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**GUIDANCE FOR IMPLEMENTATION OF CO-ORDINATION OF ENFORCEMENT
OF FINANCIAL INFORMATION**

**(Implementation of CESR Standard No 2 on Financial Information – Co-
ordination of Enforcement Activities)**

PAPER OPEN TO PUBLIC COMMENTS

JUNE 2004



Foreword

1. In April 2003, CESR published its first standard on financial information 'Enforcement Standards on Financial Information in Europe'. This standard identified the need for an appropriate mechanism whereby CESR members and non-CESR members may discuss enforcement issues in order to achieve a high level of co-ordination and convergence in this field.
2. In April 2004, CESR published its second standard on financial information 'Coordination of Enforcement Activities'. This Standard seeks to establish a co-ordination mechanism for enforcement at a pan-European level as envisaged under Standard No 1 through a series of key principles. As set out in the feed-back statement to standard No 2 CESR undertook to develop additional guidelines necessary for the implementation of the principles included in the Standard
3. This document constitutes guidance on the implementation of coordination of enforcement activities and includes policies for making decisions available to other EU National Enforcers in accordance with principle 2 of Standard No. 2. The policies and guidance have been developed by CESR-Fin through its subcommittee on Enforcement (SCE).
4. This document has been published on CESR's website on 25 June 2004 for public comments. The deadline for all interested parties to submit written comments is 6 September 2004. Please post your reply on the CESR website, under the section Consultations.

European Enforcer Coordination Sessions (EECS)

5. The objective of EECS is to achieve a high level of harmonization in enforcement decisions.
6. EECS will act as a forum in which all EU National Enforcers, whether or not CESR members, may exchange views and discuss experiences on enforcement, mainly on national ex-post and ex-ante decisions but also on general matters such as use of selection methods and enforcement methodology. In this regard, EECS could also help to highlight enforcement issues that need to be dealt with in the standard setting process to be carried out by CESR.
7. The main functions of the EECS are to:
 - Analyse and discuss decisions taken or to be taken by EU National Enforcers on the enforcement of financial information requirements to achieve harmonisation and coordination of future decisions.
 - Identify issues which are not covered by financial reporting standards or which may be affected by conflicting interpretations for referral to standard setting or interpretive bodies such as IASB or IFRIC.
 - Share and compare practical experiences in the field of enforcement on issues such as selection, risk assessment and enforcement methodology.
 - Help identify and provide advice on enforcement issues that may require future CESR standards and guidelines
 - Advise CESR-Fin on public disclosure of information on selected decisions.
 - Advise CESR-Fin on database management issues

Operation of EECS



8. EECS is an enlarged group of the CESR-Fin Subcommittee on Enforcement ("SCE") which involves all EU National Enforcers of standards on financial information whether or not they are CESR members. The EECS is chaired by the Chairman of the SCE.
9. CESR members are automatically members of the EECS as they are already members of the SCE. CESR members are responsible for identifying the relevant EU National Enforcers in their jurisdiction and for ensuring that they are invited to the EECS. A published list of EU National Enforcers will be maintained.
10. The Chairman, assisted by an Agenda Group will be responsible for preparing the agenda (including selecting decisions) for discussion by the EECS. The Agenda Group is expected to be comprised of a small number of EU National Enforcers representatives from different jurisdictions. Membership of the Agenda Group will rotate (excluding the Chairman). Rotation may be staggered to allow for an element of continuity.
11. The Agenda Group will also identify database management issues for discussion.
12. A report on the activities of the EECS will form part of the SCE section of the annual CESR-Fin report.
13. EECS are expected to take place on average every three months but may take place more frequently depending on the need. The Chairman may call a EECS meeting either at an EU National Enforcers request (where the Agenda Group considers such a request appropriate) or on his own initiative. Meetings will, to the extent possible be hosted by different EECS members on a voluntary rotation basis to allow for the opportunity of meeting and discussing issues with various interested parties.

Decisions

14. There are different types of decision that an enforcer may take. Decisions may be taken on an ex-post or an ex-ante basis. A decision may be one not to take an action "non-action decision" as well as one to take a particular action. The status of these decisions is clarified below along with guidance on how they might be shared with other EECS members.
15. Some EU National Enforcers may provide an opinion on a particular financial reporting issue before an issuers accounts have been finalised. Where an enforcer gives an opinion that represents the official view of the EU National Enforcer, then such a decision comes within the scope of principles 1 and 2 of Standard No 2 and falls to be considered for dissemination to EECS members.
16. Enforcers may investigate particular financial reporting issues adopted or to be adopted by an issuer and conclude that the treatment adopted or proposed is within the scope of the relevant standard. Such decisions constitute an enforcement decision and may fall within the criteria for submission to the database outlined in paragraph 21 below.

Consultation

17. Principle 1 of Standard No 2 requires that "Where practicable, discussions with other enforcers should take place before significant decisions are taken". EU National Enforcers should always as a minimum, consult the database before taking enforcement decision to ensure that they are fully informed of existing precedent(s).
18. Situations may arise where apparently contradictory decisions are taken. In cases of apparent contradiction, the enforcer taking the new decision would normally be expected, where practicable, to discuss the facts and rationale surrounding the earlier decision with its originator before taking the decision.

19. Where an enforcer takes a decision which is in apparent contradiction to existing precedent(s), in addition to normal database submission, the EU National Enforcer should inform the Agenda Group that such a decision has been taken together with brief details of the new decision, the rationale and the existing precedent(s) reference number.
20. This procedure will ensure that apparently contradictory decisions are highlighted for appropriate discussion at EECS.

Submission of decisions to the database

Relevant decisions

21. Principle 2 of Standard No. 2 requires details of decisions to be made available in accordance with CESR policies. EU National Enforcers may take many different types of enforcement decisions, not all of which will be relevant for submission to the database. To determine which decisions are relevant, enforcers should consider the following criteria:
 - Whether a material misstatement in financial information has been detected in line with that envisaged by principle 16 of CESR Standard No 1;
 - Whether dual, multiple or cross border listings are involved;
 - Whether a decision apparently contradicts a previous decision on the database;
 - Whether the decision is expected to potentially impact harmonised financial reporting in Europe or have a major impact on a financial market;
 - Whether the decision will be of interest to other EU National Enforcers (this judgement is likely to be informed by EECS discussions);
 - Whether there is a risk of significantly different treatments between companies and jurisdictions;
 - Whether a decision is likely to have a significant impact on other issuers;
 - Whether a decision is taken on the basis of principles under IAS 1 and 8 because an issue is not covered by a specific standard; and
 - Whether a decision has been overruled by an appeals committee or Court.
22. Where any of the above criteria are met, a decision will be relevant for submission to the database and should as such be submitted to the database. A number of the above criteria are subjective and will require EU National Enforcers to apply judgement in determining whether or not a criterion is met.
23. In practice, the development of the database will be influenced by the practical experiences of enforcers. EECS experience will influence for example the types of decision that are submitted, what is considered to be of interest to other enforcers and what has an impact on harmonised financial reporting.

Input to the database

24. Input to the database is decentralised and decisions are sent in electronic form to a holding area of the database by National Enforcers using a standardised input form. The CESR Secretariat will review all submissions for consistency of disclosure and terminology, completeness of input and overall understandability. Where the result of the Secretariat review is unsatisfactory, the relevant EU National Enforcer may be asked to resubmit or provide additional information. Following a completed review the submission is given a unique precedent number and is formally logged on the database.

The following details are recorded on the database:

1. Date of input MM/YY
2. Date decision taken by enforcer

3. Date decision was discussed at EECS
 4. Financial year end to which decision relates DD/MM/YY
 5. Type of document (e.g. annual report, interim report, prospectus)
 6. Jurisdiction and name of enforcer organisation
 7. Name of issuer and any group of which it is part
 8. Market(s) where the securities are listed
 9. Indicative market capitalisation of issuer and sector details
 10. Category of issue
 11. Standard or accounting requirement(s) involved
 12. Description of issuer financial reporting treatment and/or disclosure adopted/proposed and the circumstances
 13. Rational for enforcer decision (action/no action)
 14. Details of the corrective action taken e.g. restatement, corrective announcement and enforcer rational and how communicated to the market (if communicated)
 15. Effect of restatement
 16. Outcome of any EECS discussion
 17. Whether the decision is final or subject to any appeal process
 18. Details of any court decision or appeals commission decision
 19. Precedent number cross reference (to precedent followed or contradictory precedent)
 20. Auditor opinion (i.e. clean or qualified)
 21. The name of the audit firm (optional)
 22. Text of any selected information relating to the decision that CESR has published
 23. Miscellaneous
25. Where national law prohibits the disclosure of certain information to a database or where there are particular confidentiality issues surrounding a decision, for example with disclosing non-action decisions, EU National Enforcers may anonymize the information submitted to the database. In most instances this will relate to omitting the name of the issuer and its group, the market capitalisation and details of the sector that the issuer is in
 26. The database is in English and all submissions will be in English. There is no obligation for the whole of a national enforcement decision to be translated into English, only those summary details necessary to complete the input submission template. A number of input fields may be completed retrospectively if applicable i.e. the «Date decision was discussed at EECS», «Outcome of any EECS discussion" and "Details of any court decisions".
 27. Category of issue – this will be a brief description of the main issue which will allow national enforcers to search issues more effectively e.g. "Capitalisation of development costs", "Impairment of goodwill".
 28. The “standard or accounting requirement(s)” input field may contain more than one accounting standard reference as there may be interaction between several standards. Enforcers should indicate which version of a standard is applicable.
 29. The description of the issue must contain sufficient detail to allow an understanding of the relevant facts and circumstances surrounding the issuer treatment or disclosure.
 30. Enforcement decisions may include a number of aspects in a particular case resulting in more than one decision. National Enforcers only need to include and submit details of the relevant decisions (using the relevancy criteria outlined above) on the input form – there is no need to describe every individual misstatement/breach relating to a particular case.

Timing

31. Principle 2 of Standard No 2 requires that decisions should be made available for the database "Within a reasonable time after decisions are taken..." No time deadline is specified for submission of decisions as what is considered reasonable will depend on the



nature and complexity of the particular decision. Common practice and acceptability on timing will develop with experience.

Interim submissions

32. In the case of some significant enforcement decisions there may be a delay between arriving at the conclusion that there has been non-compliance with relevant accounting standards and agreeing what the correct disclosures or accounting treatments should be. In these situations it would be useful for other enforcers to know that there has been a significant decision taken in another jurisdiction relating to a particular accounting issue – other enforcers may be in the process of taking similar decisions and this knowledge would enable them, if relevant to contact the other enforcer.
33. In order to achieve this, where an enforcer has taken a significant decision and believes that there will be a delay before full details can be provided to the database, it should submit an interim draft decision to the database. Such interim submissions contain only these data which are currently available and will be clearly identifiable as interim decisions. Interim submissions will be held pending completion on the database. These interim decisions can be viewed by other EU National Enforcers and will be superseded once the full decision is available on the database.