WIRTSCHAFTSPRÜFERKAMMER
Körperschaft des öffentlichen Rechts

www.wpk.de/oeffentlichkeit/stellungnahmen/

Stellungnahme zum IESBA-Exposure Draft *Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*

Die WPK hat mit Schreiben vom 19. April 2016 gegenüber dem International Ethics Standards Board for Accountants (IESBA) zur vorgesehenen Neustrukturierung des IESBA Code of Ethics (Exposure Draft *Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1*) wie nachfolgend wiedergegeben Stellung genommen.

We are pleased to take this opportunity to comment on the IESBA Exposure Draft: Improving the Structure of the Code of Ethics for Professional Accountants – Phase 1 (hereinafter referred to as "ED"). We would like to address some general comments first and provide you with our responses to the questions of the ED subsequently.

1. General Comments to the Exposure Draft

Agreement to the Restructuring of the Code in general

We welcome IESBA's intention to restructure the IESBA Code of Ethics in order to improve its understandability and usability. Overall we think that the proposed adjustments (especially the separation of requirements from the application material) are reasonable and useful from the users' perspective. From our understanding, the ED seems to make the right steps to foster the manageability of the Code.

Different Phases of the Project

With regard to IESBA's limited resources, we understand the approach of separating such an enormous restructuring project into different phases. However this separation into two phases, combined with the also two-phased safeguards and long association projects makes it difficult to

assess the overall effect of the different EDs on the IESBA Code of Ethics. Accordingly an overall assessment will only be possible after the accomplishment of all mentioned project phases.

Change in meaning

We ask the IESBA to make sure that no changes in the meaning of requirements due to the restructuring of the Code take place. Please see our comments to question No. 3. Unintended changes in meaning should be avoided. Intended changes should be clearly communicated.

Future cost-benefit-analysis

The comprehensive restructuring of the Code will result in extensive and costly follow-up work for the audit firms as well as for member organisations, regulators and others. Examples refer to the update and the reworking of translations, comparisons, guidance and training material.

We therefore encourage the Board to perform cost-benefit analysis that such extensive future projects may have: the benefits of any proposed changes to the Code need to outweigh the likely costs for affected parties, including the translation and adoption in national or firm-wide instructions by national legislation, local regulators, IFAC member bodies, and firms.

Avoidance of too much emphasis on enforceability

We will very much welcome, if IESBA does not put too much emphasis on the (alleged) enforceability of the requirements of the Code. With a view to the remarks in note 3 (feedback received from some regulators in terms of enforceability) and question 1g) of the ED one might get the impression that enforceability of all requirements in the Code has become one of the core criteria for the restructuring. Notwithstanding the need for sanctioning violations of the Code (e.g. in disciplinary or legal proceedings) we question whether regulatory enforcement is an appropriate criterion with respect to the quality and usability of the Code in its entirety. In our view, facilitation of such enforcement can, amongst many others, only be one criterion in relation to independence standards for audit services.

From our understanding enforceability derives in large parts from the clarity, understandability, adequacy and practicability of a requirement. Accordingly enforceability should only be one guiding aspect – besides others – on which the restructuring of the Code is based. Additionally some of the fundamental principles of the Code are by themselves not enforceable, since they address a mind-set and require the professional accountant to apply a consequent behavior and to exercise personal judgment.

In particular, we refer to the relationship between the fundamental principle of objectivity and the independence standards derived from this principle: whilst objectivity is a wide, and primarily behavioural, concept that applies to all professional activities of a public accountant and is not

directly enforceable we consider independence (in particular independence in appearance) as a proxy to demonstrate objectivity with respect to assurance services only, and thus being subject to [enforceable] standards.

This said we would also like to refer to our answer to question 6.

2. Specific comments to the questions of the ED
Request for specific comments

Refinements to the Code

1. Do you agree with the proposals, or do you have any suggestions for further improvement to the material in the ED, particularly with regard to:

   (a) Understandability, including the usefulness of the Guide to the Code?

   We agree with the proposals in the ED and support the 'Guide to the Code' as a reasonable assistance for users. A further improvement may be reached by a future project to eliminate or at least to reduce redundancies in the Code.

   (b) The clarity of the relationship between requirements and application material?

   We welcome the intended separation of requirements ('R') from application material ('A'). We think that the relationships between R and A is sufficiently clear and understandable.

   Nevertheless we would like to mention that the different position of ‚R' and ‚A' might lead to difficulties for professionals and others with regard to referencing of working papers - especially when electronic (automated) working paper solutions are in place.

   (c) The clarity of the principles basis of the Code supported by specific requirements?

   We welcome that IESBA emphasizes the importance of the principles-based conceptual framework approach. Any tendencies to shift to a more rules-based approach should be avoided. However, we fear that the restructuring might be seen as a shift towards a more rules-based approach aimed at enforceability rather than application of the fundamental principles of the Code.

   (d) The clarity of the responsibility of individual accountants and firms for compliance with requirements of the Code in particular circumstances?

We welcome IESBA's approach of maintaining the link between the Code, ISQC 1 and ISAs and encourage IESBA to defer further consideration until the finalization of IAASB's project on ISQC 1.

It should be taken into consideration that the responsibilities within a firm relate to the structure of the professional activity as well as to the structure and environment of the respective firm. E.g. similar as for independence in relation to assurance engagements responsibilities within a praxis may vary with respect to the situations described in sections 310 (conflicts), 320 (professional appointment), 350 (custody of assets).

However, as currently drafted the Code does not provide for the desired clarity by separating responsibilities between a firm and a PA. E.g. whilst in the independence sections the responsibility is mainly allocated to the respective firm, the ED places responsibilities on individuals in Sections 310, 320, 350 despite – and depending on the size and operating model of a firm – it would be primarily the responsibility of the firm that is entering into a respective contract with a client to provide for conflict management, to arrange for background checks and other preparatory measures before accepting an engagement, or to comply with requirements in section 350 where it is the firm that holds a client's assets under custody.

Based on this observation we find it difficult to allocate the responsibility to comply with a given requirement to the firm and/or an individual for any potential circumstance. Therefore, we would encourage the Board to explore whether a general approach (like the one in the extant Code) can be applied which may then be supplemented by guidance in line with the forthcoming ISQC1.

(e) The clarity of language?

We support the improvement of the clarity of the language.

(f) The navigability of the Code, including:

(i) Numbering and layout of the sections;

We welcome the proposed numbering and layout of the sections. Nevertheless we would like to refer to our answer to question 1b) above. The different position of ‚R' and ‚A' might lead to difficulties for professionals and others with regard to referencing of working papers - especially when electronic (automated) working paper solutions are in place.

(ii) Suggestions for future electronic enhancements; and

We generally welcome electronic enhancements, provided that current formats, such as pdf or similar formats, are also maintained due to their ‘easy to use’-characteristic.

Especially with a view to SMPs there should be a functionality to hide all provisions applying to PIE to result in a concise and readable Code for SMPs.

But it should be considered that any kind of filter functionality might bear the risk that users just look for requirements that apply to a given circumstance they are facing, and miss the overall requirement to comply with conceptual framework as such – or at least awareness in this respect may be lost.

(iii) Suggestions for future tools?

We have no comments.

(g) The enforceability of the Code?

We refer to our general comments. We think it is not advisable if the quality of the Code seems to be increasingly measured by whether it is easily to enforce. We doubt whether such approach is appropriate to promote compliant behaviour with the fundamental principles of the Code.

2. Do you believe the restructuring will enhance the adoption of the Code?

We see the restructuring of the Code only as one component besides others in order to enhance the adoption of the Code. From our point of view the decisive factor for acceptability is quality. The quality derives especially from the clarity and understandability, adequacy and practicability of the requirements of the Code.

We observe that with respect to professional ethics legislative and regulatory frameworks used are different across countries. Within some jurisdictions, like Germany, there are different legislative and regulatory bodies charged with the responsibility for different subjects that are addressed in the Code. The current application of the EU-legislation on statutory audits as adopted in 2014 shows that even under a single framework as provided in the EU, application may vary substantially from country to country (e.g. exercise of member state option on external rotation, prohibition of non-audit services,…).

3. Do you believe that the restructuring has changed the meaning of the Code with respect to any particular provisions? If so, please explain why and suggest alternative wording.

A final assessment of this question will require a profound and time consuming analysis of each and every paragraph of the Code. Furthermore, the overall effect of the different phases of the restructuring has to be taken into consideration when answering this question.

However we ask the IESBA to make sure that no changes in the meaning of requirements due to the re-structuring of the Code take place. Below is an example of - what we think – is a change in meaning:

- 112.3.A1 Objectivity: Whereas the extant Code (280.2) describes the relationship between the fundamental principle of objectivity and the concept of independence correctly by making clear that independence derives from objectivity, independence is now described as a measure of objectivity in relation to assurance engagements.

  We believe this paragraph to be conceptually wrong as it would imply that a person that complies with independence standards can be considered to be acting with objectivity when performing assurance engagements. As drafted the restructured Code suggests that objectivity can be measured. It ignores that objectivity as such is not subject to simple measurement, nor does the compliance with independence standards allow to conclude that the individual concerned applied objectivity. Furthermore, the drafted text suggests that objectivity for activities other than assurance engagements can be measured as well, but leaves it open of how in the view of the Board such objectivity can be “measured”.

Other Matters

4. Do you have any comments on the clarity and appropriateness of the term “audit” continuing to include “review” for the purposes of the independence standards?

   We have no comments.

5. Do you have any comments on the clarity and appropriateness of the restructured material in the way that it distinguishes firms and network firms?

   Currently, we have no comments.

Title

6. Is the proposed title for the restructured Code appropriate?

   As already said under general comments we think that the mixing of the terms ‘Code’ and ‘Standards’ in the title may be misleading. Fundamental principles as currently set out in Part

A of the Code primarily address a mind-set and require the professional accountant to apply a consequent behavior and to exercise personal judgment.

The term ‚Standards' inherently implies a mere compliance and enforceability of the rules contained, rather than to the need to observe and apply the fundamental principles in their entirety and to behave in a respective way. Standards, in our view, can be derived from fundamental principles, but should primarily be designed to provide organizations and individuals with a framework that allows them to demonstrate and document their compliance with the requirements.

Unfortunately such a separation of fundamental principles in the sense of a Code and corresponding ('derived') standards would result in an extensive reworking of the Code, far beyond the current restructuring project.

Request for General Comments

(a) Small and Medium Practices (SMPs) – The IESBA invites comments regarding the impact of the proposed changes for SMPs.

From an SMP perspective the current restructuring may be only of minor benefit. Instead we believe that separating standards such as independence standards from the rest of the Code would help facilitate application and understandability by SMPs.

Furthermore it might be useful for SMPs to distinguish between provisions applicable to Public Interest Entities (PIEs) and non-PIEs in the proposed Parts B and C of the Code. This could be achieved by electronical tolls as proposed to question f)ii). This distinction could help make the provisions of the Code more understandable to SMPs. Despite the efforts made, we think there is still room for improvement to make clear to SMPs what provisions of the Code are applicable to them or not.

(b) Developing Nations – Recognizing that many developing nations have adopted or are in the process of adopting the Code, the IESBA invites respondents from these nations to comment on the proposals, and in particular, on any foreseeable difficulties in applying them in their environment.

We have no comments.

(c) Translations – Recognizing that many respondents may intend to translate the final pronouncement for adoption in their environments, the IESBA welcomes comment on potential translation issues respondents may note in reviewing the proposals.

For non-English speaking countries and countries that have only recently translated the Code, the modification of the structure of the Code will likely be very costly in order to adapt their current provisions to the new structure of the Code. Furthermore, the current restructuring proposal is only one of two phases. In combination with the EDs on safeguards and long association timely translations do not seem to be very likely.

We hope that our remarks will be taken into consideration in the subsequent course of the proceedings, and we would be delighted to answer any questions you may have.

-/-