

Mr Fabrice Demarigny
Secretary General
The Committee of European
Securities Regulators
11-13 avenue de Friedland

75008 Paris
France

Düsseldorf, July 23, 2004
486/500

Dear Mr Demarigny

CESR Call for Evidence: Implementing Measures concerning the Transparency Directive

The German Institut der Wirtschaftsprüfer (IDW) appreciates the opportunity to submit its views on which matters CESR should take into consideration in submitting its advice to the European Commission with respect to the implementing measures concerning the Transparency Directive. Our comments concentrate on those issues which are directly or indirectly linked to accounting or auditing.

Retaining periodic financial reports (including the audit or review report) available to the public (implementing measures according to Article 4 (5) and 5 (5) of the Transparency Directive)

In defining the technical conditions under which a published annual financial report (including the audit report) and a published half-yearly financial report (including any audit or review report) is to remain available to the public CESR should consider the following issues which are especially important from an auditor's perspective:

- If the financial reports have been audited or reviewed it will be necessary to ensure that the version of those financial reports which is published together with the audit or review report is the same version as that which has been audited or reviewed.

- It is also necessary to ensure that the financial reports available to the public can be neither amended nor updated without involvement of the external auditor as the “old” audit or review report can no longer be used together with the “new” financial report.
- Any implementing measure needs to be in line with Article 49 of the Fourth Directive: If the annual accounts are not published in full, the fact that the published version is an abridge version must be indicated. The audit report itself shall not accompany this publication. However, disclosure as to whether an unqualified, qualified or adverse audit opinion has been expressed, or whether the auditor has been unable to express an audit opinion shall be made.

Half-yearly financial reports (implementing measures according to Article 5 (5) of the Transparency Directive)

(1) Clarification of the nature of the auditor’s review of the half-yearly report

Previously commenting on the draft Directive the IDW has pointed out that the scope and the nature of a review are clearly defined in the international auditing standards, notably in the “International Standard on Review Engagements” (ISRE 2400; previously ISA 910) and that, therefore, separate European standards or requirements on a financial statements review would be neither necessary nor appropriate. European requirements differing from ISRE 2400 would prove contra-productive to both the achievement of the goal of transparent capital markets and to the international acceptance of reviews carried out within the EU.

If the Commission, nevertheless, wishes to address this issue in the implementing measures it should restrict itself to clarifying the objective of a review by using the definition of ISRE 2400.3 (“The objective of a review of financial statements is to enable an auditor to state whether, on the basis of procedures which do not provide all the evidence that would be required in an audit, anything has come to the auditor’s attention that causes the auditor to believe that the financial statements are not prepared, in all material respects, in accordance with an identified financial reporting framework (negative assurance).”) and to requiring that any review be performed in accordance with ISRE 2400.

(2) Content of half-yearly reports not being prepared in accordance with international accounting standards

Article 5 (3) requires that, if the issuer is required to prepare consolidated accounts, the condensed set of financial statements being part of the half-yearly financial report has to be prepared in accordance with the endorsed international accounting standard applicable to the interim financial reporting; that is IAS 34. If the issuer is not required to prepare consolidated accounts the condensed set of financial statements shall at least contain a condensed balance sheet, a condensed profit and loss account and explanatory notes to the accounts. In preparing the condensed balance sheet and the condensed profit and loss account the issuer shall follow the same recognition and measurement principles as when preparing annual financial reports, i.e. the principles required by IFRS or national GAAP, according to how the option of the IFRS-Regulation has been exercised.

To contribute to transparency and comparability of half-yearly reports prepared within the EU we would like to recommend that the Commission specify the minimum content and level of detail of the condensed set of financial statements by following, in principle, the essence of IAS 34. This would mean that

- the condensed balance sheet and the condensed profit and loss account shall include, as a minimum, each of the headings and subtotals as have been presented in its most recent annual financial statements (analogous to IAS 34.10), and
- the explanatory notes shall contain, as a minimum, if material, the information required by IAS 34.16 with the exception of information linked to the equity statement, the cash-flow statement or segment reporting (since those statements will not form part of the minimum content of the condensed set of financial statements required in Article 5 of the Transparency Directive).

We recognise that such an approach might result in the level of information given in the explanatory notes exceeding the level of information which has to be presented in the notes to the annual financial statements prepared under national GAAP. However, we believe that this level of information is necessary to an understanding of the figures presented in the condensed balance sheet and profit and loss account and the specific characteristics of interim reporting. For this reason, national standard setters in many Member States have developed standards or guidance on interim reporting in line with IAS 34 (e.g. GAS 6).

(3) Clarification of the notion of “major related parties transactions” as part of an interim management report for issuers of shares

In contrast to the other issues addressed in the call for evidence the clarification of the notion of the term “major related parties transactions” is not explicitly mentioned in the Transparency Directive as an issue being subject of implementing measures. Related parties and related party transactions are already appropriately defined in the (endorsed) IAS 24 “Related Party Disclosure”. For the reasons explained above under (1) separate European definitions or standards in respect of this issue would similarly be neither necessary nor appropriate.

If the Commission, nevertheless, wishes to address this issue, it should restrict itself to providing guidance how to interpret the term “major”, as according to Art. 5 (3) of the Transparency Directive only *major* related party transactions have to be disclosed in the interim management report. One question to be answered in this respect is whether there is any difference between the concept of materiality as used in IFRS/ISA (see IASB Framework, para. 29 and 30) and the term “major” as used in the Transparency Directive.

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

Yours sincerely



Wolfgang Schaum
Executive Director



Norbert Breker
Technical Director
Accounting and Auditing