

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

12 May 2014

Dear Sir or Madam,

Re: Consultation Paper: ESMA Guidelines on Alternative Performance Measures

BUSINESSEUROPE appreciates having the opportunity to provide comments on the Consultation Paper.

We 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.

BUSINESSEUROPE 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. This can be achieved by emphasising that the CESR Recommendation should be applied consistently in all EU Member States.

Very few performance measures are defined in IFRS. Entities may, however, add totals, subtotals and line items in their financial statements. BUSINESSEUROPE 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 as "appropriate balance between clarity in presentation and communication" between IFRS measures and APMs.

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.

Yours sincerely,



Jérôme P. Chauvin
Deputy Director General

APPENDIX

Why are amendments necessary?

The proposed guidelines are intended to replace a CESR Recommendation from 2005. The consultation paper does not describe the current situation in the EU Member States regarding the regulation of APMs. It is therefore not possible to understand how large the differences are between EU Member States today. BUSINESSEUROPE believes that a description of this would have been helpful for interested parties when commenting on the consultation paper.

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, no clear and comprehensive description is given of proposed changes. BUSINESSEUROPE believes that this is a weakness with the consultation paper, making it more difficult for interested parties to give comments.

This also carries over to the assessment of why changes to the CESR Recommendation are necessary. ESMA has not been very clear on this. ESMA has stated that some issuers present confusing or optimistic pictures of their performance by removing certain negative aspects when presenting APMs. This conclusion is not backed by any empirical evidence. It is therefore not possible to comment on this statement based on what is said in the consultation paper.

Some entities fall under both EU and SEC rules regarding APMs. It is therefore important to understand whether the proposed guidelines are compatible with SEC rules, in order to mitigate the problem for issuers of having to apply multiple regulations. No such analysis is however made in the consultation paper.

BUSINESSEUROPE does not think that ESMA has explained clearly enough why amendments compared to the CESR Recommendation are necessary. BUSINESSEUROPE 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. BUSINESSEUROPE 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.

BUSINESSEUROPE 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. BUSINESSEUROPE 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.

BUSINESSEUROPE believes that users are interested in performance measures defined by the entity since this helps explaining how management runs the business.

BUSINESSEUROPE also believes that the requirement to give greater prominence to figures in the financial statements might give rise to clutter in the information presented. BUSINESSEUROPE believes that the “prominence” requirement therefore should be re-formulated as “appropriate balance between clarity in presentation and communication” between IFRS measures and 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.

BUSINESSEUROPE 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. BUSINESSEUROPE suggests that a reference to the latest annual financial report should be sufficient, if the determinations of APMs are not changed.

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