

Mr Ken Siong
Technical Director
International Ethics Standards Board
for Accountants (IESBA)
IFAC
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Brussels, September 18, 2015.

Your ref.:
Our réf.: ES/DM.
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Dear Mr Siong,

Re: Comments on IESBA Exposure Draft of May 2015 "Responding to Non-Compliance with Laws and Regulations"

The Belgian *Instituut van de Accountants en de Belastingconsulenten - Institut des Experts-comptables et des Conseils fiscaux* (IAB-IEC) thanks the International Ethics Standards Board for Accountants (IESBA) for its invitation to answer to the IESBA Exposure Draft "Responding to Non-Compliance with Laws and Regulations" (hereinafter "ED").

IAB-IEC welcomes the improvements made to the ED which take into account the fact that the IESBA Code is not meant to override national law and should be applied without prejudice to any applicable legal provisions in any jurisdiction.

Indeed, IAB-IEC draws IESBA's attention to the fact that compliance with the provisions proposed in the previous ED would give rise to a violation of the accountants' duty of confidentiality (professional secrecy) under Belgian law. IAB-IEC therefore thanks IESBA for having included a reference to this issue in the last line of paragraph 225.27 of the ED in that "Disclosure would be precluded if it would be contrary to law or regulation".

In this respect, however, the ED does not address how to deal with situations which arise as part of cross-border engagements. It is the case where, for example, in one jurisdiction, a disclosure would be prohibited whilst in another jurisdiction, such disclosure would be mandatory. This is particularly problematic where some jurisdictions have laws with extraterritorial outreach (e.g. FCPA, UK Bribery Act, etc.). This aspect might need to be looked at further.

IAB-IEC emphasizes the need to facilitate convergence in order to enhance IESBA's credibility and therefore regrets that the ED cannot be seen as a step towards convergence. It only acknowledges the existence of different legal systems. The issuance of guidance would therefore have been more appropriate.

In addition, the view of IAB-IEC on the ED can be summarized as follows:

- the proposed provisions are in our opinion jeopardizing the necessary trust between the accountant and his client; if the confidentiality is not guaranteed, the accountant, who has no judiciary power or competence to obtain information, may not receive the information by the entity that is necessary to perform the accounting; and
- there may be a number of practical difficulties arising from the lack of definition of e.g. a "suspected" Non-Compliance with Laws and Regulations (NOCLAR).

Furthermore, IAB-IEC would like to draw special attention to those accountants in small and medium practices (SMPs). However, on assessing what is reasonable to ask of PAs working in SMPs or SMEs when they come across an act or suspected act of NOCLAR, some requirements and guidance as currently drafted may be seen as complicated to apply in practice due to lack of segregation of duties, and management override of controls. Professional judgement would need to be strongly emphasised for those PAs to ensure the application of a proportionate approach.

Please do not hesitate to contact us should you need any further information.

Yours sincerely,



Benoît Vanderstichelen
President