

Date
15 October 2008

Le Président

Fédération
des Experts
Comptables
Européens
AISBL

Avenue d'Auderghem 22-28
1040 Bruxelles
Tél. 32 (0) 2 285 40 85
Fax: 32 (0) 2 231 11 12
E-mail: secretariat@fee.be

Ms. Jan Munro
Senior Technical Manager
International Ethics Standards Board for Accountants
International Federation of Accountants
545 Fifth Avenue, 14th Floor
USA – New York, NY 10017



Dear Ms. Munro,

Re: International Ethics Standards Board for Accountants (IESBA) Exposure Draft – July 2008 – on Drafting Conventions of the Code of Ethics for Professional Accountants

FEE is the “Fédération des Experts Comptables Européens” (Federation of European Accountants). FEE represents 43 professional institutes of accountants and auditors from 32 European countries, including all of the 27 EU Member States.

In representing the European accountancy profession, FEE recognises the public interest. It has a combined membership of more than 500,000 qualified accountants, working in different capacities in public practice, small and big firms, government and education, who all contribute to a more efficient, transparent, and sustainable European economy.

FEE's objectives are:

- To promote and advance the interests of the European accountancy profession in the broadest sense recognising the public interest in the work of the profession;
- To work towards the enhancement, harmonisation and liberalisation of the practice and regulation of accountancy, statutory audit and financial reporting in Europe in both the public and private sector, taking account of developments at a worldwide level and, where necessary, promoting and defending specific European interests;
- To promote co-operation among the professional accountancy bodies in Europe in relation to issues of common interest in both the public and private sector;
- To identify developments that may have an impact on the practice of accountancy, statutory audit and financial reporting at an early stage, to advise Member Bodies of such developments and, in conjunction with Member Bodies, to seek to influence the outcome;
- To be the sole representative and consultative organisation of the European accountancy profession in relation to the EU institutions;
- To represent the European accountancy profession at the international level.

FEE is pleased to comment on the International Ethics and Standards Board for Accountants (IESBA) Exposure Draft (ED) of July 2008 on the Code of Ethics for Professional Accountants – Drafting Conventions. This letter includes a number of general comments on the ED and our responses to the questions set out in the Explanatory Memorandum. In addition, we have summarised at the end of this letter a number of specific comments on detailed paragraphs of the ED.



Overall comments

The Code is intended to follow a principles-based approach, which FEE wholly endorses. We support, therefore, the retention of the structure and layout of the existing Code in the revised draft. The revised structure in the International Standards of Auditing (ISAs) is better suited to standards largely concerned with procedure, whereas the Code is more concerned with behaviour.

While we support the work undertaken to use more-direct language, the IESBA needs to guard against taking this too far. Directness should not result in more rules, nor should it result in the user assuming that mere compliance with the specific examples set out in the Code is sufficient.

We are concerned, therefore, that the proposed changes give the impression of moving the Code further away from the threats and safeguards approach towards a legalistic, rules-based standard. We believe the robustness of the principles-based approach is being undermined by the proliferation of detailed underlying rules.

A principles-based code, applied properly, accommodates all circumstances and the needs of entities of all sizes. Similarly, it caters for departures from detailed requirements in cases where to follow them, would result in a failure to comply with the fundamental principles. If the principles are now intended only to fill in the gaps between the detailed requirements, this could be interpreted as having become a fundamentally rules-based code: something at odds to the initial discussion and our understanding of the IESBA's intent.

As well as responding to the questions asked we have set out a number of comments below on specific paragraphs of the revised draft Code.

Comments on specific questions

Question 1 - The IESBA is of the view that identifying a requirement by the use of the word "shall" clarifies the Code and appropriately brings the language in line with that adopted by the IAASB. Do you agree? If you do not agree please provide an explanation.

We agree but we have included more detailed comments on a number of paragraphs below which we believe should be considered in conjunction with the change from 'should' to 'shall'.

Question 2 - The IESBA is of the view that separately presenting the objective to be achieved, the requirements designed to achieve that objective, and the application guidance as in the ISAs would not further improve the clarity of the Code. Do you agree? If you do not agree, please provide an explanation and an example of the separate presentation that you recommend.

We agree.

Question 3 - The IESBA is of the view that in exceptional and unforeseen circumstances that are outside the control of the professional accountant, the firm or employing organization, and the client, the application of a specific requirement in the Code may result in an outcome that a reasonable and informed third party would not regard as being in the interest of the users of the output of the accountant's professional services. Therefore, the Board is proposing that the Code include a provision that would permit a professional accountant, in such circumstances, to depart temporarily from that specific requirement. This would not be the same as provisions in the Code that address



situations in which a professional accountant has inadvertently violated a provision of the Code. The departure would only be acceptable if all of the conditions set out in paragraph 100.11 are met.

(a) Do you agree that the Code should contain a provision that permits any exception to compliance with a requirement set out in the Code? If you do not agree, please provide an explanation.

We agree that there needs to be an allowance for circumstances where an exception from compliance with a detailed requirement is necessary. In a principles-based code, there may be circumstances, albeit rare, where to apply a precise prohibition or mandated action would result in a failure to adhere to the fundamental principles. While we do not advocate moving to the 'replace if inappropriate' approach specified by the IAASB, we note that the 'exception' concept has a similar purpose, i.e. overriding detail in some circumstances. Accordingly, we believe that an exception, with appropriate safeguards and disclosure, needs to be included.

(b) If you believe that the Code should contain a provision that permits an exception to compliance, are the conditions under which the exception would apply appropriate? Should there be additional or fewer conditions and, if so, what are they?

As well as the principles compliance issue noted above, we agree that a provision to deal with the circumstances raised in the Exposure Draft is appropriate. However, we have a number of comments on the detailed drafting, which seems to have been written as a set of detailed rules rather than apply a threats and safeguards approach:

- The opening sentence clarifies the circumstances in which a professional accountant may judge it necessary to temporarily depart from a specific requirement of the Code. When circumstances are outside the control of each of the professional accountant, the firm or employing organization, and the client, whether they are foreseen or unforeseen becomes irrelevant. We suggest reference to unforeseen circumstances be deleted.
- A "disclosure" of any departure from a "shall" requirement of the Code might not be appropriate, or even weaken the acceptance of the Code as such:
 - Although the professional accountant would apply alternative safeguards and thus be acting in accordance with the Code when he uses the departure foreseen in paragraph 100.11, the reader of a disclosure as currently proposed may draw wrong conclusions as it may appear to him that the professional accountant is not in compliance with the Code when such a disclosure is made.
 - Overall this would lead to new questions, new discussions and, finally, distort the acceptance of the Code as a whole.
 - In addition to that, such a disclosure may send a problematic message to the marketplace: Users of audit reports may assume that something is wrong with the company's audited financial statements although this would not be the case.
 - In this respect, it is also noted that a departure from a "shall" requirement in the International Standards on Auditing (ISAs) is not disclosed to the users of the financial statements audited under ISAs.
- As this section of the Code applies to all professional and business activities of professional accountants, we are concerned that the requirements seem to have been prepared assuming that the exception will always relate to an audit or similar engagement. For example, discussion with those charged with governance is unlikely to apply to all situations accountants in business may face. Furthermore, it is unclear who "those charged with governance" might be in respect if services are provided to individuals. Therefore, this condition should not be mandatory in all cases.
- A professional accountant employed within a firm would, depending on his or her position in the firm's hierarchy, normally refer the relevant matter to the manager or partner responsible



in the first instance, as opposed to directly seeking contact with those charged with governance of the client entity. This aspect ought to be clarified.

- The only sentence using “shall” refers to the content of the discussion. However, as the paragraph states that the departure would only be acceptable if all of certain conditions are met we suggest it would be clearer if the procedures underlying these conditions were also worded using “shall” rather than present tense.

(c) If you believe that the Code should not contain a provision that permits an exception, please explain how you would deal with the types of exceptional and unforeseen situations that may be covered by paragraph 100.11.

We support the provision.

(d) Are there any other circumstances where you believe a departure from a requirement in the Code would be acceptable? For example, should an event that is within the control of one of the relevant parties qualify for an exception? If so, please provide an explanation and specific examples of the circumstances where you believe a departure would be acceptable.

We agree with the restriction. The criterion “outside the control of each of the professional accountant, the firm or employing organization, and the client” is necessary to prevent misuse, for example, were a circumstance within the control of the entity only, auditors could be subject to “disqualification” in inappropriate circumstances, such as when disagreement between the auditor and the entity occurs.

We propose below, an amendment to the ED wording which would address our concerns.

“A specific requirement in the Code shall be departed from in those rare circumstances where to apply that requirement would result in failure to adhere to the fundamental principles or failure to reduce the threats to an acceptable level.

In addition, in exceptional and unforeseen circumstances that are outside the control of the professional accountant, the firm or employing organization, and the client, the application of a specific requirement in the Code may result in an outcome that a reasonable and informed third party would not regard as being in the interest of the users of the output of the professional services. In such circumstances, the professional accountant may judge it necessary to depart temporarily from that specific requirement.

Such a departure would be acceptable only if all of the following conditions are met:

- The professional accountant shall apply alternative safeguards;
- The professional accountant shall use his professional judgment;
- The professional accountant shall discuss the matter with those for whom the activity is being undertaken, or appropriate representatives such as those charged with governance; the discussion shall include the nature of the exceptional ~~and unforeseen~~ circumstances, the fact that the circumstances are outside the control of the relevant parties, why in the professional accountant’s judgment it is necessary to depart ~~temporarily~~ from a specific requirement in the Code, and any safeguards that will be applied;
- If providing an assurance service, the professional accountant shall document the substance of the departure and details of any discussions held or decisions made concerning that



issue. In other circumstances, when non-assurance services are provided such as accounting, taxation, business advice, being an accountant in business, etc, it may be in the best interests of the professional accountant to document this. ~~The professional accountant documents the matters discussed with those charged with governance; and~~

- ~~• The nature of the departure and the reasons for the departure are appropriately disclosed to the users of the output of the professional services; and~~
- The professional accountant shall ~~complies~~ with the requirements of the Code at the earliest date that compliance can be achieved.
- ~~If t~~The professional accountant may wish to discuss the matter with the relevant regulatory authority. ~~If the accountant has such a discussion,~~ the substance of that discussion shall be documented. If applicable, the professional accountant also documents that the regulators have accepted the alternative safeguards applied and approved the action taken by both the professional accountant and those for whom the activity is being undertaken, or appropriate representatives such as those charged with governance.

Question 4 - The IESBA is of the view that the proposed modification to focus the application of the conceptual framework throughout the Code, and the related documentation requirements in Sections 290 and 291, on threats that are not at an acceptable level will result in a more efficient and effective application of the framework approach. Do you agree? If you do not agree, please provide an explanation.

We support the change in the wording. 'Clearly insignificant' is set at such a level that in determining and documenting what threats needed to be safeguarded against, much time is spent paying attention to insignificant threats rather than those which actually impair, or appear to impair, independence.

We note that the definition of 'acceptable level' focuses entirely on external perception. In addition it should be clear that the professional accountant should be happy that threats are at an acceptable level, as well as the reasonable and informed third party.

It does not seem ideal for readers to need to go to the definitions at the back of the Code to understand such a fundamental aspect of the code as 'acceptable level', especially as 'acceptable level' is a very subjective term. We recommend that a fuller explanation be given early in the Code as to what the professional accountant is required to do or not do in relation to the determination of the acceptable level and what he is required to do or not do related to the documentation of threats that are not at an acceptable level.

Question 5 - The IESBA is of the view that the selected point-in-time effective date with the proposed transitional provisions will provide the appropriate balance between firms and member bodies having sufficient time to implement the new standards and effecting change as soon as possible. Do you agree? If you do not agree, please provide an explanation of how you would revise the effective date or transitional provisions to achieve that balance.

We agree.



Specific comments on detailed paragraphs of the ED

Paragraph 100.3

The term “they” in the second sentence should be clarified. We presume that Parts B and C are meant.

Paragraph 100.6 (and paragraphs 290.8 and 291.7)

The last sentence now states that “The conceptual framework ... can deter a professional accountant from concluding that a situation is permitted if it is not specifically prohibited.” The tone of this represents an increase in stringency, for example when compared to the last sentence of paragraph 290.9 in the treatment of situations not explicitly addressed in the Code. We suggest the wording be aligned to that of paragraph 290.9.

Also, the last sentence starts with the word “it”. We are unsure whether the approach or the conceptual framework are meant, and suggest this be clarified.

Paragraph 100.9

In our opinion, it is the effectiveness of safeguards rather than the significance of the threats that is of prime relevance in any decision the professional accountant may need to make about declining or withdrawing from a specific engagement. Evaluating the significance of threats in making such a decision would be necessary only when there are no possible safeguards, or safeguards are insufficiently effective. A requirement for the professional accountant to evaluate the significance of a threat in deciding whether to decline or withdraw, for which there are adequate safeguards would result in an inefficient use of resources. We suggest this paragraph be redrafted accordingly, to clarify this aspect.

Paragraph 100.12 (and paragraphs 200.1 and 300.6)

We note that the revised wording has replaced discussion of ‘examples’ in such a way that not only are the specific requirements in parts B and C paramount, but the overall framework is to be considered only when the specific circumstances are not addressed by those requirements. Although an apparently minor change in wording, this could be seen as an important (and regrettable) move away from considering the Code to be principles based, with some specific requirements deeming what appropriate actions are in some circumstances, to a rules-based code, with some principles to sweep up anything not thought about. The IESBA has not publicly suggested that there is a fundamental change of stance and we hope this is not the case.

We understand that there has been some concern about the status of the examples being misunderstood but urge that the proposed change of wording is revisited to clarify that the fundamental principles are paramount and that the detailed requirements explain how these principles shall be applied in particular circumstances, being those typically faced by professional accountants.

Paragraph 100.13

We are generally comfortable with the change to the description of threats in this paragraph. However, we note that a number of the rewritten sentences in paragraph 100.13 (b) and elsewhere have become very long. This does not assist with clarity of understanding.

Additionally, subparagraph 100.13 (c) needs to be redrafted, as the cause and effect are not portrayed logically. The threat is to objectivity, and may be caused by being asked to promote an employer’s position.



Paragraph 100.19

It is unclear why the words “consistent with the fundamental principles identified” have been deleted. This wording was a useful reminder of the underlying purpose of the Code.

Paragraph 100.20

A professional accountant employed within an audit firm would, depending on his or her position in the firm’s hierarchy, normally refer the relevant matter to the partner responsible for the individual audit engagement in the first instance, as opposed to directly seeking contact to those charged with governance of the client entity.

Paragraph 100.22

We generally agree with the proposal to change “consider” in several paragraphs into either “evaluate” or “determine”, to make the Code more robust. We understand that “consider” will be used where the accountant is required “to think about” several matters and that “determine” will be used when the accountant has to conclude and make a decision; therefore “decide” could be used as well.

In the majority of the paragraphs “considering” is an obligation, because of the use of “shall” with respect to “consider”. However, this is not the case in paragraph 100.22, because of the use of “may”. We believe that the word ‘may’ can be deleted, since it is important that significant conflicts are solved in a due process.

We suggest the first sentence be amended to require such consideration.

Paragraph 100.23

Although it appears to be recognised in this paragraph that it is not always possible to withdraw from an engagement, we believe it would be useful to also elaborate on what the options are for the professional accountant in case he is not allowed by law or regulation to withdraw from the engagement. This would be helpful to address the perception that the professional accountant has a continuing duty of care to for instance external shareholders.

Paragraph 110.3 (and a number of other places like 290.13)

There are a number of statements in the draft Code that “A professional accountant will not be deemed to be...” We are aware that the US SEC uses this but in that context there is a central regulatory authority that will opine on the circumstances. This is not always the case. Indeed the point of the Code is that the professional accountant makes the decision within an overall framework and this wording does not fit well. It can be resolved easily by deleting the words “be deemed to” to make a straightforward statement that the professional accountant will not be in breach.

Paragraph 120.2

The new wording refers to a situation which “biases or unduly influences...” It would be preferable to place the word “unduly” in front of “biases” as the potential problem with bias is as much a question of degree as influence.

The last sentence should be expanded to the effect that it applies “...unless appropriate safeguards are in place...” As drafted this is a ban on services if a professional accountant’s judgment is affected in any way at all.



The final paragraph could usefully include further comment to remind the user that the perception of the “reasonable and informed third party” is relevant.

Paragraph 130.6

Further words need to be added to make more sense of the paragraph, such as “given or offered”.

Paragraph 140.4

The revised wording requires that the professional accountant “shall *be aware of* the need to maintain confidentiality”. Surely the requirement is to maintain confidentiality (as is the case with paragraph 140.3).

Paragraph 200.2 (and new paragraph 300.7)

This paragraph has not changed substantially but perhaps should do. To require a professional accountant not to do something which “might” compromise integrity etc is a very wide-ranging requirement. Almost anything might impair integrity if the circumstances turn out wrong. This perhaps should be rephrased along the lines of not doing something which impairs, or which a reasonable and informed third party would consider would impair the fundamental principles.

Paragraph 200.3

In the rewrite the word “many” has been dropped, implying that all potential threats must fall into one of the five categories listed. To deal with all possible circumstances, we think “many” should be restored.

Paragraphs 200.4 to 200.8 (and paragraph 240.5)

We note that, at the bottom of page vii of the explanatory memorandum, the IESBA explains that the IESBA has taken the view that a particular relationship or circumstance creates a threat, and accordingly has changed the word “may” to “does” in various instances. Given the infinite variation in possible circumstances, there may be instances where threats will not *always* be created.

Therefore, the relevant sentences of the Code in paragraphs 200.4 to 200.8 and 240.5 should be amended to read: “...create or may create...” to reflect this.

Paragraph 200.4

While the revised examples in this paragraph are not unreasonable, they are very biased towards assurance services. Section 200 is meant to address all services provided by practitioners.

The second bullet point needs to read “a firm, individual office or partner having undue dependence on total fees ...”.

The last bullet point is not a self-interest, rather a self-review threat, which should appear under paragraph 200.5

Paragraph 200.8

The fifth bullet point relates to a matter of technical competence that an auditor is required by ISA 220 to address (it mandates competence on the team or use of an expert). This might



therefore not be a valid example of an intimidation threat to an auditor facing an audit client in all circumstances.

Paragraph 200.13

It is unclear what the point of the word “previous” is in the first example.

Paragraph 210.8

ISA 620 covers this issue. We suggest that once the revision and redrafting of ISA 620 has been finalized by the IAASB, the requirements be brought in line.

Paragraph 210.11

We wonder how this caters for the issue of serious fraud or money laundering concerns found by the incumbent professional accountant; ‘tipping off’ is not an option yet continuing in post is not an option either; no help is given to this very real problem.

Paragraph 210.14

Removal of the word “ordinarily” results in an illogical paragraph. A sentence is included giving an absolute requirement, yet it is followed by a sentence referring to when the requirement is not absolute.

Paragraph 290.1

This paragraph ought to refer not only to financial statements but also to elements of financial statements, in line with ISA 805.

Paragraph 290.2

The term “restriction on use and distribution” should be amended to read “restriction on use or distribution”. Whilst the distribution may be restricted in the terms of the engagement contract, restriction on use may not be legally effective in all jurisdictions. This also applies at other points throughout the Code. We suggest they also be amended, possibly using a search technique.

Paragraph 290.8

In line with our comment on paragraph 100.6 above, in our opinion paragraph 290.9 covers this issue. Accordingly, paragraph 290.8 is redundant and can be deleted.

Paragraph 290.113 (and Paragraph 291.33)

This paragraph previously did not specify who should give consideration to the potential threats. It now requires the firm to undertake this. Is this always appropriate?

Paragraph 290.124 (a)

The term “insignificant level” ought to read “acceptable level”, in line with the terminology in the last sentence of this paragraph.

Paragraph 290.148 (and 291.137)

The logic of the revised second sentence does not quite flow correctly: 'despite [a prohibition], when permitted by law, the activity shall be limited to x,y,z'. Is it not despite [a prohibition], when permitted by law, the activity *may be carried out* if limited to x,y,z?



Paragraph 291.28

We assume the degree of threat has been retained at the 'trivial and inconsequential' level in this paragraph as it is intended to require a two-stage process: assessment at this level whether any aspects of Sections 290/291 need to be applied at all, followed by assessment for those parts to which it does apply, of threats at the acceptable level. This has not been made entirely clear, however.

Paragraphs 290.124, 290.508 and 291.119 and their related titles, subtitles and references in contents pages (pages 166, 181, 215, 217 and 230 in the ED).

In the paragraphs and on the pages referenced to above, both the terms 'close business relationships' and 'business relationships' are used in the same context. It is not clear to us whether these terms are supposed to have the same meaning or not. If the meaning of these terms is the same, then one term should be used consistently, if not, the difference in meaning should be made clear.

Paragraph 320.6

In the majority of the paragraphs "considering" is an obligation, because of the use of "shall" with respect to "consider". However, as the same paragraph requires the professional accountant not to be or remain associated with misleading information, the use of the word 'determine' or 'decide' instead of 'consider' might be more appropriate.

Editorial comments

General

In relation to the definition of "assurance team" and the Code as a whole, it would be helpful to have consistency in the use of capital letters after a colon and when categorizing.

In relation to the definition of "audit client", it is not clear to non-native speakers why both the future tense and the present simple is used in the same definition. We understand that listed audit clients always include its related entities and that non-listed audit clients always include those related entities over which the client has direct or indirect control, so it is not clear why one tense cannot be used consistently.

Paragraph 100.14 (in marked-up version only)

Categories should be (a) and (b).

Paragraph 110.2

It would be consistent with the Code to use the designation "professional accountant" instead of just "accountant" in all instances. Therefore, in the last sentence added to paragraph 110.2, the accountant should read as the "professional" accountant.

Paragraph 120.2 (and paragraph 300.4)

It would again be consistent with the Code to use the designation "professional accountant" instead of just "accountant", in a sentence in which the word "professional accountant" has already been used (compare with, for example, the first sentence of the same paragraph, 110.3 or 320.6).



Paragraph 140.7 (b) (in marked-up version only)

Categories should be (i) and (ii).

Paragraph 140.7 (c) (in marked-up version only)

Categories should be (i) to (iv).

Paragraph 150.1

We are not in favour of the current use of wording “in a negative manner” and would prefer “adversely affects the good reputation of the profession”.

Paragraph 200.12

The original wording of paragraph 200.12 was more readable: “they must be independent” rather than “independence is required”.

Paragraph 291.120

The word “threat” is missing after the word “any” in the following sentence: *“The significance of any shall be evaluated and safeguards applied when necessary to eliminate the threat or reduce it to an acceptable level.”*

Paragraph 300.17 (in marked-up version only)

Paragraph should be 300.16.

Paragraph 330.1

Undertakes instead of undertake. Alternatively, the word “shall” could be inserted where “should” has been deleted.

Paragraph 330.5 (in marked-up version only)

Paragraph should be 330.4.

We would be pleased to discuss any aspect of this letter you may wish to raise with us.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'Jacques Potdevin', with a long horizontal line extending to the right.

Jacques Potdevin
President