ENFORCEMENT OF IAS: REMARKS OF THE BELGIAN BANKS

Remarks of the Belgian banks about the Statement of Principles concerning Enforcement of IAS, CESR-Consultation CESR/02-188b.

We are pleased to inform you with this document about our remarks concerning the enforcement-rules CESR is developing. We note that the Belgian banking' sector (listed as well as non-listed companies) has made the choice to adapt the IAS-standards as accounting standards. For this reason we are closely following up the introduction of the IAS in Europe.

Our remarks are the following :

Enforcers

In our opinion, the scope of Principle 3 is extremely broad. This makes it very difficult to assess its contents. However, we notice that the IAS contain options for accounting certain items in one or way or an other (e.g. the option of creating a 'fair value'-book or the use of settlement or trade day accounting). These choices provided for in the IAS should still be available for all companies using IAS and consequently, they must not be restricted by any code of conduct or best practice of CESR.

The same code of conduct and best practices mentioned in Principle 3 should also take into account the audit rules followed by auditors while checking the accounts, and comply with these rules.

In Belgium, the 'competent independent administrative authority' probably will be the Banking and Finance Commission , which is funded by the companies put under its supervision, e.g. the banks. The banking sector is concerned about the possible impact of this new task on the budget of the Banking and Finance Commission.

Is there a possibility to clarify how requiring information from the auditors can be reconciled with their professional secrecy ?

Companies and documents

We understand that the enforcement of compliance with the IAS is a supplementary market control mechanism. It is stated that this compliance control and enforcement are limited to 'listed companies' . Depending on the contents of the compliance, we would like to stress that it will be very hard to avoid contamination between certain measures beyond the original scope of those 'listed companies'. One example could be a listed company which does not make 'proper' use of a certain IAS (in the sense of the abovementioned best practices) and which has to adapt its figures, the figures being the result of an internal approach to implement IAS. Let us also suppose that this internal approach is also followed by non-listed companies using IAS.

Is it fair to impose a sanction on the listed company, if non-listed companies can continue to develop figures following the method challenged by a competent independent administrative authority? One could try to justify this by stating that listed companies should be handled with more scrutiny. However, such an approach is not convincing, because it does not tie in with the ultimate goal of the IAS-implementation, i.e. a harmonisation of the accounting rules.

One could also argue that the enforcement policies and the decisions taken in individual cases will be publicly available, so that non-listed companies also can adopt them. This leaves the remark concerning the need for imposing sanctions on listed companies (see above) unsolved.

Our conclusion is that such a measure only creates a double level of IAS-applications, which would be detrimental for market confidence when a non-listed company seeks access to the market through an IPO for example and first has to restate its annual accounts of the previous years.Therefore, we believe that the existing control mechanisms on accounting rules are more than sufficient and that there is no need for a supplementary market control mechanism.

The IAS-regulation being applicable on consolidated accounts, we wonder to what extent Principle 8 should be interpreted, since it states that principles for enforcement also apply to individual accounts. Does this imply that listed companies publishing individual accounts must apply the IAS to these individual accounts? According to us, such an extension of the IAS-regulation is unjustified.

Definition of Enforcement

The 'consistent application' of IAS sought by the market regulators should honour the fact that companies can choose some options under the IAS-regime (see our remark made earlier).

Under the new Basel Accord, banks will have to comply with special disclosure rules to be tranposed into European law. In principle, these rules should be consistent with the IAS, but further work remains to be done in this field. We wonder if the enforcement as described in this document (which includes enforcement of disclosure standards imposed by EU law) will also apply to these solvency disclosure rules?

Actions

The public correction of misstatements raises the question of the value of audited figures and the liability of the auditor in case of a misstatement.

We admit that the listed company itself bears the bigger part of the liability for its accounts. However, the company mostly has a close relationship with its auditors and when doubts arise, solutions are found after consultation with the auditors. It seems wrong to impose public correction of misstated audited figures without making any reference to the fact that the figures were audited. We wonder what may be the liability of the auditor in such cases?

It has been pointed out that the sanctions for infringing on a European harmonised matter should also be harmonised. More important even, double sanctioning should be avoided. Developing a policy in this matter should be done on a European basis.

Furthermore, it is not clear which authority can impose sanctions on the company? The authority of the Member State where the consolidation takes place; where the infringement was made? What about the so-called subconsilidations?