EFRAG
European Financial Reporting Advisory Group

EFRAG DUE PROCESS

Explanatory Memorandum

The explanatory memorandum provides a background to the EFRAG Statement of Due Process and explains some of its content in more detail.

Introduction

1. EFRAG's mandate covers both pro-active work and endorsement advice to the Commission. A clear distinction should always be maintained between the two in internal debates, publications and consultations.

2. The arrangements put in place, both at the international and EU levels, for achieving convergence in financial reporting standards are designed to draw in contributions from many parties and are, in consequence, quite complex. If the financial reporting community is not to be overwhelmed by requests for comment on proposals and counter-proposals, each participant in the process will have to have a clear idea of its own role and design its procedures, as far as possible, to optimise the efficiency of the whole.

Quality standards of EFRAG's work

3. The standards of quality that should characterise all EFRAG's work are:

   (i) Independence

   The members of the Technical Expert Group (TEG) shall not regard themselves as representing sectional and/or national interests but shall be guided by the need to act in the European interest, as set out in the joint proposals and memoranda of understanding with the Commission and IASB.

   (ii) Technical quality

   EFRAG should aim to deliver sound technical judgements supported by reasoned opinions.

   (iii) Widespread and open debate

   Subject to the timetable constraints within which it must operate, EFRAG should consult widely, give reasons for its judgements and regularly publicise its agenda and decisions. The requirement for openness should not exclude the possibility of preserving, on request, the confidentiality of information provided by consultees.

(iv) Efficient due process

EFRAG must work quickly and efficiently in order to meet the dual pressure of the IASB timetable and its own commitment to the Commission to give its endorsement advice within two months of publication of an IFRS or an IFRIC pronouncement.

4. EFRAG addresses financial reporting issues for listed and non-listed companies. The Regulation on the application of international accounting standards provides the option for Member States to require or permit the application of IAS not just for consolidated accounts of listed companies but also for other accounts of a wide range of companies. In a number of countries, there will therefore be an immediate impact for (certain classes of) unlisted companies including SMEs.

Pro-active contribution to IASB

5. In order to avoid merely duplicating the consultative process of IASB, as well as that of national standard setters that consult their own constituency on each IASB proposal, EFRAG will address its invitations to comment primarily to its own consultative network, including the EFRAG sponsoring organisations; the national standard setters of Europe; and other organisations as considered appropriate e.g. specialist industries, professions, etc.

6. Organisations and other members of the public will be kept informed of EFRAG's activities through its website. Comment letters from the public will be considered, if received, but will not be actively sought. A well-designed and regularly updated website will play a key role in EFRAG's openness.

7. National standard setters of Europe will have access to EFRAG through a number of routes. In common with other consultative organisations they will receive regular updates of EFRAG agenda items and decisions. Additionally, they will comprise EFRAG's Consultative Forum, meeting at least twice a year to engage in technical debate on matters arising from the EFRAG agenda. It is also expected that individual standard setters may volunteer from time to time to assist EFRAG on particular projects.

8. In accordance with paragraph 8 of the joint proposals "Expert Level of the Endorsement Mechanism – The Establishment of the "European Financial Reporting Advisory Group" (EFRAG)" for the establishment of EFRAG, the Accounting Regulatory Committee (ARC) will be kept informed of proactive contributions to the IASB. An exchange of views is envisaged. Representatives from EFRAG, if invited, would also expect to have the right to speak at ARC on the technical assessment of an IFRS or IFRIC pronouncement provided by EFRAG in fulfilling its role in the endorsement process.

9. The formal, public record of EFRAG views on an IASB proposal is the comment letter submitted to IASB as part of the latter's due process. It is important to preserve a clear distinction in the minds of all readers of that letter between EFRAG views expressed as part of its pro-active function and the formal technical advice delivered to the Commission on whether to endorse an IFRS or IFRIC pronouncement. Failure to make this distinction will not only create confusion but may also inhibit EFRAG from stating clearly objections it may have to an IASB proposal, for fear they may be taken

as an indication of future negative endorsement advice. Each formal comment letter should make clear in which capacity the letter is written, as set out in paragraph 1.

Endorsement advice

10. In addition to the consultation process that will have taken place in the course of EFRAG's pro-active work, it is necessary for EFRAG to consult specifically on giving an endorsement advice to the Commission, be it positive or negative.

11. In the case of negative advice EFRAG faces a conflict between the need to act expeditiously and the importance of allowing time to reach a mature decision after deliberating the issues and carefully exploring alternatives with IASB. Too late an announcement that EFRAG is minded to advise against adopting an IASB pronouncement will leave insufficient time for aggrieved parties to make their views known to EFRAG. Too early an announcement could prejudice delicate discussions with IASB and other parties.

12. As far as possible, EFRAG should aim to reach a tentative view on endorsement no later than the publication date of an IASB pronouncement. In most cases it could do this on a conditional basis in advance of the IASB meeting at which the document is finalised by deciding whether any of the likely alternatives would present an insuperable problem for EU endorsement. Since summary minutes are published on the website, a growing likelihood of negative advice from EFRAG would become public knowledge for some weeks before the IASB pronouncement was published. EFRAG should, however, refrain from publicly soliciting views on rejection of an IASB pronouncement until that pronouncement has been approved.

13. According to the joint proposals "Expert Level of the Endorsement Mechanism – The Establishment of the "European Financial Reporting Advisory Group" (EFRAG)" para. 35 in the case of a negative advice of the TEG, the Supervisory Board will submit a separate statement directly to the Commission to provide its commentary. This statement will be in addition to the negative advice of the TEG that has been directly submitted to the Commission. The TEG expects that there will be a dialogue with the Supervisory Board when there is a likelihood of a negative advice well before the Supervisory Board issues its advice.

14. EFRAG will give publicity to an invitation to comment on a proposal to give endorsement advice. The proposal should indicate the nature of the advice – positive or negative – and the main reasons. In the case of a negative advice, the invitation should draw attention to the consequences if EU companies were to be prohibited from complying with an IASB pronouncement. EFRAG could include a discussion of alternative solutions.

15. EFRAG is committed to giving the Commission its endorsement advice within two months of an IFRS or an IFRIC pronouncement being published. The minimum period that can realistically be given for public consultation is one month in either case. For this reason, it may be necessary for advice given by EFRAG within the required timescale to be provisional, pending receipt and evaluation of the public comments.

Statement of Due Process

1. Introduction

1.1 The members of the EFRAG Technical Expert Group (TEG) shall be guided by the need to act in the European interest, as set out in the joint proposals and shall therefore not regard themselves as representing sectional or national interests. EFRAG aims to deliver sound technical judgements supported by reasoned opinions.

1.2 EFRAG conducts a transparent due process open to all parties.

Openness and transparency are achieved in particular by:

- publication of EFRAG comment letters to the IASB, endorsement advice to the Commission and other EFRAG position papers as appropriate;
- providing reasoned opinions for EFRAG positions;
- publication of TEG agendas and summary minutes of its meetings;
- inviting comments on IASB proposals, EFRAG tentative positions etc;
- publishing an annual report.

1.3 Publication means that the documents are freely available

- by email to the Supervisory Board, the sponsoring organisations, the national standard setters of the EU and the Accounting Regulatory Committee (ARC); and
- via the internet for all other interested parties.

At its discretion, EFRAG may make printed copies available, with or without a charge.

1.4 EFRAG consults primarily through its Consultative Network, viz;

i) the EFRAG sponsoring organisations;

ii) the national standard setters of Europe;

iii) other organisations as considered appropriate eg specialist industries, professions etc.
Any comment letters received from the public are considered.

Individuals and organisations are kept informed of EFRAG's activities through its website.

1.5 In addition to participating in the consultative network, European national standard setters comprise EFRAG's Consultative Forum, meeting at least twice a year to engage in technical debate on issues arising from the EFRAG agenda. It is also expected that individual standard setters may from time to time be asked to assist EFRAG on particular projects.

1.6 The Accounting Regulatory Committee (ARC) is kept regularly informed of submissions made to IASB in the course of EFRAG's pro-active work.

1.7 EFRAG's due process distinguishes between:

- pro-active contribution to IASB
- endorsement advice and
- other pronouncements.

2 Pro-active contribution to IASB

2.1 The objectives of EFRAG's pro-active work are:

i) to provide an authoritative voice, reflecting, particularly, European perspectives, giving IASB reasoned opinions on financial reporting issues, and identifying issues that need to be addressed by the IASB

ii) to stimulate and co-ordinate debate on financial reporting issues and thereby develop an enhanced ability across Europe to reach sound judgements on such issues.

EFRAG addresses financial reporting issues for listed and non-listed companies.

2.2 EFRAG's pro-active contribution to IASB covers:

- proposals by EFRAG for consideration by IASB;
- comments on the work programme of IASB and
- comments on discussion papers and exposure drafts for IFRSs, IFRIC pronouncements and other IASB statements.

2.3 In order to optimise its influence within the time constraints available, EFRAG has to vary the depth of the debate and consultation that it undertakes. Among the considerations that may affect the time and effort devoted to a topic are:

- importance and difficulty of the subject;
- any EU/European special aspect; and
- priority in IASB's agenda.

2.4 As a means of fostering the European debate, EFRAG informs the members of its consultative network and the public in general through EFRAG's website of the principal points it is minded to make and solicits their views before committing itself to a formal comment letter or to fresh proposals to IASB. However, EFRAG alone is responsible for positions that it publicly adopts and it is neither necessary, nor in most cases practical, for successive drafts of EFRAG comments to be circulated to the network for approval.

2.5 EFRAG comment letters or proposals to IASB, IFRIC etc are published on the day they are submitted or as soon as practicable thereafter.

2.6 In order to clearly separate the two roles of EFRAG, each EFRAG comment letter on an IASB proposal contains a statement that the letter is submitted by EFRAG in its capacity of contributing to IASB's due process, and not in its capacity of advising the European Commission on endorsement.

3 Endorsement advice

3.1 EFRAG is committed to give its endorsement advice to the Commission within two months of an IFRS or an IFRIC pronouncement being published.

3.2 In addition to the consultation process for EFRAG's pro-active work, EFRAG will consult on the giving of endorsement advice, be it positive or negative.

3.3 A consequence of the consultation process described below is that it may not be possible for EFRAG to give final advice on endorsement until after the expiry of the deadline referred to in paragraph 3.1. In that event, it gives tentative advice within the agreed periods and final advice as soon as possible after redeliberation of the issues in the light of comments received.

3.4 EFRAG issues an open invitation to comment. In addition to discussing the technical reasons for the advice, in the case of a negative advice, the invitation to comment draws attention to the consequences of prohibiting EU companies from complying with an IASB pronouncement.

3.5 The invitation to comment is published as soon as possible after the IASB has given final approval for issue of its pronouncement. A period of one month is allowed for comments to be given to EFRAG.

3.6 EFRAG will set out the basis for conclusions in its endorsement advice.

3.7 A decision to give negative endorsement advice requires the minimum consent of two thirds of the members of the TEG. An abstention will be counted as a vote in favour of the endorsement.

3.8 Voting may be in formal meeting or by electronic, telephonic, or written communication.

3.9 The technical assessment of an IASB pronouncement has to respect the provisions of the Framework for the Preparation and Presentation of Financial Statements (IASC Framework), except insofar as the Framework is itself being reviewed.

3.10 EFRAG publishes its final endorsement advice – positive or negative – on the day it is delivered to the Commission or as soon as possible thereafter. Comment letters received in response to the invitation to comment are made available for inspection and may be published unless confidentiality is requested by the writer.

4. Other pronouncements

4.1 Other pronouncements by EFRAG in principle follow the same due process as pro-active work by EFRAG on IASB proposals (section 2). In view of the longer timescale that is often available for framing EFRAG's own proposals, the process of consulting the EFRAG network may be extended by formally seeking comment letters from the public. Any such letters may be published unless confidentiality is requested by the writer.