BUSINESSEUROPE

Mr Steven MAIJOOR
Chair
ESMA
103 Rue de Grenelle
75007 Paris
France

9 November 2011

Dear Sir,

RE: RETROSPECTIVE ADJUSTMENTS TO FINANCIAL STATEMENTS FOLLOWING REJECTION NOTES PUBLISHED BY THE IFRS INTERPRETATIONS COMMITTEE – ESMA PUBLIC STATEMENT 20 JULY 2011

BUSINESSEUROPE would like to raise concerns about ESMA's public statement on the Rejection Notes published by the IFRS Interpretations Committee (IFRIC), which is recently available on the ESMA website.

As noted in that new statement, in April 2007, CESR, FEE and BUSINESSEUROPE issued a joint statement (CESR/07-121b) concerning the question as to what consequences IFRIC Rejection Notes should have on financial statements prepared under IFRS in Europe.

One of the main underlying reasons for issuing the statement was that all three parties participating in the original pronouncement believed that during the first years of IFRS application, many interpretative issues would arise, mainly due to the lack of practical experience preparers, users, auditors and enforcers had at that time with IFRS. Therefore, as an interim solution - and consequently to be revisited once time had passed and all stakeholders had become more acquainted with IFRS - it was concluded that a retrospective adjustment of financial statements would not be necessary, as long as the relevant facts were presented in the notes to the financial statements.

Earlier this year, BUSINESSEUROPE took note of the fact that ESMA removed – without prior consultation or notification of the parties initially involved - statement CESR/07-121b from its website. In July of this year, ESMA published the above mentioned new public statement, which unilaterally changed – at least in parts - the common position reached in 2007.

ESMA states that it believes that, six years after the implementation of IFRS, we are no longer in a transitional period and then continues that there is an expectation on the part of the stakeholders in IFRS that Rejection Notes concluding that IFRSs are

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sufficiently clear will result in a retrospective adjustment to the financial statements, in accordance with IAS 8, if a company's previous accounting policy was different.

Our first observation relates to the scope of the public statement. It is our understanding that ESMA considers that only in situations where the IFRIC concluded that "IFRSs are sufficiently clear" a retrospective adjustment to the financial statements either as a change in accounting policy or correction of an error is necessary. This in turn implies that ESMA has not changed its position with respect to any other IFRIC Rejection Notes. While we disagree with ESMA's conclusion (see also below), we believe that ESMA should clarify this point in its statement and also note that, for all other situations, the original position is still maintained.

ESMA's underlying assumption on which its conclusion for such IFRIC Rejection Notes is based seems to be that, after six years of practical application, IFRS as a whole should be understood well enough to avoid situations where the answer is obvious from reading the standards. This assumption ignores the kind of questions that are raised with, what analysis is done by, and how the debate proceeds at the IFRIC.

From our own experience, the cases where the answer is obvious and free of any debate on the accounting literature are very limited. We have rarely encountered questions raised to the IFRIC where the alternative solutions analysed were so farfetched that they were clearly not a possible interpretation of at that time applicable literature. We are of the view that if a possible interpretation of an issue is supported, with valid arguments, by a minority does not mean that it is a wrong interpretation; it just means that the majority of IFRIC members hold a different opinion.

We therefore believe that there cannot be an assumption that, in the event of an IFRIC Rejection Note claiming that "IFRSs are sufficiently clear", a retrospective adjustment in which a different accounting policy was previously applied is automatically required.

Our second observation is that we believe ESMA should have refrained from making any changes to the commonly agreed position on IFRIC Rejection Notes, until their status in the official IFRS literature is clarified by the IFRS Foundation, IASB or at least within Europe and at the European Commission level. They are currently clearly identified as not forming part of the authoritative IFRS literature and are also not approved by the IASB and not endorsed by the EU; in fact they were until recently not even discussed by EFRAG.

Therefore, we strongly believe, also in the light of our experience with IFRIC Rejection Notes, that - as a matter of principle - they sit uneasily in the IFRS hierarchy. Also, due to the lack of appropriate due process surrounding their development, they should not have any authoritative qualities whatsoever until this problem is addressed following an appropriate due process.

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In this context, we also note that it is unclear to us if the ESMA conclusion is only valid for IFRIC Agenda decisions, or if ESMA holds the same view on issues considered for Annual Improvements, where the IFRIC might conclude as well that IFRSs are sufficiently clear or a term would be "sufficiently understood within IFRSs". We would have the same strong objection if ESMA extends that view to the relevant issues considered for Annual Improvements.

Finally, we regret that ESMA decided to unilaterally make changes to a commonly agreed position between FEE, BUSINESSEUROPE and ESMA / CESR. While we appreciate that ESMA acts as an independent EU Authority contributing to safeguarding the stability of the European Union's financial system by ensuring the integrity, transparency, efficiency and orderly functioning of securities markets, we believe that it would have been appropriate if the original parties would have joined forces again in an attempt to come to a common position, particularly as we are concerned that European regulators will apply the ESMA statement in their enforcement decisions.

This is of significant concern for BUSINESSEUROPE as these regulators increasingly require application of IFRIC Rejection Notes, despite the lack of clarity on their status in the IFRS hierarchy or in Europe. We are concerned that unendorsed IASB statements are becoming part of the official European IFRS, and believe that a more fundamental debate needs to take place regarding this, both at the IFRS Foundation and in Europe.

Please do not hesitate to contact us if you want to discuss this subject further.

Yours sincerely,

Jérôme P. Chauvin
Director
Legal Affairs Department
Internal Market Department