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Dear Mr. Guersent,

PUBLIC CONSULTATION ON THE OPERATIONS OF THE EUROPEAN SUPERVISORY AUTHORITIES

The Accounting Standards Committee of Germany (ASCG) is the national standard setter in the area of group financial reporting in Germany. The organisation was established on 15 March 1998 as an independent and registered not-for-profit association by German Industry and is domiciled in Berlin. The ASCG had been formally acknowledged by the German Ministry of Justice (now the Ministry of Justice and for Consumer Protection) as *the* private standardisation organisation pursuant sec. 342 of the German Commercial Code.

Whilst the majority of the Commission's consultation on the operations of the European Supervisory Authorities (ESAs) is concerned with supervision and enforcement activities, the consultation also contains two questions that deal with financial reporting. It is these two questions that we would like to comment on below.

14. What improvements to the current organisation and operation of the various bodies do you see would contribute to enhance enforcement and supervisory convergence in the financial reporting area? How can synergies between the enforcement of accounting and audit standards be strengthened? Please elaborate.

With regard to the first question we feel that asking what improvements to the current organisation and operation of the various bodies one would see contribute to enhance enforcement and supervisory convergence in the financial reporting area starts with a presumption that improvements are needed. We are not convinced that this is the case. Before suggesting any changes, we would have expected to see the set of objectives against which the actual outcomes are assessed in order to carry out a gap analysis. Only with such an analysis one could evaluate the existence and sever-

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ity of any gaps and discuss measures how to overcome them. Whilst one of these measures may indeed be a strengthening of convergence activities, it is by no means the only solution and certainly not one to conclude on before there is indeed a gap to be filled. We have not been provided with any evidence in the consultation that would make us conclude that change was warranted, let alone necessary. The mere fact that convergence of the enforcement of accounting standards is limited does not, in itself, mean that the current system of NCAs carrying out enforcement activities is not working (and even if there was evidence that it does not work in some jurisdictions, it does not mean that one should automatically withdraw enforcement and supervisory powers from all NCAs). Further, the fact that ESMA cannot launch a breach of EU law case does not answer the question whether any such launch would have been deemed necessary but had been prevented. Again, the consultation paper is silent on whether such a case did exist.

Hence, we are not convinced that strengthening enforcement powers is warranted without having seen evidence that such strengthening is indeed needed.

On the second question we do not see what specific synergies the Commission is thinking of. The enforcement of accounting standards is not necessarily driven by the same factors and processes as the enforcement of auditing standards. As far as we can tell, the enforcement of accounting standards in Germany seems to work properly. The two-tier system consisting of a private enforcement panel (FREP) and the public sector financial services authority (BaFin) has been working for ten years and has proven to be efficient and effective. The enforcement of audit standards has just been reconstituted using a different model. Hence, it seems premature to look for synergies. Further, a long debate about the appropriate setup of audit supervision in Europe has just come to a close, with the result that no pan-European agency should be established in the field of audit regulation and supervision. Re-opening a process just put to rest between the Commission, Member States and the European Parliament and, moreover, under the umbrella of a regular consultation on the operations of the ESAs seems out of place and to certainly come at the wrong point in time. We believe that the agreed-upon structures need to be given time to see whether they are working as expected or whether changes are warranted. And should the system not work as expected, strengthening central supervisory powers appears to be but one feasible alternative we can think of.

15. How can the current endorsement process be made more effective and efficient? To what extent should ESMA's role be strengthened? Please elaborate.

As above, this set of questions seems to start with a presumption that the endorsement process is seen as being in need of making it more effective and efficient and ESMA's role needing strengthening. Again, we are taken by surprise seeing the Commission re-opening the chapter and raising the questions – noting that less than two years ago the Commission finished a comprehensive review of the functioning of the IAS Regulation (including the endorsement process). In parallel, the Commission's special advisor, Mr Philippe Maystadt, formulated suggestions as to how EFRAG's setup and processes could be enhanced. Whilst the majority of his suggestions have been picked up and have meanwhile been implemented and been



deemed to work satisfactorily, a few proposals have been discarded: Whilst Mr Maystadt voiced his own preference for the endorsement process being executed by ESMA, this view was not shared by any other key stakeholder (absent ESMA themselves). On the contrary, a big majority favoured leaving this task with EFRAG, although in a different shape: Whilst Mr Maystadt originally envisaged the ESAs to become full members of the EFRAG Board with voting rights, they declined to join the organization and have instead accepted an observer status.

Therefore, we fail to see where the private end of the endorsement process could be enhanced further without negating or duplicating the work that has already been carried out and finished recently. To fully evaluate the changes that had been implemented following the Maystadt reform, we feel that more time and evidence is needed to cast a final verdict and suggest changes, if any.

Where we do see some potential in streamlining the process, though, is in the public sector end. We fail to see why it takes so long for IFRSs to be legally endorsed once EFRAG hands its endorsement advice to the Commission (that goes for small and big standards alike). We believe that some of the discussions that seem to take place only *after* EFRAG has finished its work could be anticipated and pulled forward – e.g. the translations of the pronouncements, the sounding of Member States and – potentially – the European Parliament, etc. This would contribute to facilitating a speedier endorsement procedure in Europe, leaving those that have to apply the pronouncements in less uncertainty as to the timing, scope and content.

If you would like to discuss any aspect of our comments further, please do not hesitate to contact us.

Yours sincerely,

Ralf Thomas
(Chairman of the Administrative Board)

Andreas Barckow
(President)