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**CESR Standard No 2 on Financial Information – Coordination of
Enforcement Activities**

FEEDBACK STATEMENT

APRIL 2004



Feedback Statement on the Consultation on a draft Standard No 2 on Financial Information – Coordination of Enforcement Activities

On October 7th 2003 CESR published for comments a draft Standard No 2 on Financial Information – Coordination of Enforcement Activities.

The period for comments expired on the 7th of January 2004, after a public hearing was held on the premises of CESR in Paris on the 12th of November 2003.

During the consultation period 22 letters were sent by various organizations mainly belonging to the private sector of Europe. All comment letters received have been published on the CESR website.

These letters were considered by the CESR-Fin Subcommittee on Enforcement (SCE) in a meeting held in Rome on the 12th of February 2004. An in-depth analysis of all comments received lead SCE to propose to CESR-Fin and then to CESR to publish the final version of the Standard No 2, along with this feedback statement providing the views of CESR on the critical areas and points dealt with by respondents to the public consultation.

CESR takes the opportunity of this feedback statement for thanking all respondents and participants to the public hearing for their fruitful and constructive contribution. This feedback statement focuses on the major topics on which various respondents expressed views and on which CESR believed necessary to comment.

CESR observes that the draft Standard No 2 on coordination of Enforcement received a full support from those who responded to the consultation.

The main concern expressed was that CESR should develop additional guidance for the implementation of the principles included in the Standard No 2. As explained further below, the development of additional guidance is part of an exercise currently conducted by the Subcommittee on Enforcement of CESR-Fin. Once finalised any additional guidance will be subject to the normal CESR consultation process.

1. Role of EU National Enforcers for a proper application of IFRS

All commentators acknowledged the need to have in place a mechanism ensuring the coordination of the supervision and enforcement by EU National Enforcers of financial information prepared by European listed companies on the basis of the International Financial Reporting Standards (IFRS/IAS). In particular they largely supported the proposals to exchange information between Enforcers and to set up a data base on cases and decisions considered by EU National Enforcers, and the intention to discuss such cases and decisions through the European Enforcers Coordination Sessions (EECS) in which all EU National Enforcers should participate, being CESR-Members or not.

The envisaged coordination mechanism will primarily cover the financial reporting of European listed companies since these companies will be the main users of the IAS/IFRS as from 2005, in application of the EU Regulation 1606/2002. It is also important to focus on these companies as their financial reporting has a direct and large impact on the proper functioning of European financial markets.

Many commentators expressed the concern that EU National Enforcers should not become standards setters by delivering, through the envisaged coordination mechanism, specific interpretations of the IAS/IFRS. In particular, it was stressed that the coordination should not lead to a body of detailed rules of acceptable application of the IAS/IFRS, as this would (i) contradict the “principle-based” approach of these standards or (ii) close options or encourage best practices where different accounting treatments are allowed by the IAS/IFRS. This concern was particularly raised in connection with the proposal to also include in the data base decisions taken on an ex-ante basis by EU National Enforcers (usually referred to as “pre-clearance” procedure).



As already underlined in the Principle 20 of the CESR Standard No 1 on Financial Information – Enforcement of Financial Information, the intention of CESR is not to develop general interpretation and/or application guidance of financial reporting standards.

Issuing general interpretation of existing standards is part of the standard setting process conducted by the relevant bodies (which, in the current institutional structure, is the International Financial Reporting Interpretations Committee - IFRIC). The Standard No 2 is based on the Standard No 1, and therefore does not modify the approach adopted.

As regards the “pre-clearance” procedures, reference is made to the indications already included in the Standard No 1¹.

The public consultation indicates that opinions are divided on the pre-clearance procedures currently provided in some jurisdictions.

As CESR does not propose to generalise these procedures at the European level, the organisational aspects of pre-clearances remain a national prerogative. It is not envisaged to set up separate, additional procedure to handle coordination of pre-clearance decisions in the framework of the Standard No 2. These decisions will be considered in the same way as other kind of decisions.

2. Importance of guidance implementing the Standard No 2

Many respondents to the public consultation asked for clarifications on how the principles included in the draft Standard No 2 will be implemented. Respondents indicated they would particularly welcome further clarification on the kind of decisions that would be subject to the coordination mechanism and further detail regarding the instruments to be used for ensuring a confidential exchange of information between EU National Enforcers and about the functioning of the EECS.

The SCE is currently working on the development of additional guidance for the implementation of the Standard No 2 on some of the areas identified above. The indications received in the public consultation will be taken into account to the extent possible. CESR would like to thank the respondents who have already provided valuable advice for the further implementation of the Standard No 2.

Additional guidance will be subject to the normal CESR consultation process. Although the need for clarification is well understood by CESR, it is also important to underline that the standards and guidance published by CESR on the enforcement of financial information abide by a principle-based approach and do not end up into too detailed and rigid structures.

3. Precedent value of decision and authority of the coordination mechanism

In accordance with the Principle 1 of the Standard No 2, all EU National Enforcers will be expected to take account of existing precedents when adopting a new enforcement decision. The explanatory text under this principle specifies that *“Decisions already taken in similar circumstances by the same enforcer or by other enforcers may constitute precedents which may have different legal status according to the various EU jurisdictions. In most of the cases these decisions will at least be considered a source of information as well as a useful tool for the enforcers’ decision making process.”*

Respondents to the public consultation expressed different views in respect of the Principle 1.

¹ For more details, see the para 2 and 3 of the explanatory text following the Principles 11 to 15 of the Standard No 1.



- Some underlined that existing decisions could be used as useful source of information, but **not as legally binding precedents**.

This is clearly the CESR's viewpoint as expressed in the explanatory text quoted above. It is clear however, that the Principle 1 commits EU National Enforcers to duly consider existing decisions (even if this is not legally binding), otherwise no coordination will occur.

- Other commentators stressed the fact that enforcement decisions are often adopted in the context of a **complex background**. Therefore, precedents would be only conditionally comparable.

As indicated in the Standard No 1 and 2, it is not the intention of CESR to create an additional body of application rules that would stand next to the IAS/IFRS with the aim of addressing all possible situations. Existing decisions are marked by the characteristics of the related specific cases, and by the particularities of the market and the national regulation. The Principle 1 of the Standard No 2 applies insofar the circumstances are sufficiently comparable as the objective is primarily to reach harmonisation at the level of principles or general characteristics of cases (similar rationale).

This does not preclude that the exchange and disclosure of information, as envisaged by the Principles 2, 3 and 4, occur on the basis of an appropriate description of the case and its background.

- The comments received about the **role of the SCE and the EECS** as regards the decisions adopted by national enforcers were not always unanimous. Some advocate for a strong co-ordination mechanism empowered to issue statements correcting national decisions that would be considered as inappropriate. Others hold the view that the EECS should not act as a "second-tier" institution, because enforcement action must basically remain with the national enforcer.

As indicated in the Standard No 1, the enforcement activities will continue to be conducted at the national level, with appropriate national enforcement structures. It is not envisaged, through the present standard to create a "second-chamber" mechanism empowered to revise national decisions. On this basis, the coordination mechanism is aimed at improving convergence on future decisions and is intended to work on an efficient and flexible basis and will mainly gain authority from the practical cooperation of its members and from the quality of its output.

However, in order to keep the data base of enforcement decision meaningful and up to date, it may be decided to publish some decisions instead of others and to remove from the data base decisions when necessary (e.g. when IFRIC has published an interpretation contradicting all or part of an existing decision)

4. Public disclosure of selected information

Many respondents to the public consultation were keen to have some kind of public data base including all kind of enforcement decisions (even pre-clearance).

As underlined in the explanatory text under the Principles 2 and 3 of the Standard No 2, the CESR database should be accessible to all EU National Enforcers committed to applying CESR enforcement standards. However, disclosure of enforcement decisions to other parties (such as issuers, their auditors, non EU regulators) may produce further benefits for harmonization. To this end CESR will consider appropriate measures additional to those required by principle 21 of the Standard n.1, aimed at public disclosure of selected information.

Addressing concerns expressed by the respondents to the consultation, the final standard has made it clear that any public disclosure of information will need to be made in a way that gives a fair and complete view of cases and decisions described and will duly consider confidentiality and privacy implications..



In this regard, it is the intention of CESR to ensure sufficient transparency without prejudicing individuals and companies with unnecessary publicity, in particular when the national decision is that there was no infringement.

5. Wider consultations

Different respondents to the public consultation called for a wider consultation mechanism involving all stakeholders and not only EU National Enforcers. Such a consultation would permit to other entities, such as auditors or issuers, to review general experience and to express views on broader issues in financial reporting.

In the same vein, many suggested that EECS discussions should, when necessary, entail a dialogue with bodies such as the IASB or the IFRIC.

It was also underlined that CESR should encourage regular and effective dialogue with non EU enforcement authorities.

CESR acknowledges the importance of establishing such wider consultations and will consider how this could be organised in the framework of the CESR-Fin organisation and CESR consultation practices.

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