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Unabhängigkeit des gesetzlichen Abschlußprüfers – Stellungnahmen der WPK gegenüber BMJ und IFAC

Das Thema „Unabhängigkeit des gesetzlichen Abschlußprüfers“ wird zur Zeit von mehreren Organisationen behandelt. So habe sich neben der Europäischen Kommission (vgl. den Bericht zum EU-Committee on Auditing, WPK-Mitt. 2000, 185) auch die International Federation of Accountants (IFAC) und – von der Öffentlichkeit besonders beobachtet – auch die US-amerikanische Securities & Exchange Commission (SEC) der Thematik angenommen. Aus Sicht der Wirtschaftsprüferkammer ist hier eine Koordinierung dringend erforderlich.

Zu dem jüngsten Entwurf der Europäischen Kommission hat die Wirtschaftsprüferkammer gegenüber dem Bundesministerium der Justiz als unmittelbaren deutschen Vertreter im EU-Committee on Auditing mit Schreiben vom 14. September 2000 daher wie folgt Stellung genommen:

„Grundsätzlich begrüßt die Wirtschaftsprüferkammer den Entwurf der Europäischen Kommission. Das Konzept ist ausgewogen und bietet aufgrund der Gliederung in eine Darstellung allgemeiner Rahmenbedingungen (*framework*) und die Auflistung spezifischer Grundsätze (*specific requirements*) die für eine mögliche Anwendung durch unsere Berufsangehörigen notwendige Klarheit.

Ein Vergleich des Kommissionsentwurfes mit den in Deutschland geltenden Berufsgrundsätzen hat aus unserer Sicht ergeben, daß die geltenden Grundsätze zur Unabhängigkeit und Unbefangenheit des Wirtschaftsprüfers und vereidigten Buchprüfers (§ 49 2. HS WPO; §§ 20 ff. Berufssatzung WP/vBP; § 319 Abs. 2 und 3 HGB) den Anforderungen der Europäischen Kommission weitestgehend entsprechen. Teilweise weitergehende Vorschläge der Kommission stoßen seitens der Wirtschaftsprüferkammer auf keine Bedenken, so daß eine Umsetzung in nationales Berufsrecht keine besonderen Probleme bereitet.

Vor dem Hintergrund, daß die International Federation of Accountants (IFAC) derzeit ihre im „Code of Ethics“ niedergelegten Grundsätze zur Independence revidiert und stringenter faßt, erscheint es uns besonders wichtig, daß sich die Europäische Kommission mit ihrem Entwurf nicht in Widerspruch zu den Independence-Grundsätzen der IFAC setzt. Im jetzigen Stadium bestehen bezüglich des Entwurfes der Europäischen Kommission insoweit keine Bedenken.

Die Koordinierung der Bemühungen von IFAC und Europäischer Kommission halten wir deshalb für besonders wichtig, weil die internationalen Kapitalmärkte nicht nur einheitliche Rechnungslegungs- und Prüfungsgrundsätze, sondern auch einheitliche Berufsgrundsätze erfordern.

Bei den internationalen Rechnungslegungs- sowie Prüfungsgrundsätzen verfolgt die Europäische Kommission dabei bereits heute einheitliche Strategien. So wie sie sich in ihrer Mitteilung vom 13. Juni 2000 zur Rechnungslegungsstrategie in der EU für die Anerkennung der vom International Accounting Standards Committee (IASC) entwickelten Rechnungslegungsgrundsätze (IAS) auf der Grundlage eines noch zu entwickelten Billigungs- und Durchsetzungsmechanismus (*endorsement* und *enforcement*) ausspricht, akzeptiert sie faktisch auch die von IFAC entwickelten Prüfungsgrundsätze (ISA) als für den Berufsstand weltweit geltende Standards und verzichtet dabei insbesondere auf die Entwicklung eigener, europäischer Grundsätze. Hier sei darauf hingewiesen, daß die Europäische Kommission über das EU Committee on Auditing die Umsetzung der ISA in Europa mehrfach erörtert hat und in bezug auf die Prüfungsgrundsätze der IFAC damit bereits ein funktionierender *endorsement*- und *enforcement*-Mechanismus besteht (vgl. Sitzung des EU Committee on Auditing am 2./3. Dezember 1999 in Madrid).

Bezüglich der Berufsgrundsätze scheint die Europäische Kommission jedoch von der vorgenannten Strategie abweichen zu wollen. Angesichts ihrer faktischen Anerkennung der IFAC als weltweiten Standardsetzer von Prüfungsgrundsätze, erscheint uns dies aber inkonsequent.

IFAC sollte bei der Entwicklung von Berufsgrundsätzen die gleiche Schlüsselrolle zukommen. Die Arbeit der IFAC wird von der Mehrheit aller nationalen Berufsorganisationen getragen und orientiert sich an den in den Mitgliedstaaten bestehenden Rahmenbedingungen zur Berufsausübung. Die Mitgliedsverbände sind nach der Satzung der IFAC auch zur Umsetzung der von IFAC erarbeiteten Grundsätze verpflichtet. Daher besteht kein sachlicher Grund, hinsichtlich der Anerkennung der Berufsgrundsätze der IFAC anders zu verfahren als in bezug auf ihre Prüfungsgrundsätze.

Die oben dargelegte Auffassung ist selbstverständlich zunächst in die Zukunft gerichtet, bei der Erarbeitung der Unabhängigkeitsgrundsätze sollte die Kommission aber schon jetzt darauf achten, daß ihre Bemühungen denjenigen der IFAC auf dem selben Gebiet nicht entgegenstehen.“

Neben der Europäischen Kommission hat auch die International Federation of Accountants (IFAC) Vorschläge zu neuen Unabhängigkeitsgrundsätzen ausgearbeitet; im Juni 2000 hatte IFAC Änderungsvorschläge zu den entsprechenden Passagen des „Code of Ethics“, den von IFAC erarbeiteten Berufsgrundsätzen, veröffentlicht, die auch über deren Internetseite

abgerufen werden können (www.ifac.org). Hierzu hat die Wirtschaftsprüferkammer am 13. September 2000 wie folgt Stellung genommen:

„The Wirtschaftsprüferkammer (WPK) is pleased to have this opportunity to comment on the IFAC Ethics Committee’s Exposure Draft proposing changes to Section 8 of the Code of Ethics for Professional Accountants.

Our comments are divided into some general remarks concerning improvement and further development of both ethical rules and audit standards in general on one hand and some special remarks concerning the aforementioned Exposure Draft (ED) on the other hand.

General comments

At present, besides IFAC new principles on independence are discussed by various interested parties like in Europe by the European Commission seeking to develop recommendations on auditor’s independence and – of course – the US Securities & Exchange Commission (SEC) seeking to revise its independence requirements.

Against the backdrop of this development coordination and harmonisation of those activities seems to be highly indispensable in order to avoid a bewildering bunch of conflicting principles on the professional’s independence. Different principles and requirements set out from national and international regulators will not provide sufficient guidance for professionals considering their position in a particular engagement. Confusion on what principles might be relevant or not could even provoke an increasing number of conflicts in independence matters.

On the other hand, since transnational engagements become more and more important for our profession, an internationally binding common core of principles concerning independence should be set up, binding upon all professionals whether acting in Europe, before the SEC or elsewhere.

From our point of view IFAC should assume leadership in developing those principles. Since the International Accounting Standards Committee (IASC) is going to be accepted as standard setter for accounting rules by IOSCO, the European Union, SEC and others worldwide, IFAC should – in future – monopolise an equal position concerning the development of both auditing and ethical rules. Those rules set up by IFAC should be endorsed and enforced by national and transnational regulators, i.e. comparable to the proposals of the European Commission’s stated on June 13, 2000 (“EU Financial Reporting Strategie: The Way Forward”) concerning accounting Standards, endorsement and enforcement procedures for professional rules have to be developed. In Europe for instance the European Commission respectively the member states of the European Union together with national professional bodies could endorse those rules while the national professional bodies were responsible for the endorsement of those rules. This approach could be realised

in connection with the present concepts of strengthening IFAC for the future, particularly the visions of the International Forum on Accountancy Development (IFAD).

However, concerning the aforementioned diverging discussion about independence, more immediate action is needed. We therefore propose that IFAC should address to the SEC and invite it to discuss harmonisation of independent requirements as soon as possible. In the interest of all professionals this is utmost important in order to prevent the SEC from developing independence requirements being inconsistent with future (global) professional rules of IFAC. Of course this might lead to a controversial debate, e.g. concerning the provision of non-audit services where the SEC is unacceptably trying to expulse all kinds of additional services rendered by our profession without any exceptions.

At the same time we will discuss the above-mentioned approach with the European Commission trying to find a solution that does not conflict with the present ED of IFAC.

IFAC's request for comment

Our comments on IFAC's ED will concentrate on the following points mentioned in the preface of the ED.

(a) Whether the change from a prescriptive approach to an approach that sets out a framework of risks and safeguards is acceptable.

WPK welcomes the new approach since it provides more guidance for professionals seeking solution in a particular situation. Moreover, similar framework approaches are also discussed by the European Union and the SEC. Therefore, IFAC's new concept might be welcomed and accepted by those, too.

(b) Whether the risks identified in this exposure draft are considered serious and whether the safeguards identified are adequate.

The risks and safeguards identified in the ED are serious and adequate on principle. However, the examples (analysis of specific situations) in paragraphs 8.100 to 8.138 might be awarded with an enhanced binding force. Conclusive and good-standing rules on independence are the main key to the profession's esteem. Besides that, a more statutory character might be helpful for the acceptance of IFAC's principles by third parties like IOSCO, the European Union and the SEC, too.

(c) Whether any terms, phrases of concepts in this document would be particularly difficult to translate into other languages or might be ambiguous when translated.

As we know from our participation at IFAC's Ethics Committee Discussion Forum on November 10 and 11, 1999 in Rome, linguistic aspects were one of the main concerns of many participants. Of course, translatability is one of the key problems in developing internationally accepted standards. But Anglo-American terms for functions within an enterprise like Director, Officer, CEO, Owner Manager, Senior Manager etc. can hardly be translated since managerial structures differ from country to country depending on

legal traditions and historical developments. The same problem exists with terms for cooperations, federations, associations or any other interlinking of business enterprises whether on the side of the professional or its client. Therefore, we would like to recommend exact definitions of these terms since they are very important for identifying connections and dependencies between relevant persons. Perhaps more generally known terms or definitions for managerial linkages between relevant persons could be helpful. The European Commission for instance avoids defining specific management functions and speaks among others of “persons, who form part of the Chain of Command”.

(d) *Whether the definitions of reporting accountant, immediate and close family members are appropriate.*

In order to avoid loopholes within the new framework the definition of “reporting accountant” should be revised with utmost care. From our point of view groups of audit firms should be included more adequately.

Here, the definitions of the European Commission might be helpful. The Commission states that independence requirements should apply to

- the professional (statutory auditor) himself, and
- those who are in a position to influence the outcome of the statutory audit, i.e.
 - all persons, who are directly involved in the statutory audit (the engagement team), including
 - (i) the audit team (i.e., audit partners, audit managers and audit staff);
 - (ii) professional personnel from other service disciplines involved in the audit engagement (e.g. lawyers, actuaries, taxation specialists, IT-specialists, treasury management specialist);
 - (iii) those who provide control or direct oversight of the audit engagement;
- all persons, who form part of the Chain of Command within an audit firm (i.e. the organisational entity performing the audit, e.g. a sole practitioner’s practice, a partnership or a company of professional accountants, including its shareholders, partners, managers and employees) or a group of audit firms, including those with office, country, regional or global responsibilities;
- all persons within an audit firm or a group of audit firms who, due to any other circumstance, may be in a position to exert influence on the statutory audit.

The same concerns exists about definitions of immediate and close family members.

Due to the European Commission the term immediate family refers to spouses, dependants and spouses thereof, where dependants are persons who receive more than half of their support for the most recent calendar from the relevant audit firm’s or group member firm’s partner. The term close family includes the persons defined as

immediate family and adds certain family members who may appear to have less regular, but not necessarily less close, contacts with a Statutory Auditor, or potential members of the engagement team or Chain of Command, such as non-dependant children, parents, siblings and spouses thereof. Furthermore the Commission refers to any other close personal relationship that can hardly be defined but where a statutory auditor should consider the self-interest, intimidation or advocacy threats which may result from any other relationship.

From our perspective the definitions of the European Commission adequately cover all possible risks rising from family or other personal relationships.

(e) *Whether additional examples should be included in the second half of the document.*

The present list of examples is comprehensive and well-balanced. However, in order to achieve broad acceptance of IFAC's independence principles the scope of examples should be as broad as possible. Therefore, all specific situations presently discussed by SEC and European Commission should be taken into IFAC's consideration. This could include the following situations:

- SEC and European Commission focus on possible conflicts in independence resulting from internal audits ("self-review risk");
- concerning close business relationships between the professional and its client (paragraphs 8.104 to 8.105) situations should be mentioned where a professional provides services to a managing director or another individual performing a senior management function of the audit client in respect of the personal interest of such individual;
- concerning provision of other services to assurance clients (paragraph 8.108) it should be underlined what services are insignificant with regard to the professional's independence. This seems to be essential in view of the SEC's approach trying to expulse all kinds of non-audit services rendered by our profession."