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The Auditor's Liability in Belgium

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Ladies, Gentlemen,
Dear colleagues,

First of all, I would like to thank David Devlin for inviting me to speak to you about a particularly interesting subject, being the introduction of a legal cap on liability for auditors.

To explain in a few minutes the reform of auditors' liability in Belgium is a real challenge because such a development did not happen overnight. It started back in 1985 with a proposal made by the Government to introduce a cap on liability amounting to 50 times the fees for a specific service rendered by the auditor. In addition, it was proposed to the Government to introduce a compulsory insurance for an equal amount However, at that time, such proposals were dropped. The idea of a compulsory insurance was indeed too difficult to enforce, one of the reasons being the impossibility to oblige the insurance companies to accept unwanted risks. Times have changed again …

I shall thus limit myself to a brief overview of the discussions, which led to the current reform in Belgium.

The former version of the Belgian law did not provide for a cap on liability for auditors. The unlimited liability in Belgium made it more and more difficult for auditors to subscribe to an insurance policy for a reasonable amount.

Moreover, the group insurance policy negotiated by the Belgian Institute and taken out by more than 50% of the profession, used to cover a maximum amount of 1.8 million Euros. This amount was the maximum amount we could negotiate for a reasonable premium.

The unlimited liability obviously put a great strain on auditors and did not encourage the young talents in their career prospects as auditors.

In this context, the profession suggested ending the unbearable system of unlimited liability. The different possibilities analyzed in our country were the following:

- first of all, a cap equal to 50 times the fees (as mentioned before)
- secondly, a cap for an amount depending on the size of the company
- finally, a fixed cap.

The Belgian oversight body composed of social-economic partners who are totally independent from the audit profession, the insurance companies and the Belgian Minister of Economy support the principle of a fixed cap on liability

It was and it is indeed easier for the insurance companies to quote the coverage if the maximum risk consists in a fixed cap ; a cap depending on fees or on the size of the company would have led to more complicated calculations and perhaps to uninsurable risks.

A major concern discussed in Belgium was the expectation gap between the stakeholders who wrongly believed that the auditors were covered for unlimited amounts and the fact that the majority of the profession was actually covered for a maximum amount of 1.8 million euros.

The Parliament has decided that it is more efficient on the one hand to cap the liability but on the other hand to oblige each auditor to be adequately insured.

Following consultation with the Government, with the oversight body, with representatives from insurance companies, who initially agreed to cover a maximum amount of about 10 million Euros, the Belgian Parliament approved the law in December 2005, which contains a revised provision on auditors' liability, inspired by the legal cap on liability set in Germany which amounts to 1 or 4 million Euros, even though the amount of the cap in Belgium is three times higher.

The new Belgian legal provision sets out that the auditors' liability is limited to an amount of 3 million Euros for an audit of an unlisted company and to 12 million Euros if the company is listed.

In this context, the Board of the Belgian Institute of auditors has negotiated a new insurance policy in order to bring the insurance coverage in line with the new auditors' liability regime.

Currently, all the auditors in Belgium are obliged to be insured at least for the amounts mentioned in the legal provision, 3 and 12 million euros.
As it is usual in all contracts, the auditors' liability applicable to contractual services rendered by auditors can be negotiated. Auditors are free to determine together with companies a reasonable liability regime applicable to services rendered, which are not specifically entrusted by law to auditors.

As a conclusion, I would like to outline that the discussions in the Belgian Parliament emphasized that unlimited liability threatens the viability of audit firms, that the number of potential insurers decreases and that the amount of the coverage has been reduced from 50% to 75% in the last few years.

A legal cap on liability therefore promotes amongst others, the competition between insurance companies and increases the protection of stakeholders who no longer expect auditors to face up to unlimited liability as they wrongly thought they did in the past.

Finally, the experience of the Belgian stakeholders shows that preference should be given to a compulsory limited liability, which is entirely insured rather than an unlimited liability, which obviously cannot entirely be insured.

I thank you for your attention.