



IASB  
International Accounting Standards Board  
30 Cannon Street  
London EC4M 6XH  
United Kingdom

20 April 2011

Dear Sir or Madam,

RE: EXPOSURE DRAFT OFFSETTING FINANCIAL ASSETS AND FINANCIAL LIABILITIES

BUSINESSEUROPE welcomes the opportunity to respond to the exposure draft on Offsetting Financial Assets and Financial Liabilities (the ED).

We acknowledge and appreciate the Board's efforts to converge to US GAAP and to arrive at a principle based approach for offsetting. BUSINESSEUROPE strongly believes in a level playing field and considers that European listed companies applying IFRS should not be put at a disadvantage compared to companies applying US GAAP.

BUSINESSEUROPE also broadly supports the principles of the exposure draft and, in particular, the unconditional right of set-off but considers that its application in all circumstances is too rigorous, because it does not allow a net presentation when the parties have the legal right to settle net and intend doing so but the right could be nullified by the bankruptcy of a counterparty. Therefore we recommend that the unconditional right should be applicable in the conditions prevailing at the balance sheet date in the normal course of business (please see our answers to question 1 and 2 for more details).

We also have concerns with the numerical disclosures, which we consider superfluous given the strict conditions of the ED. Therefore we would recommend that the Board restricts the disclosures to the description of the offsetting agreements that the entity has entered into (please see our answer to question 4 for more details).

We remain at your disposal should you wish to discuss this subject further.

Yours sincerely,

Jérôme P. Chauvin  
Director  
Legal Affairs Department  
Internal Market Department



## APPENDIX I - RESPONSES TO THE SPECIFIC QUESTIONS

### Question 1- Offsetting criteria: unconditional right and intention to settle net or simultaneously

*The proposals would require an entity to offset a recognised financial asset and a recognised financial liability when the entity has an unconditional and legally enforceable right to set off the financial asset and financial liability and intends either:*

- a) to settle the financial asset and financial liability on a net basis or*
- b) to realise the financial asset and settle the financial liability simultaneously.*

*Do you agree with this proposed requirement? If not, why? What criteria would you propose instead, and why?*

BUSINESSEUROPE welcomes and supports the Board's decision to converge the offsetting requirements to an approach similar to that of IAS 32. Therefore we note that the Exposure Draft (the ED) does not fundamentally change the requirements on offsetting in paragraph 6 compared to those of IAS 32 paragraph 42 that allows offsetting net presentation when:

- a) an entity currently has a legally enforceable right of set off, and
- b) intends either to settle on a net basis or to realise the asset and the liability simultaneously.

The main difference noted is that paragraph 6 of the ED specifically requires that the right of set-off be unconditional, removes the reference to the requirement that the right needs to be currently available – presumably because the ED assumes that this is covered by the unconditional part - and requires the right to be available in all circumstances (C5). BUSINESSEUROPE would support the principle of an unconditional right of set off but considers that its application in all circumstances is too rigorous as explained in the next paragraph.

While the Basis for Conclusion discusses in broader detail the reason why the right must be unconditional, it does so only with respect to rights that only become unconditional on a future event. The ED does not explain the opposite situation, where a right to offset is currently available but might be nullified by a future event, e.g. the bankruptcy of the counterparty. Instead, paragraph C6 simply points out that an entity's right of set-off "will depend on the law governing the contract and the bankruptcy regime that governs the insolvency of the counterparties". We consider that these requirements are very restrictive because the reference to the bankruptcy regime in the various legislations involved with the agreements makes the net presentation of assets and liabilities almost impossible to achieve, for example in the case of certain structured transactions. We also do not agree with the Board when it believes that it is not sufficient that the unconditional right to offset existed at balance sheet date (i.e. "currently"). One could argue that if there is any informational relevance of showing in the income statement e.g. unrealised gains and losses due to fair value movements, there is an equally high information relevance in connection with offsetting assets and liabilities at the balance sheet date, if there is a legal enforceable unconditional right at that date and the intention to use it.

We believe that the very restrictive requirements of the ED result in inflating the balance sheets of the entities whereas, in normal circumstances (i.e., excluding a forced liquidation), the parties would always be able to settle net and a net presentation would reflect this fact.

BUSINESSEUROPE therefore recommends leaving the basic principles unchanged but to refer to the application of unconditional offsetting to currently enforceable agreements in the most probable situation at the balance sheet date and when management intends to settle net. Consequently the reference to the application in case of bankruptcy or default should be deleted.

Furthermore the fact that the asset and the liability sometimes have the same maturities is further evidence of offsetting and we consider that this criterion is not redundant as the Boards contend in BC53. Therefore considering the above facts would better reflect the economic substance of the offsetting transactions.

### **Question 2—Unconditional right of set-off must be enforceable in all circumstances**

*It is proposed that financial assets and financial liabilities must be offset if, and only if, they are subject to an unconditional and legally enforceable right of set-off. The proposals specify that an unconditional and legally enforceable right of set-off is enforceable in all circumstances (i.e. it is enforceable in the normal course of business and on the default, insolvency or bankruptcy of a counterparty) and its exercisability is not contingent on a future event. Do you agree with this proposed requirement? If not, why? What would you propose instead, and why?*

BUSINESSEUROPE would be supportive of an approach whereby offsetting would be based on the substance of the transactions as explained in broader detail in our answer to question 1. Therefore we consider that the requirement should be restricted to enforcement in the normal course of business on the basis of conditions prevailing at the balance date. However if the agreement is not enforceable in case of a bankruptcy or default, and if the bankruptcy or the default of the counterparty is likely at the balance sheet date, then a gross position should be presented.

When an entity holds a conditional right of set-off, we do not consider that this entity should be allowed to present net on the balance sheet because it would be very difficult to establish reliable criteria under which the entity would report net.

### **Question 3—Multilateral set-off arrangements**

*The proposals would require offsetting for both bilateral and multilateral set-off arrangements that meet the offsetting criteria. Do you agree that the offsetting criteria should be applied to both bilateral and multilateral set-off arrangements? If not, why? What would you propose instead, and why? What are some of the common situations in which a multilateral right of set-off may be present?*

We agree with the conclusion of BC61 that there is no valid reason to exclude multilateral offsetting which may even occur in practice.

#### **Question 4—Disclosures**

*Do you agree with the proposed disclosure requirements in paragraphs 11–15? If not, why? How would you propose to amend those requirements, and why?*

BUSINESSEUROPE considers that the disclosures are cumbersome and that the standard does not distinguish disclosures required from banks and those required from non-financial entities.

For non-financial entities, we believe that the purpose of the disclosures is to help the users to understand what types of assets and liabilities are subject to a right of set-off but we have doubts about the numerical disclosures as per paragraph 12 and the illustrative examples. We believe that the users must understand the terms and conditions of the offsetting agreements and, therefore we consider that narrative disclosures would suffice because the full transparency and faithful representation of the assets and liabilities already exists on the balance sheet.

In particular, we consider the disclosures of paragraph 12 lit. (a) and (b) that cover the gross and net positions under an offsetting agreement when the conditions of the ED are met are superfluous because the entity would settle net in accordance with the future IFRS. Therefore the disclosure of the gross and net position refers to a situation that would never exist. Likewise we do not agree with the disclosure of gross and net amounts when an entity has adopted a gross presentation because it does not intend to settle net (paragraph 12 lit. (c)), or it has a conditional right to settle net (paragraph 12 lit. (d)). In such a case it is the net amount that has little significance if any.

We also fail to see the meaning and do not understand the benefits that the users may receive from a net amount of all the disclosures of paragraph 12 lit. (a) to (d), which is requested in paragraph 12 lit. (e), i.e., the net amounts after taking into account the effects of the items in (a)-(d).

Finally the ED requires disclosures about collateral whereas IFRS 7 paragraphs 14 and 15 already cover collateral. We therefore consider that paragraph 12 lit. (f) and (g) are redundant.

#### **Question 5 - Effective date and transition**

- a) *Do you agree with the proposed transition requirements in Appendix A? If not, why? How would you propose to amend those requirements, and why?*
- b) *Please provide an estimate of how long an entity would reasonably require to implement the proposed requirements.*

BUSINESSEUROPE considers that the future IFRS on offsetting should be effective at the same time as the complete version of IFRS 9, i.e., not earlier than 1 January 2015.

\* \* \*