

CO-ORDINATION OF IFRS ENFORCEMENT ACTIVITIES

Memorandum of comment submitted in September 2004 to the Committee of European Securities Regulators on the consultation paper ‘Guidance for Implementation of Co-ordination of Enforcement of Financial Information’, published in June 2004

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INTRODUCTION

1. The Institute of Chartered Accountants in England and Wales welcomes the opportunity to comment on the consultation paper *Guidance for Implementation of Co-ordination of Enforcement of Financial Information*, published by the Committee of European Securities Regulators (CESR) in June 2004. The Institute is the largest accountancy body in Europe, with more than 126,000 members operating in business, public practice and within the investor community. The Institute operates under a Royal Charter, working in the public interest.
2. We have reviewed the consultation paper and set out below a number of comments. We commend the approach of CESR to co-ordination of enforcement across Europe and in general support the proposed guidance on the functioning of the European Enforcer Co-ordination Sessions (EECS) and the proposed database of enforcement decisions. However, we have set out below a number of comments and recommendations for improvement in relation to each section of the consultation paper.

EUROPEAN ENFORCER COORDINATION SESSIONS (EECS)

3. Consistency of enforcement across Europe is an essential corollary of the adoption in 2005 of a single set of accounting standards by the European Union. A high level of co-ordination and convergence in the approach and decisions of national enforcement bodies is therefore of great importance. Accordingly, we welcome the establishment of European Enforcer Co-ordination Sessions (EECS) as a forum where all EU national enforcers can exchange information and experience.
4. Confidence in published financial information and in the effectiveness of enforcement mechanisms will be undermined if decisions on International Financial Reporting Standards (IFRS) are inconsistent, not only in Europe but around the world. In due course, regulatory enforcement should be undertaken on a global basis. In the meantime, CESR should encourage regular and effective dialogue between IFRS enforcement bodies in Europe and those in other jurisdictions, and reference to that dialogue should be made at the EECS and in the CESR implementation guidance.
5. In general, we support the main functions of the EECS identified in paragraph 7 of the consultation paper, including the referral of issues not covered by accounting standards or subject to conflicting interpretations to the relevant standard setting body (although we are surprised that CESR continues to refer to bodies 'such as' the IASB or IFRIC). The EECS should not act in any sense as a European interpretation mechanism, which would contribute to the development of a complex and diverse body of accounting literature.
6. Paragraph 7 of the draft guidance also refers to the role of the EECS in advising CESR-Fin "on public disclosure of information on selected decisions". We welcome this. The sharing of key enforcement decisions with parties such as issuers, their auditors and non-EU regulators would produce further benefits for

harmonisation and encourage best practice, and we therefore support timely public disclosure of relevant information. We encourage CESR to issue proposals at an early stage on the criteria for determining which decisions should be published on an external database, taking account where necessary of confidentiality and other constraints. In due course the public database should be extended to cover enforcement decisions relating to unlisted companies and other users of IFRS.

OPERATION OF EECS

7. We welcome the decision to invite non-CESR members to join the EECS. However, we believe that non-CESR national enforcers should attend the EECS as of right and not at the discretion of CESR members. As CESR members will be responsible for ‘ensuring’ that national enforcers in their jurisdiction are invited to the EECS (paragraph 9), we assume that such invitations are not discretionary. However, this should be made more explicit. If, moreover, the list of enforcers referred to in paragraph 9 of the draft guidance is to be maintained by CESR, it would seem neither necessary nor desirable for invitations to the EECS to be delegated to local CESR members.
8. We welcome the establishment of an Agenda Group (paragraph 10), which should include representatives of non-CESR enforcers.
9. Paragraph 13 of the consultation paper indicates that meetings of the EECS will be held at the discretion of the Chairman of CESR-Fin’s Sub-Committee on Enforcement (SCE), in his or her capacity as chairman of the EECS. We believe that a programme of regular meetings should be established in advance, with the Chairman able to cancel scheduled meetings (or call additional meetings) with the advice of the Agenda Group.
10. CESR should keep the effectiveness of the EECS mechanism under close review, in consultation with market participants. In due course we would like to see the creation of a more widely-based forum than meetings of a body associated very closely to CESR-fin. This would not be closely aligned to any particular enforcement model and would be able to bring within its remit all entities that use IFRS but are not subject to oversight by securities regulators.

DECISIONS

11. CESR refers in paragraph 16 to cases where enforcers conclude that a particular accounting treatment “is within the scope of the relevant standard”. We assume that this refers to a situation where the accounting treatment is compliant with the requirements of the standards and leads to a “non-action decision” (as referred to in paragraph 14), although this is unclear. The inclusion of a significant number of non-action decisions may be unhelpful to users of the database and might divert resources away from the important task of explaining adequately the circumstances and rationale for adverse enforcement decisions. However, we agree that non-action decisions that involve complex situations and difficult judgements or that seem to contradict a decision already on the database should be included, although we expect this to occur only infrequently.

12. Ex-ante decisions which are the ‘official view’ of a national enforcer and thus suitable for inclusion in the database are referred to in paragraph 15 of the draft guidance. We suggest that CESR clarifies its distinction between ‘official’ and other decisions of national enforcers to minimise the risk of inconsistent approaches to the submission of information to the database.

CONSULTATION

13. We welcome the proposed arrangements for ensuring that enforcement decisions that are *prima facie* contradictory are highlighted for discussion at the EECS.

SUBMISSION OF DECISIONS TO THE DATABASE

Relevant Decisions

14. We support the criteria set out in paragraph 21 for determining which decision should be submitted to the database, subject to our comments in paragraph 11 above. We believe that in practice most decisions will satisfy one or more of the criteria. It might therefore be helpful for CESR to explain in paragraph 21 that non-submission is expected to be exceptional.

Input to the Database

15. We support the procedures for submitting information to the database, and accept that where there are particular confidentiality issues surrounding a decision, enforcers should be able to ‘anonymize’ the information (paragraph 25). We agree that maintaining the database in English is the best practical solution to the issue of translation (paragraph 26).

Timing

16. We agree that it is not practical to set a deadline for the submission of decisions to the database at the inception of the project (paragraph 31). However, as practice develops CESR should publish further guidance.

Interim Submissions

17. We concur with the guidance on interim submissions to the database (paragraph 33).

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