



**Fédération des
Experts Comptables
Européens**

Rue de la Loi 83 - 1040 Bruxelles
Tél 32(2)285 40 85 - Fax 32(2)231 11 12

**ENFORCEMENT MECHANISMS
IN EUROPE**

*A Preliminary Investigation
of Oversight Systems*

April 2001

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FEE gratefully acknowledges the efforts made by the following persons:

Austria	Mr. G. Prachner Dr. H. Samer
Belgium	Mr. K. van Oostveldt
Czech Republic	Mr. R. Sedlak
Denmark	Mr. P. Gunslev
Finland	KHT - Yhdistys Föreningen CGR
France	Mr. B. Lebrun
Germany	Mr. B. Böttcher Mr. K. P. Naumann Ms. S. Tielmann
Hungary	Mr. A. Ferenczi
Ireland	Mr. J. Bowen-Walsh Ms. A. Sykes
Italy	Mr. S. Baudo Mr. J. Guigard
Luxembourg	Mr. E. Damotte Mr. M. Guay
Netherlands	Mr P. van der Zanden
Norway	Ms. H. Korsmo
Portugal	Mr. J. Gonçalves Roberto
Slovenia	Slovenian Institute of Auditors
Spain	Mr. J. A. Gonzalo
Sweden	Mr. J. Buisman
Switzerland	Mr. F. Geissbuhler
United Kingdom	Mr. R. Langford Mr. R. Martin Mr. C. Nobes Dr. N. V. Sleight-Johnson Mr. I. Wright
FEE Secretariat	Ms. S. Slomp Ms. S. Romancide

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1. INTRODUCTION

In October 1999, FEE published a Discussion Paper on a Financial Reporting Strategy within Europe. During the discussions establishing the paper and also in follow-up discussions, it became clear that there was no clear overview within FEE of the various existing enforcement mechanisms in Europe and of the national standard setters. Therefore, FEE has decided to carry out a survey on the national accounting standard setters¹ and another survey to obtain the necessary background information on enforcement mechanisms². The survey is factual and descriptive in nature and does not conclude on the merits of one system compared to another. The study hopes to contribute to a better understanding of the existing enforcement systems in Europe and thereby to the discussions about enforcement at European or even at international level.

In its 1999 Discussion Paper, FEE stated that:

“Enforcement of internationally accepted standards should ideally take place at global level in form of a partnership between national standard setters, the accountancy profession and the enforcement agencies around the world that would subject cross-border listed entities to one set of enforcement arrangements and not to a multitude of arrangements. IFAC (International Federation of Accountants) could consider the establishment of such a mechanism for reducing any significant differences in individual cases and countries. If there is no coherence of application of internationally accepted standards, then the standard setter will have to act as moderating agent in ensuring that compliance is addressed consistently around the world. The issue of enforcement of financial reporting standards is of crucial importance to avoid incomplete and inconsistent implementation/application. The reliability of financial statements needs to be the same and, taking account of different statutory frameworks, enforcement should be consistent throughout Europe, which is at present not the case”.

The Commission also attaches considerable importance to equivalent enforcement of accounting standards throughout the EU both in the Financial Services Action Plan and in the Communication EU Financial Reporting Strategy: the way forward. In the Commission Communication, the enforcement infrastructure is addressed:

“Enforcement comprises a cascade of different elements, including (1) clear accounting standards, (2) timely interpretations and implementation guidance, (3) statutory audit, (4) monitoring by supervisors and (5) effective sanctions. Each of these must work efficiently: the system will be as strong as its weakest part in delivering strong investor and creditor protection.

If this framework is to provide high quality financial reporting, the statutory audit function, which ensures a proper application of accounting standards, will need to be carried out to uniformly high levels across the EU. This requires giving urgent attention to the establishment of benchmarks for auditing, the development of professional ethics standards and the implementation of effective quality assurance systems for the statutory audit function. The Commission will issue a Recommendation on Quality Assurance for Statutory Audit. Further

¹ FEE Study on Accounting Standard Setting in Europe (published in December 2000)

² See definition in section 2

work of the EU Committee on Auditing will also be undertaken to determine a common approach for auditing standards and professional ethics.

Securities supervisors also have a critical role in ensuring that listed companies comply with financial reporting requirements. There is clearly a major interest in ensuring accurate and consistent application of accounting standards in the securities markets they oversee. In the EU securities markets regulators must be actively involved in enforcement issues. In particular, the Commission looks to European securities markets supervisors (through FESCO - the Forum of European Securities Commissions) to develop and implement a common approach to enforcement. Such an approach would establish a level playing field and avoid the danger of regulatory arbitrage. Peer-reviews of securities markets supervisors' practices could be considered as a useful instrument for ensuring a common approach."

Also in the Frequently Asked Questions published together with a proposal for a Regulation on the application of international accounting standards, the question on how can enforcement of IAS be improved is raised:

"An equivalent level of enforcement is necessary to bring about an efficient capital market. Companies which apply IAS do not always fully comply with the standards. This needs to be corrected. First of all, common guidance is needed about the way in which the standards are to be applied. This is first of all the task of the Standards Interpretation Committee, which develops interpretation guidelines for the proper implementation of IAS. If need be, these guidelines could be supplemented at the EU level by the endorsement mechanism.

Secondly, the financial statements must be properly audited. The audit profession is on the front line in this respect, as auditors are required to certify that the financial statements have been properly prepared. In order to ensure an equivalent high quality level of audit throughout the EU, the Commission has published a Communication in 1998 setting out the priorities for action in this area. Last year, the Commission issued a Recommendation on Audit Quality Assurance (see IP/00/1327). Further work is under way within the EU Committee on Auditing on subjects such as auditing standards, the audit report and independence.

Thirdly, external supervision is necessary in order to protect investors. Securities supervisors have a critical role in ensuring that listed companies comply with financial reporting requirements. The Commission looks to European securities markets supervisors through FESCO (the Forum of European Securities Commissions) to develop and implement a common approach to enforcement. It is FESCO's intention to set up a permanent sub-committee that will work on enforcement issues, notably enforceability of accounting standards."

In February 2000, the SEC published its Concept Release on International Accounting Standards. In his statement on the concept release the SEC Chairman underlined that:

"it is critical to remember that a truly transparent and comparable system of financial reporting necessarily depends on the existence of a sound infrastructure. Accounting standards must rest upon a foundation that includes a quality process for developing those standards. They must be verified by a rigorous audit process conducted by firms covered by profession-wide quality assurance programs and a credible oversight programme".

The SEC Concept Release does not only address details of IASs and the way they are used but addresses also, and asks many detailed questions on, the related audit process and regulatory enforcement, which form together the sound infrastructure. Enforcement cannot therefore be separated from financial reporting.

Also the “old” IASC Board addressed application and enforcement of accounting standards in its legacy³:

“Effective financial reporting depends not only on high-quality accounting standards but also the availability of a vehicle for publishing high quality interpretations of the standards on a timely basis; equally important are high-quality auditing of those standards and also efficient enforcement activities by regulators. [...] If a set of high-quality auditing standards is in place for use alongside a high-quality set of international accounting standards, and present arrangements are continued, as is planned, for issuing timely international interpretations of standards, the ingredients will be available for meeting the needs of the international capital markets. But the arrangements will not be complete. Regulatory supervision will be needed to ensure that a good standard of compliance is achieved. The Board recognises that different models for enforcement exist and that one particular model may not work best in all countries. The key requirement is for a regulatory body to be able to require the restatement of financial statements that do not comply with applicable accounting standards. IASC cannot itself deal with these other requirements for good reporting and yet its ability fully to achieve its objectives depends on them. And while some individual countries have strong regulators, many others do not, and no arrangements exist that promise to be able to supply consistent and effective regulation on a global scale. There is a danger that enforcement decisions may vary from country to country while some countries may continue to lack any kind of effective enforcement. And enforcement action at the national level may lead to the loss of some of the benefits that have been gained by global agreement on the standards. The Board strongly calls for new initiatives to create a global approach to enforcement. It also recommends that the Trustees, in consultation with the new Board, consider what IASC should do to promote rigorous application of International Accounting Standards. Initiatives on enforcement must be primarily matters for national regulators. Evident difficulties exist in forming a global regulatory body directly, at least at the present stage of international developments, but the Board hopes that the national regulators will be able to set up a mechanism, including exchange of information that will limit the possibility that inconsistent enforcement decisions may be made in different jurisdictions. This may turn out to be one of the most important building blocks for the provision of good services to the global capital markets.”

³ Statement by the Board of the International Accounting Standards Committee – December 2000

2. SCOPE

This study provides an overview of the mechanisms operating in Europe for the enforcement of financial reporting standards. It is intended as a contribution to the discussion on the future developments of enforcement as an essential element of capital market regulation. The study discusses in Section 3 some general issues about enforcement as well as an overview of the enforcement mechanisms existing in Europe. More detailed information is included in the Appendix.

The study focuses on the consolidated accounts of listed companies for those countries where the rules for individual accounts can be separated from those for consolidated accounts. It limits itself to the financial statements and does not address prospectuses or other relevant documents issued by listed companies. The study does not deal with enforcement by tax authorities. The study does not specifically address the separate enforcement systems existing for the financial institutions, including insurance undertakings.

A description of auditors' sanctions, peer reviews and other forms of supervision on auditors is excluded from the scope of this study, although they could be clearly considered as contributing to the enforcement of accounting standards.

The information provided in this study gives the situation as per March 2001.

3. GENERAL PRINCIPLES OF ENFORCEMENT AND SUMMARY OF ENFORCEMENT MECHANISMS EXISTING IN EUROPE

Enforcement can be defined as all procedures in a country in order to assure the proper application of accounting principles and standards. Efficient enforcement should be made up of due process and economic efficiency, the essential performance measure being to deter harmful violations. A key feature of enforcement is to be able to require the restatement of financial statements that do not comply with applicable accounting standards. Reviews limited to formal checks are for this study not considered as enforcement – reviews need to be substantive in nature.

In relation to enforcement, several aspects can be considered and enforcement appears in most of the European countries at six levels:

- Self-enforcement: preparation of financial statements
- Statutory audit of financial statements
- Approval of financial statements
- Institutional oversight system
- Court: sanctions/complaints
- Public and Press reactions

First of all, clear accounting standards⁴ and timely interpretations and implementation guidance should be in place.

3.1 Self-enforcement: Preparation of Financial Statements

The first step in enforcing the proper application of accounting principles is the self-enforcement on the preparation of financial statements. The responsibility for that rests with the management of the company. Companies should have an appropriate corporate governance structure in place, that safeguards the proper application and implementation of accounting standards resulting in high quality financial statements. It is the clear responsibility of the management of the company that the financial statements are prepared in accordance with an agreed set of GAAP.

A form of governance is the audit committee, which in a one tier system is made up of non-executive directors, a majority of whom should be independent. The audit committee has no direct executive authority. It is the Board of Directors that turns the audit committee's recommendations into decisions (see for a more detailed description United Kingdom – Section 1).

3.2 Statutory audit

The statutory auditor plays an important role in assuring that accounting standards are complied with, as the auditor has to report on compliance with accounting standards, be it IASs or others. ISA 700⁵ “The Auditor's Report on Financial Statements” states in paragraph 17 on the Opinion Paragraph that:

⁴ FEE Study on Accounting Standard Setting in Europe (published in December 2000)

⁵ FEE has published a study on ISA 700: “The Auditor's Report in Europe”.

“The auditor’s report should clearly state the auditor’s opinion as to whether the financial statements give a true and fair view (or are presented fairly, in all material respects) in accordance with the financial reporting framework and, where appropriate, whether the financial statements comply with statutory requirements”.

The audit is an important element of the financial reporting structure because it subjects information in the financial statements to independent and objective scrutiny, increasing the reliability of these financial statements. Trustworthy and effective audits are essential to the efficient allocation of resources in a capital market environment, where investors are dependent on reliable information. It is the duty of the auditors in the first instance to draw attention to departures from standards in reporting to the shareholders and for regulators or other enforcement agencies and capital and financial markets then take appropriate action against those companies that abuse compliance with the agreed accounting standards. Capital and financial market regulators have a prudential interest in ensuring accurate and consistent application of accounting standards in the securities markets they regulate. Therefore, all countries have the system of statutory audits.

The quality control systems of the accountancy profession are designed to ensure the quality of the audit of the financial statements as part of the enforcement mechanism. FEE is a member of, and contributes to, the European Commission Committee on Auditing which aims to increase the quality of the statutory audit in Europe. A Commission Recommendation⁶ on minimum requirements for quality assurance for the statutory audit in the EU has recently been published. FEE’s Member Bodies already meet these requirements or are going to meet them by new legislation or are just establishing the relevant systems. FEE itself has published various studies to contribute to the work of the Committee on Auditing:

- Statutory Audit Independence and Objectivity, Common Core of Principles
- Setting the Standards – Statutory Audit in Europe
- Continuous Quality Assurance – Statutory Audit in Europe
- Liberalisation of the Accountancy Profession in Europe
- The Auditor’s Report in Europe.

Auditors should have a common understanding of IASs or any other set of accounting standards applied and should develop approaches to interpret standards in the same way.

In case of departure from accounting standards, be it IAS or others, a qualified or an adverse opinion on the financial statements will be issued. The consequences of a qualified opinion differ from country to country. In some countries the financial statements can still be approved despite the existence of a qualified opinion. In other countries the audit opinion determines whether or not the financial statements are legally binding. In a number of countries in case of departures from accounting standards resulting in a qualified opinion the impact of these departures on the distribution of profits needs to be indicated in the auditor’s report. In practice, listed companies would be unlikely to file financial statements containing a qualified audit report because of the negative reaction of the capital market and therefore would take into account the auditor’s reservations in preparing the financial statements. A qualified audit report as such may however not be a reason for delisting.

⁶ Quality assurance for the statutory audit in the EU: minimum requirements

3.3 Approval of financial statements

Approval of financial statements exists in all countries although the form and approach may differ from country to country.

In most countries, the shareholders meeting (AGM) usually has the ultimate responsibility to approve the financial statements. In others, e.g. in UK and Ireland, this responsibility is assumed by the board of directors. In some countries the approval of the AGM is without legal effect. In others approved financial statements are needed to distribute dividends. Approval does not in all countries imply that the AGM has the power to modify the accounts on specific aspects.

Some continental countries have a two-tier system within companies in that they have in addition to the management (Board of Directors), a Supervisory Board. The task of the Supervisory Board in the enforcement process differs widely. In countries having a two-tier-system, it is usually the task of the “second tier” to approve the accounts. In some countries, the Supervisory Board is allowed to amend or can require management to change the financial statements. Furthermore, in some countries like Austria and Germany, the Supervisory Board also has an examination function which is broader than the task of the statutory auditor in that the Supervisory Board has not only to ensure the compliance of the financial statements and the annual report with national GAAP but also to assess whether the accounting policies selected are adequate, rather than only to assess whether the accounting policies selected are appropriately and adequately applied.

3.4 Institutional oversight system

An institutional oversight system contributes to the effective enforcement of accounting standards. In the Appendix, a detailed description of the systems existing in the different countries is included. The institutional oversight system for the enforcement of accounting standards in consolidated accounts of listed companies differs from country to country and does not exist in all countries. This analysis focuses more in particular on the oversight system and the sanctions/complaints mechanisms.

Most of the European countries have an institutional oversight system for listed companies. However, in some countries the institutional oversight system is only responsible for enforcement in relation to other documents than financial statements (e.g. prospectus, preliminary results, interim financial statements) or is only prepared to undertake reviews limited to formal checks. This study focuses only on enforcement by reviews being substantive in nature and on enforcement in relation to financial statements. It does not address other forms of financial reporting such as prospectuses, preliminary results and interim financial statements in detail other than in the country descriptions.

Different types of institutional oversight systems for listed companies can be distinguished (see Table 1):

➤ *Stock exchange*

In Sweden, Norway and Switzerland, stock exchanges have the responsibility for enforcing financial reporting requirements. In other countries where the stock exchange has a regulatory role, often this is limited to prospectuses and interim financial statements of listed

companies or the stock exchange's reviews are limited to formal checks only. There is a tendency to take the enforcement task away from the stock exchange and bring it into an independent oversight mechanism: the stock exchange regulator or otherwise.

➤ *Stock exchange regulator*

In other countries, namely Belgium, France, Italy, Portugal and Spain an independent regulator/supervisor exercises control over the stock exchange(s) and enforces the financial reporting standards for all types of reporting, including the annual financial statements for listed companies. In some countries, a development is taking place to combine the various regulators (financial institutions, insurance undertakings and stock exchanges) into one regulator. The Paris, Amsterdam and Brussels stock exchanges have merged (Euronext). It is not known yet what impact this will have on the regulatory side. The regulators are organised at European level in FESCO, the Forum of European Securities Commissions.

➤ *Review panel*

In the UK, a privately organised review panel – Financial Reporting Review Panel – functions on a reactive basis by investigating complaints that are brought to its attention. If the complaint is valid, the review panel can seek corrective action, which would include presenting the case to the Court. The strength of this mechanism lays also in the public “naming and shaming” by means of press communication. A detailed description of the UK review panel is included in the Appendix.

➤ *Governmental department*

In some cases, there is a companies department within the government that has the task of enforcing financial reporting standards for the annual financial statements of all companies (often not only listed companies, but also unlisted companies). This is in particular the case for regulated industries, such as financial institutions and insurance undertakings. In Denmark, UK (DTI) and the Czech Republic (listed companies only) there is a governmental department that enforces the accounting standards by reviews in substance.

Table 1: Summary information on institutional oversight mechanisms concerning consolidated accounts of listed companies

Institutional oversight mechanism for financial statements				No institutional oversight system ⁷
Stock Exchange	Stock Exchange Regulator	Review Panel	Other Government	
Sweden Norway Switzerland	Belgium France Italy Portugal Spain	UK (FRRP) ⁸	Denmark ⁹ UK (DTI) ¹⁰ Czech Republic ¹¹	Austria Finland Germany Ireland ¹² Luxembourg Netherlands ¹³ Hungary Slovenia

Countries may have more than one of the four systems described above for the enforcement of financial reporting standards. As an alternative to, or in addition to, the institutional oversight system, all countries have sanctions/complaints systems whereby the respective responsibilities and rights of the company, its management, its shareholders, auditors and other stakeholders are detailed in law.

Austria, Finland, Germany, Ireland, Luxembourg, Netherlands, Hungary and Slovenia have no specific institutional enforcement oversight system to enforce financial reporting standards for financial statements by reviews going beyond formal checks.

⁷ In those countries the existing institutional oversight systems is only responsible for enforcement in relation to other documents than annual financial statements (e.g. prospectus, preliminary results, interim financial statements) or is only prepared to undertake reviews limited to formal checks.

⁸ Large and listed companies

⁹ In Denmark, the financial statements of financial institutions and insurance undertakings are reviewed by a special governmental agency: The Financial Supervisory Authority. For other companies, the financial statements are reviewed by the Danish Companies and Commerce Agency on a test/sample basis.

¹⁰ Small and medium sized companies primarily

¹¹ Securities Committee

¹² The office of the Director of Corporate Enforcement is to be established.

¹³ In the Netherlands, there is a special Court system, see for further details the appendix on the Netherlands.

The number of listed companies differs widely between countries, with France, Germany and UK having most listed companies (see Table 2).

Table 2: Market Capitalisation: Main and Parallel Markets*

Domestic Equity (EUROm) [January 2001]				
	Domestic	Foreign	Total listed	UPDATE Value at month end EUROm
Exchange**				
Athens	311	1	312	110.962
Budapest	58	1	59	11.078
Copenhagen	224	10	234	118.335
Deutsche Borse	748	240	988	1.325.976
Euronext	1.223	214	1.437	2.294.724
Helsinki Exchange	155	3	158	194.733
Irish Exchange	76	20	96	89.693
Italian Exchange	289	6	295	753.827
Lisbon and Oporto	107	1	108	69.721
Ljubljana	155	0	155	3.340
London	2.423	498	2.921	2.591.090
Luxembourg	53	215	268	37.049
Madrid	1.083	19	1.102	557.210
Oslo	188	23	211	68.942
Stockholm	290	20	310	326.727
Swiss Exchange	253	162	415	786.943
Vienna	95	15	110	28.779
Total	7.731	1448	9.179	9.369.129
Prague***	141	0	141	10.910
Total	7.872	1448	9.320	9.380.039

* Excluding Investment Trusts, Listed Unit Trusts and UCITS

** Source: FESE website – European Stock Exchange Statistics

*** Source: Prague Stock Exchange

In all countries, the institutional oversight mechanism relates at least to national GAAP. In Belgium, IAS and US GAAP are enforced when used by national companies, instead of national GAAP. In France and Italy, laws have been developed for the direct application of IAS and/or US GAAP instead of national GAAP but have so far not been implemented.

Also in a number of countries without institutional oversight system, Austria, Finland and Germany, IAS and/or US GAAP can be directly applied instead of national GAAP. Since in the

Netherlands the financial reporting rules of other EU countries can be used, direct application of IAS and US GAAP is also possible.

Several countries institutional oversight mechanisms operate on a proactive basis in that either a systematic review of financial information of all listed companies takes place (Belgium, Italy, Sweden and Czech Republic) or the financial information is reviewed on a test basis (Denmark, France, Portugal, Spain and Norway) as far as the financial statements are concerned (see Table 3). A complaint based institutional oversight mechanism, be it a review panel or other, is always reactive in nature. The complaints based system is also not limited to listed companies only whereas the proactive system is usually limited to listed companies.

Table 3: How active is the institutional oversight?

Way of review		
Proactive		Reactive
Review all listed companies (Systematic Review)	Test Basis	Complaint
Belgium Italy Sweden Czech Republic	Denmark France Portugal Norway Spain	UK (FRRP) UK (DTI) Switzerland

In the situation where foreign companies are listed on the national stock exchange, in most cases, reliance is placed on the institutional oversight body of the foreign company in its home country, and no additional reviews are carried out. Only in France and Spain, an independent review takes place. It can be concluded that in most countries, foreign listings are not supervised/subject to enforcement procedures of the national institutional oversight mechanism (Table 4).

Table 4: Enforcement of foreign listings

Foreign Listing Enforcement		
Independent Review	Reliance Enforcement Body Home Country	Not applicable
France Spain	Belgium Denmark Italy Portugal Sweden UK Norway Switzerland	Czech Republic ¹⁴ Austria Finland Germany Ireland Luxembourg Netherlands Hungary Slovenia

¹⁴ No foreign companies are listed on the regulated capital market in the Czech Republic.

3.5 Legal Sanctions/complaints

Parallel to the institutional oversight system, there exists in all countries a system of sanctions (through civil or criminal procedures), sometimes in connection with the institutional oversight system or as part of it, as well as the possibility to go with complaints about the financial statements ultimately to Court. In the Netherlands, there exists a special Court system, as described in the appendix.

In many countries, individual persons have the possibility to go to Court for a decision about their complaints. Such a court action is mainly used by shareholders and creditors. In many countries there is detailed legislation for legal reaction by creditors and other third parties in case the financial statements are incorrect or not in compliance with the law, including a system of punishments, penalties and enforcement fines by the court. In addition, the government can initiate criminal proceedings. The likelihood of corrections/changes to the financial statements differs from country to country. Penalties and sanctions can be imposed. The consequences from Court decisions differ from country to country.

However in going to the Courts to obtain revision of (alleged) erroneous financial statements, it should be noted that the cumulative effect of:

- (i) the financial costs incurred by such action;
- (ii) the uncertainty as to whether such action would be successful and, if successful, whether costs can be recovered;
- (iii) (presumably) the need to prove economic damage incurred as a consequence of errors in the financial statements; and
- (iv) the length of the process involved

is such that in some countries, complainants would rarely consider this a viable option.

3.6 Public and Press reactions

The risk of public and press reactions should not be underestimated and exists in all countries. Naming and shaming may form an effective part of the enforcement mechanism. Pressure exercised by public and press reactions can have an influence on the accounting decisions of companies. Companies are aware of pressure exercised by public and press reactions and will avoid their name or reputation being damaged. Therefore the role of public and press can have a positive impact on the proper application of accounting standards.

4. CONCLUSIONS

Self-enforcement, the approval of financial statements and the statutory audit are parts of the enforcement mechanisms that exist in all countries in Europe and have many common features. However, there are some differences between the systems for example as to whether there is a one tier or two tier system and the involvement of the audit committee. It is often not possible to make a distinction in the information provided for private and public companies or listed and non-listed companies. There are also large differences in legal environments, which explain part of the differences in the enforcement mechanisms.

The main differences relate to the institutional oversight systems in Europe. Regulators of security markets have a significant role to play to ensure that listed companies comply with financial reporting requirements so setting and maintaining a high standard to which other companies can be “encouraged” to aspire. FESCO covers most of the regulator based oversight systems but does not encompass the other institutional oversight systems. In some countries such as in Ireland and Spain, developments are taking place towards a regulator-based system.

However, also private oversight systems like the FRRP can contribute to enforcement in an effective way and, therefore, institutional oversight systems do not necessarily have to be governmental bodies or “regulators”.

The study focuses on the enforcement of financial reporting standards for the financial statements and on enforcement reviews being substantive in nature and not limited to formal checks. Therefore, it had to conclude that for nearly half of the countries surveyed, there is no institutional oversight system in place. In some of these countries, there is a discussion whether there is a need to establish an institutional oversight system. For example, in Germany, there are proposals to establish a private oversight system like the FRRP.

With the proposed Regulation on the application of international accounting standards and the final Lamfalussy report, changes in the capital market regimes and in enforcement may be expected over the coming years, in particular as far as the institutional oversight systems are concerned. Audit of financial statements will continue to play a major role in enforcement but will in more and more countries be accompanied by an institutional oversight system, be it private or public.

APPENDIX

BACKGROUND INFORMATION ON FINANCIAL REPORTING ENFORCEMENT MECHANISMS IN EUROPE¹⁵

EU COUNTRIES

AUSTRIA

In Austria the financial reporting enforcement mechanism is substantially identical for all enterprises obliged to draw up their financial statements in conformity with the rules set by the Fourth and Seventh Directives (e.g. stock corporations, limited liability companies). However, there are some differences depending on the individual company law regulations for various types of companies. Furthermore, there are some differences concerning the enforcement elements depending on the enforcement of accounting standards in individual or consolidated accounts. For this reason the following outline addresses not only consolidated accounts but also individual accounts.

To explain the Austrian enforcement mechanism the background information below deals with the Austrian stock corporation only (*Aktiengesellschaft*). The corporate governance structure for stock corporations is based on a two tier system in which governance of the company is shared by the executive board (*Vorstand*) charged with the executive management of the company and the supervisory board (*Aufsichtsrat*) charged to oversee the executive board.

1. Preparation of financial statements

Preparation of Financial Statements and the Annual Report by the Executive Board

a) Individual Financial Statements and Annual Report

The individual financial statements and the annual report of listed companies have to be prepared by the executive board of the company in accordance with Austrian accounting principles (§ 222 para. 1 Commercial Code). Even in the case of internal statutes, which assign the task of preparing financial statements and the annual report to only one board member, in relation to a third party this legal obligation applies to the whole executive board, i.e. each member of the executive board.

b) Listed companies

Companies whose shares or other securities issued are traded officially ("*Amtlicher Handel*") or in the regulated market ("*Geregelter Markt*") on a stock exchange of a Member State of the

¹⁵ The extent to which information is provided and the level of detail of the information differs from country to country. The information provided and the level of detail was selected by the country representative. Since it is a preliminary investigation of the enforcement mechanisms in Europe, it was decided not to harmonise the text since some information may be lost, although it is realised that the differences in description may suggest more differences than there actually are, in particular in relation to the preparation of financial statements, the statutory audit and the approval of financial statements.

EU are deemed to be large in the sense of the size criteria as defined in the Austrian Commercial Code (§ 221 para. 3 Commercial Code). These companies have to apply the accounting, auditing and publication rules of the Austrian Commercial Code (§ 222 pp), which are in accordance with the Fourth and Seventh Directives. Consolidated companies are allowed to draw up consolidated financial statements in accordance with Internationally Accepted Standards (§ 245a Commercial Code, usually IAS or US GAAP) and do not have to prepare consolidated financial statements in compliance with national accounting principles if certain criteria are met.

c) Consolidated Financial Statements and Consolidated Annual Report

The consolidated financial statements and the consolidated annual report have to be prepared by the executive board of the parent company (§ 244 para. 1 sentence 1 Commercial Code). As in case of preparing individual financial statements the obligation applies to the whole executive board, i.e. each member of the executive board. The consolidated financial statements and the consolidated annual report have to be prepared in accordance with the law and the generally accepted accounting principles (§§ 195 and 222 para. 2 Commercial Code) or in accordance with internationally accepted accounting principles subject to specific conditions which are stated under § 245a Commercial Code.

2. Audit of financial statements

Audit of the Financial Statements and the Annual Report by the Statutory Auditor

The individual financial statements and the annual report and the consolidated financial statements and the consolidated annual report have to be audited by the statutory auditor (§ 268 para. 1 sentence 1 and para. 2 Commercial Code). The purpose of the audit is to state whether the financial statements and the annual report are prepared in accordance with the legal requirements stated in the Commercial Code and to assure that the financial statements provide a true and fair view of the company's capital, financial and earnings position. The auditor has to express the results of the audit in an audit opinion, which is addressed to the public. The company is legally required to publish the audit opinion with the financial statements in the "Amtsblatt zur Wiener Zeitung". These documents have to be published with the Register of Firms. Furthermore the auditor has to draw up a long-form report about the result of the audit, in which he states whether the (consolidated) financial statements and (consolidated) annual report are in accordance with the legal requirements. The balance sheet as well as the income statement have to be itemized and explained. Furthermore adverse changes of the company's capital, financial and earnings position compared to previous year's balance and substantial losses must be listed and explained. In cases of offences against legal requirements and articles of incorporations or when reorganisation must be presumed the auditor has to report immediately. The auditor also has to report about audit scope and audit procedures. The auditor's long-form report is only addressed to the supervisory board and the executive board.

Audit of the Financial Statements and the Annual Report by the Supervisory Board

The individual and consolidated financial statements and the annual reports have to be examined by the supervisory board of the company (§ 96 para.1 Austrian Stock Corporation Act). In case the supervisory board consists of more than five members, a kind of audit committee ("Bilanzausschuß") within the supervisory board has to be formed. Its task is to discuss the

financial statements with the auditor based on the long-form auditor's report and additional explanations given by the auditor. The audit committee then reports to the supervisory board. In the so-called balance sheet meeting of the supervisory board, which the statutory auditor has to attend (§ 93 para. 61 Austrian Stock Corporation Act) as well as based on other information, each member of the supervisory board has to form his own judgment on the financial statements and the annual report.

The examination by the supervisory board (§ 96 para.1 Austrian Stock Corporation Act) includes the verification of the financial statements and annual report as well as the suggestion of the allocation of profits.

The supervisory board has to forward a written report to the general meeting of the enterprise including the manner and extent the management was examined by the supervisory board during the year, who audited the financial statements and annual report and if the conclusions of the audit by the statutory auditor led to complaints (§ 96 Austrian Stock Corporation Act).

3. Approval of financial statements

Approval of the Financial Statements by the Supervisory Board respectively by the General Meeting

The individual financial statements are legally effective against third parties as soon as they are approved by the responsible body ("*Feststellung*"). Usually, the individual financial statements are approved as soon as the supervisory board agrees on the financial statements. Only in rare cases, the approval is transferred to the general meeting (§ 125 Austrian Stock Corporation Act). The audit of the individual financial statements is conditional for the approval.

The decision to pay dividends, which is taken by the management, then forwarded to the supervisory board finally transferred to the shareholders in the general meeting is only legally binding if the financial statements have been approved.

Contrary to the individual financial statements, the consolidated financial statements are not approved, as they have mainly the function of information.

4. Institutional oversight system

Concerning stock exchange transactions, listed companies have to show the last financial statements and annual report as well as the last consolidated financial statements and consolidated annual report to the Stock Exchange ("Wiener Börse AG") and the Stock Exchange Regulator ("Bundeswertpapieraufsicht"), both situated in Vienna. This single presentation is *not part* of the enforcement mechanism.

Type of financial information

The enforcement mechanism covers interim financial statements, annual financial statements and prospectuses.

Financial reporting standards

National GAAP, IAS¹⁶ and US GAAP¹⁶.

¹⁶ Special provisions when applying § 245-a HGB (Konzernabschlußgesetz, March 1999).

Enforcement

Enforcement is carried out in a reactive way on complaint basis. There is no check with financial reporting standards. When IAS or US GAAP are used, separate compliance with the EC Accounting Directives is assessed.

Foreign listings

For foreign listings, either the enforcement body of the foreign company in its home country is contacted or this body is relied upon (special regulations of § 75 a BörseG for EWR - companies, acceptance of IAS/US GAAP).

5. Courts

Determination of Punishments, Penalties and Enforcement Fines by the Court of the Commercial Register and the General Court and Punishments According to the Austrian Stock Corporation Act

The purpose of punishments and penalties is to prevent violation of regulations. The purpose of enforcement fines (repeated if necessary) however is to enforce certain actions directly.

Punishment occurs at two different levels.

The first one relates to offences against the filing and publicising regulations of the Austrian Commercial Code and the Commercial Register Act. The second relates to the false and misleading preparation of financial statements, which are regulated in § 255 Austrian Stock Corporation Act):

“Whoever as managing director, member of the supervisory board or as liquidator

1. in descriptions, in overviews of the assets of the company, in particular in financial statements, in a public offer to participate in the company or in reports or information in the shareholders’ meeting incorrectly describes the situation of the company or fails to mention material circumstances,
2. in information, which is to be given to an auditor or other examiners of the company pursuant to § 272 Commercial Code, fails to mention material circumstances, incorrectly describes the situation of the company or otherwise makes incorrect statements or
3. makes incorrect statements about the facts to be stated in the notes (§§ 236 through 240 Commercial Code) or in the annual report (§ 243 Commercial Code) or fails to mention material circumstances

shall be punished by the court by imprisonment of up to two years or by financial penalty of up to 360 daily rates.”

6. Public and Press reactions

Publication of Financial Statements, the Annual Report and the Audit Opinion by the Executive Board

The executive board has to publish the individual financial statements and the audit opinion as well as the consolidated financial statements and the audit opinion. Publication means filing of these documents with the Register of Firms as well as publication in the official federal gazette (§§ 277 – 281 Commercial Code).

Legal Reaction by Other Parties to Achieve that Financial Statements are Invalid

If the substance of individual financial statements contradicts with legal or contractual provisions, that safeguard creditor protection, or that are in the public interest the approved financial statements are void, i.e. they do not have any legal authority (§ 202 para. 1 No. 2 Austrian Stock Corporation Act).

Individual financial statements may be invalid by taking legal action. If a shareholder, the executive board as a whole or an individual member of the executive board or a member of the supervisory board takes legal action, the judgment that declares the individual financial statements as invalid is binding for the public at large as well as for all shareholders, members of the executive board and members of the supervisory board. Furthermore each third party being in the position to prove a vested interest in the individual financial statements, may take a legal action to achieve that individual financial statements are invalid. In this case however the judgment only is effective towards the parties of the legal action.

As the consolidated financial statements, missing any authority against third parties defined by law, are not approved, they can consequently not be invalid. These statements however may include such a severe violation of fundamental rules and regulations that, in a legal sense, consolidated financial statements did not exist from the beginning (dummy consolidated financial statements).

BELGIUM

1. Preparation of financial statements

a. *Individual Financial Statements and Annual Report*

The individual financial statements and the annual report have to be prepared by the Board of Director(s) of the company in accordance with the Belgian Accounting Law. These financial statements and the annual report have to be submitted to the shareholders 14 days before the general assembly of shareholders will approve the financial statements and the annual report.

b. *Listed companies and limited companies*

All listed and also limited companies (except small and medium sized companies) have to submit to the statutory auditors (commissaire) the draft financial statements and the annual

report 1 month before the date of the general meeting of shareholders which has to approve the annual accounts. The auditors have to report on the financial statements within 2 weeks.

c. Consolidated financial statements and consolidated annual report

The consolidated financial statements and the consolidated annual report have to be prepared by the board of the parent company in accordance with Belgian Accounting Law. These consolidated financial statements are presented to the Annual General Meeting of shareholders, but the shareholders do not have to approve these financial statements.

2. Audit of financial statements

The individual financial statements and the annual report and the consolidated financial statements and the consolidated annual report have to be audited by the statutory auditor (commissaire/commissaris). The statutory auditor is appointed by the shareholders for a period of 3 years.

The audit of financial statements has to be done in conformity with the Belgian Audit GAAP (normes et recommandations de révision / Normen en aanbevelingen) published by the Belgian Institute of Auditors (Institut des Reviseurs d'Entreprises / Instituut der Bedrijfsrevisoren). This Belgian Audit GAAP is for a large part compliant with the International Standards on Auditing (see the FEE Study of June 1998 «*Setting the Standards - Statutory Audit in Europe*»).

The company is legally required to publish the audit opinion and/or to file the audit opinion at the "Centrale des bilans".

3. Approval of financial statements

The general meeting of shareholders has to approve the annual financial statements of the individual company with a majority of more than 50% of the votes of the shareholders present or represented at the meeting. If the financial statements are not approved the board of directors has the obligation to modify the financial statements and to prepare modified financial statements which have to be presented to the (new) general meeting of shareholders.

The consolidated financial statements have not to be approved by the general meeting of shareholders but the general meeting of shareholders has to be provided with the consolidated financial statements.

4. Institutional oversight system

Nature

The stock exchange supervisor (CBF – Commission Bancaire et Financière) and the Office de Contrôle des Assurances (Insurance undertakings and pension funds regulator) enforce the financial reporting standards. In addition to listed companies, the enforcement applies to banks, investment companies, insurance undertakings and pension funds.

Type of financial information

The enforcement applies to any document made publicly available: preliminary results, interim financial statements, annual financial statements and prospectuses. The requirements differ for different types of companies.

Financial reporting standards

National GAAP and, exceptionally with special permission, IASs and internationally accepted standards including US GAAP. Specific rules apply to specific types of companies.

Enforcement

A systematic review of financial information of all listed companies (proactive) takes place. The extent of the review is at the discretion of the CBF staff. The enforcement review of compliance with financial reporting standards covers a formal check that certain elements are there and that certain issues are addressed. In addition, some review of substance takes place including compliance with all applicable legislation. Also for IASs or other internationally accepted standards, a formal check of elements is carried out and the compliance with the EC Accounting Directives is assessed.

In addition, the accounting law contains penal sanctions in the case of non-compliance with the financial reporting standards.

Foreign listings

For foreign listed companies, a separate independent review takes place for prospectuses. Reliance is placed on the enforcement body of the foreign company in its home country for financial statements. The enforcement of the reporting standards for foreign listed companies is considered as the responsibility of the auditor. A separate independent assessment of compliance with the Fourth and Seventh Directives is not carried out since there is no review of the financial statements.

5. Courts

The directors of the company, together with the auditor can be pursued for having prepared and confirmed wrong financial statements. The sanctions include fines and jail punishments.

Where net income has been overstated and the company has made an excessive distribution of dividends, the shareholders have to reimburse these excessive dividends. Action of the public prosecutor is also possible.

Civil action against the company may be made by any interested party, having suffered from a misrepresentation of the financial situation of the company.

6. Public and Press reactions

All financial statements and annual reports have to be filed within 1 month after the date the general meeting of shareholders has given the approval at the “Centrale de Bilans”. Everybody has access or can obtain copies of these filings.

Listed companies have to publish their annual report in 3 (national) newspapers respectively 2 weeks and 1 week before the meeting of shareholders.

Financial statements and annual reports of listed companies are available to anyone upon request.

DENMARK

1. Preparation of financial statements

The individual financial statements and the annual report have to be prepared by the Board of Directors and General Management in accordance with the legislation and the articles of association. In addition, consolidated financial statements are prepared by parent companies. However, groups not exceeding certain size limits are exempted from the requirement to prepare consolidated financial statements. The financial statements must be submitted with the auditors’ opinion not later than 8 days before the annual general meeting.

2. Audit of financial statements

The financial statements of “aktieselskaber” and “anpartsselskaber” (limited liability companies) and certain other companies must be audited in accordance with generally accepted auditing practice. Where the company is a parent company, the auditor must also audit the consolidated financial statements and the mutual accounting relationships of companies within the group.

3. Approval of financial statements

The financial statements are approved by the annual general meeting.

An approved copy of the audited financial statements must be filed with the Danish Commerce and Companies Agency together with the annual report and information on when the financial statements were approved.

There is an active enforcement of adherence to the filing requirements with penalties for late filing.

4. Institutional oversight system

Nature

The enforcement mechanism can be described as follows:

The following provisions appear from article 63c of the Annual Accounts Act:

“The Danish Commerce and Companies Agency examines the received annual financial reports, consolidated financial reports and the opinions made on these financial reports in order to detect

violations of the Danish Annual Accounts Act, the Danish Companies Act, the Danish Private Companies Act, the Danish Commercial Foundations Act or the Danish Book-keeping Act.

The Danish Commerce and Companies Agency may issue a guideline in order to ensure compliance with the Acts mentioned above. The Danish Commerce and Companies Agency can point out violation of these Acts, order correction of errors and order that violation of the Acts mentioned is put to an end.

The Danish Commerce and Companies Agency establishes an accounting consultancy committee with which the Danish Commerce and Companies Agency can discuss general accounting matters. Chairmanship and secretariat is to be handled by the Danish Commerce and Companies Agency

The enforcement mechanism applies to all limited liability companies, private companies, limited partnership companies as well as commercial foundations.

In addition, the Copenhagen Stock Exchange carries out an enforcement function for listed companies. The Copenhagen Stock Exchange ascertains that prospectuses, preliminary results and interim financial statements comply with the legal requirements, including EC Directives. In the case of application for admission to listing, the Stock Exchange ascertains compliance with the rules of the Stock Exchange e.g. cash-flow statements and normally audited financial annual or interim statements.

Type of financial information

The enforcement mechanism applies to annual financial statements. For listed companies, the Copenhagen Stock Exchange ascertains that prospectuses, preliminary results and interim financial statements comply with legal requirements.

Financial reporting standards

National GAAP

Enforcement

Enforcement is carried out on a test/sample basis (proactive). The Danish Commerce and Companies Agency ascertains compliance with the legal requirements on a test basis. A sample of the annual financial statements, consolidated financial statements etc. received by the Danish Commerce and Companies Agency are tested in order to detect violation of the Danish company and accounting legislation. The Danish Commerce and Companies Agency may assist the companies in order to avoid violation of the law.

In addition, the Copenhagen Stock Exchange ascertains that prospectuses, preliminary results and interim financial statements comply with legal requirements. The enforcement review of compliance with financial reporting standards is carried out as a formal check that all elements are contained in the report and that certain issues are addressed. It is ascertained that the annual financial statements contain the required sections e.g. profit and loss account, balance sheet, cash-flow statement, notes, consolidated financial statements and annual report.

Foreign listings

For foreign listings, reliance is placed on the enforcement body of the foreign company in its home country.

5. Courts

The Board of Directors, The General Management, and the auditors can be punished by fine for not complying with the Annual Accounts Act. In some cases a more severe penalty, e.g. imprisonment, could be decided by the court according to other legislation, e.g. the penal code.

Civil actions against the Board of Directors, The General Management, other employees or the auditors may be made by any interested party having suffered from violence of the accounting legislation.

6. Public and Press reactions

The Danish financial press and professional magazines often refer to or perform reviews of published financial statements of Danish companies. Sometimes the accounting principles are criticized, and this could lead the company to apply a more appropriate accounting practice next year.

FINLAND

1. Preparation of financial statements

The concept of the financial statements

The Accounting Act (1997/1336) chapter 3 section 1. “Contents of the annual accounts. For each financial year, annual accounts must be prepared, consisting of:

- 1) *a profit and loss account* disclosing how the profit or loss has arisen;
- 2) *a balance sheet* disclosing the financial position as of the balance sheet date;
- 3) *notes* to the profit and loss account and the balance sheet; and
- 4) *a report of operations* with information about major developments affecting the reporting entity’s business.”

Further according to the section 7 of the chapter 3 annual accounts must be dated and signed by the reporting entity and if the reporting entity is a corporation or a foundation, annual accounts must be signed by the board of directors or the responsible partners together with the managing director or other person in a comparable position.

A parent undertaking has an obligation to draw up consolidated accounts.

The responsibility of the Board of Directors and the Supervisory Board regarding the financial statements

The Companies Act (1978/734) chapter 8 section 6. “The Board of Directors shall be responsible for the proper supervision of the bookkeeping and the control of the financial matters of the company. It shall be the duty of the Managing Director to see to it that the book-keeping of the company complies with the law and that the financial matters are being handled in a reliable manner”.

A company whose share capital exceeds 80.000 euros may have a Supervisory Board under the precondition that this is stipulated by the Articles of Association. This Supervisory Board shall

supervise the management of the company by the Board of Directors and the Managing Director and give to the Ordinary General Meeting of the Shareholders its report on the annual accounts and the audit report.

2. Audit of financial statements

The Auditing Act (1994/936) chapter 3 section 9 "An auditor must be elected for a corporation or foundation, and an audit must be carried out, in accordance with the provisions laid down in this Act and in other laws". **Chapter 4 section 17**: "The accounting records for the financial period, the annual accounts and the corporate governance of a corporation or a foundation are subject to an audit". **Chapter 4 section 19**." An auditor has to give an auditor's report for each financial period. The auditor's report must contain a statement on:

- 1) whether the annual accounts have been prepared in accordance with the Accounting Act and other provision and requirements governing the preparations of annual accounts;
- 2) whether the annual accounts give a true and fair view, in accordance with the Accounting Act, of the corporation's or foundation's result of operations and financial position;..".

3. Approval of financial statements

The Companies Act (1978/734) chapter 9 section 5 "The Ordinary General Meeting of the Shareholders shall be held within six months form the end of a financial period. The meeting shall be presented with the annual accounts and the audit report as well as, if the company has a Supervisory Board, its opinion on the above documents,

The meeting shall decide on:

- 1) the adoption of the income statement and the balance sheet as well as, in a parent company, also of the consolidated income statement and the consolidated balance sheet;
- 2) measures necessary for the profit or loss shown on the adopted balance sheet of the consolidated balance sheet of a parent company;
- 3) the discharge from liability for the members of the Board of Directors, the members of the Supervisory Board and the Managing Director; as well as on
- 4) other matters ..."

4. Institutional oversight system

Nature

There is no specific Finnish enforcement mechanism. In Finland, the statutory audit function has an important role. Enforcement is carried out in a reactive way on complaint basis. There is no check with financial reporting standards.

Anyone who offers securities to the public or applies for the official listing of a security on a stock exchange shall be under an obligation to publish a prospectus, which may be published only after approval by the Financial Supervision Authority. However the Financial Supervision Authority do not review the prospectus in substance. Only a formal check is made whether the prospectus to be published is complete.

Financial reporting standards

National GAAP, IAS¹⁷ and US GAAP¹⁷. When IAS or US GAAP are used, separate compliance with EC Accounting Directives is required.

Foreign listings

According to the Decision of the Ministry of Finance (1999/390) an issuer whose registered office is situated in another State than Finland can apply for a permission from the Financial Supervision Authority to publish an interim financial statement and annual financial statement such as published in the company's home country.

5. Courts

Penal provisions

The Accounting Act (1997/1336) chapter 8 article 4 "Violation of the Accounting Act. A person who deliberately or through recklessness

- 1) fails to keep accounting record within the limit laid down in chapter 2 article 4 paragraph 2¹⁸,
- 2) fails to retain accounting material in accordance with chapter 2 article 10 ,
- 3) prepares annual accounts or consolidated accounts which are not in accordance with chapter 3 article 2¹⁹ or
- 4) neglects the filing requirements referred in chapter 3 article 9²⁰ shall be sentenced to a fine for a violation of the Accounting Act, unless the offence is punishable as an accounting crime or a negligent accounting crime according to the Criminal Act chapter 30 article 9 or 10 and if it is not subject to a more severe punishment provided elsewhere in the law.

Punishment shall not be imposed for a minor offence".

Due to the Accounting Act, The Ministry of Trade and Industry shall supervise compliance with the Accounting Act and the police has the obligation to assist the Ministry in its supervision. However this supervision is not systematically organised. Under the Ministry on Trade and

¹⁷ Only applicable on consolidated basis and on special provisions

¹⁸ The chronological recording of a cash transaction must be made on a daily basis without delays. Other transactions may be recorded on a monthly basis or on a four-week period basis no later than two months after the end of the calendar month or four week period.

¹⁹ The annual accounts shall give a true and fair view of the reporting entity's result of operations and financial position. Any additional necessary for this purpose shall be disclosed in the notes to the accounts. The Ministry of Trade and Industry shall direct the circumstances under which departures from the provisions concerning the preparation of annual accounts shall be allowed in order to give a true and fair view, as well as the kind of departures to be allowed.

²⁰ A copy of the annual accounts shall always be filed for registration with the National Board of Patents and Registration of Trademarks, if the reporting entity is one of the following: A reporting entity must file the annual accounts for registration no later than six months after the end of the financial year. Separate provision shall apply to the time limits for limited liability companies and co-operatives. The procedures to be followed by reporting entities registering documents with the National Board of Patents and Registration of Trademarks in computerised form shall be directed by the Ministry of Trade and Industry.

Industry operates the Accounting Board which may on application issue instructions and statements on application of the Accounting Act.

The National Board of Patents and Registration of Trademarks supervises compliance with the filing requirements referred in the Accounting Act (“A copy of annual accounts shall always be filed for registration with the National Board of Patents and Registration of Trademarks...”).

The Financial Supervision Authority supervises compliance with the Accounting Act in those entities which are under its supervision (credit institutions, investments companies and other financial institutions specified in the Act) but not in the listed companies.

The Securities Markets Act (1989/495) chapter 8 section 3. “ Anyone who wilfully or through negligence

1) violates the provisions of chapter 2 ... section 6...

..shall unless the act is minor or subject to a more severe punishment elsewhere in the law, be sentenced for a securities-market offence to fine”.

Although the Financial Supervision Authority is supervising compliance with the Securities Markets Act and regulations issued by the authorities and thus also violations of chapter 2 section 6 (“the annual accounts”) this is not at the moment done in substance nor systematically.

6. Public and Press reactions

The Securities Markets Acts (1989/495) regulates the duties of listed companies to publish the annual accounts, the annual statement and the interim report. The auditors` report shall also be published in connection with the annual accounts.

The duty to publish annual accounts

The Securities Markets Act (1989/495) chapter 2 section 6. “The issuer of a security subject to public trade shall publish its annual accounts without undue delay no later than one week before the meeting where the annual accounts shall be presented to be adopted, but however no later than within three months from the end of the financial period...

...The annual accounts shall give correct and sufficient information on the result of the operations of the issuer and of his financial position. The contents of the annual accounts and the presentation of the information to be given in the annual accounts shall be further provides for by a decision of the competent Ministry”.

The Decision of the Ministry of Finance on the regular duty of disclosure of the issuer of securities (1999/390) regulates further the information presented by the issuer in addition to the provisions of the Accounting Act (1997/1336), the Accounting Decree (1997/1339) and the Companies Act.

FRANCE

1. Preparation of financial statements

In France, the responsibility for the preparation of financial statements is assumed by various legal structures depending on the legal form of the company.

Most French companies are in the form of “société anonyme” with a board of directors. The board of directors is responsible for the preparation of financial statements.

In “société anonyme” with a “directoire” and a “conseil de surveillance”, the “directoire” is responsible for this preparation. The supervisory board cannot have any implication in this preparation and has only the duty and power to check the financial statements.

In a “société anonyme simplifiée”, the legal structure within the company in charge of the preparation of financial statements is defined by the by-laws of the company.

In the “société à responsabilité limitée” and the “société en nom collectif”, the “gérant” is responsible for the preparation of the financial statements.

2. Audit of financial statements

When a company is obliged by the law to have an auditor, the auditor is a “commissaire aux comptes”. The audit is compulsory for:

- all “sociétés anonymes”;
- the “société à responsabilité limitée” and the “société en nom collectif” which have a certain size, appreciated through three criteria (total assets, revenues and number of employees);
- the “groupement d’intérêt économique” which have 100 employees or more;
- not-for-profit organisations which receive public grants.

As the “société anonyme” is a widely used legal form, even by SME’s, the audit is mandatory for a significant number of French enterprises.

The audit is normally to be performed after the financial statements have been prepared by the board of directors or the other appropriate legal structure. In practice, the auditor can make its suggestions before the meeting of the board which has to decide on the final version of financial statements.

For the “société anonyme” with a “directoire” and a “conseil de surveillance” (supervisory board) the role of the supervisory board, as regards the verification of the financial statements is very limited in practice, because this role is played by the auditor for any form of “société anonyme”.

A French specificity is that any company which is required by the law to prepare consolidated financial statements is also required to have two auditors instead of one. Another particularity is that the auditor is designated by the general assembly of shareholders for a six years period; at the end of this period, the same auditor can be redesignated for a new six years period.

One of the major burdens on the French auditors is the obligation they bear to denounce to the public prosecutor any wrong doing of the company and its management, providing this wrong doing could result in a criminal action.

A qualified opinion or an adverse opinion have no direct consequences and do not preclude the approval of the financial statements by the general assembly of shareholders. Indirect consequences include an unfavourable reaction of financial analysts for listed companies and an action from the stock exchange regulator.

3. Approval of financial statements

The individual financial statements are approved by the General Assembly of the shareholders. This assembly has also the power to change the financial statements; however, this power is rarely used, especially for practical reasons.

The consolidated financial statements are submitted for information to the General Assembly of shareholders. They are not approved by this assembly.

4. Institutional oversight system

Nature

The financial reporting standards for listed companies are enforced by the stock exchange regulator – COB, Commission des Opérations de Bourse (agency-based system). For other companies, the enforcement mechanism lies mainly in the legal engagement of statutory auditors. The enforcement applies to any entity soliciting funds from the general public (“sociétés faisant appel public à l’épargne”).

Type of financial information

The enforcement mechanism covers preliminary results (a COB reaction would be expected if preliminary results were misleading), interim financial statements (only limited information on the first semester is required), annual financial statements (are checked in detail), and prospectuses (have to be checked and stamped by the COB for any issuance).

Financial reporting standards

National GAAP (French GAAP for French registrants and Domestic GAAP for EU registrants (European Union registrants’ accounts are accepted as they are, because they already comply with the EU Directives). Foreign registrants have a choice between French GAAP and IASs (and until 2002 US GAAP) to the extent that they are compatible with the EU Accounting Directives.

Enforcement

Enforcement is carried out on a test/sample basis and annual financial statements are checked in detail. The enforcement review of compliance with financial reporting standards consists of both formal checks that certain elements are included and that certain issues are addressed and review of substance.

Foreign listings

For EU registrants, compliance with the EU Accounting Directives is a non-rebuttable presumption if the auditor has signed of the accounts as complying with the domestic law of the country of origin. For non-EU registrants, COB requires a translation of financial statements and statutes of the enterprise. To certify this information, the translation of items required by COB has to be certified by a statutory auditor. In some cases, COB may require reconciliation with domestic law. If the company is not quoted in its own country, certified information about national stock exchange and business laws is required.

In conclusion, for non-EU registrants COB's requirements may be different. There is a particular study of each of these enterprises, which would like to be quoted at the French stock exchange.

5. Courts

The management of the company, together with the auditor, can be pursued for having respectively prepared and confirmed wrong financial statements. The criminal sanctions include fines and jail punishments.

Where the net income has been overstated and the company has made a distribution, there is a special criminal action for distribution of excessive dividends.

Civil action against the company may be made by any interested party, having suffered from a misrepresentation of the financial situation of the company.

6. Public and Press reactions

There have been examples in the past of press articles on accounting practices of listed companies. These articles seemed not to have had any major effect on these companies and on their stock price.

GERMANY

In Germany the financial reporting enforcement mechanism is substantially identical for all enterprises obliged to draw up their financial statements in conformity with the rules set by the Fourth and Seventh Directives (e.g. stock corporations, limited liability companies). However, there are some differences depending on the individual company law regulations for various types of companies. Furthermore, there are some differences concerning the enforcement elements depending on the enforcement of accounting standards in individual or consolidated accounts. For this reason the following outline addresses not only consolidated accounts but also individual accounts.

To explain the German enforcement mechanism the background information below deals with the German stock corporation only (*Aktiengesellschaft*). The corporate governance structure for stock corporations is based on a two tier system in which governance of the company is shared by the executive board (*Vorstand*) charged with the executive management of the company and the supervisory board (*Aufsichtsrat*) charged to oversee the executive board.

1. Preparation of financial statements

§ 264 para 1 sentence 1 of the German Commercial Code requires the executive board to prepare individual financial statements comprising a balance sheet, an income statement and notes to the financial statements. In addition the stock corporation is required to prepare an annual report unless it is a small corporation as defined in § 267 of the Commercial Code. The individual financial statements and the annual report have to be prepared in accordance with the accounting requirements of the German Commercial Code.

Moreover, parent companies are also required to prepare consolidated financial statements and a group annual report (§ 290 para 1 sentence 1 of the Commercial Code). On certain conditions laid down in §§ 291-293 of the Commercial Code (e.g. size-related exemptions) a parent company may be exempted from this requirement. The consolidated financial statements and the annual group report have to be prepared in accordance with the German accounting principles or – under specific conditions stated under § 292a of the Commercial Code - internationally accepted accounting principles.

Even if the preparation of financial statements and related annual report as well as the establishment and maintenance of the bookkeeping system are delegated by the executive board to one or more of its members when dealing with a third party it is within the legal obligation of the complete executive board, i.e. of each member of the executive board, to prepare the financial statements and the annual report. Therefore, each member of the executive board has to sign the financial statements and the annual report.

2. Audit of financial statements

Audit of the Financial Statements and the Annual Report by the Statutory Auditor

The individual financial statements and the annual report (except for in case the company is classified as small according to § 267 of the Commercial Code) as well as the consolidated financial statements and the group annual report of listed companies have to be audited by the statutory auditor (§ 316 para. 1 sentence 1 and para. 2 of the Commercial Code). The purpose of the audit is to state whether or not the financial statements and the annual report are prepared in accordance with the authoritative accounting principles.

The auditor has to express the results of the audit in an audit opinion, meant to be presented to the public. Furthermore the auditor has to draw up a long-form report. Whereas the auditor's report contains the summarised overall conclusion reached in the audit by the auditor and is addressed to the public the long-form audit report gives detailed conclusions the auditors has drawn during the audit and is addressed to the supervisory and executive board.

Examination of the Financial Statements by the Supervisory Board

The individual and consolidated financial statements and the (group) annual report of a stock corporation have to be examined by the supervisory board of the company (§§ 171 para. 1 sentence 1 German Stock Corporation Law). Based on the long-form auditor's report and additional explanations given by the auditor during the balance sheet meeting of the supervisory board, which the statutory auditor must attend (§ 171 para. 1 sentence 2 German Stock

Corporation Law) as well as based on further information each member of the supervisory board should draw his own conclusions of the financial statements and the (group) annual report.

The audit by the supervisory board is more comprehensive than the statutory auditor's one. Responding to its obligation to supervise the executive board the supervisory board not only has to ensure the compliance of the financial statements and the annual report with the authoritative accounting principles but must also assess the appropriate selection of accounting policies.

The supervisory board is requested to forward a written report on the results of its audit to the general meeting the stock corporation. In this report the supervisory board describes the scope of its examination and among other things comments on the conclusions drawn by the statutory auditor when auditing the financial statements (§ 171 para 2 sentence 3 of the German Stock Corporation Law).

3. Approval of financial statements

The individual financial statements represent the legal basis on which claims against the corporation by third parties can be made legally effective. Individual financial statements become legally valid in relation to third parties upon approval by the responsible body of the corporation. Prior to approval (*Feststellung*) neither shareholders' rights to dividends approved for distribution by the general meeting nor the creation or dissolution of reserves by which retained earnings are respectively appropriated or released become effective. In contrast, the annual report as well as the consolidated financial statements and the group annual report only provide information to stakeholders and therefore are not subject to approval.

With regard to a stock corporation the individual financial statements are usually approved upon the supervisory board's consent of the financial statements. Only in rare cases an approval by the general meeting is requested (§ 172 of the German Stock Corporation Law). The audit of the individual financial statements by the statutory auditor is subject to approval. However it is irrelevant whether or not the auditor has modified his opinion.

4. Institutional oversight system

Nature

In Germany the institutional oversight system of security market contains

- ◆ the Federal Securities Supervisory Office (*Bundesaufsichtsamt für den Wertpapierhandel, BAWe*), which exercises supervision over securities trading and reacts to undesirable developments in securities trading which may adversely affect the orderly conduct of securities trading;
- ◆ the Exchange Supervisory Authority (*Börsenaufsichtsbehörde*) of each German state being in charge of monitoring the stock exchanges domiciled in the respective state;
- ◆ the Trading Surveillance Offices (*Handelsüberwachungsstellen*) being in charge of monitoring the trading on the Exchange and the settlement of Exchange transactions of each German stock exchange.

However, these bodies are not involved in enforcing the annual financial statements and annual reports. Enforcement of accounting standards is within the responsibility of the Stock Exchange.

For companies listed at the Frankfurt Stock Exchange these measures are taken by the Admission Office (*Zulassungstelle*) for official listings, by the Admissions Committee (*Zulassungsausschuß*) for listings on the regulated market and by the so-called *Neuer-Markt-Ausschuß* for listings on the *Neuer Markt*.

Financial reporting standards

Companies that issue publicly listed securities are required to publish their individual and consolidated financial statements and their (group) annual report after approval provided approval is required by law. With permission by the admissions office the company may provide either the individual or the consolidated financial statements the condition being that the financial statements not being published do not contain additional information of substantial importance.

Which type of accounting standards needs to be complied with depends on the market segment on which the corporation is listed. For example, corporations being listed on the “*Neuer Markt*” are required to publish financial statements drawn up in accordance with IAS or US GAAP. The same applies for companies being listed on the SMAX. For financial years beginning after 31.12.2001 such companies are required to draw up their financial statements in accordance with IAS or US GAAP. In contrast, for official listed companies and companies listed on the regulated market the respective regulations do not specify the accounting standards to be complied with in the financial statements published for listing purposes. However, it is assumed that application of German accounting standards will be allowed along with the application of IAS or US GAAP.

Enforcement

In principle, the Admission Office, the Admissions Committee and the *Neuer-Markt-Ausschuß* do **not** review in substance the financial statements and annual reports to be published for listing purposes. Normally only a formal check is made whether the financial statements and the annual report to be published are complete. Only if there are clear indications that the financial statements are deficient the Admission Office, the Admission Committee or the *Neuer-Markt-Ausschuß* will require the company to provide further information on this issue.

The Admission Office, the Admission Committee and the *Neuer-Markt-Ausschuß* have the possibility to impose sanctions on the company or to revoke the admission of the company to participate in exchange trading if any of the conditions for admission (including annual publication of financial statements) has subsequently ceased to be fulfilled. Yet in practice up to now deficient financial statements did not entail revocation of the admission.

Foreign listings

In principle, publication requirements and enforcement mechanisms are identical for foreign and national companies. Foreign companies listed on the *Neuer Markt* for example have to apply IAS or US GAAP. As the regulations for official listings and listings on the regulated markets do not require the application of a special set of accounting standards foreign companies are allowed to use their “home country accounting standards” as well as German accounting standards, IAS or US GAAP for listing purposes. In case the financial statements and the annual report of issuers domiciled outside the EU do not comply with the European Accounting Directives and do not present the actual status of the assets, the financial situation and performance of the issuer has to give additional information hereof.

5. Courts

Examination duty of the court of the commercial register

The executive board is required by law to disclose its individual financial statements and annual report together with the audit report hereto by filing with a register (commercial register) and publishing them in the federal official gazette. Moreover, parent companies are required to disclose their consolidated financial statements, group annual report and the related audit opinion (§ 325 of the Commercial Code). However, §§ 326 and 327 of the Commercial Code provide for size-related allowances for disclosures by small and medium-sized companies; e.g. small companies do not have to publish their income statement and the notes hereto.

The court of the commercial register has to examine whether the records to be published are complete and were published to the extent prescribed by §§ 325-328 of the Commercial Code (§329 of the Commercial Code). The examination can be described as being **only** a formal check. In case the court concludes that the disclosure requirements fail to be in compliance it is not entitled to impose sanctions on the executive board.

Determination of Punishments, Penalties and Enforcement Fines by the Court of the Commercial Register and the General Court

The general court and the registry court are entitled to impose sanctions (punitive fines and imprisonment), penalties (Bußgeld) or enforcement fines (Ordnungs- und Zwangsgeld) in case the executive board and/or the supervisory board contravene the requirements of the Commercial Code for drawing up and disclosing the (individual and consolidated) financial statements and the (group) annual report. The registry court, however, can only determine such fines upon request of a third party. Each person (e.g. shareholder, creditor or any other person) can complain with the court regardless whether a vested interest in the financial statements concerned exists.

The purpose of punishments and penalties is aimed to prevent from the violation of requirements laid down in the Commercial Code whereas the purpose of enforcement fines is considered to directly enforce certain actions prescribed by the Commercial Code. For reference see the following table:

Violation related to financial statements or the management report	Misstatement or concealment of the financial position	Violation of requirements in relation to the contents of financial statements and the annual report	Violation to the obligation to prepare, file and disclose financial statements and the annual report
Statutory basis	Punitive measure according to § 331 of the Commercial Code	Penalties according to § 334 of the Commercial Code	Enforcement fines pursuant to §§ 335 – 335b of the Commercial Code
Responsible parties	Executive Board and Supervisory Board	Executive Board and Supervisory Board	Executive Board
Sanctions	Imprisonment up to three	Fine up to Euro 25.000.	Enforcement fine up to

	years or fine		Euro 25.000.
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Legal Actions to Obtain a Ruling that the Individual Financial Statements are Void

If the substance of individual financial statements is contradictory to legal or contractual provisions safeguarding creditor protection, or considered to be against the public interest the approved individual financial statements are void, i.e. they lack any legal authority (§ 256 para. 1 No. 1 German Stock Corporation Law). Violation of the provisions for the presentation of financial statements or over-/ understating balance sheet items under certain conditions are explicitly considered ground to void the individual financial statements (§ 256 German Stock Corporation Law).

Individual financial statements may be void by taking legal action. If a shareholder, the executive board as a whole, an individual member of the executive board or a member of the supervisory board takes legal action the ruling declaring the individual financial statements void is binding for the public at large as well as for all shareholders, members of the executive board and members of the supervisory board. Furthermore, any third party being in a position to prove a vested interest in the individual financial statements may take a legal action to render the individual financial statements void (§ 256 Code of Civil Procedure). In this case, however, the ruling becomes effective only with regard to the parties involved in the legal action.

The fact that individual financial statements are automatically void makes the resolution for the distribution of profits equally void (§ 253 German Stock Corporation Law). On certain conditions shareholders having already received dividends based on a void resolution have to refund the payments received.

In the absence of an approval of the (group) annual report and the consolidated financial statements, missing thus any authority with regard to third parties defined by law, these consequently cannot be void. Consolidated financial statements, however, may include such a severe violation of fundamental rules and regulations that, in a broad sense, consolidated financial statements have been inexistent from the beginning (false consolidated financial statements).

6. Public and Press reactions

Applying Court for determination of punitive measures, penalties and enforcement fines

See part 5.

Legal actions to obtain a ruling that the individual financial statements are void

See part 5.

IRELAND

1. Preparation of financial statements

The Companies Acts specify basic accounting principles with which the annual financial statements are to comply. The Companies Acts oblige a company's directors to prepare and present to the shareholders in annual general meeting financial statements, comprising a balance

sheet, a profit and loss account and notes to the financial statements, that give a true and fair view of the state of affairs of the company at the balance sheet date and of the results of its operations for the reporting period then ended.

The presumption is that financial statements which meet the Companies Acts' requirements will follow, rather than depart from, accounting standards and that any departure would be regarded as sufficiently abnormal to require justification.

2. Audit of financial statements

The statutory auditors are required to form their opinion as to whether the financial statements prepared by the directors do give a true and fair view and whether those financial statements have been properly prepared in accordance with the Companies Acts.

3. Approval of financial statements

The Board of Directors approves the financial statements before they are submitted in final form to the auditors. The financial statements, together with the auditors report thereon, are placed before the shareholders at the annual general meeting.

4. Institutional oversight system

Nature

The Company Law Enforcement Bill, 2000, currently before Parliament, provides for the establishment of the Office of the Director of Corporate Enforcement. The legislation specifies the functions of the Director of that office will include:

- “(a) To enforce the Companies Acts, including by the prosecution of offence by way of summary proceedings...
- (b) To investigate instances of suspected offences under the Companies Acts...”

The Irish Stock Exchange reviews and approves Listing Particulars in respect of issues of securities for which application for listing is made. It also monitors on a systematic basis listed companies' ongoing compliance with the Exchange's Continuing Obligations and in particular, listed companies' interim and annual financial statements, to ensure that the Listing Rules requirements are complied with. There is a range of sanctions for non-compliance with the Exchange's Listing Rules, including the ultimate penalty of suspension or cancellation of listing.

The July 2000 Report of the Review Group on Auditing, established by the Minister for Enterprise, Trade and Employment, agreed:

1. The distinct role of examining departures from accepted accounting standards by a public limited company or other entity should be discharged by a Financial Reporting Review Panel, as was recommended in the First Company Law Review Group Report, and that its remit be primarily directed at public and large private companies. The Review Group also agreed that the work of such a Panel would require statutory backing, including the power to seek a High Court order to enforce changes to a company's accounts if necessary.

2. The Review Group decided that this role could best be discharged under the Oversight Board, subsequently renamed The Irish Auditing and Accounting Supervisory Authority, because:
- it would have a greater familiarity with the accounting standards area having regard to its remit;
 - there is a natural affinity/link between the preparation of accounts to recognised standards and the auditing of those accounts, and divorcing them would not promote efficient compliance; and
 - it would be in a better position to select suitable members of such a Panel in consultation with the recognised bodies and other relevant interests.

The Authority will be established by statute as a distinct legal entity on a stand alone basis. It will have an independent Board with adequate resources to carry out the functions.

These proposals have been accepted by Government as part of its overall endorsement of the July 2000 Report.

Type of financial information

Annual financial statements.
Interim financial statements.
Preliminary results.
Prospectuses.

Financial reporting standards

National GAAP

Preliminary announcements and interim financial statements are the subject of non-mandatory guidance issued by the Accounting Standards Board. They are also subject to the Listing Rules of the Irish Stock Exchange. Prospectuses are governed by Rules of the Irish Stock Exchange.

Corporate governance

Irish listed companies must state their compliance with, or specify departure from, the Combined Code on Corporate Governance. This Code requires establishment of an audit committee made up of non-executive directors, whose function would incorporate discussion of the company's accounting practice with the statutory auditors.

5. Courts

A person who has suffered loss as a consequence of relying on annual financial statements which were prepared on an inappropriate basis may initiate Court proceedings against the directors who prepared those financial statements.

The Director of Corporate Enforcement or the Director of Public Prosecutions, depending on the particular offence, may initiate Court proceedings where the preparation or presentation of the financial statements has resulted in the committing of an offence under the Companies Acts.

6. Public and Press reactions

Commentary in the Press regarding alleged non-compliance with the Companies Acts, or accounting standards, could cause the Director of Corporate Enforcement or the Irish Stock Exchange to examine the matter.

ITALY

1. Preparation of financial statements

In Italy, statutory financial statements must comply with the rules set by the Fourth and Seventh EEC Directives. In particular, article 2423 of the Italian Civil Code, as modified by Legislative Decree n. 127 dated 9 April 1991 which incorporated the EEC Directives, requires the Board of Directors to prepare annual financial statements consisting of a balance sheet, a profit and loss statement, and notes to the financial statements together with the Directors' report.

Additionally, Article 25 of the same Legislative Decree n.127 states that the parent companies' Board of Directors are required to prepare consolidated financial statements unless certain conditions are met, as specified in Article 27 of Legislative Decree n. 127, which would exempt the parent company from the preparation of consolidated financial statements (size-related exemptions).

Both the financial statements and the consolidated financial statements are to be prepared in accordance with the provisions of the law, integrated and interpreted by the Italian accounting principles or if necessary, due to the absence of a specific principle in the Italian codification of accounting principles, by principles promulgated by the International Accounting Standards Committee, commonly referred to as IAS.

2. Audit of financial statements

The Italian Civil Code (art. 2488) states that an oversight board, referred to as the *Collegio Sindacale* ("Statutory Board of Auditors") must be appointed if the share capital is greater than or equal to Lire 200 million or if it is required by the Articles of Incorporation of the company. Furthermore the company must appoint a Board of Statutory Auditors if certain conditions related to the size of the company, as set forth in article 2345 bis of the Civil Code, are met.

The Italian Civil Code in outlining the responsibilities for the Board of Statutory Auditors does not distinguish between listed and non-listed companies. Legislative Decree n. 58 of 24/2/98 ("Decreto Draghi"), effective 1/7/98 exempts some of the provisions included in the Italian Civil Code for listed companies.

Non-listed companies

The Italian Civil Code (art. 2403) states that the Board of Statutory Auditors must perform procedures to verify the correctness of the accounting, the correspondence between general ledger and the financial statements and compliance to the evaluation criteria required by the Civil Code (art. 2426). Additionally, statutory auditors must verify cash accounts, the existence of investments and other assets of the company every three months. The nature of these controls is not formal but substantial. The activities performed during the year and the findings, must be summarised in a final report on the draft of financial statements. In this report, the Board of Statutory Auditors must give an overall opinion about the correctness of the financial statements, and comments on the result of the period and the accounting. The report should also include proposed adjustments, if any, to the financial statements and the proposal for the approval of the financial statements, with particular mention to any departure from the law provision adopted by the directors.

When consolidated financial statements are required to be prepared, the Statutory Board of Auditors must also perform similar activities for the consolidated financial statements, which may require co-ordination with the Board of Statutory Auditors of the subsidiary companies.

Listed companies

Legislative Decree n. 58 dated 24/2/1998, defines the roles and responsibilities of the Statutory Board of Auditors for listed companies. In particular, the roles and responsibilities of the Board of Statutory Auditors include the oversight of the company's compliance with the Italian Civil Code and with the Articles of Incorporation, the appropriateness of the administration, and the adequacy of the organisation of the company including the system of internal controls and administrative functions. Article 149 co.3 of the Legislative Decree n. 58, states that the Board of Statutory Auditors must inform immediately the stock exchange supervising entity (CONSOB) if any irregularity has been noted during its control activities. Also, should the Board of Statutory Auditors suspect irregularities in the operating of the Directors of the company, it can report the irregularities to the competent court.

With Legislative Decree n. 58, dated 24/2/1998, all other areas required by the Italian Civil Code to be verified by the Board of Statutory Auditors became the exclusive responsibility of the external auditors for the company.

It is to underline that the Decree specify that the opinion on the financial statements and the consolidated financial statements, is exclusive competence of the external auditors of the companies.

3. Approval of financial statements

The financial statements are approved by the shareholders ordinary meeting.

When consolidated financial statements are required to be prepared, fifteen days prior to the shareholders meeting, the consolidated financial statements must be available for the shareholders to review and remain available until the financial statements are approved. The consolidated financial statements are submitted only for information of the shareholders. The approval by this assembly is not requested.

4. Institutional oversight system

Nature

There is an institutional oversight system: the stock exchange supervisor – CONSOB, Commissione Nazionale per le Società e la Borsa.

In February 1997, the Italian Stock Exchange Council set up a new private company, Borsa Italiana SpA, which is responsible for the regulation, promotion and management of the Stock Exchange, the unlisted securities market and the Italian Derivatives Market (IDEM). As from 27 March 1997, the assets and legal responsibilities of the Italian Stock Exchange Council were transferred to Borsa Italiana SpA.

The Borsa Italiana SpA is responsible for the following aspects:

1. The definition of the organisation and functioning of the markets, the admission of intermediaries, market surveillance and the management of critical situations.
2. The regulation of the requisites and procedure for the admission of securities and relationships with issuers relative to listing undertakings, corporate disclosure and listing suspensions and delistings.
3. The managerial set-up of the new Stock Exchange and the setting out of a Code of Behaviour for all market operators.

An internal technical service of Borsa Italiana SpA “listing” does share the responsibility for the analysis of the correctness of the application of the standards by the companies which are requesting to be listed at the Italian Stock Exchange (Borsa Italiana) with the sponsor of the requesting company. Yearly controls are made on the accounts by Borsa Italiana SpA.

The enforcement by CONSOB and Borsa Italiana SpA applies to listed companies. In general, enforcement can also be seen as a wider mechanism in that it is in the power of the shareholders to start a litigation in case the non-compliance with the standards has caused an effect on the accounts; the auditing companies may give a qualified opinion, but this would not mean that the accounts will not be approved by the shareholders.

Collegio Sindacale (Board of Statutory Auditors)

1. General aspects

Italian law requires the appointment by the shareholders of a Collegio Sindacale (Board of Statutory Auditors), with either three or five members. Italian law does not envisage that members of the Collegio Sindacale be Italian citizens; however, they must be enrolled on an Italian professional list and, in a professional list of “Revisori Contabili” (chartered auditors). The Auditors’ annual remuneration, fixed in advance in the Deed of Incorporation or by the shareholders’ meeting, is usually determined on the basis of the company’s capital, reserve funds and non-distributed profits. Any shareholder can bring matters of personal and company interest to the attention of the Collegio Sindacale. If such a complaint is made by shareholders representing at least one twentieth of the capital, the Auditors are compelled to carry out an immediate investigation and if they find the complain well-founded, must call a shareholders’ meeting so that proper action can be taken.

The Collegio Sindacale serves a three-year term of office and must meet at least once every three months.

2. Two different bodies

Italy has two different enforcement bodies.

2.1. Collegio Sindacale

(a) It's compulsory in all companies for which it is required an audit of the accounts.

2.2 Audit company (external auditors)

(a) It is compulsory only in the companies which are required to get an audit opinion. The audit company must be authorized by the Security and Exchange Commission, called CONSOB, who prepared and updates a list of these companies, called "Albo Speciale CONSOB".

3. The law

The Eight Directive was enforced in the Italian system with the law (D. Lgs.) 27 January 1992 n. 88.

The law created a public register, called "Registro dei Revisori Contabili", held by the Ministry of Justice, which listed all the auditors, called "Revisore Contabile". The Revisore Contabile is not a profession, as it is required to be a Dottore Commercialista or a Ragioniere and, under certain conditions, a lawyer or a state employee listed in the previously existing "Ruolo dei Revisori Ufficiali dei Conti". To be a Revisore Contabile it is required to pass a State Examination.

4. Requisites

1. They must be individuals; not allowed to be a company.
2. There are some independence requisites, for instance they cannot be relatives with the directors, be condemned for criminal offences; they cannot be consultants for the same company.

5. Quality control

No quality control is currently performed on the activity of the Collegio Sindacale. The quality control is ran out only by CONSOB on the audit companies listed in the Albo Speciale.

6. Companies for which Collegio Sindacale is compulsory

- Joint-stock company (S.p.A.) always:
- Limited liability company (S.r.l.):
 - 1) when capital of or above 200 million lira;
 - 2) when the by-laws require it;
 - 3) when, for two fiscal years the company has been above the limits of art. 2435-bis Civil Code (CC), as updated by art. 11 Fourth Directive.

7. Role and activity

The Collegio Sindacale has the following tasks.

7.1. Overview of the company

Collegio Sindacale controls the Company management and is invited to attend all the shareholders and all the Directors meeting.

7.2 Check on Y/E accounts

See paragraph 2.

Consultancy

The Collegio Sindacale gives advice, on many subjects.

Some of their advices are compulsory, for instance:

- (a) On the cooption ex art. 2386 CC of Directors;
- (b) On the posting in the accounts of:
 - Some prepaid expenses,
 - Research, development and advertising costs (art. 2428 c. 5 CC)
 - goodwill (art. 2426, c. 6 CC)

Other advices are not compulsory such as the directors' fee for special appointments (art. 2389 CC) or new shares price in certain cases – limitation of option right (art. 2441 CC).

7.3 Temporary direction of the company

In case the Board of Directors or the directors are not able to attend their office or are inactive, the Collegio Sindacale acts on their behalf, until the shareholders meeting has appointed the new directors.

7.4 Control and oversight duties

The concerns:

- (a) Law and by-laws application;
- (b) Administrative control;
- (c) Accounting control;
- (d) Fiscal control.

7.5 Check on corporate books and records

The company must keep accounting and legal records, strictly following the regulations on said matters, which vary according to the nature and size of the company. These record books must be progressively numbered and stamped and cannot be used before these formalities have been complied with; on the last page of each book a Notary Public must certify the number of sheets in the books.

Type of financial information

Interim financial statements, annual financial statements and prospectuses.

In relation to the interim report, there are some reductions concerning the balance sheet and the profit and loss account. There are no notes to the accounts and the director's report is wider.

Financial reporting standards

National GAAP (law and standards) and Internationally Accepted Standards (IASs) can be applied for consolidated accounts of companies listed in both Italian and international (non-EU) stock exchanges in compliance with the EU Accounting Directives.

Enforcement

Enforcement is carried out in form of a systematic review of financial information of all listed companies (proactive). The enforcement review of compliance with financial reporting standards takes place in form of formal checks that certain elements are there and that certain issues are addressed, but is more than a simple formal review and includes parts of a review in substance, the completeness of the financial information is checked.

Foreign listings

For foreign listings, reliance is placed on the enforcement body of the foreign company in its home country.

5. Courts

Italian Civil Code (article 2377) states that resolutions taken by the shareholders meeting, which are not respectful of the law or of the Articles of Incorporation of the company, can be impugned by Directors, Statutory Auditors and by dissenting or absent shareholders.

If the company is listed, resolutions taken by the shareholders meeting, related to the approval of financial statements, can be impugned by a number of shareholders representing 5% of the share capital when the financial statements are not compliant to provisions of law. The same number of shareholders can ask to the competent court to assess the conformity to law provisions of the financial statements (Art. 157 co 1 Legislative Decree n. 58). Also the above mentioned rights can be exercised by the stock exchange supervising entity (CONSOB) within 6 months from the date of deposit of the financial statements and consolidated financial statements to the “Registro delle imprese” (Art. 157 co 2 Legislative Decree n. 58).

6. Public and Press reactions*Listed and non-listed companies*

Directors of companies are required by law (article 2435 Civil Code) to deposit financial statements together with the Directors’ report, the Board of Statutory Auditors report and the shareholders resolution of approval of the financial statements by filing with a register (“Registro delle Imprese”) within 30 days from the approval by the Assembly. According to Legislative Decree n. 127 dated 9 April 1991, when consolidated financial statements are required to be prepared, they must be deposited to the “Registro delle imprese” together with the Directors’ report and the Board of Statutory Auditors report within 30 days from the day of the approval of the financial statements.

Additionally, the performed deposit of both financial statements and consolidated financial statements must be mentioned in the Official Bulletin of joint stock and limited liability companies.

Only for listed companies

Article 31 of “Delibera Consob” 11520 dated 1/7/98, which integrates Legislative Decree n. 58 dated 24/2/1998, states that Directors are required to deposit the same documents listed in article 2435 of the Civil Code (see above) together with the consolidated financial statements (if required) and the auditors reports in the headquarters of the company and by filing with the Stock Exchange (Borsa italiana) and the Stock Exchange Supervising Entity (CONSOB), the day after the approval of the financial statements by the Assembly. Additionally, the performed deposit of the required documents must be at the same time advised on at least one nationally distributed newspaper (article 37).

LUXEMBOURG

1. Preparation of financial statements

The Board of Directors is responsible for the preparation of financial statements in accordance with local legal requirements.

2. Audit of financial statements

The financial statements and, if applicable, the consolidated financial statements have to be audited by the statutory auditor if the company or the group meets the size requirements specified in the law. Local interpretation of such criteria excludes holding companies from being audited except consolidation when appropriate.

The objective of the audit is to express an opinion as to whether the annual accounts give, in conformity with the legal requirements, a true and fair view of the financial position of the company and of the results of its operations for a stated year.

In addition, the statutory auditor is required to ensure the consistency of the management report with the annual accounts.

3. Approval of financial statements

The approval of the financial statements lies with the general assembly of shareholders. The assembly may approve or reject the financial statements and can initiate changes to them. Profit distribution/allocation can only be performed once the financial statements have been approved by the general assembly of the shareholders.

4. Institutional oversight system

Nature

The “Commission de Surveillance du Secteur Financier” (CSSF) and the “Commissariat aux Assurances” (CAA) enforce the financial reporting standards for companies that fall under their respective jurisdiction (regulated listed companies included).

Type of financial information

The enforcement applies to any document made publicly available: preliminary results, interim financial statements, annual financial statements and prospectuses. The requirements differ depending on the industry.

Financial reporting standards

National GAAP which take into account the industry specificities (banks, insurance undertakings, investment funds etc...).

Enforcement

A systematic review of financial information of all companies involved in the financial industry (proactive) takes place. The extent of the review is at the discretion of the CSSF and CAA staff. The enforcement review of compliance with financial reporting standards covers a formal check that certain elements are there and that certain issues are addressed. In addition, some review of substance takes place including compliance with all applicable legislation.

The commercial register also verifies that all companies in Luxembourg do file annual accounts on an annual basis without any check on the quality of the said annual accounts.

The local legislation contains penal sanctions in the case of non-compliance with the financial reporting standards.

5. Courts

The Board of Directors board is required by law to disclose its individual financial statements and annual report together with the audit report hereto by filing with a register (commercial register) and publishing them in the official gazette (notice of filing is accepted). Financial statements must be made available to anyone upon request.

The law provides for punishments and penalties with the aimed to preventing from the violation of the requirements laid down in the Commercial law and other applicable regulations.

6. Public and Press reactions

Financial statements must be made available to anyone upon request. In practice, significant companies do prepare increasingly transparent annual financial statements as part of their external financial communication policies to avoid bad impression in the public and the press.

Questions are from time to time asked about accounting treatments/presentation adopted by companies in the financial press. This is however of an incidental nature and it therefore plays a limited role as enforcement mechanism.

NETHERLANDS

General

The enforcement mechanism in the Netherlands is the same for all legal entities that have to draw up accounts in conformity with rules of the Fourth and Seventh Directives.

It is important to keep in mind that the Dutch company law regulation regarding annual accounts deals with consolidated accounts as notes to the individual financial statements of the parent company, more precise as notes to the financial fixed assets. So enforcement is not divided over single and consolidated accounts.

It is relevant to know that Dutch listed companies have a two-tier structure. A board of management, which is, like a board in charge of developing strategy and implements this strategy in the day-to-day operations. Separate from this board, there is a supervisory board whose task is to govern the board of management and give this board advice.

Very particular is that for large companies –structuurvennootschappen– (paid up capital and reserves more than DFL 25 mio, more than 100 employees and a work-council based on the law) members of the supervisory board itself and the law gives special rights to this board e.g. the board appoints and fires the members of the board of management and the board approves the annual accounts.

In circumstances where more than 50% of total group personnel are employed outside the Netherlands, relief from some of these obligations is available.

It is noted that at the present the system is coming under discussion but there are not yet initiatives to change the law.

1. Preparation of the financial statements

The board of management is responsible for the preparation of financial statements in accordance with the legal requirements.

Every member of the board has to sign the financial statements to prove that they agree.

2. Audit of financial statements

After (and during) the preparation, the financial statements are audited by an auditor (a "registered accountant" or sometimes by an "accountant-administratie consulent").

One of the aspects of the audit is to make sure that the accounts are in conformity with the law and with a generally acceptable accounting principle (in the Netherlands).

3. Approval of financial statements

Determination by the supervisory board

The audited financial statements of the company, prepared by the management of large companies (structuurvennootschappen) have to be determined by the supervisory board. Determine means that the board has the right to change the financial statements.

One of the tasks of the supervisory board is to govern whether or not the accounts are in conformity with Dutch law. Based on recent court-verdicts one can assume that the members of the supervisory board do not need to investigate themselves, but have to be sure that the annual accounts are looked after by professionals and that they are audited properly. In general the opinion is that the board has to discuss the financial statements with the board of management and the auditor. The responsibility for the financial statements is the responsibility of the board as an entity, however, every member of the board has to sign off the statements and if one of the signatures is missing, the reason therefore is to be disclosed. Given the shared responsibility of the board, members of the supervisory board would be very reluctant to delegate such discussions to an audit committee.

If the company is not a "structuurvennootschap" the board does not have the right to "determine the financial statements. However, the members have to sign off the statement. The general opinion is that they have the same responsibility, however not the right to require changes in the accounts. If a member is of the opinion that the accounts should be changed and the board of management refuses, the only way out for them is to resign.

Approval of the annual accounts

The general shareholders meeting of the “structuurvennootschap”(the large company) has the right to approve or reject the financial statements. They cannot change the financial statements. Only on a basis of approved financial statements profits can be distributed.

For companies that are not “structuurvennootschap”, the general meeting has the right to determine the financial statements. The determination of the financial statements by the general meeting has the same effect on profit distribution as the approval.

Filing of the financial statements

Within 8 days after approval or determination, the financial statements have to be filed with the Chamber of Commerce. Everyone can get copies of the financial statements.

4. Institutional oversight system

STE

The STE (Stichting Toezicht Effectenverkeer) has in its function as a public agent the task to look after the rules of the stock exchange. However they do not have special authority or special initiatives towards financial reporting by listed companies.

Public Prosecutor at the Court in Amsterdam

The Public Prosecutor at the Court in Amsterdam can start, besides a criminal investigation, a civil action in the public interest if he thinks that the way the annual accounts are prepared or approved violate a specific public interest.

Type of financial information

Annual financial statements.

The stock exchange regulator enforces compliance with stock exchange regulations. These regulations contain only limited rules with respect to financial reporting. The regulations do contain a few formal guidelines on interim reporting. Prospectuses are reviewed by the stock exchange.

Financial reporting standards

National GAAP. Judges interpreting the law look also to national accounting standards. The Dutch Council for Annual Reporting relates to IASC.

Foreign listings

For foreign listings, no separate independent review is carried out to verify the compliance with financial reporting rules of their financial statements.

5. Courts

Court action

Within 2 months after filing every interested party that is of the opinion that the financial statements are not in conformity with the law on annual accounts can complain with the Court of Justice (Gerechtshof) in Amsterdam. This court has a special forum, which deals with a number of decisions relating to enterprises. It is called the “Ondernemingskamer”(the Enterprise chamber).

This forum is made up by three judges and two experts.

Based on jurisprudence it is clear that every shareholder is an interested party. Also employees and trade unions are considered as interested party. Every other person has to prove a direct interest in the financial statements.

Besides interested parties the public prosecutor at the court in Amsterdam can file a complaint in the public interest. However, only once such a complaint was filed and the court decided that in this case there was no violation of specific public interest as meant in the law.

In the court case the complainant and the defending companies are parties. Based on the prescriptions in the law, the court is obliged to hear the auditor who audited the financial statements. Although the auditor is not a witness, he has to give all the information the court asked for. In case of a complaint regarding the financial statements of a bank or an insurance company, respectively the Nederlandsche Bank (National Bank) or the Verzekeringskamer (the Insurance Chamber), both government agencies which are entitled to respectively govern banks and insurance companies, are heard as well.

The court can decide to nullify the approval or determination of the financial statements and can give assignments for changes of the financial statements. The court can also give assignments for future financial statements.

The complainer as well as the defender can appeal to the High Court.

In interpreting the law the court sometimes appears to have regard (informally) to the Guidelines of the Council on Annual Reporting. However, the court will never refer directly to the guidelines because they have no legal status.

Since 1971, about 70 complaints have been filed with the Enterprise Chamber. About 50 complaints were actually handled. The vast majority of the complaints (90%) relates to financial statements for the years 1974-1987.

Action against the auditor

Sometimes complainers who did not file their claim in the right time start a disciplinary complaint against the auditor who gave a clean opinion to the financial statements, because the disciplinary court for auditors has no time limits for complaints.

In a few cases the disciplinary court has decided that the auditors' opinion was not correct, because of violations of the regulation regarding annual accounts.

The court decided so, even if the violation was not directly related to the law, but also to the guidelines of the Council on Annual Reporting.

Penal provisions

Violating the filing rules of the financial statement is a criminal act and can be punished with a fine of 10.000 guilders, and or six months' imprisonment of the board members and or closing down the enterprise for a year.

Based on the criminal laws, the members of the board of management and the supervisory board can be punished if the financial statements are misleading.

In case of a bankruptcy management can be personally liable if the regulations for filing are not properly followed.

6. Public and Press reactions

There have been examples in the past of press articles on accounting practices of listed companies. Sometimes these articles seemed to have had an effect on other companies stock prices.

PORTUGAL

General

Portugal has a system of enforcement laid down in company law and tax regulations. The principles of enforcement include self-enforcement, statutory audit and the general court-system.

In general, the Portuguese Company Law states that the board of directors must prepare annual financial statements and a director's report (self-enforcement) to submit to a supervisory board (Conselho Fiscal, where one of the members has to be a Statutory Auditor, or Fiscal Único, also a Statutory Auditor) and with the exception of small entities the accounts must be audited by a Statutory Auditor. A group must prepare also consolidated accounts, following the same process.

The approval is given by the general meeting of shareholders.

1. Preparation of the Financial Statements and Director's Report

Accounting Standards Applied

General accepted accounting principles in Portugal are set up based on the Fourth and Seventh Directives and, as far as possible, it is in compliance with IAS. In cases where there are neither standards nor statements there is a statement that imposes the application of IAS.

For companies outside from Portugal, listed in the stock market:

EU Companies, according to the mutual recognition, can follow their own countries national GAAP or the IAS. Non-EU companies must follow the Portuguese GAAP or *international accepted principles*, which means IAS.

The company can ask for a special authorization to use a different GAAP subject to the condition that the GAAP used provides same quality and trustily as the IAS (with this it has opened a door to accept US GAAP). The CMVM is entitled to require additional disclosures for non-EU companies but, until now, they have not used this right, besides national companies, there is only a Spanish company among the companies listed in the Portuguese stock market.

The right to require additional information is applied to all regulated markets and does not depend on the type of securities.

Finally, it should be noted that companies listed in stock markets established outside EU must, in addition to the specific information requirements of the Portuguese Securities Code, disclose all the information required to be disclosed in other markets and considered relevant to the investors. In other words, it includes additional disclosures on the financial statements that could be required in other markets and are not covered by Portuguese law.

Responsibility

The board of directors is responsible for the preparation and presentation of annual financial statements in accordance with the legal requirements and generally accepted accounting principles as well as consolidated financial statements where applicable.

Every member of the board has to sign the financial statements as to assure his agreement.

2. *Audit of financial statements and Director's Report by the Statutory Auditor*

After the preparation, the financial statements are audited by a Statutory Auditor (Revisor Oficial de Contas).

The audit of financial statements, to be performed by a statutory auditor, is restricted to public companies and private limited responsibility companies in accordance with European Accounting Directives.

Portuguese Company Law does not require the audit of the director's report. However the stock market regulator requires the audit of director's report in what concerns financial information.

Listed companies must also have their accounts audited by an auditor registered in the stock exchange regulator (CMVM "Comissão do Mercado de Valores Mobiliários").

In the case of a statutory audit of a non resident company, CMVM will only accept the audit report if the firm or person allowed to carry out statutory audit complies with conditions equivalent to the ones fulfilled by the national statutory audits registered with CMVM (which includes the submission to a quality assurance system meeting the terms of the recommendation that is being prepared by the European Commission).

To be recognized by the CMVM the auditor must comply with the ISA. The Portuguese audit standards are all in conformity with the ISA.

All the financial information included in the annual report disclosed in Portugal must be audited and the auditors report must refer to the audit standard in which its work is based.

The CMVM accepts an audit report made by an auditor non-resident in Portugal and not registered with CMVM if it satisfies all the conditions of independence and quality of work as required from an auditor already registered. In addition, the auditor must be submitted to a quality assurance system in compliance with the recommendations carried out by the European Commission.

The CMVM verifies these conditions, especially if the auditor, in his own country, is submitted to a quality assurance system that could bring trust to the market.

The professional association of auditors (OROC) has implemented, seven years ago, a system of quality control based on peer review monitored by specialised commission. The quality assurance system will verify if the auditor complies with all audit standards referred to in the audit report.

3. Approval of the annual accounts

The general shareholders meeting (Assembleia Geral de Accionistas) has the power to approve or not the financial statements. They cannot change the financial statements. Also, distributions are to be approved by general meeting.

4. Institutional oversight system

• **Stock Exchange Regulator**

The law assigns to the Stock Exchange Regulator (CMVM “Comissão do Mercado de Valores Mobiliários”), wide regulatory powers on securities markets and the activities developed within their scope. Being responsible for the supervision of securities market and all the entities participating in those markets, it is incumbent on the CMVM to carry out a number of supervision activities aimed at guaranteeing their regular, efficient and credible performance as well as investors' protection.

The CMVM supervises the appropriated appliance of accounting standards used in the accounts of listed companies.

In fact, the Securities Code empowers CMVM to verify whether the information disclosed by the companies (including all the financial information) follows the legal requirements (article 9 of the Securities Code) and if any override has been properly disclosed.

In addition, the CMVM has power to punish the companies with a penalty (article 389 of the Securities Code) and can, as a last consequence, exclude them from the regulated market.

Firstly, the CMVM verifies whether the financial statements, the management report and the audit report are comprehensive and contain all the disclosures required by law and, if any override, have been properly disclosed.

In a second step, if there are any doubts about the compliance, in a process of analytic procedures, the CMVM will ask for clarifications from the company.

Finally, in the case of remaining doubts, the CMVM's enforcement division will visit the company's head office and will verify the accounting records and make some substantive tests and/or conformity tests in order to clarify doubts. At the same time, the CMVM visits the auditing head's office to study the auditing files related to the company in investigation.

The CMVM seeks to cover both sides - company and auditor - in order to assure that there are no suspicions or problems on the financial information that is not properly disclosed. This enforcement procedure covers the single and the consolidated accounts.

The CMVM has powers to, according to international principles, formulate new accounting or interpretative rules for listed companies (article 11 of the Securities Code).

Until now, since CMVM attends, as a member, the Board of the National Accounting Standard Setting Body (CNC), all the rules have been issued directly by CNC. The CMVM has also been requiring the cash-flow statements and some other disclosures.

All the standards or/and the interpretations have been formulated on national standards and in all matters not covered by them, they have been based on the IAS in compliance with the Accounting Directives.

The CMVM overseeing the statutory auditors of companies whose securities are listed on the Portuguese regulated markets, in co-ordination with the auditor's professional body (OROC – Ordem dos Revisores Oficiais de Contas). In certain circumstances, the CMVM can access the auditing files of the statutory auditor and verify if everything is complying with the auditing standards.

CMVM also receives from OROC the report on the quality assurance system carried on by this professional body. If there is any problem with a specific auditor, OROC can take actions that could include additional investigations. If deficits in proper application of the accounting rules are recognized, the CMVM can impose sanctions to listed companies such as penalties or even exclusion from the regulated market.

The sanction can be imposed to the company and/or to the auditor, in the last case its registration with CMVM can be revoked (it implies that the firm or auditor excluded will not be allowed to provide audit work for listed companies). The CMVM, as well as listed companies, practices the enforcement mechanism on investment funds.

- **Central Bank of Portugal (Banco de Portugal)**

The Portuguese banking regulator has a private accounting system with a predefined method of enforcement on the financial reporting of banks.

- **Portuguese Institute of Insurance (Instituto de Seguros de Portugal)**

Enforces the financial reporting of the insurance companies and has a private accounting system.

5. Courts

In Portugal, there is neither special court nor other body exclusively in charge of receiving and dealing with complaints on financial statements. If the shareholder seeks for compensation, he should address to the Court, that is the entity entitled to apply sanctions based on civil liability. However, there is no past experience in this area, therefore a lack of doctrine and jurisprudence of these issues that associated with the high costs of the Portuguese law courts, make them difficult to be considered effective.

However, it must be noted, that the CMVM, in performing its role of market authority, is also a typical addressee for shareholders' complaints. The Enforcement Division manages these complaints and, as explained above, in the case of suspicion, CMVM is empowered to visit both the company and the auditor head offices and to investigate their files.

At the end, the investigation could finish with the appliance of a penalty or with the exclusion of the company from the regulated market.

6. Public and Press reactions

The publication of economic articles in the press has been of some importance. It is in the best interest that all news regarding important accounting issues come to the knowledge of the general public. All listed companies have to publish their annual and consolidated accounts, as well as the auditor's report, in the press and all financial statements are available upon request. It is in the general interest that all companies have clear and transparent annual financial statements to avoid bad publicity from the economic press. There is also a CMVM regulation that obliges all listed companies to inform CMVM about any relevant matters before releasing them to the press.

SPAIN

1. Preparation of financial statements

The administrators of the company are responsible for the formulation of the annual accounts (balance sheet, notes to the accounts and profit and loss statement), the director's report and the proposal of application of the results for the year and, in their case, of the consolidated annual accounts and director's report according to the article 171 of the Company Law.

The individual and annual accounts have to be prepared in accordance with the accounting requirements of the Spanish Code of Commerce and the Company Law.

The Board have to formulate the annual accounts in the term of three months starting from the closing of the social exercise and all the members of the Board have to sign the annual accounts to prove that they agree (otherwise, they must to explain their differences).

2. Audit of financial statements

The annual accounts as well as the consolidated annual accounts (except for those companies classified as small accordingly to our Company Law) have to be audited by the statutory auditor. The purpose of the audit is to issue an opinion on the annual accounts as a whole and to state whether or not the annual accounts provide a true and fair view of the assets and financial situation, as well as the results for the year and the resources obtained and applied during the period examined according to the Commercial Code and other legislation applicable. It also includes the verification that director's report matches the information included in the said annual accounts.

The auditor has a minimum of a month to issue his audit report on the accounts (after its formulation and sign by the Board of the Company).

3. Approval of financial statements

The individual and consolidated annual accounts have to be approved by the shareholders during the annual general meeting (before 6 months after the closing of the year).

Within the next month after the approval of the accounts, the Annual accounts and audit report has to be filed with the Commerce Registry. Annually the trade Registry reports to the ICAC (Instituto de Contabilidad y Auditoría de Cuentas) the list of the companies that have not filled their annual accounts. The ICAC is responsible for the sanction function. The penalty for those not attending this requirement is a fine of 50 million pesetas maximum.

While the company does not deposit the accounts, no other document will be accepted in the Commerce Registry.

4. Institutional oversight system

Nature

Spain has three systems of enforcement for each one of these kinds of companies:

The Comisión Nacional del Mercado de Valores (CNMV): Stock exchange regulator enforces the financial reporting standard of listed companies, investment funds and investment companies and brokers.

The Banco Central de España: central Bank of Spain. Enforces the financial reporting standard of banks, saving banks, credit cooperatives, leasing factoring and instalment sales companies and other creditor companies.

The Dirección General de Seguros: Insurance General Direction. Enforces the financial reporting standard of the Insurance companies.

The IGAE: public sector companies.

Type of financial information

Interim financial statements, annual financial statements and prospectuses for listed companies, banks and Insurance companies.

Additionally the Bank of Spain and the DGS review other information e.g. actuarial reserves.

Financial reporting standards

National GAAP, generally accepted accounting principles in Spain, settled in the General accounting Plan (in which it is also stated the form and content of the annual accounts); and its adaptations.

Enforcement

Enforcement is carried out by the review of financial information of the companies. Listed companies have to present interim and annual financial information, the CNMV verifies that the company carries out this information and reviews the annual audit report. They do not use to review the information contained in the annual accounts.

In addition the CNMV request for special interim reports issued by the statutory auditor in case of a qualified audit opinion. In those interim reports, the auditor reports on the status of the qualifications and the extent to which problems have been solved

Foreign listing

Foreign listed companies have the same obligations that national companies and in case of companies outside Europe, more information is required. Specifically the CNMV requires the fulfilment of a form in which differences are explained.

5. Courts

Third parties that have suffered any loss as result of annual accounts prepared in an inadequate basis are able to court against the administrators of the company and its auditors through the Ordinary Court of Justice. They can also court against the auditors through the ICAC (regulator of the audit profession).

6. Public and Press Reactions

Is in the public interest that all news related to sanctions and revisions done by the regulators have an immediate press reaction. It uses to be published by the economic press and also in the internal bulletins of the regulators.

SWEDEN

1. Preparation of financial statements

a. Individual Financial Statements and Annual Report

The individual financial statements and the annual report have to be prepared by the Board of Director(s) of the company in accordance with the Companies Act and the Bookkeeping Act. Such financial statements and the annual report have to be prepared in accordance with the Annual Accounts Act and submitted to the 14 days before the general assembly of shareholders will approve the financial statements and the annual report.

b. Listed companies

All listed companies have to prepare their financial statements in accordance with the standards of the Financial Accounting Standards Council (Redovisningsrådet).

c. Consolidated financial statements and consolidated annual report

Consolidated financial statements and a consolidated annual report have to be prepared by a parent company in accordance with the Annual Accounts Act, except for small groups and where the parent is head of a subgroup and its consolidated accounts are included in the consolidated accounts of its ultimate parent company in accordance with the European Accounting Directives.

2. Audit of financial statements

Financial statements of all limited liability companies have to be audited by a statutory auditor.

3. Approval of financial statements

Financial statements are approved by the general shareholders meeting.

Filing of financial statements

Financial statements should be filed with the Patent and Registration Office within a month after approval by the shareholders meeting. There is an active enforcement of adherence to the filing requirements with penalties for late filing increasing per month.

4. Institutional oversight system

Nature

The enforcement mechanism is the same for all legal entities and is primarily based on the EU Directives: the requirements to prepare, audit, approve and file the financial statements. On top of that, for listed companies, the Stock Exchange (OM Stockholmsbörsen) requires that the standards of the Swedish Financial Accounting Standards Council (RR) are adhered to when preparing financial statements. The Stock exchange actively enforces this by carrying out a systematic review.

Type of financial information

The enforcement mechanism applies to preliminary results, interim financial statements, annual financial statements and prospectuses.

Financial reporting standards

National GAAP, converging to IAS. The listing agreement requires companies to apply the accounting standards of the Redovisningsrådet.

Enforcement

Enforcement is carried out in form of a systematic review of financial information for all listed companies. The enforcement review of compliance with financial reporting standards encompasses both a formal check that certain elements are there and certain issues are addressed and a review of substance. The compliance with national GAAP is assessed. The Exchange has a disciplinary committee (independent judges) that may issue a warning, fines and ultimately decide on delisting for breaches with the listing agreement, including the requirement to follow the accounting standards of the Redovisningsrådet.

Foreign listings

For enforcement of foreign listings, reliance is placed on the enforcement body of the foreign company in its home country.

5. Courts

There is no special court or regulation in place for complaints on financial statements. Form and contents of financial statements can be contested in court however as part of a civil proceeding against the company or its board. Corporate law gives minority shareholders some extra protection by voting rules for certain decisions and the possibility that the county appoints a minority auditor. The minority shareholders (representing one tenth of all shares or one third of the shares represented at the meeting) may request the County Administrative Board to appoint an auditor who shall participate in the audit together with the other (appointed) auditors. The County Board appoints after consultation with the company's board and such appointment is for the period to the next AGM.

Criminal law proceedings by a receiver in a bankruptcy case or by a special prosecutor for economic crimes might also contest financial statements.

6. Public and Press reactions

Questions are from time to time asked about accounting treatments adopted by companies in the financial press. This is however of an incidental nature and it therefore plays a limited, though increasing, role as enforcement mechanism.

UNITED KINGDOM

1. Preparation of financial statements

The directors of a company are required by company law to prepare annual financial statements that give a true and fair view and comply with the requirements of the Companies Act 1985. The directors of public companies are required to present the financial statements to members in the general meeting (Private companies can elect to dispense with this requirement).

In the UK, the effective audit committee is a cornerstone of the public's confidence in corporate governance and financial reporting. The Combined Code on Corporate Governance, applicable to all listed companies incorporated in the UK, indicates that boards should establish an audit

committee of at least three directors, all non-executive, a majority of whom should be independent. The committee should have written terms of reference that deal clearly with its authority and duties. As a sub-committee of the board, the audit committee has no direct executive authority and it is the board that turns the audit committee's recommendations into decisions.

The Code stipulates that the duties of the audit committee should include keeping under review:

- the scope and results of the external audit
- the cost effectiveness of the external audit
- the independence and objectivity of the auditors, and
- matters related to the provision by the auditors of non-audit services.

In addition to its role in reviewing interim or quarterly financial information and the annual financial statements, the audit committee receives reports from the internal audit function (where one exists) and reviews the resources of that function. The committee often has a role in reviewing the board's statement on the wider aspects of internal control. If so requested by the board, the committee may also get involved in asking probing questions about the overall process for identifying, assessing, managing and monitoring the significant risks faced by the company.

2. Audit of financial statements

The shareholders of a company are required by company law to appoint an auditor. An auditor may not accept the appointment unless authorised as a Registered Auditor by a supervisory body. The auditor is required to form an opinion on whether the financial statements prepared and approved by the directors give a true and fair view and comply with the Companies Act 1985, and *inter alia* to report, if it is the case, that proper accounting records have not been kept.

3. Approval of financial statements

The board of directors is required to approve the financial statements before they are submitted in final form to the auditors and before being placed before the shareholders.

4. Institutional oversight system

The UK has an enforcement system that consists of a number of parts: the Listing Authority (UKLA) of the Financial Services Authority, the Financial Reporting Review Panel (FRRP) and the DTI (Department of Trade and Industry). The first relates to listed companies. The responsibilities of FRRP include only large UK private companies as well as UK public companies; the scope of the DTI extends to all companies. The FRRP operates separately from the Accounting Standards Board (ASB) and is independent of it, but both are under the Financial Reporting Council. The outcome of a FRRP investigation is reported publicly when the complaint is upheld.

The FRRP is involved only when it may appear that audited financial statements do not comply with company law and applicable accounting standards.

Types of financial information subject to enforcement procedures

Preliminary results (UKLA), interim financial statements (UKLA), annual financial statements (FRRP/DTI), prospectuses (UKLA) and directors' report (DTI).

Financial reporting standards

National GAAP for UK companies; usually IASs/US GAAP for non-UK companies listed in the UK.

Preliminary announcements and interim financial statements are the subject of non-mandatory guidance on best practice issued by the ASB. This is additional to the provisions of the UKLA's requirements. However, preliminary announcements and interim financial statements are outside the scope of the FRRP.

Prospectuses are the subject of Rules issued by the UK Listing Authority.

Enforcement

The task of the FRRP is to secure remedial action where requirements of accounting standards or the law have not been followed. It acts through discussion with the directors of companies and seeks to resolve the issue on a voluntary basis, but it has been given the power to refer the matter to the court if a voluntary solution cannot be reached. The FRRP investigates matters which are drawn to its attention. For example:

- where a case is referred to the FRRP by an individual or a corporate body
- as a result of a press comment.

The FRRP operates by means of establishing sub-groups of five or six of its members for each individual enquiry. The knowledge of the case in question is generally confined solely to those members. In other words, the group acts as the panel for the particular enquiry. The full panel meets once a year to take stock and discuss general issues. FRRP members are independent experts drawn from the wide basis of the financial community. Their consideration of the difficult and contentious issues to which cases frequently give rise thus provides a useful addition to existing analysis of issues from which others may draw.

If the FRRP concludes that the accounts are defective and some remedial action is needed, it may pursue a number of solutions:

- formal application to the court for a determination that the accounts in question do not comply with the Act and for an order compelling their revision (power of last resort, which the Panel has not had to use, for which a substantial fund has been established)
- voluntary action: directors issuing a correction where they agree that the original accounts were defective, as provided for in the Companies Act, either by reissue of the full accounts or by the issue of a corrective note covering the defective areas
- correction in the company's next annual financial statements, preliminary announcement and/or interim report, accompanied in some cases by the issue by the company of an immediate press statement to put the necessary information in the public domain.

The FRRP's standard practice in cases where some remedial action has been agreed is itself to issue its own press statement briefly summarising the accounting or legal issue in question and outlining the remedial action agreed. Such press statements serve an important function of drawing attention to accounting practices that the FRRP has found not to comply with the requirements of the Act, with the object of deterring others. In addition, it increases the knowledge base for preparers and users of accounts by making the FRRP's views publicly available.

During 2000, 42 cases were considered by the FRRP, including 10 cases outstanding at the end of 1999. Of the 42 cases, 8 were not taken up and 20 were satisfactorily concluded without any need for corrective action. 5 press notices were issued in respect of those cases where remedial action was required and at the end of the year, 9 were at various stages of consideration by the Panel. All adverse rulings by the FRRP are brought to the attention of the accountancy bodies. On occasions, the FSA refers matters.

Recently a study on *A peculiarly British institution – An analysis of the contribution made by the Financial Reporting Review Panel to accounting compliance in the UK*²¹ was published. The overall objectives of this research study are to evaluate the contribution that the FRRP has made to the effectiveness of the regulatory framework for financial reporting in the UK and to consider how well it is placed to adapt to future challenges.

The researchers found that the FRRP is a cost-effective and respected body that has had a positive impact on attitudes in the UK. They also noted that large audit firms (particularly the Big 5) find that the existence of the FRRP strengthens their position in client negotiations regarding possible regulatory breaches. Their overall conclusion is that the FRRP plays a 'key role in the enforcement of accounting standards in the UK'.

Although, generally, the research is very supportive of the Panel and its achievement to date, the study reaches some notable conclusions:

- There is one overriding criticism of the FRRP, which is linked to the tensions between the detail of the law and the judgements of accounting: the FRRP is too concerned with relatively minor issues of non-compliance and is missing issues of substance (page 90)
- There is some demand from practitioners for a regulatory mechanism for pre-clearance of accounting issues, to pre-empt a subsequent adverse finding (page 91).

In relation to these issues the study also brings out recommendations (page 94):

“The criticism that the FRRP is not picking up significant non-compliance in company accounts is a serious one, and one which we believe needs to be addressed. If audit firms are not prepared to bring non-compliance to the attention of the FRRP themselves, then the alternative solution is for the FRRP to develop a programme of pro-active monitoring itself, on a cyclical basis, but only in respect of listed companies, which are subject to the highest level of public interest. A reactive approach should suffice for the others. But apart from picking up non-

²¹ *A peculiarly British institution – An analysis of the contribution made by the Financial Reporting Review Panel to accounting compliance in the UK* – Stella Fearnley, Tony Hines, Karen McBride, Richard Brandt – Portsmouth Business School, January 2001

compliance, we believe the knowledge that pro-active monitoring was taking place would be a significant deterrent to those minded to commit regulatory breaches.

There is a gap in the regulatory framework in respect of pre-clearance of accounting treatments. It is not obvious where responsibility for this could reside but we believe that consideration should be given to setting up a process for pre-clearance. It would also be helpful if, on a no-names basis, the FRRP were prepared to issue information about accounting treatments which it has investigated and subsequently cleared. We find the arguments that it is not a precedent setter unconvincing and it would be helpful if the reality of this situation were recognised.”

As announced in its 1999 Annual Review, published in February last year, the FRRP itself has set up a small working party to consider the case for pro-activity.

DTI: the DTI conducts limited tests of compliance with UK legal requirements and of consistency in the financial statements that are filed with them. Where an error or omission is identified the company is required to correct it. Statistics are not available on the level of errors and omissions resolved.

UKLA: the UKLA checks compliance with those elements of the listing rules on accounting and disclosure that go beyond UK GAAP. In addition, the UKLA is currently reviewing its policies and procedures relating to compliance with accounting standards. Previously there was no formal process in place other than review of listing particulars.

Foreign listings

For foreign listings' compliance with financial reporting rules, reliance is generally placed on the enforcement body of the foreign company in the home country. The FRRP only has authority over those companies that prepare their financial statements under the Companies Act 1985.

Corporate governance

UK listed companies are required to state their compliance or otherwise with the Combined Code on Corporate Governance. As noted above, listed companies are required to establish an audit committee comprising non-executive directors. If they fail to do so, companies are required to state in the annual financial statements that they have failed to comply with the Code. The Institute of Chartered Accountants has issued guidance for audit committees that sets out that they should review the accounting principles and practices and discuss them with the auditors.

5. Courts

Legal system

Individuals that have suffered loss as a result of reliance on financial statements that were prepared on an inappropriate basis, and in relation to criminal acts, such as fraud, and the Director of Public Prosecution where in the public interest, are able to take court action against Directors that have prepared those statements. Restitution may involve a requirement to restate the original financial statements. However, such events are rare.

6. Public and Press reactions

Action by the UKLA, the FRRP or the DTI to review compliance with the law and applicable accounting standards may follow as a result of a complaint from the public or comment in the press. An adverse ruling by the FRRP is made public through the issue of a press release.

NON-EU COUNTRIES

NORWAY

1. Preparation of the Financial Statements

The management and the board of a company are responsible for the preparation of financial statements.

The Norwegian Public Limited Companies Act regulates the responsibility for the financial statements for limited companies. The managing director shall ensure that the accounts of the company are in accordance with existing Norwegian legislation (i.e. The Norwegian Accounting Act) and regulations. The Board of Directors must keep itself up to date on the company's financial position and shall be under an obligation to ensure that its activities, accounts and assets management are subject to adequate control.

According to the Norwegian Accounting Act, every member of the board must sign the annual accounts and the directors' report as to prove that they agree. The managing director must also sign. If a person who is to sign has objections to the annual accounts or the directors' report, the person in question must sign with an endorsement of the qualifications and give further information about this in the directors' report.

2. Audit of financial statements

After (and during) the preparation, the financial statements are audited by an auditor. Listed companies must be audited by a "State Authorized Public Accountant". (Companies, which are not listed, can instead be audited by a "Registered Public Accountant").

One of the aspects of the audit is to make sure that the accounts are in conformity with the law and with generally acceptable accounting principles (in Norway).

3. Approval of financial statements

The General Meeting has the right to approve or reject the financial statements. They cannot change the financial statements. Only on a basis of approved financial statements can profits be distributed.

The annual accounts, the director's report and the auditor's report are public documents. Anyone shall be entitled to study the contents of the document at the office of the enterprise or at the Register of Company Accounts. The documents are public immediately after they have been approved by the General Meeting.

If the General Meeting rejects the financial statements, listed companies have to inform The Oslo Stock Exchange immediately.

4. Institutional oversight system

Nature

In Norway, there is an enforcement system operated by the stock exchange (Oslo Børs). The Oslo Stock Exchange enforces financial reporting standards for listed companies. The financial reporting requirements of financial institutions are also enforced by the “Kredittilsynet”, i.e. the Banking, Insurance and Securities Commission, which is a government body under The Ministry of Finance. The Kredittilsynet enforces financial reporting standards for both listed and unlisted financial institutions. The Oslo Stock Exchange is supervised by The Ministry of Finance. The Ministry does not enforce financial reporting standards.

Type of financial information

The enforcement system operated by the Oslo Stock Exchange applies to interim financial statements, annual financial statements, prospectuses and report of preliminary results.

In Norway, there is a fourth quarter interim report, which also constitutes the companies’ preliminary annual accounts.

Prospectuses are subject to more rigid controls than the interim and annual financial statements. Prospectuses can be stopped or approved with reservations.

Financial reporting standards

National accounting standards

Norwegian companies are required to comply with Norwegian accounting standards. In **addition** Norwegian companies may produce supplementary statements according to other national GAAPs or IAS. If so, a reconciliation note must be presented.

Foreign companies listed on Oslo Stock Exchange are not required to comply with Norwegian accounting standards. Internationally accepted accounting standards such as UK GAAP, US GAAP and IAS are accepted.

Enforcement

The enforcement is carried out in form of a test/sample basis review of financial information of listed companies. This review is carried out in form of a review in substance. The controls focus on different types of accounting information and different parts of the financial statements. The controls also focus on certain types of transactions, e.g. business combinations and the way these transactions are accounted for. In addition the Oslo Stock Exchange on request by the listed company, will examine the accounting of certain transactions.

The Oslo Stock Exchange can request a company to make changes to its financial statements. If a listed company exceeds the deadline for publishing its financial statements, a fine can be imposed by the Oslo Stock Exchange.

Serious deviations from the financial reporting standards will be treated as violation of the information requirements of the Stock Exchange Regulations, and the company may therefore be charged with a violation fee, or may ultimately be delisted. In practice, however, the listed companies will correct their accounts.

The Stock Exchange Regulations, Section 25-5 *Charge for violation by undertakings with listed financial instruments:*

"Where issuers of listed financial instruments violate the provisions of the Stock Exchange Act or these regulations, the stock exchange board may resolve to impose a violation charge, payable to the stock exchange. (...) An issuer upon whom a violation charge is imposed shall be notified in writing of the decision, and the grounds for the decision shall be set out in the notification. (...) The decision and the grounds for the decision shall be published unless there are special reasons for not doing so."

From the Stock Exchange Regulations Section 25-2 *Delisting of financial instruments*

"The stock exchange board may decide that a financial instrument shall be delisted if it no longer satisfies the conditions for stock exchange listing or if called for on other special grounds. If the issuer has grossly or repeatedly violated the provisions²² laid down in or pursuant to the stock exchange, the issuer of listed financial instruments may apply to the stock exchange board to have its financial instruments removed from the quotation lists where this has been decided by the general meeting with the majority required for amendments to the articles of association. (...)

A decision regarding delisting shall be published immediately in accordance with the rules of section 23-2. (...)"

Section 25-4 *Daily fines for issuers of listed financial instruments*

"If an issuer of listed financial instruments and/or the issuer's employees and/or officers fail to observe the information requirements pursuant to the Stock Exchange Act or these regulations, cf. Section 6-2 of the Stock Exchange Act, the stock exchange board may impose a daily fine on the issuer and/or the issuer's employees and/or officers until such time as the information requirement is complied with.

The daily fine for issuers may not exceed NOK 500.000 per day. The daily fine for the issuer's employees and officers may not exceed NOK 50.000 per day per person. (...)

The decision and the grounds for the decision shall be published. (...)"

Foreign listings

For foreign companies that are secondarily listed on the Oslo Stock Exchange, reliance is placed on the enforcement body relevant to the stock exchange where it is primary listed. However, the Oslo Stock Exchange enforces the accounting rules applicable to foreign companies which are primarily listed on the Oslo Stock Exchange.

²² i.a. the Norwegian Accounting Act and the Norwegian Accounting Standards

5. Courts

According to sections 525 through 527 in the Norwegian Public Limited Company Act, a shareholder, and a shareholder only, may submit a motion on scrutiny of the company. The motion on scrutiny may relate to specified conditions regarding the accounts. The motion must be submitted either at an ordinary General Meeting or at a General Meeting of which the notice convening the General Meeting states that the matter is to be discussed.

- The motion must be endorsed by shareholders owning at least 10% of the share capital;
- The Bankruptcy Court will accept the motion if it finds that the motion is based on reasonable grounds.
- The scrutinisers must submit a written scrutiny report to the Bankruptcy Court.
- The Bankruptcy Court will convene the General Meeting to discuss the scrutiny report.

Indirectly the above procedure may result in an alteration of the accounts to the extent that the Bankruptcy court/the scrutinisers arrive at the conclusion that the relevant part of the accounts should be adjusted, however, the formal decision rests with the General Meeting.

The right of a third party to claim compensation by the company for a loss, is regulated by the Act on Compensation for damages ("Skadeerstatningsloven"). The company's liability will cover claims made by third parties who have based their decisions on misleading annual accounts. Only a person having a legal interest in the matter, i.e. a person claiming to have suffered a financial loss, may seek civil damages against the company. The accounts, and the alleged errors in the accounts, must be considered by the court as a basis for any liability to pay compensation. If the court rules that the company is liable to pay compensation, this not necessarily implies that the accounts must be corrected. The general conditions for a liability to pay compensation according to the above-mentioned act are the following:

- an act or omission intended or through negligence, must have caused the misleading accounts
- the person claiming compensation must establish that he/she has suffered a loss
- there must be an adequate causal connection between the act/omission and the incurred loss.

Penalty

Anyone who deliberately or negligently materially violates the Accounting Act or any regulation issued in pursuance hereof shall be punished by fines or imprisonment of up to three years. In the event of particularly aggravated circumstances, the penalty may be imprisonment of up to six years. Complicity shall be punished in the same way.

Moreover, anyone who deliberately or negligently violates the Accounting Act or any regulation issued in pursuance hereof shall be punished by fines or imprisonment of up to three months. Complicity shall be punished in the same way.

As far as criminal liability is concerned, the person offended has the right to request prosecution (the Norwegian Penal Code, chapter 7). To the extent that violation of the Accounting Act is prosecuted, such actions are normally requested by public authorities etc. (tax authorities/supervisory authorities etc).

6. Public and Press reactions

The annual accounts (including the consolidated accounts and the director's report) and the auditor's report are public documents both for listed companies and other companies. The financial press often refers to published financial statements. The press mainly comments on profit, but it may also criticise the accounting principles used or comment on qualified audit opinions. This may have some impact on accounting practice as most companies will try to avoid negative publicity.

SWITZERLAND

1. Preparation of financial statements

It is the unrestricted responsibility of the Board of Directors to prepare financial statements in accordance with the legal requirements and/or with recognised standard settings (ARR, IAS, etc).

The Board of Directors signs the financial statements as formal acknowledgement of compliance.

a) *Individual Financial Statements and Annual Report*

The individual financial statements and the annual report of every limited liability company (listed or not listed) have to be prepared by the Board of Directors of the company in accordance with the Swiss law.

b) Consolidated Financial Statements and Consolidated Annual Report

Consolidated financial statements are compulsory for group companies (listed or not) which size is more than:

CHF 10 millions of the balance sheet
 CHF 20 millions of the annual turnover
 Annual average of 200 employees.

(Art. 663e of the Swiss Code of Obligations).

The consolidated financial statements and the consolidated annual report have to be prepared by the executive board of the parent company in accordance with the Swiss accounting principles as stated in the Swiss Code of Obligations or, in accordance with the "ARR" recommendations or the internationally accepted accounting standards mentioned above.

Financial reporting standards for listed companies are enforced by the Swiss Stock Exchange.

Listed companies have to adopt either the "ARR" Swiss standards (see comment below), or other generally accepted standards (IAS, US GAAP, etc) as long as they are in compliance with Swiss law for their consolidated accounts.

Financial reporting standards

Listed and non-listed companies have both to comply with the company law (Swiss Code of Obligations). The company law is a system of general provisions and actions, which guarantees the correct application of the authoritative accounting principles.

Since the Swiss company law describes only general principles, accounting and reporting recommendations have been issued by a private Foundation called “Foundation for Accounting and Reporting Recommendations”(ARR).

These “ARR” recommendations mainly apply to consolidated financial statements but can also be applied to statutory financial statements.

The “ARR” recommendations have been accepted by the Swiss Stock Exchange. This means that listed companies have to apply these “ARR” recommendations or another accepted international standards such as IAS or US GAAP).

Non-listed companies in Switzerland are not enforced to adopt the “ARR” recommendations or other accepted international standards. They may simply apply the company law.

2. *Audit of the Financial Statements and the Annual Report by the Statutory Auditor*

The individual financial statements and the consolidated financial statements of limited companies (listed and non-listed) have to be audited by the statutory auditor (Art. 727 of the Swiss Code of Obligations). The purpose of the audit is to state whether the financial statements and the annual report comply with the law and the company’s articles of incorporation.

If the company has adopted the “ARR” recommendations (or IAS, US GAAP and EU Directives), the auditor will have to state this fact in his audit report.

The auditor has to express the results of the audit in an audit opinion, which is public only for listed companies. The company is legally required to publish the audit opinion with the financial statements and the annual report.

Furthermore, for big companies, listed or not listed, (total of balance sheet more than CHF 20 millions, turnover of more than CHF 40 millions, and annual average of employees of more than 200), the auditor has to draw up a long-form report, which includes among others statements about type, scope and conclusions of the audit. The auditor’s long-form report is only addressed to the Board of Directors.

3. *Approval of the Financial Statements by the General Meeting*

The individual financial statements and the consolidated financial statements are legally effective against third parties as soon as they are approved by the general meeting of the shareholders. The audit of the individual financial and consolidated financial statements is conditional for the approval. The decision to pay dividends, which is taken by the shareholders in the general meeting, is only legally binding if the financial statements are approved.

Publication of Financial Statements, the Annual Report and the Audit Opinion by the Executive Board

The executive board of listed companies has to publish the individual financial statements, the annual report and the audit opinion as well as the consolidated financial statements, the consolidated annual report and the audit opinion.

4. *Institutional oversight system*

Nature

Financial reporting standards are enforced, only for listed companies, by the Swiss Stock Exchange.

Type of financial statements

Listed companies have to adopt either “ARR” Swiss standards (see comment above), or other generally accepted standards (IAS, US GAAP, etc...) as long as in compliance with Swiss law.

Enforcement

Enforcement is carried out on a complaint basis.

There is no intervention of public bodies in the process of preparation and audit of the financial statements.

The enforcement bodies are as follows:

At first, there are the internal enforcements put in place by the companies (Internal control system) and of course the supervision of the Board of Directors. Very large companies also benefit from internal auditors.

Secondly, there are the external auditors that are compulsory for every limited company.

Thirdly, the tax authorities consult the annual financial statements (but not the consolidated accounts which are not relevant for tax purposes) for the annual tax return. Depending on the circumstances, tax authorities may perform the audit of financial statements for tax purposes.

Finally, the stock exchange performs a review of financial information for all listed companies. The enforcement review of compliance with financial reporting standards encompasses both a formal check that certain national elements are present and certain issues are addressed and a review of substance. The compliance with the applied GAAP is assessed.

Foreign listings

For enforcement of foreign listings, reliance is placed on the enforcement body of the foreign company in its home country.

5. Courts

As explained before, enforcement is carried out on a complaint basis.

The primary responsibility for the establishment of the annual and or the consolidated accounts is for the Board of Directors.

Articles 754 para. 1 and 755 of the Swiss Code of Obligations stipulate the following:

Art 754 para. 1:

"The members of the Board of Directors (Art. 707 et seq.) and all persons engaged in the management (Arts. 718-721) or liquidation (Art. 739 et seq.) are liable not only to the company, but also to each shareholder and to the company's obligees for the damage caused by an intentional or negligent violation of their duties".

Art. 755:

"All persons engaged in the audit of the annual accounts and the consolidated statement (Art. 728 et seq.), the foundation (art. 635a), a capital increase (art. 652f), or a capital reduction (Art. 732, para. 2), are liable not only to the company but also to each shareholder and the company's obligees for the damage caused by an intentional or negligent violation of their duties".

The primary responsibility is on the Board of Directors, but referring to Art. 755 of the Swiss Code of Obligations, any person or company who has suffered a loss as a consequence of relying on annual financial statements and can prove that the auditor is partially responsible for this situation, can take action to the court.

Everybody (creditors, shareholders, employees, etc.) who has a founded reason to complain against a company has the right to go to the court.

In case of bankruptcy, the Board of Directors can be personally liable if the law has been violated.

6. Public and Press reactions

Listed companies have to publish their annual accounts and consolidated accounts.

This leads listed companies to produce more and more transparent annual financial statements to avoid bad impression in the public and the press.

CENTRAL AND EASTERN EUROPEAN COUNTRIES

CZECH REPUBLIC

The current situation is that the large amendment of Commercial Code is effective from the 1 January 2001, but the proposed significant amendments of the accounting law have not been approved by the Parliament of the Czech Republic (only the small changes in the accounting law are effective from the 1 January 2001). It is a matter of common expectation that the significantly new accounting law and further amendments of commercial law will come into effect January 1, 2002.

Introduction

The consolidated accounts are kept in accordance with the mandatory regulation in the Czech Republic. The Ministry of Finance of the Czech Republic issues the Decree on consolidated financial statements. The accounting standards are mandatory regulations issued by the Ministry of Finance of the Czech Republic and they form part of a legal framework.

The holding company is required to consolidate the group if the net assets of the group (the holding company, subsidiaries and associates) exceed CZK 300 million and its net turnover exceeds CZK 600 million.

The holding company can exclude subsidiaries or associates from consolidation if the holding company is a partnership or co-operative, or if the holding company itself is a subsidiary consolidated within a foreign group in compliance with the Seventh Directive. Minority shareholders can, however, insist on consolidation. The above exemption cannot be applied in the case of listed holding companies.

1. Preparation of the financial statements

The accounting unit (i.e. company) is responsible for its accounting. This means that the responsible managers and staff shall keep their accounting records in a complete manner, with proper support, and correctly, so that they fairly present the accounting events which are the object of accounting.

In accordance with the provisions of the Commercial Code the board of directors ensures that company's accounts are kept properly. The board of directors submits annual financial statements and a proposal for the profit distribution to the general meeting for approval purposes.

The board of directors of the holding (parent) company is responsible for the consolidated financial statements.

The members of the board of directors shall be elected and recalled by the general meeting. The articles of association may require that the members of the board of directors shall be elected and recalled by the supervisory board.

The supervisory board shall supervise how the board of directors exercises its scope of power and how the company realises its business activities. Members of the supervisory board are authorised to investigate all the documents and records related to company's activities and to

check whether the bookkeeping entries are made in accordance with the actuality and whether the business activities of the company comply with the legal provisions, the articles of association and the instructions of the general meeting.

The supervisory board shall consist in minimum of 3 persons. Two thirds of the number of the supervisory board members shall be elected by the general meeting and the other third by the employees of the company, provided that there are more than 50 employees in the company.

The supervisory board shall review the annual financial statements and the proposed profit distribution and submit its comments to the general meeting.

2. Audit of financial statements

Auditor's activities are regulated by the Act on Auditors and the Chamber of Auditors of the Czech Republic, which has been amended in August 2000. The amendment will come into effect 1 January, 2001. The membership of the Chamber of Auditors of the Czech Republic (CACR) is obligatory for all auditors in the Czech Republic. CACR is the sole setter of the national auditing standards and regulations. The other main issues dealt with by CACR are ethics, quality control of audit activities and the professional education and examinations.

The Czech national auditing standards are based on the International Standards on Auditing (ISA) issued by IFAC.

In accordance with the provisions of the Commercial Code an audit of annual financial statements (statutory audit) is required for any joint stock company (in Czech "akciová společnost" or "a.s."). Any limited liability company ("in Czech "společnost s ručením omezeným" or "s.r.o.") or co-operative (in Czech "družstvo") the net turnover of which exceeds CZK 40 million in the preceding year, or the net business assets of which are over CZK 20 million in the preceding year, is also subject to audit. An audit is usually required for a consolidated group of companies.

With reference to the above there is an obligation of audit of financial statements and consolidated financial statements for all the listed companies in the Czech Republic. Audit is provided in accordance with the law regulations and the Czech national auditing standards based on the International Standards on Auditing. Quality of audit services is supervised by the Chamber of Auditors of the Czech Republic which is the professional body established by the law with the mandatory membership of all the auditors.

There are no general regulations for an auditor's appointment. This is a matter of a business relationship between the auditor and the company. Each of the companies has individual rules related to the above issue to ensure the objective and independent audit services (in addition to the requirements enforced by the auditor's regulations and ethics). This means that the auditor should be appointed either by the financial manager, general manager of the company, management, board of directors, supervisory board or general meeting. Companies use usually their own individual approval system of auditor's appointment (this means e.g. the board of directors chooses the auditor based on the recommendation provided by the financial director and makes the proposal for the supervisory board which is finally competent to appoint the auditor).

Audit is carried out by an auditor during and after the preparation of the financial statements (there is no possibility to replace the audit carried out by an auditor by another review carried out by anyone else in the case of the listed companies and in the case of the consolidated financial statements).

There are no legal consequences of a qualified auditor's opinion in the Czech Republic. Qualified auditor's opinion is not a legal reason for prohibition of profit (or dividends) distribution.

The auditor is not allowed to correct the financial statements (only information power to excite the reaction of third parties).

3. Approval of financial statements

In accordance with the provisions of Commercial Code the board of directors submits annual financial statements and a proposal for the profit distribution to the general meeting for approval purposes. The above financial statements are provided to the company's shareholders no less than 30 days prior to the general meeting date. The supervisory board shall review the annual financial statements and the proposed profit distribution and submit its comments to general meeting.

Members of the supervisory board attend the general meeting of the company and they are obliged to present the results of their investigation to the general meeting.

The auditor has the right to inform shareholders during the general meeting about his findings and the results of the audit of the financial statements. The company shall include the auditor's opinion in its annual report.

It is within the scope of exclusive authority of the general meeting to approve the financial statements and determine the profit distribution.

The general meeting cannot change the financial statements – it has only the right to approve or reject the financial statements. Only on a basis of approved financial statements profits can be distributed.

4. Institutional oversight system

Nature

The enforcement system of the Czech Republic is based on the Commercial Code and Act on Accounting. The above law contains the general enforcement regulations such as responsibility of the statutory body for bookkeeping and financial reporting, the statutory audit of the financial statements, approval of the financial statements by the general meeting, filing of documents and publication of financial statements, annual report and auditor's opinion, penal and fine provisions. In addition to such a system there are enforcement mechanisms related to listed companies applied by the Prague Stock Exchange (the review is limited to formal checks) and the Securities Committee which is the government body appointed to oversee the capital market in the Czech Republic. The Czech National Bank enforces the rules for banks (these are listed companies too) and provides a specific review of certain bank operations in addition to the common mechanism applied in the case of other enterprises.

Financial reporting standards

Financial reporting standards means the Decrees issued by the government. These are mandatory regulations which form a part of legislation framework. The application of IASs is obligatory for both consolidated and individual financial statements of the listed companies, but only in addition to the financial statements prepared in compliance with national GAAP (IASs cannot be applied instead of national GAAP). Specific rules are applied to specific types of companies (enterprises, banks, public sector, etc.).

Description of enforcement

Enforcement is carried out in a form of systematic review of financial information of all listed companies. Proactive systematic review of annual financial statements has to be provided by the statutory auditors in the first place.

The enforcement review of compliance with financial reporting standards comprises both a formal check that certain elements are there and certain issues are addressed.

In addition, the reactive review on a test/sample basis is carried out by the government control body. The tax authorities investigate the compliance with the valid accounting law and standards within the tax control and assess the penalties in the case of non-compliance.

Foreign listings

Not applicable in the Czech Republic

5. Courts

Any shareholder, member of the board of directors or member of supervisory board may ask the court to cancel the resolution of the general meeting in the case of violating any regulations (incl. articles of association) within 3 months period after the date of the general meeting.

In accordance with the Criminal Code the responsible person who does not keep the accounting books and other records or makes the false entries commits the criminal act and can be punished with a fine of a penalty, imprisonment for duration from six months to three years, or prohibition of activity.

Complaints against auditor are dealt with by the supervisory board of the Chamber of Auditors of the Czech Republic. In case of a breach of the auditor's obligations (where such a breach is not a criminal act) the Chamber shall impose on the auditor a fine of up to CZK 500.000 or suspension of professional activity for a period of up to three years.

In case of a breach of any obligations assigned by the accounting law (incl. accounting standards) the authorities can impose fines of up to CZK 500.000, and whether the proper determination of the income tax base is prevented by such a breach, the fine may be increased up to CZK 1.000.000.

6. Public and Press reactions

The listed companies have the obligation to publish their annual report including the financial statements (both the individual and the consolidated) in the nationally distributed daily news or to allow the annual report free of charge at the seat of the company and at the Prague Stock Exchange. The way of publication has to be announced in the Trade Bulletin. The deadline for publication is at the latest 4 months after the end of financial year at the latest.

Annual report has to comprise in particular the complete financial statements, the auditor's report and information regarding the financial situation and activities of company, the expected financial results in the forthcoming years, and information related to all benefits received by the executives and management of the company and financial relationship between the company and third parties. Also information about the number of company's shares owned by the members of board of directors, supervisory board and management has to be published in the annual report.

In the case the auditor's report is not issued yet at the moment of deadline for publishing the financial statements the company has the obligation to append the auditor's report to the annual report immediately after receiving it.

In case the general meeting will not approve the financial statements the company has the obligation to publish at latest within one month the new annual report in which will give the reasons of financial statements' disapproval and explain the way of solution of general meeting's remarks.

The annual reports and financial statements have to be put in the Collection of Documents of the Trade Register. In case of listed companies the above documents are submitted to the Securities Committee that puts the annual reports and financial statements to the Collection of Documents in itself.

The transparent and proper accounting policy and financial statements are part of companies' external financial communication that should help to avoid the bad impression regarding company based on the information from the press and the public documents. However, with reference to the past experiences with the press articles related to the accounting practises of the companies there have not been any numerous examples with major effects on such companies in the Czech Republic.

HUNGARY

1. Preparation of financial statements

Preparation of Financial Statements and the Annual Report by the Executive Board

a) Financial Statements and Annual Report

Both the individual and consolidated financial statements and the annual report of companies have to be prepared by the management of the company in accordance with the Hungarian Accounting Act. They have to be audited by the auditor and, together with the opinion of the supervisory board, approved by the shareholders' meeting.

It is stipulated in the Act on Business Associations that: “The supervisory board shall examine all substantial business reports on the agenda of the shareholders’ meeting, as well as any proposals relating to issues falling within the exclusive competence of the shareholders’ meeting”. The shareholders’ meeting may pass resolution on the report prepared according to the Act and on dividend only in possession of the written report of the supervisory board. The business association shall have the authenticity and legal compliance of the report prepared pursuant to the Accounting Act examined by the auditor. Without a statement of opinion by the auditor, the shareholders’ meeting may not decide on the report prepared pursuant to the Accounting Act. Furthermore, the auditor shall examine all substantial business reports proposed to the shareholders’ meeting from the point of view of whether they contain true data and comply with all legal regulations.

For limited liability companies the Act stipulates: “Submission of the report of the company limited by shares prepared pursuant to the Accounting Act, and of the proposal for the dividend shall be the duty of the board of directors”.

b) Listed companies

For companies whose shares or other securities issued are traded officially the stipulations of the Securities Act prevail. The annual report has to be audited, published and sent to the Supervisory Commission. These companies have to apply the accounting, auditing and publication rules of the Hungarian Accounting Act, which stipulates:

“Save for government securities, the issuer shall disclose regular information to the public concerning main data of his financial and income position and operations. Regular information is to be provided in the form of flash-reports and annual reports. Local governments are not required to prepare flash-reports.

Issuers shall publish the flash-report by 15 February at the latest following the financial year in a national daily newspaper and in the stock exchange journal, and shall send the same to the Supervisory Commission. The attention of investors is to be drawn to the fact that the data indicated in the flash-report are not audited.

Issuers shall ensure the inspection of their annual reports by the investors. Issuers shall publish in an announcement the place and time of inspection of the annual report by 30 April at the latest following the financial year in at least a national daily newspaper and in the stock exchange journal. The inspection of the annual report is to be made possible not later than within seven days of the publication of the announcement.

The annual report is to be sent to the Supervisory Commission no later than 30 April following the financial year and it is to be announced simultaneously when and in which daily newspaper the announcement will be published.

The Supervisory Commission may oblige the issuer to complete or amend the annual report by setting a deadline if the annual report does not comply with the provisions of the Securities Act.

Issuers shall duly sign the flash-report and the annual reports. Issuers shall be held responsible for the contents of the reports.

An annual report shall include a letter of responsibility on the part of the issuer that it contains true data and statements and does not conceal any fact that is of importance in respect of opinion on the issuer's position.

International financial institutions shall publish their annual reports prepared based on specific laws. An issuer, publishing a prospectus between 1 January and 30 April following the financial year, shall not be required to prepare and publish an annual report on the financial year, provided however, that the prospectus includes the data of the annual report. The prospectus and the public offer shall indicate that the issuer will not publish any annual report following the publication of the prospectus.

Save for government securities, issuers are obliged to send to the Supervisory Commission and publish in a daily newspaper and in the stock exchange journal within two days all the required information and those directly or indirectly affecting the value or returns of the securities.

The deadline of two days is to be calculated from the date of the decision of the issuer or another association, from the date of occurrence of the event and fact, or the day when the issuer knew them.

In the event of any securities of the issuer being offered abroad, the issuer is obliged to publish the data and information to be announced according to the laws of the place of issue at the same time and with the same contents in Hungary also.

Issuers shall be held responsible for paying compensation for damages caused by any failure to disclose regular and extraordinary information and by the deceptive contents thereof. This fact is to be indicated in the annual report.

If false data is published about an issuer, that might affect the value or returns of the securities issued by him, he is obliged to publish the true data within two days. The statement of the issuer is to be published in a manner as defined and at the place of announcement of the false data.

c) Consolidated Financial Statements and Consolidated Annual Report

The consolidated financial statements have to be prepared by the management of the parent company. The consolidated financial statements have to be prepared in accordance with the Hungarian Accounting Act.

2. Audit of financial statements

The Act on Business Associations stipulates:

“Election of an auditor shall be obligatory

- a) for companies limited by shares,
- b) for limited liability companies, the initial capital of which exceeds fifty million HUF, furthermore, in the case of single-man limited liability companies, and
- c) if so prescribed by law.”

The shareholders' meeting may decide on the election of an auditor even if this is not obligatory.

Without a statement of opinion by the auditor, the shareholders' meeting may not decide on the report prepared pursuant to the Accounting Act. Furthermore, the auditor shall examine all substantial business reports proposed to the shareholders' meeting from the point of view of whether they contain true data and comply with all legal regulations.

The auditor shall take part in the shareholders' meeting. If so required, the auditor may be invited to attend the management meetings or the supervisory board meetings with a right of consultation, or the auditor himself may initiate his attendance at such meetings. In this latter case, the request of the auditor may be refused only in exceptional justified cases.

The purpose of the audit is to state whether the financial statements are prepared in accordance with the authoritative accounting principles. The auditor has to express the results of the audit in an audit opinion, which is meant for the public. The company is legally required to publish the auditor's opinion with the financial statements. Furthermore the auditor might prepare a so-called long-form report, which includes among others statements about type, scope and conclusions of the audit. The auditor's long-form report is only addressed to the supervisory board and the executive board.

3. Approval of financial statements

The approval of the financial statements is the task of the shareholders' meeting. Only financial statements audited by the auditor and commented by the supervisory board can be presented to the shareholders' meeting of the corporation. The management is required by law to disclose its individual financial statements with the auditor's report by filing with a register (commercial register) and publishing them by presenting it to the publishing department of the Ministry of Justice. Parent companies are required to disclose their consolidated financial statements and the related auditor's opinion.

4. Institutional oversight system

Concerning stock exchange transactions, listed companies have to show the financial statements as well as the consolidated financial statements to the Stock Exchange and the Supervisory Commission.

Enforcement

Enforcement is carried out in a reactive way on complaint basis. There is no check with financial reporting standards. Auditors are responsible for the quality of their work to the Chamber of Hungarian Auditors. The Courts accept only audits of Chamber members. Any disciplinary action might endanger the membership of the Chamber of the auditor.

5. Courts

Determination of Punishments, Penalties and Enforcement Fines by the Court of the Commercial Register and the General Court

Criminal Code stipulates:

“Infringement of Accounting Discipline

The person who infringes

- a) his reporting, bookkeeping or other obligation,
- b) discipline in connection with certificates

Prescribed in the Act on Accounting or in the legal rules based on its authorisation, and thereby frustrates or makes more difficult the survey or inspection of his property situation, commits a misdemeanour, and shall be punishable with imprisonment of up to two years.

Abuse of Authority by the Senior Officer of an Economic Association

A senior officer of a business association, or a member vested with management authority, who deceives any member of the company in respect of the pecuniary assets of the company, commits a misdemeanour offence and shall be punishable with imprisonment of up to two years, labour in the public interest or a fine, if such act does not result in a criminal act of greater gravity.

Curtailment of Registered Capital or Primary Capital

The senior officer of a company limited by shares or of a limited liability company, who withdraws partly or wholly the registered capital or primary capital, commits a felony, and shall be punishable with imprisonment of up to three years.”

Commercial Register:

The stipulations are in the Law on the Registration of Companies, Public Company Information and Court Registration Proceedings as follows:

General Rules for Judicial Supervisory Procedures

Judicial supervisory proceedings shall be conducted, if the company fails to operate in compliance with legal regulations or with the provisions of the instrument of constitution pertaining to the company's structure and operations,

Judicial supervisory proceedings may be initiated upon request or ex officio.

Within the framework of judicial supervisory proceedings the Court of Registration shall decide on the judicial supervisory petition and, depending on the weight of the grounds for such, impose the following measures when justified:

- a) order the company in writing to restore operations in compliance with the law,

- b) impose a fine between 50.000 and 500.000 HUF,
- c) suspend execution of the company's resolution for a specific period or declare such resolution null and void, and order a new resolution to be passed if necessary,
- d) convene the executive body of the company in order to have lawful operation of the company restored,
- e) suspend the company's operations for a specific period of time,
- f) ban the company from further operations and declare it dissolved if lawful operations cannot be otherwise provided for.

Stock Exchange Supervisory Commission:

The Securities Act stipulates:

“Proceeding of the Supervisory Commission

The Supervisory Commission shall act in cases pertaining to its sphere of authority - with the differences as defined in this Act”.

In respect of resolutions of the Supervisory Commission no legal remedies shall be available through administrative channels.

The Supervisory Commission may order the prompt execution of its resolutions - except if a fine is imposed by such resolution - if

- a) it is necessary for the purpose of protection of investors from damages, or the protection of general interests of the capital market,
- b) in default thereof a further decline can be expected in the position of the investment service enterprise giving reason to take measures.

In the course of the Supervisory Commission's proceedings for the licensing investment service activities and the approval of the prospectus, if the relevant documents are in a foreign language, an attested Hungarian translation of such documents shall also be attached.

6. Public and Press reactions

Publication of Financial Statement and the Audit Opinion by the Management

There is no evidence of substantial impact of the press on the financial reporting by companies.

SLOVENIA

1. Preparation of financial statements

The executive management of the company is responsible for timely preparation and the accuracy of financial statements and business report which it is obliged to submit to company bodies within the time limits defined by the Company Act. Business reports shall contain in particular:

- information and explanation concerning the balance of assets, financial position and the structure of funding,
- information and explanation concerning development and the results of business operation,
- an estimate of possibilities for future development,
- information on the issue and purchase of own stocks or shares.

The annual report shall consist of financial statements with enclosed explanations thereof, plus the business report; the financial statements and explanations shall make up the annual accounting report as a basis for the preparation of the business report, mentioned above.

The obligatory financial statements shall be prepared in accordance with Slovenian accounting standards (which are in all material aspects in accordance with International Accounting Standards) and shall include:

- a balance sheet, showing the balance of assets and liabilities relative to the sources of funds at the end of the business year,
- a profit-and-loss statement, showing income, expenditure and financial results in the business year and
- a statement on the profit use and loss coverage.

Large and medium-sized joint stock companies, large (also medium-sized according to the new law which is not in force yet) limited liability companies, associated companies and companies whose securities are quoted on the stock exchange shall in addition to the statements from the preceding paragraph prepare a cash flow statement in accordance with the accounting standards.

Associated companies shall in addition prepare consolidated annual statements composed of the consolidated balance sheet, consolidated profit-and-loss account and consolidated cash flow statement with the necessary explanations, under conditions and in the manner provided by the accounting standards. Associated companies shall be understood to mean legally independent companies which are mutually related in such manner that:

- one company holds a controlling share in the other (controlled company and majority-share company),
- one company depends on the other (dependent company and controlling company),
- they form a concern,
- two companies share in each other's capital,
- they are associated through corporate contracts.

2. Audit of financial statements

According to the Law on Commercial Companies the annual financial statements of large and medium-sized joint stock companies, large (also medium-sized according to the new law which is not in force yet) limited liability companies, associated companies and companies whose securities are quoted on the stock exchange shall in accordance with special regulations (The Audit Act) be audited by an independent auditing firm within six months from the end of the business year. According to the Audit Act International Standards on Auditing are used in Slovenia.

3. Approval of financial statements

The approval of financial statements is according to the Law on Commercial Companies the competency of the general assembly. In the case of joint stock company the assembly shall decide on distribution of profits as proposed by the executive management and on the basis of the opinion supplied by the supervisory board, and on the annual report as proposed by the executive management and on the basis of the opinion supplied by the supervisory board. In the case of a limited liability company the shareholders shall adopt decision on adoption of the annual financial statements in the assembly.

4. Institutional oversight system

Slovenia has an individual rights system in addition to the enforcement carried out by the stock exchange and stock exchange regulator. According to the legislation (audit act, law on commercial companies, law on banks, law on insurance companies, law on mutual funds, law on cooperative societies, law on accounting), the statutory audit function plays a very important role. The enforcement mechanism carried out by the stock exchange and by the stock exchange regulator applies to all listed companies.

Type of financial information

Preliminary results, interim financial statements, audited annual financial statements and prospectuses.

Financial reporting standards

National GAAP.

Enforcement

The enforcement is carried out by the audit of financial statements prescribed by law. These audits are performed in accordance with International Standards on Auditing.

Foreign listings

No foreign companies are listed at the Ljubljana Stock Exchange.

5. Courts

According to the present law the decision to verify the annual report may be contested in a lawsuit:

- if the substance of the report is at variance with the law which protects the interests of creditors, or if it is at variance with public interest,
- if the report was not prepared in accordance with the law,
- if in the process of evaluation the report was assessed by unauthorised auditors,
- if the executive management or the supervisory board did not adopt the report in accordance with the Articles of Association.

Any shareholder may contest in a lawsuit any assembly decision which is in violation of the company's fundamental goals or fair business practices and aims at doing harm to a shareholder or impairing the interests of the company.

Any shareholder may contest in a lawsuit an assembly decision which a shareholder, by using his voting right, turned to his or a third person's advantage at the expense of the company or other shareholders. The decision by which other shareholders are indemnified for damage may not be contested in a lawsuit.

6. Public and Press reactions

According to the present law a share capital company shall be bound to submit an annual report to the organisation authorised for the processing and publication of data within two months from the end of the business year.

Companies which are obliged to have their annual reports audited shall submit them within 30 days from the receipt of the audit notice, but not later than eight months from the end of the business year.

Companies which pursuant to the present law are considered as small shall submit only the annual accounting reports, and not the business reports.

The organisation authorised for the processing and publication of data shall make the data from annual reports available to whoever requests them, and shall issue on request a copy of the data against payment of actual expenses for the copy.