ED OF PROPOSED AMENDMENTS TO IFRS 3 BUSINESS COMBINATIONS

Question 1—Objective, definition and scope

The proposed objective of the Exposure Draft is :

> *…that all business combinations be accounted for by applying the acquisition method. A business combination is a transaction or other event in which an acquirer obtains control of one or more businesses (the acquiree). In accordance with the acquisition method, the acquirer measures and recognises the acquiree, as a whole, and the assets acquired and liabilities assumed at their fair values as of the acquisition date.*

The objective provides the basic elements of the acquisition method of accounting for a business combination (formerly called the purchase method) by describing :

(a) what is to be measured and recognised. An acquiring entity would measure and recognise the acquired business at its fair value, regardless of the percentage of the equity interests of the acquiree it holds at the acquisition date. That objective also provides the foundation for determining whether specific assets acquired or liabilities assumed are part of an acquiree and would be accounted for as part of the business combination.

(b) when to measure and recognise the acquiree. Recognition and measurement of a business combination would be as of the acquisition date, which is the date the acquirer obtains control of the acquiree.

(c) the measurement attribute as fair value, rather than as cost accumulation and allocation. The acquiree and the assets acquired and liabilities assumed would be measured at fair value as of the acquisition date, with limited exceptions. Consequently, the consideration transferred in exchange for the acquiree, including contingent consideration, would also be measured at fair value as of the acquisition date.

The objective and definition of a business combination would apply to all business combinations in the scope of the proposed IFRS, including business combinations :

(a) involving only mutual entities

(b) achieved by contract alone

(c) achieved in stages (commonly called step acquisitions)

(d) in which the acquirer holds less than 100 per cent of the equity interests in the acquiree at the acquisition date.

(See paragraphs 52-58 and paragraphs BC42-BC46 of the Basis for Conclusions.)

Question 1—Are the objective and the definition of a business combination appropriate for accounting for all business combinations ? If not, for which business combinations are they not appropriate, why would you make an exception, and what alternative do you suggest ?

Acteo's, Medef's and AFEP's joint answer

1.1. Objective

At the time ED3 was issued, we had expressed disagreement with the choice of the Board to apply the acquisition method to all combinations, disregarding the necessary arbitrary designation of an acquirer in situations in which no party takes control. At the time the justification given was that true mergers were extremely rare, provided that they indeed exist. We had supported the announced intent of the Board to define suitable accounting for true mergers, joint ventures, entities under common control and combinations by contract alone or involving mutual entities. We regret that the specificities to combinations by contract alone or involving mutual entities (duly acknowledged in the existing IFRS 3-BC30) are now denied and/or disregarded (ED-BC179-199).

1.2 Definition of a business combination

The definition of a business combination as drafted in the exposure draft is consistent with what, in our view, ought to be the scope and objective of the standard (ref to paragraph 1.1 above). However, since the objective of the Board is set to encompass all types of combinations, including situations in which no acquirer can be objectively identified, we believe that the definition of a business combination needs redrafting. The Board must be aware that its standards are due to become law in some jurisdictions which have adopted IFRS, without necessarily including the basis for conclusions. The text of the standard cannot afford to be internally inconsistent, with the basis for conclusions (in the specific circumstances BC31-32) portraying the Board's real intent. We therefore fully concur with the alternative view explained in ED-AV14. Further, we note that the present definition of a business combination has not proved to be difficult to apply in practice.

1.3 Change to fair value as the measurement attribute of a business combination

We fully disagree with the change proposed for the reasons explained below :

a. *We believe that accounting for business combinations at cost is more relevant*.

The acquirer does not necessarily determine its pricing solely on the basis of the acquiree's fair value (i.e. the price at which a deal could be struck in an exchange transaction involving *any* market participant) : acquisitions respond to different objectives, and the price offered or accepted by a buyer can reflect some synergies that can only arise from *a specific* business combination. (i.e. an acquisition carried out for the purpose of eliminating competition or circumstances where there is only one potential obvious buyer). Therefore the price offered reflects the value that the combination can add to the acquirer. In some instances, the acquirer is the entity that reached the best offer or accepted the highest price after negotiations.

The present requirements in IFRS 3 are based on the same observations. Hence IFRS 3.BC130b explains: "those synergies and other benefits are *unique* to each business combination, and different combinations produce *different synergies* and, hence, *different values*." IFRS 3 BC131 refers to item b in BC130 as "a component conceptually part of goodwill"...part of "core goodwill". The same comments are expressed in ED.AV4.We fully concur with the view expressed, that there is nothing like "the" fair value of a business combination because "the total value of the acquired business is an extremely subjective measure". For these reasons which show that the fair value of the acquirees is not a measurement attribute relevant to business combinations, we believe that business combinations should remain accounted for on the basis of their costs to the entity. Cost is presently de facto acknowledged in the existing IFRS 3 as being fully consistent with the fundamental underlying principle on which the present amendments are based. In IFRS 3.BC44-45, the Board explains and justifies the existing purchase method (based on cost) on the basis of the assumption that a business combination, as every ordinary purchase, is an exchange of equal values. Bases for conclusions to the ED do not attempt to explain why the change would be needed or would bring improvement. ED BC53 simply states "the draft revised IFRS 3 carries forward this fundamental conclusion *– reference to IFRS 3-BC44 –then follows on how the change can be implemented* "the Board agreed that measurement of the values exchanged could be based …..". No single word is devoted to identify benefits arising from the change.

b. *Acquisition costs should not be expensed at the acquisition date.*

Acquisition costs are taken into account at the time the price offer is prepared. Costs of acquisition are an integral part of the investment decided by management, and should therefore remain part of goodwill arising from a combination. The Framework notes that one of the objectives of financial statements is to show the accountability of management for the resources entrusted to it. IFRS 3 BC53 which refers to this objective of financial statements derive from it that the method of accounting for a business combination should "hold management accountable for the investment made and its subsequent performance". In our view, measuring a business combination at cost, applying IFRS 3.24, achieves this objective. Nowhere in the basis for conclusions the Board explains why it is not so, or how measuring the business combination on the basis of the fair value of the acquiree better achieves this objective.

First, we reject ED-BC87 for the reasons expressed in paragraph 1.3.1 above, namely that there is not "a" fair value of a business combination.

In ED-BC86, the Board acknowledges that accounting for direct acquisition costs is presently inconsistent with the accounting for indirect acquisition costs. The Board overlooks that this difference in treatment is explained by the verifiability threshold that financial information must meet in order to be reliable. Indirect costs do not meet this threshold and that is the sole reason why they are excluded. Contemplating this difference in treatment hence does not support the view that direct costs of acquisition would no longer be included in the valuation of a business combination. Furthermore we object that there would be at present an inconsistency in the accounting for direct costs related to successful and unsuccessful combinations. The treatment is different because there is a fundamental difference between a successful operation that brings value to the entity and an unsuccessful operation that does not.

Further, in ED-BC85, the Board claims that acquisition costs should be expensed, because consumed as soon as the services are rendered. However the issue of acquisition costs has nothing to do with *recognition* issues. Acquisition costs are part of the cost of the business combination and therefore only play a role in *measuring* business combinations and goodwill.

Finally, we want to stress the need for internal consistency all through IFRS. All transaction costs incurred in the acquisition of assets are accounted for as part of the valuation of the asset upon initial recognition, except for financial instruments held for trading, this exception being made for practical and not for conceptual reasons.

c. *Attempts at measuring contingent consideration at fair value at the date of acquisition may lead to unreliable figures and override the probability recognition criterion*

Our experience shows that contingent consideration included as a feature of business acquisition deals helps buyers and sellers reach an agreement in circumstances when they do not agree on the value of the business under negotiation, or when the buyer does not want to take chances with the uncertainty of part of the business prospects. It is therefore difficult to assess “the” fair value of any contingent consideration, as the assessment of uncertainty greatly varies from one entity standpoint to another.

In the present IFRS 3, contingent consideration is taken into account in the cost of the combination in stages, first on the basis of a preliminary best estimate of the supplementary consideration to be paid, if (and only if) additional payments are probable and can be measured reliably. The cost of the combination (as defined in the standard) is adjusted if necessary when final payments really occur. Present accounting is consistent with the probability and reliability recognition criteria set out in the framework and ought to be retained as they provide, in our view, more useful information to the users of financial statements (IFRS 3.32-35). Users are indeed more interested in the amounts that the entity considers as probable outflows than they are interested in amounts based on subjectively assessed probabilities attached to various scenarios.

Moreover, we disagree with ED.BC77 that post-combination events triggering contingent consideration to be paid most probably do not change the fair value of the consideration paid for the interest in the acquiree. Post-combinations events play the role of confirmation – or negation - of the buyer’s estimate of the acquiree’s value at the time the transaction was agreed.

d. *Measuring business combinations on the basis of the fair value of the acquiree at the acquisition date raises reliability and consistency concerns*.

Measuring the fair value of the acquiree at the acquisition date will prove to be fairly unreliable. Our experience of valuations put forward by valuation experts shows significant discrepancies in the valuations of businesses. The valuations obtained are valuable to management as they assist it in the assessment of the reasonable range in which the best bargain for the business under analysis lies. They are far from being reliable enough for measurement purposes in the context of financial reporting. Nor do they necessarily comply with the fair value approach as set forward by the Board.

Although the rebuttable presumption that the fair value of the consideration given is equal to the fair value of the acquiree would leave most 100% equity interest purchases free from this reliability concern, our concern remains significant as it would apply in all situations where less than 100% interest is acquired (quite a common occurrence in Europe) and in most situations involving mutual entities or combinations by contract alone. Deriving the fair value of the acquiree on the basis of the consideration paid would undoubtedly be much less obvious than illustrated in the guidance provided (ED.A8-A17). No bright lines (control premium…) are provided in practice. These measurement difficulties are acknowledged by the Board in their approach to negative goodwill and overpayments. Adjusting goodwill in order to compensate for any excess of value or overpayment stems from the Board's lack of confidence in the reliability of measurement of the fair value of the acquiree.

Please see in addition our answer to question 5.

e. *The change would introduce inconsistency in the accounting for assets*

The change introduces inconsistency in the treatment of acquisitions of businesses and groups of assets, while the definition of a business is changed and the distinction between a group of assets and a business reduced to a very narrow line subject to interpretations.

As a conclusion, we do not see any benefit stemming from the change in measurement attribute in accounting for business combinations. Indeed none is analysed in the bases for conclusions to the ED. We, on the opposite, believe that business combinations should remain accounted for at cost for the reasons explained at length above. This measurement attribute provides for business combinations the best balance of relevance and reliability, and at present, guarantees consistency with the accounting for assets. We concur with the Board's observations (ED.BC41) that accounting for the acquisition of assets and of businesses should remain consistent and that further research and deliberations of additional issues are needed before a change in the measurement basis for assets (either groups of assets or businesses) is made.

Question 2—Definition of a business

The Exposure Draft proposes to define a business as follows : A business is an integrated set of activities and assets that is capable of being conducted and managed for the purpose of providing either :

(1) a return to investors, or

(2) dividends, lower costs, or other economic benefits directly and proportionately to owners, members, or participants. [paragraph 3(d)]

Paragraphs A2-A7 of Appendix A provide additional guidance for applying this definition. The proposed IFRS would amend the definition of a business in IFRS 3. (See paragraphs BC34-BC41.)

Question 2—Are the definition of a business and the additional guidance appropriate and sufficient for determining whether the assets acquired and the liabilities assumed constitute a business ? If not, how would you propose to modify or clarify the definition or additional guidance ?

Acteo's, Medef's and AFEP's joint answer

2.1 We understand that the change from the present definition of a business in IFRS 3 aims at broadening the definition, in order to encompass situations in which businesses are acquired although they were not conducted as such prior to the acquisition or are no longer intended to be operated as such within the combined entity.

2.2 We agree with the objective of the change which is favourable to greater consistency from an entity or a business combination to the next. However we believe that the guidance provided in ED.A3 is likely to create confusion, and make the difference between a group of assets and a business very controversial, all the more so that the accounting would substantially differ. We therefore ask the Board to clarify the borderline between the group of assets and the business.

Questions 3-7—Measuring the fair value of the acquiree

The Exposure Draft proposes that in a business combination that is an exchange of equal values, the acquirer should measure and recognise 100 per cent of the fair value of the acquiree as of the acquisition date. This applies even in business combinations in which the acquirer holds less than 100 per cent of the equity interests in the acquiree at that date. In those business combinations, the acquirer would measure and recognise the non-controlling interest as the sum of the non-controlling interest's proportional interest in the acquisition-date values of the identifiable assets acquired and liabilities assumed plus the goodwill attributable to the non-controlling interest. (See paragraphs 19, 58 and BC52-BC54.)

Question 3—In a business combination in which the acquirer holds less than 100 per cent of the equity interests of the acquiree at the acquisition date, is it appropriate to recognise 100 per cent of the acquisition-date fair value of the acquiree, including 100 per cent of the values of identifiable assets acquired, liabilities assumed and goodwill, which would include the goodwill attributable to the non-controlling interest ? If not, what alternative do you propose and why ?

Acteo's, Medef's and AFEP's joint answer

3.1 We share the alternate view explained in ED.AV2-AV7 and strongly oppose to the so-called full goodwill approach to accounting for business combinations, although we agree with the Board that it is conceptually consistent with the economic entity approach to consolidation. They are however hurdles, both in practice and in the existing accounting framework, which in our view bring this pure conceptual approach out of reach.

3.2 First, as mentioned in our answer to question 1 (1.3), we doubt that valuations could form the basis for reliable measurements and fully concur with ED.AV4. Implementing the full goodwill method implies to record a business combination at fair value and would most probably result in unreliable or misleading financial reporting.

3.3 Second, we believe that the full goodwill approach, if subsequent transactions cannot trigger any revaluation, can only lead to misreporting an entity's net assets, upon subsequent acquisition of non-controlling interests. One of the benefits that the Board claims would be obtained from the full goodwill approach is that the asset side of the balance sheet would be the same (goodwill would not be subject to any further change), whether the equity interest held in the subsidiary has been acquired in one or several transactions after control is obtained. (If and) when assessing whether there is any gain in usefulness to the user of financial statements, the Board should consider the whole balance sheet, including equity, not only the asset side or only assets and liabilities. Denying to subsequent acquisitions of minority interests the ability to trigger goodwill change in value negates the subsidiary increase in - or decrease of - value that has occurred over time and which is reflected in the price agreed in the transaction with non-controlling interests. The consequence is to require entities to report destroyed equity, and the more prosperous the subsidiary has been over time, the greater the damage reported in equity. We therefore believe that implementing the full goodwill method would lead to seriously undermine the relevance of financial reporting.

3.4 We urge the Board to adopt a parent perspective in accounting for goodwill, in order to avoid such misrepresentations and support the proposal put forward by dissenting members as explained in AV3 (provided proper allocation of unrealised gains and losses on a pro- rata basis).

This method would help achieve understandable and meaningful financial information.

The Exposure Draft proposes that a business combination is usually an arm's length transaction in which knowledgeable, unrelated willing parties are presumed to exchange equal values. In such transactions, the fair value of the consideration transferred by the acquirer on the acquisition date is the best evidence of the fair value of the acquirer's interest in the acquiree, in the absence of evidence to the contrary. Accordingly, in most business combinations, the fair value of the consideration transferred by the acquirer would be used as the basis for measuring the acquisition-date fair value of the acquirer's interest in the acquiree. However, in some business combinations, either no consideration is transferred on the acquisition date or the evidence indicates that the consideration transferred is not the best basis for measuring the acquisition-date fair value of the acquirer's interest in the acquiree. In those business combinations, the acquirer would measure the acquisition-date fair value of its interest in the acquiree and the acquisition-date fair value of the acquiree using other valuation techniques. (See paragraphs 19, 20 and A8-A26, Appendix E and paragraphs BC52-BC89.)

Question 4—Do paragraphs A8-A26 in conjunction with Appendix E provide sufficient guidance for measuring the fair value of an acquiree ? If not, what additional guidance is needed ?

Acteo's, Medef's and AFEP's joint answer

4. We believe that the guidance provided by the Board in ED.A8-A26 adequately illustrates how the Board believes an entity should proceed. However it does not – and probably cannot – help solve the practical difficulties inherent to the determination of the acquiree's fair value and the appropriate allocation of goodwill to group and non-controlling interests. Appendix E provides useful guidance too. We are concerned that appendix E is only an extract of the FASB present draft of its future standard on how to measure fair value. Furthermore, our understanding is that this text is still subject to changes arising from *FASB's decisions.* We therefore believe that this text will need re-exposure, once the final FAS has been drafted.

The Exposure Draft proposes a presumption that the best evidence of the fair value of the acquirer's interest in the acquiree would be the fair values of all items of consideration transferred by the acquirer in exchange for that interest measured as of the acquisition date, including :

(a) contingent consideration ;

(b) equity interests issued by the acquirer ; and

(c) any non-controlling equity investment in the acquiree that the acquirer owned immediately before the acquisition date. (See paragraphs 20-25 and BC55-BC58.)

Question 5—Is the acquisition-date fair value of the consideration transferred in exchange for the acquirer's interest in the acquiree the best evidence of the fair value of that interest ? If not, which forms of consideration should be measured on a date other than the acquisition date, when should they be measured, and why ?

Acteo's, Medef's and AFEP's joint answer

5.1 We support measurement at the acquisition date because we support business combinations being accounted for at cost.

We believe however that IAS 39 AG 70.72 to which IFRS 3. 27 refers should be supplemented in order to provide more appropriate guidance to deal with situations addressed in the present EITF 99-12.

5.2 We believe that to measure business combinations at fair value at the agreement date would not, in theory, be without merit but welcome the convergence between FASB and IASB as discussed in BC 66 of the ED.

5.3 As we have indicated earlier in our answer to question 1 (1.1), we concur with the alternative view expressed in ED.AV4 that "the total value of the acquired business is an extremely subjective measure… there will not be an observable fair value in the marketplace…". Therefore we recommend the Board to retain present requirements of IFRS 3 (i.e. accounting for the business combination at cost measured at the acquisition date).

The Exposure Draft proposes that after initial recognition, contingent consideration classified as :

(a) equity would not be remeasured.

(b) liabilities would be remeasured with changes in fair value recognised in profit or loss unless those liabilities are in the scope of IAS 39 Financial Instruments : Recognition and Measurement or [draft] IAS 37 Non-financial Liabilities. Those liabilities would be accounted for after the acquisition date in accordance with those IFRSs.

(See paragraphs 26 and BC64-BC89.)

Question 6—Is the accounting for contingent consideration after the acquisition date appropriate ? If not, what alternative do you propose and why ?

Acteo's, Medef's and AFEP's joint answer

6. No, we do not support the change, for the reasons expressed in our answer to question 1, paragraph 1.3.3 above. We believe that the present requirement under IFRS 3 should be retained.

The Exposure Draft proposes that the costs that the acquirer incurs in connection with a business combination (also called acquisition-related costs) should be excluded from the measurement of the consideration transferred for the acquiree because those costs are not part of the fair value of the acquiree and are not assets. Such costs include finder's fees ; advisory, legal, accounting, valuation and other professional or consulting fees ; the cost of issuing debt and equity instruments ; and general administrative costs, including the costs of maintaining an internal acquisitions department. The acquirer would account for those costs separately from the business combination accounting. (See paragraphs 27 and BC84-BC89.)

Question 7—Do you agree that the costs that the acquirer incurs in connection with a business combination are not assets and should be excluded from the measurement of the consideration transferred for the acquiree ? If not, why ?

Acteo's, Medef's and AFEP's joint answer

7. No, we do not. Our view is fully justified in our answer to question 1, paragraph 1.3.2 above.

Questions 8 and 9—Measuring and recognising the assets acquired and the liabilities assumed

The Exposure Draft proposes that an acquirer measure and recognise as of the acquisition date the fair value of the assets acquired and liabilities assumed as part of the business combination, with limited exceptions. (See paragraphs 28-41 and BC111-BC116.) That requirement would result in the following significant changes to accounting for business combinations :

(a) Receivables (including loans) acquired in a business combination would be measured at fair value. Therefore, the acquirer would not recognise a separate valuation allowance for uncollectible amounts as of the acquisition date.

(b) An identifiable asset or liability (contingency) would be measured and recognised at fair value at the acquisition date even if the amount of the future economic benefits embodied in the asset or required to settle the liability are contingent (or conditional) on the occurrence or non-occurrence of one or more uncertain future events. After initial recognition, such an asset would be accounted for in accordance with IAS 38 Intangible Assets or IAS 39 Financial Instruments : Recognition and Measurement, as appropriate, and such a liability would be accounted for in accordance with [draft] IAS 37 or other IFRSs as appropriate.

Question 8—Do you believe that these proposed changes to the accounting for business combinations are appropriate ? If not, which changes do you believe are inappropriate, why, and what alternatives do you propose ?

Acteo's, Medef's and AFEP's joint answer

8.1 In our answer to ED3 relative to accounting for contingent liabilities, we had stated :

"No, we do not agree.

Identifiable and measurable contingent liabilities may have influenced the total consideration that management agreed to in the acquisition.

However we believe that no liability should be recognised that does not meet IAS 37 definition and recognition criteria. Therefore contingent liabilities arising from an acquisition and of which fair value can be measured reliably should not be allocated as part of the cost of acquisition, unless they meet IAS 37 criteria before the end of the allocation period".

8.2 In our view, these comments are still valid. They can be supplemented by analogous comments in relation to contingent assets. Our answer to questions raised on the proposed amendments to IAS 37 will further elaborate and justify our position.

The Exposure Draft proposes limited exceptions to the fair value measurement principle. Therefore, some assets acquired and liabilities assumed (for example, those related to deferred taxes, assets held for sale, or employee benefits) would continue to be measured and recognised in accordance with other IFRSs rather than at fair value. (See paragraphs 42-51 and BC117-BC150.)

Question 9—Do you believe that these exceptions to the fair value measurement principle are appropriate ? Are there any exceptions you would eliminate or add ? If so, which ones and why ?

Acteo's, Medef's and AFEP's joint answer

9. Yes, we believe these exceptions to the fair value measurement principle are appropriate.

Questions 10-12—Additional guidance for applying the acquisition method to particular types of business combinations

The Exposure Draft proposes that, for the purposes of applying the acquisition method, the fair value of the consideration transferred by the acquirer would include the fair value of the acquirer's non-controlling equity investment in the acquiree at acquisition date that the acquirer owned immediately before the acquisition date. Accordingly, in a business combination achieved in stages (step acquisition) the acquirer would remeasure its non-controlling equity investment in the acquiree at fair value as of the acquisition date and recognise any gain or loss in profit or loss. If, before the business combination, the acquirer recognised changes in the value of its non-controlling equity investment directly in equity (for example, the investment was designated as available for sale), the amount that was recognised directly in equity would be reclassified and included in the calculation of any gain or loss as of the acquisition date. (See paragraphs 55, 56 and BC151-BC153.)

Question 10—Is it appropriate for the acquirer to recognise in profit or loss any gain or loss on previously acquired non-controlling equity investments on the date it obtains control of the acquiree ? If not, what alternative do you propose and why ?

Acteo's, Medef's and AFEP's joint answer

10. We do not believe that it is appropriate for the acquirer to account as part of P/L for a gain or loss on previously acquired non-controlling equity investments on the date of acquisition, for the reasons explained in the alternative view exposed in ED.AV12. The purchase of additional interests in the subsidiary transforms the interest previously held, but should not, in our view, treat it as if it had been disinvested and immediately reacquired. Until equity interests are disinvested, the changes in value, including revaluation upon obtaining control, should be accounted for in equity, as is the case for gains and losses arising on available for sale assets, as suggested in ED.AV13.

The Exposure Draft proposes that in a business combination in which the consideration transferred for the acquirer's interest in the acquiree is less than the fair value of that interest (referred to as a bargain purchase) any excess of the fair value of the acquirer's interest in the acquiree over the fair value of the consideration transferred for that interest would reduce goodwill until the goodwill related to that business combination is reduced to zero, and any remaining excess would be recognised in profit or loss on the acquisition date.

(See paragraphs 59-61 and paragraphs BC164-BC177.)

However, the proposed IFRS would not permit the acquirer to recognise a loss at the acquisition date if the acquirer is able to determine that a portion of the consideration transferred represents an overpayment for the acquiree. The boards acknowledge that an acquirer might overpay to acquire a business, but they concluded that it is not possible to measure such an overpayment reliably at the acquisition date. (See paragraph BC178.)

Question 11—Do you agree with the proposed accounting for business combinations in which the consideration transferred for the acquirer's interest in the acquiree is less than the fair value of that interest ? If not, what alternative do you propose and why ?

Acteo's, Medef's and AFEP's joint answer

11 We support the Board's conclusions on this account (accounting for both under- and over-payments), because these conclusions are fully consistent with our observations that the acquiree's fair value cannot be determined reliably. If it were as the Board in other parts of the basis for conclusions claims it is, *it would be possible* to measure an overpayment reliably at the acquisition date.

Question 12—Do you believe that there are circumstances in which the amount of an overpayment could be measured reliably at the acquisition date ? If so, in what circumstances ?

Acteo's, Medef's and AFEP's joint answer

12. All our comments above clearly indicate that we do not.

Question 13—Measurement period

The Exposure Draft proposes that an acquirer should recognise adjustments made during the measurement period to the provisional values of the assets acquired and liabilities assumed as if the accounting for the business combination had been completed at the acquisition date. Thus, comparative information for prior periods presented in financial statements would be adjusted, including any change in depreciation, amortisation or other profit or loss effect recognised as a result of completing the initial accounting. (See paragraphs 62-68 and BC161-BC163.)

Question 13—Do you agree that comparative information for prior periods presented in financial statements should be adjusted for the effects of measurement period adjustments ? If not, what alternative do you propose and why ?

Acteo's, Medef's and AFEP's joint answer

We agree. Restatements of previously reported financial statements will provide the comparative information that users need.

Question 14—Assessing what is part of the exchange for the acquiree

The Exposure Draft proposes that an acquirer assess whether any portion of the transaction price (payments or other arrangements) and any assets acquired or liabilities assumed or incurred are not part of the exchange for the acquiree. Only the consideration transferred by the acquirer and the assets acquired or liabilities assumed or incurred that are part of the exchange for the acquiree would be included in the business combination accounting. (See paragraphs 69, 70, A87-A109 and BC154-BC160.)

Question 14—Do you believe that the guidance provided is sufficient for making the assessment of whether any portion of the transaction price or any assets acquired and liabilities assumed or incurred are not part of the exchange for the acquiree ? If not, what other guidance is needed ?

Acteo's, Medef's and AFEP's joint answer

14.1 We believe that ED.69 should be rewritten into a clear principle on which judgement could easily rely, instead of being formulated into an anti-abuse requirement. Without such a principle, illustrative guidance is far less efficient than it should be. Without any change made, we believe this area would raise endless questions of interpretation.

14.2 Furthermore the interaction of ED.69 with amendments to IAS 37 relative to reimbursements could lead to what we would regard as counterintuitive recognition of profit. Often when contingencies are identified in the course of a business combination, the seller writes a financial guarantee to the buyer in order to cover the financial outcome that the buyer may face, would the contingency materialise. If the contingency arises from an unconditional obligation, a non financial liability has to be recognised as part of the business combination (i.e. liability of the acquiree). The financial guarantee, on the other hand, is meant to benefit the acquirer, not the acquiree. Therefore, in applying IFRS 3 and IAS 37 as revised, a financial guarantee which undoubtedly is triggered by the business combination would generate recognition of profit in the post-combination income statement.

Question 15—Disclosures

The Exposure Draft proposes broad disclosure objectives that are intended to ensure that users of financial statements are provided with adequate information to enable them to evaluate the nature and financial effects of business combinations. Those objectives are supplemented by specific minimum disclosure requirements. In most instances, the objectives would be met by the minimum disclosure requirements that follow each of the broad objectives.

However, in some circumstances, an acquirer might be required to disclose additional information necessary to meet the disclosure objectives. (See paragraphs 71-81 and BC200-BC203.)

Question 15—Do you agree with the disclosure objectives and the minimum disclosure requirements ? If not, how would you propose amending the objectives or what disclosure requirements would you propose adding or deleting, and why ?

Acteo's, Medef's and AFEP's joint answer

15. The changes in the disclosure requirements follow logically from the other changes proposed. We therefore do not recommend any change beyond adjustments following from dropping the changes in the measurement both for the business combination and goodwill.

Questions 16-18—The IASB's and the FASB's convergence decisions

The Exposure Draft is the result of the boards' projects to improve the accounting for business combinations. The first phase of those projects led to the issue of IFRS 3 and FASB Statement No. 141. In 2002, the FASB and the IASB agreed to reconsider jointly their guidance for applying the purchase method of accounting, which the Exposure Draft calls the acquisition method, for business combinations. An objective of the joint effort is to develop a common and comprehensive standard for the accounting for business combinations that could be used for both domestic and cross-border financial reporting. Although the boards reached the same conclusions on the fundamental issues addressed in the Exposure Draft, they reached different conclusions on a few limited matters. Therefore, the IASB's version and the FASB's version of the Exposure Draft provide different guidance on those limited matters. A comparison, by paragraph, of the different guidance provided by each board accompanies the draft IFRS. Most of the differences arise because each board decided to provide business combinations guidance that is consistent with its other standards. Even though those differences are candidates for future convergence projects, the boards do not plan to eliminate those differences before final standards on business combinations are issued.

The joint Exposure Draft proposes to resolve a difference between IFRS 3 and SFAS 141 relating to the criteria for recognising an intangible asset separately from goodwill. Both boards concluded that an intangible asset must be identifiable (arising from contractual-legal rights or separable) to be recognised separately from goodwill. In its deliberations that led to SFAS 141, the FASB concluded that, when acquired in a business combination, all intangible assets (except for an assembled workforce) that are identifiable can be measured with sufficient reliability to warrant recognition separately from goodwill. In addition to the identifiability criterion, IFRS 3 and IAS 38 required that an intangible asset acquired in a business combination be reliably measurable to be recognised separately from goodwill. Paragraphs 35-41 of IAS 38 provide guidance for determining whether an intangible asset acquired in a business combination is reliably measurable. IAS 38 presumes that the fair value of an intangible asset with a finite useful life can be measured reliably. Therefore, a difference between IFRS 3 and SFAS 141 would arise only if the intangible asset has an indefinite life.

The IASB decided to converge with the FASB in the Exposure Draft by :

(a) eliminating the requirement that an intangible asset be reliably measurable to be recognised separately from goodwill ; and

(b) precluding the recognition of an assembled workforce acquired in a business combination as an intangible asset separately from goodwill. (See paragraphs 40 and BC100-BC102.)

Question 16—Do you believe that an intangible asset that is identifiable can always be measured with sufficient reliability to be recognised separately from goodwill ? If not, why ? Do you have any examples of an intangible asset that arises from legal or contractual rights and has both of the following characteristics :

(a) the intangible asset cannot be sold, transferred, licensed, rented, or exchanged individually or in combination with a related contract, asset, or liability ; and

(b) cash flows that the intangible asset generates are inextricably linked with the cash flows that the business generates as a whole ?

Acteo's, Medef's and AFEP's joint answer

16. No, we do not.

In our comments to ED3 on this issue, we had stated :

"Measurability of intangible assets has always been a difficult issue. Therefore we do not agree with the Board on this issue, since we do not believe it is reasonable to assume that all identifiable intangible assets will –with the exception of a work-force- be measurable in all situations arising in business combinations".

In finalising phase 1 of the Business Combinations project, the Board had decided to withdraw the assumption that any intangible asset acquired in a business combination (with the exception of a workforce) was reliably measurable. Information gathered by the project team in field visits had convinced the Board that some identifiable intangible asset might not be reliably measurable. Examples given throughout field visits included, for example, business operating licenses that cannot be transferred to any other party, specialised rights that are also restricted from sale, brands which are the name of the company.

For the joint Exposure Draft, the boards considered the provisions of IAS 12 Income Taxes and FASB Statement No. 109 Accounting for Income Taxes, relating to an acquirer's deferred tax benefits that become recognisable because of a business combination. IAS 12 requires the acquirer to recognise separately from the business combination accounting any changes in its deferred tax assets that become recognisable because of the business combination. Such changes are recognised in post-combination profit or loss, or equity. On the other hand, SFAS 109 requires any recognition of an acquirer's deferred tax benefits (through the reduction of the acquirer's valuation allowance) that results from a business combination to be accounted for as part of the business combination, generally as a reduction of goodwill. The FASB decided to amend SFAS 109 to require the recognition of any changes in the acquirer's deferred tax benefits (through a change in the acquirer's previously recognised valuation allowance) as a transaction separately from the business combination. As amended, SFAS 109 would require such changes in deferred tax benefits to be recognised either in income from continuing operations in the period of the combination or directly to contributed capital, depending on the circumstances. Both boards decided to require disclosure of the amount of such acquisition-date changes in the acquirer's deferred tax benefits in the notes to the financial statements. (See paragraphs D4 and BC119-BC129.)

Question 17—Do you agree that any changes in an acquirer's deferred tax benefits that become recognisable because of the business combination are not part of the fair value of the acquiree and should be accounted for separately from the business combination ? If not, why ?

Acteo's, Medef's and AFEP's joint answer

17. Yes we do, because it is consistent with the principle stating that only acquired assets and liabilities should be accounted as part of the business combination.

The boards reconsidered disclosure requirements in IFRS 3 and SFAS 141 for the purposes of convergence. For some of the disclosures, the boards decided to converge. However, divergence continues to exist for some disclosures as described in the accompanying note Differences between the Exposure Drafts published by the IASB and the FASB. The boards concluded that some of this divergence stems from differences that are broader than the Business Combinations project.

Question 18—Do you believe it is appropriate for the IASB and the FASB to retain those disclosure differences ? If not, which of the differences should be eliminated, if any, and how should this be achieved ?

Acteo's, Medef's and AFEP's joint answer

18. We do not believe that the remaining differences are substantial enough to object to the whole process. We also acknowledge that not all existing standards and requirements can be altered at the same time.

Question 19—Style of the Exposure Draft

The Exposure Draft was prepared in a style similar to the style used by the IASB in its standards in which paragraphs in ***bold type*** *state the main principles. All paragraphs have equal authority.*

Question 19—Do you find the bold type-plain type style of the Exposure Draft helpful ? If not, why ? Are there any paragraphs you believe should be in bold type, but are in plain type, or vice versa ?

Acteo's, Medef's and AFEP's joint answer

19. Yes, we do.

Additional comments :

We object to the removal of the reliability criterion from recognition requirements for identifiable assets and liabilities.

ED.BC98-100 explains that the criterion has been removed because fundamental concepts displayed in the framework do not need to be repeated in standards. Standards having a higher level of authority than the framework, and the IASB proposing and issuing standards in breach of the framework (existing and proposed IFRS 3, proposed amendments to IAS 37) lead us to strongly urge the Board to reinstate the reliability criterion.

The same type of issue arose in the improvement project in relation to materiality, when the Board acknowledged that the materiality threshold had to be reinstated in standards.

ED OF PROPOSED AMENDMENTS TO IAS 27 *Consolidated and Separate Financial Statements*

Question 1

Draft paragraph 30A proposes that changes in the parent's ownership interest in a subsidiary after control is obtained that do not result in a loss of control should be accounted for as transactions with equity holders in their capacity as equity holders. As a result, no gain or loss on such changes would be recognised in profit or loss (see paragraph BC4 of the Basis for Conclusions).

Do you agree ? If not, why not and what alternative would you propose ?

Acteo's, Medef's and AFEP's joint answer

1.1. On this issue again, we cannot find in the basis for conclusions any analysis of how this change will benefit to users of financial statements. We are convinced that reporting the transactions leading to increases and decreases in interest once control is obtained is very useful information for the parent's company. It serves the objective of financial statements to help investors assess management's stewardship of the assets entrusted to it.

We agree that non-controlling interests are part of equity, because they are no liability to the group. However they are equity of a very different kind from the parent's and remain a third-party to the group. The Board's approach tends to depriving financial reporting from an important and meaningful differentiation.

1.2 We note that the Board is at present developing a joint project with the FASB on financial statements, including the income statement and the statement of variations in equity. We believe that the change proposed should be considered within the boundaries of this project, taking the views of users into account and not relying solely on an objective of pure conceptual integrity. Financial communication is a difficult exercise and accumulating successive narrowly scoped changes brings confusion in the process. We therefore support that all necessary changes (including changes towards greater conceptual consistency) be fully, openly and widely discussed and explained before being implemented. We recommend never amend IAS 1 via consequential amendments, beyond the change in labels which may be decided in other standards.

1.3 In the meanwhile, we support the alternative view and recommendation exposed in ED.AV1.AV3, and oppose to those IAS 1 amendments which go beyond generalising the use of "non-controlling" interests.

Question 2

Paragraph 30D proposes that on loss of control of a subsidiary any non-controlling equity investment remaining in the former subsidiary should be remeasured to its fair value in the consolidated financial statements at the date control is lost. Paragraph 30C proposes that the gain or loss on such remeasurement be included in the determination of the gain or loss arising on loss of control (see paragraph BC7 of the Basis for Conclusions).

Do you agree that the remaining non-controlling equity investment should be remeasured to fair value in these circumstances ? If not, why not and what alternative would you propose ?

Do you agree with the proposal to include any gain or loss resulting from such remeasurement in the calculation of the gain or loss arising on loss of control ? If not, why not, and what alternative would you propose ?

Acteo's, Medef's and AFEP's joint answer

2.1. No, we do not. We believe that the remaining non-controlling equity investment should be re-measured to fair value, only when in accordance with the standard applicable to it once control is lost, i.e IAS 28, 31 and 39. Revaluation should not be required upon loss of control when the remaining investment falls into the scope of IAS 28 or IAS 31.

2.2 We note that fair value measurement is required by IAS 39 upon initial recognition of available for sale assets, the category to which the remaining non-controlling equity investment may belong. IAS 39 hence requires that the remaining investment be revalued and that the resulting gain or loss be recorded in equity until disinvestment really occurs.

Question 3

As explained in Question 1, the Exposure Draft proposes that changes in a parent's ownership interest in a subsidiary that do not result in a loss of control should be treated as transactions with equity holders in their capacity as equity holders. Therefore, no gain or loss would be recognised in profit or loss.

However, a decrease in the parent's ownership interest resulting in the loss of control of a subsidiary would result in any gain or loss being recognised in profit or loss for the period. The Board is aware that differences in accounting that depend on whether a change in control occurs could create opportunities for entities to structure transactions to achieve a particular accounting result.

To reduce this risk, the Exposure Draft proposes that if one or more of the indicators in paragraph 30F are present, it is presumed that two or more disposal transactions or arrangements that result in a loss of control should be accounted for as a single transaction or arrangement. This presumption can be overcome if the entity can demonstrate clearly that such accounting would be inappropriate (see paragraphs BC9-BC13 of the Basis for Conclusions).

Do you agree that it is appropriate to presume that multiple arrangements that result in a loss of control should be accounted for as a single arrangement when the indicators in paragraph 30F are present ? Are the proposed factors suitable indicators ? If not, what alternative indicators would you propose ?

Acteo's, Medef's and AFEP's joint answer

3.1 In adopting the accounting treatment detailed in ED.AV3, the Board would remove the risk of abuse that paragraph 30F is intended to prevent, all disinvestments being accounted for similarly.

3.2 If the Board were to finalise IAS 27 amendments as proposed, we would support paragraph 30F. We warn the Board however that any set of indicators which lead to substantially different reporting generally call for a need for later interpretations.

Question 4

Paragraph 35 proposes that losses applicable to the non-controlling interest in a subsidiary should be allocated to the non-controlling interest even if such losses exceed the non-controlling interest in the subsidiary's equity. Non-controlling interests are part of the equity of the group and, therefore, participate proportionally in the risks and rewards of investment in the subsidiary.

Do you agree with the proposed loss allocation ? Do you agree that any guarantees or other support arrangements from the controlling and non-controlling interests should be accounted for separately ? If not, why not, and what alternative treatment would you propose ?

Acteo's, Medef's and AFEP's joint answer

4.1 We believe loss allocation should be made, taking into account all contractual arrangements between shareholders at the subsidiary level. In case all shareholders share risks and rewards equally, we believe the loss allocation proposed leads to fairer representation.

Question 5

The transitional provisions in the Exposure Draft propose that all of its requirements should apply retrospectively, except in limited circumstances in which the Board believes that retrospective application is likely to be impracticable.

Do you agree that proposed paragraphs 30A, 30C and 30D should apply on a prospective basis in the cases set out in paragraph 43B ? Do you believe that retrospective application is inappropriate for any other proposals addressed by the Exposure Draft ? If so, what other proposals do you believe should be applied prospectively and why ?

Acteo's, Medef's and AFEP's joint answer

5.1 We believe these amendments should apply only to business combinations accounted for in accordance with the revised IFRS3. To apply an entity economic approach to increases or decreases of interest in business combinations accounted for applying the parent perspective to goodwill would result in inconsistent accounting.

ED OF PROPOSED AMENDMENTS TO
IAS 37 *Provisions, Contingent Liabilities and Contingent Assets*

Question 1 – Scope of IAS 37 and terminology

The Exposure Draft proposes to clarify that IAS 37, except in specified cases, should be applied in accounting for all non-financial liabilities that are not within the scope of other Standards (see paragraph 2). To emphasise this point, the Exposure Draft does not use 'provision' as a defined term to describe liabilities within its scope. Instead, it uses the term 'non-financial liability' (see paragraph 10). However, the Exposure Draft explains that an entity may describe some classes of non-financial liabilities as provisions in their financial statements (see paragraph 9).

(a) *Do you agree that IAS 37 should be applied in accounting for all non-financial liabilities that are not within the scope of other Standards ? If not, for which type of liabilities do you regard its requirements as inappropriate and why ?*

(b) *Do you agree with not using 'provision' as a defined term ? If not, why not ?*

Acteo's, Medef's and AFEP's joint answer

1.1 We are opposed to scope of standards defined by default, designed to encompass everything that the Board has not yet addressed in a specific standard. IAS 37 present scope helps design relevant recognition and measurement requirements because all liabilities encompassed by the present standard have uncertainty as a common feature, in their timing or amount.

1.2 Under the proposed scope, up-front payments by customers are encompassed. Considering the analysis made by the Board in the Revenue Recognition project that measuring obligations arising from customer contracts on the basis of their legal lay-off amount would not be practicable, we suspect that this type of liability was not intended to be dealt with under the revised IAS 37. This, in our view, demonstrates that designing a scope by default is highly inappropriate.

1.3 The change from "provisions" to "non-financial liabilities" result from a late and quick deliberation by the Board before publication of the exposure-draft. Changes in standards have far-reaching consequences and should not in our view be decided in haste, as this one has been.

1.4 We do not agree with eliminating the former segregation between certain and uncertain non-financial liabilities, as we believe such segregation provides meaningful information to the user. We understand from the Board's conclusions that the term "provision" was not welcome or adequate to fit to all jurisdictions and environments. From a widely shared European perspective, the term is fully appropriate and well used in an IFRS environment and we favour its retention. Whatever the final assessment the Board will make, however, we recommend that a separate category be designed to encompass all liabilities uncertain in their timing or amount.

Question 2 – Contingent liabilities

The Exposure Draft proposes to eliminate the term 'contingent liability'. The Basis for Conclusions on the proposals in the Exposure Draft explains that liabilities arise only from unconditional (or non-contingent) obligations (see paragraph BC11). Hence, it highlights that something that is a liability (an unconditional obligation) cannot be contingent or conditional, and that an obligation that is contingent or conditional on the occurrence or non-occurrence of a future event does not by itself give rise to a liability (see paragraph BC30). The Basis for Conclusions also explains that many items previously described as contingent liabilities satisfy the definition of a liability in the Framework. This is because the contingency does not relate to whether an unconditional obligation exists. Rather it relates to one or more uncertain future events that affect the amount that will be required to settle the unconditional obligation (see paragraph BC23).

The Basis for Conclusions highlights that many items previously described as contingent liabilities can be analysed into two obligations : an unconditional obligation and a conditional obligation. The unconditional obligation establishes the liability and the conditional obligation affects the amount that will be required to settle the liability (see paragraph BC24).

The Exposure Draft proposes that when the amount that will be required to settle a liability (unconditional obligation) is contingent (or conditional) on the occurrence or non-occurrence of one or more uncertain future events, the liability is recognised independently of the probability that the uncertain future event(s) will occur (or fail to occur). Uncertainty about the future event(s) is reflected in the measurement of the liability recognised (see paragraph 23).

(a) Do you agree with eliminating the term 'contingent liability' ? If not, why not ?

(b) Do you agree that when the amount that will be required to settle a liability (unconditional obligation) is contingent on the occurrence or non-occurrence of one or more uncertain future events, the liability should be recognised independently of the probability that the uncertain future event(s) will occur (or fail to occur) ? If not, why not ?

Acteo's, Medef's and AFEP's joint answer

2.1. We have no objection to the elimination of the term "contingent liability" provided it is replaced by another term, encompassing both unrecognised liabilities and conditional obligations (see below why in our view there is still the need to encompass "unrecognised liabilities"). Present disclosure requirements are useful, and conditional obligations should not be mechanically scoped out of them.

2.2 We strongly object that all liabilities would be recognised, irrespective of the recognition criterion being met (see our analysis in our answer to question 5).

2.3 We are concerned that the identification of the obligating event may be subject to many diverse interpretations, as the change proposed makes it even more difficult than it already is today. As a matter of example : does a present obligation arise when a company thinks it has done something wrong, knows for sure it has done something wrong, when some other party is aware of it, has taken action against the company or is it only when those charged with proving something have actually proven it, as they are obliged to do under the law ? What is the obligating event ?

2.4 Moreover, illustrative examples do not appear helpful in this respect. Examples 1 and 2 seem contradictory – is it the knowledge of causing damage that is the obligating event, the start of litigation or are both required or is it the earlier of the two ? If a company is convinced it has not infringed the law or caused damage, why would court action trigger an obligating event ? We therefore agree with the dissenting Board member (ED.AV5) that a clear definition of when an unconditional (stand ready) obligation exists is needed to avoid unclear implications of the approach and confusion in practice.

Question 3 – Contingent assets

The Exposure Draft proposes to eliminate the term 'contingent asset'. As with contingent liabilities, the Basis for Conclusions explains that assets arise only from unconditional (or non-contingent) rights (see paragraph BC11). Hence, an asset (an unconditional right) cannot be contingent or conditional, and a right that is contingent or conditional on the occurrence or non-occurrence of a future event does not by itself give rise to an asset (see paragraph BC17).

The Basis for Conclusions also explains that many items previously described as contingent assets satisfy the definition of an asset in the Framework. This is because the contingency does not relate to whether an unconditional right exists. Rather, it relates to one or more uncertain future events that affect the amount of the future economic benefits embodied in the asset (see paragraph BC17).

The Exposure Draft proposes that items previously described as contingent assets that satisfy the definition of an asset should be within the scope of IAS 38 Intangible Assets rather than IAS 37 (except for rights to reimbursement, which remain within the scope of IAS 37). This is because such items are non-monetary assets without physical substance and, subject to meeting the identifiability criterion in IAS 38, are intangible assets (see paragraph A22 in the Appendix). The Exposure Draft does not propose any amendments to the recognition requirements of IAS 38.

(a) Do you agree with eliminating the term 'contingent asset' ? If not, why not ?

(b) *Do you agree that items previously described as contingent assets that satisfy the definition of an asset should be within the scope of IAS 38 ? If not, why not ?*

Acteo's, Medef's and AFEP's joint answer

3.1 We agree with the proposal.

3.2 Nonetheless we do not understand the rationale followed by the Board to treat assets and liabilities of a very similar nature (the liability to one party is an asset to the other) in so different ways.

Question 4 – Constructive obligations

The Exposure Draft proposes amending the definition of a constructive obligation to emphasise that an entity has a constructive obligation only if its actions result in other parties having a valid expectation on which they can reasonably rely that the entity will perform (see paragraph 10). The Exposure Draft also provides additional guidance for determining whether an entity has incurred a constructive obligation (see paragraph 15).

(a) Do you agree with the proposed amendment to the definition of a constructive obligation ? If not, why not ? How would you define one and why ?

(b) Is the additional guidance for determining whether an entity has incurred a constructive obligation appropriate and helpful ? If not, why not ? Is it sufficient ? If not, what other guidance should be provided ?

Acteo's, Medef's and AFEP's joint answer

4.1. Our understanding of the Board's intent is that the change in the definition is aimed at restricting the scope of constructive obligations. Our present practice of implementing IAS 37 is that an unreliable expectation would not be valid. We therefore welcome the change proposed as it is fully consistent with our present practice.

Question 5 – Probability recognition criterion

The Exposure Draft proposes omitting the probability recognition criterion (currently in paragraph 14(b)) from the Standard because, in all cases, an unconditional obligation satisfies the criterion. Therefore, items that satisfy the definition of a liability are recognised unless they cannot be measured reliably.

The Basis for Conclusions emphasises that the probability recognition criterion is used in the Framework to determine whether it is probable that settlement of an item that has previously been determined to be a liability will require an outflow of economic benefits from the entity. In other words, the Framework requires an entity to determine whether a liability exists before considering whether that liability should be recognised. The Basis notes that in many cases, although there may be uncertainty about the amount and timing of the resources that will be required to settle a liability, there is little or no uncertainty that settlement will require some outflow of resources. An example is an entity that has an obligation to decommission plant or to restore previously contaminated land. The Basis also outlines the Board's conclusion that in cases previously described as contingent liabilities in which the entity has an unconditional obligation and a conditional obligation, the probability recognition criterion should be applied to the unconditional obligation (ie the liability) rather than the conditional obligation.

So, for example, in the case of a product warranty, the question is not whether it is probable that the entity will be required to repair or replace the product. Rather, the question is whether the entity's unconditional obligation to provide warranty coverage for the duration of the warranty (ie to stand ready to honour warranty claims) will probably result in an outflow of economic benefits (see paragraphs BC37-BC41).

The Basis for Conclusions highlights that the Framework articulates the probability recognition criterion in terms of an outflow of economic benefits, not just direct cash flows. This includes the provision of services. An entity's unconditional obligation to stand ready to honour a conditional obligation if an uncertain future event occurs (or fails to occur) is a type of service obligation. Therefore, any liability that incorporates an unconditional obligation satisfies the probability recognition criterion. For example, the issuer of a product warranty has a certain (not just probable) outflow of economic benefits because it is providing a service for the duration of the contract, ie it is standing ready to honour warranty claims (see paragraphs BC42-BC47).

Do you agree with the analysis of the probability recognition criterion and, therefore, with the reasons for omitting it from the Standard ? If not, how would you apply the probability recognition criterion to examples such as product warranties, written options and other unconditional obligations that incorporate conditional obligations ?

Acteo's, Medef's and AFEP's joint answer

5.1. We fully disagree with the analysis put forward by the Board and object to the removal of the probability recognition criterion. If the Board's analysis was strong enough, this removal would not be needed, as the Board indicates that "in all cases, an unconditional obligation satisfies the criterion". However the analysis by the Board does not hold.

A standing ready obligation undoubtedly meets the definition of a liability. According to the framework however, a liability is recognised when and only when the sacrifice of resources it is expected to trigger becomes probable. Consumption of assets and transfer of economic benefits to the third-party will occur – eventually via the provision of services - only if and when the equipment under warranty fails and is accepted for repair by the entity, to follow-up on the Board's example. It is in those cases that a transfer of assets may occur, and it is only if and when this transfer of assets becomes probable that, according to the IASB framework, the corresponding liability has to be recognised (Framework.91).

According to the Framework (paragraph 16), financial information has value to the users if it helps predicting the ability of the entity to generate cash and cash equivalents. Accordingly the definition of a liability indicates the ways and means by which a liability may be settled (paragraph 62) and providing services is one way of settlement. A standing ready obligation can be settled in various ways, either by direct cash-outflows, provision of services or time lapse. The fact that in accepting the stand ready obligation, the entity is providing a service to third-parties does not override in any way the fact that the recognition criteria applies to the expected sacrifice of economic resources that may be required for settlement

5.2 Furthermore, changing the measurement principle to the legal lay-off amount does not, by itself, change the probability of occurrence of the potential outflow. As exposed in ED.30, in many cases, there is no legal lay-off possibility.

5.3 We support the probability recognition criterion, because we believe that the user of financial statements is interested in probable consumption of resources, not in financial data which purport what remains highly improbable. In our view, relaxing the recognition criterion leads to meaningless information (see our answer to question 6).

5.4 We believe that the present requirements under IAS 37, based on the probability criterion as defined in the framework, are appropriate. We note that IOSCO had not identified IAS 37 as a standard in need for improvement. We fully disagree with ED.BC29 in which the Board "decides" without any reference to the benefit to users that "it would be better if the probability criterion could be applied to single guarantees…". Individually a liability may not meet the recognition criterion, while taking as a portfolio they may result in probable out-flows of economic benefits.

5.5 The removal of the probability criterion creates divergence from US Gaap accounting requirements for contingencies.

Question 6 – Measurement

The Exposure Draft proposes that an entity should measure a non-financial liability at the amount that it would rationally pay to settle the present obligation or to transfer it to a third party on the balance sheet date (see paragraph 29).

The Exposure Draft explains that an expected cash flow approach is an appropriate basis for measuring a non-financial liability for both a class of similar obligations and a single obligation. It highlights that measuring a single obligation at the most likely outcome would not necessarily be consistent with the Standard's measurement objective (see paragraph 31).

Do you agree with the proposed amendments to the measurement requirements ? If not, why not ? What measurement would you propose and why ?

Acteo's, Medef's and AFEP's joint answer

6.1 We strongly reject the proposed amendments as potentially leading to unreliable and useless financial reporting.

6.2 First, we believe that setting a measurement principle to acknowledge in the immediate following paragraph that it is virtually inapplicable is not appropriate in standard-setting.

6.3 Second, we note that the Board has reached the tentative conclusion, within the Revenue Recognition project, that measuring performance obligations at their legal lay-off amount would be impracticable. This conclusion is relevant in our view to most of non-financial liabilities

6.4 Third, we believe the reference to the best estimate should be retained as principle. Estimating techniques are necessarily needed in some instances. They should however be used in order to estimate the potential outflow *which will probably occur*. Many liabilities are settled via the provision of services, and the best estimate for them is the cost that will probably be incurred, not any form of legal lay-off amount, including risk premium. We therefore object to the change made to 37.42-43 (amended as ED.35-37).

6.5 Fourth, even if it were not lacking relevance, the amendments would not satisfy reliable accounting requirements. Reliability is based in particular on verifiability and neutrality, and building up the multiple cash flow scenarios needed in the proposed "expected cash-flow approach" would not satisfy, in most cases, any of both qualities. It is already very difficult to obtain from lawyers an estimate of what the most likely outcome of a litigation, for example, would be. They would in no way be in a position to provide us with the necessary inputs to the expected cash flow approach. Moreover, many risks accounted for under the existing IAS 37 may have black and white outcomes, and the range of various scenarios would not allow for representation faithfulness of the information.

6.6 Fifth, the expected cash-flow approach is not absent of the existing IAS 37. It applies to portfolios of similar risks, in areas such as warranty claims, where the law of large numbers applies, under the law of statistics. In those cases, it produces meaningful and reliable information to users.

6.7 Sixth, applying the existing IAS 37 in practice has proved to provide efficient reporting, when adding recognised liabilities and disclosures provided.

Question 7 – Reimbursements

The Exposure Draft proposes that when an entity has a right to reimbursement for some or all of the economic benefits that will be required to settle a non-financial liability, it recognises the reimbursement right as an asset if the reimbursement right can be measured reliably (see paragraph 46).

Do you agree with the proposed amendment to the recognition requirements for reimbursements ? If not, why not ? What recognition requirements would you propose and why ?

Acteo's, Medef's and AFEP's joint answer

7.1 No, we do not agree. For the same reasons as explained in our answers to questions 5 and 6, we do not believe that the probability criterion should be overridden. However we would agree to a change that would move the reimbursement recognition threshold from "virtually certain" to "probable".

7.2 Furthermore, we believe amending IAS 37 could have lead to two improvements from the existing version :

- the asset should be shown for the amount it is worth. In some cases, this amount may be greater than the non-financial liability recognised. We cannot see why recognition of the asset should be capped ;
- for clarity purposes, we believe that the text should not suggest that reimbursement recognition is linked to an existing non-financial liability. Reimbursement recognition should be triggered or pursued in circumstances where the liability has already been settled.

Question 8 – Onerous contracts

The Exposure Draft proposes that if a contract will become onerous as a result of an entity's own action, the liability should not be recognised until the entity takes that action. Hence, in the case of a property held under an operating lease that becomes onerous as a result of the entity's actions (for example, as a result of a restructuring) the liability is recognised when the entity ceases to use the property (see paragraphs 55 and 57). In addition, the Exposure Draft proposes that, if the onerous contract is an operating lease, the unavoidable cost of the contract is the remaining lease commitment reduced by the estimated sublease rentals that the entity could reasonably obtain, regardless of whether the entity intends to enter into a sublease (see paragraph 58).

(a) Do you agree with the proposed amendment that a liability for a contract that becomes onerous as a result of the entity's own actions should be recognised only when the entity has taken that action ? If not, when should it be recognised and why ? *(b) Do you agree with the additional guidance for clarifying the measurement of a liability for an onerous operating lease ? If not, why not ? How would you measure the liability ?* *(c) If you do not agree, would you be prepared to accept the amendments to achieve convergence ?*

Acteo's, Medef's and AFEP's joint answer

8.1. We agree with the principle supporting the present amendment, based on our understanding. However we believe this amendment needs clarification in order not to trigger any interpretation issue. Clarifications are needed in the following areas :

- a liability is not triggered by the mere fact that the price the entity is committed to pay for the goods or services or rights of use under the contract is above current market prices ;
- a liability is incurred as soon as a contract (or a group of contracts) becomes onerous within an activity which is no longer profitable whatever the actions the entity may take, and after all assets dedicated to the contract or the group of contracts have been impaired in conformity with IAS 36.

8.2 Expected economic benefits should be defined.

8.3 If the Board concludes that the clarifications we are requesting demonstrate a misunderstanding of the change, then the Board should consider that we disagree with the proposal.

8.4 A useful link with the restructuring provision requirements could be made.

Question 9 – Restructuring provisions

The Exposure Draft proposes that non-financial liabilities for costs associated with a restructuring should be recognised on the same basis as if they arose independently of a restructuring, namely when the entity has a liability for those costs (see paragraphs 61 and 62).

The Exposure Draft proposes guidance (or provides cross-references to other Standards) for applying this principle to two types of costs that are often associated with a restructuring : termination benefits and contract termination costs (see paragraphs 63 and 64).

(a) Do you agree that a liability for each cost associated with a restructuring should be recognised when the entity has a liability for that cost, in contrast to the current approach of recognising at a specified point a single liability for all of the costs associated with the restructuring ? If not, why not ?

(b) Is the guidance for applying the Standard's principles to costs associated with a restructuring appropriate ? If not, why not ? Is it sufficient ? If not, what other guidance should be added ?

Acteo's, Medef's and AFEP's joint answer

9.1 Although we understand the need for convergence and the rationale behind limiting liability recognition to elements that strictly meet the definition, and are ready to support the change on that basis, we are concerned of the impact that such a change will have on financial reporting. Users in our view need to get the full picture of any significant restructuring. The dissemination of losses through various periods of reporting as the implementation of the plan progresses will not serve that purpose and may be misinterpreted as a never-ending loss stream. We therefore recommend the Board to assess how the change of accounting can be carried out without any loss of information and understandability for users.

9.2 We believe the guidance is appropriate.

ED OF PROPOSED AMENDMENTS TO IAS 19 Employee Benefits

Question 1 – Definition of termination benefits

The Exposure Draft proposes amending the definition of termination benefits to clarify that benefits that are offered in exchange for an employee's decision to accept voluntary termination of employment are termination benefits only if they are offered for a short period (see paragraph 7). Other employee benefits that are offered to encourage employees to leave service before normal retirement date are post-employment benefits (see paragraph 135).

Do you agree with this amendment ? If not, how would you characterise such benefits, and why ?

Acteo's, Medef's and AFEP's joint answer

1. Yes, we do. However we believe that clarification should be provided as to what short-term means, more especially in the context of recurring restructuring plans.

Question 2 – Recognition of termination benefits

The Exposure Draft proposes that voluntary termination benefits should be recognised when employees accept the entity's offer of those benefits (see paragraph 137). It also proposes that involuntary termination benefits, with the exception of those provided in exchange for employees' future services, should be recognised when the entity has communicated its plan of termination to the affected employees and the plan meets specified criteria (see paragraph 138).

Is recognition of a liability for voluntary and involuntary termination benefits at these points appropriate ? If not, when should they be recognised and why ?

Acteo's, Medef's and AFEP's joint answer

2.1 No, we do not.

2.2 Once the offer for voluntary termination benefits is made, the entity may, in some jurisdictions, incur the obligation to pay every employee who accepts the offer and satisfies the specified criteria (This is the case in France, for example). A liability based on the number of employees who are expected to accept should therefore be accounted for. We do not believe that the text should imply that in all cases such an obligation does not exist at the time the offer is made.

2.3 We believe the IASB should re-discuss this issue with the FASB, in order to allow convergence be met while better fitting the diversity of jurisdictions.

Question 3 – Recognition of involuntary termination benefits that relate to future service

The Exposure Draft proposes that if involuntary termination benefits are provided in exchange for employees' future services, the liability for those benefits should be recognised over the period of the future service (see paragraph 139).

The Exposure Draft proposes three criteria for determining whether involuntary termination benefits are provided in exchange for future services (see paragraph 140).

Do you agree with the criteria for determining whether involuntary termination benefits are provided in exchange for future services ? If not, why not and what criteria would you propose ? In these cases, is recognition of a liability over the future service period appropriate ? If not, when should it be recognised and why ?

Acteo's, Medef's and AFEP's joint answer

3. Yes, we do.