

Dear Sir,

The CESR has requested comments with respect to a draft advice regarding possible implementing measures for the Transparency Directive (consultation CESR/04-512c).

Among the themes dealt with, the AFEP's comments relate to half-yearly financial reports, (Article 5 of the Directive and Chapter II of the consultation paper). The companies would like to draw your attention to the following points in particular:

It seems useful to point out that an issuer publishing *consolidated* half-yearly financial statements cannot be required to publish *non-consolidated* half-yearly statements. Moreover, whether they are voluntary half-yearly publications or annual financial statements, a parent company's non-consolidated statements are prepared in accordance with the national law of the Member State, which enables consistency of an issuer's publications to be ensured and the principle of subsidiarity to be respected.

The CESR's draft opinion regarding formats (of the balance sheet and profit and loss account) and explanatory notes can therefore only be made an obligation for an issuer not required to prepare consolidated accounts, and then only if compatibility with the directives is ensured. In addition, for all non-consolidated financial statements, it cannot be a requirement to mention major related parties transactions using the definition provided in IAS 24.

1. The non-consolidated financial statements of the parent company are prepared in accordance with the national law of the Member State (Questions 50 and 51 of the consultation paper)

The consultation paper implies that the IAS/IFRS must be applied by all issuers publishing consolidated accounts: IAS 34, with respect to explanatory notes (§ 496 of the consultation paper) and IAS 24, for reporting regarding related parties (§ 505).

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This reading of the Transparency Directive provokes *strong reservations on the part of companies*. In fact, it does not seem to be of general application for *non-consolidated financial statements*, which are governed by the national law of the Member State. Therefore, they can only lead to European implementing measures for the points laid down explicitly by the Directive, i.e., in this case, the content of the condensed balance sheet and profit and loss accounts and explanatory notes on these accounts, where they are not prepared in accordance with international accounting standards (Article 5.6). Reporting on related parties, which is not referred to by the Directive, must therefore be excluded.

However, with regard to non-consolidated financial statements, *even for those subjects mentioned in the Transparency Directive, it is necessary to take into account the provisions adopted by the Member States in the context of European texts*:

- European Regulation of the Parliament and of the Council on the application of international accounting standards ((EC) No. 1606/2002);
- Directives (4th Directive, etc.), *in particular as regards the presentation formats of the balance sheets and profit and loss accounts and the content of the notes*.

In fact, the European Regulation lays down that it is up to the Member States to permit or require publicly traded companies to prepare their annual accounts in accordance with these standards (Article 5 of the Regulation). As for the Transparency Directive, it states that where the issuer is required to prepare consolidated accounts (in accordance with Directive 83/349/EEC of the Council or 7th Directive), the parent company's annual accounts are prepared in accordance with the national law of the Member State in which the parent company is incorporated, whereas consolidated accounts are prepared in accordance with Regulation (EC) No. 1606/2002.

2. An issuer publishing consolidated half-yearly financial statements cannot be required to publishing non-consolidated half-yearly statements (Q 50)

Article 5.3 of the Transparency Directive lays down that where an issuer is required to prepare consolidated accounts, the condensed set of financial statements shall be prepared in accordance with the international accounting standard applicable to the interim financial reporting.

Given that the non-consolidated financial statements of issuers required to draw up consolidated accounts are governed by the national law of the Member State (cf. above), *it emerges from Article 5.3 that the set of condensed half-yearly financial statements of such an issuer is prepared on a consolidated basis. The issuer cannot therefore be required to prepare a set of non-consolidated half-yearly financial statements as well. In other words, publication in consolidated form dispenses the parent company from publishing non-consolidated financial statements*.

According to Article 5.3, an issuer that is *not required* to prepare consolidated accounts follows the same principles for recognising and measuring as when preparing annual financial reports, which therefore applies mainly to its non-consolidated accounts.

Therefore, within the meaning of Article 5.3, condensed half-yearly financial statements means the following :

- 1) For the issuer *not required* to prepare consolidated accounts, *non-consolidated* condensed financial statements prepared using the same principles for recognising and measuring as when preparing annual financial reports;
- 2) For the issuer *preparing consolidated accounts* in accordance with international accounting standards, *consolidated* condensed financial statements prepared in accordance with the international accounting standard applicable to the interim financial reporting.

It should be pointed out that a requirement relating to presentation formats and reporting applicable to *non-consolidated* half-yearly financial statements would not be justified in any way for such an issuer. It would not rely on any Community legal basis, could contradict the provisions laid down in accordance with the principle of subsidiarity and would have low added value since interim financial reporting is published on a consolidated basis.

As a result, it should be mentioned explicitly that the *draft CESR advice* (§§ 498 and 499), relating to non-consolidated half-yearly financial statements not prepared in accordance with international accounting standards, *can only be an obligation for an issuer not required* to prepare consolidated accounts (case pursuant to 1) above). Moreover, as indicated above, *the implementing measures must be limited to the fields laid down by the Transparency Directive and not contradict the national provisions adopted in the context of the European Regulation and the transposition of certain directives* (4th Directive in particular). *The companies are therefore expressing their reservations about the proposal made by the CESR in paragraphs 498 and 499.*

Where the issuer is required to prepare consolidated accounts, the non-consolidated half-yearly financial statements published voluntarily by the parent company should continue to be prepared in accordance with the national law of the Member State in which the parent company is incorporated, in accordance with the principles which apply to its annual accounts.

3. An issuer publishing non-consolidated half-yearly financial statements cannot be required to use the definition of related parties transactions provided in IAS 24 (Q 51)

Article 5.4 of the Directive lays down that the interim management report shall include major related parties transactions. Moreover, it is not laid down explicitly that this reporting is subject to implementing measures by the Commission.

With regard to a half-yearly management report prepared on a *consolidated basis*, the companies agree that the definition of related parties provided in IAS 24, *Related Parties Transactions*, is applicable, since, in such a case, the issuer prepares its condensed half-yearly financial statements in accordance with international accounting standards.

On the other hand, *for a half-yearly management report not prepared on a consolidated basis, the companies consider that the provisions drawn up by the Member States are applicable and enable consistency of principles to be ensured for half-yearly and annual reports. It should also be pointed out that these provisions result in particular from the definition of related companies given in Article 41 of Directive 83/349/EEC (concerning consolidated accounts), also applicable in the context of Directive 78/660/EEC (concerning the annual accounts of certain types of companies).*

7 March 2005

As a result, the companies do not agree with the proposal made in § 507 of the consultation paper, according to which companies which are not required to prepare consolidated accounts should also use the definition of related parties transactions provided by IAS 24. Such a provision could prove incompatible with the provisions resulting from the application of the directives.

Thank you for your kind attention to these issues. I would be happy to correspond with you on this matter again should you so desire.

Yours faithfully,

Alexandre Tessier
Director General