Dear Mr. Siong,

1 - The French accountancy bodies, CNCC and OEC, are pleased to provide you with our comments on the IESBA exposure draft "Responding to a Suspected Illegal Act" "the ED" in the IESBA Code of Ethics for professional accountants ("the Code").

2 - Please note that Mrs. I. Sapet, although she is a member of our Ethics Committee did not take part in our response as she is currently a member of the IESBA task force on illegal act.

3 – Our response contains a set of general comments. Given the content of those comments, we came to the conclusion that there was no need to respond to the specific questions.

**General comments**

4 - First of all, we would like to highlight that the membership of the two French accountancy bodies comprises exclusively members in public practice. And therefore, we have no responsibility regarding the professional conduct of professional accountants operating in business or industry.

5 - Secondly, we draw your attention on the fact that in France, according to a long lasting legislation, statutory auditors are subject to a disclosure requirement. When a statutory auditor in the course of an audit becomes aware of a breach of the law, subject to criminal sanctions, he is required by law to report the fact to the Public Prosecutor, and, if it applies, to Tracfin (anti money laundering supervisory authority).
Moreover, depending on the nature of the audited entity, the auditor has also a reporting obligation to certain regulatory bodies such as: AMF (The French security regulator) and the ACP (banking supervisory authority). According to this legal framework, the Public Prosecutor is the only appropriate authority which has the right to determine if the act is illegal or not. Any failure of reporting in due time can be subject to criminal sanctions. On the one hand, such a reporting framework is very stringent and demanding for the auditor. On the other hand, it is also protective for the auditor essentially because it avoids any risk of legal liability. Such a mechanism is workable and practicable only because it is prescribed and limited by a clear legal framework. Please note also that although a breach of law (subject to criminal sanctions), identified by the auditor, is discussed with the appropriate level of management, such breach must be reported to the Public Prosecutor.

6 - This reporting obligation (to the Public Prosecutor) applies exclusively to auditors and not to professional accountants in public practice providing services to non-audit clients. Therefore, compliance with the provisions proposed in the ED would give rise to a violation of confidentiality (professional secrecy) which in our country is subject to criminal sanctions. Given that the Code is not a legal instrument and hence cannot provide for protection with respect to the professional accountant liability, there might be also serious potential consequences if after disclosure of a suspected illegal act, no occurrence of an illegal act is determined.

Finally, one cannot ignore that the proposed disclosure requirement suggested by the ED would create serious competition issues between the professional accountant being subject to the provisions of the Code and other services providers outside of the profession.

7 – From a more general perspective, the Code contains fundamental principles which apply to all professional accountants. Accordingly, one can reasonably ask: is the Code the right place to do more than encouragement? Moreover, we draw your attention on the fact that professional accountants are confronted regularly with money laundering as explained above for which in many countries (and definitely for all member states in the EU) there is already major and very prescriptive legislation.

8 - A right or an obligation to report in the Code would create a very significant interaction with national laws and would lead to a very complex application particularly in cross-border situations. There are many layers of confidentiality for example ethical, data protection, banking secrecy, legal privilege which can vary very significantly from country to country and may create different consequences particularly in terms of legal liability of breaching these.

9 - We also disagree with the notion of public interest as a criteria related to the right of disclosure. It is not clear what the public interest is all about. The recently issued IFAC framework is not particularly helpful in this respect. We do not think that auditors and accountants can be "judges" of the public interest in the case of suspected illegal acts based on which external reporting to public authorities is to be performed. We strongly believe that auditors and accountants are prepared to contribute to the public interest but not to judge on it.
10 - We would like to highlight that when a reporting requirement is prescribed by law, the reporting circumstances are well defined and accompanied by confidentiality and legal liability protection. This is not the case in the ED. Only reporting requirements are prescribed but not the confidentiality and liability protection.

11 - Consequently, for all the rationale exposed above, we believe that the provisions proposed by the ED are extremely complex and to some extent could create difficult and dangerous situations for the accountancy profession.

We recognize and agree that auditors should play a specific role regarding illegal acts, but, according to our experience, such matters should be dealt with in legislation or regulation and not in an international Code of Ethics for professional accountants. Professional accountants in public practice should only comply with International Standards on Auditing or other applicable audit standards and legal requirements imposed in their respective jurisdiction. Accordingly, we believe that IESBA should publish a policy statement encouraging law makers to include these matters into their own domestic legislation. Indeed, such legislation could provide for the protection of the auditor against allegations of breach of confidentiality, legal liability and also mitigate any potential physical threats. All essential safeguards which cannot be offered by a Code.

Response to specific questions

Please refer to our general comments above.

We remain,

Yours sincerely,

Agnès Bricard
President of the CSOEC

Claude Cazes
President of the CNCC