

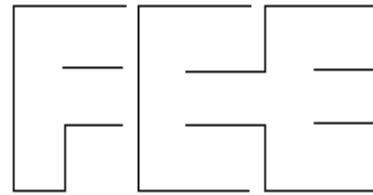
Date
25 November 2003

Le Président

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Mr Fabrice Demarigny
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Dear Fabrice,

Re: CESR Consultation Paper Draft Standard No 2 on Financial Information Coordination of Enforcement Activities

1. FEE (Fédération des Experts Comptables Européens, European Federation of Accountants) welcomes the Consultation Paper Draft Standard No 2 on Financial Information Coordination of Enforcement Activities since it is crucial that European coordination on enforcement is in place at latest by 2005 to ensure consistency in application decisions within Europe. FEE organised a Round Table on Enforcement: Coordination and Interpretations on 10 October to facilitate and contribute to the debate on enforcement coordination and the issue of interpretations. In addition we are about to publish a Discussion Paper on European Enforcement Coordination. This paper was used in draft form as background paper to our 10 October Round Table. Our experiences so far evidence a strong support for European coordination of enforcement involving all enforcement bodies, whether they follow a securities regulator or review panel model.
2. We agree that as a first step the coordination should be concerned only with the enforcement bodies for listed companies. However with the possibility of wider use of IFRS in the consolidated (and individual) financial statements (depending on the use the Member States make of the options provided for in the IAS Regulation), it is important to make the coordination facility available to enforcement bodies with a responsibility beyond listed companies, in particular covering non-listed public interest companies, banks and insurance undertakings and ultimately all IFRS companies.

Principle 1 Ex ante and ex post enforcement decisions taken by competent independent administrative authorities or by bodies delegated by these authorities ("EU National Enforcers") should take into account existing precedents consistent with the timing and feasibility constraints which characterize the decision. Where practicable, discussions with other EU National Enforcers should take place before significant decisions are taken.

3. We support principle 1 and underline the need for consistent and coordinated enforcement decisions which should be widely accepted in order to create a level playing field and to avoid arbitrage and "enforcement" shopping. The informal conclusions of our Round Table of 10 October indicate that there is a need to establish criteria or guidelines as to the enforcement issues which should preferably be subject to coordination and consultation before a final (national) decision is taken. As indicated in our Discussion Paper on European Enforcement Coordination, several criteria could be considered, including:

- Where there are dual listings and cross-border listings involved
- Where a decision potentially contradicts a previous decision (of the same or another European enforcement body)
- Where a decision may be expected to have a major impact on the financial market

- Where a decision has relevance for other enforcement bodies (criteria would need to be decided on what is “relevance”)
 - Where there is a risk of significantly different treatments across companies and countries in Europe.
4. We are strongly of the opinion, as already set out in the key messages of our April 2002 Discussion Paper on Enforcement of IFRS within Europe, that pre-clearance should be offered only where cost-effective and with the full involvement of the Board of Directors and the auditors of the company concerned. Pre-clearance should be limited to issues where no IFRS or IFRIC interpretations exist. Where a pre-clearance mechanism is offered by a national enforcer, it should publish a detailed set of procedures to be followed, remaining within the CESR principles on enforcement as laid down in Standards 1 and 2 (draft). Not all enforcers may consider it necessary or even desirable to have a pre-clearance mechanism. Preparers and users in any event have always to assume their proper responsibilities for financial information. Where the enforcement body provides a mechanism for formal pre-clearance decisions, these decisions should preferably be subject to the same coordination, consultation and reporting requirements as other enforcement decisions. FEE agrees that no separate, additional mechanism is needed to handle coordination of pre-clearance decisions.

Principle 2 Within a reasonable time after decisions are taken by an EU National Enforcer, details of these decisions should be made available to the other EU National Enforcers in accordance with the policies developed by CESR.

Principle 3 The EU National Enforcers should follow a confidentiality regime consistent with that applicable to CESR members.

5. We welcome principles 2 and 3. We note CESR’s intention to include enforcement decisions of no-action in the database. While we see some benefits for including such decisions, this should be approached with caution given the risk involved to create a body of approved accounting treatments that would stand next to IFRS and IFRIC interpretations. Such a body of information risks to turn the standards into rules. For any public part of the database it may be difficult to publish no-action enforcement decisions on a no-name basis.

However when an investigation of an enforcement case is known to the market, it is important to inform the market of the resulting enforcement decision, also in case of a no-action decision.

Criteria need to be developed as to what enforcement decisions should be published in the external database. These could include considerations of the true and fair view and materiality. The criteria could be close to those for consultation and coordination (see paragraph 4 of this letter).

6. We note that the draft standard observes: “However disclosure of enforcement decisions to other parties (such as issuers, their auditors, non-EU regulators) may produce further benefits to harmonisation. To this end CESR will consider appropriate measures additional to those required by principle 21 of the Standard No 1, aimed at public disclosure of selected information.” We welcome the CESR initiative to disseminate information to the public. In our Discussion Paper European Enforcement Coordination we suggest the use of a public database, including all enforcement decisions – including pre-clearance decisions – that have been made public in each of the countries. This may need to be partly on a no-name basis where the case is not named at national level.
7. In the text explaining principle 20 in Standard No 1, it is said that “an accounting or disclosure treatment which is not prohibited by the relevant standards or interpretations should not lead to an enforcement action”. We fully support this statement and would like to underline that enforcers should not close options or encourage best practice, where different accounting treatments are allowed by IFRS.

Principle 4 In order to achieve a high level of harmonization, the chairman of the SCE shall call European Enforcers Coordination Sessions (EECS) of the SCE to which all EU National Enforcers of standards on financial information should participate. Such sessions will be aimed at discussing decisions taken at national level, as well as experiences in the application of standards on enforcement.

8. We support the underlying principles of principle 4 bringing all enforcers of Europe together to discuss enforcement issues and decisions taken at national level, as well as experiences in the application of standards on enforcement. We would like to reiterate the statements in Standard No 1 and Draft Standard No 2 that CESR is not a standard setter and should not be involved in standard setting: "Issuing general interpretations of the existing standards is part of the standard setting process conducted by the relevant bodies, such as IFRIC. Enforcers may contribute to this process by providing their experience to the interpretation debate. However, harmonization requires that they should not attempt to create a parallel body of interpretations."
9. Although we call in our Discussion Paper on European Enforcement Coordination for a separately established body, we accept that the EECS could achieve the same purpose provided that the authority of EECS is clear and some further issues are clarified, including:
 - The distinction between the functions of SCE and EECS should be carefully drawn.
 - It should not be the sole right of the Chairman of SCE to call for meetings of EECS: each of the enforcers involved should have the right to call for a meeting, if he can provide the necessary evidence for the need for having a meeting. It would in our view be preferable to introduce a regular programme of meetings a year.
 - For cross-border listings, there is a strong case for an obligation to consult and not only when it is "practical".
 - Each enforcer should have the right to bring enforcement issues and decisions up for discussion in the EECS meeting the criteria set.
 - A form of quality assurance, or peer review system needs to be organised covering all members of the EECS.
10. The text supporting principle 3 refers to "disclosure of enforcement decisions to other parties". We strongly believe that an additional wider consultation mechanism is desirable involving all stakeholders to give them the opportunity to review general experience and to act at the same time as a sounding board for SCE and EECS. The structure of such a mechanism does not need to be formal, it could take place in the form of public hearings, round tables or a consultation panel organised by the EECS. Such a wider consultation mechanism, with a minimum frequency of meetings, should be open to anybody with an interest in financial reporting. Also the Lamfalussy process underlines the importance of proper stakeholder consultation.
11. We refer to our Discussion Paper European Enforcement Coordination, which provides further details how the Coordination could be envisaged to work in practice (advance copy attached).

We would be pleased to discuss any aspect of this letter you may wish to raise with us.

Yours sincerely,

David Devlin
President

Encl.