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Internal Market and Services DG

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE
Accounting

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AGENDA PAPER FOR THE MEETING OF THE ACCOUNTING REGULATORY COMMITTEE ON 2ND FEBRUARY 2007 (DOCUMENT ARC/08/2007)

**Subject: Relationship between the IAS Regulation and the 4th and 7th
Company Law Directives
Can a company preparing both individual and consolidated accounts
in accordance with adopted IFRS issue the individual accounts
before the consolidated accounts?**

1. ISSUE

- 1.1.** At the Accounting Regulatory Committee meeting of 26 September 2006, the Estonian delegation asked if a company preparing both individual annual accounts and consolidated accounts in accordance with IFRS as adopted by the EU, could issue the individual annual accounts before the consolidated accounts. On 19 October 2006, the Estonian delegation sent a paper to the Commission which detailed further their question and commented on the Commission document (“Interaction of the IAS Regulation with the Company Law Directives” [Document ARC/15/2006] presented at the 26 September ARC meeting) as follows:
- 1.2.** *"IFRIC's view: The issue whether separate financial statements could be issued before consolidated financial statements has already been dealt with by the IFRIC Committee. The IFRIC decided that separate financial statements issued before consolidated financial statements could not be considered to comply with IFRS, because separate financial statements should identify the consolidated financial statements to which they relate (IAS 27.42)."*
- 1.3.** *"Commission's view: The conclusion paragraph of the Commission's document on “Interaction of the IAS Regulation with the Company Law Directives” states that The Commission Services are of the opinion that, if a company chooses or is required to prepare its annual accounts in accordance with adopted IFRS, **the requirement to prepare consolidated accounts in IAS 27 does not apply.**” This conclusion seems to suggest that*

the requirement in IAS 27.42 that the separate financial statements should identify the consolidated financial statements to which they relate is not relevant in the EU IFRS framework and therefore companies preparing their financial statements in accordance with the IFRS as adopted in the EU could issue their annual accounts before issuing consolidated accounts (although in IFRIC's view this is not acceptable for companies reporting under "full IFRS"). We would like the Commission to clarify in the revised document whether our understanding of the Commission's view is correct."

- 1.4. One needs to bear in mind that the parameters under which IFRIC and the Commission made their respective pronouncements are different: IFRIC made its comments from the perspective of the general global context of IFRS whereas the Commission's comments are from the perspective of the European Union's legislative framework.**

2. LEGISLATIVE BACKGROUND AND INTERPRETATION

- 2.1.** As mentioned in the Commission's document on "Interaction of the IAS Regulation with the Company Law Directives" (Document ARC/15/2006) circulated before the Accounting Regulatory Committee on 26 September 2006, the term "annual accounts" comes from the Fourth Company Law Directive (78/660/EEC) whereas the term "separate financial statements" is defined by IAS 27.
- 2.2.** The definition of annual accounts is provided by the Fourth Company Law Directive as the starting point for a company to prepare accounts. Subsequent to this, if a company is also a parent company, then it needs to determine whether the Seventh Company Law Directive requires the preparation of consolidated accounts.
- 2.3.** Article 5 of the IAS Regulation allows Member States to permit or require companies to prepare their annual accounts in conformity with IFRS as adopted by the EU. This article expressly refers to the annual accounts of a company as a set of financial statements different from consolidated accounts, i.e. individual statutory accounts. This is confirmed by the wording of Article 5(b) stating that "Member States may permit or require: ... companies ... to prepare their consolidated accounts and/or annual accounts" in conformity with IFRS as adopted by the EU. Thus, Article 5 gives an option for annual accounts to be prepared in conformity with IFRS as adopted by the EU, irrespective of whether consolidated accounts, if any, are prepared in conformity with IFRS as adopted by the EU. Therefore, where this option is used, annual accounts may be issued in conformity with IFRS as adopted by the EU, independently from the issuance and even the existence of consolidated accounts.
- 2.4. The Commission Services are of the opinion that a parent company is required to prepare annual accounts as defined by the Fourth Directive. Where, under the IAS Regulation, a company chooses or is required to prepare its annual accounts in accordance with IFRS as adopted by the EU, those provisions in IAS 27 setting out the requirement to prepare consolidated accounts do not apply. Such annual accounts are**

described as having been prepared in accordance with IFRS as adopted by the EU.

- 2.5. The Articles in the Fourth Directive that still apply to companies that use IFRS as endorsed by the EU to prepare their annual accounts, are set out in the document “Comments concerning certain Articles of the Regulation (EC) No 1606/2002”, published by the Commission on November 2003, in section 3.3:¹

“A company which is required to prepare **annual accounts** and which falls within the scope of the IAS Regulation as a result of the application of Article 5 of the IAS Regulation, is required to comply with national law transposed from those Articles in the Fourth and Seventh Directives that deal with the audit, annual report and certain disclosures that are beyond the scope of International Accounting Standards. For the avoidance of doubt, the following Articles in the Fourth and Seventh Council Directives continue to be relevant to such annual accounts:

- (a) In the case of the Fourth Council Directive, Articles 11, 12, 27, 43(1)(2), 43(1)(9), 43(1)(12), 43(1)(13), 45(1), 46, 47(1), 47(1a), 47(2) last sentence, 48, 49, 51, 51a, 53, 56(2), 57 and 58.
- (b) In the case of the Seventh Council Directive, Article 9(2).”

- 2.6. Articles 47 to 49 relate to the publication requirements of annual accounts and therefore, these requirements are still applicable when preparing annual accounts using IFRS as adopted by the EU.

- 2.7. The Commission’s November 2003 document also sets out the Articles that still apply to companies that use IFRS as endorsed by the EU to prepare their consolidated accounts. Article 38, which sets out the requirements for the publication of consolidated accounts, still applies to these companies. It should be noted that whilst the Fourth and Seventh Directives have separate publication requirements and do not explicitly refer to the timing of publication, the Commission Services believe that there was never any intention for separate publication dates. However, Member States can permit separate publication dates if they choose to do so.

3. CONCLUSION

- 3.1. **The Commission Services are of the opinion that, if a company chooses or is required to prepare its annual accounts in accordance with IFRS as adopted by the EU, it can prepare and file them independently from the preparation and filing of its consolidated accounts – and thus in advance, where the national law transposing the Directives requires or permits separate publication.**

¹ http://ec.europa.eu/internal_market/accounting/docs/ias/200311-comments/ias-200311-comments_en.pdf

3.2. We draw your attention to the fact that this opinion of the Commission is not legally binding. According to the EC Treaty, the Court of Justice has a sole jurisdiction to interpret the acts of the institutions of the Community. The Commission also reserves the right to change its views presented in this paper.

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