27 May 2024
ESMA32-193237008-8267

Report

29th Extract from the FRWG (EECS)'s Database of Enforcement

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The decisions included in this report were taken by national enforcers in the period from December 2021 to December 2023. ESMA will continue to publish further extracts from the database on a regular basis.

List of abbreviations and acronyms used in this report

APM	Alternative Performance Measure
BC	Basis for Conclusions
CAPEX	Capital Expenditure
CGU	Cash Generating Unit
EEA	European Economic Area
ESMA	European Securities and Markets Authority
FRWG (EECS)	Financial Reporting Working Group (European Enforcers Coordination Sessions)
IAS	International Accounting Standards
IASB	International Accounting Standards Board
IFRS IC	IFRS Interpretations Committee
IFRS	International Financial Reporting Standards
MAR	Market Abuse Regulation or Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014
PPA	Power Purchase Agreement
Prospectus Regulation	Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017
Q&A	Questions & Answers in ESMA's webtool
ROCE	Return on Capital Employed
Taxonomy Regulation	Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088
Transparency Directive	Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004
USD	US Dollars

Executive Summary

The European Securities and Markets Authority (ESMA) publishes extracts from its restricted database of enforcement decisions on financial statements with the aim of strengthening supervisory convergence and providing issuers and users of financial statements with relevant information on the appropriate application of International Financial Reporting Standards (IFRS) and the ESMA Guidelines on Alternative Performance Measures (APMs)[1]. APMs are disclosed outside IFRS financial statements but in documents within the scope of regulated information, such as management reports disclosed in accordance with the Transparency Directive and prospectuses. According to its founding regulation, ESMA shall act in the field of financial reporting to ensure the effective and consistent application of European legislation.

To fulfil these responsibilities, ESMA organises the Financial Reporting Working Group (European Enforcers Coordination Sessions) (FRWG (EECS)), a forum of 38 European enforcers from all European Economic Area (EEA) countries with responsibilities in the area of enforcement of financial information.

With responsibility for the coordination of supervision of almost 4,000 issuers listed on the regulated markets in the EEA preparing IFRS financial statements, FRWG (EECS) constitutes the largest regional enforcers' network with supervision responsibilities for IFRS.

Through FRWG (EECS), European enforcers discuss and share their experience on the application and enforcement of IFRS and the ESMA Guidelines on APMs. In particular, they discuss significant enforcement cases before and/or after decisions are taken to promote a consistent approach to the application of IFRS and the ESMA Guidelines on APMs. In addition, FRWG (EECS) produces technical advice in ESMA Statements and Opinions on accounting matters and reviews accounting practices applied by European issuers to enable ESMA to monitor market developments and practices.

In taking enforcement decisions, European enforcers apply their judgement, knowledge and experience to the facts and circumstances of the individual cases they consider. Relevant factors may also include other areas of national law beyond accounting requirements. Interested parties should, therefore, carefully consider the circumstances when reading the cases. As IFRS are principles-based, there may be no single way of dealing with situations which may seem similar but in substance are different.

Decisions taken by European enforcers do not constitute applicable interpretations of IFRS; this remains the role of the IFRS Interpretations Committee (IFRS IC). The decisions published in each extract are based on the IFRS requirements valid at the time of the IFRS financial statements and may be superseded by subsequent developments in IFRS. This extract edition also includes decisions based on the requirements stemming from the ESMA Guidelines on APMs.

The publication of selected enforcement decisions informs market participants about accounting treatments that European enforcers consider as complying with IFRS, i.e., whether the treatments considered are within the accepted range of those permitted by

IFRS. Such publication, together with the rationale behind the decisions, contributes to consistent application of IFRS and the ESMA Guidelines on APMs in the EEA.

In accordance with the provisions of the ESMA Guidelines on Enforcement of Financial Information[2], cases submitted to the enforcement database are considered to be appropriate for publication if they fulfil one or more of the following criteria:

- The decision refers to a complex accounting issue or an issue that could lead to different applications of IFRS,
- The decision relates to a relatively widespread issue among issuers or within a certain type of business and, thereby, may be of interest to other enforcers or third parties,
- The decision addresses an issue on which there is no experience or on which enforcers have inconsistent experiences, and
- The decision has been taken on the basis of a provision not covered by an accounting standard.

The criteria highlighted above applies *mutandis mutatis* to decisions related to the APM Guidelines.

[1] ESMA/2015/1057 ESMA Guidelines on Alternative Performance Measures, 20 June 2015
[2] ESMA32-50-218 Guidelines – On enforcement of financial information, 4 February 2020

1. EECS extract of decisions on International Financial Reporting Standards (IFRS)

I. Decision ref EECS/0125-01 – Significant influence

Financial year end: 31 December 2021
Category of issue: Significant influence.
Standards or requirements involved: IAS 28 *Investments in Associates and Joint Ventures.*

Description of the issuer's accounting treatment

1. The issuer, a media and entertainment company, was controlled and consolidated by entity A. In addition, the issuer controlled and consolidated entity B, holding 90% of capital and voting rights. During 2021, the issuer (i) sold 20% of the capital of entity B to two external groups, and (ii) distributed 60% of the capital of entity B to its shareholders. Following these two transactions, the share capital structure of entity B was the following: the issuer held 10%, entity A held 28%, two other external groups held 30%, the remaining share capital was held by disparate retail investors.

2. The issuer concluded that it had significant influence over entity B given (i) the existence of an agreement between the issuer, parent entity A and the two external groups to act in concert to influence the dividend distribution policy, (ii) the fact that entity B provided the issuer with financial information needed to account for it under the equity method in the issuer's financial statements, and (iii) that some of the issuer's key employees were transferred from the issuer to entity B. The issuer had no representation on entity B's board, nor did it engage in material transactions with entity B. The issuer did not have any contractual rights to appoint a representative to entity B's board of directors.

3. The issuer indicated to the enforcer that a representative of the issuer would be appointed as a member of entity B's board at the next general meeting.

The enforcement decision

4. The enforcer disagreed with the issuer's assessment regarding significant influence over entity B. The enforcer noted that, given that the issuer owned only 10% of voting rights of entity B, significant influence would have to be clearly demonstrated. The enforcer was of the view that the issuer did not have significant influence over entity B.

Rationale for the enforcement decision

5. The enforcer noted that, according to paragraph 6 of IAS 28, the existence of significant influence by an entity is usually evidenced in one or more of the following ways: (a) representation on the Board of Directors or equivalent governing body of the investee, (b) participation in policy-making processes, including participation in decisions about

dividends or other distributions, (c) material transactions between the entity and its investee, (d) interchange of managerial personnel, or (e) provision of essential technical information.

6. Therefore, enforcer concluded that the issuer did not have significant influence over entity B, because:

   a. the financial information exchanged from entity B to the issuer did not have the nature of essential technical information (per paragraph 6 (e) of IAS 28);

   b. the two managers in entity B that were former employees of the issuer no longer had any contractual relations with the issuer and therefore, the transfer did not constitute an interchange of managerial personnel as outlined by paragraph 6 (d) of IAS 28; and,

   c. the agreement on the dividend payment policy at the general meeting of shareholders in isolation (i.e., without further specifications regarding other policy making processes) was not sufficient to demonstrate a significant influence over operating policy decisions (per paragraph 6 (b) of IAS 28).

II. Decision ref EECS/0125-02 – Related party transactions

Financial year end: 31 December 2019
Category of issue: Related party disclosures.
Standards or requirements involved: IAS 24 *Related Party Disclosures.*

Description of the issuer's accounting treatment

7. The issuer, a telecommunication company, used a telecommunication network of Company C (a third party) based on a contract which was entered into between Company B (an affiliate of the issuer; that is, both had the same parent company) and Company C. The issuer is authorised to use the telecommunication network of Company C because of its affiliation with Company B.

8. For the use of telecommunication network by the issuer, Company C invoices Company B which in turn charges the issuer for its portion of the services. The issuer transfers the amount payable to Company B, which then forwards the payment to Company C.

9. The issuer did not disclose the transaction (forwarding payments through Company B to Company C) as a related party transaction in accordance with paragraphs 9 and 18 of IAS 24. The issuer argued that Company B acted as an intermediary or an agent without charging any fees or margin or providing any service. Therefore, forwarding the payments through Company B did not affect the issuer's financial position, financial performance and cash flow.

10. As there was no service provided from Company B to the issuer, but rather, directly from Company C to the issuer, the issuer considered that the payments made to Company B which were forwarded to Company C were not related party transactions.

The enforcement decision

11. The enforcer disagreed with the issuer's interpretation that the payments to the affiliated company do not qualify as related party transactions pursuant to paragraph 9 of IAS 24.

Rationale for the enforcement decision

12. The enforcer noted that a transaction between related parties is not only the provision of services, but also any transfer of resources. Therefore, these transactions were related party transactions according to paragraph 9 of IAS 24, the disclosure of which is required by paragraph 18 of IAS 24.

13. Furthermore, the enforcer noted that, according to paragraph 21(j) of IAS 24, the settlement of a liability for the account of the issuer through a related party requires disclosure. In this case, Company B settled the liability on behalf of the issuer. Therefore, the transactions qualified as related party transactions, and therefore, the issuer should have provided the disclosures required by paragraph 18(a) of IAS 24 in conjunction with paragraph 19(a) of IAS 24, regardless of whether Company B received a transfer fee.

III. Decision ref EECS/0125-03 – Disclosures in the interim financial report

Financial year end: 30 June 2023
Category of issue: Impairment loss; Interim financial reporting; Notes to the financial statements.
Standards or requirements involved: IAS 34 *Interim Financial Reporting*; IAS 36 *Impairment of Assets;* IFRS 13

Description of the issuer's accounting treatment

14. The issuer, a renewable energy company, sold electricity under long-term power purchase agreements (PPAs). In 2021, the issuer entered into a business combination. As part of the business combination, the issuer acquired power production assets identified as three separate cash generating units (CGU), each one with attached contracts to deliver electricity under PPAs. In 2022, the issuer determined the recoverable amount of the three CGUs using the fair value less cost of disposal and recognised impairments in its annual financial statements in relation to all three CGUs. In addition, the issuer disclosed the input data (Level 3 measurement) in accordance with IFRS 13.

15. In its interim financial statements for the first half of 2023 (H1/23 interim report) prepared under IAS 34 *Interim Financial Reporting*, the issuer recognised an additional impairment loss for these CGUs representing 72% of the issuer's loss before taxes for the period. In

the notes to the H1/23 interim financial statements on impairment, the issuer provided (i) high-level qualitative disclosures (i.e., a narrative description of operational challenges and delays in key operations of the three CGUs), (ii) the disclosure of the discount rate, and (iii) the sensitivity analysis for the discount rate used. The discount rate had not changed compared to the 2022 annual financial statements.

The enforcement decision

16. The enforcer considered that the disclosures provided regarding the impairments recognised in the H1/23 interim report were not sufficient for users of the financial statements to understand the changes in the issuer's financial position and performance since the end of the last annual reporting period, as required by paragraph 15 of IAS 34. The enforcer required the issuer to provide further qualitative and quantitative disclosures regarding changes in management's key assumptions that were the reasons giving rise to the recognition of impairments in the H1/23 interim report, as well as relevant sensitivities analysis.

Rationale for the enforcement decision

17. The enforcer noted that, based on the information provided in the H1/23 interim report, the reasons for the additional impairments recognised in the first half of 2023 were unclear, given that the only disclosed assumption (discount rate) had not changed compared to the 2022 annual financial statements. Upon request, the issuer identified several changes in management's key assumptions related to the three CGUs (specifically, power production profile, price differences between bought and sold electricity, and other project uncertainties) which led to the recognition of the impairment losses in the CGUs. None of these changed assumptions were disclosed in the H1/23 interim report.

18. Paragraph 15 of IAS 34 requires an explanation of events and transactions that are significant to an understanding of the changes in financial position and performance of the entity since the end of the last annual reporting period (such as impairment losses of non-financial assets, paragraph 15B.b). According to paragraph 15C, individual IFRSs provide guidance on disclosure requirements for many of the items listed in paragraph 15B. Among the individual IFRSs referred to in paragraph 15 of IAS 34 are IAS 36 and IFRS 13 for impairment losses that are based on fair value less cost of disposal. While the determination of which disclosures from IAS 36 and IFRS 13 should be provided may require judgement, the enforcer emphasised that scope for judgement is limited given that the disclosures in the interim financial statements should ensure that users understand the significant events or transactions that gave rise to the impairments recognised and their impacts compared to the last annual financial report.

19. The enforcer was of the view that for fair value less cost of disposal, especially if based on unobservable (Level 3) inputs, management's key assumptions were highly relevant information for users of financial statements if changes in such assumptions have led to material impairments. Therefore, as required by paragraph 15C, the enforcer concluded

that the issuer should have provided an update of the relevant disclosures as specified by paragraph 130(f)(iii) of IAS 36 regarding all key assumptions that were the basis for the material impairments in the H1/23 interim report.

IV. Decision ref EECS/0125-04 – Measurement of expected credit losses

Financial year end: 31 December 2019
Category of issue: Expected credit losses, Purchased or originated credit-impairment financial assets, Forecasts of future economic conditions.
Standards or requirements involved: IFRS 9 *Financial Instruments.*

Description of the issuer's accounting treatment

20. The issuer, a debt management company, acquired portfolios of credit-impairment financial assets (non-performing unsecured consumer loans). In accordance with paragraph 5.5.13 of IFRS 9 *Financial Instruments,* the issuer recognised as an impairment gain or loss the amount of the change in lifetime expected credit losses (ECL) at each reporting date. With this, the recognised loss allowance for the loan portfolios was equal to the cumulative change in lifetime ECL since initial recognition of the loans.

21. For the ECL calculation, the issuer used a rolling 180-month collection forecast, based on the issuer's own historical data and industry collection decay curves. At the end of each quarter, the issuer analysed the forecast and actual collection for all portfolios where the actual collection over the last six months deviated from the forecast by both more than 5% and exceeded a predetermined absolute monetary threshold. This resulted in an updated 180-month forecast, which formed the basis for an updated ECL estimate.

22. Neither current levels nor forecasts of macroeconomic factors such as unemployment rate, economic growth or interest level were used by the issuer as input factors for the ECL calculation. In the issuer's opinion, such macroeconomic factors would be implicit in its ECL estimate, as future estimates are an extrapolation of certain patterns of historical collections. Furthermore, the issuer argued that there was no significant correlation between the ECL and changes in macroeconomic situation.

23. While the ECL at any point in time was estimated using a single collection forecast per portfolio, the issuer argued that a collection forecast such as described, implicitly reflected a range of possible outcomes in a fair way.

The enforcement decision

24. The enforcer considered that the issuer's ECL measurement methodology was not in compliance with the requirements of paragraph 5.5.17 of IFRS 9. In particular, the issuer (i) did not consider reasonable and supportable information regarding forecasts of future economic conditions that was available without undue cost or effort, and (ii) did not evaluate

in an adequate manner a range of possible outcomes when determining the ECL amount. As a consequence, the enforcer required the issuer to collect data on current and projected macroeconomic factors and to use this data as actual input data in estimating ECL, using more than one scenario.

Rationale for the enforcement decision

25. According to paragraph 5.5.17(c) of IFRS 9, the ECL should reflect reasonable and supportable information that is available without undue cost or effort at the reporting date about past events, current conditions and forecasts of future economic conditions. Paragraph B5.5.51 of IFRS 9 states that the information used as input shall include factors such as the general economic conditions and an assessment of both the current as well as the forecast direction of conditions at the reporting date. Although paragraph B5.5.52 of IFRS 9 acknowledges that the best reasonable and supportable information in some cases may be the unadjusted historical information, it requires that estimates of changes in ECL reflect and are directionally consistent with changes in related observable data (such as changes in unemployment rates, property prices, commodity prices, payment status or other factors that are indicative of credit losses).

26. The enforcer noted that the issuer stated in its financial reporting that future collection would be affected by macroeconomic factors such as unemployment rate, economic growth, interest level and housing prices. The enforcer agreed with the issuer that there are arguments supporting the view that credit losses of debt management companies may be less sensitive to changes to the macroeconomic factors than for banks. However, the issuer did not provide sufficient evidence of a lack of correlation between changes in current or future economic conditions and credit losses. In addition, the fact that the issuer performed periodic reviews and updated its estimates could not compensate for not using all reasonable and supportable information required by IFRS 9.5.5.17 in the ECL estimation.

27. In relation to the use of multiple scenarios, the enforcer referred to the requirement in paragraph 5.5.17(a) of IFRS 9 that an entity shall measure ECL on a financial instrument in a way that reflects 'an unbiased and probability-weighted amount that is determined by evaluating a range of possible outcomes.' While paragraph B5.5.42 states that in some cases the average credit losses of a large group of financial instruments with shared risk characteristics may be a reasonable estimate of the probability-weighted amount, it also clarifies that in other situations, the identification of scenarios that specify the amount and timing of the cash flows from particular outcomes and the estimated probability of those outcomes will likely be needed. In the enforcer's opinion, the issuer's specific factors such as the relative heterogeneity of the different portfolios, the issuer's limited time period of historic collection data (from 2015) and the use of a long estimation period of 180 months also supported the need to include different scenarios in the issuer's ECL measurement.

V. Decision ref EECS/0125-05 – Fair Value Disclosures

Financial year end: 31 December 2021
Category of issue: Investment property, Fair value measurement.
Standards or requirements involved: IFRS 13 *Fair Value Measurement.*

Description of the issuer's accounting treatment

28. The issuer, a real estate company, holds investment property as its core business, with a geographical distribution spread across multiple cities and regions in the country of incorporation. A small percentage of the portfolio (15%) was located internationally. The issuer applied the fair value model of IAS 40 *Investment Property* for the subsequent measurement of the properties (based on a model using Level 3 inputs).

29. In its annual report, outside the financial statements, the issuer provided quantitative and qualitative information for 15 different geographical markets. In addition, the issuer commented on risks and opportunities by different market segments and by different types of use of properties (i.e., offices, warehouse/logistics, residential, government buildings).

30. When providing disclosures regarding the valuation techniques used to determine the fair value of the real estate properties in the financial statements, the issuer described that the valuation was based on (i) future developments in the wider market and in the immediate vicinity, and (ii) the conditions and location of the real estate properties. Furthermore, the issuer provided rental yields by ranges in two separate dimensions: (i) geography or location (divided in six classes), and (ii) type of use (divided in four classes). The ranges used in the different classes varied between 200 to 550 basis points.

The enforcement decision

31. The enforcer disagreed with the issuer's determination of classes of investment properties included in the financial statements and concluded that the disclosures related to the input data used did not provide sufficient information regarding the fair value measurement as required by paragraphs 91 to 94 of IFRS 13. In particular, given the wide ranges of rental yields applied by the issuer, the level of detail and aggregation in the disclosures regarding unobservable inputs was insufficient to meet the objectives set out in paragraph 91 of IFRS 13 (see paragraph 32 below). The enforcer required the issuer to include a higher degree of disaggregation of classes (paragraph 94 of IFRS 13) based on geography, and for each class of geography, the issuer should provide the rental yields by type of use.

Rationale for the enforcement decision

32. According to paragraph 91 (a) of IFRS 13, an entity shall disclose information that helps users of its financial statements to assess the valuation techniques and inputs used to develop the measurements of assets and liabilities measured at fair value in the statement of financial position after initial recognition. Paragraph 92 of IFRS 13 clarifies that, to meet objectives in paragraph 91 of IFRS 13, an entity shall consider (a) the level of detail

necessary to satisfy disclosure requirements, (c) how much aggregation or disaggregation to undertake, and (d) whether users of financial statements need additional information to evaluate the quantitative information disclosed.

33. According to paragraph 93 (d) of IFRS 13, to meet the objective of paragraph 91 of IFRS 13, an entity shall disclose information on inputs used for each class of assets and liabilities. Paragraph 94 of IFRS 13 requires that appropriate classes of assets and liabilities are determined on the basis of (i) the nature, characteristics and risks of the asset or liability, and (ii) the level of the fair value hierarchy within which the fair value measurement is categorised.

34. The enforcer agreed with the issuer that, in the case at hand, the key factors affecting the rental yields and consequently the fair value measurement of real estate assets were the location and the type of use.

35. With regards to the geographical/location dimension, the enforcer noted that, among other factors, in urban areas there are often alternative lessors, vacancy risk is lower, and rents are generally higher. In rural areas competition as well as rental levels are lower, and the risk of vacancy is higher.

36. With regards to the type of use (nature and characteristics) the enforcer noted that, in the case at hand, there was a growing demand for logistics and residential areas, whereas retail and office buildings were regarded as properties with higher risk. Government buildings, by contrast, represented a low risk.

37. Considering the wide range in the rental yields applied by the issuer, resulting from significant differences in the characteristics and risks of the issuer's properties, the enforcer concluded that a combination of geographical location and type of use would be an appropriate basis for the determination of the issuer's relevant asset classes. Therefore, the enforcer requested the issuer to provide a matrix combining the real estate rental yields by geographical location broken down by type of use.

2. EECS extract of decisions on ESMA APM Guidelines

VI. Decision ref EECS/0125-06 – Scope of the APM Guidelines

Financial year end: 31 December 2022
Category of issue: Scope of the APM Guidelines, Article 8 Taxonomy Regulation.
Principles of APM Guidelines involved: Paragraph 4 of the APM Guidelines, ESMA Q&A #1885, Q#1886.

Description of the issue

38. The issuer is a group operating in the retail sector. In its management report, the issuer included a dedicated section on APMs, outlining the information required by the APM Guidelines.

39. Elsewhere in the management report, the issuer included a measure labelled as "*Capital Expenditure (CAPEX)*", which was defined as the sum of additions made to tangible assets, intangible assets and right of use assets occurring during the year.

40. Despite complying with the APM Guidelines principles regarding consistency and comparative information, the issuer did not consider this measure as an APM and, therefore, did not provide the information required by the APM Guidelines, including reconciliation, definitions or explanations of its use.

The enforcement decision

41. The enforcer agreed with the issuer and concluded that, in accordance with paragraph 4 of the APM Guidelines and ESMA Question & Answer (Q&A) #1885[3] on the APM Guidelines, the CAPEX measure was not within the scope of the APM Guidelines. Therefore, the issuer was not required to disclose the information prescribed in the APM Guidelines.

Rationale for the enforcement decision

42. In general, CAPEX is a measure that falls within the scope of the APM Guidelines. However, when examining the definition and the calculation of CAPEX, the enforcer concluded that CAPEX as determined by the issuer was in accordance with Article 8 of the Taxonomy Regulation.

43. Paragraph 4 of the APM Guidelines sets out that the APM Guidelines do not apply to APMs disclosed in accordance with applicable legislation, other than the applicable financial reporting framework, which sets out specific requirements governing the determination of

[3] The ESMA Questions & Answers webtool is available on ESMA's website. Q&As on the APM Guidelines may be retrieved from this webtool by selecting "Alternative Performance Measures (APM)" from the Topic dropdown menu in the search function.

such measures. Furthermore, ESMA Q&A #1885 and Q#1886 on the APM Guidelines further clarify that measures determined in accordance with the Taxonomy Regulation[4] are outside the scope of the APM Guidelines and that issuers should reflect (or not) this fact on the label of the APM used (i.e., whether the measure was determined in accordance with the Taxonomy Regulation or not).

VII. Decision ref EECS/0125-07 – Calculation of Return on Capital employed (ROCE)

Financial year end: 31 December 2022
Category of issue: True and fair view; Comprehensibility.
Principles of APM Guidelines involved: Paragraphs 6, 8 and 9 of the ESMA APM Guidelines, Q&A #1883 on the ESMA APM Guidelines, Articles 4 and 5 of the Transparency Directive[5] and Article 6 of the Prospectus Regulation.

Description of the issue

44. The issuer decided to spin off (demerge) certain activities into a new group. The issuer provided details of the demerger to the market in a presentation disclosed pursuant to Article 17 of the Market Abuse Regulation (MAR)[6]. In addition, the issuer submitted a prospectus for the approval of the relevant National Competent Authority. Both the presentation to the market and the prospectus contained forward-looking information.

45. Historically, the issuer disclosed the return on capital employed (ROCE) ratio to communicate its performance to the market. As part of its forward-looking information included in the prospectus and in the presentation, the issuer disclosed, for the demerged activities, an adjusted definition of the ROCE ratio for future years. The adjustments considered the effect of a new material project that would be carried out in the future by one of the subsidiaries with significant non-controlling interests.

46. The numerator of the adjusted ROCE ratio proposed by the issuer would continue to consider the total amount of the returns (100%) of subsidiaries with non-controlling interests (i.e., when the issuer holds less than 100% of the share capital of the subsidiary, 100% of the returns would be considered). However, the denominator of the adjusted ROCE proposed by the issuer would consider only the issuer's share of the capital employed of subsidiaries with non-controlling interests (i.e., when the issuer holds less than 100% of the share capital of the subsidiary, such as 60%, only the corresponding proportionate share of capital employed, 60%, would be considered).

[4] Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020
[5] Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004.
[6] Regulation (EU) No 596/2014 of the European Parliament and of the Council of 16 April 2014

The enforcement decision

47. The enforcer disagreed with the issuer's calculation of the adjusted ROCE ratio. The enforcer considered that the definition included by the issuer in the prospectus and in the presentation to the market under Article 17 of MAR did not comply with paragraphs 6, 8 and 9 of the APM Guidelines and, by extension, with Articles 4 and 5 of the Transparency Directive. The enforcer considered that the adjusted ROCE ratio was a biased measure of performance that hindered investors' comprehensibility of the financial information included in the prospectus, as prescribed by Article 6 of the Prospectus Regulation[7]. The enforcer required the issuer to adjust the ROCE accordingly.

Rationale for the enforcement decision

48. The enforcer concluded that the issuer's calculation of the numerator (by including 100% of the returns, irrespective of the issuer's equity share held in the subsidiary) and the denominator (by including a portion of capital employed based on the issuer's equity share held in the subsidiary) of the ROCE was biased and thus was not in compliance with the principles included in the APM Guidelines. According to paragraph 6 of the APM Guidelines the overall objective of the Guidelines is to contribute to transparent and useful information to the market and improve comparability, reliability and/or comprehensibility of APMs used.

49. With respect to the APM included in the issuer's presentation to the market pursuant to Article 17 of MAR, the adjusted ROCE ratio did not comply with paragraph 8 of the APM Guidelines, and Articles 4 and 5 of the Transparency Directive, as clarified by ESMA Q&A #1883.

50. With respect to the APM included in the issuer's prospectus, when scrutinising the prospectus pursuant to Article 38 of the Commission Delegated Regulation (EU) 2019/980, the enforcer concluded that the adjusted ROCE ratio did not comply with Article 9 of the APM Guidelines and Article 6 (1) of the Prospectus Regulation. According to Article 6 (1) of the Prospectus Regulation, the prospectus shall contain the necessary information material to an investor for making an informed assessment of the assets and liabilities, profits and losses, financial position, and prospects of the issuer. In addition, Article 6 (2) of the Prospectus Regulation requires the information included in a prospectus to be presented in an easily analysable, concise and comprehensible form.

51. The enforcer requested the issuer to adjust the numerator in the ROCE calculation consistent with the change made to the denominator by the issuer, in order for both the numerator and denominator to consider the issuer's share in the subsidiaries, i.e. without considering non-controlling interests.

[7] Regulation (EU) 2017/1129 of the European Parliament and of the Council of 14 June 2017

VIII. Decision ref EECS/0125-08 – Definition of an APM

Financial year end: 31 December 2022
Category of issue: Definition; Scope of the APM Guidelines.
Principles of APM Guidelines involved: Paragraphs 17-19 of the APM Guidelines.

Description of the issue

52. The issuer is a conglomerate operating in several businesses, including agriculture, real estate and industrials. The issuer included several APMs in its annual management report, together with information required by the APM Guidelines. Additionally, the issuer also included other measures, such as '*Estimated value of the share*', '*Order intake in USD*' and '*Rental yields*'.

53. The issuer did not consider the above measures as APMs and, therefore, did not provide the information required by the APM Guidelines, namely, definitions, explanations on the use of these measures and, where applicable, reconciliations to the most directly reconcilable line item, subtotal or total presented in the financial statements.

The enforcement decision

54. The enforcer disagreed with the issuer and considered that, in accordance with paragraphs 17 to 19 of the APM Guidelines, the measures *'Estimated value of the share'*, *'Order intake in USD'* and *'Rental yields'* were within the scope of the APM Guidelines. Therefore, the issuer was required to disclose the information prescribed by the APM Guidelines.

Rationale for the enforcement decision

55. '*Estimated value of the share*': the issuer explained that this measure was of particular relevance to minority shareholders as it included unrealised gains. The measure was not easily derived from financial statements or from the market, as it differed significantly from the net assets stemming from financial statements or from the share price.

56. '*Order intake in USD*': the issuer noted that this measure was a key component of the sales backlog, providing information regarding the potential cash inflow that would be received from sales orders when these sales would be completed and recognised as per IFRS 15 *Revenue from contracts with customers*.

57. '*Rental yields*': the issuer clarified that the calculation of this measure considered valuation parameters such as annualised rental yields provided by the issuer's external appraisers (in the numerator), together with data derived from the issuer's financial statements regarding its real estate portfolio (in the denominator).

58. According to paragraph 17 of the APM Guidelines, the guidelines apply to financial measures of historical or future financial performance, financial position, or cash flows, other than a financial measure defined or specified in the applicable financial reporting

framework. Paragraphs 18 and 19 of the APM Guidelines provide further explanations regarding which measures fall within the scope of the APM Guidelines.

59. Based on the above paragraphs, the enforcer concluded that the measures '*Estimated value of the share'*, *'Order intake in USD'* and *'Rental yields'* fall within the scope of the APM Guidelines because these either provided information regarding historical or future financial performance. The enforcer required the issuer to provide the necessary and applicable disclosures, pursuant to the APM Guidelines.