due process. It was in particular suggested to add a section to this report to indicate that EFRAG has received no correspondence from stakeholders on the due process posted directly to its new online *Register of Due Process Correspondence* (see section below).

Register of Due Process correspondence with stakeholders

- 43 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](#).
- 44 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 are included.

EFRAG Administrative Board Due Process Committee meetings

- 45 Paragraph 3.4 of EFRAG's DPP provides that the EFRAG Administrative Board DPC:
- (1) Shall meet when substantial issues are raised by stakeholders or at the request of either any of its members or the EFRAG Administrative Board; and
 - (2) Meeting shall be held at least twice a year by either a physical meeting or a conference call or a video conference webcast meeting.
- 46 The EFRAG Administrative Board DPC met 9 times between April 2022 and February 2023. 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.

- 47 Over the period from March 2022 to February 2023, the EFRAG DPC addressed the following major topics in relation to Sustainability Reporting.
- (1) Reviewed and provided comments on the [feedback statement](#) prepared by the EFRAG Secretariat to summarise the responses received to EFRAG's 2021 public consultation on its due process and how the input received was addressed. The feedback statement was subsequently published on 30 March 2022;
 - (2) Received regular updates on the progress made by EFRAG in developing Set 1, the issues identified or reported to EFRAG in the public consultation and how they were addressed;
 - (3) Was informed in cases where technical matters were discussed in closed meetings or sessions by the EFRAG SRB or by the EFRAG SR TEG and obtained the reasons for the decision to not have the session or meetings in public;
 - (4) Identified the lessons learned from Set 1 (including the review of the feedback received from the public consultation in relation to due process matters and in separate letters addressed by stakeholders);
 - (5) Identified potential omission or shortcuts to the normal due process procedures and made recommendations on f areas for improvements;
 - (6) Discussed the request made by the EFRAG SRB and EFRAG SR TEG to have shortened consultation periods for Set 1 and for the first batches of Set 2 (at several consecutive meetings), obtained explanations on the rationale for the request and made recommendations on the matter to the EFRAG Administrative Board; and
 - (7) Considered the consultation period for the Digital Taxonomy (2 months) and made recommendations on the matter to the EFRAG Administrative Board.
 - (8) Discussed and approved potential updates to align the DPP with the published CSRD; and
 - (9) Start discussing possible other updates to the DPP on account of:
 - (1) Areas not (or not fully) covered by current DPP (Due Process for XBRL Taxonomy and Cost-benefits analysis); and
 - (2) Other possible updates and improvements based on practice and experience from Set.
- 48 The (Acting) Chairs or Vice-Chairs of the EFRAG SRB and EFRAG SR TEG were invited to the meetings whenever relevant.
- 49 For obvious reasons, the EFRAG DPC's activity over the past period was essentially focused on the Sustainability Reporting Pillar, as this pillar and its governance bodies, required all the attention of the EFRAG DPC for its first year of activity since Q1 2022.
- 50 On the Financial Reporting Pillar, the EFRAG DPC requested the Secretariat to starts formalising the existing due process procedures (without changing them) in a DPP document and received regular updates on the progress with that matter.