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Paris, the 22nd July 2013

Mr Hans HOOGERVORST
Chairman
IASB

30 Cannon Street
LONDON EC4M 6XH
UNITED KINGDOM

Re : Exposure Draft ED/2013/05 Regulatory Deferral Accounts

Dear Mr Hoogervorst,

I am writing on behalf of the Autorité des Normes Comptables (ANC) to express our views on the above-mentioned draft. These views result from the ANC's due process, involving all interested stakeholders. More precisely, the due process includes fundamental work by a diversified experts task force, a full fledged discussion of its assessment by a complete Commission for all International Standards and then a global and strategic discussion in the Collège (Board) before signing this letter.

The ANC acknowledges that in some circumstances, temporary measures aimed to facilitate first-time adoption of IFRS Standards result in improving overall comparability of financial statements, of which the ANC is supportive. But we note that the IASB usually deals with such temporary measures with the dedicated standard IFRS 1. Whilst pursuing the same objectives and the same scope of entities as those of IFRS 1, the IASB has chosen to depart from its established approach of using that standard. The ANC considers that the proposed requirements are of a different nature from those contained in IFRS 1, and will have further-reaching effects than those traditionally encountered with IFRS 1.

In the present circumstances, the ANC is not supportive of the above-mentioned ED for the following reasons:

1. We note that the established practice has been that rate-regulated entities do not recognise regulatory deferral account balances in IFRS financial statements (unless they meet the definition of financial assets/liabilities), even when they were allowed by their previous GAAP to do so.

The ANC is therefore particularly concerned that this ED would result in a lack of comparability between existing IFRS reporting entities and first-time adopters from a jurisdiction that permits recognition of regulatory deferral account balances in local GAAP.

In addition, the proposals in the ED would also result in a lack of comparability between first-time adopters, depending on whether the previous local accounting GAAPs applied allow deferral account balances.

As a result, companies bidding for tenders, for example, would be subject to distortions of competition, depending on whether they are allowed by their local GAAPs to recognise regulatory deferral accounts or not, and on whether they are first-time adopters or not.

2. Moreover, should the IASB issue an interim Standard based on the ED, and notwithstanding the fact that we do not support it, we do not believe that the presentation and disclosure requirements proposed in the ED are sufficient to overcome the significant lack of comparability and diversity in practices that would be introduced in IFRS.

We believe that the IASB's concern should only be dealt with in a disclosure requirements standard: entities forced to derecognise their rate-regulatory accounts when they adopt IFRS should be allowed to disclose the effect of such derecognition.

3. Further, we are not convinced that the proposed interim standard, presented as a means to facilitate adoption, will effectively carry forward previous accounting policies only for a short period. Other interim standards such as IFRS 4 and IFRS 6 have shown that there is no such thing as a short-term interim Standard:

- IFRS 4 was published in March 2004, and the new Standard is expected in the second half of 2014 at best;
- IFRS 6 was published in December 2004, and there is still no ongoing project to address this topic.

In addition, those Standards are applicable without discrimination to all entities concerned and not solely for first time adopters.

4. Moreover, responses to the IASB's 2011 agenda consultation have not shown a worldwide call for such a Standard.

Beyond these considerations, we understand that the aim of the project is to remove a significant barrier to adoption of IFRS for entities in a limited number of jurisdictions for which regulatory deferral account balances represent a significant proportion of net assets, and to reduce the risk of local "carve-ins" or "carve-outs".

In the context of a global standard, is it relevant to base a standard on a business model that is encountered only within certain specific regulatory or business environments?

The ANC considers that such non-technical objectives should not form the basis for standard-setting.

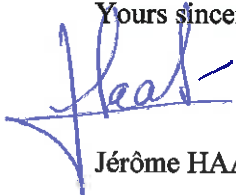
It is all the more critical as some countries have had to, in 2005 and even much more recently, and for good reasons, give up their pre-existing standards allowing recognition of such assets and liabilities upon adoption of IFRS. This leads to questioning the fairness of the proposed approach.

Finally, even if the IASB indicates that the proposals in the interim Standard do not prejudice the outcome of the comprehensive project, we believe that the interim Standard will necessarily significantly influence the comprehensive project. As mentioned in paragraph BC16 "In many jurisdictions, the accounting policies developed for regulatory deferral account balances are based on US GAAP or local GAAP that provides similar guidance". This will necessarily increase the pressure to address the future Standard in a way consistent with these generally accepted local requirements. In that sense, the adoption of the interim Standard would influence the outcome of the Rate-regulated Activities Project.

To conclude in that line, we refer you to our comments on the Exposure Draft ED/2009/8 “Rate-Regulated Activities”, where we expressed significant doubts as to the compliance of the amounts accounted for on the balance sheet with the existing Conceptual Framework. We still remain unconvinced of the relevance of recognising such assets and liabilities in the financial statements, even within those business models that are targeted by the exposure draft. More fundamentally, it remains to be demonstrated that the availability of information about the entity's regulatory contexts elsewhere in the documentation it produces does not give enough useful and relevant information to users.

If you have any questions concerning our comments, we would be pleased to discuss them.

Yours sincerely,



Jérôme HAAS

Appendix – Invitation to comment

Scope

Question 1

The Exposure Draft proposes to restrict the scope to those first-time adopters of IFRS that recognised regulatory deferral account balances in their financial statements in accordance with their previous GAAP.

Is the scope restriction appropriate? Why or Why not?

Answer

The ANC understands that the objective of the interim standard is to allow, but not to require, first-time adopters who currently recognise regulatory deferral accounts in accordance with their local GAAP to continue to do so after adoption of IFRS, in order to facilitate adoption of IFRS.

As indicated in our cover letter, the ANC disagrees with the issuance of such an interim standard. One of the reasons for our disagreement lies in the scope proposed by the ED.

The ANC considers that the proposed scope would result in a lack of comparability and inconsistent accounting policies not only between entities of different jurisdictions, but also potentially between entities within a jurisdiction, depending on whether they adopted IFRS before or after the issuance of such an interim standard. Indeed, according to the ED, new first-time adopters of the IFRS would be allowed to recognise deferral account balances in their IFRS financial statements, whereas current IFRS issuers would not.

As a result, companies bidding for tenders would be subject to distortions of competition, depending on whether they are allowed by their local GAAP to recognise regulatory deferral accounts or not, and on whether they are first-time adopters or not.

We consider that there is no point in making such a difference in the presentation of the balance sheet and the profit and loss account statements between first-time adopters of IFRS and existing IFRS issuers, and that the proposed presentation and disclosure requirements are not sufficient to outweigh the lack of comparability and diversity in practices which will be introduced by the interim standard (See answer to questions 6 to 8).

On the other hand, we believe that allowing all the IFRS reporting entities to recognise regulatory deferral accounts would not fully solve the comparability issues, because the interim standard could only be applied by entities authorised to recognise such accounts in their local GAAP.

In addition, the proposed standard is ambiguous in terms of the local GAAP to be applied : the local GAAP of the parent entity or of that of the individual subsidiaries ?

We believe that addressing the problem raised by such entities, while minimising comparability issues in the financial statements, should be only dealt with by way of disclosures. In our opinion:

- first-time adopters should continue to not be allowed to recognise regulatory accounts in their financial statements, even if they are allowed to do so according to their local GAAPs;
- entities forced into discontinuing the recognition of regulatory deferral accounts in their financial statements when they adopted IFRS (regardless of the date of their adoption) should be allowed to disclose the effect of such derecognition.

Question 2

The Exposure Draft proposes two criteria that must be met for the regulatory deferral accounts to be within the scope of the proposed interim Standard. These criteria require that:

- a. an authorised body (the rate regulator) restricts the price that the entity can charge its customers for the goods and services that the entity provides, and that price binds the customers; and*
- b. the price established by regulation (the rate) is designed to recover the entity's allowable costs of providing the regulated goods or services (see paragraphs 7-8 and BC33-BC34).*

Are the scope criteria for regulatory deferral accounts appropriate? Why or why not?

Answer

The ANC has several concerns about the scope criteria that contribute to its disagreement with the issuance of such an interim standard.

First, the ANC notes that the scope criteria are very similar to those included in the 2009 ED. We also note that, due to a lack of consensus and the complexities of the issue, the IASB decided in September 2010 not to finalise the proposals presented in the 2009 ED.

In addition, responses to the 2009 ED highlighted that there were many types of rate regulation and these responses suggested that the scope of the project should be expanded to look at a wider variety of rate regulation in order to identify common characteristics from which accounting guidance might be developed.

The IASB has issued a Request for Information (RFI) in March 2013, the purpose of which is to identify the range of rate regulation schemes that stakeholders think should be included within the scope of the project. This RFI aims at identifying and more clearly articulating:

- the common features of rate regulation;
- whether these common features create economic resources for, or claims against, a rate-regulated entity that should be recognised in the IFRS financial statements; and
- the information about the consequences of rate regulation that would be most useful for users of IFRS financial statements.

In view of the complexities of the project, the ANC considers that such a preliminary survey is a necessary first step before any proposal is made with respect to regulatory deferral accounts.

Indeed, the ANC is concerned about the potential unintended consequences of defining the scope of a potential interim standard before having identified the different regulatory schemes encountered around the world. Without such preliminary work, it is difficult to assess whether the definition captures the key differentiating factors of rate regulation schemes for which an interim standard may be appropriate.

Further, the proposed scope is defined in a very generic manner and, without illustrative examples, it may be very difficult for preparers to identify whether the regime(s) in which they operate meet(s) the scope definition or not.

For instances, some may question whether certain activities (for instance banks, mutual insurance companies, health services providers, and pharmaceuticals ...) would (or should) fall within the scope of the interim standard.

These uncertainties could lead to inconsistencies in the financial statements published according to the proposed standard.

In our opinion, having a preliminary understanding of the existing rate regulation regimes is necessary before issuing any interim standard.

The ANC also has a number of additional concerns about the scope criteria.

Notwithstanding the fact that we do not support the ED, we agree, in principle, that an identifiable causal effect linking the regulatory deferral account balances to the rate setting process can only exist if customers of the rate-regulated products and services are bound by the prices established by the regulator. However, it is not clear how the following two situations would be analysed based on the scope criteria:

- 1) Situations in which the rate regulation applies only to some of the components of the overall price charged to customers. For example, if the regulator establishes the price to be applied to the electricity or gas consumed but not to the trading activity of the electricity or gas. In such schemes would the regulator be considered as *restricting the price that the entity can charge and to which the customers are bound*?
- 2) Situations in which rate-regulated entities have no reasonable guarantee that future customer demand will be sufficient to allow them to recover the value of their regulatory deferral assets. In that respect, we note that FAS 71 requires that *"In view of the demand for the regulated services or products and the level of competition, direct and indirect, it is reasonable to assume that rates set at levels that will recover the enterprise's cost can be charged to and collected from customers"*. We wonder why no such requirement is included in the ED, despite the fact that it requires the rate setting mechanism to be designed to recover the entity's specified costs. Would an entity submitted to a rate setting mechanism designed to recover its specified costs meet automatically the scope criteria, regardless of its reasonable ability to recover these costs in the future, according to the probable demand and the level of competition?

Should the IASB finalise the interim standard, the ANC believes that the Board should provide illustrative examples to help preparers identify whether or not they fall within the scope.

Question 3

The Exposure Draft proposes that if an entity is eligible to adopt the interim Standard it is permitted, but not required, to apply it. If an eligible entity chooses to apply it, the entity must apply the requirements of all the Rate-regulated Activities and resulting regulatory deferral account balances within the scope. If an eligible entity chooses not to adopt the interim Standard, it would derecognise any regulatory deferral account balances that would not be permitted to be recognised in accordance with other Standards and the Conceptual Framework (see paragraphs 6, BC11 and BC49).

Do you agree that adoption of the interim Standard should be optional for entities within the scope? If not, why not?

Answer

Notwithstanding all our concerns and our disagreement with the issuance of such an interim standard, the ANC notes that the approach proposed in the ED which consists in maintaining “non IFRS” accounting already exists in IFRS 4 and also in IFRS 1. The ANC agrees that such an approach should be an option made available to entities meeting the scope requirements, similar to the options available in IFRS 1 and IFRS 4.

Recognition, measurement and impairment

Question 4

The Exposure Draft proposes to permit an entity within its scope to continue to apply its previous GAAP accounting policies for the recognition, measurement and impairment of regulatory deferral account balances. An entity that has Rate-regulated Activities but does not, immediately prior to the application of this interim Standard, recognise regulatory deferral account balances shall not start to do so (see § 14-15 and BC47-BC48).

Do you agree that entities that currently do not recognise regulatory deferral account balances should not be permitted to start to do so? If not, why not?

Answer

Notwithstanding our disagreement with the proposed interim standard, the ANC concurs with the fact that this interim standard should only be applicable to entities that currently recognise deferral regulatory accounts in application of their local standards. In that sense, we agree that entities which did not, prior to the application of the interim standard, recognise deferral regulatory accounts because their local standards do not allow for such recognition, should not be permitted to start recognising such amounts.

In addition, we note that the proposed standard is ambiguous in terms of the local GAAP to be applied: the local GAAP of the parent entity or of that of the individual subsidiaries ?

Question 5

The Exposure Draft proposes that, in the absence of any specific exemption or exception contained within the interim Standard, other Standards shall apply to regulatory deferral account balances in the same way as they apply to assets and liabilities that are recognised in accordance with other Standards (see § 16-17 and BC51)

Is the approach to the general application of other Standards to the regulatory deferral account balances appropriate? Why not?

Answer

We understand that paragraph 16 of the ED aims at avoiding substantial amendments to other standards, the interim standard being considered as a short-term solution.

Nevertheless, there is an apparent contradiction between paragraph 14 that requires that *“An entity shall continue to apply its previous GAAP accounting policies for the recognition, measurement and impairment and regulatory deferral account balances ...”* and paragraph 16 that *“ In the absence of any specific exception exemption or additional requirement contained within this interim Standard, other Standards shall apply to regulatory deferral accounts in the same way as they apply to assets, liabilities, income and expenses that are recognized in accordance with other Standards”*.

Accordingly, it is unclear whether an entity is allowed to apply its previous GAAP policies requirements to the recognition, measurement and impairment of its regulatory assets and liabilities, even when these criteria do not meet the IASB requirements about recognition, measurement and impairment of assets and liabilities. For example, the local GAAP applicable to an entity may permit (require) recognition of assets and liabilities based on the general matching principle in their local GAAP. This may be the basis for recognition of the deferral account balances. The IASB should clarify how paragraph 16 of the ED applies in such circumstances.

The IASB should also clarify how an entity should deal with changes to local GAAPs and rate regulation regimes:

- Local GAAPs may evolve over time. To the extent that the regulatory deferral accounts that an entity had recognised under previous GAAP, and maintained upon adoption of IFRS, would no longer meet the criteria for recognition as a result of changes to local GAAP, should the entity be permitted (or required) to derecognise the related amounts? Similar clarification is also required with respect to changes to local GAAP that would modify the measurement principles applicable to regulatory deferral accounts.
- Rate regulation regimes may also evolve over time. Changes in the rate regulation regime could result in the scope criteria no longer being met. It would also be appropriate for the IASB to clarify how an entity that maintained regulatory deferral accounts upon adoption of IFRS should account for such changes.

Presentation

Question 6

The Exposure Draft proposes that an entity should apply the requirements of all other Standards before applying the requirements of their interim Standard. In addition, the Exposure Draft proposes that the incremental amounts that are recognised as regulatory deferral account balances and movements in those balances should then be isolated by presenting them separately from the assets, liabilities, income and expenses that are recognised in accordance with other Standards (see § 6, 18-21 and BC 55-BC62).

Is this separate presentation approach appropriate? Why or why not?

Disclosure

Question 7

The Exposure Draft proposes disclosure requirements to enable users of financial statements to understand the nature and financial effects of rate regulation on the entity's activities and to identify and explain the amounts of the regulatory deferral account balances that are recognised in the financial statements (see § 22-33- and BC 55-BC62).

Do the proposed disclosure requirements provide decision-useful information? Why or why not? Please identify any disclosure requirements that you think should be removed from, or added to the interim Standard

Question 8

The Exposure Draft explicitly refers to materiality and other factors that an entity should consider when deciding how to meet the proposed disclosure requirements (see § 22-24- and BC 63-BC64).

Is this approach appropriate? Why or why not?

Answer (to questions 6 to 8)

Although we are not in favour of the finalisation of the interim standard, we agree that:

- the presentation requirements isolate the effects of the application of the ED for those companies who do not currently apply IFRS, and;
- the proposed disclosure requirements provide useful information.

Nevertheless, we do not believe that presentation and disclosure requirements are sufficient to overcome the significant lack of comparability and diversity in practices that would be introduced in IFRS should the IASB issue an interim standard based on the ED.

But - as mentioned in the answer to question 1 -, as the disclosure requirements are able to provide useful information, they could be used to address the concern of some rate-regulated entities.

In that sense, we propose that:

- first-time adopters should continue to not be allowed to recognise regulatory accounts in their financial statements, even if they are allowed to do so according to their local GAAPs;
- entities forced into discontinuing the recognition of regulatory deferral accounts in their financial statements when they adopted IFRS (regardless of the date of their adoption) should be allowed to disclose the effect of such derecognition.

Transition

Question 9

The Exposure Draft doesn't propose any specific transition requirements because it will initially be applied at the same time as IFRS 1, which sets out the transition requirements and relief available.

Is this approach appropriate? Why or why not?

Answer

The absence of specific transition requirements is consistent with the mentioned ED, which applies only to first-time adopters of IFRS.

Other comments

Question 10

Do you have any comments on the proposals in the Exposure Draft?

Answer

1) ***IFRS 1***

If the IASB maintains its proposal to limit the scope of the interim standard to first-time adopters of IFRS, we believe that it would be more appropriate to introduce the option of maintaining regulatory deferral accounts as an amendment to IFRS 1.

2) ***Interaction with IFRIC 12 requirements***

In some jurisdictions, entities operating in public services are involved in service concession arrangements. Some entities subject to these arrangements provide rate regulated services too.

We suggest that the Board provides clarification on the interaction between IFRIC 12 and the ED. This clarification should illustrate under which circumstances regulated deferral accounts could be recognised in addition to those already recognised under IFRIC 12. In our understanding, under the IFRIC 12 intangible asset model, rate regulation would provide an additional right to the operator who otherwise has no form of guarantee from the grantor in respect of its future revenue. The interim Standard would apply to the regulatory deferral accounts available as a result of the rate regulation.

On the other hand, under the IFRIC 12 financial model, the operator has a contractual right to receive cash guaranteed by the grantor. This right covers the costs of the operator's investments in infrastructure under the concession arrangement. Therefore it is not expected that an additional regulatory deferral account would arise in respect of such arrangements.

We suggest that the Board should clarify the interactions between IFRIC 12 and the ED and under which circumstances operating costs are eligible for recognition as regulatory deferral accounts.

3) *Interaction with other IFRS Standards*

We believe that the interaction between IFRS 3 *Business Combinations* and an eventual interim Standard should be clarified. In particular, the following issues should be addressed

- If an entity acquires a business that recognises regulatory deferral account balances under local GAAP, is the acquirer permitted to retain these amounts in the purchase price allocation and if so what is the basis of measurement of these amounts (fair value, local GAAP, ...)? Would this be permitted only if the acquirer is itself in the scope of the interim Standard?
- If an entity recognises regulatory deferral accounts balances with respect to a business that was acquired in a business combination, how would the entity determine the impact of interim Standard to comply with presentation and disclosure requirements? That is, would it be required (or permitted) to consider that the goodwill, if any, recognised for the business combination would have been different if the regulatory deferral account balances had not been recognised at the date of acquisition?

We believe that the Board should look into specific guidance on these interactions.

4) *Interaction between the interim Standard ED and the future standard envisaged*

We note that:

- § BC15 acknowledges that discontinuing the recognition of deferral account balances in advance of the comprehensive Rate-regulated Activities project could be a significant barrier to the adoption of IFRS for those entities for which regulatory deferral account balances represent a significant proportion of assets and that the IASB has decided to deal with this situation by proposing an interim standard.
- The IASB acknowledges that this interim standard would introduce some inconsistency and diversity into IFRS practice, but that it believes that this is intended to be a short-term interim situation until the comprehensive Rate-regulated Activities project is completed.
- The IASB considers that this interim standard is in no way anticipating the outcome of the comprehensive Rate-regulated Activities project.

We do not share this assessment and we believe that first-time adoption difficulties related to the recognition of rate-regulated account balances could have been dealt otherwise. We do not believe that the inconsistency and diversity in practices that would be introduced into IFRS if an interim standard is issued would in fact be short-term and temporary.

Previous examples of interim standards (IFRS 4 and IFRS 6) have shown that there is no such thing as short-term interim standard solutions. IFRS 4 was published in March 2004, and the subsequent Standard is expected in the 2nd half of 2014. IFRS 6 was published in December 2004, and at this date, no on-going project is designed to address this topic. Without prejudging the ability of achieving the comprehensive project in a short time, we notice that the IASB itself acknowledges that the comprehensive project is a complex issue. Consequently the interim standard is not expected to be a short-term interim solution.

Further, even if the IASB indicates that the proposal in the interim standard do not prejudice the outcome of the comprehensive project, we believe that the interim standard will necessarily significantly influence the comprehensive project. As mentioned in § BC16 “in many jurisdictions, the accounting policies developed for regulatory deferral account balances are based on US GAAP or local GAAP that provides similar guidance”. This will necessarily increase the pressure to address the future standard in a way consistent with these generally accepted local requirements. In that sense, the adoption of the interim standard would influence the outcome of the Rate- regulated Activities Project.