



EUROPEAN COMMISSION

Internal Market and Services DG

FREE MOVEMENT OF CAPITAL, COMPANY LAW AND CORPORATE GOVERNANCE
Auditing

Brussels,
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FORUM ON AUDITOR'S LIABILITY

SUMMARY OF THE MEETING OF 23 NOVEMBER 2005

1. WELCOME BY THE CHAIRMAN

The Chairman welcomed the participants to the first meeting of the Forum.

The participants introduced themselves and presented their main interest in auditors' liability.

2. GENERAL FUNCTIONING OF THE FORUM

The Chairman explained that the role of the Forum will essentially be:

- to provide data and input to the future contractor of the study and to review the draft interim and draft final report presented by the contractor;
- to discuss market-led solutions to mitigate litigation risks related to the statutory audit of listed companies.

The Forum will meet every six weeks until the autumn 2006 (or less if appropriate).

The operational conclusions of each meeting will be posted on the website of Directorate General Internal Market and Services.

The working language will be English.

3. STUDY ON THE ECONOMIC IMPACT OF AUDITORS' LIABILITY REGIMES

The Commission services informed the participants on the state of play of the future study. It provided an overview of existing studies/research. Participants agreed with the fact that these studies do not in general have detailed data about audit markets and the impact on financial markets.

The contract notice for the call for tender was published in the EU Official Journal on 5 October. The deadline for the receipt of tenders expired on 14 November. The

Commission is currently analysing the tenders received and will probably select the contractor before the end of the year.

The contractor will start its work in January. The results of the study should be available in autumn 2006.

The Commission also informed the participants that they are gathering information about the legal situation in the Member States, US, Australia, Norway, Switzerland and Japan. It was agreed to make this information available to the participants.

4. DATA SHARING

Participants agreed to produce the following papers:

- **Structure of the audit networks in all Member States and impact on liability regime.** Participants agreed that users of audit reports do not always have a clear understanding of how audit firms and partnerships are organised.

In this regard, it would be useful for the forum to receive a description of the legal structure and ownership of the audit firms as well as a description of the network and the legal and structural arrangements in the network. A clear picture is important to understand the functioning of the insurance issues and the background of litigation risks affecting firms and networks as a whole.

European Contact Group (ECG) and EGIAN representatives agreed to draft a paper focusing in particular on the structure of the four largest audit networks and the subsequent four networks.

- **Litigation risks.** An international insurance broker with wide experience of the market for professional indemnity insurance is in the process of collecting data on litigation across the European Union against the Big 4 firms, BDO and Grant Thornton. This will also include an analysis of available insurance cover by member state. Data will be aggregated or averaged as appropriate to preserve confidentiality. Two other middle-tier audit firms will be approached to see if they can provide similar data. This will permit separate aggregation of Big 4 data versus data for the next four firms without raising undue confidentiality or anti-trust concerns for BDO and Grant Thornton.

The ECG will submit a methodology paper that sets out the types of information that might be shared, subject to appropriate confidentiality rules. This will include, inter alia, data on outstanding claims for damages in the EU and in the United States against the ECG member firms, an analysis of EU claims paid and incurred over the past ten years and an analysis of recent litigation trends in the USA. The linkage between the EU and US firms will also be considered.

This methodology paper will be discussed at the next meeting. A subsequent paper will be produced by the ECG that presents all of the data in line with the agreed methodology.

- The representatives from the insurance sector will complement these data on litigation by information on claims incurred but not reported (IBNR). They will also contact the reinsurers active in this sector.
- The representatives from the insurance will present papers on the **Professional Indemnity for other liberal professions** in order to discuss potential particularities of the audit market.
- **Market shares by audit fees, breakdown audit/non audit fees, degree of concentration.** The FEE will contact its members and will provide input for all 25 EU Member States. It was noted that the Forum will concentrate its work on the audit of listed companies, but identification of the data related to the audit of such companies might be difficult.
- Representatives of the investors will examine from their side litigation risks and pending claims in UK, NL and FR.
- **Captive Insurance** (self-insurance). Participants agreed that there is a need to understand the functioning of the self-insurance. However, a detailed evaluation needs to be discussed further.

5. OTHER POINTS

The Chairman invited participants to consider as to whether recommendations can be made to market participants, including investors, in order to avoid litigation risks.

Other participants showed their interest in further discussing the internal market dimension of the liability issue.

6. NEXT STEPS AND DATES FOR NEXT MEETINGS

The next two meetings of the Forum will take place on 13 December 2005 from 3:00 pm to 6:00 pm and on 20 January 2006 from 10:30 am to 2:00 pm, at the same venue.