



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



ESMA
103 rue de Grenelle
75007 Paris
France

Paris, May 13 , 2014

Dear Sir/ Madam

Ref : Consultation on ESMA Guidelines on Alternative Performance Measures

MEDEF shares the general objective of these guidelines...

Firstly, we emphasise our support to the objective of the promotion of a consistent application of the European legislation with respect to financial reporting among the European regulators. We share the objective to provide users with high quality financial information that enables them to make informed decision.

The use of Alternative Performance Measures (APM) contributes to this high quality financial information, as it gives the opportunity for the management of the issuer to communicate on its strategy with the measures it considers relevant both in the sector and for the specific situation of the company. For that reason, we welcome the assertion underlined in the consultation stating that ESMA does not wish to prevent the use of APM. We highlight the complementarity of both types of information:

- Information developed according to the accounting standards, which intends to enable a standardised approach of all the transactions encountered by issuers, delivered essentially in the periodic information and
- Information from the management, relying in a more or less extensive manner on restated information, according to the sector and the specific situation of the company, which is the support for the management to explain its strategy. Especially in the press releases, we consider appropriate that the management communicate on metrics it judges relevant.

... as APM are part of the financial information, some precautions are legitimate...

In order to offer adequate information to the users, we share the view that some key principles should be respected:

- A clear status of each information, to allow the reader to well distinguish GAAP and non-GAAP measures,
- Availability of GAAP measures, with appropriate definitions and reconciliations of non-GAAP measures, which enable the reader to well understand the bridge between them

... but ESMA's proposals are excessive on some aspects and must be reconsidered.

Even if ESMA states that it does not wish to prevent the use of APM, we note that some proposed measures contradict this position and such an excess of constraints would finally restrict their use. We consider that ESMA proposals should be reviewed on two points:

- Some ESMA proposals may represent a too systematic approach of the requirements for definition and reconciliation

We fear that ESMA's proposals may represent a significant addition of constraints to the current rules applied to press releases, opening the door to a too systematic approach of the proposed requirements.

Firstly, we consider that any significant addition of requirements should be justified by a clear and precise demonstration of highlighted shortcomings.

Secondly, the possibility described §8 p24 in the proposal - which enables a reference to another document which contains these disclosures and is readily and easily accessible to users - should be confirmed and need to be added directly in the guidelines themselves to avoid any ambiguity (this possibility is currently described in the part "Purpose", but does not appear in any way in the guidelines themselves).

We consider that the guidelines should more precisely take into account the different cases which can be encountered, in order to avoid useless costs and overabundant information. In particular, issuers may use well-known APM, current in the sector, which does not require additional guidance if complete information (definition, reconciliation and comparative) can easily be found in the annual / half-yearly information. On the other hand, if the APM is not consistently used over time and is entity-specific, then additional information may be necessary.

- The prominence approach for GAAP measures contradicts the affirmed acceptance of APM

As a preliminary remark, we disagree with the prerequisite stating that information prepared according to the accounting standard necessarily offers better financial information for the users. The regulator acknowledges that users ask for metrics specific for the sector and for that reason, issuers should be free to communicate on performance measures they deem relevant, provided that they respect the principles which regulates their use.

We disagree with ESMA proposals on prominence approach because it would be contradictory to fix the rules which regulate the use of APM with the requirements to define, compare and reconcile APM and in the same time, to restrict their use to a second weight in the press releases.

Furthermore, IFRS do require, for operating segments, to use figures adjusted in order to take into account profit or loss only if they are included in the measure of the segment's profit or loss that is used by the chief operating decision maker. This acknowledgement of such APM as GAAP measures by the standard-setter for operating segment has to be taken into account by the regulators.

It would not be practicable to require that issuers present a double analysis of APM and GAAP measures in the same document; it would no longer be readable. For instance, a press release with an analysis of the performance relying on figures adjusted from the impact of foreign currency risk hedging, from the impact of inventory valuation method, from the impact of scope of consolidation or from the impact of PPA cannot be done in parallel with unadjusted figures.

For those reasons, we consider that ESMA's proposals have to be reviewed and that the legitimate requirement in terms of prominence is the maintenance of a minimum communication on GAAP measures, which includes at least the net result.

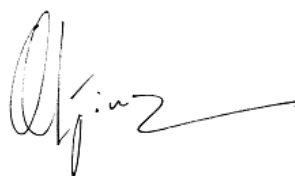
Yours faithfully,

ACTEO

MEDEF

Patrice MARTEAU
Chairman

Agnès LEPINAY
Director of economic
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Detailed answer

Q1: Do you agree that the ESMA [draft] guidelines should apply to all issuers defined as a legal entity governed by private or public law, other than Member State or Member State's regional or local authorities, whose securities are admitted to trading on a regulated market, the issuer being, in the case of depository receipts representing securities, the issuer of the securities represented regardless of the financial reporting framework they use to report? If not, why?

Q2: Do you agree that the ESMA [draft] guidelines should apply to APMs included in:

a) Financial statements prepared in accordance with the applicable financial reporting framework, that are made publicly available, and

b) All other issued documents containing regulated information that are made publicly available?

If not, why?

As a general remark, we note that the guidelines proposed by ESMA would be excessively burdensome and contradict the general objective of improvement of the relevance and conciseness of financial information, taking into account a broad scope, combined with a very broad definition of APM and large requirement of definition, reconciliation and justification. The proposal should be amended to obtain a better balance constraint / benefit.

From our perspective, the adequate scope - regarding issuers and the documents - should be that of the Transparency directive as it is the legal basis for periodic and permanent financial information.

The application of these guidelines to “all other issued documents containing regulated information” would be too broad¹. Esma’s requirements are legitimate for **financial communication** covered by the Transparency directive. It would be consistent with **the current scope of the CESR recommendation which does not need to be amended**.

Q3: Do you believe that the ESMA [draft] guidelines should also be applicable to prospectuses and other related documents, which include APMs (except for pro-forma information, profits forecasts or other measures which have specific requirements set out in the Prospectus Directive or Prospectus Directive implementing regulation)? Please provide your reasons

We do not support the application of these guidelines to prospectuses for the following reasons:

- The Prospectus regime is complete and presents a very detailed approach of all categories of information which need to be produced by the issuer, integrating elements on APM. We consider that it would represent a loss of clarity to add another document of guidelines not directly tailored for Prospectus regulation. The necessity to have consistent rules does not mean that a unique text would be an improvement.
- As the proposed guidelines seem to be broader in their scope and consequences than the current CESR recommendation, it might add significant burdens to the Prospectus although

¹ For instance, we do not consider that these guidelines should cover a press release related to the announcement of a merger or acquisition

ESMA provides neither a solid analysis of the consequences of this inclusion nor a clear identification of lacks in the current regulation on prospectuses.

Q4: Do you believe that issuing ESMA guidelines constitute a useful tool for dealing with the issues encountered with the use of APMs? If not, why?

Firstly, any significant addition of requirements regarding the use of APM should be justified by a clear and precise demonstration of highlighted shortcomings. In the consultation, ESMA does not give those precise facts and circumstances underlying the need for a new text. What are precisely the “issues encountered with the use of APMs” which are quoted in this question?

Secondly, the proposal for guidelines instead of a new recommendation should also be explained: why does ESMA consider that a higher level of text is necessary? If ESMA encounters differences of implementation of its current recommendation, the work should be focused on the implementation by NCA and should not lead to stricter rules or a broader scope. In France, the current position / recommendation issued by AMF (2010-11) represent an adequate cost/benefit balance and we do not consider that stricter rules are needed.

Finally, on the substance, the use of Alternative Performance Measures (APM) contributes to high quality financial information, as it gives the opportunity for the management of the issuer to communicate on its strategy with the measures it considers relevant both in the sector and for the specific situation of the company. For that reason, we welcome the assertion underlined in the consultation stating that ESMA does not wish to prevent the use of APM. We highlight the complementarity on these aspects of:

- Information developed according to the accounting standards, which intends to enable a standardised approach of all the transactions encountered by issuers, delivered essentially in the periodic information and
- Information from the management, relying in a more or less extensive manner on restated information, according to the sector and the specific situation of the company, which is the support for the management to explain its strategy. Especially in the press releases, we consider appropriate that the management communicate on metrics it judges relevant.

In order to offer adequate information to the users, we share the view that some key principles should be respected:

- A clear status of each information, to allow the reader to well distinguish GAAP and non-GAAP measures,
- Availability of GAAP measures, with appropriate definitions and reconciliations of non-GAAP measures, which enable the reader to well understand the bridge between those two parts of the financial communication.

For that reason, guidelines might constitute a useful tool for national regulators, provided that the requirements are proportionally fixed to respond to effective needs. The proposed guidelines should be reconsidered to reach a better adaptation of the requirements to the different cases encountered, avoiding useless costs. It would be damaging to adopt a systematic approach on this question though all stakeholder of financial information are aware that we are facing an urgent problem of overabundant information.

Q5: Do you agree with the suggested scope of the term APM as used in the [draft] guidelines? If not, why?

No, we disagree.

Firstly, we consider that ESMA does not demonstrate the relevance of a change to the definition used in the current CESR standard, which we deem satisfactory.

ESMA's suggested scope of the term APM is too broad: "any numerical measure [...] other than a measure defined by the applicable financial reporting framework" would cover almost every performance indicator. Indeed, the IFRS integrates very few definitions of performance measures, the suggested definition would then cover too many performance measures commonly used in the financial statements. The definition of the APM has to refer to measures not included in the audited IFRS financial statements (balance sheet, profit and loss, notes) as it is currently the case in the CESR standard. The guidelines should be a way to complete information on APMs that the financial statements do not provide, not to duplicate it for any performance indicator not defined by the accounting framework.

Q6: Do you believe that issuers should disclose in an appendix to the publication a list giving definitions of all APMs used? If not, why?

No, we disagree. Issuers should have the choice to disclose all APMs used and their definition in an appendix to the publication or to make a reference to another document which contains these disclosures and is readily and easily accessible to users.

In that respect, we strongly support the §8 p24 of the proposal which enables a reference to another document which contains the disclosures (definition, reconciliation and justification) and is readily and easily accessible to users. It should be added directly into the guidelines to avoid any ambiguity (this possibility is currently described in the part "Purpose", but does not appear in any way in the guidelines themselves).

ESMA acknowledges the importance not to impede a prompt disclosure of information to the market. We consider that the cost/benefit balance is not positive if the guidelines oblige issuers to duplicate the same information on each publication although it communicates with a constant range of APM, clearly defined, for instance in its annual report.

The guidelines should more precisely take into account the different cases which can be encountered, in order to avoid useless costs and overabundant information. In particular, issuers may use APM constantly over time, which does not require additional guidance if complete information (definition, reconciliation and comparative) can easily be found in the annual information. On the other hand, if an APM is not consistently used over time, then additional information may be necessary.

Q7: Do you agree that issuers should disclose a reconciliation of an APM to the most relevant amount presented in the financial statements? If not, why?

No, we disagree.

The proposed guideline is excessive and the reconciliation should be limited to the following requirements:

Reconciliation of APM (with a narrower definition, see Q5) :

- once a year for indicators constantly used over time, in general for the year-end period
- to a GAAP measure of the financial statements presented on the same period
- the reconciliation has to be consistent with the definition of the APM.

The reconciliation to another date would represent a disproportionate cost. Moreover, these guidelines may not lead to a requirement to reconcile with unpublished GAAP measures.

Q8: Do you agree that issuers should explain the use of APMs? If not, why?

Yes, we agree with an explanation in the financial statements or another publication once a year.

This explanation is useful but, in order to avoid useless costs, should be limited to one occurrence, for instance in the annual report. Such an explanation should be considered as sufficient for a constant use of the same APMs.

Q9: Do you agree that APMs presented outside 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? If not, why?

No, we disagree.

As a preliminary remark, we disagree with the prerequisite stating that information prepared according to the accounting standard necessarily offers better financial information for the users. The regulator acknowledges that users ask for metrics specific for the sector and for that reason, issuers should be free to communicate on performance measures they deem relevant, provided that they respect the principles which regulates their use.

We disagree with ESMA proposals on prominence approach because it would be contradictory to fix the rules which regulate the use of APM with the requirements to define, compare and reconcile APM and in the same time, to restrict their use to a second weight in the press releases.

Furthermore, IFRS do require, for operating segments, to use figures adjusted in order to take into account profit or loss only if they are included in the measure of the segment's profit or loss that is used by the chief operating decision maker. This acknowledgement of such APM as GAAP measures by the standard-setter for operating segment has to be taken into account by the regulators.

It would not be practicable to require that issuers present a double analysis of APM and GAAP measures in the same document; it would no longer be readable. For instance, a press release with an analysis of the performance relying on figures adjusted from the impact of foreign currency risk hedging, from the impact of inventory valuation method, from the impact of scope of consolidation or from the impact of PPA cannot be done in parallel with unadjusted figures.

For those reasons, we consider that ESMA's proposals have to be reviewed and that the legitimate requirement in terms of prominence is the maintenance of a minimum communication on GAAP measures, which includes at least the net result.

Q10: Do you agree that issuers should explain the reasons for changing the definition and/or calculation of an APM? If not, why?

Yes, we agree.

Q11: Do you believe that issuers should provide comparatives and / or restatements when an APM changes? If not, why?

Yes, we agree.

Q12: Do you believe that issuers should provide explanations when they no longer use an APM? If not, why?

Yes, we agree, provided that this requirement relates to APM which are currently used over time and highlighted by the issuer in its financial communication. Such an explanation would not be relevant for minor APM which might have been punctually disclosed on a specific operation.

Q13: Do you agree that the [draft] guidelines will improve transparency, neutrality and comparability on financial performance measures to users? If not, please provide suggestions.

We consider that the current French guidelines on this topic are adequate and enable to reach the objectives of transparency and comparability. ESMA's guidelines may be useful if they offer the possibility to enhance the level playing field through EU but some aspects have to be reviewed to avoid useless costs. In particular, the developments on the questions of prominence are not adequate.

Q14: Do you agree with the analysis of the cost and benefit impact of the [draft] guidelines? Please provide any evidence or data that would further inform the analysis of the likely cost and benefits impacts of the proposals.

We consider that the proposed analyse of cost for issuers is vague and cannot be the base for a decision. The analysis of the cost and benefit impact of the guidelines should be deepened to take into account the current general move toward a more relevant approach of disclosures and annexes to tackle the problem of overabundant information.