UNICE

THE VOICE OF BUSINESS IN EUROPE

22.7/8/1

28 June 2005

Mr Stig Enevoldsen
EFRAG
Avenue des Arts, 41
1040 Bruxelles

Stig,

Dear Sir,

RE: UNICE COMMENTS TO DRAFT EFRAG LETTER CONCERNING IFRIC D17, IFRS 2 – GROUP AND TREASURY SHARE TRANSACTIONS

We agree with EFRAG's recommendation that the IFRIC/IASB formally amend the definitions so that transactions in which a parent grants rights to its equity instruments directly to a subsidiary's employees fall within the definition of 'share-based payment transaction' and 'equity-settled share-based payment transaction'.

We share EFRAG's discomfort with the accounting treatment being made dependent on whether the parent or the subsidiary granted the rights to the subsidiary's employees, and we also believe that in practice this is often a joint decision. When the grant of rights within the entity stems from a corporate plan decided at the group level, whether the agreement is reached between the entity and its employees or between the parent entity and the subsidiary's employees only brings a very formal difference of context. Indeed the decision is made at the corporate level and the subsidiary has at no time *effective control* of the parent's shares. As the subsidiary is controlled by its parent, decisions made by its board of directors are decisions made by the parent. We therefore disagree with BC8 as we believe that the existence of an agreement by the parent to provide its own equity to the subsidiary brings to the linked arrangements (between the entity and its employees, and between the entity and its parent) the same economic substance as a grant of rights made directly between the parent and the subsidiary's employees. Recording a liability would be misleading as the outcome of the transaction is known right from inception to have no impact on the entity's financial position.

Otherwise, a practical alternative solution could be to follow the precedent set in IAS 19 (rev.):

> *IAS 19/34: Defined benefit plans that share risks between various entities under common control, for example, a parent and its subsidiaries ….*
> */34A: An entity participating in such a plan shall obtain information about the plan as a whole measured in accordance with IAS 19 on the basis of assumptions that apply to the plan as a whole. If there is a contractual agreement or stated policy for charging the net defined benefit cost for the plan as a whole measured in accordance with IAS 19 to individual group entities, the entity shall, in its separate or individual financial statements, recognise the net defined benefit cost so charged. If there is no such agreement or policy, the net defined benefit cost shall be recognised in the separate or individual financial statements of the group entity that is legally the sponsoring employer for the plan. The other group entities shall, in their separate or individual financial statements, recognise a cost equal to their contribution payable for the period.*

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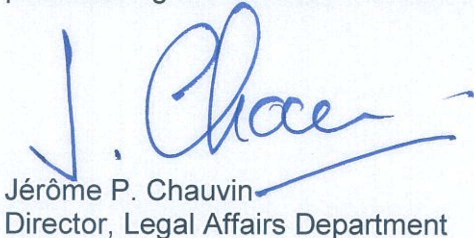
While the share scheme is not pooling risks, it takes both the service of the subsidiary's employees and the parent's shares (and possibly a trust) to make the scheme work. The subsidiary should recognise the appropriate cost of the group share scheme and disclose information about the scheme as a whole. The approach would also offer a more practical way of dealing with employees moving around to different subsidiaries during the vesting period: it would be up to a contractual agreement or stated policy for charging to determine whether the subsidiary bears the whole cost because they made the grant even if the employee now works for a different subsidiary or whether each subsidiary gets allocated a cost based on the employees they have at a given time.

If the approach proposed in para. 11 were to be adopted unchanged, considerable extra costs (and potential confusion) would arise for many entities from having to carry out parallel calculations on both an equity- and a cash-settled basis, without any commensurate benefits for the users of the financial statements. In such circumstances it would be important for IFRIC to permit pragmatic simplifications, for instance by explicitly permitting the same amounts to be recorded by the subsidiary in its stand-alone financial statements as used for consolidated purposes where there is demonstrably no material deviation between the two approaches. Also, where a parent recharges its subsidiaries for the costs of the scheme, the amounts recharged should be permitted to be recorded as the subsidiary's costs if they are in line with actual costs within reasonable limits of materiality.

Finally, IFRIC should supplement the draft interpretation with additional guidance dealing with how to account for any non-controlling interest in the transaction. Also, if D17 were to be adopted as it stands, IFRIC should give guidance, as part of the Illustrative Example, on the accounting entries involved at the outcome of a cash-settled transaction in the subsidiary's stand-alone financial statements when the rights to the parent's shares are granted by the parent as agreed between the subsidiary and its parent.



Best regards

Jérôme P. Chauvin
Director, Legal Affairs Department