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Exposure Draft: Proposed Revisions to the Code to Promote the Role and Mindset Expected of Professional Accountants

Dear Ken

Dear Ladies and Gentlemen

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 has repeatedly called for a “**period of stability**” during which no further changes of the Code of Ethics (Code) should take place. Our view has been primarily driven by the following two facts: Firstly, it has become increasingly difficult for IFAC’s member organizations and the profession to keep up with the pace of changes which the Code has undergone over the previous years. Secondly, the extant Code already provides a robust, sound and well-balanced framework which is not urgently in need of further refinements basically.

However, as already explained in our response to the IESBA consultation paper “Professional Skepticism – Meeting Public Expectations” (May 2018), **we basically appreciate the present efforts of IESBA** to better articulate in the Code what the role of professional accountants is and what the public can reasonably expect from the profession. Given the high importance of professional skepticism and the current global discussions about the role of professional accountants

corresponding refinements to the Code offer the opportunity for IESBA to clarify and draw the line with regard to responsibilities which the profession is in charge of and those the profession is not in charge of. IESBA can thereby contribute to reduce expectation gaps.

Furthermore, we would particularly like to congratulate IESBA on its decision to let the **IAASB concept of “professional skepticism” be reserved to an audit, review and assurance engagement context, exclusively**, and not to extend it to other services contrary to its initial plans.

In addition, **we appreciate the various co-ordination activities of IESBA with the IAASB and the IAESB** undertaken to ensure that the terms and concepts in the ISAs and the IESs and the present ones are appropriately aligned.

However, we have **three major concerns** regarding the IESBA’s approach as follows:

- The reference in the ED to **“upholding the ethical values upon which the Code is based”** (100.1 A1) (see also 120.13 A1) is not appropriate. The Code contains clearly defined fundamental principles whereas the new category “ethical values” is neither defined nor necessary (see further explanations below, question 1).
- Regarding the definition of **“professional behavior”**, the reference **“to act in the public interest”** (110.1 A1 (e) (i), R.115.1) is not fit for purpose. The concept of “public interest” has been subject to global discussions, however understandings vary significantly across jurisdictions (see further explanations below, question 3).
- Regarding the description of **“professional judgment”** (120.5 A2), we would suggest an alignment with the definition of professional judgment in the IAASB standards (see further explanations below, question 5).

Specific Comments

Role and Values of Professional Accountants

1. Do you support the proposals in Section 100 that explain the role and values of professional accountants as well as the relationship between compliance with the Code and professional accountants acting in the public interest? Are there other relevant matters that should be highlighted in these paragraphs?

As mentioned in our introductory remarks, we do not agree with the reference to **“upholding the ethical values upon which the Code is based”** (100.1 A1) and the other corresponding references in the ED (e. g. 120.13 A1).

We wonder what these “ethical values” are on which the Code is based. Are these “ethical values” identical with the fundamental principles? If yes, then we would suggest using the term fundamental principles. If the “ethical values” were not meant to be equal to the fundamental principles, the precise content of those “ethical values” would remain unclear to the profession. In this context, the relevant illustrations in the Explanatory Memorandum (paragraphs 19-20) do not provide any further assistance either, since the meaning of the “spirit” of the Code is unclear, too.

In our view, the Code clearly defines the fundamental principles. There is no need for making reference to or introducing the category “ethical values”. Such a reference would lead to **confusion** and **legal uncertainty** for the profession.

Determination to Act Appropriately

2. Do you support the inclusion of the concept of determination to act appropriately in difficult situations and its position in Subsection 111?

We agree.

Professional Behavior

3. Do you support the proposal to require a professional accountant to behave in a manner that is consistent with the profession’s responsibility to act in the public interest in paragraphs 110.1 A1 (e) and R115.1?

We do not support this proposal.

From a civil law perspective, at least in Germany, the concept of public interest is regarded as a legal concept; it is left to the legal literature and, in particular, case law to interpret the concept for each specific case. Whether the public interest is met can solely be determined in the context of a comprehensive assessment of the meaning and purpose of a particular statutory provision.

In addition, the definition of “public interest” has been an issue of wider debate over the last years not only within IFAC but also within the profession itself. We acknowledge that some relevant papers of accountancy organizations and IFAC, respectively exist which attempt to clarify the meaning of „public interest“. **However, despite these endeavors the concept of “public interest” is still broad and vague.** Also due to cultural differences and the room for individual interpretation, the Code would be inconsistently applied if the proposed concept of public interest were maintained.

IESBA itself seems to have acknowledged the weaknesses of the concept public interest and to have deemed it as not appropriate just some time ago in the context of the project NOCLAR (cf. Explanatory Memorandum, paragraphs 50-51, Exposure Draft NOCLAR May 2015). Whereas at that time IESBA gave up its original idea of using this concept with a limited and specific scope, IESBA now accepts it as suitable and even dramatically elevates it to a general requirement (R115.1 (a)).

If the IESBA proposal were maintained, it would ultimately be up to the oversight bodies and regulators, respectively to determine the meaning of public interest and therefore whether the professional accountant has complied with the Code or not.

Impact of Technology

4. Notwithstanding that the IESBA has a separate Working Group that is exploring the implications of developments in technology, are there any additional matters relating to the impact of technology beyond the proposals in paragraphs 110.1 A1(b)(iii), 113.1 A2 and 120.12 A2 that you consider should be addressed specifically as part of the Role and Mindset project?

In our view, there are no additional matters that should be addressed specifically as part of the Role and Mindset project.

Inquiring Mind

5. Do you agree with the concept of an inquiring mind as set out in the proposals in Section 120?

We agree with the concept of an inquiring mind as set out Section 120.

However, in the context of Section 120, we do not agree with the application material related to **professional judgment** (120.5 A2 and Glossary). The description in Section 120 varies from how professional judgment is defined in the ISAs (ISA 200, paragraphs 13(k), 16, A23-27). The reasons stated in the Explanatory Memorandum (paragraph 38) for this different treatment are in our view not convincing and do not prevent a further alignment. **On the contrary, to safeguard consistent application of international standards, we encourage IESBA to liaise with the IAASB to further align the description of professional judgment in the Code with the ISA's definition of the term.**

Bias

6. Do you support the approach to addressing bias? If so, do you agree with the list of examples of bias set out in paragraph 120.12 A2? Should any examples be omitted or new ones added?

We agree.

Organizational Culture

7. Are there any other aspects about organizational culture in addition to the role of leadership that you consider should be addressed in the proposals? Paragraph 20 -

We have no further suggestions.

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

Kind regards



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Chief Executive Officer



WP Heiko Spang
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