



Mr David Devlin
President
Fédération des Experts Comptables Européens
Rue de la Loi 83

B-1040 Bruxelles

Berlin, 13. Februar 2004

Discussion Paper European Enforcement Coordination

Dear David

The German Accounting Standards Committee welcomes the opportunity to comment on FEE's discussion paper on the coordination of enforcement in Europe. GASC shares FEE's concerns that the benefits of increased market efficiency will be undermined unless there is consistent enforcement of IFRS throughout Europe.

Nevertheless, for the foreseeable future enforcement must take place at national level in the current legal environment. Likewise, a fully integrated European capital market can only be achieved via consistent enforcement processes and decisions across Europe. As differing organisational structures have been set up in the EU member states, it is vital that a coordination mechanism is created putting consistency in enforcement processes and decisions reached first, disregarding the organisational differences.

The Committee of European Securities Regulators (CESR) has been established as an independent committee of senior representatives from national public authorities in the field of securities. It is the obvious sponsoring organisation for any coordination efforts as it has an established network of member organisations. Its members have a number of responsibilities, enforcing financial reporting requirements is not the core function. A close cooperation with organisations active in the field of financial reporting as standardsetters, preparers, auditors or users would strengthen the expertise on which to base decisions.

GASC concurs that European enforcement coordination should have as its objective

- Coordination of major enforcement issues
- Monitoring and reporting to CESR as the coordinator how CESR's enforcement principles have been upheld by the relevant national enforcement bodies
- Monitoring enforcement sanctions
- Coordinating the databases of enforcement decisions both for internal and external use
- Cooperating with other enforcement bodies and organisations in the world, notably IOSCO.



CESR Standard No 1 on Financial Information contains the principle on which all further guidance should be built:

Principle 20

In order to promote harmonization of enforcement practices and to ensure a consistent approach of the enforcers to the application of the IFRSs, coordination on ex-ante and ex-post decisions taken by the authorities and / or delegated entities will take place. Material controversial accounting issues will be conveyed to the bodies responsible for standardsetting or interpretation. No general application guidance on IFRSs will be issued by the enforcers.

The CESRfin subcommittee on enforcement has built on this principle and issued a consultation paper on the coordination of enforcement activities.

GASC concurs that European enforcement coordination should have as its objective

- Coordination of major enforcement issues
- Monitoring and reporting how the CESR principles have been upheld on the national level
- Facilitating relationships with other enforcement bodies, notably with IOSCO
- Monitoring sanctions

3 General context for European coordination activities

GASC supports the general principles listed.

- We understand the aim of achieving official recognition. We believe that the best way of ensuring consistency in Europe is creating a forum for interchanging opinions on certain interpretation issues at CESRfin. That forum should be competent to request binding interpretations by IFRIC.
- Creating a level playing field cannot be achieved by a coordination mechanism. If there is agreement on creating a level playing field, a common basis will have to be created. It is GASC's understanding that there is no initiative on the way beyond creating enforcement bodies. The scope of actions is far from being harmonised. It is important that all enforcement efforts in Europe have credibility. This will have to be achieved in the field.
- Involvement of all relevant bodies carrying out enforcement at national level is essential: it is the function, not the organisational structure that authorises coordination efforts.
- A form of due process to coordinate decisions with cross-border implications will be needed. It would not only entail implication in cases with more than one listing in at least two member states; there is a very strong argument for a common approach towards non-EU enterprises listed on any EU market.
- Involvement of stakeholders has to be dependent on the activity to be coordinated. Self regulation has an obvious limitation when it comes to public interest, sanctions and



finances. While it is obvious why FEE does not define “appropriate”, a common understanding of appropriate involvement of stakeholders will be essential.

- It is arguable to plead for reporting models on national decisions at national level in a paper on international coordination. A European database indeed depends on national contributions. A coordinating mechanism is not the vehicle to introduce a regulation binding national requirements.
- FEE’s arguments for global coordination seem to be neglecting the long standing efforts for global coordination within IOSCO; some of them lead by European enforcement bodies. A European coordination cannot be seen as a step, but only as a further step towards global coordination.

4 Functions of enforcement coordination

GASC concurs with the principles of coordinating enforcement issues. We have some reservations as to operating a consultative mechanism in order to exchange views and experiences, a sounding board. The wording seems to be very vague. Good communications are essential. However, enforcement decisions should not be based on a basis of acceptability by all parties involved.

5 Structure of Enforcement Coordination

GASC fully concurs with the need for coordination regardless of organisational structures. It could be argued that the strict division into a group of CESR members on the one hand and another group of CESR members and others might be counterproductive. The division of functions should be the decisive factor, specifically as this division might differ from country to country. Having coordination of functions within the CESR group where some CESR members do not provide that function will not work.

Again, the wording around the consultative mechanism is very vague. All stakeholders should not be involved in pending enforcement decisions; political and socially relevant issues do not lend themselves to agreement in a big public forum and not as criteria for compliance with financial reporting requirements.

6 Interpretations and implementation guidance

GASC fully supports the notion that strong commitment to high quality, global principle-based neutral financial reporting standards is needed. We believe that Principle 20 of CESR Standard No 1 should always be borne in mind when discussing possible mechanisms for interpretation in Europe (that is, no general application guidance on IFRSs will be issued by the enforcers.) Arguably, CESR’s recommendation for additional guidance regarding the transition to IFRS published in December 2003 contradicts the above stated principle.

Pre-clearance advice is a service rendered by some European enforcement bodies currently. The labelling as consultation or counselling does not conceal the fact that the diversity of services on offer by enforcement bodies distorts the level playing field aimed for. The mechanism for coordination should embrace all decisions; there is no argument for separate action for pre-clearance advice.



7 Transparency and publication

GASC supports the establishment of two databases, one for external and one for internal use. It would be very helpful if the development phase could be initiated very soon in order to be in working mode as soon as possible.

While developing publication criteria is necessary, we do not see any merit in possibly having the same as for consultation: they should be identical. The data basis is set up for the coordination; therefore there is no room for more or less publication.

GASC concurs with setting up an external data basis as a central information point. As long as the process is not harmonised any further, the extent of publication will very much depend on the national process.

8 Diagram coordination mechanism

The links between the national and the European level are all one way. It would be more appropriate to see merit in a two-way coordination, e.g. from national securities regulators to CESR and from CESR to national securities regulators. Furthermore, it should not be excluded to have communications directly between national review panels and other enforcement bodies and CESR.

If you would like to discuss any part of our comments, if we could clarify any part, please contact me.

Kind regards

Prof. Dr. Klaus Pohle