Auditor's liability towards third parties within the EU: A comparative study between the United Kingdom, the Netherlands, Germany and Belgium[1]

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Abstract. Auditors' liability is a hot topic nowadays. Due to the increased risks of auditors and the lack of appropriate insurance, a limitation of auditors' liability seems appropriate. Based on the economic study of the London Economics, the European Commission issued a consultation paper to discuss a European harmonization of auditors' liability. But to harmonize a liability cap on auditors, one needs to examine not only the economic implications, but also the legal restraints and differences of auditors' liability regimes within the European Union. This paper shows that there are large discrepancies concerning auditor's liability towards third parties within the legal systems of the European Union. In Belgium, an auditor is liable towards each interested party. However, the public role of an auditor is not acknowledged in the United Kingdom, the Netherlands and Germany. In those countries the purpose of audited statements is to fulfil the auditor's duty to the shareholders collectively and not to the stockholders as individual parties or third parties. In Germany, the Netherlands and the United Kingdom, an auditor has to encompass a special duty of care towards the third party to be liable. Only a special relationship of the auditor towards a third party could imply auditor's liability toward those parties. This element wasn't discussed in the London Economics Study. However, these findings could have a major impact on the debate to harmonize an auditor's liability cap because the more parties can pursue an auditor, the more damage can be claimed and the higher the liability cap needs to be fixed.

1. Introduction

Due to the increased market capitalization of companies during the last decade, the risk of auditing such companies has increased similarly. At the same time, access to insurance for auditors has fallen sharply, especially for firms auditing international and listed companies, thus leaving partners in audit firms with an unattractive prospect of entirely supporting the liability risks themselves. Numerous financial scandals such as Enron, Worldcom, and Parmalat (etc.) underlined these issues.

This paper will show that there are large discrepancies concerning auditor's liability towards third parties within the legal systems of the European Union. To be able to litigate an auditor some legal systems require specific conditions of a third party. Four legal systems are to be compared: the United Kingdom, the Netherlands, Germany and Belgium. These findings will have serious consequences on the debate about the limitation of auditors' liability because the number of claimants and therefore the amount of damage could vary enormously.

2. A European initiative to harmonize auditors' liability cap

In pursuance of article 31 of the Statutory Audit Directive 2006/43/EC (OJ L 157, 9.6.2006, 87-107), the European Commission ordered a report concerning this debate, more specific on the economic impact of current national liability rules carrying out statutory audits on European capital markets and on the insurance conditions for statutory auditors and audit firms, including an objective analysis on the limitations on financial liability. The extensive report of the London Economics on the economic impact of auditors' liability regimes of September 2006 indicated that the current amount of high value actual of potential claims arising from statutory audits may entail serious financial consequences for audits firms. Since the current level of commercial insurance is such that it would cover less than 5% of the larger claims some firms face nowadays in some EU Member States, the independence audit work could endangered. Within this debate, we may not forget the Enron-fraud already evolved in the elimination of one of the Big Audit Firms. Different solutions to resolve this extensive liability risk of auditors are to be debated.

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[1] This paper was first published in Kierkegaard, S.(2007) International Law and Trade: Bridging the East-West Divide. IAITL. pp.238-246.

In January 2007 the Directorate General for Internal Market and Services issued a consultation document on this matter, to be precise on the auditors' liability and its impact on the European capital markets. It proposes a liability cap for European statutory audit. Four options are to be considered:

1. One single monetary cap for all EU member states
2. A cap depending on the company's size
3. A cap depending on audit fees charged to the company and proportionate liability.
4. Austria, Belgium, Germany, Greece and Slovenia already capped the liability of the auditors.

To harmonize the auditors' liability and the limitation of auditors' liability in particular, it is necessary to study the different legal systems within the European Union. In this paper, we highlight the major differences in some European legal systems on auditors' liability towards third parties. A Belgian auditor is liable towards each interested third party. In Germany, the Netherlands and the United Kingdom, an auditor has to encompass a special duty of care towards the third party to be liable. This means an evaluation will be made of the two European common law systems versus two European civil law systems, and with some reflections on the American system since the latter was an inspiration to some legal European systems. This element was not discussed in the London Economics Study (2006), but is a significant issue in the liability limitation debate since the number of claimants and damage could differ enormously.

3. The United Kingdom

3.1. Liability of an issuer of a statement: *Hedley Byrne & Co v. Heller & Partners*-case

In the United Kingdom, the third party liability of an auditor is restricted. Numerous cases describe the necessary conditions in order for a third party to be able to rely on the auditors' statements.

The leading case concerning the liability of an issuer of a statement towards third parties, is the *Hedley Byrne & Co v. Heller & Partners*-case ([1963] 2 All ER 575). These third party liability principles were an inspiration for many auditor liability cases. In the *Hedley Byrne & Co v. Heller & Partners*-case, the House of Lords ruled that a third party who had relied to his detriment on a negligent statement could sue the issuer of the statement, despite the absence of privity of the contract. For the first time, the House of Lords recognised the possibility of liability for pure economic loss caused by a negligent statement was not dependent on any contractual relationship.

> Persons uttering statements owe a duty of care to any third person with whom a 'special relationship' exists. A special relationship requires more than a fiduciary contractual relationship. It can arise because of a voluntary assumption of responsibility by the defendant. "*All those relationships where it is plain that the party seeking information or advice was trusting the other to exercise such a degree of care as the circumstances required, where it was reasonable for him to do that, and where the other gave the information or advice when he knew or ought to have known that the inquirer was relying on him.*".

3.2. Auditor's Liability: *Caparo Industries v. Dickman and others-case*

The duty of care of an auditor to third parties was elucidated in the *Caparo Industries v. Dickman and others*-case ([1990] 1 All ER 568; AC 605). The Court specified the necessary relationship, as mentioned in the *Hedley Byrne* case, between the maker of a statement or giver of advice (adviser) and the recipient who acts in reliance on it (advisee) may typically be held to exist where:

1. "the advise is required for a purpose, whether particularly specified or generally described, which is made known either actually or inferentially, to the adviser at the time when the advise is given,
2. the adviser knows either actually or inferentially, that his advise will be communicated to the advisee, either specially or as a member of an ascertainable class, in order that it should be used by the advisee for that purpose,
3. it is known, either actually or inferentially, that the advice so communicated is likely to be acted on by the advisee for that purpose without independent inquiry and
4. it is so acted on by the advisee to his detriment.
5. That is not of course, to suggest that these conditions are either conclusive, but merely that the actual decision in the case does not warrant any broader propositions."

Based on this judgment a three pronged test for a duty of care is applied:

1. foreseeability of damage;
2. a relationship characterised by the law as one of proximity or neighbourhood (proximity) and
3. that the situation should be one in which the court considers it would be fair, just and reasonable that the law should impose a duty of care given scope on one party for the benefit of the other.

Proximity was the focus of the Caparo Court's legal analysis, given that foreseeability is not difficult to establish in many situations. Proximity exists when

1. the professional knew that his or her work product would be communicated to a known third party or a known third party class;
2. the third party suffered damage as a result of relying on the professional's work product;
3. the work product was used for the purpose for which it was prepared.

The professional's knowledge includes not only actual knowledge but such knowledge as would be attributed to a reasonable person situated as the defendant. The knowledge requirement must be met at the time the work product is prepared.

The third requirement - that it should be fair, just and reasonable - was an additional restriction to the Hedley Byrne principles. Based on this three-pronged test, the Court rejected the claim of Caparo Industries against the auditor of a company, Fidelity plc. The facts were that the plaintiff acquired shares in Fidelity based on the accounts of Fidelity as audited by Dickmans, the defendants. Shortly after the plaintiff acquired the shares, it became clear that the reality of the financial position of the company was significantly worse than what the audited accounts suggested. The Court ruled that in the absence of special circumstances, an auditor of a public company owes no duty of care to an outside investor or an existing shareholder who buys stocks in reliance on a statutory audit.

According to the Caparo Court, the purpose of the audited statements is to fulfil the auditor's statutory duty to the shareholders collectively and not to the stockholders as individual shareholders or third parties.

3.3. The Caparo-case as a precedent

Likewise, in the *Al Saudi Banque v Clarke Pixley*- case ([1990] Ch 313), the court ruled that no duty of care is to exist of an auditor to the credit institution because the defendant/auditor had not issued his report to his client with the intention or the knowledge that the audit opinion would be communicated to the credit institution. Proximity required contemplation not only of a particular and identified recipient of the information but also of a particular and known purpose for which the defendant would foresee that the information would be relied on.

In 1991 the *James McNaughton Papers v. Hicks Anderson* Court ([1991] 1 All ER 134) narrowed the scope of the duty of care of an auditor to third parties which are directly intended by the maker of the statement to act on it. Six key elements highlight the auditor's liability to third parties:

(1) the purpose for which the information was prepared;
(2) the purpose for which the information was communicated;
(3) the relationship between the maker of the statement (the auditor), the informed (the client) and each interested third party;
(4) the size of the class to which the third party belongs;
(5) the degree of experience of knowledge of the maker of the statement; and
(6) the extent of the third party's reliance.

Nevertheless, the Caparo-test is the foremost approved judgment to describe and reject the auditor's liability to third parties.

More recently, the Scottish High Court decided in the context of a strike-out-application in the *Royal Bank of Scotland v. Bannerman Johnstone Maclay and others*-case (23 July 2002) , that in preparing audited accounts, company's auditors were legally responsible to a credit bank if they knew (or ought to have known) that the bank would rely on those accounts. In this matter, the Court rejected the auditor's (Bannerman) attempt to narrow the Caparo-test by imposing a requirement that to be liable the auditors must have intended that the party seeking to establish a duty of care should rely on those accounts. The requirement of intent was not presented in Caparo itself.

According to this jurisprudence, an auditor can exclude his liability to all identified third parties by adding a disclaimer to his audit report. However in circumstances in which auditors are not aware that particularly identified third parties are to rely on audited accounts, such individual disclaimer will be meaningless.

4. The Netherlands

Whether third parties can rely on the information of the audit report is controversial in the Dutch jurisprudence and doctrine. Often inspired by some American principles, the public character of the audit report is not acknowledged. The purpose of the audit report is to inform the general meeting and the shareholders of the true and fair view of the financial statements as a basis to evaluate and possibly penalize the board's policy. More in particular, the minority shareholders should benefit from the information in the financial statements and audit report.

But the Dutch jurisprudence and legal doctrine are not unanimous on this point. Several cases illustrate the auditor's liability to third parties.

4.1. Liability of an accountant

On the 28th of September 1983 (*NJ* 1985, 120), in a case concerning an accountant, the Den Bosch High Court recognized the third party liability of the accountant based on the fact that an accountant's work covers 'the proprietary right of the company within judicial matters'. For this, an accountant accepts third party liability for his statements. Dutch legal doctrine criticizes this judgment for it is not the accountant but the (board of directors of the) company who is responsible for creating the financial accounts.

Similarly, in 1990, the Utrecht Court (Rb. Utrecht 18 April 1990, *unreported*) accepted the accountant liability to third parties for the negligent composed annual account of a company. The accountant was reluctant to perform additional verifications which resulted in inaccurate financial statements. The Court based his decision on the following criteria:

(1) the accountant knew that the annual accounts were to be used to promote the company;
(2) the accountant should have realized that the annual accounts were to be used to attract financial resources;
(3) the accountant should have known that a rosy picture of the financial situation of the company could lead to transactions with third parties.

This decision is highly criticized among the Dutch doctrine: tort liability to third parties can only be derived from special circumstances such as known use of the financial statements, foreseeability, and the plausible use of the accounts for matters such as price setting of shares for a merger or acquisition.

4.2. Auditor's Liability

Especially related to audit, the Dutch jurisprudence focuses on the degree of expertise of the third party to uphold the auditor's liability.

In 1999 the Amsterdam Court decided that a credit bank can't rely solely on the audited financial accounts for it has its own, separate responsibility to lend funds to the audited company (Rechtbank Amsterdam 9 juni 1999, *JOR* 1999/195).

The Utrecht Court reached a similar decision on the first of March 2000 (*unreported*). In 1991 creditor Voorhout Beheer B.V. lent Akwarius B.V. the sum of 1.115.520 euro. However, on the fourth of December 1991 Akwarius B.V. was declared bankrupt. The credit bank tried to retrieve its losses from the auditor for his negligent statement. According to the Court's decision, the credit institution acted negligently in relying on the financial statements and the audit report to accommodate the money because it refrained from executing its own due diligence.

Only in special circumstances is the auditors' liability to credit institutions as a third party acknowledged, *e.g.* the explicit approval of the company to use the financial statements and the audit report.

The *Zutphen* judgment is equally auditor 'friendly' (Rechtbank Zutphen 12 December 2002, *NJ* 2003, 26). Only the company can rely on the audit report, which implies that the auditor mainly is liable to the company. The duty of care of an auditor to third parties can only be derived from Caparo-like criteria. One might recognize the American *Ultramares* approach. According to the *Ultramares*-principle (*Ultramares Corp. V. Touche Niven & Co.*, 174 N.E. 441, 443 (N.Y. 1931)), an accountant is liable only for negligence to third parties who are in privity of the contract (the state of two specified parties being in a contract) or privity-like relationships with the accountant. This doctrine provides the narrowest standard for accountants to be held liable to third parties for negligence.

On the 27th of June 2000, the Den Haag High Court (*JOR* 2001/70) rejected the auditor liability to third parties by lack of foreseeability, similar to the American Restatement approach. The Restatement approach has been extracted from § 522 Restatement of Torts:

> "*One who, in course of his business, profession of employment, or in any other transaction in which he has a pecuniary intrest supplies false information for the guidance of others in their business transactions, is subject to liability for pecuniary loss caused to them by their justifiable reliance upon information, if he fails to exercise reasonable care or competence in obtaining or communicating the information*."

According to the Den Haag High Court, an auditor has a duty of care to those third parties when he reasonably have foreseen that his fault could cause damage to those specified third parties.

More recently and surprisingly, on the 13th of June 2001 (*NJ* 2001, 445), the Den Haag High Court abandoned this approach by recognizing third party liability. The High Court stated that by issuing a public statement, the auditor is aware of the risks involved towards third parties. The amount of expertise of the third party was no issue in this debate.

The High Council has not decided yet on this matter. However, concerning different but similar liability matters, the court focused on the credit institutions' own responsibility to analyze the financial statements. Therefore, a lead manager may not rely on the accuracy of the financial statements of the issuer (HR 2 December 1994, *NJ* 1996, 246). Similarly, the High Council rejected the duty of care of an accountant to a third party which relied on the negligent information of the accountant (HR 9 juni 1995, *NJ* 1995, 692). The High Council stated that the third who acquired a considerable number of shares of the company, should have performed its own due diligence to examine the value of the company ('s shares).

5. Germany

The German system is similar to the approach in the Netherlands and the UK. Based on the principles of tort law, the liability of a German auditor or Aβschlussprüfer to third parties is restricted. Since no explicit regulations on auditor liability to third parties are in place, the German doctrine and jurisprudence tried to resolve this loophole in the law by applying different tort law techniques: the (bloβe) Auskunftvertrag, the Vertrag mit Schutzwirkung zugunsten Dritter and the Garantievertrag.

5.1. Bloβe Auskunftvertrag

The jurisprudence of the Bundesgerichtshof acknowledges that a statement ,such as an advice, could accomplish under different circumstances an implied agreement or bloβe Auskunftvertrag to third parties. The Bundesgerichtshof decided that an Abschluβprüfer consented tacitly to the third party if the information which was issued, namely the audit report, was essential for the third party to take a certain decision. The question of whether both parties – the Abschluβprüfer and the third party – wanted to contract is irrelevant However, special circumstances should be met to establish a (bloβe) Auskunftvertrag.

First, the Abschluβprüfer should have known his report was of great importance for the third party to take his decision. Second, the issuer of the information should have a certain degree of expertise which infuses special confidence into its clients or third parties. Concerning the audit work, an Abschluβprüfer will always possess the required expertise to meet with this last condition. This legal concept, established mainly by jurisprudence, was seriously criticised by the German doctrine imposing that this mainly fictious concept doesn't comply with the consensus ad idem requirement of contract law. This consensus is not in place within the concept of the (bloβe) Auskunftvertrag. To meet this criticism, the current jurisprudence obliges an explicit consensus for this legal concept.

5.2. Garantievertrag

Another approach to the issue of the liability of an auditor is the Garantievertrag. The Garantievertrag is a more evolved type of the above mentioned Auskunftvertrag. By issuing a Garantievertrag in the audit report, the Abschluβprüfer guarantees the content of the audit report. The basis of this legal concept is found in the special position of the Abschluβprüfer within the legal system for he knows that his audit work will be used by interested parties because his report is to be published.

The application of this Garantievertrag is obviously more limited in comparison by the Auskunftvertrag. The Abschluβprüfer only guarantees the accuracy and correctness (Richtigkeit seiner Auskunft) of his public statement and not the carefulness of his audit work. Therefore, based on this theory, an Abschluβprüfer can limit his audit work to a strict minimum of shallow supervision and publish a condensed report. Since this is not the purpose of an audit, this approach is not appropriate to use in the auditor's liability issue.

5.3. Vertrag mit Schutzwirkung zugunsten Dritter

Finally, the Vertrag mit Schutzwirkung zugunsten Dritter could be applied to determine the auditors' liability towards third parties. For this issue, this approach is widely accepted among the jurisprudence and the doctrine. According to the Vertrag mit Schutzwirkung zugunsten Dritter, both contractors could have accepted in behalf of third parties (some of) the implications of the agreement. Occasionally, the mutual consent to imply the agreement to third parties is contracted tacitly by means of a '*stillschweigenden Vereinbarung*'. Thus, the contract between the audited company and the Abschluβprüfer could embrace a protective function towards third parties (*Schutzwirkung zugunsten Dritter*).

The legal foundation of this approach is not to be found in the explicit consent between the contractors, but in the principle of Treu und Glauben, meaning that the protective function is fair and reasonable. However, the protective function or Drittschutz is not indefinite because several requirements describe the limitations of this approach to third parties.

- Leistungs- oder Vertragsnähe: the risk of the third party should be equal to the risk the contractor – the audited company – has to endure caused by the negligent performance of the auditor's duties. Based on this requirement, individual investors or stockbrokers seem to be excluded from the protective function of the Vertrag mit Schutzwirkung zugunsten Dritter.
- Glaübigernähe: a special relationship has to exist between the third party and the audited company by virtue of which the Abschluβprüfer has a duty of care to the third party. The Glaübigernähe is at hand as soon as it is contracted between the Aβschlussprüfer and the audited company. It is accepted if the contract stipulates some kind of special interest to safeguard a third party. This subjective requirement is supposed to be on hand if the Abschluβprüfer is commissioned by the company to issue a statement which will be made public to third parties.
- The Abschluβprüfer knew or had to know he owed a duty of care to a third party and vice versa, the third party had a considerable interest in the good performance of the contract between the auditor and his client, the audited company.
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To apply this approach, the Bundesgerichtshof decided in 1985 that it is necessary that the third party and the contractor of the adviser have equal interests.

This approach makes it possible for third parties to compensate economic losses caused by false or misleading information and audit reports issued by the company or Abschluβprüfer. However, not even this last approach is without criticism as this artificial approach ascribes much prerogative power to the courts.

6. Belgium

6.1. The public role of a Belgian auditor

In Belgium, the liability of the auditor is not restricted towards third parties. By virtue of article 140 of the Belgian Company Code and the common liability principles, a Belgian auditor is liable towards each interested party. Since the financial information and the audit report have to be published, third parties are able to rely on that information.

Since the seventies, the public role of the auditor is acknowledged. By ordering the mandatory publication of the financial information, the Belgian legislator wanted to emphasize the information is meant not only to inform the shareholders or the company, but the public in general. Similar to the publication of the financial information, due to the performance of an audit by an independent and certified professional and the publication of it's report, all parties involved are equally informed of the value of the public statement. Therefore, the audit report is a public mechanism to inform all interested parties.

The auditor does not act solely in the interest of the company, but also in the general interest. This means that all users of certified financial information could found their decision on the public report. Therefore, not only the shareholders or the company are entitled to rely on the audit report, but all stakeholders (e.g. employees, creditors, …) and other interested parties. No legal or juridical limitations are enforced: a claimant has to prove that the negligence of the auditor has caused the damage he suffered. As for the company, this implies that all third parties who relied on the financial information and the audit report to make a damaging decision could take legal action against the auditor to recuperate its economic losses.

6.2. Jurisprudence

Despite this ‘tolerant’ legislation, few cases of auditor liability towards third parties exist in Belgium. Three remarkable cases are to be considered.

In 1989 the liability of an auditor was upheld by the Belgian tax authorities (Rb. Brugge 6 november 1989, *F.J.F.* 1990, 44). According to article 633 of the Belgian Company Code, a general shareholders’ meeting is to be convened either by the board of directors or the auditor, when, as a result of losses, the Company’s equity has decreased to less than half of the Company’s share capital. The general shareholders’ meeting must deliberate and resolve on the dissolution of the Company or possible other measures.

The Belgian tax authorities claimed the auditor was negligent to notify the shareholders’ meeting in accordance with article 633 of the Companies Code. They argued that if the shareholders meeting was convened the company wouldn’t have gone bankrupt and (most of) the indebted taxes would have been paid. The ability of the tax authorities to act as a claimant in a procedure against an auditor wasn’t questioned by the court. However, the Bruges Court rejected the auditor’s liability uttering the causal connection between the negligence of the auditor and the economic damage of the tax authorities wasn’t proved. No evidence existed that if the shareholders’ meeting was convened the indebted taxes would have been paid.

Also credit institutions are acknowledged as third parties in auditor liability cases. No specific requirements e.g. expertise, as is essential in the Netherlands, exist.

In 2002, a credit institution filed a suit against an auditor to recuperate its losses due to a judicial composition (Gerechtelijk akkoord) by the company (Kh. Hasselt 25 juni 2002, T.R.V. 2003, 81). Due to this similarity to the Chapter 11 in the United States-procedure, the credit institution relieved the company from some debts. The credit institutions wanted to recuperate its losses from the auditor as they declared that the audited financial statements were used to evaluate the company’s financial situation on which basis the funds were granted. So according to the credit institution the false audit report led to the damage it endured. Similar to the tax authorities-case, the interest of the credit institution to file a suit against an auditor wasn’t questioned. The Hasselt Court approved the credit institution’s argumentation for it was clearly prearranged that a positive audit of the financial statements was a prerequisite for the credit institution to allow the funds.

On the 12th of December 1996, the Brussels Court upheld the auditors’ liability towards a new shareholder of a company (*T.R.V.* 1997, 41). For the acquisition, the price setting of shares of the company was based upon the annual accounts, audited by the company’s auditor. Within months after the acquisition, different corrections (e.g. a considerable amount was transferred as exceptional expenses) concerning the annual account were made as result of which it was obvious that the annual account did not represent a true and fair view of the company’s financial situation. The Brussels Court acknowledged the claimant’s argumentation that if the auditor had issued an unqualified audit report or an adverse audit opinion, the claimant would have been informed about the misleading data in the annual accounts before deciding to acquire a number of shares.

As mentioned before, according to the Belgian legal system, no additional requirements exist for an auditor to be liable towards a third party. However, only few cases exist on this matter. One of the most important motives can be found in the difficulty to acknowledge the causation between the auditors’ statement and the third party’s decision: one has to prove the audit report (directly of indirectly) influenced their decision: without the auditor’s fault, the decision wouldn’t have been taken and the damage wouldn’t have occurred. For this, the claimant first of all has to prove he actually utilised the audit report before taking his decision. Secondly it must be proven that the financial information and annual accounts would have been different if the auditor had not been negligent. Thirdly, a claimant has to prove he would have taken another decision if the information had been presented correctly.

7. One single monetary liability cap for all EU member states?

Whether the auditor’s liability should be capped, is not the focus of this paper. Different studies, especially the London Economics report (2006) studied this question. Five EU Member States (Austria, Belgium, Germany, Greece and Slovenia) have already chosen to cap auditor liability. The UK has recently introduced a regime of auditor liability limitation agreements into law and also the Italian and Spanish legislators are currently considering bringing in laws limiting auditor liability. In the US, the Committee on Capital Markets Regulation has expressed concern that the present level of auditor liability could result in the bankruptcy of an audit firm, with what it describes as “*devastating results to corporate governance in the United States and the rest of the world*” and has recommended that the US Congress explore protecting auditing firms from catastrophic loss.

This paper examines the question whether all EU liability regimes could be harmonized and one single monetary liability cap for all EU member states is advisable.

As mentioned, there are large differences between the legal systems of auditor liability of the studied EU Members States, especially concerning third party liability. The public role of an auditor is not acknowledged in the British, Dutch or German legal system. Only special circumstances could compromise the auditors' liability towards third parties. According to the Belgian regime, each interested third party can be involved in a liability claim towards a negligent auditor. Compared to the restricted British, Dutch or German legal regimes, potentially more parties and thus more damage, could be involved in a liability claim towards a negligent auditor. Due to these differences, one single monetary liability cap is not preferable. The cap should be adjusted to the legal regime of each EU Member State. The more parties potentially involved, the higher the liability cap should be regulated.

8. Conclusion

To discuss the harmonization of legal cap on auditor's liability, one might recognize not all legal liability systems in the European Union are equal. This paper examined the auditors' liability towards third parties of four countries: the United Kingdom, the Netherlands, Germany and Belgium. In Belgium, each interested third party, e.g. tax authorities, a credit institution etc., is allowed to pursue a liability claim against an auditor. The British, Dutch and German legal systems necessitate special requirements, e.g. foreseeability, proximity (etc.) for a third party to be able to pursue the auditor.

For two reasons, these findings are of major importance in the debate concerning the limitation of auditors' liability. First of all, a liability cap will be more appropriate in countries with a 'tolerant' legislation towards third parties because potentially more parties will be involved in a liability claim against an auditor. Secondly, the amount of liability cap should be higher in countries with a 'tolerant' legislation towards thirds as potentially more parties are implicated and as such more damage is to be recuperated from the negligent auditor.

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