



OPINION

Application of the IFRS requirements in relation to the recognition of contributions to Deposit Guarantee Schemes in IFRS accounts

Legal basis

1. ESMA's competence to deliver an opinion is based on Article 29(1)(a) of the ESMA Regulation.¹ In accordance with Article 44(1) of the ESMA Regulation, the Board of Supervisors has adopted this opinion.
2. It is ESMA's responsibility to promote effective and consistent application of European securities and markets legislation and notably of International Financial Reporting Standards (IFRS).² In order to ensure supervisory convergence and investors' protection, ESMA is of the view that an opinion is necessary to promote consistent application of IFRS in the European Union (EU) and avoid divergence in practice on this topic.
3. ESMA might review this opinion in case where the legal framework on deposit guarantee schemes in the EU is changed or the IFRS are modified.

Background

4. The Directive 94/19/EC³ (the Directive), as amended, requires Member States to ensure that one or more deposit-guarantee schemes (DGS) are introduced and officially recognised within their territories. These can have the character of ex-ante or ex-post schemes. As the transposition of the Directive 2014/49/EU⁴ is not yet completed in all jurisdictions, this opinion addresses the accounting treatment predominantly for ex-ante schemes set up according to the Directive.⁵
5. This opinion is limited to the accounting treatment of ex-ante non-refundable cash contributions to DGS for which the obligating event is identified at a single point in time (e.g. on 1 January). Furthermore, in some Member States, deposit protection is obtained through a deposit held at the DGS or on an escrow account. An analysis of such schemes as well as non-cash contributions (payment commitments) introduced by the Directive 2014/49/EU is beyond the scope of this opinion.

¹ Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities and Markets Authority), amending Decision No 716/2009/EC and repealing Commission Decision 2009/77/EC

² Regulation No 1606/2002 (EC) on the application of international accounting standards (IAS regulation)

³ Directive 94/19/EC of the European Parliament and the Council of 30 May 1994 on deposit guarantee schemes, as amended

⁴ Directive 2014/49/EU of the European Parliament and the Council of 16 April 2014 on deposit guarantee schemes

⁵ However, the accounting analysis should similarly apply to ex-ante DGS set up according to Directive 2014/49/EU as these have substantially the same economic characteristics.

Opinion

6. While ESMA acknowledges that the supervision of financial reporting and necessary potential enforcement actions rest with National Competent Authorities (NCAs), it is important that consistent application and enforcement of IFRS is achieved across the EU.
7. The present opinion is based on the enforcers' discussions within ESMA (through EECS⁶) in order to coordinate the enforcement activities in the particular area of determining the accounting treatment for ex-ante cash contributions to the DGS where divergence in application of IFRS in the EU was identified.
8. In ESMA's opinion, the following elements should be considered by issuers and their auditors when preparing and auditing IFRS interim and annual financial statements.
9. With regards to the recognition of a liability:
 - According to IAS 37 *Provisions, Contingent Liabilities and Contingent Assets* and IFRIC 21 *Levies*, a liability is recognised at the date when the obligating event occurs. The identification of the obligating event requires an analysis of the national legislation which transposed the DGS Directive(s) into national law as well as, in some cases, other legislation (e.g. banking law). An analysis of the detailed features of such schemes in individual countries is beyond the scope of the present opinion. However, ESMA considers that unless the scheme allows for the contribution to be fully or partially reduced or paid back when certain conditions are met the liability should be recognised in full when the obligating event has occurred.
10. With regards to the recognition on the debit side:
 - The IFRS Interpretations Committee decided not to provide guidance in IFRIC 21 on this matter and noted that as IFRIC 21 is an interpretation of IAS 37, according to paragraph 8 of IAS 37 other Standards specify whether expenditures are treated as assets or as expenses. Consequently, entities should apply other standards to decide whether the recognition of a liability linked to a levy results in an asset being recognized rather than an expense.
 - Therefore, it needs to be established whether the recognition of a liability for the DGS contribution leads to the recognition of an expense or if an asset can be recognised in the context of existing standards (e.g., an intangible asset according to IAS 38 *Intangible Assets* or a prepayment).
 - Assessing whether the debit side can be recognised as an intangible asset implies to assess whether the criteria in IAS 38 are met. Paragraph 8 of IAS 38 defines an asset as a resource controlled by an entity as a result of past events and from which future economic benefits are expected to flow to the entity. In the situation at hand:
 - i. In order to control an asset the entity would need to be able to restrict the access of others to the benefits of the DGS. As no credit institution could restrict the ac-

⁶ European Enforcers Coordination Sessions

cess of other credit institutions to the benefits of the DGS in its respective country, this criterion is not met.

- ii. In case the funds of DGS had to be used, the prime beneficiaries of the scheme would not be the credit institutions, but the depositors as any repayment of deposits would be made by the DGS to the depositors and not to the credit institutions. Further, in such a situation, the DGS would be in a position to claim under national resolution/insolvency law an amount equal to its payments to depositors from the credit institution. Therefore contributions to the DGS do not constitute an insurance premium. Consequently, the criterion of future economic benefits which would flow to the entity is not met.

- Furthermore, it needs to be assessed whether a prepayment (asset) could be recognised based on the concept of matching costs with revenues. However, according to paragraph 4.50 of the Conceptual Framework for Financial Reporting, the application of the matching concept does not allow the recognition of items in the balance sheet which do not meet the definition of assets or liabilities. Consequently, because the nature of the expense in this case is a levy, and because the item does not meet the definition of an intangible asset in paragraph 8 of IAS 38, no prepayment asset can be recognised.
- Finally, in respect to the interim financial statements, as IAS 34 *Interim Financial Reporting* has no specific provision for this type of expense, the expense needs to be recognised in full in the interim financial statements once the obligating event has occurred.

11. On the basis of the accounting analysis described above, ESMA is of the view that as soon as the obligating event of a non-refundable cash contribution to a DGS is identified, the contribution needs to be recognised as an expense in full. Accordingly, when such an obligating event is identified during the first quarter of the calendar year, the corresponding expense would need to be recognised in full as an expense in the first quarter interim financial statements. This opinion will be published on ESMA's website.

Done at Paris, 25 September 2015

Steven Maijoor

ESMA Chair

For the Board of Supervisors