

**HOGHE RAAD VOOR
DE ECONOMISCHE
BEROEPEN**

North Gate III - 5e verdieping
Koning Albert II-laan 16 - 1000 Brussel
Tel. 02/206.48.71 Fax 02/201.66.19
E-mail : CSPEHREB@skynet.be
www.cspe-hreb.be

**Opinion of June 24, 2004 concerning the proposal for the
Eighth European Company Law Directive**

bijlage VII

The High Council supports the initiative taken on a European level to review the 8th company law directive. Since its adoption in 1984, this directive has not been subject to any revision and therefore needs to be adapted to the evolution of the profession during the past 20 years.

The High Council is furthermore pleased to note that most of the provisions of the proposal for the 8th European directive already exist in Belgian law. In consequence, the transposition of this text in Belgian law will demand less effort than in many other EU member states.

However, the High Council regrets that, in the context of the revision of the 8th company law European directive, the European Commission did not fully make use of the progress the Committee on auditing realised, which was integrated in the European recommendations (non stringent), in particular the European recommendation of May 16th 2002 on the independence of the statutory auditor.

If not, the 8th directive should rather be considered as a step backwards in the European policy on the independence of

the statutory auditor and on the quality of his work. The Council believes that, if this new orientation would be maintained, this could lead most of the European countries (including Belgium), that already made an effort to transpose the measures of the European recommendation of May 16, 2002 into national law, to question the foundedness of decisions taken during the last years.

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The guidelines of this opinion of the High Council consist of 10 topics, classified in function of the article numbers of the proposal for the directive.

First the independence of the statutory auditors is discussed due to the High Council's belief of its importance.

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1. Provisions on ethics, professional secrecy and independence

The High Council deeply regrets the weak content of the proposal for the European directive on professional ethics, professional secrecy and independence. It believes that the proposed text is so general that it can't assure the necessary legal certainty.

Furthermore, the High Council observes that by classifying the rules on professional ethics and professional secrecy under one chapter and the rules on independence under another one, it could be understood as if the independence is not a fundamental part of the ethical rules to which the statutory auditor is subject. The High Council recommends to merge both chapters and to clarify the link between these concepts.

More specifically, the High Council would like to underline the following points:

- According to the High Council, the proposed text on **independence** is totally unacceptable, even if it would be completed with potential commitment measures.

The High Council indeed believes that the European directive should contain the different fundamental principles (bold text) of the European recommendation of May 16, 2002 on the independence of the statutory auditor, following the example of the method applied on quality control (see point 5).

If not, and considering the non-binding character of the European recommendation of May 16, 2002, the European directive should be considered as a step backward with respect to earlier positions taken by the European Commission.

- The proposed text on **ethics** deals with a general principle and only refers to commitment.

The High Council advises to guarantee the necessary transparency by clearly stating whether the ethical code of the IFAC will be used as the referential code on the European level. If not, the fundamental ethical principles to which the statutory auditors are subject in the context of their missions should be specified.

The High Council emphasizes that this position is directly linked to the position on the frame of reference for the audit rules (article 26 proposing the use of the "ISA+-rules"). Respecting the ISA-rules, established by the IAASB, implies the respect of any point of the ethical code of the IFAC.

- According to the High Council the provisions of the proposal for the directive are extremely inadequate, also as regards **confidentiality** and **professional secrecy** to which the statutory auditor is subject.

The High Council believes it is important to integrate clear rules in the 8th European directive that are common to all external auditors and their audit firms within the European Union. It's at least recommendable to have precise rules on the exchange of information between auditors:

- in the case of a "due diligence" executed by an external auditor who does not audit the accounts;
- in the case of a change of auditor or
- in the case of an auditor in charge of the audit of the consolidated accounts, who does not audit the different consolidated entities.

2. Public interest entities

2.1. Scope

The proposal for the 8th directive distinguishes the public interest entities from other entities. In the opinion of the High Council, such a distinction is only acceptable on the condition that it does not lead to audit procedures that differ in function of the nature of the company.

The High Council is pleased to observe that chapter 11 of the actual text of the proposal for the European directive (articles 38 to 43), which is only applicable to the public interest entities, does not contain any provision requiring specific tasks related to audit activities. In the future this should avoid an evolution towards two categories of external auditors.

However, the High Council believes it is advisable to review the definition under article 2 on “public interest entities” by limiting the concept to those companies whose securities are admitted on a regulated market or have been subject to a prudential supervision by an independent administrative authority.

2.2. Rules on transparency resulting from the statute of the public interest entities

The High Council is pleased with the reinforcement of the transparency rules proposed in the new 8th directive imposed to statutory auditors (information to be published on the web site of the audit firms) and companies (mention of fees).

- **Concerning the information to be disclosed by the audit firms**, the High Council wishes to underline that the provisions of article 38 should be applicable to all auditors, whether organised as a company or not and whether they execute missions in public interest entities or not, in order to ensure an identical treatment by the different statutory auditors.

The extension of the scope in article 38 should also enable the bodies in charge of appointing a statutory auditor to dispose of the necessary information on all external auditors and to make an informed decision.

This extension of the scope would have as a consequence the necessity to adapt article 16 of the proposal for the directive by adding a third category of information that should be mentioned in the public register: the internet address of the audit firm or the external auditor (and the exact location of the information meant under article 38 on this web site). This information could also be directly published in the public register.

- **With regard to the disclosure of fees for the audit of the accounts and the complementary fees**, the High Council supports the initiative of the European Commission as the applicable rules ensure the necessary transparency and legal certainty.

In this perspective it is advisable to explain the scope of § 2 of article 50 of the project for the directive: does the information on fees and complementary fees to be mentioned in the annex of the consolidated accounts only refer to the consolidating company or to all the entities of the consolidation?

The High Council underlines that the opinion¹ of March 1, 2003 on the preliminary draft of the Royal Decree establishing the rules for the breakdown of auditor’s fees is totally coherent with the provision of the proposal for the directive. Furthermore, the suggestion of the High Council to present the information in tabular form is particularly adapted to the “traditional” presentation of the annex to the accounts.

1. Opinion of the High Council of March 1, 2003 on the preliminary draft of the Royal Decree implementing article 134 of the Company Law and modifying the Royal Decree of January 30, 2001 implementing the Belgian Companies Code.

3. Access to the profession

1. The Bologna Declaration of June 19, 1999 defines a new approach for accrediting degrees that makes a distinction between degrees obtained after three years ("Bachelor"), after 5 years ("Master") and after 8 years ("Doctor").
2. Article 8, § 1 (j) of the proposed directive.
3. Article 8, § 1 classifies the matters on which the candidates will be examined on the test on theoretical knowledge in order to obtain the title of statutory auditor:
 - h) concerning the "legal requirements and professional standards relating to statutory audit and statutory auditors";
 - i) concerning the "international auditing standards";
 - j) concerning the "professional skills";
 - k) concerning "professional ethics and independence".

The High Council regrets that article 6 – the title of which ("qualifications éducatives") could be replaced by "formation" in the French version – does not take into account the new approach for accrediting degrees as defined by the **Bologna Declaration** of June 19, 1999.¹

Furthermore, the High Council has questions with regard to the scope of certain matters presented in the test on theoretical knowledge (article 8 of the proposal directive). More in particular, it should be

clarified what is to be understood by "**professional skills**"².

In light of the existence of closely related matters, such as professional standards, international audit standards or professional ethics and independence³, on the one hand, and the fact that article 8 deals with the test on theoretical knowledge, on the other hand, the High Council has questions with regard to the scope of the matter "professional skills".

4. Qualification after a long term practical experience

The proposal for a European directive submitted for opinion contains in its article 11 the provisions that were formerly included in article 9 of the 8th company law directive. The aim of this provision is to create special procedures to admit people who don't possess an adequate level of theoretical training (in accordance with article 6 of the proposal directive), but who do possess a long term practical experience (depending on the

situation, of 15 or 7 years), with regard to the profession of statutory auditor.

In the opinion of the High Council, this provision does not apply anymore as the conditions for executing the audit in the European Union have been established back in 1984. The High Council therefore advises to remove this provision from the text of the proposal for a directive.

5. Rules on quality control

The High Council is pleased to note that several fundamental principles (bold text) related to the quality assurance of the auditor in the European Union, as defined in the European recommendation of November 15, 2000, have been integrated in article 29 of the proposal for a directive.

According to the High Council, it is important that the European directive clearly states that the quality assurance review⁴, that should take place at least every six years, applies to all statutory auditors according to article 2 of the proposal for the directive.

The High Council agrees with the particular rules defined under article 41 of the proposal for a directive. These rules would be applicable to the statutory auditors of the public interest entities, which imply that the quality assurance review would take place on a more frequent base (a maximum term of three years, instead of six), on the condition that the method and the scope of the quality control are uniform, regardless the type of companies controlled by the auditor (with the exception of specific sectors, such as banks, insurance companies and "mutuals").

4. "Quality assurance review", as referred to in article 29, § 1 (h) of the proposal for a European directive.

6. Compulsory rotation

The proposal for the 8th European directive provides (article 40, c) a compulsory rotation of auditors in public interest entities. It is up to the member states to decide whether they will implement this provision with a binding measure of internal rotation or a binding measure of external rotation.

In the opinion of the High Council the rotation does not guarantee further independence of the auditor and should therefore not be binding. The High Council be-

lieves it is far more important to provide precise measures on independence (see part 1 of this opinion).

The High Council emphasises the importance of an equal treatment of all members of the same profession. In this context the High Council observes that the internal rotation has no particular advantage in respect to external rotation. In fact, for certain audit firms, mostly the smaller ones, internal rotation equals external rotation.

7. Creation of a public oversight body in each member state

In 1985 the Belgian legislative power was a pioneer by creating a public oversight body, which is totally independent from the external auditor. Nowadays this body is called the “High Council for the Economic Professions”.

In Belgium, for the last twenty years not only this system of public oversight has evolved, but also the regulatory framework applicable to the external auditors was further developed, thanks to the proactive role of the High Council for the Economic Professions.

The High Council is pleased to see that the preliminary draft of the 8th directive provides the obligation to create such a public supervision body in each member state (article 31) and that there is a regulatory cooperation between the member states in the context of the inquiries (article 34).

However, the High Council believes it is recommendable to clarify, at least in the

recitals, what should be understood by “ultimate responsibility for the oversight” mentioned in § 4 of article 31 of the European directive.

In the opinion of the High Council, the role and the missions of the “High Council for the Economic Professions”, even though they are expected to evolve up to a certain extent, should be able to meet the provisions of the proposal for a directive.

In light of the integration of the subsidiarity principle under article 31 of the proposal for the European directive, there is plenty of leeway for the transposition of the system of public oversight to the national level. This makes it possible to take into account specific national circumstances.

The High Council stresses its willingness to contribute to the reflection how to transpose article 31 of the proposal for a directive, as soon as the latter is adopted.

8. Underlying rules for the establishment and the role of audit committees

The High Council notes that, under article 39, the proposal for the 8th European directive requires an audit committee to be established in the “public interest entities”.

The High Council questions the link that between this proposal and the current activities of the European Commission

expressed in the consultation document “independent directors and the committees of the board”¹.

In the opinion of the High Council both projects should be merged in order to result in one consolidated approach for this issue.

9. Mutual recognition

The High Council is pleased with the measures on mutual recognition included in the 8th directive whereby a distinction is made between, on the one hand, the authorization of a statutory auditor authorized in another member state of the European Union (article 14) and, on the other hand, the authorization of a statutory auditor authorized in a country that is not a member state of the European Union (Chapter XII – articles 44 to 47).

However, the High Council wishes to emphasise the fact that the provisions of chapter XII are only acceptable if they lead to a genuine mutual recognition. This applies both to European statutory auditors and to public oversight bodies created on a national level.

10. Missions assigned to the Audit Regulatory Committee on Audit

The High Council notes that article 49 of the proposal directive creates the “Audit Regulatory Committee”.

The High Council supports this proposal, but it believes it would be advisable to include a precise description of the different missions assigned to the Committee in order to ensure the necessary transparency and legal certainty.

Although a priori it seems logic that the representatives of the member states are appointed by the public oversight bodies created on the national level, the High Council advises to clarify the composition of this committee.

1. Consultation (closed on June 4, 2004) of the Directorate General “Internal Market” of the European Commission: “Recommendation on the role of (independent) non-executive or supervisory directors”, May 5 2004, 20 p.