

28 August 2015

To:

Dr Thomadakis
Chair of the International Ethics Standards Board for Accountants

**Re.: Comment letter from European audit regulators relating to the IESBA's Exposure Draft
"Responding to Non-Compliance with Laws and Regulations"**

Dear Dr Thomadakis,

1. A number of independent European audit regulators and/or oversight bodies ("audit regulators") appreciate the opportunity to comment on the IESBA's ("Board") Exposure Draft "*Responding to Non-Compliance with Laws and Regulations*" issued in May 2015. The content of this letter has been discussed and agreed upon by the audit regulators of the following countries:
 - Austrian Auditors Supervisory Authority – Austria
 - Commission for Public Oversight of Statutory Auditors – Bulgaria
 - Public Audit Oversight Board – Czech Republic
 - Danish Business Authority – Denmark
 - Auditors Activities Oversight Council – Estonia
 - Haut Conseil du Commissariat aux Comptes – France
 - Abschlussprüferaufsichtskommission - Auditor Oversight Commission – Germany
 - Auditors' Public Oversight Authority – Hungary
 - Irish Auditing and Accounting Supervisory Authority – Ireland
 - Authority of Audit and Accounting – Lithuania
 - Commission de Surveillance du Secteur Financier – Luxembourg
 - Netherlands Authority for the Financial Markets – The Netherlands
 - Finanstilsynet – Norway
 - Audit Oversight Commission – Poland
 - Conselho Nacional de Supervisão de Auditoria – Portugal
 - Romanian Public Interest Oversight Body of Accounting Profession – Romania
 - Auditing Oversight Authority – Slovakia
 - Agency for Public Oversight of Auditing – Slovenia
 - Instituto de Contabilidad y Auditoria de Cuentas – Spain
 - Federal Audit Oversight Authority FAOA – Switzerland
2. Our comments in this letter reflect those matters on which we have achieved a consensus amongst the above-mentioned audit regulators. Nevertheless, they are not intended to include all comments that might be provided by these individual regulators and their respective jurisdictions.
3. As audit regulators, our mandates encompass the oversight of the independence of statutory auditors, based on the requirements applicable in our respective jurisdictions.
4. The IESBA Code of Ethics ("IESBA Code" or "Code") is used in several jurisdictions, but not in all of them, and is not mandatory for auditors in all circumstances. Even for those jurisdictions that do not use it, we clearly see an interest in enhancing its content, as it is used as a basis for some benchmarks at international level. Moreover, a number of audit firms and networks have voluntarily committed to complying with the IESBA Code.

5. Given our mandates in the field of oversight of the statutory auditors in our respective jurisdictions, our shared comments hereafter focus only on the provisions related to auditors. We chose not to comment on the proposed modifications to the Code applying in other types of situations.
6. We draw the IESBA's attention to the fact that the comments included in this letter do not take into account the content of the IAASB proposals in its Exposure Draft "*Proposed Amendments to the IAASB's International Standards – Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations*", which have been published after the completion of our discussions on the IESBA proposals.

The auditor's behaviour should be driven by the public interest perspective

7. We are appreciative of the IESBA's efforts in promoting an international response and consistent behaviour when the auditor suspects or witnesses non-compliance with laws and regulations (NOCLAR). We share the view that the auditor's behaviour and response in those situations should be driven by the public interest perspective.
8. We nevertheless observe that the level of response provided for by the current Exposure Draft does not meet our expectations and does not meet, in particular, the minimum level of legal requirements applicable in all our respective jurisdictions for the audits of public interest entities.¹

The expectations should be at a higher level in the IESBA Code

9. We recognize and support the fact that the IESBA's proposal explicitly states that the applicable laws and regulations of each jurisdiction should apply in addition to the IESBA Code of Ethics provisions,² and that the IESBA Code does not intend to overrule locally-applicable legal requirements that would be more stringent.
10. We believe nevertheless that the IESBA Code should set the response expected for the auditor at a higher level. In jurisdictions that do not have locally applicable legislation in place relating to the auditor's behaviour when facing "NOCLAR", a Code that is less stringent than higher requirements applicable elsewhere would be less useful, or not useful at all. Raising the level of expectations in the Code would better achieve the aim of convergence at international level pursued by the IESBA.
11. Furthermore, we would like to draw the IESBA's attention to the recent audit inspection findings of a number of EAIG³ members, as reported back in the EAIG inspection findings database: situations were reported where audit firms applied the provisions of the IESBA Code directly, without adapting their internationally developed policies to include their more stringent locally applicable legislation. Thus, we support the fact that the IESBA Code recognizes that laws and regulations prevail and we encourage the IESBA to continue to place emphasis, whenever possible, on any other applicable laws and regulations that may be more stringent than the Code.

¹For example, article 7 of EU regulation 537/2014 will be applicable as from 17 June 2016, or other similar provisions applicable in non EU jurisdictions

²ED par. 225.10

³European Audit Inspection Group

Lack of obligation to invite the audited entity to take action and to monitor the outcome

12. In this regard, we note that the proposals in the ED include a phase where the auditor engages with the appropriate level of management and those charged with governance. We concur with this preliminary phase, but we believe that the auditor should invite management and those charged with governance to take action, in all situations, not only when they agree on the facts.⁴ This precondition of their agreement integrated in the ED, is, in our view, inappropriate.
13. We also believe that the auditor should monitor and assess the response of the entity. This assessment is indirectly touched upon in the ED,⁵ but it is expressed in a manner that does not create a clear requirement for the auditor in this area.

Lack of obligation to report to authorities

14. The proposals in the ED suggest, following this initial phase, that the auditor shall determine whether further action is needed,⁶ and that further actions may include disclosing the matter to an authority.⁷ We believe that, when the audited entity does not take appropriate action to investigate the matter, the auditor should have an obligation to inform the authorities designated by national law, unless this is clearly prohibited locally, and that he should not have only a right to inform, as suggested in the ED.

Scope of application of the provisions included in this exposure draft

15. We understand that the IESBA intends to limit the scope of the provisions to (i) the information obtained by the auditor in the course of performing an audit,⁸ (ii) laws and regulations pertaining to financial and business operation matters,⁹ and (iii) matters that are not “clearly inconsequential”.¹⁰ We would like to draw the IESBA’s attention to the fact that these limitations of scope would result in the auditor not considering all required irregularities to take action on in accordance with locally applicable legislation relevant for the audit. Again, the IESBA should consider increasing the scope of elements to be considered. In addition, the IESBA should make clear that this level of scope set by the Code does not capture the higher level of requirements that could apply in a number of jurisdictions around the world.
16. In particular, we believe that the scope should not be limited to matters identified in the course of performing the audit, for public interest entities. If the auditors of an entity become aware of existing or potential NOCLAR when performing non-audit services for that entity, they shall take the same steps as if the matter was identified in the course of the audit. We believe that this should be reflected in the proposals.¹¹

⁴ ED par. 225.17 *"If management and, where appropriate, those charged with governance, agree that non compliance have occurred or may occur"*

⁵ ED par.225.21 bullet 2

⁶ ED par.225.20

⁷ ED par.225.24

⁸ ED par.225.11

⁹ ED par.225.5

¹⁰ ED par.225.8

¹¹ ED par.225.39

Communication between predecessor and successor auditors

17. In the case of a change in auditor, we believe that the former auditor should communicate any information relevant to the audit of the entity to the newly appointed auditor, unless prohibited by national law. We do not agree with the precondition in the current ED proposals that the former auditor should obtain the audited entity's permission before making such communication.¹² We believe the IESBA could clarify this in the proposals.

Link between ethics and auditing standards

18. We believe that several steps should be taken by the auditor facing suspected NOCLAR, to drive appropriate behaviour. A number of the proposed modifications to the Code indicate that actions shall be envisaged, and create incentives for the auditor to perform specific procedures. Given the nature of the actions required, we see a necessary link to be made with auditing standards, as those standards describe the level of work effort required by auditors. We would see a clear benefit in aligning the ISAs and the provisions of the Code¹³ to ensure that all the requirements are addressed in a coordinated manner by ethics and auditing standard-setters (e.g. work effort, communication, group audit specificities, documentation ...).¹⁴
19. Regarding the audit of consolidated financial statements, we support the reference made in the proposal to applicable professional standards,¹⁵ but we believe that it would be helpful to enhance the focus in the Code or in the appropriate auditing standards on the difficulties arising for auditors when faced with NOCLAR in a group audit situation, whether the auditors involved belong to the same network and/or the same jurisdictions or not. Such increased focus may contribute to a consistent approach by the auditors of subsidiaries within a group, and could facilitate the communication between those auditors and the auditor of the consolidated financial statements.

Terminology and enforceability

20. Enforceability of the ethics provisions that apply to auditors and furthermore the fact that the Code allows for consistent application by different auditors, is an area of concern for us. Indeed, clear provisions allow for consistency in application and for a homogeneous protection of the auditor's action. Consistency in application of the ethics rules allows for a level playing field for auditors, and is likely to create more security for users of the audited financial statements.
21. Several proposals and words included in the exposure draft leave room for interpretation in the Code and are thus likely to hamper enforceability of the Code. We would therefore encourage the IESBA, as it progresses in the project, to minimize the room for interpretation apparent in the current proposals.

¹² ED par.210.13

¹³ ED par.225.19

¹⁴ Please refer to par. 6 of the letter: the comments included in this letter do not take into account the content of the IAASB proposals in its Exposure Draft “*Proposed Amendments to the IAASB’s International Standards – Responding to Non-Compliance or Suspected Non-Compliance with Laws and Regulations*”, which have been published after completion of our discussions on the IESBA proposals.

¹⁵ ED par.225.19.b

We thank you for the opportunity to comment on the Exposure Draft. If you have any questions or would like to further discuss the matters noted in this letter, please contact Laurence Duflo at the Haut Conseil du Commissariat aux Comptes (+33 1 44 51 09 36).

Yours sincerely,

Audit regulators of:

- Austria
- Bulgaria
- Czech Republic
- Denmark
- Estonia
- France
- Germany
- Hungary
- Ireland
- Lithuania
- Luxembourg
- The Netherlands
- Norway
- Poland
- Portugal
- Romania
- Slovakia
- Slovenia
- Spain
- Switzerland