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Re: comment letter on the ESMA consultation Paper – *Guidelines on enforcement of financial information*

Dear Sir/Madam,

We are pleased to have the opportunity to comment on your Consultation Paper – *Guidelines on enforcement of financial information*.

We would like to stress that a common European approach to the enforcement of financial information is useful in order to avoid possible regulatory arbitrage by issuers. In particular, we believe that this approach should be followed in a joint way, by each national enforcer and ESMA. In addition, we are in agreement that, in determining materiality for enforcement purposes, materiality should be assessed according to the relevant reporting framework such as IFRS.

Also for these reasons, we believe that some proposed guidelines could improve the consistency of financial reporting in Europe.

However, this consultation paper provides an opportunity for some considerations about the possible effects that enforcement in regard to the correct application of international accounting standards may have on accounting harmonization at the global level. It is necessary to bear in mind that accounting harmonization was and remains the core reason for the use of a single set of accounting standards.

The Maystadt Report itself recommends a strict enforcement process of the IAS/IFRS in order to avoid regulatory arbitrage by operators or even stock-exchange capitalization losses in favour of other markets for the sole purpose of avoiding reconciliation costs.

It is on this conceptual basis that in Europe we have also accepted that the IASB, through IFRIC, be the sole body to provide interpretations of standards – accounting harmonization requires a single set of standards but also common interpretations with uniform application.

We are aware of the importance of the uniformity of enforcement activity in this context, and how important the proper application of accounting standards is for market transparency.

However, we believe that, where the enforcement activity affects matters that are not clearly defined in the standards, it is necessary to proceed with great caution.

It is apparent that in this case we are in a grey area where the definition of the most appropriate application could have the same effects as an interpretation but without the sufficient due process that characterizes IFRIC's work.

We are aware that the times of enforcement often do not match those of the Interpretation Committee. However, in order to limit the risk of significant damage to global harmonization through the enforcement process favouring the above-mentioned regulatory arbitrage, we would recommend a due process that involves at least the NSS.

There are already in place regular forms of collaboration between the NSS and national regulators. Also with ESMA, the opportunities for sharing views on IAS/IFRS are intensifying at both EFRAG level and elsewhere.

What is being suggested here is in line with, and would make more effective, coordination between parties that operate in different ways and with different responsibilities but yet are concerned with the same issues.

We understand that in many circumstances the period of responding to the emerging issues is significantly short due to the time constraints of the approval of financial reporting. In such circumstances it might become very difficult to involve the IFRS IC and to have an ex-ante consultation at European level. When this is the case we are convinced that local regulator should be able to analyse the situation, preferably involving in the discussion the NSS, and to take any decision in accordance with the power given by the Transparency Directive. An ex-post communication of the enforcement decisions taken might be shared with other European regulators and ESMA. On the other hand the discussions on emerging issues at European level should not limit the independent responsibility of the National Regulator.

Finally we note that the proposed guidelines introduce new requirements for local regulators that represent an important discontinuation of the approach based on current legislation. For instance it is proposed that local regulators should conduct an ex-ante enforcement review on prospectuses. This represents an important change with reference to current approach. We are not sure that guidelines on enforcement are the correct vehicle to introduce such a requirement. We are also unsure that establishing at European level the common enforcement priorities, as the factor for selection method of issuers for review, is appropriate, because the selection method falls within the responsibility of the enforcers. When enforcement priorities are not relevant for a National Regulator, it should be allowed not to deal with them.

Yours faithfully,
Angelo Casò
(Chairman)