Confederation of Danish Industry

14 May 2014
KKo

European Securities and Markets Authority
(ESMA)
CS 60747
103 rue de Grenelle
75345 Paris Cedex 07, France

Consultation Paper – ESMA Guidelines on Alternative Performance Measures

Dear Sir/Madame,

The Confederation of Danish Industry (DI) appreciates having the opportunity to provide comments on the Consultation Paper.

DI support the idea that performance measures should be clearly defined by entities and that entities should present those definitions in a consistent manner. However, we do not think that ESMA has explained clearly enough why amendments compared to the CESR Recommendation are necessary. Instead we would encourage ESMA to focus on the consistent application of the current CESR Recommendation in all EU Member if ESMA finds that there is an inadequate level playing field today.

Very few performance measures are defined in IFRS. Entities may, however, add totals, subtotals and line items in their financial statements. Like BUSINESSEUROPE, DI does not believe that such items should be categorized as alternative performance measures (APMs) and therefore, instead of defining an APM by reference to a measure that is defined in the financial reporting framework, an APM should be defined as a measure that is not presented in the audited IFRS financial statements by an entity.

We believe that the guidelines should be limited to APMs presented in financial reports, not extending the requirements to other regulated information.

In addition, the “prominence” requirement should be re-formulated. We would suggest to refer to the IFRS Practice Statement Management Commentary. The Practice Statement permits entities to adapt the information provided to particular circumstances of their business, including the legal and economic circumstances of individual jurisdictions. This flexible approach will generate more meaningful disclosure about the most important resources, risks and relationships that can affect an entity's value, and how they are managed.

Lastly, we believe that the guidelines should allow for flexibility regarding the disclosure of APMs.

These issues are set out in more detail in the appendix to this letter. Please do not hesitate to contact us should you wish to discuss these issues further

Kind regards

Kristian Koktvedgaard
Head of VAT, Accounting and Auditing
Confederation of Danish Industry

APPENDIX

Why are amendments necessary?

The proposed guidelines are intended to replace a CESR Recommendation from 2005. However, the consultation paper does not describe the current situation in the EU Member States regarding the regulation of APMs. As a consequence it is not possible to understand the extent of the differences between EU Member States today and why changes to the CESR Recommendation are necessary. DI believes that ESMA should focus on the consistent application of the current CESR Recommendation in all EU Member before embarking on further changes to the current CESR recommendation.

The proposed guidelines contain a number of amendments compared to the CESR Recommendation, e.g. regarding the definition of APMs and the scope for when information should be given by issuers on APMs (extended to all regulated information). However, DI does not believe ESMA has provided adequate information on the proposed or envisaged changes and more detailed argumentation for the specific changes anticipated. DI believes that this is a weakness with the consultation paper.

DI has noted the ESMA statement that some issuers present confusing or optimistic pictures of their performance by removing certain negative aspects when presenting APMs. As this conclusion is not backed by any empirical evidence, DI finds it impossible to comment on this statement based on what is said in the consultation paper. DI would suggest that ESMA gather more emphirical evidence for this statement. DI would also suggest that if ESMA finds the emphirical evidence, then ESMA should also evaluate whether the current CESR recommendation is applied.

In short, DI does not think that ESMA has explained clearly enough why amendments compared to the CESR Recommendation are necessary. DI supports guidelines that will contribute to a level playing field in the EU when there is evidence that there is an inadequate level playing field today. DI believes that this can be achieved by emphasising that the CESR Recommendation should be applied consistently in all EU Member States.

Definition of Alternative Performance Measures

An APM is in the draft guidelines defined as "any numerical measure of historical, current or future financial performance, which relates to the financial position, comprehensive income or cash flows, other than a measure defined by the applicable financial reporting framework". IFRS is principle based and has very few definitions of performance measures. A consequence of this is that the definition of APMs in the ESMA guidelines will cover nearly all performance measures reported by entities.

The draft guidelines are however not entirely clear. In paragraph 16 of the draft guidelines it is said that APMs usually are derived from (or based on) the financial statements, most of the time by adding or subtracting amounts from the figures presented in the financial statements. According to paragraph 25, an issuer is released from the reconciliation requirement when an APM is a total or a subtotal in financial statements, if the totals or subtotals are directly readable from the financial statements.

This means that if an entity inserts a total or a subtotal in a financial statement, there is no reconciliation requirement. But the requirement "directly readable" is not clear. Is this applicable if e.g. reporting a performance measure like cash earnings as the equivalent of net profit and amortization (two line items)? What about if one figure included in a performance measure is reported as a line item in a financial statement while another figure is disclosed in a note? This has to be clarified in the guidelines.

Another issue not discussed in the consultation paper is how to interpret the draft guidelines with regard to IFRS 8 Operating Segments. The information required according to this IFRS might be based on measures defined by the management of the reporting entity. IFRS 8 also has specific reconciliation requirements. Since the information disclosed follows from an IFRS, it can be argued that this information should be deemed to follow directly from the applicable financial reporting framework and also that it is directly readable. Therefore, the guidelines should classify measures reported according to IFRS 8 as IFRS measures.

DI believes that instead of expanding the definition of APMs by reference to the "financial reporting framework", it would be better to define an APM as a measure that is not presented in or based on the audited IFRS financial statements by an entity (line items, totals or subtotals in the financial statements).

Scope
ESMA proposes that disclosure and reconciliation requirements regarding APMs should cover all regulated information. An issuer that in any document presents figures on a non-IFRS basis (e.g. operating income, EBITDA, underlying result, etc.) would therefore be obliged to also disclose this information on an IFRS basis and to present the IFRS disclosures with "greater prominence" than the non-IFRS information.

This would lead to an extension of the scope of IFRS information from financial reporting to all publications/communications from companies on financial issues. This is a major amendment compared to the CESR Recommendation. By extending the scope to all regulated information while at the same time having reconciliation and prominence rules, there is a risk that information on APMs will be cluttered and less useful. Adding to this, there is also the consequential risk that information regarding APMs no longer will be provided. DI therefore believes that the guidelines should be restricted to APMs presented in financial reports.

Prominence
ESMA believes that APMs that are presented outside the financial statements should be displayed with less prominence, emphasis or authority than measures directly stemming from financial statements prepared in accordance with the applicable financial reporting framework.

DI believes that users are interested in performance measures defined by the entity since this helps explaining the managements objectives and the strategies for achieving those objects. This is also recognised by IFRS in their "IFRS Practice Statement Management Commentary". DI believes that ESMA should recognise this, and therefore ESMA should have a more balanced approach to the prominence of APMs.

Disclosure requirements
The main rule in the proposed guidelines (paragraph 19) is that issuers should disclose a list of definitions of all APMs used in an appendix to the publication. Paragraph 8 of the guidelines allow for relief, permitting press releases to include the required disclosures by reference to other documents.

DI believes that the guidelines should allow for flexibility regarding the disclosure of definitions of APMs. In order to reduce the burden for issuers and to avoid clutter, a similar relief as for press releases should be applied to interim financial statements. DI suggests that a reference to the latest annual financial report should be sufficient, if the determinations of APMs are not changed.