



**COMMITTEE OF EUROPEAN SECURITIES REGULATORS**  
**THE CHAIRMAN**

EFRAG  
Mr. Pedro SOLBES

Square de Meeus 35  
B-1000 BRUSSELS

Date: 27 November 2009  
Ref.: CESR/09-1164

**EFRAG's draft response on the IASCF Constitution Review Phase II**

The Committee of European Securities Regulators (CESR), through its standing committee on financial reporting (CESR-Fin), has considered EFRAG's draft response on the the IASCF's proposed amendments to its Constitution.

We thank you for this opportunity to comment on your draft response. Our detailed comments on the amendments are set out in the appendix to this letter. You will see that we agree in principle with most of the by the IASCF proposed amendments but think that further consideration by the IASCF is needed in a few areas:

- We note that the Trustees have already taken a number of steps to enhance their oversight activities. Nevertheless CESR believes that some of those steps need to be taken further and that more regular and transparent feedback is needed to the IFRS Boards' constituents on what it is doing.
- We welcome the proposal that the IFRS Board should develop its technical agenda in consultation with the Trustees and the SAC. However, we believe that the IFRS Board's agenda priorities, and the scope and key elements of the Board's work programme, should be subject to public consultation, at least every two years.
- We note the Trustees' deliberations on why a reference to principle-based standard-setting should not be made in the Constitution. However, CESR is not convinced by those arguments and remains of the view, as stated in our earlier comment letter on the Constitution Review, that an explicit reference to principle based standard-setting should be included in the Constitution.

In addition we would like to take the opportunity to note that the Board has launched a number of new initiatives and has decided over the last year to add a number of new topics to its agenda. However, CESR thinks that the IASB priorities should remain firmly in the domain of setting accounting standards and related disclosures for listed companies.

I would be happy to discuss all or any of these issues further with you.

Yours sincerely,

Eddy Wymeersch



### Question 1

The trustees seek views on the proposal to change the name of the organisation to the 'International Financial Reporting Standards Foundation', which will be abbreviated to 'IFRS Foundation'.

The trustees also seeks vies on the proposal to mirror this change by renaming the International Accounting Standards Board, which will be abbreviated 'IFRS Board'. Do you support this change in name? Is there any reason why this change of name might be inappropriate?

CESR supports this change in name of the International Accounting Standards Board (IASB) to the International Financial Reporting Standards Board (IFRS Board) and of the International Accounting Standards Committee Foundation to the International Financial Reporting Standards Foundation. However, CESR believes that setting accounting standards for listed companies should remain the main focus and priority of the Board.

### Question 2

The trustees seek views on the proposal to replace all references to 'accounting standards' with 'financial reporting standards' throughout the Constitution. This would accord with the name change of the Foundation, the Board and the formal standards developed by the IASB – International Financial Reporting Standards (IFRSs).

Do you support this change?

We agree with the proposal to replace all references to 'accounting standards' with 'financial reporting standards' throughout the Constitution. Please refer to our response to Question 1.

### Question 3

The trustees seek views on their proposal to change section 2 as follows:

The objectives of the ~~IASB~~ IFRS Foundation are:

- (a) to develop, in the public interest, a single set of high quality, understandable, ~~and~~ enforceable and globally accepted accounting financial reporting standards that require high quality, transparent and comparable information in financial statements and other financial reporting to help participants in the world's capital markets and other users make economic decisions;
- (b) to promote the use and rigorous application of those standards;
- (c) in fulfilling the objectives associated with (a) and (b), to take account of emerging economies and, as appropriate, the special needs of small and medium-sized entities ~~and emerging economies~~; and
- (d) to bring about convergence of national accounting standards and ~~International Accounting Standards~~ and International Financial Reporting Standards (IFRSs, being the standards and interpretations issued by the IFRS Board) to high quality solutions.

**Do you support the changes aimed at clarity?**

We agree with the proposals and think it is important that financial reporting standards are globally accepted. The use of such a phrase emphasises in our opinion the need for the IFRS Board to consult with and find support amongst a wide variety of constituents.

We remain of the opinion however that the primary focus of the IFRSB should remain the needs of capital market participants. Owing to their high quality and complexity IFRSs are intended mainly for use by listed companies, however the reference in the Constitution to taking into account the particular needs of small and medium-sized entities and emerging markets could increase the



importance of IFRS over the coming years and as such we considered it helpful. However, it is unclear to us what is exactly meant by “taking account of, as appropriate”.

We believe it is important that IFRS remains a single set of high quality, global standards. By definition small and medium-sized entities need accounting standards that are simpler and therefore potentially of a lesser quality than their listed counterparts. Consideration of the particular needs of small and medium-sized entities should not therefore detract from the aim of striving for the global high quality solution that IFRSs represents for listed companies.

We note the Trustees’ deliberations on why a reference to principle-based standard-setting should not be made in the Constitution. However, CESR is not convinced by the arguments presented and remains of the view, as stated in our earlier comment letter on the Constitution Review, that an explicit reference to principle based standard-setting should be included in the Constitution. Additional guidance could then be provided on what “principles-based” means including explanation to the effect that there is a lesser need to publish extensive implementation guidance when a principle is clear and the risk of inconsistent application is low, than in cases where the principles within a particular area are complex and the risk of inconsistent application is high.

#### **Question 4**

**The trustees seek views on the proposal to amend section 3 of the Constitution as follows:**

The governance of the IASC IFRS Foundation shall primarily rest with the Trustees and such other governing organs as may be appointed by the Trustees in accordance with the provisions of this Constitution. A Monitoring Board (described further in sections 18-23) shall provide a formal link between the Trustees and public authorities. The trustees shall use their best endeavours to ensure that the requirements of this Constitution are observed; however, they ~~are empowered to~~ may make minor variations in the interest of feasibility of operation if such variations are agreed by 75 per cent of all the Trustees.

**Do you support this clarifying amendment?**

CESR considers the creation of a Monitoring board an enhancement to the accountability of the IASCF and the IFRS Board as long as its governance rules are clear, transparent and efficient. We agree with the amendments proposed and think that more experience needs to be gathered before proposing other additional changes to the constitution, if required. We believe that two years after the creation of the Monitoring Board would be a good moment to evaluate its functioning and composition and to consider whether improvements are needed.

In addition we note that section 3 of the Constitution states that “The trustees shall use their best endeavours to ensure that the requirements are observed; they may make minor variations of the interest of feasibility of operation if such variations are agreed by 75 per cent of the Trustees”. CESR believes that a key role for trustees is to ensure that the requirements of the Constitution are observed at all times. We would invite the Trustees to communicate why they believe there is a need for such a facility to vary and to remove this reference as part of a future revision of the Constitution. In the meantime we would like to ask the Trustees to reveal in which situations this facility has been used in the past and to use it in future only in very rare circumstances for truly minor issues.

#### **Question 5**

**The trustees seek views on the proposal to amend section 6 of the Constitution as follows to include one Trustee from each of Africa and South America :**



All Trustees shall be required to show a firm commitment to the IFRS IASC Foundation and the IFRS Board IASB as a high quality global standard-setter, to be financially knowledgeable, and to have an ability to meet the time commitment. Each Trustee shall have an understanding of, and be sensitive to, the challenges associated with the adoption and application of high quality global ~~accounting~~ financial reporting standards developed for use in the world's capital markets and by other users. The mix of Trustees shall broadly reflect the world's capital markets and diversity of geographical and professional backgrounds. The Trustees shall be required to commit themselves formally to acting in the public interest in all matters. In order to ensure a broad international basis, there shall be:

- (a) ~~one~~ six Trustees appointed from the Asia/Oceania region;
- (b) ~~one~~ six Trustees appointed from Europe;
- (c) ~~one~~ six Trustees appointed from North America; ~~and~~
- (d) one ~~Trustee~~ Trustee appointed from Africa;
- (e) one ~~Trustee~~ Trustee appointed from South America; ~~and~~
- (f) two ~~four~~ Trustees appointed from any area, subject to maintaining ~~establishing~~ overall geographical balance.

**Do you support the specific recognition of Africa and South America?**

CESR is of the view that it is important to maintain a balanced Board representation from amongst the regions that apply IFRS throughout the world. We agree with the Trustees' proposal and believe that including countries which are in the process of adopting IFRSs would allow input to be gathered about the adoption experience and subsequently from such countries about implementation when they begin applying IFRSs. Such input might throw light on a number of additional difficulties and peculiarities that may benefit the work the IFRS Board undertakes.

**Question 6**

**The Trustees seek views on the proposal to amend section 10 of the Constitution as follows to allow up to two Trustees to be appointed as vice-Chairman of the Trustees.**

The Chairman of the Trustees, and up to two vice-Chairmen, shall be appointed by the Trustees from among their own number, subject to the approval of the Monitoring Board. With the agreement of the Trustees, regardless of prior service as a Trustee, the appointee may serve as the Chairman or a Vice-Chairman for a term of three years, renewable once, from the date of appointment as Chairman or Vice-Chairman.

**Do you support the constitutional language providing for up to two Vice-Chairmen.**

CESR agrees with the proposal of allowing the appointment of up to two vice-Chairmen of the Trustees as this will assist the Chairman and help balance the workload. However, along similar lines to the concern expressed in our response to question 9 below, we would like to reiterate that we believe that given the IFRS Foundation is a global organisation and that the Chairman and the vice-Chairmen should preferably come from different geographical areas.

**Question 7**

**The Trustees seek views on the proposal to make no specific amendments to sections 13 and 15, but to address the valid and important concerns raised by commentators by way of enhanced accountability, consultation, reporting and ongoing internal due process improvements.**

We agree that the Constitution already provides the Trustees with powers to ensure that oversight functions are carried out. We note that the Trustees have already taken several steps to improve their oversight activities (such as the creation of the Due Process Oversight Committee, interaction



with the IASB to discuss the organisation's strategy and performance, Feedback statements etc.). Nevertheless we believe that some of those steps need to be taken further and more regular and transparent feedback to the IFRS Boards' constituents developed.

We also think that the Trustees' oversight of the IFRS Board can be enhanced in some areas. In particular we believe that

- (a) there is a pressing need for the IFRS Board to appear to be more willing to reconsider proposals which attract adverse comment. The Board should always be prepared to re-deliberate proposals in such circumstances, even in situations where the staff concludes that no substantive new arguments have been raised by constituents. A widespread lack of support for proposals, whilst not a reason in itself not to proceed with them, should be seen to result in a process of reflection, further field testing and engagement with concerned stakeholders. This is one matter that the Trustees might consider when undertaking their annual assessment of the effectiveness of the Board.
- (b) the IFRS Board should have a process requiring it to explain its reasons for deciding not to re-expose an ED even in cases where significant changes have been made (for example because the changes reflect almost unanimous views from respondents). CESR would like to highlight however that in its view the number of responses received should not be a criterion relevant to assessing whether re-exposure is necessary as such a decision should be based on the technical quality of the arguments raised in those responses. Consequently CESR believes re-exposure should be obligatory whenever the final standard differs substantially from the ED. Such rejections should however be properly justified in the basis for conclusions paragraphs in the standard
- (c) the IFRS Board should strengthen its commitment to the continued development of a framework for impact assessments/cost benefit analyses and feedback statements on new financial reporting standards. We believe that the Board should not only publish feedback statements on particular accounting standards but on all new standards and on significant amendments. In addition we believe that the bases for conclusion should not only contain feedback on why a certain direction has been chosen but also on why adverse comments have not been taken into account. If Basis for conclusions are sufficiently developed, they may adequately replace feedback statements.
- (d) the Trustees should review the IFRS Boards intention to issue a vast amount of consultative material over a fairly short period of time. CESR questions whether the IFRS Board's constituents are be able to cope properly with all the material the IFRS Board intends to issue and the Trustees should therefore consider the potential impact this proposal may have on users, preparers, auditors and regulators as well as on the Board's own resources.

## Question 8

### Section 28 would be amended as follow :

The IASB IFRS Board will, in consultation with the Trustees, be expected to establish and maintain liaison with national standard-setters and other official bodies ~~concerned~~ with an interest in standard-setting in order to assist in the development of IFRS and to promote the convergence of national accounting standards and ~~International Accounting Standards and International Financial Reporting Standards~~ IFRSs.

### **Do you support the changes aimed at encouraging liaison with a broad range of official organisations with an interest in accounting standard-setting?**

CESR supports the proposal to encourage the IFRS Board to liaise with a wide range of organisations around the world with an interest in accounting standard-setting. However we do not



think that this amendment will change existing practice. We also believe that the amendment should not be limited to official organisations but should be extended to include a wide range of organisations with similar objectives (such as for example the European Financial Reporting Advisory Group (EFRAG) or the Financial Stability Board (FSB)).

Liaising with any of those organisations should not in CESR's opinion have an impact on the due process, integrity or independence of the IFRS standard setting process.

#### **Question 9**

**The Trustees seek views on the proposal to amend section 30 of the Constitution as follows to permit the appointment of up to two Board members to act as vice Chairman of the IASB.**

The Trustees shall appoint one of the full-time members as Chairman of the IASB-IFRS Board, who shall also be the Chief Executive of the IASC IFRS Foundation. ~~One~~ Up to two of the full-time members of the IASB IFRS Board shall may also be designated by the Trustees as a Vice-Chairman, whose role shall be to chair meetings of the IASB IFRS Board in the absence of the Chairman or to represent the Chairman in external contacts in unusual circumstances (such as illness). The appointment of the Chairman and the designation as Vice-Chairman shall be for such term as the Trustees decide. The title of Vice-Chairman would not imply that the individual member (or members) concerned is (or are) the Chairman-elect.

We agree with the proposal to permit the appointment of up to two Board members to act a vice-Chairman of the IFRS Board as this will assist the Chairman and help balance the workload. However we would take this occasion to reiterate that we believe that as the IFRS Board is a global standard-setter, and that the Chairman and the 2 vice-Chairmen should preferably come from different geographical areas..

#### **Question 10**

**The Trustees seek views on the proposal to amend section 31 to allow for altered terms of appointment for IASB members appointed after 2 July 2009.**

**The proposed amendment is to allow for Board members to be appointed initially for a term of five years, with the option for renewal for a further three-year term. This will not apply to the Chairman and Vice-Chairman, who may be appointed for a second five-year term. The Chairman or Vice-Chairman may not serve for longer than ten consecutive years.**

**The proposed amendments to section 31 are as follows:**

Members of the ~~IASB~~ IFRS Board appointed before 2 July 2009 shall be appointed for a term of up to five years, renewable once for a further term of five years. Members of the IFRS Board appointed after 2 July 2009 shall be appointed initially for a term of up to five years. Terms are renewable once for a further term of three years, with the exception of the Chairman and a Vice-Chairman. The Chairman and a Vice-Chairman may serve a second term of five years, but may not exceed ten years in total length of service as a member of the IFRS Board.

We agree with the proposals to allow Board members to be appointed initially for a term of five years, with the option of renewing for a further three-year term after an individual assessment of the Board member's performance. However, we see no merit in varying this proposal in relation to renewing the mandates of the Chairman and vice-Chairman and consequently believe they too should be limited to renewal for a further 3 years only.



We also note that the question in the discussion document asks whether the Chairman and vice-Chairman should be prevented from serving for longer than ten *consecutive* years but that the amended constitution does not contain the word “consecutive”.

#### Question 11

The Trustees seek views on the proposal to insert in section 37 (to become section 38) of the Constitution an additional subsection as follows to allow the Trustees, in exceptional circumstances, to authorise a short due process period. Authority would be given only after the IASB has made a formal request. The due process could be reduced but never dispensed with completely.

The **IASB IFRS Board** shall:

- (a) ...
- (b) ...
- (c) **In exceptional circumstances and only after formally requesting and receiving prior approval from the Trustees, reduce, but not eliminate, the period of public comment on an exposure draft below that is described as the minimum in the Due Process Handbook.**

We agree with the proposed amendment to allow the IFRS Board to reduce, but not to eliminate, the period of public comment on an exposure draft in exceptional circumstances and only after formally requesting and receiving prior approval from the Trustees. However we believe that this facility should only be used in very rare circumstances and that the IFRS Board should still, when using it, maximise the comment period and consult the widest range of constituents possible.

In addition we think that the decision regarding whether an issue deserves urgent treatment or not should be taken in liaison with the Monitoring Board.

#### Question 12

The Trustees seek views on the proposal to amend section 37(d) (to become section 38) of the Constitution as follows to expressly provide that the IASB must consult the Trustees and the SAC when developing its technical agenda.

The **IASB IFRS Board** shall:

**(e)(d) have full discretion in developing and pursuing the technical agenda of the IASB IFRS Board, after consulting the Trustees (consistently with section 15(c)) and the SAC (consistently with section 44(a)), and over project assignments on technical matters: in organising the conduct of its work, the IASB IFRS Board may outsource detailed research or other work to national standard-setters or other organisations;**

We welcome the proposal that the IFRS Board should develop its technical agenda in consultation with the Trustees and the SAC. However, we believe that the IFRS Board’s agenda priorities, and the scope and key elements of the Board’s work programme, should be subject to consultation at least every two years.

An early appraisal of the convergence agenda as part of this consultation process is also desirable, and should bear in mind the following particular factors:

- (a) the importance of ensuring that convergence projects are only undertaken when they lead to an actual improvement in IFRS reporting – or at the very least, and exceptionally, when they do not actually lead to a reduction in quality;



- (b) the necessity of full commitment from both the IFRS Board and the FASB in achieving convergence on the issue in questions; and
- (c) the need to avoid the cost and uncertainty associated with frequent changes to IFRS. The IFRS Board should adopt an approach to major change that is evolutionary, structured, well-understood and manageable for preparers and users.

Public consultation would also give the IFRS Board an opportunity to justify the number of changes to standards and interpretations it proposes every year and the level of staff it needs to undertake its agenda. In the process, stakeholders would also be given the opportunity to comment on the appropriateness of the scope of each specific project proposed by the IFRS Board. This would avoid running the risks, particularly when the IFRS Board proposes minor piecemeal changes, of causing confusion and imposing compliance costs without clear benefits as well as of proposed changes having unforeseen side effects on other standards. A principles-based, high quality standard setting process should encompass an objective of ensuring the standards set are stable, an objective which is also consistent with the aim of achieving high quality, global accounting standards that establish a good basis for consistent application and enforcement.

As mentioned previously, such a process should also oblige the IFRS Board and the Trustees to take into account when setting their agenda the potential impact and burden the output from that agenda might have on users and other stakeholders, as well as the Board's own resources. Such a step may also help the IFRS Board determine the appropriate number of standards or interpretations to be addressed or issued on an annual basis.

#### **Question 13**

**Trustees seek views on the proposal to make no amendment to sections 44 and 45 (renumbered as 45 and 46), which are the provisions relating to SAC, at this time.**

We welcome the recent decision to modify the membership of the SAC, which we understand represents an operational change that does not prejudice the possibility of making additional structural changes in the context of the current constitutional review. However, we note the argument made by the Trustees that the new arrangements should be given the time to develop to see whether they are effective, before a decision is taken on the need to make further significant changes.

Nevertheless, we continue to believe that there is a need to reconsider the size of the SAC, which currently has over 40 members. The large membership of this body, whilst ensuring wide geographical and sectoral representation, may undermine the SAC's effectiveness. The possibility of streamlining the SAC once the current term of office of its members expires should be explored (all the while seeking to maintain a balanced geographical and sectoral representation of key stakeholder groups).

In addition we believe it would be beneficial to have a public record of the different positions put forward at the SAC meetings and that when appropriate the IASB should justify in a public document why it has not incorporated any matters into IFRS on which there is a common view within the SAC.

#### **Question 14**

**The Trustees seek views on the proposal to amend section 48 by removing specific staff titles and replacing it with the term the 'senior staff management team'. Accordingly section 49 should be deleted.**



**The Trustees also seek comment on the proposal to update the Constitution by removing all historical references that relate to when the organisation was established in 2001.**

We agree with the proposed reference to the ‘senior staff management team’.

Nevertheless we would like to state that we believe that this aspect of the IFRS Board’s operations deserves more attention from the Trustees. The role of the staff is crucial in ensuring that the IFRS Board’s technical work, due process and outreach is of the highest possible quality.