WIRTSCHAFTSPRÜFERKAMMER
Körperschaft des öffentlichen Rechts

www.wpk.de/oeffentlichkeit/stellungnahmen/

Stellungnahme zu den geplanten Einschränkungen bei der Erbringung von Nichtprüfungsleistungen im IESBA Code of Ethics

Die WPK hat mit Schreiben vom 26. Mai 2020 zu dem Konsultationspapier des IESBA zu geplanten Änderungen des Code of Ethics im Bereich der Erbringung von Nichtprüfungsleistungen (Exposure Draft Non-Assurance Services – ED NAS) wie nachfolgend wiedergegeben Stellung genommen.

The Wirtschaftsprüferkammer (WPK) is pleased to take this opportunity to comment on the above mentioned Exposure Draft (ED). We would like to highlight some general issues first and provide you with our specific responses to the ED questions subsequently.

General Comments

As you are aware the **WPK provided you with a comment letter of September 6, 2019** on the NAS project. At that time we were referring to the public meeting documents on the IESBA website.

We appreciate that IESBA has taken up our proposal to **release the ED NAS at the same time as the ED Fees** due to the various interrelations between these EDs.

We also recognize positively that **IESBA engages closely with the IAASB** to ensure that the proposed changes are consistent or otherwise interoperable with the ISAs.

On the other hand, we have to note that our earlier core concern, i. e. the proposed **deletion of the materiality qualifier** does not seem to have been (fully) addressed. While materiality is proposed as a relevant factor in identifying and evaluating threats to independence (600.9 A2, 600.11 A2 (b)), many NAS seem to be prohibited if there is a self-review threat irrespective of whether the outcome of that NAS is immaterial to the financial statements. We find the new proposals **confusing** insofar as it is not sufficiently clear whether the concept of materiality and the materiality qualifier, respectively is meant to be abolished or whether it is maintained by the "back door" (600.11 A2 (b), cf. below question 2). **We strongly suggest maintaining the materiality qualifier** and stipulating corresponding clear provisions to provide the profession with legal certainty.

We are also concerned that IESBA might not have investigated the overall effects of its proposals on the global audit market, in particular with regard to **SMPs**. Many smaller firms have audit clients that are covered by the PIE definitions set up at national level. IESBA proposes fundamental changes with regard to PIEs without really overseeing the **divergences which exist with regard to entities that may fall within the definition of PIE in different jurisdictions**. Likewise, the outcome of IESBA´s project on the definitions of listed entity and PIE (cf. question 4) might have a significant impact on the present proposals. Therefore, it might be difficult to stakeholders to comment on the ED NAS without knowing the consequences the aforementioned IESBA project might have. We are concerned that the IESBA proposals will lead to disproportionate results, lead to increased market concentration and bring about **competitive disadvantages for SMPs**. Considering these potential negative consequences, many of the IESBA proposals, as further explained below, **cannot be regarded to be in the public interest**.

In this context we would also like to remind IESBA of its commitment to an **evidence-based standard setting** (IESBA Strategy and Work Plan, 2019-2023, paragraph 32). While we acknowledge that also perception issues need to be taken into consideration, we strongly miss any (empirical) evidence that the current NAS provisions of the Code are in need of improvement. In this context, IESBA predominantly refers to the views of stakeholders (cf. e. g. Explanatory Memorandum para. 43 f.) rather than providing evidence that justify the proposed dramatic changes. We also raised this point already in our above mentioned comment letter.

Finally, given the tremendous impact of the current **COVID-19 pandemic** on the profession, we would ask IESBA to **significantly extend the implementation periods of upcoming changes of the Code**.

Specific Comments

Prohibition on NAS that Will Create a Self-review Threat for PIEs
1. Do you support the proposal to establish a self-review threat prohibition in proposed paragraph R600.14?

We are generally supportive of a proposal that stipulates a self-review threat prohibition. However, the extant Code already contains a well-working general self-review prohibition which is linked to and embedded in the fundamental principles and the conceptual framework.

Against this background, we wonder what the difference between the extant Code and the proposed R600.14 is and why a change is needed. In other words, the precise **scope of and the meaning of R600.14 is unclear** to us. If R600.14 were meant to abolish the principle of materiality and the materiality qualifier, respectively, we would strongly oppose to that change as further explained below (questions 5 and 6).

The unclear meaning of proposed R600.14 gets even heightened when read in conjunction with 600.11 A2 (b) as further described below (question 2).

2. Does the proposed application material in 600.11 A2 set out clearly the thought process to be undertaken when considering whether the provision of a NAS to an audit client will create a self-review threat? If not, what other factors should be considered?

The WPK is of the view that the application material in proposed 600.11 A2 does not set out clearly the thought process to be undertaken when considering whether the provision of a NAS to an audit client will create a self-review threat.

While R600.14 might give the impression that the concept of materiality and the materiality qualifier, respectively is meant to be abolished (cf. question 1), 600.11 A2 (b) seems to introduce some kind of materiality considerations through the "back door" by referring to "audit procedures". Although the term "audit procedures" is in general need of clarification, we are of the view that this term implicitly refers to the materiality qualifier. On the contrary, the Explanatory Memorandum of the ED and various other proposed provisions of the ED purport that the materiality qualifier is meant to be abolished. **The interplay of R600.14 and 600.11 A2 does not work and would create a high level of confusion to the profession**.

We strongly recommend **maintaining the materiality qualifier** as further explained below (question 5) and set up corresponding clear provisions which provide the profession with legal certainty.

Providing Advice and Recommendations

3. Is the proposed application material relating to providing advice and recommendations in proposed paragraph 600.12 A1, including with respect to tax advisory and tax planning in proposed paragraph 604.12 A2, sufficiently clear and appropriate, or is additional application material needed?

The application material in proposed 600.12 A1 is **confusing**. We assume that what IESBA intends to cover in essence in this context is the description of assuming management responsibilities. From a conceptual viewpoint we would suggest carrying out any necessary clarifications exclusively in the context of assuming management responsibilities. Otherwise IESBA might create confusion and legal uncertainty for the profession.

Moreover, 604.12 A2 is **unclear**, too, particularly with regard to the last condition (c) "*have a basis in tax law that is likely to prevail*". Due to its **subjective nature**, it remains unclear which requirements the professional accountant would have to meet. We are concerned that this proposed application material would create confusion and potentially lead to inconsistent application. Furthermore, this tax issue should be reserved to the recently established IESBA Working Group "Tax Planning and Related Services" to avoid any unintended conflicts at a later stage.

Project on Definitions of Listed Entity and PIE

4. Having regard to the material in section I, D, "Project on Definitions of Listed Entity and PIE," and the planned scope and approach set out in the approved project proposal, please share your

views about what you believe the IESBA should consider in undertaking its project to review the definition of a PIE.

We support IESBA´s project to readdress the definitions of listed entity and PIE and would like to stress the necessity of close co-ordination with the IAASB during this project.

We agree with IESBA that it cannot create a definition of **PIE** to overrule national definitions. What constitutes a PIE is primarily decided at national level. We also agree that the degree of public accountability is a key consideration.

As you are aware, the EU Audit Directive (2006/43) contains a definition of PIE which includes listed entities, credit institutions and insurance undertakings. In addition Member States can designate other entities as PIEs; therefore the understanding of entities deemed as PIEs vary across Europe.

With regard to the Code definition of **listed entity**, we are concerned that this definition also covers companies traded in **secondary markets** by referring to "or other equivalent body". On the contrary, Art. 2 EU Audit Regulation covers listed entities but does not include companies traded on secondary markets. German Commercial Code (§§ 264d, 319a HGB) refers to capital market oriented companies which do not include companies traded on secondary markets either.

During its project, IESBA should carefully take the impact of any proposals on audits into consideration, in particular with respect to SMPs. A new definition should be principles-based and bring about simplifications and not further complications.

Materiality

5. Do you support the IESBA's proposals relating to materiality, including the proposal to withdraw the materiality qualifier in relation to certain NAS prohibitions for audit clients that are PIEs (see Section III, B "Materiality")?

We are concerned that IESBA gives up the materiality qualifier. As already explained in our above mentioned comment letter of September 6, 2019, the deletion of the materiality qualifier is **disproportionate** and will lead to an unjustified significant extension of prohibited NAS. The withdrawal of the materiality qualifier would result in prohibiting services even if their results will not be covered by the audit procedures. The criterion materiality meets the principle of proportionality, whereas the deletion of this principle will generally lead to disproportionate results. In other words, **giving up the materiality qualifier would not be in the public interest**.

In addition we would kindly ask IESBA to provide stakeholders with **facts and evidence** why such a tightening is necessary instead of just referring to the perception of some stakeholders. A standard-setting not based on a profound fact-finding and evidence analysis would be contrary to the public interest.

6. Do you support the proposal to prohibit the following NAS for all audit clients, irrespective of materiality:
• Tax planning and tax advisory services provided to an audit client when the effectiveness of the tax advice is dependent on a particular accounting treatment or presentation and the audit team has doubt about the appropriateness of that treatment or presentation (see proposed paragraph R604.13)?
• Corporate finance services provided to an audit client when the effectiveness of such advice depends on a particular accounting treatment or presentation and the audit team has doubt about the appropriateness of that treatment or presentation (see proposed paragraph R610.6)?

We are concerned that the reference to materiality seems to be withdrawn even for non-PIEs. The deletion of materiality leads to an unjustified significant extension of prohibited NAS.

The IESBA proposals will particularly **affect SMPs with limited resources negatively**, contribute to **increased market concentration** and lead to **competitive disadvantages for SMPs**. These dramatic effects **would not be in the public interest** which IESBA is committed to.

Communication with TCWG
7. Do you support the proposals for improved firm communication with TCWG (see proposed paragraphs R600.18 to 600.19 A1), including the requirement to obtain concurrence from TCWG for the provision of a NAS to an audit client that is a PIE (see proposed paragraph R600.19)?

The WPK **supports** the proposals for improved firm communication with TCWG, including the requirement to obtain concurrence from TCWG for the provision of a NAS to an audit client that is a PIE. According to our understanding, this requirement is basically in line with the EU Audit Regulation (No 537/2014, Art. 5 IV) which subjects the provision of a non-audit service by the auditor of a PIE to the approval of the audit committee after the committee has properly assessed threats to independence and the safeguards applied.

We also appreciate the flexibility provided under the proposal regarding the process by which the firm obtains the concurrence of TCWG. We would just like to suggest improving the wording as to better articulate the potential existence of different corporate governance regimes.

Other Proposed Revisions to General NAS Provisions
8. Do you support the proposal to move the provisions relating to assuming management responsibility from Section 600 to Section 400, and from Section 950 to Section 900?

We agree with the proposal to move the provisions relating to assuming management responsibility from Section 600 to Section 400, and from Section 950 to Section 900 to increase the prominence of these provisions.

9. Do you support the proposal to elevate the extant application material relating to the provision of multiple NAS to the same audit client to a requirement (see proposed paragraph R600.10)? Is the related application material in paragraph 600.10 A1 helpful to implement the new requirement?

We basically support the proposal to elevate the extant application material relating to the provision of multiple NAS to the same audit client to a requirement (R600.10).

However, in our view the proposed application material (600.10 A1) is not clear and only of limited help for the profession (e. g. group audit). The profession needs clear and specific guidance which should encompass real-life examples. We suggest that IESBA issues **more guidance material outside the Code** to avoid that the Code gets longer and more complex.

Proposed Revisions to Subsections
10. Do you support the proposed revisions to subsections 601 to 610, including?

As explained in detail above, we do not agree with the deletion of the materiality qualifier also in the subsections 601 to 610.

Proposed R601.5 stipulates a dramatic intensification for accounting and bookkeeping services. Corresponding **services of a routine or mechanical nature** will no longer be permissable. In addition, the **materiality qualifier** has been removed. We deem the new proposal as **disproportionate** and **not in the public interest**.

Our concerns of **disproportionate results** as a consequence of the **deletion of or lack of reference to the materiality qualifier** are equally true for the following proposed provisions:

- Valuation services (R603.5)
- Tax services (R604.10, R604.13, R604.15, R604.26)
- Internal audit services ((R605.6)
- Information technology systems services (R606.6)
- Litigation support services (R607.6)
- Legal services (R608.6, R608.9)
- Corporate finance services (R610.6, R610.8).

• *The concluding paragraph relating to the provision of services that are "routine or mechanical" in proposed paragraph 601.4 A1?*

We agree with the concluding paragraph.

• *The withdrawal of the exemption in extant paragraph R601.7 that permits firms and network firms to provide accounting and bookkeeping services for divisions and related entities of a PIE if certain conditions are met?*

As explained above, we deem the withdrawal of the exemption in extant paragraph R601.7 as **disproportionate and not in the public interest**.

• *The prohibition on the provision of a tax service or recommending a tax transaction if the service or transaction relates to marketing, planning or opining in favor of a tax treatment, and a significant purpose of the tax treatment or transaction is tax avoidance (see proposed paragraph R604.4)?*

We do not agree with this prohibition and refer to our illustrations above (cf. question 3).

• *The new provisions relating to acting as a witness in subsection 607, including the new prohibition relating to acting as an expert witness in proposed paragraph R607.6?*

We agree with the position taken by IESBA.

Proposed Consequential Amendments

11. Do you support the proposed consequential amendments to Section 950?

We support the proposed consequential amendments to Section 950.

12. Are there any other sections of the Code that warrant a conforming change as a result of the NAS project?

There are no other sections of the Code that warrant any conforming changes as a result of the NAS project.

Although not contained as a question in the present Explanatory Memorandum, we would also like to comment on proposed **R400.32**. We wonder why disallowing certain of the extant Code´s safeguards should be necessary (e. g. using non-audit team members). This might have an impact on concentration in the audit market.

We hope that our comments are helpful to IESBA for its further deliberations. If you have any questions relating to our comments in this letter, we should be pleased to discuss matters further with you.

– – –