

OPINIONS ON
“CESR STATEMENT OF PRINCIPLES OF ENFORCEMENT OF
ACCOUNTING STANDARDS IN EUROPE”
AND
A GENERAL EVALUATION OF RELATED IMPROVEMENTS IN
TURKEY

We believe that CESR’s consultative paper undoubtedly provides effective principles to create an efficient capital market within the European Union (EU) and restore and improve investor confidence in capital markets.

On the edge of becoming a member of the EU, Turkey follows, as rapid as possible, the new developments and regulations with a global perspective and starts several progressive projects of adoption of such regulations believing that harmonisation may be achieved. Prevailing and projected regulations that have been established by Capital Markets Board of Turkey (CMB) in accordance with international accounting standards create enormous opportunities in this aspect.

In this context, our opinions on CESR’s SOP is available in the following section.

A. OPINIONS ON CONTEXT AND SCOPE OF THE SOP

It is totally agreed that an efficient and effective financial information system in a transparent European capital market (not only in Europe but also in global capital markets) shall be based on the development and the harmonisation of principles mentioned in the Consultative Paper. CMB has been working on new legislations to ensure the enforcement of high disclosure standards, corporate governance issues and auditing regulations which are consistent with the principles indicated by CESR.

CMB has issued and is continuously planning to issue several communiqués in order to both harmonize the effective regulations on accounting and auditing with the global and, consequently, the EU standards and provide a more trustful capital market. Considering that the European Commission presented a proposal in June 2002 that has required all EU companies listed on a regulated market to use IAS from 2005 onwards and allowed Member States to extend this requirement to all companies, CMB has prepared a draft communiqué involving almost every IAS issued by the International Accounting Standards Board (IASB) and recently being at the end of its due process of issuance.

Furthermore, it has been planned to harmonize the existing auditing standards with the global regulations which have been developed especially after the immediately following series of accounting-based problems that resulted with bankruptcies of large companies. In this direction, existing regulations on independent auditing standards have been improved in terms of auditor independence.

As it has been stated above, we adopt the principles of harmonisation on accounting and auditing standards and enforcement practices which will help improve investors' confidence in financial markets and enhance comparability between financial information published by listed companies. However, it is believed that the harmonisation goal is a moving target and enforcement framework must all times be in tune with economic developments.

B. OPINIONS ON ENFORCERS

Principles 1-6 state that competent independent administrative authorities shall overtake the responsibility for enforcement of compliance of the financial information provided by the companies and any code of conduct or best practice or procedure established by CESR shall be complied with.

It is agreed that the enforcer shall be competent and independent. In our opinion, competence shall be understood as the capability of continuously directing and improving the enforcement practices, not only as the ability of carrying out the existing ones. On the other hand, independence, implying that the authorities shall not be unduly influenced by the issuers, their auditors, intermediaries, the government or the stakeholders, is a must course for best and sound enforcement system.

However, it is clear that there will be different implications of competence and independence among EU Member States because of diverse legal environments and market characteristics.

In Turkey, CMB's mission, as an independent administrative authority, has been defined as to make innovative regulations, and perform supervision with the aim of ensuring fairness, efficiency and transparency in Turkish capital markets, and improving their international competitiveness. Under the umbrella of this mission, monitoring and enforcement of the CMB's accounting and auditing requirements is handled by the CMB's Corporate Finance, Enforcement, Institutional Investors, Intermediary Activities and Accounting Standards Departments

Its ***Department of Accounting Standards*** carries studies on the establishment of general and private accounting standards related to the institutions subject to the Capital Market Law, in harmonisation with international standards. It is also responsible to evaluate the applications for establishing independent auditing firms and also rating firms that will operate in Turkey. The Department supervises the activities of independent auditing firms and the quality of the services they provide.

On the other hand, its ***Department of Enforcement*** has the primary function of auditing of corporations, intermediary institutions, banks and other financial institutions operating in securities markets, and ensuring the conformity of their activities to the pertaining legislation. The Department is responsible for enforcing Capital Market regulations and investigating violations of the regulations.

As mentioned, CMB is a competent independent administrative authority or enforcer as stated by SOP of CESR.

C. OPINIONS ON COMPANIES AND DOCUMENTS

Principles 7-8 state that the SOP shall apply to financial information provided by companies whose securities are traded on a regulated market and that applied for admission to trading of their securities; moreover, the financial information provided for investors shall be harmonized.

It is agreed that the type of the company shall be a listed one in terms of investor protection; however, for instance on a consolidation basis, a small company, which is not listed, but a subsidiary of a listed parent company shall also be subjected to these principles. Furthermore, non-listed public companies shall be encouraged to apply them even they are not required to do so.

Uniform documentation is also an important issue for investors. It is agreed that financial information shall be provided by all harmonized documents, including annual and interim financial statements and reports (individual/consolidated). As known, documentation is a significant issue related to the comparability of the information among different jurisdictions. It is important for securities regulators to facilitate cross-border offerings and listings by multinational issuers by enhancing comparability of information, while ensuring a high level of investor protection. The use of international accounting and auditing standards shall be the main requirement to provide comparability.

D. OPINIONS ON DEFINITION AND METHODS OF ENFORCEMENT

Principles 9-10 state the purpose of enforcement of financial information and define enforcement in a general framework. It is agreed that the whole and ultimate purpose shall be to protect investors and it is supported to use IFRS in reporting.

On the other hand, Principles 11-15 state techniques for selecting financial information for enforcement purposes. Since, every member state in EU has and will have different market characteristics, it may not be appropriate to standardize the selection techniques such as requiring to use a pure risk or pure rotation approach. In our opinion, a mixed model may be used by competent authorities according to the circumstances. A mixed model may also provide the flexibility of making cost-benefit analysis in terms of time constraint for the enforcement procedure and the quality of information available to the enforcer.

E. OPINIONS ON ACTIONS

Principles 16-19 state the appropriate actions to be taken by enforcers where material or non-material misstatements in the financial information is detected. It is agreed that the enforcer actions shall be effective, timely enacted and proportional to the impact of the detected infringement. However, distinguishing actions and sanctions requires a fine tune. In our opinion, an enforcer shall issue sanctions when it is really for the sake of investor protection. Sometimes, sanctions may improve market confidence by punishing the infringer. For example, if the enforcer is also the regulator, sanctions and actions shall be taken together. CMB has duty and responsibility to take necessary measurements (actions) and/or issue sanctions.

E. OPINIONS ON COORDINATION IN ENFORCEMENT AND REPORTING

It is agreed that the provisions stated in Principles 20-21 is progressive enough to stiffen the harmonisation process in the enforcement system.