Audit Financiar, XXII, Nr. 4(176)/**2024**, *695-723*
ISSN: 1583-5812; ISSN on-line: 1844-8801

Expectation Gap: the Story of the Auditor's Necessary and Impossible Mission

Professor Emeritus Alain BURLAUD,
Conservatoire National des Arts et Métiers, France

Univ. Prof. Maria NICULESCU,
Director of the Centre for Advanced Sustainability Studies, Romania

Lorena PREDESCU, Ph. D. Ec.,
External Public Auditor, Court of Accounts, Romania

Abstract

The expectation gap, the gap between what the public expects from auditors and what auditors can deliver, is a key issue. This gap can call into question the trust necessary for contemporary societies to function.

After providing a historical overview to help understand the issues and the development of the "expectation gap" concept, the article shows the mechanisms by which auditors are subjected to contradictory or incompatible pressures and paradoxical injunctions that can lead to such gaps. It then describes the ways and means of reducing the expectation gap: essentially, guaranteeing the independence of auditors and extending the tasks entrusted to them so that they can better contribute to defending the public interest. In this second area, the case of sustainability auditing is special, given its great complexity, the great diversity of stakeholders and their expectations, and the ability of a new profession, "sustainability auditor", to respond, which is "bubbling up".

These reflections are based on historical and documentary research, dealing with international standards, European law and its impact on French and Romanian accounting law, as well as secondary analysis of various reports and official documents.

Key words: *expectation gap; audit; auditors; statutory auditors; auditing standards; audit directive; sustainability directive;*

JEL Classification*: M42, M48, N01*

To cite this article:
Burlaud, A., Niculescu, M., Predescu, L. (2024), Expectation Gap: the Story of the Auditor's Necessary and Impossible Mission, *Audit Financiar*, vol. XXII, no. 4(176)/2024, pp. 695-723, DOI: 10.20869/AUDITF/2024/176/023

To link this article:
http://dx.doi.org/10.20869/AUDITF/2024/176/023
Received: 14.04.2024
Revised: 22.04.2024
Accepted: 3.08.2024

Introduction

> *"All that remained was to elect the two financial auditors, responsible for presenting a report on the balance sheet to the meeting and thus checking the accounts provided by the directors: a delicate and useless function, for which Saccard had appointed Mr Rousseau and Mr Lavignière, the former completely subservient to the latter, the latter tall, blond, very polite, always approving, consumed with the desire to join the board later, when his services would be appreciated"*[1].
>
> E. Zola, *Money*, 1891

We live in a world largely inherited from the industrial revolution of the 19th century. It would not have been possible without a combination of three factors: the development of engineering sciences, the invention of the legal status of business corporation (société anonyme) to bring together a large number of people and a large volume of capital to carry out major projects or works (maritime trade, railways, trans-oceanic canals, oil exploration, etc.), and accounting to manage extensive organisations (networks, groups, etc.) and create an active financial market to drain savings. The evolution of capitalism, and in particular its profound transformation in the second half of the twentieth century and the beginning of the twenty-first, with the transition from industrial capitalism to financial capitalism, has reinforced the collective fear of excesses, because without control, "Money has great power: it opens all doors and spoils all laws"[2].

It quickly became necessary to combine the production of accounts with a mechanism whereby an independent third party, the auditor, provides a guarantee by giving an assurance on the exchanges of financial information between the public or private capital providers and the managers. This process has developed at different speeds and in different ways from one period to another and from one country to another. It was not without its difficulties, as the excerpt from Émile Zola's novel above shows.

The principle of auditing by an independent third party has long existed in the public sector[3] due to the remoteness of activities over a vast territory and the volume of business. It was therefore necessary to delegate a significant amount of power. For example, Charlemagne (date of birth unknown - died 814) had his *missi dominici* (seigniorial envoys) who travelled the length and breadth of his empire to control his vassals and, in particular, the levying of taxes. There were usually two of them, which was a primitive form of joint auditing[4] as we know it today. Later, Prince Matei Basarb (1588-1654), the prince of one of the two Romanian principalities at the time, introduced the "visterie" (treasury) audit, which historians attest to as a form of public finance control.

Whether in a private company or a public organisation, the principle is always the same: as soon as power is delegated, there is necessarily an inspectorate responsible for monitoring the directives of the central authority and, when it comes to finance, for monitoring financial flows, checking their traceability and thus reducing the asymmetry of information. Transparency is at the heart of good governance.

From time immemorial, but even more so since the 19th century, there has been an *expectation gap*[5], a gap between the aspirations and expectations of the state or capital providers and the auditors or statutory auditors or *commissaires-censeurs* as they used to be called. They have evolved considerably, as a result of changes in the

[1] Translated by the authors

[2] I. Slavici, I., (1906) *Mara,* Ed. Institutului de Arte Grafice "Luceafărul", Budapesta, p. 349.

[3] The term "public sector" is not entirely appropriate, as the accounts of the State and the personal accounts of the monarch were one and the same. There was therefore no separation between the public and private assets of the king or emperor.

[4] In France, today, in official texts, we speak of *commissaires aux comptes* (statutory auditors) but in business life, often of auditeurs (auditors). We will use both expressions indistinctly in the case of France, but the word auditor in the case of Romania and also in the international context. In Romania, the chartered accountant may also carry out financial and accounting audit activities (see Ordinance no. 65 of 19 August 1994, updated in 1995, art. 6 (c), concerning the organisation of the chartered accountancy activity).

[5] In the remainder of this article, we will systematically use the expression *expectation gap*, which is customary in the professional world, rather than its translation into national languages, which would be *écart* (in French) or différence/"diferență" (in Romanian) between users' expectations and the services actually provided by the auditors.

realities of the world of public and private finance, the evolution of the players and their interests, and the representations that the various players have made of this reality.

We will begin with a historical presentation of the *audit expectation gap* in two countries, France and Romania. Indeed, understanding the 'life' of a concept in its temporal and spatial context enables us to better understand its ins and outs. We will then look at how listeners are at the centre of paradoxical injunctions that can be dangerous for them. Finally, in the third part, we will present ways and means of giving auditors back the possibility of creating the confidence necessary for our societies to function, without limiting ourselves to the economic aspects, in particular with the sustainability audit.

1. The *expectation gap* at the centre of a chaotic history of auditing

A little history helps us to understand the dialectical relationship between audit and business. For the most part, we will draw on the history of this relationship in France and Romania.

The existence of asymmetric information between a principal and an agent is not a recent discovery. In Mesopotamia, more than 2,000 years before Christ, when the owner of a herd entrusted its care to a shepherd, it was necessary to devise a written system to secure the information at the origin of the "invention" of accounting[1]. Indeed, it was necessary to avoid any dispute over the number of animals making up the herd in order to pacify the agency relationship, which was not theorised until much later, by Jensen and Meckling in 1976. But in Mesopotamia, there was no such thing as auditing.

England was the first country in the world to pass a law requiring a financial audit to protect shareholders against the interests of directors in 1845[2]. This is hardly surprising, given that England is the home of the financial capitalism associated with the industrial revolution of the 19th century. Indeed, distrust was the order of the day, as Adam Smith wrote in 1776 in his *Inquiry into the Nature and Causes of the Wealth of Nations:* "The directors of these sorts of companies being stewards of other people's money rather than of their own, they can hardly be expected to exercise that exact and solicitous vigilance which partners often exercise in the handling of their funds".

In France, the introduction of a statutory audit came later. But practice had preceded the law. For example, the Compagnie des Indes had a corps of "inspectors" - what we now call internal auditors - as early as 1723[3]. It was not until the law of 23 May 1863 creating the *société à responsabilité limitée* (limited liability company) and then the law of 24 July 1867 creating the *société anonyme* (joint-stock company) that there was a legal audit carried out by *commissaires*[4] (statutory auditors). France's aim was to create a legal framework favourable to industrial development comparable to that of England, which had adopted the *Joint Stock Companies Act* in 1844 and the *Limited Liability Act* in 1855.

Such concerns were also evident in the public sector. Under the impetus of Jean-Baptiste Colbert (1619-1683), who denounced the embezzlement of funds by Nicolas Fouquet (1615-1680), continuing the practices of Cardinal de Mazarin (1602-1661), Minister of Finance under King Louis XIV (1638-1715), the Kingdom of France undertook to reform its administration, particularly the most sensitive area, that of public finance. This led to the creation of the Chambers of Audit in France, which were merged by Napoleon in 1807 into a single body, the *Cour des Comptes*. This led to the institutionalisation of statutory audit and its integration into a rigorous bureaucratic system, the so-called "French bureaucracy".

Inspired by the French experience, in 1864 the United Principalities of Wallachia and Moldavia passed the law creating the Romanian High Court of Audit, the first institution with auditing powers. However, its achievements in terms of controlling public finances fell far short of citizens' expectations. Thus, the conclusions of a critical analysis of the activity of the High Court of Audit, carried out in 1922, show that it demanded a posteriori control of budget execution, with an obligation to regularise the accounts three years after the end of the financial year. In practice, the delays were so great that the reports were only of historical interest. For example,

[1] Degos, J.-G., (1998), Histoire de la comptabilité. Paris, PUF, p. 7 & s.

[2] Olatunde, S. P., (2023), Fraud and the Audit Expectation Gap, Honors Thesis, Georgia Southern University, p. 8.

[3] Bensadon, D., Praquin, N. & Touchelay, B. (2016), *Dictionnaire historique de comptabilité des entreprises*, Villeneuve d'Ascq, Presses universitaires du Septentrion, p. 37.

[4] *Ibid*, p. 36.

the first budgets of the High Court of Audit were regularised 24 years late[1].

After the First World War and in particular after the constitution of Greater Romania, following the Union of 1918, the Romanian institutional system underwent profound changes. The reorganisation of the administrative and financial system was the subject of a legislative package in 1929, including the law for the reorganisation of the High Court of Accounts, inspired this time by Belgian and Italian laws. The Parliament of the time hoped that this new law would "regenerate the country's morals, prevent citizens' money from being used for purposes other than those in the general interest of the Romanian State and nation[2]". Its practical application was problematic, for reasons linked to organisational deficiencies, the large volume of work and the lack of independence of its activity, to which were added, from 1940 onwards, new constraints on the management of public money generated by the war.

Under the French Third Republic, France was the scene of numerous financial scandals, the most important of which were the Panama Canal scandal[3] in 1889 and the Stavisky affair in 1934. It was in response to these events that the decree-law of 8 August 1935 was passed. It radically altered the role of the *commissaires* by introducing the following provisions[4]:

- incompatibility with salaried employment or family ties with directors;
- prohibition on receiving remuneration other than that related to the audit engagement;
- respect for professional secrecy;
- obligation to disclose offences to the public prosecutor;
- penalising the dissemination or confirmation of misleading information by the auditor;
- in the event of a public offering, the obligation to appoint an auditor from a list drawn up by the Court of Appeal and the institution of joint auditing.

But the statutory audit was introduced before there was a set of accounting standards which, in France, were adopted at the time of reconstruction, after the Second World War and therefore in a different context, with the General Chart of Accounts (PCG) of 1947, revised in 1957 and 1982 and then modified over time, with the latest edition dating from 2023.

Taken together, these measures considerably reduced what was not yet known as the *expectation gap*. However, the profession remained poorly organised, even though the Institute of Chartered Accountants in Scotland, the oldest in the world, was created in 1854 and the Institute of Chartered Accountants in England and Wales in 1880.

The post-war years, the 50s and 60s, were marked in France by two opposing movements: the decline of a largely state-run economy, inherited from the *Resistance* during WW2 and the doctrine of General de Gaulle[5], and the increasing financialization of large companies that had not been nationalised. Against this backdrop, the law of 24 July 1966 considerably changed the role of the statutory auditors. From being mere agents of the shareholders, they also became the custodians of a public service mission addressed to all stakeholders. The independence of the auditor was strengthened and access to the profession was made conditional on passing high-level professional examinations organised by the Ministry of Justice. The decree of 12 August 1969 established the Compagnie Nationale des Commissaires aux Comptes, which is overseen by the Ministry of Justice and has disciplinary powers over its members, who have a monopoly on the practice of statutory auditing.

In France, after the return to power of a Socialist government in 1981 following ten years of liberalism, the partnership concept of the company came back into favour. It was also defended by the followers of General de Gaulle. The company is a place where value is created, but also where the value created is shared fairly between the providers of capital, employees and third

[1] Curtea de Conturi a României, (2004), *Istoria Curții de Conturi a Romaniei*, Ed. Evenimentul românesc, p. 131.

[2] *Idem*, p. 139.

[3] On this subject, see the following two novels: E. Zola, *L'argent* (*op. cit.*) and Ledouble, D., (1997), *Le Temps d'un Canal*, Paris, Favre.

[4] Bensadon *et al, op. cit.* p. 37.

[5] The economy was to be a mixed one, with a strong public sector capable of a long-term vision and in charge of structural investments, within the framework of a plan, and a private sector to serve the immediate needs of consumers. This model has met with success, particularly in the nuclear and aeronautical sectors, but also with failure, as in the case of the calculation computor plan. In the field of defence, public-private cooperation is the preserve of the "military-industrial complex" in the United States and, to a certain extent, in China.

parties (suppliers, customers, the State)[1]. It must be accountable for its management to all stakeholders. As a result of the high number of company closures, many of which involved relocating their activities, sometimes with dramatic social consequences, the Act of 1st March 1984 strengthened the public service remit of statutory auditors by introducing a warning procedure to prevent company failures.

The end of the Second World War and the arrival of communism completely changed the institutional landscape in Romania. The abolition of the High Court of Audit in 1948 was almost self-evident, as the existence of an independent institution to control the communist administration was incompatible with the way in which a centralised state functioned, as the sole owner of the national patrimony, as both decision-maker and controller. The responsibilities of the Court of Audit were divided between the Financial Control Department of the Ministry of Finance and the Accounting Departments of Public Entities. A quarter of a century later, the Superior Court of Financial Control was created, which took over the control responsibilities of the Ministry of Finance. However, it had jurisdictional and preventive control powers, which differentiated it from the Ministry of Finance. In this centralised system, controlled by the Communist Party, the expectations to be met were those of a single party and an omnipresent state. Historians believe that, despite the limitations of the political system at the time, this institution played an important role in managing the country's assets and limiting fraud.

The internationalisation of economies, especially from the 1990s onwards, and the crisis of confidence following the collapse of Enron, led to new legislative and regulatory developments. In France, the *loi de sécurité financière* (LSF [Financial Security Act]) of 1 August 2003 anticipated European Directive 2006/43 on statutory audit by creating an independent oversight body, the *Haut Conseil du Commissariat aux Comptes* (H3C)[2], and adopting the International Standards on Auditing (ISA) produced by the International Auditing and Assurance Standards Board (IAASB).

In the 90s, Romania was once again in turmoil, as the fall of the Communist regime generated an unprecedented ideological, political, structural and functional rupture and marked the greatest economic transition of our times. This "revenge on history" generated immense hope and well-justified expectations on the part of the "public" for new leaders. Successive governments, charged with managing the historic process of moving from a system based on communist doctrines to a system of liberal democracy, found themselves faced with enormous tasks, often lacking the necessary know-how and resources. They had to act under time pressure to cope with the imperatives of the complex paradigm shift of a long process of "deconstruction" and "refoundation" at all levels of society. This was also the case for financial institutions. For example, the Superior Court of Financial Control ceased to operate in 1990, and in 1992 the Romanian Court of Audit was re-established, with the task of "exercising control over the manner in which the financial resources of the State and the public sector are constituted, administered and used"[3]. Internal audit and preventive financial control were regulated in 1999[4], by a Government Ordinance which set out the framework for their exercise, their objectives and, indirectly, the expectations placed on them. After joining the European Union, Romania aligned itself with European requirements in this area.

Today, France and Romania, like all EU countries, are facing a new challenge for auditors, in response to a new *expectation gap*, the audit of sustainability information, which we will see later. So, there is more to this story than meets the eye. But it has shown us that auditing is still a confidence-building technique rooted in the state of society. The gap between what the audit provides and what is expected of it is therefore a socially constructed reality.

We will now look at the *expectation gap* and the tensions it reflects.

[1] On this subject, see the technique of "overall productivity surplus accounts": Burlaud & Simon, 2003, p. 310 et seq. and Burlaud, A. & Dahan, L., 1985.

[2] In 2024, the H3C became the High Audit Authority (H2A) to reflect the extension of its remit beyond accounts to include sustainability reporting.

[3] Romanian Constitution (1991), art. 139.

[4] *Ordonanta nr. 119 din 31 august 1999 privind auditul intern şi controlul financiar preventiv* (Government Emergency Ordinance on Internal Audit and Preventive Financial Control).

2. The expectation gap: a paradoxical injunction and a challenge for auditors

In order to better understand the challenge, we will define the two expressions *expectation gap* and paradoxical injunction.

2.1. Definition of the expectation gap

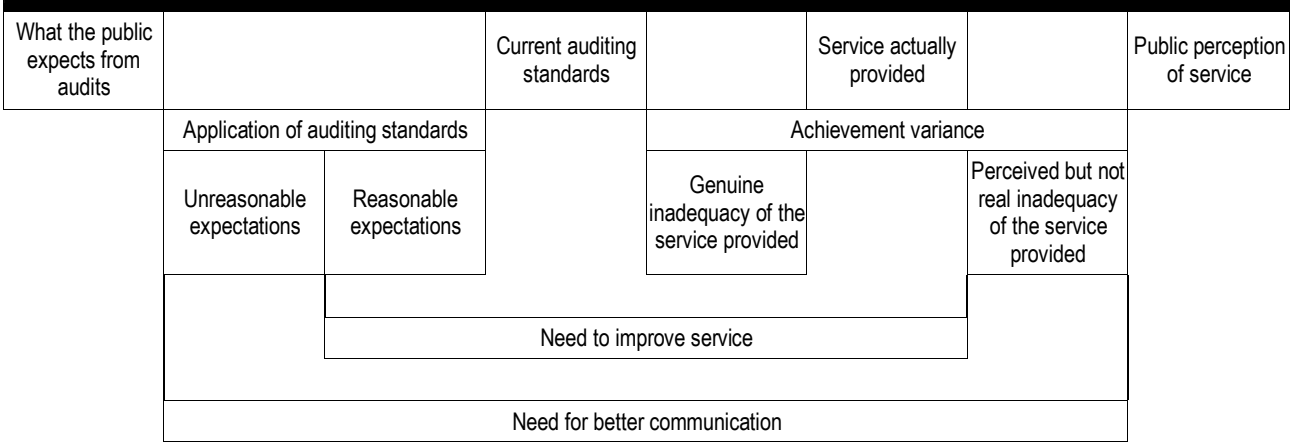
The gap between what users expect from auditors' reports and what auditors produce is, as we have seen, as old as the audit function itself. The public wants assurance, to be reassured in order to have confidence. In our context, for the sake of brevity, we will call it the *expectation gap* or *audit expectation gap* (AEG). While the fact is old, the expression is recent. It is attributed to Liggio in a 1974 article[1]. It was officially adopted by the American Institute of Certified Public Accountants (AICPA) in a 1978 report[2]. This gap is defined as the difference between the levels of expected performance as envisaged by the independent accountant and by the user of the financial statements.

The gap is indeed a difference in perception. It involves three players: the auditors, the standard-setter and a more vague category, the public or users. Being subjective, deviations are difficult to measure, but their components can be identified. Liggio identifies three of them:

- the auditor does not do what is expected of him or her because the service provided is perceived as inadequate;
- auditing standards do not allow the auditor to satisfy public demand;
- the public demand is unreasonable because it goes beyond what an auditor can do. For example, a survey in the United States showed that 70% of companies wanted auditors to provide absolute assurance, which is obviously not possible[3].

In 1988, the Canadian Institute of Chartered Accountants (CICA)[4] supplemented Liggio's definition as presented in **Diagram no. 1**.

Diagram no. 1. Definition of the audit expectation gap, according to the CICA



Source: Own projection

The CICA introduced two new categories of publicly perceived differences relating to standards:

– reasonable expectations, which implies that standards can better meet the needs of the public and that it is therefore possible to reduce this gap;

[1] Liggio, C. D., (1974), "The Expectation Gap: The Accountant's Waterloo", *Journal of Contemporary Business*, n° 3, pp. 27-44.

[2] AICPA. (1978). *Report, conclusions and recommendations of the Commission on Auditors' Responsibilities (Cohen Commission)*. New York.

[3] Jedidi, I., (2013), *Contribution à la compréhension de "l'*expectation gap*" en audit. PhD* thesis, Université Paris-Dauphine, p. 186.

[4] CICA, (1988), *Report of the commission to study the public's expectations of audits*. CICA, p. 18.

– unreasonable expectations that the standard-setter cannot meet.

This message is therefore addressed to the standard-setter, whereas Liggio's message was essentially addressed to the auditors.

The Association of Chartered Certified Accountants (ACCA) introduced in 2019 a different definition of the *audit expectation gap* which is analysed in three gaps[1], as presented in **Diagram no. 2**.

Diagram no. 2. Definition of the audit expectation gap, according to ACCA

Knowledge gap	Achievement variance	Variance

What the public thinks listeners are doing	What listeners actually do	What listeners are expected to do	What the public wants listeners to do

Deviation from audit expectations

Source: Own projection

This diagram shows that the knowledge gap, the difference between what the public thinks auditors do and what auditors actually do, can be reduced by better communication. The auditors should then give more details of the controls carried out and their limitations in[1] their report.

The achievement gap, the difference between what auditors actually do and what they are supposed to do, is the responsibility of the oversight body, in France the Haut Conseil du Commissariat aux Comptes (H3C), now the Haute Autorité de l'Audit (H2A), and in Romania the Authority for Public Supervision of the Statutory Audit Activity (ASPAAS).

The evolution gap, the difference between what auditors are supposed to do and what the public wants auditors to do, is the responsibility of the law maker. In this way, as we saw earlier in the historical section, the legislator can give the auditors new responsibilities in response to a politically admissible request from the public. We shall see that this is still the case today in Europe with the audit of sustainability information[2].

The various definitions, of which we have selected the most institutional, show that the *audit expectation gap* is a social fact and that perception is contingent. However, they remain imprecise insofar as they refer to the public, whereas the public is made up of different categories of users of auditors' reports, with particular interests that may be divergent. But they all show that by integrating the providers of capital into the wider public, the auditor is no longer just an intermediary in the agency relationship between the providers of capital and the managers. The game is played by at least three parties: the auditors, the standard-setters and the public. Paradoxical injunctions arise from the interplay between these three categories of players who experience different frustrations.

2.2 Definition of the concept of paradoxical injunction

The double bind is a situation known since ancient times in Sophocles' play *Antigone* (441 BC), which depicts the conflict between the legal order and the divine order, the law of men and the law of God. The double bind was theorised much later by Gregory Bateson, an American anthropologist and psychologist, in 1956 at the Palo-Alto School in California in connection with the study of schizophrenia. Schizophrenia is a situation in which a person is subjected to two contradictory or incompatible pressures. Here are a few examples to help you understand the concept.

If a superior says to a subordinate: "Be spontaneous", there is a paradoxical injunction. The subordinate receives an order which he must obey.

[1] ACCA, p. 12.

[2] See Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 on the *publication of sustainability information by companies.*

But on the other hand, spontaneity is the result of a decision taken freely, and therefore outside of any hierarchical obligation. You can certainly feign spontaneity, but you can't act spontaneously under threat. Another example of a paradoxical injunction is to say "Be autonomous". The "victim", in this case the subordinate, is faced with an impossible choice, unless he quits his job. In effect, he is being told not to take orders because he is autonomous. Generally speaking, the dual constraint leads to a blockage in action and communication, as the victim is faced with the absurdity of the choice. Fortunately, as Olivier Fournout writes[1], "a system of paradoxical injunctions can never be completely satisfied. It is, by definition, always precarious, always in crisis, always out of balance".

In what way is the auditor subject to a double constraint? On the one hand, they are appointed and paid by their clients, which, whether we like it or not, creates a relationship of dependence. On the other hand, they act in the public interest as part of a public service mission, which may lead them to act against their client's interests by reporting a negative assurance on the financial statements or by revealing criminal acts. To arbitrate this conflict and break the deadlock, a third 'authority' is needed: the legislator or the standard-setter, who will provide a framework for the auditor's work and give him an obligation of means (to comply with the standards) rather than an obligation of result (to satisfy the client *versus* the public). This makes a considerable difference in terms of liability.

2.3 Audit expectation gap and paradoxical injunctions: the main situations experienced by auditors

Auditors and the public are asking questions that call into question the credibility of the mission. Can a professional accountant in public practice or an accountancy firm defend the public interest? Is its judgement based on standards or on its professional judgement? Should these standards be laid down by the profession or by the legislator? How can a balance be struck between the social demands made on auditors and their concern not to take risks?

2.3.1 Why entrust the defence of the public interest to private individuals?

First, let's clarify the vocabulary. Should we talk about the general interest or the public interest? Without having a conceptual definition, the notion of general interest refers to the common interests of the various individuals who make up a society, the needs of the population, or according to the Declaration of the Rights of Man and of the Citizen, "public necessity". Scientists unanimously agree that the general interest can only be defined at a very high level of abstraction. The concept is not defined either in national legislation or in European law, which refers instead to activities/services of general interest. As Professor D. Truchet states, the notion of general interest is "the *Leitmotif* of legislation and case law in European law. The general interest is everywhere, 'colonised' in increasingly legal and political areas (...) an object shrouded in mystery, whose contours remain undefined (...), is what we would call in chemistry an unstable element. It depends on the circumstances of time, place and political choices"[2]. Similar assessments can be found in Romanian doctrine, such as that of Professor D. C. Dănişor, who considers that "from a legal point of view, the general interest has no content. It is not something (...) It is a formal and insubstantial reality. The interest is 'general' not because it is superior to individual interests, but because it is accessible to anyone at any time. It is availability, not superiority, that makes it general"[3].

In conclusion, the definition of "general interest" is a functional notion, not a conceptual one[4]. The conceptual imprecision of the "general interest" and its "plasticity" are not defects, but qualities that make it valuable for applying a rule to increasingly diverse factual situations. It is in tune with the gradual shift in our legal systems towards a system of values: it adds legitimacy to legality"[5]. The concepts of "general interest" and "public interest" are

[1] Fournout, O., (2022), *Le nouvel héroïsme*, Paris, Presses des Mines, p. 16.

[2] Truchet, D (2021). *Droit administratif*, 9th edition, Puf, Paris, p. 361.

[3] Dănişor, D.C (2015). Garantarea disponibilității interesului general-limită a restrângerii exercițiului libertăților. *Revista de ştiințe juridice*, nr. 1, p. 111.

[4] Truchet, D (2017), La notion d'intérêt général : le point de vue d'un professeur de droit, *Legicom*, 2017/1 (n° 58), p. 5 - 11.

[5] *Ibid.*

often synonymous and interchangeable. It is therefore the concept of public interest that will be used here, as this term is used in all the laws and regulations applicable to audit engagements and auditors.

The history of auditing has its origins in what is now known as agency theory, whereby the auditor is at the service of the providers of capital. A contractual conception of the company, the partnership contract, logically corresponded to the use of a natural or legal person to examine the accounts in the sole interest of the partners. The audit was therefore a private matter between contracting parties. But we have seen that the mission now extends to other stakeholders, sometimes without any contractual link with the company, with concerns that are not necessarily limited to the financial dimension, grouped together under the term "public interest".

The question of defending the public interest entrusted to private individuals does not arise in the public sector. Auditing is entrusted to an independent jurisdiction, made up of magistrates, the Cour des Comptes and the Chambres Régionales des Comptes in France. Defending the public interest is at the heart of their missions. Over the last two decades, however, we have seen a privatisation of auditing in the public sector, with local authorities[1], universities, hospitals, etc. being required to have their accounts audited by auditors in public practice. But we are only dealing here with the *expectation gap* affecting auditors in the private sector.

In Romania, the Court of Audit was stripped of its jurisdictional function in 2003[2], when the Constitution was revised, and this function was entrusted to the ordinary courts.

2.3.1.1 The public interest in international standards

The IFRS conceptual framework does not mention the public interest but does provide a list of stakeholders. "Other parties, such as regulators and members of the public other than investors, lenders and other creditors, may also find general purpose financial reports useful. However, those reports are not primarily directed to these other groups."[3] Unsurprisingly, coming from the IASB, capital providers therefore have priority.

The foreword to the IAASB Handbook states that the role of the International Federation of Accountants (IFAC) is to serve "the public interest by working with its member organizations to help ensure a skilled, knowledgeable, and ethical workforce of professional accountants around the world; by contributing to the development of sustainable private and public sector organizations; and by supporting strong international financial markets and economies."[4] The *Handbook* states that the professional accountant must act in accordance with the public interest[5].

2.3.1.2 The public interest under European law

The concept of European public interest appeared in European accounting law with Regulation 1606/2002 on the application of international accounting standards. Article 3(2) states that "international accounting standards may be adopted only (...) if they are in the European public interest (...)". By international standards, we mean IFRSs. This condition is therefore essential, but it is not defined. Some people can live with it. For example, the Report from the Commission to the European Parliament and the Council on the evaluation of Regulation n° 1606/2002 on the application of international accounting standards notes that "some stakeholders considered that it would be helpful to be more specific about what European public good encompasses while others considered that the term is generic enough to have meaning and allows flexibility in practice"[6].

Taken out of context, the notion of European public interest can be extremely broad. Here, however, it is a question of contributing to the smooth functioning of the capital market. Accounting standardisation, by ensuring the comparability of financial statements[7], must protect investors and preserve confidence[8]. In the case of accounting standardisation, the public interest must be

[1] *Loi organique relative aux lois de finances* (LOLF) of 1st August 2001.
[2] Romanian Constitution, (2003), art. 140, §. 1.
[3] IFRS *Conceptual Framework*, (2018), § 1.10.
[4] International Auditing and Assurance Standards Board (IAASB), (2020), *Handbook of International Quality Control, Auditing, Review, Other Assurance, and Related Services Pronouncements*. p. 47.
[5] *Ibid.*, p. 47, § A2.
[6] 2015 Report, p. 9.
[7] Regulation 1606/2002, recital 1.
[8] *Ibid.,* recital 4.

considered, as the regulation currently stand, in a restricted sense.

While there is agreement that macro-economic stability is a component of the public interest, from an operational point of view, the European Court of Justice is the only body empowered to interpret European Union regulations[1], while the European Financial Reporting Advisory Group (EFRAG) only has an advisory role. However, the Court has not yet been called upon to rule on this issue[2]. It should be noted that the very (too?) general nature of the concept of European public interest makes it an argument of last resort for possibly rejecting an IFRS standard[3].

2.3.1.3 The public interest under French law

The contractual vision of the company, a network of contracts according to the agency theory, which originated in the Civil Code, is largely tempered by a more recent institutional vision in the Commercial Code. The higher interest of the company, for example its survival, may conflict with the common interest of the shareholders insofar as it takes into account the interests of all the stakeholders. Thus, "the interest of the company is at the heart of the two offences of misuse of company assets and credit on the one hand and misuse of power on the other, both of which generally punish the fact that a company director makes use of company assets or credit, or of powers, contrary to the interest of the company and in his personal interest (...)"[4]. "In the absence of a legal definition, the corporate interest (...) remains a sort of (...) soft concept whose definition is left to the sovereign appreciation of judges combined with doctrinal positions".[5]

Although the offence of misuse of corporate assets was created in France in 1935, it was virtually not punished until the 1960s, reflecting a change in the way companies were represented that is very clearly reflected in the development of the *Code des entreprises en difficulté*. For example, a ruling by the Criminal Division of the *Court de Cassation* on 5 November 1963 held that "the offence of misuse of company assets was created not in the interests of the partners but to protect the company's assets in the interests of the company[6] itself and third parties"[7]. More recently, the Court of Appeal of Caen ruled on 2 February 2006 that "the interests of the company as an economic and legal entity (...) are specific and do not necessarily coincide with those of the partners"[8].

Another notion, close to that of public interest, could be that of public order introduced by article 6 of the Civil Code. But it is not further defined, except insofar as it is associated with "good morals". This is a long way from economic issues and the auditors' remit.

2.3.1.4 The public interest under Romanian law

In Romanian law, the public interest is referred to using different terminology (general interest, national interest, social interest or public utility) and with varying degrees of generality, depending on the normative act.

Thus, according to article 135(2) of the Basic Law, "the State is the guarantor and defender of the general interest by ensuring, *inter alia*, the protection of national interests in economic, financial and foreign exchange activities (...), the exploitation of natural resources, in accordance with the national interest, etc."[9]. According to some authors, this is a "descriptive-expository definition of the legal concept of general interest, using terminology that is obviously economic in nature"[10]. The Civil Code also refers to the nation of public interest, but only to contrast it with private interest, in the context of the exercise of the right of ownership[11]: "every legal person must have an independent organisation and its own patrimony, assigned to the realisation of a lawful and moral purpose, in accordance with the general interest"[12].

---

[1] Accounting Regulatory Committee (2016): *Non-Paper of Commission Services DG FISMA. European public good.* http://ec.europa.eu/finance/company-reporting/docs/committees/arc/2016-06-27-european-public-good_en.pdf

[2] *Ibid.*

[3] Louis KLEE & Isabelle CHAMBOST (2009): La régulation comptable européenne : de l'articulation de l'expertise et du politique. *Comptabilité Contrôle Audit,* May, p. 18.

[4] Yvonne MULLER (2016): "RSE et intérêt social" *in La RSE saisie par le droit. Perspectives internes et internationales.* Ed. A. Pedone, p. 227.

[5] *Ibid.* p. 228.

[6] The term "company" is used here to refer to the legal entity constituted by the business.

[7] *Ibid.* p. 228.

[8] *Ibid*. p. 230.

[9] Romanian Constitution (2003), art. 135, § 2, b & d

[10] Clipa, C., (2019), "Noțiunea de interes public, între definiții juridice şi speculații economice", *Revista Romana de Drept Privat* no. *1/2019*

[11] *Codul civil* (2009), *actualizat*, art. 602.

[12] *Idem*, art. 187.

Some organic laws are more precise and explicit regarding the concept of public interest. Thus, according to Law 554 of 2 December 2004 on administrative disputes, "legitimate public interest" refers to the rule of law and constitutional democracy, the guarantee of citizens' fundamental rights, freedoms and duties, the satisfaction of the community's needs and the fulfilment of the public authorities' remit[1] . Other legislative acts refer to the public or general interest, without defining it, but by evoking, depending on the specific context, activities of general interest. For example, Law 2019 of 2015 defines as activities of general interest "any activity in the economic, cultural, artistic, social, educational, scientific, health, sport, housing, environmental protection, preservation of traditions, etc. fields". Without being in contradiction, all these texts shape a certain image of the public interest, but each does so using different language.

In the context of our study and given the responsibility of the auditing profession towards the public interest, it is worth recalling the meaning given by the Code of Ethical Conduct for Financial Auditors in Romania, according to which the public interest is a common good: "the good of the community of people and institutions that a financial auditor serves"[2].

In conclusion, if the financial and sustainability information published by companies is similar to a "public good" in the sense of E. Ostrom[3], one might logically have thought that the control of this information should be entrusted to a "Court of Audit for companies" responsible for defending the public interest, in the same way as the Courts of Audit responsible for public organisations. But no country has adopted this solution in favour of a hybrid form of defending the public interest. The partners or shareholders are free to choose an auditor on the market, they can put them out to competition and issue invitations to tender, but they must be members of a regulated profession under the supervision of the public authorities. The main difference with the *Cour des Comptes* is that the latter has a monopoly, it has jurisdictional powers and its interventions are free of charge for the audited entity. For this last reason, plus the weight of history, the Court of Audit model cannot be transposed to the private sector.

This hybrid solution, combining the freedom of the market and the use of a regulated profession, is a compromise response to a paradoxical injunction: the auditor must defend the public interest even though he is appointed and paid by his client. Arthur Andersen, the world's largest audit firm, was implicated in 2001 in the bankruptcy of one of its major clients, Enron, because it had been guilty of a little too creative accounting, and suffered such damage to its reputation that it disappeared within a few months[4]. An auditor's reputation is his main asset.

2.3.2 What balance should be struck between the application of standards and professional judgement?

In other words, should we obey or think? So posed, the question calls for a simple answer. But it is not[5].

Let's compare two statements:

"Any natural or legal person who is a merchant **must book** all movements affecting the assets and liabilities of their business[6].

and

"The objective of general purpose financial reporting is to provide financial information about the reporting entity that is useful to existing and potential investors, lenders and other creditors in making decisions relating to providing resources to the entity"[7].

We can see that we are in two different worlds with two opposing conceptions of the law. The first, strengthened by the legitimacy conferred by its source, the vote of Parliament, does not have to justify the choices made. The law is prescriptive. The second, whose legitimacy can

[1] *Legea 554/2004 contenciosului administrativ, art. 2, § 1 - r*

[2] *Codul privind conduita etica a auditorilor financiari,* p. 8, http://www.evcont-audit.ro uploads consulted on 20 March 2024

[3] See: Burlaud, A. & Pérez, R., (2012), La comptabilité est-elle un "bien commun?", *Comptabilité, société, politique. Mélanges en l'honneur du professeur Bernard Colasse,* Paris, Economica, pp. 216-233.

[4] See: Colasse, B., (2012), *Les fondements de la comptabilité.* Paris, Éditions La Découverte, pp. 101-104. See also: Sauviat, C., (2003), "Deux professions dans la tourmente : l'audit et l'analyse financière", *Actes de la recherche en sciences sociales*, volumes 1-2, no. 146-147, pp. 21-41.

[5] This § 2.3.2 makes extensive borrowings from Burlaud, A. & Niculescu, M., (2016), "Un drept contabil care face appel la raționamentul profesional: o amenințare sau o oportunitate pentru profesia contabilă?" *Audit Financiar* no. 144, December, pp. 1267-1276.

[6] French Commercial Code, art. 123-12.

[7] IFRS, *Conceptual Framework*, § 1.2.

be challenged[1], is justified on the grounds of its usefulness. The law is interpretative because, since this concept is perfectly subjective, an authority will have to be designated whose **professional judgement** will enable a decision to be made. In the ecosystem of international accounting standards, this will of course be the professional accountant. His intervention will be all the more decisive in that the IASB has clearly opted for standard-setting based on principles, which must therefore be interpreted, as opposed to standard-setting based on rules.

What is professional judgement? It is an "operation consisting in forming an opinion, in cases where certain knowledge cannot be attained".[2] More specifically, in the context of the accounting profession, it can be defined as follows: "The ability of a member of a profession to assess a situation without knowing all its elements with certainty and to choose an acceptable course of action where professional standards allow latitude. (...) The exercise of professional judgement requires the member of the profession to make an objective and prudent analysis, based on his or her experience and knowledge (including knowledge of his or her own limitations) and an awareness of his or her responsibility towards those who suffer the consequences."[3]

At the heart of these two definitions is uncertainty, which is a threat to both the preparer of the accounts and the auditor. The professional accountant must make forecasts (e.g. calculating the present value of future cash flows), translate intentions (e.g. classifying securities as equity investments or investments for impairment) and assess risks (e.g. calculating a provision), in other words give a simplified yet 'true and fair' view of a reality that is only incompletely and uncertainly known.

If uncertainty concerns the context of the action, it also concerns the outcome of the judgement made by the professional. In the legal field, for example, decisions are never perfectly predictable and, as a result, generally involve an appeal procedure. But while there is a personal element in the judgement, personal judgement should not be confused with professional judgement. The former is freer than the latter, which is based on a set of rules and standards adopted by a profession. Uncertainty is reduced by social pressure. "We are well aware that we are not masters of our own judgements; that we are bound and constrained. It is the public conscience that binds us[4].

More specifically, with regard to auditors, the concept of professional judgement is mentioned 14 times in the International Ethics Standards Board for Accountants (IESBA) Code of Ethics for Professional Accountants. In the Fundamental Principles (§ 112), with regard to objectivity, it is stated: "A professional accountant shall comply with the principle of objectivity, which requires an accountant to exercise professional or business judgment without being compromised by:

(a) Bias;

(b) Conflict of interest; or

(c) Undue influence of, or undue reliance on, individuals, organizations, technology or other factors."

The Audit Directive does not use the concept of professional judgement but implicitly addresses it in relation to independence. "Member States shall ensure that, when carrying out a statutory audit, a statutory auditor or an audit firm, and any natural person in a position to directly or indirectly influence the outcome of the statutory audit, is independent of the audited entity and is not involved in the decision-taking of the audited entity"[5]. Professional judgement also requires technical competence. "Member States shall ensure that, when the statutory audit is carried out by an audit firm, that audit firm designates at least one key audit partner. The audit firm shall provide the key audit partner(s) with sufficient resources and with personnel that have the necessary competence and capabilities to carry out his, her or its duties appropriately."[6]

[1] See on this subject: Burlaud, A. & Colasse, B. (2010): "Standardizarea contabilă internațională: reîntoarcerea politicului?", in *Audit Financiar*, January, pp. 3 -to 11 and February, pp. 10 -to 15.

[2] Lalande, A., (1983): *Vocabulaire technique et critique de la philosophie*, Paris, PUF, p. 548. See also: Burlaud, A. & Niculescu, M. (2016), "Un drept contabil care face appel la raționamentul profesional: o amenințare sau o oportunitate pentru profesia contabilă?" *Audit Financiar* no. 144, December, pp. 1267 - 1276.

[3] Ménard, L. *et al* (2004), *Dictionnaire de la comptabilité et de la gestion financière.* CICA, OEC, CNCC, IRE, p. 931.

[4] Durkheim, E., (1911), *Jugement de valeur et jugement de réalité*. http://kieranhealy.org/files/misc/durkheim-jugements-text.pdf, p. 6.

[5] Audit Directive, art. 22, § 3.

[6] *Ibid.* art. 24b, § 1.

In France, according to the Code of Ethics for Statutory Auditors[1], auditors "may only accept or continue a statutory audit engagement if they can justify that their professional judgement, the expression of their opinion or the performance of their engagement are not affected". The Code of Ethical Conduct for Romanian Financial Auditors requires the auditor to "possess specific skills, obtained through training and education" and to "adhere to a common code of values and conduct... He must provide professional services with due care, competence and conscience, and has a permanent duty to maintain his professional knowledge and skills at the level necessary to ensure that a client or employer receives a competent professional service based on the latest practices, legislation and techniques"[2].

If professional judgement has become so important, a source of prestige and power but also a source of risk for auditors, it is because of the development of accounting law. Largely produced by professionals, applied by professionals, inaccessible to the general public because of the technical nature of the subjects dealt with, and autonomous, it is logical that this new law should give professional judgement a place of choice in the implementation and interpretation processes. Moreover, professional judgement enables a global law to adapt to local situations, to give shape to a necessary *glocalisation* (globalisation + localization).

We are therefore seeing the development of a form of "legal self-management", self-regulation and self-discipline under the aegis of professional organisations that cooperate with the States but dominate them in technical matters. Sovereignty is shared, "which implies a contradiction in terms"[3]. In the absence of political legitimacy, IFAC and IASB have acquired substantive legitimacy (control over the technical content of standards) and procedural legitimacy (the right to comment on exposure drafts of standards).[4] All that remains is for legislators to validate the standards and, if necessary, to use the coercive powers of governments to enforce them. This was the case with the adoption of IFRS by Article 4 of EC Regulation 1606/2002 of 19 July 2002 *on the application of international accounting standards* and the adoption of International Standards on Auditing (ISA) by article 26 of Directive 2006/43/EC of 17 May 2006 *on statutory audits of annual accounts and consolidated accounts*.

How can the possibility of exercising professional judgement affect the *gap expectation*? The answer is not simple.

On the one hand, the extension of the field left to the auditor's appreciation and judgement is necessary because of increasingly complex regulations. While prescriptive accounting law, made up of simple, general rules, such as the General Chart of Accounts (PCG) in France or, in Romania, the General Chart of Accounts, corresponds perfectly to the needs of millions of VSEs and SMEs, as far as multinational groups are concerned, the complexity of legal arrangements and financial products, and the fact that they are present in multiple jurisdictions, require standardisation based on common principles that must be applied locally on the basis of reasoning. This is where professional judgement comes in. It reduces the *expectation gap* by seeking a relevant response to a given situation. Substance *over* form. This approach has its supporters: it enhances the value of the accounting profession, which can thus demonstrate a skill for which it has a monopoly.

On the other hand, responding to *gap expectations* by seeking relevance rather than regularity, i.e. compliance with a rule, is a source of risk from which the profession seeks to protect itself. To do this, it is standardising procedures in order to transform an obligation of result, which opens the way to disputes, into an obligation of means that can be more easily satisfied by following a commonly accepted audit approach, in accordance with "good practices". The burden of proof is then easier to meet. The auditor's report, which is also standardised, opens up all possible safeguards by referring to "moderate level assurance", the lowest level of assurance, or "reasonable assurance"[5], the highest level of assurance, which does nothing to reassure the public, who are

[1] Annex 8-1 of Book VIII of the French Commercial Code, regulatory part, art. 19-II.

[2] *Codul privind conduita etica a auditorilor financiari*, p. 8 and 10, http://www.evcont-audit.ro, consulted on 20 January 2024

[3] Frydman, B. (2000), "Le droit, de la modernité à la postmodernité". *Réseaux*, n° 88-90, p. 71.

[4] See on this subject: Burlaud, A. & Colasse, B., *op. cit*.

[5] See the definition of these two terms in: International Auditing and Assurance Standards Board, (2022), *Handbook of International Quality Management, Auditing, Review, Other Assurance, and Related Services Pronouncements*, p. 11, https://ifacweb.blob.core.windows.net/publicfiles/2023-10/IAASB-2022-Handbook-Volume-1.pdf

looking for an impossible total assurance, thereby increasing the *expectation gap*.

Once again, therefore, the auditor is faced with a paradoxical injunction: to satisfy a social demand by giving priority to relevance, a vague and subjective concept that is often mentioned[1], but never operationally defined in international accounting law, or to limit his civil and criminal liability by hiding behind procedures that are as standardised as possible and very vague commitments as to results, such as moderate or reasonable assurance. Finding the right balance is a matter of professional judgement...

2.3.3 The audit between self-regulation and the legislator?

If we are to think about self-regulation, as opposed to regulation by public authorities, we first need to think about the vocabulary.

Most authors talk about self-regulation. The *Dictionnaire de l'Académie française* defines regulation as follows: "The act of controlling and correcting the variable data of a system or phenomenon in order to bring them into line with a standard, to maintain their equilibrium value (...) By extension: control of an activity or a complex system with the aim of ensuring that it functions properly and guiding its development (in this usage, regulation is opposed to regulation legislation, which is general, prior, impersonal and permanent). A regulatory authority is one of the institutions entrusted by the State with the task of ensuring this control".[2] The institution in question is, in our case, in France, the High Audit Oversight Authority (H2A) and we must therefore distinguish between regulation and regulation legislation.

The same dictionary defines self-regulation as follows: "Regulation of a machine or function without outside intervention. The self-regulation of blood pressure".[3] Alain Rey adds: "The notion of self-regulation corresponds to the principle of the thermostat and cybernetic machines".[4]

In everyday language, self-regulation is usually used to refer to self-regulation, but this is a poor translation of *self regulation, i*.e. regulation produced by the auditors for the auditors. We will therefore use the term self-regulation. This term is also used in economic and legal language in Romania.

The question now is who should decide the rules governing auditors' practice. There are two opposing models: either self-regulation or regulation by public interest representatives.

Historically, the Anglo-Saxon tradition corresponds to the first model. In the United Kingdom, for example, a Royal Charter delegates to professional bodies the task of organising the accountancy profession in the broad sense, the *chartered accountants*, who are responsible for regalian functions, essentially the production of standards and disciplinary powers, and for activities such as initial and continuing training education. Of course, this model has its advantages. Producing auditing standards requires specialised technical skills that only professionals can have. They have substantial legitimacy to translate "good practice" into standards. But there is one major *caveat*: the possibility of a real or apparent conflict of interest. Isn't a professional organisation more concerned with the interests of its members than with the public interest?

Continental Europe has a more centralised tradition and entrusts professional organisations only with the functions of leading and defending the profession, while standard-setting and initial training education generally remain the prerogative of the State[5]. This is the case in France with the Compagnie Nationale des Commissaires aux Comptes (CNCC), created in 1969 under the supervision of the Ministry of Justice, and in Romania with the Camera Auditorilor Financiari din România (CAFR) under the supervision of the Ministry of Finance[6]. This model also has its advantages: the standards emanate from a representation of the nation and are therefore better able to satisfy the public interest and reduce *gap expectations*. Political legitimacy is unquestionable, which in legal matters is not negligible. The other side of the coin is that

[1] The word "relevance" or "relevant" appears 95 times in the IFRS conceptual framework. Cf: Burlaud, A. & Niculescu, M. (2015), "Informația non-financiară: o perspectivă europeană". *Audit Financiar*, June, pp. 102 - 112.

[2] https://dictionnaire-academie.fr/article/A9R1374

[3] https://www.dictionnaire-academie.fr/article/A9A3294

[4] Rey, A., (dir), (2000), *Dictionnaire historique de la langue française*, Paris, Dictionnaires Le Robert, p. 1881.

[5] As far as initial training education is concerned, the State generally delegates this activity to the universities.

[6] See: Accountancy Europe, (2019), *Organisation of the public oversight of the audit profession in Europe. State of affairs after the implementation of the 2014 audit reform. Survey results*, p. 30 & 70. https://accountancyeurope.eu/wp-content/uploads/2022/12/180319_Organisation-of-the-Public-Oversight-of-the-Audit-Profession-2018-survey-update-.pdf

the technical nature of the profession is harder to grasp. Substantial legitimacy may be lacking when the decision is taken by non-specialists.

Internationally, things are more complicated. IFAC, the global professional organisation under private law, *via* the IAASB for auditing standards and *via* the IESBA for ethical standards, produces standards that are intended to be adopted by all countries in the world but has no binding power. We are dealing here with the Anglo-Saxon model of standard-setting by professionals for professionals. It could not be any other way, since there is no supra-national organisation with competence in this field and the power to compel.

The European Union, in the continental European tradition, regulates the audit profession and audit engagements by means of directives, the Audit Directive and the Sustainability Directive. For operational details, however, the Audit Directive refers to the IAASB's International Standards on Auditing (ISAs), which thus have the force of law in the 27 countries of the European Union.

In practice, we can see that the two models do not exist in a 'pure' state.

In France, draft auditing standards are prepared within H2A by professional members of the CNCC who have technical skills and experience in the field. They rely heavily on ISAs, as required by the Audit Directive. This first stage in the standard-setting process is based on the Anglo-Saxon model. However, these drafts must then be approved by a decree of the Minister of Justice in order to acquire the force of law. This gives rise to a hybrid model combining substantive and political legitimacy. The *expectation gap* should therefore be reduced to a minimum.

In Romania, financial auditing standards are drawn up by the Chamber of Financial Auditors on the basis of international standards and European regulatory requirements in this area.

This hybrid model gradually took hold in international professional organisations following the Enron scandal, the ensuing crisis of confidence and the collapse of Arthur Andersen. The reputation of audit firms had been severely called into question and their independence challenged. There was therefore an urgent need to deal with the sharp criticism of *self-regulation, which* was responsible for a widening of the *expectation gap*. The profession was in danger. As a result, René Ricol, Chairman President of IFAC, radically changed the governance of the profession by creating an independent oversight body in 2005, the *Public Interest Oversight Board* (PIOB), which was more concerned with investors than auditors, to act as a counterweight to the IAASB and the IESBA. Later, in 2024, IFAC created a *Stakeholder Advisory Council* (SAC) to bring a multi-stakeholder perspective to auditing and ethical standards. Social and environmental concerns have come a long way.

In Europe, the 2006 Audit Directive required that the quality assurance system shall be organised in such a manner that it is independent of the reviewed statutory auditors and audit firms and is subject to public oversight[1]. Accountancy Europe, a European professional organisation, published a study in 2019 describing the public oversight mechanisms in 23 European countries[2].

France had anticipated the Audit Directive by introducing into the Financial Security Act (*loi de sécurité financière*) of 1st August 2003 an article creating an independent public authority, the H3C.

In conclusion, while the hybrid model designed to reduce the *expectation gap* by combining technical expertise and the public interest has gained ground, it remains to be seen whether this is purely formal governance of the ecosystem or a genuine tool at the service of all stakeholders. Will supervisors have the time and human resources to influence the choices prepared and examined by the major global firms?

2.3.4 The auditor between responding to social demand and controlling risks?

Companies whose shares are admitted to trading on a regulated market are required to publish a certain amount of information, including their financial statements, management report, including the sustainability report, and the report of the statutory auditor(s). As we have already said, this information is a "public good" in the sense of E. Ostrom, which presupposes two things[3]:

- no possibility of exclusion: the information is freely available to all;
- absence of rivalry in use: as there is no limit to the dissemination of information, the fact that one user

[1] Article 29, § a.
[2] See Accountancy Europe, *op. cit*.
[3] See Burlaud & Pérez, *op. cit.* p. 223.

receives it cannot prevent another user from also receiving it.

As the auditor's report is not information reserved for a select few, such as shareholders, it must satisfy the needs of a wide range of users. But social demand cannot be expressed directly. It results from a consensus within a jurisdiction at a given time, which the legislator translates into legal obligations specifying the list of what must be made public and therefore audited. Theoretically, there should be no *gap expectations*, apart from individual requests not covered by the legal information to which the auditor cannot respond and, legally, does not have to respond because he is bound by professional secrecy.

These individual requests may include requests from the auditor's clients, who may ask for a qualified report made by the auditor not to be included in the final report. Given that the auditor is appointed and remunerated by his client, does he have the possibility of resisting such a request? Theoretically, yes. In practice, however, it can be more complicated, particularly if the request relates to an issue that is open to discussion. It may also be for a defensible reason: should losses be concealed in order to obtain a loan and save the company and its jobs, or should a qualified audit report be disclosed that will inevitably doom the company? The request may also come from a major shareholder wishing to obtain information outside the boardroom. In this case, we are dealing with an *expectation gap* caused by special interests. By responding favourably to such requests, the auditor takes a civil and criminal risk: unequal treatment of shareholders, interference in management, breach of professional secrecy, complicity in presenting untrue accounts, complicity in tax fraud and other offences.

There may also be "collective" *gaps in expectations* which the legislator has been unable or unwilling to fill. For example, before sustainability reporting became a legal obligation, there was already a social demand for information of this nature. The company was not obliged to publish what would have been desired by some of its stakeholders, such as NGOs or employee unions. If this information was given outside the management report, the auditor did not have to audit it and report an audit opinion, thus taking no risk.

In conclusion, we can see that the auditor contributes to the production of a "public good", a creator of confidence, an essential component of the functioning of the economy, but that he can only respond to the demand of all or part of the Company within the legal framework unless he takes a risk that may be significant.

3. The expectation gap: ways and means of reducing it

3.1 Auditors can only be credible if they are independent

The theme of independence has already been addressed, but needs to be explored in greater depth. We will then look at ways of institutionalising auditor independence so that heroism is not the only recourse for avoiding or resolving ethical dilemmas.

3.1.1 What is independence?

Numerous scandals have been blamed on the lack of independence of auditors, the most notorious in recent history being the collapse of Enron and the fall of Arthur Andersen, mentioned above. There is no debate about the need for auditors to be independent. But independence must be defined.

A distinction is made between independence of spirit or fundamental independence and de facto or formal independence or independence in appearance. The IESBA Code of Ethics gives the following definition: "Independence is linked to the fundamental principles of objectivity and integrity. It comprises:
(a) Independence of mind – the state of mind that permits the expression of a conclusion without being affected by influences that compromise professional judgment, thereby allowing an individual to act with integrity, and exercise objectivity and professional skepticism.
(b) Independence in appearance – the avoidance of facts and circumstances that are so significant that a reasonable and informed third party would be likely to conclude that a firm's or an audit or assurance team member's integrity, objectivity or professional skepticism has been compromised"[1].

Some jurisdictions prefer formal independence, which is easier to qualify. All you have to do is list the incompatibilities. For example, you cannot be an auditor of your spouse's or child's business as defined in the Civil Code. But formal ignorance ignores, for example, the

[1] IESBA (2009), *Code of Ethics for Professional Accountants*, § 120.15 A1.

bonds of friendship that can be just as strong as family ties. Where does friendship begin? Where does it end? Independence of mind is obviously what counts, but its perimeter is not the same as that of formal independence.

In France, the Code of Ethics for Statutory Auditors defines independence as follows: "Statutory auditors must be independent of the person or entity to which they provide an engagement or service. They must also avoid placing themselves in a situation that could be perceived as compromising the impartial performance of their engagement or service. These requirements apply throughout the duration of the engagement or service, both when it is being performed and when it is not[1].

In Romania, the Code of Ethical Conduct for Financial Auditors refers to independence of reasoning and independence in appearance, the definitions of which are identical to those given by the IESB[2].

3.1.2 Independence requires skills

Professional skills can be a protection against the risks of loss of independence. They may be technical and scientific or relate to attitudes that have an impact on independence and are therefore described in most auditor training standards.

3.1.2.1 Technical and scientific skills

As with all regulated professions, given that they perform public service functions (doctors, architects, chartered accountants, statutory auditors, etc.) and that the asymmetry of information does not allow for the normal functioning of regulation by the market (the customer does not have the technical and scientific knowledge necessary to assess the quality of the service provided by the professional), the regulatory authority stipulates that access to the profession is reserved for people who have passed a knowledge test.

The IESB has published the *International Accounting Education Standards* (IES)[3].

In 1984, the European Union published the 8th Directive on Statutory Audit, which requires auditors to undergo theoretical, practical and continuous training. Articles 10 to 13 of the current Audit Directive set out these requirements. Depending on the country, this obligation may take different forms: examinations delegated to professional organisations bodies according to a rather liberal model (Ireland, on the model of Great Britain or the United States), delegated to universities (Germany, Italy, Spain) or organised according to a hybrid model combining national diplomas organised by the State and university diplomas deemed equivalent (France, Romania).

The Sustainability Directive (CSRD), by extending the audit to sustainability reporting, completed Articles 6 and 8 of the Audit Directive. "In order for the statutory auditor to also be approved to carry out sustainability assurance, the examination of professional competence referred to in Article 6 shall ensure the necessary level of theoretical knowledge in the fields relevant to sustainability assurance and the ability to apply that knowledge in practice. At least part of this examination shall be in writing." In Article 8, the following paragraph is added: "In order for the statutory auditor to also be approved to perform sustainability assurance, the theoretical knowledge test referred to in paragraph 1 shall also cover at least the following areas: a) legal requirements and standards for the preparation of annual and consolidated sustainability information; b) sustainability analysis; c) due diligence procedures with regard to sustainability issues; d) legal requirements and assurance standards for sustainability information referred to in article 26a."

These guarantees of technical and scientific expertise are likely to reduce the *expectation gap*.

3.1.2.2 Critical thinking and the exercise of professional judgement

We have already discussed professional judgement above, at § 2.3.2. The International Education Standards Board defines it as follows: "The application of relevant training, professional knowledge, skills and experience commensurate with the facts and circumstances, including the nature and scope of the particular professional activities, and the interests and relationships involved."[4]

[1] *Code de déontologie de la profession de commissaire aux comptes* (Annexe 8-1 du Livre VIII du *Code de commerce* français, partie réglementaire) (2020), art. 5.

[2] *Codul privind conduita etica a auditorilor financiari*, p. 5, http://www.evcont-audit.ro, consulted on 20 January 2024

[3] International Accounting Education Standards Board (2019), *Handbook of International Education Pronouncements*. p. 204.

[4] *Ibid*, p. 145.

Professional judgement must be based on critical thinking or professional scepticism.

The IAESB defines professional skepticism as "An attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud, and a critical assessment of evidence.[1] Professional skepticism *is* one of the skills required by the IAESB's *International Education Standards.*

In the European Union, the Audit Directive states: "Member States shall ensure that, when the statutory auditor or the audit firm carries out the statutory audit, he, she or it maintains professional scepticism throughout the audit, recognising the possibility of a material misstatement due to facts or behaviour indicating irregularities, including fraud or error, notwithstanding the statutory auditor's or the audit firm's past experience of the honesty and integrity of the audited entity's management and of the persons charged with its governance.

The statutory auditor or the audit firm shall maintain professional scepticism in particular when reviewing management estimates relating to fair values, the impairment of assets, provisions, and future cash flow relevant to the entity's ability to continue as a going concern."[2]

In France, the Code of Ethics for Statutory Auditors devotes Article 6 to the issue of critical thinking: "In the exercise of his professional activity, the statutory auditor shall adopt an attitude characterised by critical thinking". Article 23, on the conduct of the engagement, states: "The statutory auditor (...) shall be alert to material misstatements due to error or fraud and shall critically appraise the audit evidence on which the audit opinion is based."

Critical thinking and professional judgement help to identify risky situations from the point of view of the auditor's independence and thus reduce the *expectation gap*.

3.2 Institutional mechanisms guaranteeing auditor independence

Technical and scientific skills and a code of ethics are not enough to guarantee an auditor's independence. Institutional mechanisms and governance of the profession as a whole must complement these regulations to strengthen public confidence, which is constantly under threat.

3.2.1 Appointment of auditors

The auditors are appointed or reappointed by the general meeting of shareholders or partners. In other words, only the contributors of equity capital make the decision. In practice, it is the management and the board of directors who make a proposal to the members of the general meeting assembly, which generally approves the proposal in the absence of information to enable a counter-proposal to be made. In large companies, it is almost normal to issue a call for tenders in order to exert pressure on the auditors' fees.

The auditor's independence may therefore be called into question by the fact that he or she may be an employee of the company's management.

This risk is mitigated by two measures:

1. the existence of auditing standards[3] limits the risk that the auditor will not perform certain controls or will limit their scope in order to maintain a certain level of profitability of the assignment, possibly with the complicity of the client's management;
2. the term length of the office appointment. This varies from one jurisdiction to another, sometimes depending on the size of the company or whether it issues securities admitted to trading on a regulated market. In France, the term of office is six years[4] and cannot be terminated by the company. The company's disproof of the statutory auditor or the statutory auditor's request for a review to resign must be the subject of a court decision. This important protection ensures strong independence. In Romania, the term length of office the appointment is aligned with the provisions of Regulation (EU) No 537/2014 of 16 April 2014 on specific requirements for the statutory audit of public interest entities, article 17 of which states that "Neither the initial engagement of a given statutory auditor or audit firm, nor that engagement combined with any renewed engagements, may last in total more than ten

[1] *Ibid.*
[2] Art. 21.
[3] International Auditing and Assurance Standards Board (IAASB) (2022), *Handbook of International Quality Management, Auditing, Review, Other Assurance, and Related Services Pronouncements*
[4] French Commercial Code, art. L821-44.

years". The Romanian Statutory Audit Law provides for the possibility of extension to 10 years with a maximum duration of 20 years when a procurement procedure is carried out in accordance with art. 16 paras § (2) to (5) of Regulation (EU) no. 537/2014.[1]

3.2.2 Auditor rotation

In order to avoid an almost automatic renewal of auditors and the risk of a form of complicity with the management of client companies, most countries have introduced a rotation requirement, which is a determining factor of independence. At the end of their term of office, auditors will not be tempted to 'negotiate' their renewal, as they will be obliged to make way for a colleague. While the advantage is clear, rotation also has a disadvantage. The new auditor will not have the same knowledge of the client as his predecessor, which generates a cost both for the auditor (acquiring knowledge) and for the client's accounting and financial departments (information to be provided).

The professional organisations were generally not in favour of introducing a rotation obligation that would put members of the profession in a competitive situation.

IAASB auditing standards do not deal with the rotation of mandates. The issue is addressed in the IESBA Code of Ethics, which provides for a maximum term of office of 7 years for public interest entities only. When the auditor is a legal entity, rotation applies only to the partner in charge of the file[2]. Thus, firm X may remain auditor of company Y for an unlimited period, provided that every 7 years there is a change of signatory engagement partner.

The Audit Directive takes up this provision without really specifying it further. In order to reinforce the independence of auditors of public-interest entities, the key audit partner(s) auditing such entities should rotate. To organise such rotation, Member States should require a change of key audit partner(s) dealing with an audited entity, while allowing the audit firm with which the key audit partner(s) is/are associated to continue being the statutory auditor of such entity.

In France, the Commercial Code has adopted the same provisions, applicable only to public interest entities and bodies making public offerings of securities, but specifying that the term of office must be six consecutive years.

As we can see, the rotation principle is applied *at a minimum*, since it only applies to certain companies and the large firms are able to retain mandates by rotating their partners.

3.2.3 Non-interference in management and the risk of conflicts of interest

Contrary to the practice in Anglo-Saxon countries, which do not distinguish between the professions of chartered accountant and statutory auditor, many European countries have two distinct professional bodies. In the United Kingdom, for example, *chartered accountants* and in the United States and Canada *certified public accountants* belong to the same professional body, whether they are consultants, auditors or employees of industrial or commercial companies or even public organisations. In France, we distinguish between the *Ordre des experts-comptables* (OEC) and the *Compagnie nationale des commissaires aux comptes* (CNCC). In Romania, we have the *Corpul Experților Contabili şi Contabililor Autorizați din România* (CECCAR) and the *Camera Auditorilor Financiari din România* (CAFR).

Because the Anglo-Saxon countries did not make this distinction so clearly, confusion between the two was undoubtedly more common. Once again, it was the bankruptcies of Enron and WorldCom that raised awareness of the risks involved in combining audit and advisory consulting work for the same client. In the United States, a federal law, the Sarbanes-Oxley Act, passed on 25 July 2002, put an end to this practice for listed companies.

The IESBA Code of Ethics has not opted for an absolute prohibition on dual functions. "Before a firm or a network firm accepts an engagement to provide a non-assurance service to an audit client, the firm shall apply the conceptual framework to identify, evaluate and address any threat to independence that might be created by providing that service"[3].

On this point, the Audit Directive is not very restrictive. In the case of self-review or self-interest, it would be appropriate, where necessary to ensure the independence of the statutory auditor or audit firm, for the Member State and not the statutory auditor or audit firm to decide

[1] *Legea nr. 162/2017 din 6 iulie 2017 privind auditul statutar al situațiilor financiare anuale şi al situațiilor financiare anuale consolidate şi de modificare a unor acte normative*, art. 71.
[2] IAESB, art. R540.5.
[3] Art. R600.8.

whether the statutory auditor or audit firm should resign or decline the audit engagement. However, this should not lead to Member States being generally obliged to prevent statutory auditors or audit firms from providing non-audit services to their clients. Regulation (EU) No 537/2014 on requirements for statutory audits of public interest entities is more specific: "A statutory auditor or an audit firm carrying out the statutory audit of a public-interest entity, or any member of the network to which the statutory auditor or the audit firm belongs, shall not directly or indirectly provide to the audited entity, to its parent undertaking or to its controlled undertakings within the Union any prohibited non-audit services in: (follows a list of prohibited services)"[1].

In France, the ban dates back to the creation of the Compagnie des commissaires aux comptes by a decree of 12 August 1969. The French Commercial Code, which includes this decree, is much more categorical than the European Directive. "The statutory auditor is prohibited from providing to the person or entity that has commissioned appointed him to audit its accounts, or to the persons or entities that control it or that are controlled by it (...), any advice or any other provision of services that do not fall within the scope of the duties directly linked to the statutory auditor's mission"[2].

In Romania, Law 162/2017 on statutory audit, requires that when carrying out a statutory audit, "the auditor or audit firm shall take all reasonable steps to ensure that its independence is not affected by an actual or potential conflict of interest or by direct or indirect commercial or other relationships involving the financial auditor or audit firm carrying out the audit, and, where applicable, the network to which they belong (...)."[3] The law lists twelve threats to the auditor's independence, including: financial interests; loans and guarantees; business relationships; family and personal relationships; employment with an audit client; temporary assignment of staff; recent services provided to audit clients; holding a management or directorship position with the audit client; provision of non-audit services to an audit client; reward and appraisal policies; gifts and hospitality; pending or imminent litigation[4].

The limits imposed on the combination of advisory and audit functions now make it possible to avoid a conflict of interest when the advisory role leads to conclusions that are contrary to those of the audit role and to increased responsibility on the part of the auditor. The ban reduces the *expectation gap*.

3.2.4 Quality control

The purpose of the controls carried out by the professional organisation or its supervisory body on audited firms and client files is to ensure that the trust placed in statutory auditors by the markets, users of the accounts and all stakeholders is justified.

The IAASB standards do not deal with external quality control of auditors' files as part of a peer review.

The European Union has introduced external quality control. "Regular inspections are a good way of ensuring that statutory audits are of a consistently high quality. Statutory auditors and audit firms should therefore be subject to a system of quality assurance which is organised in such a way as to be independent of the audited entities. (...) Member States may organise the quality assurance system in such a way that each individual auditor must be subject to a quality assurance review at least every six years." "Member States shall ensure that effective systems of investigations and sanctions are in place to detect, correct and prevent inadequate performance of the statutory audit. "Regular inspections are a good means of achieving a consistently high quality in statutory audits. Statutory auditors and audit firms should therefore be subject to a system of quality assurance that is organised in a manner which is independent from the reviewed statutory auditors and audit firms (...)[5]. Member States may organise the system of quality assurance in such a manner that each individual auditor is to be subject to a quality assurance review at least every six years. Member States shall ensure that there are effective systems of investigations and sanctions to detect, correct and prevent inadequate execution of the statutory audit."[6]

[1] Regulation (EU) No 537/2014 of the Parliament and of the Council of 16 April 2014 *on specific requirements for the statutory audit of public interest entities*, art. 5, para. 1.
[2] French Commercial Code, art. L822-11, § 2.
[3] *Legea nr. 162/2017 din 6 iulie 2017 privind auditul statutar al situațiilor financiare anuale şi al situațiilor financiare anuale consolidate şi de modificare a unor acte normative,* art. 21.
[4] *Idem*, art. 22.
[5] Audit Directive, recital 17.
[6] *Ibid*, art. 30 §1.

In France, periodic audits are carried out on all registered statutory auditors. Firms holding mandates for public interest entities are audited at least once every three years, and other firms every six years. In accordance with article L.821-1 of the French Commercial Code, the H2A is responsible for supervising all audits and issuing recommendations for follow-up.[1] In the event of non-compliance, the H2A may take legal action against the statutory auditor.

In Romania, the *Autoritatea pentru supravegherea publică a activității de audit statutar*/Autorité de contrôle public de l'activité d'audit statutaire (ASPAAS) is responsible for supervising the statutory audit of accounts, as well as supervising the activity of auditors, audit firms and the Chamber of Financial Auditors of Romania (CAFR)[2]. Its missions are: to improve the quality of statutory audit; to enhance the professionalism of financial auditors and audit firms; to supervise statutory audit activity in the public interest, in accordance with the requirements of European Union and other relevant regulations; and to ensure the effectiveness of its own work in the field of statutory audit.

Audits of audit firms and audit files have made a major contribution to improving the quality of work, even though some professionals complain of excessive formalism. In this sense, the *expectation gap* has narrowed.

3.2.5 Joint statutory auditors

The existence of joint auditors is far from being a general rule. The IAASB standards refer to the possible existence of joint auditors in relation to consolidated financial statements. "Where joint auditors conduct the group audit, the joint engagement partners and their engagement teams collectively constitute the group engagement partner and the group engagement team."[3] (International Standards on Auditing).

The Audit Directive also refers to the possibility of several auditors for consolidated accounts, but does not make this an obligation. "For the purposes of this Directive, the following definitions shall apply: (...) group auditor means the statutory auditor(s) or audit firm(s) carrying out the statutory audit of the consolidated accounts."[4]

In France, following the introduction of joint statutory auditors by the Decree-Law of 8 August 1935, and the Order 2005-1126 of 8 September 2005 on statutory auditors amending the Commercial Code[5], persons and entities required to publish consolidated financial statements must appoint at least two statutory auditors. This wording explicitly allows for the possibility of appointing more than two statutory auditors. Their mission relates only to the consolidated accounts. In Romania, Law 162/2017 on statutory audit also refers to the possibility of more than one auditor for consolidated financial statements.[6]

The presence of two statutory auditors reduces the risk of complicity with the parent company's management and increases the independence of the auditors, thereby helping to reduce the *expectation gap*.

In conclusion, institutional mechanisms, the way auditors are appointed, the rotation of mandates, the prohibition on interfering in the client's management, external quality control by peers or an independent authority and joint auditing of consolidated accounts significantly reduce the risks of loss of independence that could cast doubt on a public service mission.

3.3 Extending the auditor's remit to meet the gap in expectations

The public is asking for 100% assurance that the financial statements are true and fair, which is obviously not possible since audits are carried out on a test basis, targeting areas of risk. But they want even more: does the company comply with laws and regulations? is it viable? does it respect social and environmental commitments? In other words, the public is calling for a broadening of the auditors' remit beyond an opinion on the financial statements alone.

[1] See on this subject: *Décision du Haut Conseil du Commissariat aux Comptes* nº. 2009-04, relating to the periodic controls to which statutory auditors are subject. Delegation of the performance of periodic controls and procedures. https://www.h3c.org/wp-content/uploads/2020/06/2009-04.pdf

[2] *Legea nr. 162/2017 din 6 iulie 2017 privind auditul statutar al situațiilor financiare anuale şi al situațiilor financiare anuale consolidate şi de modificare a unor acte normative,* art. 72.

[3] IAASB *Handbook*, p. 26.

[4] Audit Directive, art. 2.

[5] French Commercial Code, art. L823-2-2.

[6] *Legea nr. 162/2017 din 6 iulie 2017 privind auditul statutar al situațiilor financiare anuale şi al situațiilor financiare anuale consolidate şi de modificare a unor acte normative*, art. 33.

3.3.1 Disclosure of suspected criminal offences and the fight against money laundering and terrorist financing

A distinction must be made between the disclosure of criminal acts on the one hand and the fight against money laundering and the financing of terrorism on the other, although the objective is the same: to have a dissuasive effect on financial crime.

3.3.1.1 Disclosure of alleged criminal acts

It is not a general rule that the auditor must disclose alleged offences to the public prosecutor, i.e. the judicial authorities. It is a matter for the Member States. Neither the ISAs nor the Audit Directive deal with this subject.

European regulations do not cover the disclosure of criminal acts, except in the case of money laundering and terrorist financing.

In France, the obligation to disclose criminal acts has a long history, dating back to the decree-law of 8 August 1935, published after a series of resounding politico-financial scandals, including the Stavisky affair in 1933. This obligation has now been incorporated into the French Commercial Code. "When the statutory auditor concludes that the accounts contain material misstatements resulting from fraud likely to be classified as a criminal offence, he shall disclose the facts to the public prosecutor".[1] The statutory auditor "shall report to the next general meeting assembly or meeting of the competent body any irregularities or inaccuracies discovered in the course of his work and shall disclose to the public prosecutor any criminal offences of which he has become aware, without his liability being incurred as a result of such disclosure".[2] If he fails to do so, the statutory auditor is liable to five years' imprisonment and a fine of €75,000. This refers only to alleged criminal acts detected in the course of the audit, which excludes, for example, a traffic offence committed by the company director. The word "supposed" that we have added is important. The statutory auditor does not have to qualify the offence; he reveals a doubt relating to facts that may be classified as criminal offences. The public prosecutor will be responsible for classifying them as a crime, misdemeanour or offence and will decide what action to take (prosecution or dismissal). The statutory auditor is not obliged to systematically seek out allegedly criminal acts, but has a duty of vigilance.

Finally, the existence of such facts does not automatically lead to disclose a qualified report or a negative assurance on the annual accounts.

Romanian regulations are fairly succinct in this area. Law 162/2017 on statutory audit refers to Article 10 of Regulation 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements for the statutory audit of public interest entities, which requires "a description of the assessed risks of material misstatement, including the risks of material misstatement due to fraud" and International Standard on Auditing ISA 240 "The auditor's responsibilities in relation to fraud in an audit of financial statements".

3.3.1.2. Combating money laundering and terrorist financing

Money laundering is defined as the use of the economic and financial system to benefit legally from the proceeds of illicit activities. According to the OECD, this represents over 2000 billion dollars per year worldwide, i.e. six times Romania's GDP, or 2/3 of France's GDP.

As we said in relation to the disclosure of criminal offences, the ISAs are not intended to interfere with national criminal law. They simply refer to the possibility of auditors becoming involved in the fight against money laundering and the financing of terrorism. "In some jurisdictions, law or regulation may restrict the auditor's communication of certain misstatements to management, or others, within the entity. Law or regulation may specifically prohibit a communication, or other action, that might prejudice an investigation by an appropriate authority into an actual, or suspected, illegal act, including alerting the entity, for example, when the auditor is required to report identified or suspected non-compliance with law or regulation to an appropriate authority pursuant to anti-money laundering legislation. In these circumstances, the issues considered by the auditor may be complex and the auditor may consider it appropriate to obtain legal advice."[3]

The Audit Directive does not address these issues, which are covered by a separate directive: Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the *prevention of the use of the financial*

[1] French Commercial Code, art. L 823-15,§ 31.
[2] *Ibid*, art. A823-27-1, § 40.
[3] IAASB, *Handbook of International Quality Management, Auditing, Review, Other Assurance, and Related Services Pronouncements*, ISA 450, § A11.

system for the purpose of money laundering and terrorist financing. It applies in particular to statutory auditors and also to accountants in public practice. "Suspicious transactions should be reported to the Financial Intelligence Unit (FIU), which acts as a national centre responsible for receiving, analysing and communicating to the competent authorities reports of suspicious transactions and other information relating to possible money laundering or terrorist financing."[1]

In France, Order 2009-104 of 30 January 2009 requires chartered accountants In France, Order 2009-104 of 30 January 2009 requires accountants and statutory auditors to report suspicious transactions to Tracfin, an intelligence service under the authority of the Ministry of the Economy, Finance and Industrial and Digital Sovereignty. It contributes to the development of a healthy economy by combating clandestine financial circuits, money laundering and the financing of terrorism[2]. Statutory auditors are not obliged to systematically investigate such transactions, but they do have a duty of vigilance, depending on the risks involved. The declaration, whether written or oral, is confidential, as some of these transactions may still be in progress. The statutory auditor is not liable for it. Failure to report suspicions may result in disciplinary action by the H2A and/or criminal penalties.

In Romania, Law no. 129 of 11 July 2019 on the prevention of money laundering lists auditors and in public practice among the entities obliged to report suspicious transactions, on pain of administrative penalties from the competent authorities.[3]

In conclusion, we can see that the auditors are once again quasi auxiliaries of justice and contribute to a public service mission. If it's not the traffickers' *gap expectations* that is shrinking, it's the public's one.

3.3.2. Preventing business failures

We are a long way from a Darwinian conception of business demography. Rather, we are talking about a multi-stakeholder vision of the company, in line with the doctrine of General de Gaulle in France. Shareholders, employees, creditors and other stakeholders are obviously interested in the survival prospects of the entity concerned. There is a strong public demand for an expert, outside view of a company's health and future. Beyond the losses suffered by those who have a contractual relationship with the entity, the negative externalities can be just as significant. For example, the closure of a large factory in a small or medium-sized town can threaten an entire employment area.

The preparers of the financial statements must, of course, ensure that the company is a *going concern* in order, in particular, to carry out impairment tests on certain assets, and the statutory auditors must give their opinion on this going concern. However, information about a possible risk of insolvency does not reach shareholders until the general meeting assembly called to approve the accounts, i.e. several months after the event, which is often too late.

Neither international standards nor European business law address the possibility of a procedure that prioritises prevention through a whistleblowing procedure initiated by the auditor.

In France, following a major wave of business failures in the early 1980s, the legislature took two measures to prevent rather than cure... too late: the publication of forecasts and the early warning procedure. This was the aim of the Act law of 1st March 1984 on the *prevention and resolution of business difficulties*, updated by the *Business Safeguard Act* (loi de sécurité financière) of 26 July 2005.

On the one hand, companies (trading companies, economic interest groupings, etc.) are required to produce forecasts as soon as they have more than 300 employees on permanent contracts or pre-tax sales of more than €18 million. The documents to be provided are as follows: situation of realisable and available assets and current liabilities, projected income statements prepared on a half-yearly basis, cash flow statement and projected financing plan, written report on the development of the company by the Board of Directors or the Management Board. The statutory auditor must: if necessary, draw the attention of management to the absence of forecast documents or, if they exist, check their relevance and consistency. He is not required to give an assurance on these documents. How can he give an audit opinion on the future? Only if he has observations to make, such as unrealistic sales forecasts, will he draw up a report to be sent to the social and economic committee (the body committee where the company's management consults negotiates with employee representatives, the equivalent of the

[1] Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the *prevention of the use of the financial system for the purpose of money laundering and terrorist financing*. Recital 29.

[2] https://www.economie.gouv.fr/tracfin

[3] *Legea nr. 129 din 11 iulie 2019 pentru prevenirea şi combaterea spălării banilor şi finanțării terorismului, precum şi pentru modificarea şi completarea unor acte normative*, art. 5 & 26.

Betriebsrat in Germany) and to the general meeting assembly of shareholders.

In addition to information, the law provides for action. In the event of doubt about the company's viability, it entrusts the statutory auditor, the social and economic council, shareholders representing more than 5% of voting rights or the president of the commercial court with the task of triggering an alert. In the event of doubt, the statutory auditor must:

1. inform the directors of the reasons for its his action, set out the facts likely to jeopardise the continued operation of the business and ask them what measures they intend to take to rectify the situation;
2. if, and only if, the response is not convincing, it he must refer the matter to the Board of Directors and again raise the question of the measures decisions to be taken;
3. if, and only if, the response is not convincing, he must refer the matter to the General Meeting assembly of Shareholders and submit a report;
4. if, and only if, the response is not convincing, he must refer the matter to the President of the Commercial Court.

This step-by-step approach is gradual and, at least until the general meeting assembly, remains internal to the company, so that publicising the difficulties does not exacerbate them. The statutory auditor is obliged to initiate a warning procedure and has no choice if the situation is alarming. He is not liable for doing so. On the other hand, if he wrongly fails to do so, he may be held civilly liable, provided that it can be shown that there is a causal link between the auditor's negligence and the deterioration in the company's financial situation.

There are no such regulations in Romania.

Obviously, the auditor cannot guarantee that the audited entity will not run into difficulties, only that the forecasts made are reasonable. The early warning procedure can also speed up the decision-making process, which can restore the company's financial equilibrium, which is a significant advantage. This is already a considerable response to the *expectation gap*.

3.3.3 Auditing sustainability information: a mission for the future

This new development in the field of auditing deserves to be developed at greater length because of its importance and novelty.

The fact that a desire for infinite growth in a world that is by definition finite poses a problem is nothing new. Indeed, the idea of the impossibility of unlimited growth was already theorised by Thomas Malthus in 1798[1]. He contrasted the natural growth of the population, doubling every 25 years, with the limited land available to feed this population, exacerbated by decreasing soil yields, as the best land had already been farmed. After the industrial revolution, in 1972, the Club of Rome, which brought together scientists, economists, civil servants and industrialists from 52 countries, published the *Report on the Limits to Growth*.[2] With the first oil crisis in 1973, the prospect of an imbalance between real or perceived needs and the availability of various resources became obvious to a broad public whose daily lives were affected. The trend accelerated from the 2000s onwards. In 2012, according to article 11 of the Treaty on the Functioning of the European Union (TFEU): "Environmental protection requirements must be integrated into the definition and implementation of the Union's policies and activities, in particular with a view to promoting sustainable development". The commitment to sustainable development is also becoming a priority for the United Nations, which adopted the *2030 Agenda for Sustainable Development* in 2015. In 2018, the European Union adopted the *Action Plan: Financing Sustainable Growth*, the *Green Pact for Europe,* which represents the Union's new growth strategy, and the *Strategy for Financing the Transition to a Sustainable Economy*. Much of the world of politics, science and public opinion shares the same concerns. But to move from words to action, legal and management tools had to be devised.

The European Union is at the forefront of this battle, publishing a series of legally binding texts on sustainability and the obligation to provide information in this area:[3]

---

[1] Malthus, T. R. (1992), *Essai sur le principe de population*, Flammarion. First edition in English: 1798.

[2] Delaunay, J. (1972), *Halte à la croissance*, Fayard

[3] Directive 2014/95 *on the publication of non-financial and diversity-related information by certain large undertakings and certain groups*; *The Financial Services Sustainability Disclosure Regulation 2019/2088; Delegated Regulation (EU) 2021/2139 supplementing Regu*lation (EU) 2020/852 with *the technical examination criteria for determining under which conditions an economic activity can be considered to contribute substantially to climate change mitigation or adaptation and whether that economic activity does not cause significant harm to any of the other environmental objectives;* Delegated Regulation (EU) 2021/2178 supplementing Regulation (EU) 2020/852 *with details*

These texts have an impact on financing mechanisms, but also on the various markets (goods and services market, labour market, public procurement, etc.) and on public opinion, which is sensitive to the image of companies and therefore obliges them to publish sustainability information. Of course, to ensure that this information is not manipulated with a view to greenwashing, an external and independent validation assurance system has been entrusted to auditors, first and foremost financial auditors. Very briefly, the audit stages are as follows:

1. Who can audit sustainability information? Independent third-party organisations (ITOs) or independent assurance service providers (IAPs), including financial auditors. To be approved, they must complete an eight-month training period with an IAP registered on the list of approved professionals and then pass an examination.
2. What are the different stages of the engagement? The stages are much the same as for accounts financial audits: drafting an engagement letter, familiarising themselves with the file, gathering data, planning the engagement, determining materiality thresholds, checking the regularity, fairness and accuracy of the information and, finally, drafting a report expressing the auditor's opinion.
3. What are the specific features of a sustainability audit? They relate, of course, to the nature of the information produced. The taxonomy regulation[1] sets out the criteria that activities must meet to be eligible for the sustainable activities category, then to be considered as aligned, and finally the performance indicators. In addition, the scope of the information to be published is much broader, since it is not limited to the consolidated group but includes all the activities making up the upstream and downstream value chain.
4. What level of assurance is required? Given the complexity, variety and volume of sustainability information, the auditor can only provide a moderate level assurance. In other words, the auditor can only express an opinion on the concordance, consistency, relevance and plausibility of the information.

The ecological transition and respect for human rights are major social issues that are generating a demand for verifiable and verified information so that we can sanction the relocation of activities that are the most harmful to the environment or that use a workforce subject to conditions that violate their rights (child labour, forced labour, etc.). Auditors play, and will continue to play, an essential role in the implementation of a societal policy, responding to an *expectation gap* that goes beyond the economic sphere.

Conclusion

An increase in the *gap expectations gap* would be poisonous for the company, because a company cannot function without confidence. For a long time, auditing was limited to financial statements and served only the interests of providers of capital, shareholders or creditors. Confidence has made it possible to attract savings to invest and create industrial, service or commercial companies, some of which have gradually conquered the world. But this is the most visible part of the iceberg. SMEs also use auditors to take out bank loans. Employees have also taken an interest in the economic performance of "their" company, because their jobs depend on it. They have access to audited financial statements and, in France, can call on the assistance of an chartered accountant in public practice to interpret them, as part of the company's social and environmental committee[2]. So, little by little, the Western world has

of the content and format of the information to be published by undertakings subject to Article 19a or Article 29a of Directive 2013/34/EU on their environmentally sustainable economic activities, and the method to be followed to comply with that information requirement; Commission Delegated Regulation (EU) 2023/2486 of 27.6. 2023 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by *laying down technical criteria for the examination to determine the conditions under which an economic activity qualifies as an activity which makes a substantial contribution to the sustainable use and protection of water and marine resources and to the transition to a circular economy, the prevention and control of pollution or the protection and restoration of biodiversity and ecosystems and to determine whether the economic activity concerned causes significant damage to any of the other environmental objectives* and to amend delegated Regulation (EU) 2021/2178 *as regards the publication of specific information on those economic activities;* Directive (EU) 2022/2464 *amending Regulation (EU) 537/2014 and Directives 2004/109/EC, 2006/43/EC and 2013/34/EU as regards the publication of sustainability information by companies*; The *European Sustainability Reporting Standards* (ESRS) of the European Financial Reporting Advisory Group (EFRAG).

[1] Delegated Regulation (EU) 2021/2139

[2] In France, article 47 of the law of 22 March 1941 stipulates that the social and environmental committee may be advised by an accountant in public practice. Today, the works council is known as the social and environmental committee.

become aware of the social and environmental responsibility (SER) of companies. Of course, it all starts with a company contract that brings together investors in a project housed in an entity with legal personality. But it interacts with an environment in which it finds opportunities for development, while at the same time bringing it a degree of prosperity and, in particular, jobs. In this way, it benefits free of charge from infrastructure, public services (security, education, health, etc.) and natural resources. On the other hand, this company also poses risks to its environment by destroying jobs, undermining the social balance or consuming non-renewable natural resources.

This realisation has led to an evolution in the theory of the company, which has gone from being contractual to multi-partner and institutional. Partners, including non-contracting partners, politicians, NGOs and the general public, are all demanding accountability and information on sustainability, which must be audited if it is not to be confused with advertising for lobbying or public relations purposes.

We see that today value chains involving hundreds of companies around the world, including SMEs, have acquired an economic weight greater than that of many nations' governments. The Covid crisis showed that they have such power that they effectively control public health policy. No State can accept that such responsibility should be in the hands of a few managers of large companies and, let's stress this point, the myriad of SMEs in their value chain. The same applies to security, defence, town and country planning, education and so on.

By responding to these requests from the public, the auditor will establish himself as an independent third party capable of creating a high level of confidence, enabling a calm dialogue between stakeholders on an unquestionable and undisputed basis. The auditor has a social responsibility.

BIBLIOGRAPHY

1. Albouaini, K., (2011), Contribution à la compréhension de l'Audit Expectation Gap dans le cadre d'une gouvernance d'entreprise élargie: le cas du commissariat aux comptes dans le contexte français. *Thesis, Université de Pau et des pays de l'Adour*.
2. Autorité des marchés financiers (2022), *Guide des relations entre l'Autorité des marchés financiers et les commissaires aux comptes*, https://www.amf-france.org/sites/institutionnel/files/private/2022-05/Guide_des_relations_AMF_CNCC_CAC_2022.pdf
3. Bensadon, D., Praquin, N. & Touchelay, B. (2016), Dictionnaire historique de comptabilité des entreprises, *Villeneuve d'Ascq, Presses universitaires du Septentrion*.
4. Bensadon, D., Burlaud, A., Crespin, P., Favereau, F., Lepeve, V., Mikol, A. & Romon, F. (2023), Comptabilité et audit. *Paris, Foucher*.
5. Budiarto, A. Y., (2022), Audit Expectation Gap Debates: To What Extent Audit Expectation Gap Defence Auditors?, *Business Economic, Communication, and Social Sciences*, vol. 4, no. 1, January, pp. 47-57.
6. Burlaud, A. & Dahan, L., (1985), Global Productivity Surplus Account"*, International Journal of Accounting Education and Research*, volume 21, no. 1, pp. 159-169.
7. Burlaud, A. & Simon, C., (2003), Comptabilité de gestion. *Paris, Vuibert*, (https://halshs.archives-ouvertes.fr/halshs-00616600v2/document)
8. Burlaud, A. & Colasse, B. (2010): Normalisation comptable international : le retour du politique ? *Comptabilité, contrôle, audit,* tome 16, volume 3, December, pp. 153-175. Translated into English: "International Accounting Standardisation: Is Politics Back?" in *Accounting in Europe*, volume 8, no. 1, June 2011, pp. 23-47.
9. Burlaud, A. & Niculescu, M. (2015), Non financial information: a European perspective", *Audit Financiar*, June, pp. 102 - 112.
10. Burlaud, A. & Niculescu, M. (2016), "Accounting standards that appeal to the professional judgment: a threat or an opportunity for the accounting profession". *Audit Financiar* no. 144, December, pp. 1325-1334.
11. Burlaud, A. & Hoarau, C. (2016), Définition et évolution de la notion d'intérêt public

Europeen. At: https://shs.hal.science/halshs-04455775

12. Burlaud, A., (2022), Comptabilités, l'empire des nombres. *Caen, EMS*.
13. Deepal, A. G. & Jayamaha, A., (2022), Audit expectation gap: a comprehensive literature review, *Asian Journal of Accounting Research*, vol. 7, no. 3, pp. 308-319.
14. Degos, J.-G., (1998), Histoire de la comptabilité. *Paris, PUF*.
15. Garlot Falguières, E., (2021), Financial Scandals in France: Historical construction of responsibility and Outcomes*, PhD thesis, Université Paris-Dauphine*.
16. Geiger, M. A., (1994), Investor Views of Audit Assurance: Recent Evidence of the Expectation Gap, *Journal of Accountancy*, January, pp. 60-66.
17. Hieu, P. D. & Hoai, N. T., (2022), A new method for measuring audit expectation gap, *Accounting,* no. 8, pp. 367-374.
18. Hottegindre, G. & Lesage, C., (2009), Un mauvais auditeur: manque d'indépendance et/ou de compétence? Étude exploratoire des motifs de condamnation des commissaires aux comptes surle marché de l'audit en France, *Comptabilité Contrôle Audit*, tome 15, no. 2, pp. 87-112.
19. International Auditing and Assurance Standards Board (IAASB), (2020), *Narrowing the Gap*, September.
20. International Auditing and Assurance Standards Board (IAASB), (2021), *Fraud and Going Concern in an Audit of Financial Statements.* Discussion paper, January.
21. International Auditing and Assurance Standards Board (IAASB) (2022), *Handbook of International Quality Management, Auditing, Review, Other Assurance, and Related Services Pronouncements*, Volume 1., At: https://ifacweb.blob.core.windows.net/publicfiles/2023-10/IAASB-2022-Handbook-Volume-1.pdf
22. Jedidi, I., (2013), Contribution à la comprehension de l'expectation gap en audit. *PhD thesis, Université Paris-Dauphine*.
23. Kamau, C. G., (2022), Considerations for bridging the Audit Expectation Gap: A Desk Review, *African Journal of Commercial Studies*, volume 1, no. 1, pp. 1-8.
24. Laufer, R. & Burlaud, A., (2022), "Légitimité", *in* Benzerafa *et al.* (dirs), *Encyclopédie du management public*, Paris, IGPDE.
25. Mikol, A., (1999), Les audits financiers. Comprendre les mécanismes du contrôle légal, *Paris, Editions d'Organisation*
26. Niculescu, M. & Burlaud, A. (2023), From Non-Financial Disclosure to Sustainability Reporting: New Challenge for Financial Analysts and Auditors, *Audit Financiar* no. 4, 2023, pp. 685-714.
27. Niculescu, M. & Burlaud, A. (2023), La déclaration de durabilité : recherche d'un nouveau rapport entre les règles de droits et la réalité sociale", *Revue Interdisciplinaire Droit et Organisations*, no. 6, pp. 13-46, At: https://www.revue-rido.com/wp-content/uploads/RIDO-6-Revue-Interdisciplinaire-Droit-et-Organisations-2023-BP.pdf
28. Olatunde, S. P., (2023), Fraud and the Audit Expectation Gap, *Honors Thesis, Georgia Southern University*.
29. Olojede, P., Erin, O., Asiriuwa, O. & Usman, M., (2020), Audit Expectation Gap: an Empirical Analysis, *Future Business Journal*, vol. 6, no. 1, pp. 1-12.
30. Power, M., (1997), The Audit Society: Rituals of Verification, *Oxford University Press*. Translated into French, (2005), La société de l'audit. L'obsession du contrôle*, Paris, Editions La Découverte*.
31. Quick, R., (2020), The audit expectation gap: A review of the academic literature, *Maandblad voor Accountancy en Bedrijfseconomie*, vol. 94, no. 1, pp. 5-25.
32. Salehi, M., (2011), Audit expectation gap: Concept, nature and trace, *African Journal of Business Management*, vol. 5, September, pp. 8376-8392.
33. Thiéry-Dubuisson, S., (2009), L'audit*, Paris, Editions La Découverte*.
34. Vu, V. H., (2008), Les dimensions de la performance des cabinets d'audit légal, *Thesis, Université Paris Est Créteil*
35. Zola, E. (1891), L'Argent, *Paris, Charpentier*.

European directives and regulations

1. Commission Delegated Regulation (EU) 2021/2139 of 4 June 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to climate change mitigation or climate change adaptation and for determining whether that economic activity causes no significant harm to any of the other environmental objectives
2. Commission Delegated Regulation (EU) 2021/2178 of 6 July 2021 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by specifying the content and presentation of information to be disclosed by undertakings subject to Articles 19a or 29a of Directive 2013/34/EU concerning environmentally sustainable economic activities, and specifying the methodology to comply with that disclosure obligation
3. Commission Delegated Regulation (EU) 2023/2486 of 27 June 2023 supplementing Regulation (EU) 2020/852 of the European Parliament and of the Council by establishing the technical screening criteria for determining the conditions under which an economic activity qualifies as contributing substantially to the sustainable use and protection of water and marine resources, to the transition to a circular economy, to pollution prevention and control, or to the protection and restoration of biodiversity and ecosystems and for determining whether that economic activity causes no significant harm to any of the other environmental objectives and amending Commission Delegated Regulation (EU) 2021/2178 as regards specific public disclosures for those economic activities
4. Commission Delegated Regulation (EU) 2023/2772 of 31 July 2023 supplementing Directive 2013/34/EU of the European Parliament and of the Council as regards sustainability reporting standards
5. Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2005 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing
6. Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC
7. Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts
8. Directive 2014/95/EU of the European Parliament and of the Council of 22 October 2014 amending Directive 2013/34/EU as regards disclosure of non-financial and diversity information by certain large undertakings and groups
9. Directive (EU) 2022/2464 of the European Parliament and of the Council of 14 December 2022 amending Regulation (EU) No 537/2014, Directive 2004/109/EC, Directive 2006/43/EC and Directive 2013/34/EU, as regards corporate sustainability reporting
10. Regulation (EU) 2019/2088 of the European Parliament and of the Council of 27 November 2019 on sustainability-related disclosures in the financial services sector
11. Regulation (EU) 2020/852 of the European Parliament and of the Council of 18 June 2020 on the establishment of a framework to facilitate sustainable investment, and amending Regulation (EU) 2019/2088 (Taxonomie)

List of acronyms

ACCA	Association of Chartered Certified Accountants
AICPA	American Institute of Certified Public Accountants
RFLC	Camera Auditorilor Financiari din România
CECCAR	Corpul Experților Contabili şi Contabililor Autorizați din România
CNCC	Compagnie nationale des commissaires aux comptes
CSRD	Corporate Sustainability Reporting Directive
EFRAG	European Financial Reporting Advisory Group
GIE	Economic Interest Grouping
H2A	High Audit Authority
H3C	Haut conseil du commissariat aux comptes
IAASB	International Auditing and Assurance Standards Board
IASB	International Accounting Standards Board
CICA	Canadian Institute of Chartered Accountants
IES	International Education Standard
IESB	International Education Standards Board
IESBA	International Ethics Standards Board for Accountants
IFAC	International Federation of Accountants
IFRS	International Financial Reporting Standard
ISA	International Standard on Auditing
OECD	Organisation for Economic Co-operation and Development
NGO	Non-governmental organisation
OTI	Independent third-party organisation
PIOB	Public Interest Oversight Board
SMES	Small or medium-sized business
PSAI	Independent insurance services provider
VSES	Very small company