

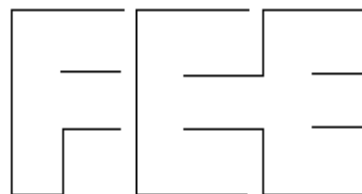
Date
12 September 2003

Le Président

Fédération
des Experts
Comptables
Européens
AISBL

Rue de la Loi 83
1040 Bruxelles
Tél. 32 (0) 2 285 40 85
Fax: 32 (0) 2 231 11 12
E-mail: secretariat@fee.be

Mr. Peter William Skinner
European Parliament
Rue Wiertz
B – 1047 BRUXELLES



cc. Chris Huhne
Theresa Villiers

Dear Mr. Skinner,

Re: Proposal for a Directive on the Harmonisation of Transparency Requirements

FEE (Fédération des Experts Comptables Européens – European Federation of Accountants) is pleased to submit its views on various aspects of the Proposal for a Directive on the harmonisation of transparency requirements with regard to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC. In the light of the single capital market, FEE welcomes the harmonisation of interim reporting based on IAS/IFRS. We appreciate that two consultation documents have preceded the proposal for revision of the Transparency Directive.

Article 4 – Annual Financial Reports

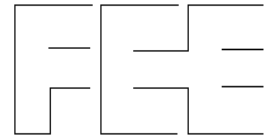
1. We welcome the extension of the earlier proposed 60 days delay to three months. However, for some companies, including smaller listed companies and others in exceptional circumstances even three months might be insufficient to permit the approval and audit requirements within corporate governance structures. At present, many European listed companies are not reporting within three months. While there are advantages of accelerated reporting, not only for the market but also for the preparers and auditors, it should be recognised that this may not be possible in all cases. Therefore, extensions to reporting deadlines will need to be permitted, but should be subject to approval of the appropriate governance body within the company and an explanation of the reasons should be provided. Proper consultation of all bodies in the corporate governance structure needs to be allowed for, so that each body can discharge its responsibilities. The involvement of Audit Committees in addition to a Supervisory Board requires extra time. Also a full scope audit of the annual financial statements requires more time than a review of an interim report.

The proposed directive should make clear to what the deadline of three months relates:

- submitted to shareholders
- approved and filed

We would like to emphasise, however, that it is important that the audited financial statements are published before, or at the latest at the same time as, any first quarter results of the following financial year are disclosed.

2. Throughout the Article the terminology “when the issuer has no subsidiary” is used. However there may be other cases (e.g. temporary control – subsidiary excluded from consolidation) where



only individual accounts have to be prepared. We suggest that the following phrase is used: “when the issuer is not required to prepare annual consolidated financial statements”.

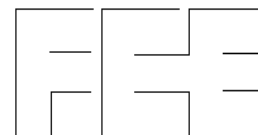
3. By virtue of Article 4.2(c), the persons responsible within the company for annual financial reports will be required to make a statement that the report is “in accordance with the facts and ...makes no omission likely to affect its import”. Article 5.2(c) extends this requirement to the half-yearly reports. It should be unambiguous that the responsibility of the directors (or other persons, as applicable in different jurisdictions) is to ensure that the financial statements give a true and fair view in accordance with the applicable accounting standards. The language used in Articles 4.2(c) and 5.2(c) may cloud this responsibility. The wording of the proposed Directive should be revised accordingly. However, as interim reports do not contain all the information and disclosures which are made in annual financial statements, the statement for the half-yearly report should only refer to the information being “prepared in accordance with the applicable accounting standards” (i.e. applicable to preparing interim financial statements).

Article 5 – Half-Yearly Financial Reports

4. The review of interim reports enhances the quality of the financial statements and the annual audit since discussion of important issues takes place at an earlier stage and it helps avoid restatements in the annual financial statements after interim reports are issued. The incremental costs of reviews need to be assessed and considered in the context of improved confidence in financial reporting that in some circumstances may arise, before reviews are required but they will be less significant for better controlled companies. FEE supports consultation with auditors before regular reports are published by the company concerning the main issues, including accounting policies.
5. FEE welcomes the proposed disclosure of the review report. It would be helpful to use the terminology of International Standards on Auditing (ISAs) when the half-yearly financial report has been reviewed by the auditor (ISA 910 “Engagements to Review Financial Statements” as currently being revised ED “Review of Interim Financial Information Performed by the Auditor of the Entity”). However, mandatory publication throughout the EU of the review report requires amendment of the existing liability regime for auditors, suitably reflecting the limitations of a review assignment. A transitional period should be introduced in order to allow the Member States to establish an appropriate liability system.
6. Article 5.1 requires the half-yearly report to be disclosed “as soon as possible” after the end of the relevant period, but at the latest two months thereafter. The term “as soon as possible” is undefined and inappropriate in this context and also in relation to possible future litigation. Only the two months deadline should be referred to (a similar comment would apply to Article 6.1 on quarterly reporting).

Article 6 – Quarterly Financial Information

7. Publication of key indicators on a quarterly basis can be a first step to full quarterly reporting based on IAS 34 and is therefore accepted by FEE as an interim solution. The market will decide if publication of key figures only is sufficient or exercise pressure for a fuller form of quarterly reporting.
8. Article 6.2 requires the publication of the net turnover and the profit or loss before or after deduction of tax. We question, however, whether these are the only appropriate key indicators of performance. Performance indicators should deliver useful, reliable information of value to market participants and at a reasonable cost to companies. A requirement for companies to disclose their most significant performance indicators on a quarterly basis (for example, net turnover by business segment or an equivalent trading indicator), together with an appropriate narrative statement on those indicators, critical events and prospects, may satisfy these criteria. The proposed reporting of only net profit or loss would not.



Moreover, the disclosure requirement of profit or loss before or after deduction of tax does not allow for future developments on performance reporting – an IASB Exposure Draft is expected by the end of 2003 – whereas the wording in the Directive Modernising the Accounting Directives allows for this flexibility in Article 1.8 (amending Article 22 of the Fourth Directive). In addition, it can be questioned whether an option – before or after deduction of tax – should be provided since this seems to contradict the aim of harmonisation and single market in that it will not result in comparable information. The argument that issuers would not be required to make tax estimates is only partly valid (they have to do it for the half-year reports). Aiming at harmonisation, it would be helpful to require that all listed companies should at least publish the profit or loss before tax

9. We are of the opinion that the terminology, to the extent possible, should be brought in line with the IAS/IFRS terminology. It would therefore be helpful to replace “net turnover” by “revenue” since only the latter is defined in IAS (IAS 14.8), taking into account our comments under 10.
10. There is no reference to the basis on which quarterly financial information should be prepared. This can lead to inconsistencies in quarterly reporting with investors and other users of these figures presented with misleading, at least incomparable, information. One solution is necessary if investors and other users are to maintain confidence in the disclosures of performance indicators. A requirement should be introduced that quarterly financial information is to be based on compliance with IAS measurement principles, or local accounting requirements for companies not required to comply with IFRS. This is also in line with the presumption that the significant accounting policies for interim financial information are consistent with those for the annual financial statements, unless they will be changed in the next annual financial statements.
11. Unlike Articles 4 or 5, Article 6 contains no provisions for issuers with no subsidiaries; the disclosure requirement in Article 6.2(a) referring only to consolidated figures. Clearly, a similar solution to half-yearly reporting is needed.
12. In Article 6.4, implementing measures should also be announced, covering such matters as whether comparative figures are required.
13. In relation to the review of quarterly information by the auditor and to the publication of the review report, we refer to our comments under paragraphs 4 and 5.

Article 20 – Competent Authorities and Their Rights

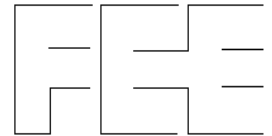
14. The restriction on delegation of tasks as prescribed in Article 20.2 is unnecessary and is not supported. In a number of countries the enforcement responsibility for financial statements is different from the enforcement responsibility for prospectuses notably in countries where a review panel model has been adopted for enforcement. Article 20.2 should therefore be changed as follows:

~~“Member States may allow their central competent authority to delegate tasks. Any delegation of tasks related to the obligations provided for in this Directive and in its implementing measures shall end five years after the entry into force of Directive [...]/.../EC [prospectus]. Any delegation of tasks shall be made in a specific manner stating the tasks to be undertaken and the conditions under which they are to be carried out.~~

Those conditions shall include a clause requiring the entity in question to be organised in a manner such that conflicts of interest are avoided and information obtained from carrying out the delegated tasks is not used unfairly or to prevent competition. In any case, the final responsibility for supervising compliance with the provisions of this Directive and implementing measures adopted pursuant thereto shall lie with the competent authority designated in accordance with paragraph 1.”

15. Under Article 20.4(b), the competent authority is empowered to require managers and, if need be, auditors of the issuer to disclose [...] to the public by the means and within the time limits the authority considers necessary.

Competent authorities should go directly to the management or directors of the company for any information they need on the company. Competent authorities may request companies to obtain a



special report on the issue from their auditors. Auditors can prepare a considered paper on the basis of their working papers and hindsight they have at that stage on a special issue to supplement information provided by the company. The fact that the auditors give their views on certain issues does not impact their opinion on the financial statements as a whole.

Requiring the auditors of the issuer to disclose information to the public overlooks the different roles of the issuers (to disclose required information) and the auditors (to provide assurance if required) and should therefore be brought into line with other legislation covering issues like confidentiality and the auditor's responsibility and liability. The auditor in our opinion should not be forced to disclose to the public information about the client (issuer) that is not owned by the auditor (i.e. it is the property of the client to whom the auditor owes a duty of confidentiality) and for which the auditor is not primarily responsible.

Another question is what is meant by "after having heard the issuer". The article as currently drafted is confusing.

16. In any case, we would like to be assured that financial reporting under this Directive will be subject to appropriate enforcement arrangements in every Member State.

Article 26 – Transitional Provisions

17. Article 26 permits Member States to exempt all issuers from adopting IAS for half-yearly reporting for the financial year commencing 1 January 2005 notwithstanding that the annual financial report for that year will be required to be prepared under IAS. Whilst Member States could, of course, choose not to implement this option, we believe that the implications for many issuers of creating comparative data for 2004 half years demands that this is determined at the earliest opportunity. It would clearly be untenable for this to be applied retrospectively. If this option is exercised as it stands, companies would be allowed to report their 2005 half-year in accordance with their pre-IAS accounting policies. Given that the annual report will be prepared in accordance with IAS, it will be misleading to the market for the half-yearly report to be prepared in accordance with current accounting practices. All 2005 financial information published should be in accordance with IAS. We consider the exemption therefore not appropriate.

However, because of the complexity of getting IAS figures for the first quarter of 2005 particularly for those companies that to date have not published quarterly information, an option could be provided to Member States to exempt companies from the requirement to publish quarterly information in 2005 (so resulting in 2005 annual financial statements on IAS in 2005, half year interims on IAS in 2005, first and third quarter information on IAS from 2006). Companies would not be prevented from disclosing quarterly information on IAS in 2005. However, all 2005 published financial information needs to be based on IAS, otherwise it would be misleading and confusing to the market when figures relating to the same year relate to two different sets of accounting standards.

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

Yours sincerely,

David Devlin
President