

**EFRAG
Francoise Flores
Square de Meeus 35
1000 Brussels
Belgium**

Draft Interpretation on *Levies Charged by Public Authorities on Entities that Operate in a Specific Market*

Dear Ms Flores,

The European Securities and Markets Authority (ESMA) is an independent EU Authority that contributes to enhancing the protection of investors and promoting stable and well-functioning financial markets in the European Union (EU). ESMA achieves this aim by building a single rule book for EU financial markets and ensuring its consistent application across the EU. ESMA contributes to the regulation of financial services firms with a pan-European reach, either through direct supervision or through the active co-ordination of national supervisory activity.

ESMA has considered EFRAG's draft response to the draft interpretation on *Levies Charged by Public Authorities on Entities that Operate in a Specific Market*. ESMA would like to thank you for this opportunity to contribute to EFRAG's due process. ESMA is pleased to provide you with the following comments aimed at improving the decision-usefulness of financial statements and the transparency and enforceability of IFRSs.

The need for an interpretation

ESMA agrees with EFRAG that the consensus over how to determine the obligating event in the specific context of levies charged by public authorities that operate in a specific market is in accordance with IAS 37 – *Provisions, Contingent Liabilities and Contingent Assets*. However, contrary to EFRAG, ESMA believes that the set of circumstances regarding the levies is not distinct enough to justify an interpretation.

ESMA notes that IFRIC 6 – *Liabilities Arising from Participating in a Specific Market – Waste Electrical and Electronic Equipment* already deals with the interpretation of what an obligating event is in the specific context of waste electrical and electronic equipment. ESMA believes that developing interpretations



in various distinct sets of circumstances has important drawbacks and that this might indicate a need for the Board to look at the principles in IAS 37.

In case the IFRS Interpretations Committee and/or the IASB believe further guidance is needed as to the determination of the obligating event in a somewhat different context from that of waste electrical and electronic equipment, ESMA believes that the issue should be addressed in a more comprehensive way. As mentioned, ESMA would not favour developing specific interpretations each time a specific case arises.

Interim Financial Statements

ESMA believes that the issue on the levies is more relevant in interim reporting periods than at year-end. That is confirmed in practice as most levies are charged on an annual basis (e.g. the bank levies). For example, when the obligating event is at the end of the year and the levy is based e.g. on the income for that year, ESMA expresses concerns whether the interim financial statements give relevant information if nothing is charged before the end of the year. In this respect the example set out in paragraph B1 of IAS 34 seems to provide guidance that levies charged on an annual basis could be recognised in the interim financial reporting based on an estimated average annual amount, even though the obligation was settled earlier in the period.

The scope of the interpretation

In its draft comment letter EFRAG argues that the scope of the draft Interpretation is very broad and would include more payments to public authorities than its title would suggest. ESMA agrees that the scope of the interpretation should be further considered. We believe that there are significant issues related to the scope of the proposed interpretation that would need to be further explored in case it were decided to continue with the interpretation. ESMA notes in particular that:

- levies due only if a minimum revenue threshold is achieved are scoped out whereas levies with a threshold based on another financial aggregate than revenue are scoped in;
- levies paid in transactions in which the entity received a specific asset are also scoped out whereas the draft interpretation neither defines nor gives an example of a levy paid to receive a specific asset;
- the interpretation excludes levies where the amount payable is fixed or not linked to a financial data;
- the notion of “specific market” is not defined and seems to be any market.

We would be happy to discuss all or any of these issues further with you.

Yours sincerely,

A handwritten signature in black ink, appearing to be 'S. Maijoor'.

Steven Maijoor
Chair ESMA

A handwritten signature in blue ink, appearing to be 'Julie Galbo'.

Julie Galbo
Chair ESMA's Corporate Reporting Standing Committee