

Committee of European Securities Regulators
t.a.v. Fabrice Demarigny, Secretary General
11-13 Avenue de Friedland
7500 8 PARIS
Frankrijk

Date 15 januari 2003
Re Enforcement principles
E-mail erika.marseille@autoriteit-fm.nl

Dear Mr. Demarigny,

The Netherlands Authority for the Financial Markets participated in CESR's working party that has formulated the CESR Statement of principles of enforcement of accounting standards in Europe. We are pleased to present you the overall responses to the principles received from market parties in The Netherlands.

Our organisation values the consultation process highly and has therefore organised a meeting in order to discuss the enforcement principles with relevant market parties. The meeting took place early in December and was joined by representatives of:

- KPMG, Deloitte and PWC.
- The Netherlands Council for Annual Reporting.
- The Dutch civil court that currently deals with failures in financial reporting.
- One of the two Dutch organisations of the accounting profession.
- The securities exchange: Euronext Amsterdam N.V.
- The Dutch Central Bank.
- The Dutch Ministry of Finance.

The discussions during this meeting are covered by the four responses to the enforcement principles that we received afterwards. Please find attached all four written responses that we received, including two that were sent to you directly (from the Council for Annual Reporting (RJ/CAR) and the issuers' organisation (VEUO)).

In general, the market parties in The Netherlands support the principles formulated by CESR. However, all parties stress the need for optimal coordination between the member states and some responses emphasise that comparable situations in different member states should result in similar interpretations, especially in the event that pre-clearance is given.

A typical Dutch situation regarding institutional oversight of accounting standards exists: after a complaint of an interested party has been filed, a special forum of the Court of Justice in Amsterdam investigates financial statements of companies. Almost all responding parties including the persons who attended our meeting, underline that new enforcement mechanisms should not interfere with the existing procedure within the civil law and other regular procedures, including the right to appeal.

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Another issue of interest is the gathering of information from the auditor. Parties have concerns that the auditor's work is duplicated or that the regulator could contact the auditor without the involved company being notified. The auditor's profession (NivRA) recommends CESR to require the audit profession being involved in developing this procedure.

Furthermore, the organisation of industry and employers (VNO-NCW) commented on dual listings. 44 companies in The Netherlands have a second listing in the United States and are therefore subject to the requirements in the Sarbanes-Oxley Act. VNO-NCW urges for coordination between Europe and the United States.

One response asks for elaboration of the principles, especially with regard to professionalism, discretion and due process of the regulator, as well as powers, including publication of results of investigations..

The received responses – oral and in writing – are helpful input in this phase of developing the enforcement process. We look forward to taking note of the suggestions made by other European parties.

Yours truly,
The Netherlands Authority for the Financial Markets

C.Rensen
Head of the Primary Markets department

Enclosed responses:

- 1) The Netherlands Council for Annual Reporting
- 2) The Royal Dutch NivRA (the organisation of the audit profession)
- 3) The VEUE (The issuers' organisation)
- 4) VNO-NCW (the largest representative organisation of industry and employers)

Response 1: The Netherlands Council for Annual Reporting

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Our ref. : EvS
Direct dial : Tel.: (+31) 20 301 0391 / Fax: (+31) 20 301 0279
Date : Amsterdam, 16 December 2002
Re : CESR – Consultation Paper: Proposed Statement of Principles of Enforcement of Accounting Standards in Europe

Dear Sir,

The Netherlands Council for Annual Reporting (CAR) is pleased to respond to your request for comments on the CESR Consultation Paper: Proposed Statement of Principles of Enforcement of Accounting Standards in Europe.

The CAR aims to give direction to annual reporting in the Netherlands by preparing and publishing Guidelines for Annual Reporting. Enforcement of Accounting Standards is not a task of the CAR. This is the reason why we did not answer every question of the Consultation Paper.

Hereafter we answer the specific questions together with any additional comments to the questions which in our opinion are related to the work of the CAR.

1. *Competent independent administrative authorities set up by member States should have the ultimate responsibility for enforcement of compliance of the financial information provided by the companies identified by Principle 7 with the reporting framework*

We support this principle. However, the CAR believes coordination between the member states is of a great importance.

8. *The principles for enforcement here identified should apply to financial information provided by all harmonized documents, including annual and interim financial statements and reports, prepared on individual and consolidated basis as well as prospectuses and equivalent documents*

The CAR supports this principle.

9. *The purpose of enforcement of financial information is to protect investors and promote market confidence by contributing to the transparency of financial information relevant to the investors' decision making process. With regard to financial statements, the above implies that enforcement contributes to a consistent application of the IFRSs in the EU financial regulated market.*

The CAR supports this principle. See also our comments on principle 20.

10. *For the purpose of this SOP enforcement may be defined as:*
- *monitoring compliance of the financial information with the applicable reporting framework;*
 - *taking appropriate measures in case of infringements discovered in the course of SOP enforcement.*

The reporting framework mainly includes:

- *the IFRS adopted by the EU;*
- *the disclosure standards required by EU legislation.*

The CAR supports this principle.

11. *For financial information other than prospectuses ex-post enforcement is the normal procedure, even if pre-clearance is not precluded.*

The CAR does not believe in pre-clearance by individual member states enforcers. In the Dutch situation the relation between the Ondernemingskamer (Enterprise Chamber), the enforcer and IFRS should be subject to further investigation.

13. *Enforcement of all financial information is normally based on selection of companies and documents to be examined. The preferred models for selecting financial information for enforcement purposes are the mixed models whereby a risk based approach is combined with a rotation and/or a sampling approach. However a pure risk based approach may be an acceptable selection method. A pure rotation approach as well as a pure reactive approach is not acceptable.*

The procedures in selecting companies and documents to be examined are in our opinion not fully clear. We believe further explanation is necessary.

20. *In order to promote harmonization of enforcement practices and to ensure a consistent approach of the enforcers to the application of IFRSs, coordination on ex-ante and ex-post decisions taken by the authorities and/ or delegated entities will take place. Material controversial accounting issues will be conveyed to the bodies responsible for standard setting or interpretation.*

We fully support this principle. We believe individual interpretations of the member states enforcers are not desirable. All interpretation issues should be conveyed to the IASB or to IFRIC.

21. *Enforcers should periodically report to the public on their activities providing at least information on the enforcement policies adopted and decisions taken in individual cases including accounting matters.*

The CAR supports this principle.

If you have any questions in relation to this letter, please do not hesitate to contact us.

With kind regards,

Prof. dr. Martin Hoogendoorn
Chairman Council for Annual Reporting (CAR)

Response 2: NivRA

Principles	Comment
Principle 1: Competent independent administrative authorities set up by member States should have the ultimate responsibility for enforcement of compliance of the financial information provided by the companies identified by Principle 7 with the reporting framework.	We agree, provided that the present opportunity for interested parties to go to court (in the Netherlands Ondernemingskamer) remains open. Furthermore, coordination between member states is essential.
Principle 2 Other bodies might carry out enforcement on behalf of the competent administrative authorities, provided that these bodies are supervised by and responsible to the relevant competent administrative authority.	We agree.
Principle 3 Irrespective of who carries out enforcement any code of conduct or best practice or procedure established by CESR should be complied with.	We assume that this principle relates to the way enforcement is performed and not to the rules to be enforced. In principle we agree, provided that the relevant codes of conduct leave sufficient room for the enforcers to react to specific developments and situations.
Principle 4 Competent administrative authorities shall have adequate independence from government, and market participants, possessing the necessary powers and having sufficient resources.	This independence should be embedded in the normal democratic procedures and not impair the protection which issuers, etc. have under a well developed legal system.
Principle 5 The necessary powers – which may be delegated to those acting on behalf of the competent independent administrative authority – should at least include power to monitor financial information, require supplementary information from companies and auditors, and take measures consistent with the purposes of enforcement.	<p>We agree with the principle with respect to information gathering. Regarding the “measures consistent with”, we refer to the previous point. The regular measures protecting the rights of the persons or entities, to whom the enforcement activities apply, should be as robust as in a well developed legal system can be expected.</p> <p>Although we understand the importance of enabling the administrative authority to require additional information from auditors, we would recommend that procedures for such requirements would be developed together with the relevant professional organisations of</p>

	auditors.
<p>Principle 6 The competent administrative authorities should be responsible for:</p> <ul style="list-style-type: none"> • the setting up of an appropriate due process of enforcement consistent with the application of the principles hereby stated; • the implementation of that due process. 	<p>We agree, be it that the first point indicates that the competent authorities and not the CESR set up the enforcement, which could be considered inconsistent with principle 3.</p>
<p>Principle 7 The principles for enforcement here identified should apply to financial information provided by companies:</p> <p>a) whose securities are admitted to trading on a regulated market;</p> <p>b) that applied for admission to trading of their securities on a regulated market.</p>	<p>We agree</p>
<p>Principle 8 The principles for enforcement here identified should apply to financial information provided by all harmonized documents, including annual and interim financial statements and reports, prepared on individual and consolidated basis as well as prospectuses and equivalent documents.</p>	<p>We agree.</p>
<p>Principle 9 The purpose of enforcement of financial information is to protect investors and promote market confidence by contributing to the transparency of financial information relevant to the investors' decision making process.</p> <p>With regard to financial statements, the above implies that enforcement contributes to a consistent application of the IFRS in the EU financial regulated markets.</p>	<p>We agree, but would like to emphasize to the importance of consistency in approach between the various bodies within the EU.</p>
<p>Principle 10 For the purpose of this SOP enforcement may be defined as:</p> <ul style="list-style-type: none"> • monitoring compliance of the financial information with the applicable reporting framework; • taking appropriate measures in case of infringements discovered in the course of SOP enforcement. 	<p>We agree, but with respect to "taking appropriate measures.." we refer to our remarks in principle 4 and 5.</p>

<p>The reporting framework mainly includes:</p> <ul style="list-style-type: none">• the International Financial Reporting Standards adopted by the EU;• the disclosure standards required by EU legislation.	
<p>Principle 11 For financial information other than prospectuses ex-post enforcement is the normal procedure, even if pre-clearance is not precluded.</p>	<p>We agree, but in our opinion the rules regarding pre clearance need further attention in order to ensure consistent appliance within the EU.</p>
<p>Principle 12 For prospectus ex-ante approval is the normal procedure as specified by the EU directives, which also identify the nature of the approval. Ex-post enforcement of financial information provided by prospectuses is possible as a supplementary measure.</p>	<p>We agree</p>
<p>Principle 13 Enforcement of all financial information is normally based on selection of companies and documents to be examined.</p> <p>The preferred models for selecting financial information for enforcement purposes are the mixed models whereby a risk-based approach is combined with a rotation and/or a sampling approach. However, a pure risk based approach may be an acceptable selection method.</p> <p>A pure rotation approach as well as a pure reactive approach is not acceptable.</p>	<p>We agree</p>
<p>Principle 14 In order to allow enforcers to adopt gradually the selection methods provided for by Principle 13, a mixed selection technique based on a combination of a random selection and rotation is considered a workable transitional step. However, such a methodology should be designed to give an adequate level of detection risk.</p>	<p>We agree.</p>
<p>Principle 15 Methods of enforcement on selected information cover a wide spectrum of possible checking procedures, ranging from pure formal checks to in-depth substantive in-nature checking. The level of risk should normally determine</p>	<p>We agree.</p>

the intensity of the review to be performed by the enforcers. The type of document to be examined and the level of information available on the issuer are also to be taken into consideration.	
<p>Principle 16 Where a material misstatement in the financial information is detected enforcers should take appropriate actions to achieve an appropriate disclosure and where relevant, correction of misstatement (in line with the requirements of the reporting framework). Non-material departures from the reporting framework may not necessarily trigger public correction even though they normally deserve an action as well.</p> <p>Misstatements are material if they are able to affect investors' decision and may have a negative impact on market confidence.</p>	We agree, provided that the issuer has a proper possibility for appeal in situations of disagreement (in the Netherlands Ondernemingskamer).
<p>Principle 17 Actions taken by the enforcers should be distinguished from sanctions imposed by the national legislation because:</p> <ul style="list-style-type: none"> • actions are measures generally aimed at improving market confidence and integrity; • sanctions are mainly aimed at punishing the infringer. 	We agree, but we refer with respect to the last point to our comments to principles 4, 5 and 16.
Principle 18 Actions should be effective, timely enacted and proportional to the impact of the detected infringement.	We agree.
Principle 19 A consistent policy of actions should be developed, whereby similar actions are adopted where similar infringements are detected	We agree.
Principle 20 In order to promote harmonization of enforcement practices and to ensure a consistent approach of the enforcers to the application of the IFRS, co-ordination on ex-ante and ex-post decisions taken by the authorities and /or delegated entities will take place Material controversial accounting issues will be	We agree. However, where controversial accounting issues occur, the CESR should make a choice of either not enforcing these issues during the time they exist or of issuing it's own benchmark rule. This choice should be consistent all over the bodies within the EU.

conveyed to the bodies responsible for standard setting or interpretation. No general application guidance on IFRS will be issued by the enforcers.	
Principle 21 Enforcers should periodically report to the public on their activities providing at least information on the enforcement policies adopted and decisions taken in individual cases including accounting matters.	We agree.

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Response 3: The VEUO

Fabrice Demarigny
Secretary General
The Committee of European Securities Regulations
11-13 Avenue de Friedland
75008 PARIS
Frankrijk
by e-mail: secretariat@europefesco.org

The Hague, 11 December 2002
Our ref.: u:\livelinkwerkfolder\resp to cesr enf princ the netherlands.doc\mavd

Dear Mr. Demarigny,

Re: Proposed Statement of Principles of Enforcement of Accounting Standards in Europe

On behalf of the Board of VEUO – the Dutch association of listed companies representing a vast majority of companies listed on Euronext Amsterdam – I am pleased to comment on the consultation paper published by CESR in October 2002 on the Proposed Statement of Principles of Enforcement of Accounting Standards in Europe.

The VEUO generally supports the proposed principles. However, the VEUO suggests the following clarifications:

Principle 1 provides that the competent independent administrative authorities set up by member States should have the **ultimate** responsibility for enforcement of compliance of the financial information provided by the companies identified by principle 7 with the reporting framework. It should be clarified that the word "ultimate" does not suggest that any actions taken by the competent independent administrative authorities can not be subject to scrutiny by the competent courts of the member States in accordance with national law.

With reference to principle 16 it would be helpful if the explanatory notes could clarify that the actions available to the enforcers in case of (material) misstatements would include the possibility to seek court imposed injunctions.

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Finally we note that adoption of the principles and their implementation can never create a "zero failure assurance" by the enforcers and that, therefore, the external auditors continue to keep a prime responsibility for the review of the annual accounts.

The VEUO has no objection to making this reaction public through your website.

Yours sincerely,

S.E. Eisma

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Response 4: VNO-NCW

De weledelgeleerde heer
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Subject
Comments VNO-NCW on the Proposed
Statement of Principles of Enforcement of
Accounting Standards in Europe

Telephone Number
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Reference Number
I/02/01.263/Nz/Wo

The Hague
January 2, 2003

Dear Mr. Rensen,

The Confederation of Netherlands Industry and Employers VNO-NCW, the largest representative organisation of industry and employers in the Netherlands, is pleased to respond to the Consultation Paper of the Committee of European Securities Regulators (CESR) of October 2002, which contains a Proposed Statement of Principles of Enforcement of Accounting Standards in Europe. Before answering the specific questions we have some general comments.

General

In general, VNO-NCW has the opinion that harmonization of enforcement systems in Europe is an effective tool to create an efficient capital market which leads to a level playing field within the EU and the rest of the world. Therefore, VNO-NCW supports the efforts taken by CESR to create a harmonized institutional system of enforcement in the EU.

Before commenting on the specific Principles, VNO-NCW has two general remarks.

Firstly, VNO-NCW points out that listed companies whose shares are also listed or are being traded in the United States, already face additional measures that safeguard the reliability of the annual and quarterly reporting. It is very important that the multitude of supplementary requirements and safeguards, which are laid down the Sarbanes-Oxley Act alone, directly apply to these companies. The companies involved are now studying as to how they can fulfil these requirements. Therefore, coordination of the requirements that apply in the United States is also important. In any case, it should be avoided that different and more burdensome requirements are laid down.

In the second place, in VNO-NCW's opinion the broad principles of enforcement given in this consultation paper must be further elaborated. After all, it is very important that enforcement is not only performed with the greatest care – which includes hearing both sides – and discretion, but certainly also with the required professionalism. It should be made sure that the market does not have doubts about the regulator's information, any 'review' or (preliminary) findings during such a 'review'. This leaves intact, though, the obligation to publicise should a company actually have 'material misstatements'.

In the Consultation Paper a procedure like that is missing.

Principle 1

We agree with the principle that the competent independent administrative authorities set up by Member States should have the ultimate responsibility for enforcement. However, this requires an optimal coordination between the authorities in the Member States, which must not lead to different interpretations in comparable situations.

Principle 2

This is an organisational problem, which must be solved.

Principle 3

This is a consequence of principle 2.

Principle 4

We agree.

Principle 5

See our general remarks. The procedures mentioned here must be further elaborated.

Principle 6

We agree.

Principle 7

We agree

Principle 8

We agree.

Principle 9

We agree.

Principle 10

We agree.

Principle 11

We agree that ex-post enforcement is the normal procedure. But if 'pre-clearance' is precluded, the key question is: what exactly is the meaning of 'pre-clearance'. It must be avoided that a system of 'pre-clearance' will lead to different interpretations in similar situations.

Principle 12

See our remarks above on ex-ante approval.

Principle 13

The exact meaning of the methods of enforcement mentioned in this principle is not clear. However, in VNO-NCW's opinion, the competent enforcement authority must use the auditor's opinion on the annual or interim statements. Neither duplication of the auditor's work nor the enforcement of it should be under discussion in this situation. The regulator will obtain a direct relationship with the company whose financial statements are being supervised. In that it does not suit that the regulator contacts the company's auditor without its knowledge. Therefore, it neither suits to provide the regulator with the right to inspect the auditor's audit files. The auditor should be given the opportunity to express his views on all the shortcomings of the related financial statements stated by the regulator.

Principle 14, 15, 16, 17, 18 and 19

See our comments on Principle 13.

Principle 20

We agree that harmonization of enforcement practices and a consistent European approach of the enforcers to the application of the IFRS requires close coordination between national enforcement authorities. Material controversial accounting issues have to be conveyed to IASB or IFRIC. Especially in the field of 'pre-clearance', in which little time is available to come to a decision, it seems almost impossible to get a 'pre-clearance' decision of these bodies on time.

Principle 21

We agree.

Should you require more information relating to this letter, please do not hesitate to contact us.

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Yours faithfully,

CONFEDERATION OF NETHERLANDS INDUSTRY AND EMPLOYERS VNO-NCW

M.W. Noordzij

Senior advisor