

SUMMARY RECORD

MEETING OF
THE ACCOUNTING REGULATORY COMMITTEE AND CONTACT COMMITTEE
OF 24 APRIL 2006

M. Delsaux, Acting Director for Company Law & Corporate Governance, DG Internal Market and Services chaired the twentieth meeting of the Accounting Regulatory Committee and the second meeting of the Contact Committee in 2006.

VOTES OF THE ARC

Result of the vote on a Proposal for a Commission Regulation amending Regulation (EC) No 1725/2003 adopting certain international accounting standards in accordance with Regulation (EC) No 1606/2002 of the European Parliament and of the Council, as regards IFRIC 8 *Scope of IFRS 2* and IFRIC 9 *Reassessment of Embedded Derivatives*.

The draft Regulation was accepted unanimously. An amendment was made to Article 2.

DISCUSSION AT THE MEETING

I. APPROVAL OF MINUTES OF THE ARC MEETING OF 17 FEBRUARY 2006

The minutes were approved after taking account of certain amendments which had been proposed by Member States.

One Member State requested that ARC Members be allowed time to provide comments on the initial, draft Summary Record before it is published on the website or sent to the EP. The Commission agreed to see what could be done but referred to the tight deadlines for transmitting the draft Summary Record to the European Parliament and making it public. The Commission did emphasise that the Summary Record remains in draft on the website and only becomes finalised once account has been taken of ARC Members' comments and the minutes approved at the subsequent ARC meeting.

II. FORMAL VOTE ON A PROPOSAL FOR A COMMISSION REGULATION ON IFRIC 8 SCOPE OF IFRS 2 AND IFRIC 9 REASSESSMENT OF EMBEDDED DERIVATIVES IN ACCORDANCE WITH REGULATION (EC) NO 1606/2002 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL OF 19 JULY 2002

One Member State stated that the wording of Article 2 regarding the commencement date was missing a word. The word "which" should be added: "... except for companies with a January, February, March or April commencement date which shall apply IFRIC 8 as from the commencement date of its 2007 financial year at the latest." It was agreed to amend the sentence.

The Regulation adopting the following: *IFRIC 8 Scope of IFRS 2* and *IFRIC 9 Reassessment of Embedded Derivatives* was accepted unanimously.

III. CONSISTENT APPLICATION

The Commission gave a brief update and referred to the finalised document on the creation of the informal Roundtable to contribute to the consistent application of IFRS in the EU. This note had been sent to Member States following the last ARC meeting in February. Arrangements were now underway for the first meeting on 17 May which will take place at the Commission's offices in Brussels. The Commission reminded those Member States which had not already done so to please provide details of the organisations which will represent them at the Roundtable in the capacity of the National Standard Setter so that invitations could be sent to them as well. The Commission also explained that, in addition to the participants listed in the note, for the first meeting of the European Banking Federation (EBF) and the Comité Européene des Assurances (CEA) would also be invited.

IV. UPDATE ON CURRENT WORK ON CONSOLIDATION AND LANGUAGE REVISION OF ENDORSED IFRS

The Commission gave an update on progress on the consolidation and language revision of endorsed IFRS, i.e. all the implementing Regulations. The consolidation will be achieved by publication (and endorsement, following the normal due process), of a new Regulation, which

will supersede the previous Regulations. This will enable constituents to refer to only one Regulation as it will contain all endorsed IFRS. This consolidation exercise also gives the opportunity to fix any errors and inconsistencies in translation. The Commission asked for comments from ARC members in an email sent on 8 February. Comments can still be sent to the Commission. Those comments will be taken into account when the consolidated text is being translated. Further on, the translations of the consolidated text will be sent to ARC members for comments before the final texts are proposed for endorsement. The timetable foresees that a new Regulation will be published before the end of the year. The definitive timeframe depends on the extent of work that is required on the translations.

Several Member States asked for clarification as to the cut-off point of the consolidation Regulation and its date of application. Another mentioned the importance not to depart from the clear notion that the legal date is the date of the EU endorsement, as EU companies must apply “IFRS adopted by the EU”. The Commission Services replied that the logical cut-off point would be to include the standards published by the IASB before the end of 2005, i.e. up to and including Regulation 108/2006 and the draft Regulation voted on at the February ARC meeting. The new Regulation will repeal the existing Regulations, however, the application dates of the standards and interpretations will remain the same as these are included in the standard or interpretation. One Member State asked whether the consolidation Regulation could include the implementation dates from the existing Regulations where these dates are still relevant. The Commission Services replied that these dates would be included.

Another Member State pointed out that not all Member States have the capacity to review the translations of the standards and that ultimately the Commission remains responsible for providing high quality language versions of its Regulations. The Commission Services confirmed this view, however, any help in revision of the Regulations is nevertheless appreciated.

V. EQUIVALENCE BETWEEN IFRS AND THIRD COUNTRY GAAP, IN PARTICULAR US GAAP

The Commission explained that although the ESC had the formal responsibility for this dossier, the views of the ARC were most important. The Commission referred to the proposals sent to Members (regarding the Prospectus and Transparency Directives) which relate to the granting of an extension and so permitting the use of US/Canadian/Japanese GAAPs in Europe until 2009. Furthermore under these proposals certain other GAAPs which fell inside the scope of IFRS would be accepted as equivalent if the notes to the financial statements drawn up in accordance with those third country standards contain an explicit and unreserved statement that they comply with IFRS. This could for example include GAAPs which were based on IFRS but were more restrictive on the use of options. The proposals had also been sent to the ESC which has the formal responsibility for them.

Views from Member States

Two Member States expressed outright opposition to granting the extension permitting the use of US/Canadian/Japanese (and other) GAAPs in Europe until 2009. They repeated fundamental concerns which had already been described in previous meetings:

- Non reciprocal – we were not asking for similar treatment for European companies in the US and this creates an obvious competitive disadvantage for EU companies versus US companies, in contradiction with the requirements of the EU Regulations, which state explicitly that they should be placed “on an equal footing”...”in world capital markets”.

- There were no safeguards against the SEC making interpretations of IFRS (although IFRS are not applicable in the US) and these, in due course, becoming accepted interpretations by companies operating exclusively inside Europe as well. This raises a systemic risk. And it concerns all Member States, including those with no companies listed in the US.
- There was no commitment from the US to end the reconciliation requirement to US GAAP for European issuers in 2009.

Beyond these arguments, one of these Member States considered that the draft decision as it stands now would undermine the EU position vis-à-vis the US, and should therefore be changed.

This Member State explained that any decision should respond to these questions raised, and in the first place: why offer an additional transition period beyond the period already granted in the Directive from 2005 to 2007? Would such a transition not benefit foreign issuers and be detrimental to all EU issuers, listed abroad or not: is it in the interest of the EU?

Furthermore, this Member State explained, if any such period was finally extended:

- How can such a period be extended without giving any guarantee regarding the decision to be made at the end of the said period, especially without determining in advance irrevocably what would happen if the requirements on EU companies are still in place in the US ?– i.e. we should decide now that the same requirements should then apply to US issuers in the EU;
- Since foreign GAAPs are not equivalent to IFRS, how can they be used without asking foreign issuers for remedies as of 1/1/07, in order to protect investors? We should be consistent and ask for remedies;
- And how could such a transition period be extended without any mechanism meant to avoid, as from 1/1/07, that the interpretation of IFRS be made in the US and applied in all Europe? We must reach this result, which is legitimate.

On the extension of this period to other third country GAAPs whose accounts are sufficiently close to IFRS (e.g. Australian) to be deemed equivalent, there was a general sentiment that establishing the point where these other GAAPs became sufficiently close to IFRS to be equivalent could be difficult to apply in practice. One Member State thought that treating these other third country GAAPs as already equivalent would create legal problems when later on in 2009 we have to determine whether US/Canadian and Japanese GAAPs are equivalent.

Another Member State advised that more time was needed to fully analyse and appreciate the content of these complex proposals and that today's comments were only preliminary.

Two Member States were concerned about the effect to the EU capital markets if other third country GAAPs were not granted an extension. They therefore supported an extension until 2009, not only for US, Canadian, Japanese and those which are close to IFRS (Australia, South Africa) but for all third country GAAPs.

Three Member States thought the overall approach (and especially in the recitals) was too defensive as we were not asking for something in return but one of these Member States was not against the idea of granting the extension itself. Stating in the recitals that the US, Japanese and Canadian GAAPs are as a whole equivalent (but remedies remain necessary) would undermine our position for the final decision. This Member State thought that under the current proposals, notably in the recitals, we would be closing options which we would not be able to reopen later on (in 2009).

Several Member States had difficulty in understanding the legal mechanism under which the Commission proposes to grant a transitional period. Some Member States explained that they understood the Transparency Directive to mean that a transitional period could only be granted for those GAAPs which the Commission deemed to be not equivalent. Nowhere in these proposals does the Commission state that these are not equivalent.

CESR expressed its concerns for the consequences for enforcement; CESR would prefer that only US, Japanese and Canadian GAAPs used by issuers from those countries be accepted.

The Commission explained that its legal service had confirmed the legal feasibility of the approach proposed. As for granting the extension to all third country GAAPs the Commission pointed out that this would be in contradiction with our objective to promote the use and acceptance of IFRS worldwide and especially in the US.

The Commission stated that it took note of the concerns expressed today and would review the situation following the discussion at the ESC later this week.

VI. UPDATE ON THE SITUATION WITH EFRAG – CREATION OF THE HIGH LEVEL GROUP

The Commission was pleased to refer to the Working Arrangement with EFRAG which was signed on 23 March. Copies of the document had already been sent to ARC Members. As indicated in that document, the Commission is now planning to create the High Level Group. The key purpose of this Group is to review, from the perspectives of objectivity and independence, the Opinions which EFRAG presents to the Commission before the Commission endorses an IFRS or IFRIC or any amendments to these. The Group is expected to be a small team of seven. Three or four of these shall be independent experts in the accounting field and the others high level representatives from national standard setters. These individuals will not already be personally involved in EFRAG's work.

The Chairman invited EFRAG to comment. EFRAG explained that it was very pleased that the Working Arrangement had been signed and was committed to ensuring that all the new arrangements, including the High Level Group when it is created, would work successfully in practice. EFRAG added that the Working Arrangement will strengthen the European perspective in dealings with the IASB.

Views from Member States

There was wide support for the signature of the Working Arrangement and recognition of the quality of EFRAG's work.

Several Member States were not convinced of the need for the creation of the High Level Group.

Another Member State stressed that it still wanted to receive a copy of EFRAG's opinion on a given issue before any influence of the High Level Group. Three Member States also thought that a cost-benefit analysis of this Group should be carried out before taking things further.

Several Member States expressed concerns that the addition of this group must not be allowed to lengthen the endorsement process. Two of these and CESR were also concerned about any change to the endorsement process itself and unclear about how the group fits into the endorsement process architecture. They wanted more clarity about the assessment process and methodology of the group.

One Member State thought that it was one of the tasks of the ARC to take account of any lack of quality or independence of EFRAG's advice. Some Member States and CESR thought that creating the High Level Group would undermine EFRAG. Another Member State also thought that creating this group now reflected badly on the ARC itself as it implied that the ARC had in the past voted for adoption of IFRS based on advice from EFRAG which had not been independent.

Some Member States thought that Recital 10 of the IAS Regulation 1606/02 meant that there could be only one committee giving advice to the Commission, not two.

The Commission replied by explaining that the creation of this Group was foreseen in the Working Arrangement signed with EFRAG. The Commission recalled that for various reasons it had not been possible to formally adopt EFRAG as a technical committee of the Commission and that the Working Arrangement had been the alternative, suitable compromise. The Commission recalled that concerns about the independence of EFRAG's advice had been voiced in the past by e.g. certain MEPs. The Commission must also address the issue of perception of independence. From the legal standpoint the creation of the group does not change the endorsement process in any way. The Commission concluded that in proceeding, account would be taken of the comments raised today and ARC members would be kept informed of future developments.

VII. IASB financing

The Commission presented a paper setting out the proposals and explaining the discussions taking place on this important topic. The paper indicates that the only practicable solution in the short term seems to be a voluntary scheme, as a mandatory one raises too many legal and administrative issues which cannot be handled in such a short time. However, in the long term, a more structured, mandatory scheme is needed to provide a stable and sustainable financing to the IASB.

The Commission also explained that the initiative needed a political signal to succeed and could not be left to the private sector alone. Therefore the Commission thought that giving this initiative support at the June ECOFIN would be a worthwhile step.

Views from Member States

There were conflicting views on the proposals in this paper. Some Member States were totally opposed to the financing proposals in the Commission document.

One of these Member States found that the paper was not clear if the contributions being proposed would be by company or by country. This Member State explained that if the

contribution was to come from companies that it was not this Committee which should be making these decisions. If, by contrast, the contributions were to come from Member States, then this Member State was opposed.

Another Member State also explained that as IFRICs were not provided on a company basis, asking companies to pay directly was questionable.

Another Member State explained that IASB funding should only be dealt with in a broader context i.e. together with EFRAG and PIOB funding. Furthermore this Member state thought that there should be a national consultation on such funding proposals. Accordingly this Member State would wish to see a document which could be used for such a consultation.

Another Member State thought that funding could not be discussed without any reference to what would be received in return (i.e. IASB governance). Furthermore the IASB needed to explain the expenditure side of its budget of €20 million. However companies should not be prevented from financing the IASB if they so wished. This Member state also explained that the proposals for the short and long term had to be coherent with each other.

Another Member State thought that Europe would lose influence if it did not take this matter of IASB financing seriously. This Member State agreed with the idea of a voluntary scheme in the short term and a mandatory scheme in the medium and long term. This Member State also thought that the Commission and Member States should work together to find a solution in the medium and long term.

Another Member State supported the solution for a voluntary system in the short term. This Member State took the view that the system had to be flexible enough to function smoothly and not become complicated by (unnecessarily) detailing all the steps.

Another Member State thought that a voluntary scheme would be difficult to apply in practice. This Member State asked that the Commission should clarify what the collection mechanism would actually be before going to ECOFIN. This Member State was opposed to presenting a document to the June ECOFIN. This Member State thought that this would give the impression to Ministers that Member States' budgets would be implicated and thus cause unnecessary alarm.

CESR doubted the feasibility for regulators to administer the collection mechanism.

There was a general sentiment that the document only gave an outline of the issues and that it needed to be far more detailed before the matter could be discussed further. This was particularly true if the Commission intended to present a document at the June ECOFIN with a view of securing a positive political signal.

The ECB noted that in the US the FASB is funded by a mandatory fee-based system. This should be borne in mind if the proposed voluntary European funding scheme is meant to be a model for other jurisdictions to raise finance for the IASB. In addition the ECB drew attention to the fact that the IASCF has not yet come forward as expected with a specific proposal for the long term funding of the IASB.

VIII. MISCELLANEOUS

Updating of the table on the decisions of Member States and EEA Countries concerning the use of options in the IAS Regulation (dated 17/01/2005)

In December last year the Commission had sent to ARC Members and EEA countries a copy of this table which appears on the Commission's website and requested, either information to update it or, if the situation remained as expressed in the table, confirmation of such. As some replies had still not been received, despite a reminder being sent in March of this year, the Commission asked if there were any further information to be provided. Three Member States agreed to provide their respective information as soon as possible.

Next meeting

The next ARC meeting was planned for 7 July.

Meeting of 24 April 2006

PARTICIPANTS' LIST

Austria

Ministry of Justice

Permanent Representation to the EU

Belgium

Commissie Boekhoudkundige Normen

FOD Economie

Cyprus

Czech Republic

Ministry of Finance

Denmark

Commerce and Companies Agency

Ministry of Economic and Business Affairs

Estonia

Estonian Accounting Standards Board

Permanent Representation to the EU

France

Conseil National de la Comptabilité (CNC)

Ministère de l'Economie, des Finances et de l'Industrie (Trésor)

Finland

Ministry of Social Affairs and Health

Ministry of Finance

Germany

Bundesministerium des Justiz

Greece

Hungary

Ministry of Finance

Ireland

Department of Enterprise, Trade and Employment

Italy

**Ministry of Economy and Finance
CONSOB
Bank of Italy**

Latvia

Ministry of Finance

Lithuania

Ministry of Finance

Luxembourg

Ministère de la Justice

Commission de surveillance du secteur financier

Malta

The Netherlands

**Ministry of Justice
Ministry of Finance**

Poland

Ministry of Finance

Portugal

CNC

CMVM

Slovakia

Ministry of Finance

Slovenia

Spain

**Banco de España
ICAC**

Sweden

Ministry of Justice

United Kingdom

Department of Trade and Industry

OBSERVERS

Iceland

Ministry of Finance

Liechtenstein

Norway

Ministry of Finance

Romania

Ministry of Public Finance

Bulgaria

Ministry of Finance

European Institutions/Committees

European Central Bank (ECB)

Committee of European Securities Regulators (CESR)

European Financial Reporting Advisory Group (EFRAG)

Commission

Pierre Delsaux, Acting Director, DG Internal Market and Services

Piotr Madziar, Head of Unit F3: "Accounting",

Ulf Linder, Deputy Head of Unit F3 "Accounting"

Remo Croci, Secretary to the ARC/F3

Annette Davis/F3

Arto Leppilahti/F3

Elzbieta Depukat/F3

Jane O'Doherty/H1 "Banking and financial conglomerates"

Allister Wilson (advisor)