



European Economic and Social Committee

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Annual accounts - insurance
companies

Brussels, 22 January 2003

OPINION

of the European Economic and Social Committee

on the

Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC, 83/349/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies and insurance undertakings

COM(2002) 259 final - 2002/0112 (COD)

On 19 July 2002, the Council decided to consult the European Economic and Social Committee, under Article 44(1) of the Treaty establishing the European Community on the

Proposal for a Directive of the European Parliament and of the Council amending Council Directives 78/660/EEC, 83/349/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies and insurance undertakings
COM(2002) 259 final - 2002/0112 (COD).

The Section for the Single Market, Production and Consumption was responsible for the Committee's work on the subject. The Committee appointed **Mr Ravoet** as rapporteur-general.

At its 396th plenary session (meeting of 22 January 2003), the European Economic and Social Committee adopted the following opinion, with 72 votes in favour and one vote against.

1. Introduction

1.1 In its communication of 13 June 2000 entitled "The EU's Financial Reporting Strategy: The Way Forward" the Commission proposes that all EU listed companies should be required to prepare their consolidated accounts in accordance with International Accounting Standards (IAS) from 2005 at the latest. The aim of this measure is to enhance overall market efficiency, thereby reducing the cost of capital for companies. The communication is in keeping with the Financial Services Action Plan, which the Lisbon European Council of 23-24 March 2000 required to be completed before 2005. The communication allows the Member States the option of extending the application of IAS to unlisted financial institutions and insurance companies in order to enhance comparability throughout the sector and ensure efficient and effective supervision.

1.2 The Commission communication is split into two parts: the introduction of IAS in the EU and the alignment of the existing EU Accounting Directives on IAS.

1.3 To implement the first part, the Regulation of the European Parliament and of the Council on the application of International Accounting Standards was adopted on 19 July 2002. This regulation sets out the mechanism for recognising IAS in the EU.

1.4 The regulation lays down that from 1 January 2005 all listed companies should prepare their consolidated financial statements in accordance with IAS approved for use in the EU. Member States are allowed the option of permitting or requiring the application of adopted IAS by the above companies, or by other companies, in the preparation of their annual accounts. In its opinion of 17 September 2001, the EESC underlined the need to take account of the social information which has to be made available to employees¹.

¹ EESC opinion, OJ C 260, 17.9.2001

1.5 To implement the second part, the existing EU Accounting Directives will be aligned on IAS. It is this alignment which is the subject of this opinion. Attention is drawn to the fact that originally these adjustments did not apply to Directive 86/635/EEC on the annual accounts and consolidated accounts of banks and other financial institutions. Following discussions in the Council, however, the current proposal will also apply to the directive. The following directives are now to be amended:

- the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies;
- the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts;
- Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions; and the
- Council Directive of 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings.

1.6 According to the Commission, the Accounting Directives will play an important role in the mechanism for adopting IAS under the proposed IAS Regulation. In addition, the intention is that they will continue to be the basis of accounting legislation for entities which do not prepare their annual or consolidated accounts in accordance with adopted IAS further to the IAS Regulation. They also deal with important matters which are outside the scope of the IAS Regulation (e.g. the requirement to obtain an audit and to prepare an annual report) and will continue to govern these areas.

1.7 In a certain number of areas the provisions of the Accounting Directives, which have remained largely unchanged for more than 20 years, are inconsistent with IAS. The Commission wants to remove these inconsistencies with the present proposal. The proposal will remove all inconsistencies between Directives 78/660/EEC, 83/349/EEC, 86/635/EEC (added) and 91/674/EEC and IAS in existence at 1 May 2002.

2. Summary of the contents of the proposal for a directive

2.1 Fourth Directive on the annual accounts of certain types of companies

2.1.1 Member States will have the power to permit or require additional statements, e.g. a cash flow statement, to be provided in annual accounts.

2.1.2 Member States will have the power, in accordance with IAS, to permit or require the disclosure of amounts in items in the profit and loss account and the balance sheet to reflect the

substance of the reported transaction or arrangement, rather than its legal form. Such permission or obligation may be limited.

2.1.3 Member States will have the power to permit companies to draw up a balance sheet in accordance with the requirements of IAS. At the same time it is anticipated that there will be a future reform of the presentation of the income and expenditure account.

2.1.4 The recording of provisions is subject to stricter rules under IAS than under the Fourth Directive. The present proposal for a directive defines the reporting of provisions consistent with IAS for companies applying IAS, but provides for a status quo for the annual accounts of unlisted companies.

2.1.5 A revaluation of intangible fixed assets is scheduled in accordance with IAS 38.

2.1.6 Member States will have the power to extend use of the "fair value" concept, which has already been introduced into the annual accounts directives by Directive 2001/65/EEC, to other asset categories (possibly only in consolidated financial statements) and include changes to this value in the income and expenditure account.

2.1.7 The underlying requirement to draw up an annual report that gives a fair review of the development of the company's business and of its position is to be extended. Attention now is to be paid to the company's performance and to the biggest risks and uncertainties facing it. An analysis of the relevant environmental, social and other aspects is to be provided alongside the financial information if this is necessary in order to have a good understanding of the company's development, performance or position.

2.1.8 In cases where extracts from the annual report have been published, it is now laid down in the proposed directive that, in addition to disclosure of a declaration with or without qualification, or a declaration without a judgment, it must also be disclosed whether the auditors have drawn attention in their report to any matter without qualifying the audit report. At the same time the proposed directive seeks to bring about further harmonisation in these audit reports.

2.1.9 Changes are to be made further to the introduction of the euro.

2.1.10 Listed companies may no longer apply for exemption from certain obligations.

2.2 **Seventh Directive on consolidated accounts**

2.2.1 Under IAS, an undertaking is a subsidiary undertaking if it is controlled by a parent, irrespective of the existence of an interest in the capital of the undertaking. The current requirement in the directive for a participating interest to exist is to be scrapped, which will bring the directive into line with IAS requirements.

Also to be scrapped are the rules providing for the exclusion of an undertaking from the consolidated accounts of the parent if its activities are incompatible with those of the parent such that inclusion would fail to meet the requirement to give a true and fair view of the undertakings included therein taken as a whole. It is now felt that this is never the case.

2.2.2 Provisions similar to those in points 2.1.1, 2.1.7, 2.1.8 and 2.1.10 are provided for in the proposals for revising the Seventh Directive. Where both an annual report and a consolidated annual report are required, provision is also made for the two reports to be combined.

2.3 **Directive on the annual accounts and consolidated accounts of banks and other financial institutions**

2.3.1 Most of the changes proposed to Directive 86/635/EEC are consequential to those to the Fourth Directive described above.

2.3.2 Member States may also permit or require credit institutions or certain types of credit institutions to draw up their balance sheet depending on the type of the balance sheet items and their relative liquidity.

2.3.3 As a derogation from the Fourth Directive, Member States may permit or require credit institutions or certain types of credit institutions to draw up a performance report instead of an income and expenditure report if the information to be set out therein is equivalent.

2.3.4 As a consequence of the abolition of the exclusion of an undertaking from the consolidated accounts if its activities are incompatible with those of its parent (point 2.2.1), the obligation for a parent credit institution to include in its consolidated accounts subsidiaries that are not credit institutions and whose activities are a direct continuation of banking activities is also to be abolished. In any case such an exception will become superfluous through the amendment to Directive 83/849/EEC.

2.4 **Directive on the annual accounts and consolidated accounts of insurance undertakings**

2.4.1 Most of the changes proposed to Directive 91/674/EEC are consequential to those to the Fourth Directive described above.

2.4.2 Further amendments are scheduled in connection with the use of fair value in the case of certain specific items further to IAS 39.

3. General assessment

3.1 The EESC welcomes the alignment of the Accounting Directives on IAS. The EESC does, however, draw attention to the fact that IAS are constantly evolving. The proposed directive will remove all inconsistencies with IAS that existed on 1 May 2002. But since then a whole lot of major changes to IAS have been undergoing development. If such adjustments create new conflicts with the EU Accounting Directives, these conflicts should in the EESC's view, be resolved as quickly as possible.

3.2 Current EU texts relating to accounting and prudential aspects of banking supervision continue to refer to subconsolidations (consolidations to be carried out also by subsidiary enterprises). The EESC draws attention to the failure to take advantage of the opportunity to abolish these subconsolidations bearing in mind that this form of consolidation is a relic of the earlier national accounting laws. When we have standard European accounting laws (in respect of consolidation), such subconsolidations would appear to be superfluous, particularly as regards the prudential supervision of banks. The EESC therefore proposes that the European Commission initiate talks with the Banking Advisory Committee to examine whether the prudential supervision of banks can be organised without requiring credit institutions to carry out subconsolidation. Once a European group or conglomeration of enterprises opts to apply IAS rules (either on a voluntary basis or under the provisions of the IAS regulation), such a body must be given the opportunity to draw up only one annual set of consolidated accounts. In order to clarify the situation, the EESC proposes that the European Commission provide an explanation of the relation between the field of application of the IAS regulation and that of the modernising directive.

3.3 With the introduction of a specific statute for a European Company, the EU took a major step towards harmonising the legal framework within which European firms operate. The relevant regulation is to come into force on 8 October 2004. The national accounting laws should, in the EESC's view, also be adapted by then in order to get the European Company off on the right foot. Obviously, such a European Company should be able to apply IAS without still being subject to national accounting laws.

3.4 The evolution of IAS is apparent, among other things, from the IAS Board's recent treatment of the issue of the consolidation of special purpose vehicles (SPVs). For the banking sector it is important that, even though they need to be included in consolidated accounts, securitisation vehicles should not give rise to capital weighting in the prudential sphere. The same consideration applies in the case of the insurance sector.

3.5 The use of fair value within the banking sector in accordance with IAS is not readily compatible with the rules of risk management as laid down by the Basle Committee. The text of the proposed directive could, in the EESC's view, impose an obligation on the European Commission to work within the IASB to ensure that the IAS take more account of the Basle standards.

3.6 The EESC believes that, in the prudential area, further fine-tuning is also necessary between the rules set out in the Capital Adequacy Directive in respect of investment services and the IAS.

3.7 Attention should also be paid to the fact that there are no IAS covering insurance contracts. It is highly probable that such a standard will not be adopted by the IASB before 2004. Until such time as a comprehensive IAS covering insurance contracts is ready to be applied, the EESC takes the view that insurance companies should be given the opportunity to make good this omission by having recourse to "best practice".

3.8 In the area of taxation, serious problems also arise. The introduction of IAS at consolidated level is in fact an artificial approach. For banks it is almost impossible to draw up consolidated annual accounts in accordance with IAS without first drawing up IAS-compatible ordinary annual accounts. The same applies to insurance companies. Unlike industrial firms, the impact of IAS-39 on banks and insurance companies as regards the valuation of financial instruments is in fact very great. To avoid complex conversions, these institutions should thus draw up ordinary annual accounts in accordance with IAS. The EESC concludes that this leads to duplication with regard to the ordinary annual accounts.

3.9 In some European countries, the link between the ordinary annual accounts and taxation does, however, make it impossible for the moment to find a solution immediately. Nevertheless it is particularly important that listed companies should no longer be obliged to use two accounting standards. The EESC therefore believes that the proposed directive should contain an article creating a link with tax harmonisation within the EU. The EESC does, however, take the view that until such time as tax harmonisation is achieved in the EU, the options for the Member States set out in the modernisation directive should be retained in order to facilitate tax-neutral implementation.

3.10 In Europe there seems to be a trend developing towards tax consolidation. In the EESC's view, the European Commission should carry out further investigations to determine whether the IAS provides a good basis for establishing companies' tax obligations.

3.11 Some Member States have already announced that they will be drawing up new national rules described as being "convergent" with IAS; such standards will thus not be completely identical with IAS. The EESC draws attention to the fact that such measures run counter to the trend towards establishing international accounting standards. Furthermore, such measures require enterprises operating at international level to carry out expensive implementing procedures. An enterprise operating in five Member States will not just have to implement a single given standard once; it will be required to carry out five different implementing procedures, not to mention the attendant analyses of the differences between the various procedures.

3.12 Although the demand for complete conformity between new national accounting rules and IAS is in line with the desire to establish uniform accounting standards for all enterprises in

the EU, such an approach will, in practice, give rise to problems until such time as uniform provisions have been introduced in all legal areas, such as taxation in general and withholding tax on dividends in particular. The EESC therefore calls upon the European Commission to work towards further standardisation in these fields. Until such time as this goal has been achieved, the modernisation directive should give Member States the opportunity to make their own national provisions for implementing this directive, particularly with regard to SMEs, which find it particularly difficult to implement the IAS.

3.13 The EESC also takes the view that it is essential to take account of the importance of social and environmental considerations and believes that information on these aspects should be included in the annual accounts.

3.14 Finally, the EESC highlights the importance of scrupulously applying audit rules, such as those laid down by the International Auditing and Assurance Standards Board (IAASB).

4. **Conclusion**

4.1 The EESC welcomes the proposals set out in this modernising directive for aligning the EU accounting directives on IAS. The proposed alignment will make it easier for investors to compare the annual accounts of companies in the EU. This, in turn, will help to increase the efficiency of the market, thereby cutting companies' cost of capital. This conclusion is in line with the conclusions reached by the EESC in its earlier work on this subject².

4.2 There needs to be an awareness of the fact that European accounting law should clearly evolve further in the direction of more standardisation. Otherwise, there is, in the EESC's view, a real risk that the measure will result in a heavier reporting burden being placed on the companies concerned.

²

See the Committee's Opinion on the application of international accounting standards – OJ No. C260 of 17.09.2001

4.3 The EESC believes that the tax implications of the introduction of IAS also require further investigation. The EESC thus takes the view that further tax harmonisation in the EU is desirable in this context too.

Brussels, 22 January 2003.

The President
of the
European Economic and Social Committee

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