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Brussels, 16 October 2017

**Subject: interpretation of “provision of general counsel” in EU Regulation no. 537/2014**

Dear Mr Mihailescu,

First, please receive my sincere apologies for responding late to your letter dated 29 May. I received it by email on 10 October, and it seems that your first mailing from May did not reach my mailbox.

I am pleased to provide you with our comments on the interpretation of the EU Regulation no. 537/2014, and in particular about “the provision of general counsel” with regards to legal services as included in Article 5 of this Regulation.

I am afraid that the European Council does not deal with interpretation issues and terminology mismatches. As soon as the law is finalised and published, the Council does not have any power to interpret the law. Additionally, as the voted text is a Regulation, it is directly applicable into national law as from the implementation date, i.e. 16 June 2016.

You suggest that the terms have been poorly translated into the Romanian version. Whether directly applicable like a Regulation or a Directive which has to be transposed, the different linguistic versions have the same legal value.

Notwithstanding this, there is a European jurisprudence conceding to refer in Court to the most advantageous translation.

In 2014, we published a briefing paper<sup>1</sup> on the provision of non-audit services to public interest entity statutory audit clients where we called for clarification and consistency in application. On page 4 of this briefing paper, we mention the fact that translation issues have emerged and we give the example of “legal services, with respect to: the provision of general counsel”. At that time, we observed that an interpretation in the wide sense would be redundant since this prohibition is listed as a sub-

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<sup>1</sup> [https://www.accountancyeurope.eu/wp-content/uploads/BP\\_140825\\_-\\_Provision\\_of\\_NAS.pdf](https://www.accountancyeurope.eu/wp-content/uploads/BP_140825_-_Provision_of_NAS.pdf)

category under “legal services” that are considered to be prohibited. It is what you refer to, on page 3 of your letter, as “emptying the content”.

Nevertheless, we are not sure that “general counsel” should be understood in a restrictive sense - even in cases where advantageous translations have been used. As far as we are aware, this is only the case for one language (Italian), but we have not had the capacity to check all linguistic versions. Based on our understanding to date and despite the ambiguity of the term, it seems that the main interpretation given to “legal counsel” in this case is that of general legal advisory services.

As an illustration, please find below what the UK FRC has included as guidance in its Ethics Standards. Even if used in the wide sense, the prohibition is ringfenced:

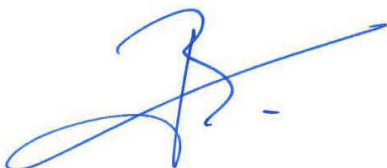
- An audit firm of an audited public interest entity cannot provide resources to carry out the functions of a general counsel because of the self-review risk and the advocacy and management threats.
- An audit firm cannot carry out negotiations on behalf of a public interest entity that the firm audits and cannot act as an advocate in the resolution of litigation for a public interest entity.

These prohibitions are absolute, but do not preclude the auditor from providing advice to a client (subject to that advice not breaching other prohibitions) as long as that advice is not delivered in a way that is binding on the client, or in a way that would lead to an objective, reasonable and informed third party concluding that the audit firm was playing a supporting role to management.

Finally, you make the link to the IFAC Code of Ethics. Even if this Code is used by the accountancy profession in practice to ensure independence requirements are fulfilled, we doubt that the IFAC Code could be used to interpret the law.

We hope that you find our comments useful. Please do not hesitate to contact us in case further clarifications are needed.

Sincerely,



Olivier Boutellis-Taft  
Chief Executive



Hilde Blomme  
Deputy Chief Executive