

## SUMMARY RECORD

MEETING OF  
THE ACCOUNTING REGULATORY COMMITTEE  
OF 8 SEPTEMBER 2004

M. Schaub, Director General of DG Internal Market chaired the tenth committee meeting.

### **Agenda item 1 – Approval of the minutes of the ARC meeting of 9 July 2004**

The minutes were approved, subject to comments from three Member States.

### **Agenda item 2 – IAS 39 – State of Play**

#### 1. The current position of Commission services

In his introductory remarks, the Chairman recalled the common objective of the Commission and the Member States to implement the financial reporting strategy on time, i.e. 1 January 2005. A full endorsement of IAS 39 currently faces two obstacles: the full fair value option and portfolio hedging of core deposits.

- On the full fair value option, the Chairman recalled that Article 42a of the Fourth Company Law Directive does not allow a company to fair value its own liabilities whereas IAS 39 in its present form does not contain such limitation. In the light of the positions expressed by the European Central Bank and the Basle Committee, the IASB published an Exposure Draft containing a restricted fair value option in March 2003 the consultation of which was closed by July 2005. The Commission already urged the parties concerned (IASB, ELB, Basel regulations) to find a solution in the light of the comments the IASB received.
- On hedge accounting, the current discussions between representatives from the IASB and from European banks are ongoing; finding a solution here is also urgent.

On the way forward, the Chairman regretted that an immediate endorsement of the full standard is at present not feasible. Instead, three options are actually conceivable: Option 1 would provide for a partial carve out of provisions related to the two issues above. Option 2 would not touch the standard, but exclude banks from its application. Option 3 would imply that the Commission takes no action, but defers the endorsement until a stage where all outstanding discussions were settled.

The Commission services would favour the first option as it would be the most limited carve out in substance and in time. The carve out should be temporary. Options 2 and 3 would have more disadvantages as it would a) privilege those companies which are actually not ready to moving to IAS 39 as from 1 January 2005 and b) not provide any incentive to end internal disputes inside the banking community on the right way forward.

## 2. Questions from Member States

Responding to questions from Member States, the Chairman explained that

- Article 42a of the Fourth Company Law Directive would not allow Member States to introduce the full fair value option on a national basis and companies would not be able to apply it.
- Companies can apply the provisions on hedge accounting under IAS 39 which have been carved out. Member States may also require companies to do so;
- Companies who prepare their accounts for the first time in 2005 under IAS will be “first time adopters” under IAS/IFRS. At present, the Commission prefers clarifying this in a recital of the Regulation;
- Companies would have to make clear in their financial statements whether they are in full compliance with IAS or with IAS as endorsed by the European Union.

Member States’ main comments were as follows :

- Several Member States asked for a written opinion by the Commission Legal Service as to whether a partial carve out is indeed allowed under the IAS Regulation;
- One Member State questioned whether national discretion on hedge accounting should be allowed;
- One Member State suggested that a partial carve out should be limited in time and the justification for such carve out should not pre-empt the future outcome of discussions on the fair value option;
- Two Member States wondered whether the carve out of the full fair value option should not be limited to liabilities only, but also extended to the assets of a company.

## 3. Preliminary positions of the Member States

18 Member States indicated support for option 1; four Member States favour option 2 whereas one Member State would currently opt for a deferral of the endorsement according to option 3.

Member States which are currently inclined to support option 1 made the following reservations:

- The need for appropriate legal justification by the Commission that a carve out is legally possible, in particular in the light of the Commission’s opinion expressed in November 2003;
- One delegation considered a combination of option 1 and 2 (partial endorsement limited to banks) as another viable solution;

- The partial endorsement should not prejudice a final full endorsement and should therefore be limited in time reflecting an exceptional situation;

Member States which currently favour either option 2 (sectoral carve-out) or option 3 (deferral) had the following concerns:

- Partial endorsement might be incompatible with the IAS Regulation;
- partial endorsement would set an unfortunate precedent for future cases;
- the envisaged carve outs would pose technical problems and would have wider effects on the remaining parts of the standard, in particular on the effectiveness test for hedge accounting;
- if the final solution were option 2, it could not be limited to banks, but should also cover insurance;
- a proper due process on the technical annex with the parties concerned is missing and time is required.

CESR pointed out that deferring option 3 would leave a huge gap for listed companies in 2005. It acknowledged that there is a problem of compatibility of the full fair value option with Article 42a of the Fourth Company Law Directive. CESR suggested EFRAG should examine the technical annex.

#### 4. Conclusions by the Chairman

The Chairman concluded

- a) that the Commission will respond to the Member States request for a legal paper, covering inter alia the legal feasibility of partial carve outs;
- b) that Member States are invited to send comments on the legal and accounting questions on the current Commission proposal (option 1) within one week;
- b) that a revised proposal for a draft Commission regulation should be circulated to Member States as soon as possible;
- c) that the Commission will inform about the target dates for the completion of discussions on the outstanding issues (full fair value hedging and hedge accounting ) in the next meeting;
- d) that the Commission will ask for a formal vote by Member States on 1 October; and
- e) that the Commission will consider to liaise with EFRAG on an assessment of the technical annex.

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ACCOUNTING REGULATORY COMMITTEE  
Meeting of 8 September 2004

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**Finanzministerium**

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**SPF Economie**

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**Danish Commerce and Companies Agency**

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**Estonian Accounting Standards Board**

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**European Financial Reporting Advisory Group (EFRAG)**

**Commission**

**Alexander Schaub, Director General of the DG Internal market,**

**Chairman of the ARC**  
**David Wright, Director "Financial markets"**  
**Karel Van Hulle, Head of Unit "Accounting & Auditing",**  
**Chairman of the ARC**  
**Jürgen Tiedje, Secretary to the ARC/ G5**  
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