



Association pour la participation des
entreprises françaises à l'harmonisation
comptable internationale



ESMA
103 rue de Grenelle
75007 Paris
France

Paris, October 10, 2013

Dear Sir/ Madam

Ref : Consultation on ESMA Guidelines on Enforcement of Financial Information

We are pleased to comment on the above document on behalf of ACTEO, AFEP and MEDEF.

We would like to emphasize that we support the objective of the harmonisation of the approaches to enforcement among the European regulators. This is, in our view, essential for the maintenance of an integrated European market place for capital. Such a concerted approach should facilitate the provision of a consistent level of information to the whole body of European investors and guarantee a level playing-field for European issuers. In this respect, ESMA's guidelines project seems to us to be a useful contribution to this end. We would, however, emphasize that this project must be consistent with the following suggested principles which are required to structure such a framework. Indeed, we believe that the free exchange of information which is a pre-requisite for a better harmonisation of practice can bring with it some risks, for the avoidance of which the European regulator should be constantly vigilant.

Guarantee the equitable treatment of European issuers, particularly in the area of sensitive information

It is essential to align the practices of the different regulators of financial information in order to avoid a situation in which issuers of one country are put at a disadvantage compared with other issuers in the European Union. We think, in fact, that each and every European issuer should be subject to the same treatment, particularly in the domain of commercially-sensitive information, with the aim of reducing the differences that can be seen in those areas where the provision of information could be detrimental to a company's competitive position. In our view, in areas such as,

for example, those of the amortisation of intangible assets and segment information, it is necessary for the recommendations of ESMA and the various national regulators to be fully harmonised.

We think that, in order to achieve this equality in requirements, it should be ESMA's role to ensure that no demands are imposed by individual jurisdictions which go beyond what is strictly necessary for compliance with IFRS. The requirements of IFRS are sufficiently detailed and wide-ranging for good communication at present.

Take into account the global reporting environment in order not to weaken European companies in the competitive arena

Certain IFRS require the disclosure of more sensitive information than other important bodies of financial reporting, such as, notably, US GAAP. We think that it is the duty of the European regulator, in its work towards harmonisation, to respect and maintain the competitive edge of European companies, and thus not to require the publication of information which would be prejudicial to their interests. The situation in which they are compelled to disclose more information than their global competitors is particularly unacceptable when the standards in question have been adopted in the name of convergence between US GAAP and IFRS. To illustrate this, we draw your attention to two very significant instances of asymmetrical disclosure to be found in standards which were ostensibly intended to be part of the convergence process:

- The Segment Information standard has resulted in varied disclosure when highly sensitive information is concerned; the absence of equity in the application of the standard allows large US groups to limit their segment information to a simple geographical analysis or even to a single segment, whereas European entities in the same business which provide detailed information for three or four segments can be beset with requests from their national regulator to further refine and analyse their segments. France is an example of a jurisdiction where this occurs frequently.
- The information required to be disclosed about the depreciation or amortisation of assets is another element which can be immediately useful to competitors. This is another instance of a major difference in approach between regulators: in the context of US GAAP, the issuer provides detailed information only in the case of impairment, whereas under IFRS detailed information is required in all cases. This important difference must be taken into account by the regulator when it is deciding upon its enforcement approach. Insistence upon the full suite of disclosure (such as, for example, sensitivity analyses, major variables and assumptions) places European entities at a disadvantage compared with their competitors, especially those from the USA, who have a lighter disclosure burden.

Be aware that the total volume of information required to be published has reached the limit of what is practical and reasonable

Harmonisation of the disclosure requirements at European level must not lead to further increase in the volume of the notes to IFRS financial statements: these have now reached a level which is no longer acceptable to companies and this furthermore undermines transparency and the quality of information for external users. All interested parties, whether they be within the entity, at the

corporate governance level or external to the entity, acknowledge that they can no longer process the volume of information that is published. This gives rise to an important risk element for entities, as it is now very difficult for interested parties to identify the essential relevant pieces of information they need.

Harmonise approaches without providing interpretation of the standards

Enforcement actions are not restricted to the information disclosed in the notes but also involve an assessment of the compliance of accounting treatments with IFRS. While we fully support the notion that IFRS standards should be applied consistently by all adopters, and we understand the necessity of regulators' exchanges of views in order to align practice, we would draw ESMA's attention to the thin line which might exist between such elements and the *de facto* establishment of a European interpretation body which we do not think is a legitimate aspect of the regulator's role.

Indeed, we believe that when ESMA publishes its extracts from its "database of enforcement", there is a real risk that these decisions become interpretations, in a manner similar to that in which rejection notices from the IFRS-IC, which have no real status in the IFRS hierarchy, represent decisions of the standard-setter and impose themselves on the preparer. The IFRS-IC is conscious of this problem and has therefore recently clarified the status of the rejection notice and modified the related due process.

ESMA does not have a role to play in the interpretation of accounting/financial reporting standards as an interpreter, but must limit its role to one of verifying that issuers have correctly applied the standards. Thus, in our view, the regulator must be careful not to establish a public database on its assessment of the application of IFRS. The existence of such a database of conclusions would constitute a further stratum in the accounting hierarchy that preparers and their auditors would have to comply with, thus leaving less room for the necessary use of judgment by preparers and auditors in their assessment of appropriate accounting treatment.

We therefore call upon the ESMA to pay scrupulous attention to the decisions held in the database and the way they are communicated in order to ensure that these do not acquire the status of an applicable interpretation of the standards.

Yours faithfully

ACTEO

Patrice MARTEAU
Chairman



AFEP

François SOULMAGNON
Director General



MEDEF

Agnès LEPINAY
Director of economic
and financial affairs



Answers to the specific invitation to comment

Q1 Do you think that the proposed guidelines will improve the quality and consistency of financial reporting in Europe?

Q2 Do you have any comments on the potential costs to the financial reporting community of any aspects of these proposals?

Q3 Do you agree that a common European approach to the enforcement of financial information is required in order to avoid regulatory arbitrage by issuers? In this context, regulatory arbitrage refers to the position where an issuer's choice of the market on which to list its securities may be influenced by different approaches to enforcement being applied in different European jurisdictions.

We would like to emphasize that we support the objective of the harmonisation of the approaches to enforcement among the European regulators. This is, in our view, essential for the maintenance of an integrated European market place for capital. Such a concerted approach should facilitate the provision of a consistent level of information to the whole body of European investors and guarantee a level playing-field for European issuers. In this respect, ESMA's guidelines project seems to us to be a useful contribution to this end. We would, however, emphasize that this project must be consistent with the following suggested principles which are required to structure such a framework. Indeed, we believe that the free exchange of information which is a pre-requisite for a better harmonisation of practice can bring with it some risks, for the avoidance of which the European regulator should be constantly vigilant.

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We think that, in order to achieve this equality in requirements, it should be ESMA's role to ensure that no demands are imposed by individual jurisdictions which go beyond what is strictly necessary for compliance with IFRS. The requirements of IFRS are sufficiently detailed and wide-ranging for good communication at present.

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Q5 Do you agree that issuers from third countries using an equivalent GAAP to IFRS should be subject to an equivalent enforcement and coordination system? Do you agree with the measures proposed to make this enforcement more efficient?

Yes, we agree

Q15 Do you agree that, in determining materiality for enforcement purposes, materiality should be assessed according to the relevant reporting framework, e.g. IFRS?

Yes, we agree

Q16 What are your comments regarding enforcement actions as presented in paragraphs 57 to 67 of the proposed guidelines? Do you agree with the criteria proposed?

Q17 Do you have any comments on the specific criteria for the submission of decisions or emerging issues to the EECS database?

Q18 What are in your opinion appropriate activities that would help to achieve a high level of harmonisation of the enforcement in Europe?

Q19 Do you have any comments on the transparency, timing and frequency of the reporting done by the enforcers with respect to enforcement actions taken against issuers?

Q20 What are your views about making public on an anonymous basis enforcement actions taken against issuers?

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