

GEFIU
GESELLSCHAFT FÜR FINANZWIRTSCHAFT
IN DER UNTERNEHMENSFÜHRUNG E.V.

„Financial Accounting Working Group“

January 16, 2004

Mr. Fabrice Demarigny
Secretary General
Committee of European Securities Regulators (CESR)
11-13 Avenue de Friedland
F-75008 Paris

**GEFIU Financial Accounting Working Group response to
CESR Consultation on Principles of Coordination of Enforcement Activi-
ties in Europe**

Dear Mr. Demarigny,

The Members of the GEFIU Financial Accounting Working Group are pleased to comment on the Consultation Paper “Coordination of Enforcement Activities”. We appreciate the Committee’s understanding in accepting our comments past the published deadline.

The GEFIU (Gesellschaft für Finanzwirtschaft in der Unternehmensführung e.V.) is the German Financial Executives Institute. It has some 160 members who are chief financial officers or finance directors of German industrial and trading companies as well as insurance companies, banks, and other financial services. GEFIU is a member of the International Association of Financial Executives Institutes (IAFEI). As a member of the International Group of Treasury Associations (IGTA), GEFIU also cooperates with other treasury associations.

The Members of the GEFIU Financial Accounting Working Group generally support the Committee’s proposals for Coordination of Enforcement in Europe. However, with regards to certain principles, we have some reservations and suggestions for improvements.

When we consider the introduction of International Financial Reporting Standards (IFRS), the CESR had already begun to set a uniform framework for the

enforcement of accounting guidelines for the members of the EU, in April of 2003 (Standard No. 1 on Financial Information: Enforcement of Standards on Financial Information in Europe). The details of the definitions of these principles have been left up to the members of the EU. We are generally in favor of this approach, since several of the member states, such as Italy and France, already have enforcement institutions in place. There are however certain enforcement positions allowed by the standard for which doubts have already been cast as to their effectiveness; such as the Financial Reporting Review Panel in Great Britain. The standard contains no binding provisions to give the national enforcement institutions the appropriate mandates (such as the right to access or inspect) or procedures. We suggest that a standard for coordination of European enforcement activities should therefore consider more carefully the resulting differences in enforcement of accounting principles.

Should uniform, trustworthy enforcement fail to be established by the introduction of the IFRS, there is a danger that the IFRS will have permanently damaged its reputation as a uniform, global accountancy standard due to its non-uniform interpretation. This will raise doubts as to the sense of the EU-wide mandatory usage of IFRS.

Furthermore, there would be a risk that the US enforcement institution, the SEC, doesn't recognize the enforcement institutions in the European countries as equivalents, and acts as a supplemental enforcement body for financial statements of European companies that are released in the US. This could cause considerable repercussions for the EU, if the interpretation of the IFRS is done by the SEC, and not through the modernized EU accounting guidelines. Additionally, possible corrections to financial statements by the SEC would cause serious reputation damage to European companies. The considerable existing US influence on European accounting standards that results from the distribution of seats on the International Accounting Standards Board (IASB), would further increase. An independent European position for accountancy questions could also be thereby endangered.

We have the following comments to the individual principles proposed by the CESR for the coordination of enforcement within the EU:

Principle 1: All EU National Enforcers should take into account decisions taken by other enforcers.

The acceptance of the financial statements presented according to IFRS in the EU, starting in 2005, will be significantly derived from their individual execution. We therefore support the basic concept that national enforcers take prior decisions by other enforcement institutions into account.

The application of accountancy standards is often done in the context of a complex background, so that precedents such as those summarized in a database (as per principles 2 and 3) are only conditionally comparable. The question of what the CESR will do, if national enforcement institutions deviate from the collective precedents remains open.

The independence of national enforcers concerning critical interpretation questions should therefore be limited. This, as well as the criteria for dealing with national institutions, should be decided at the European level. For this, basic guidelines should be provided with which the national enforcement institutions may forward critical interpretation questions to the CESR. The decision about these critical interpretations of IFRS could for example, be made by a committee of representatives of national enforcement institutions.

If it were possible, in cases where national courts were invoked in connection with disputed accounting treatment questions, for the individual interpretations to be made by way of the preliminary ruling procedures (“Vorabentscheidungsverfahren”) of the EuGH according to Article 234 of the treaty establishing the European Community, conformance could be ensured.

Principles 2 and 3: The creation of a database of enforcement decisions taken by EU national enforcers

We welcome the creation of a database as is described in the proposal. For publicly listed companies within the EU, appropriate anonymous forms for access should be made available.

Principle 4: Regular European Enforcers Coordination Sessions to ensure harmonization

In order to ensure a uniformly high quality of enforcement within the EU, it is necessary to constantly monitor the activities of the national enforcers. The proposed meetings could be expanded into a yearly activity report of the national enforcement institutions to the CESR.

We welcome the suggested inclusion of representatives of standard setting or interpretative bodies such as the IASB as well as the International Financial Reporting Interpretations Committee (IFRIC) for basic questions.

With the standard adopted in April 2003, the stage was set for primarily decentralized enforcement within the EU. According to the proposed standard for coordination of enforcement activities, a more administrative function is planned for the CESR. We believe that the CESR should take a more expanded role for the harmonization of enforcement in the EU, such as that suggested above. In addition, it should be ensured that European companies with multiple exchange listings within the EU are only subject to the enforcement of their home country, or the country of their primary listing.

It remains unclear which European institution will administer the unrestricted acceptance of financial statements according to IFRS from companies in the EU. This concerns the opening of negotiations regarding the worldwide unrestricted acceptance of financial statements prepared according to IFRS by non-European supervisory authorities, especially the SEC. We suggest that the CESR should at a minimum take a key role in these proceedings. Therefore, we

believe that the CESR should take the responsibility for a stronger coordination function in the EU.

We are at your disposal to discuss any point of this submission.

Yours sincerely,

Dr. Peter Siebourg

Chairman Financial Accounting Working Group