

International Ethics Standards
Board for Accountants (IESBA)
Submitted via the IESBA website

and via e-mail to:
kensiong@ethicsboard.org

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Dear Mr. Siong,

The French Institutes « Compagnie Nationale des Commissaires aux Comptes » (CNCC) and « Conseil Supérieur de l'Ordre des Experts-comptables » (CSOEC) are pleased to provide you with their comments on the IESBA exposure draft " **Responding to Non-Compliance with Laws and Regulations** " in the IESBA Code of Ethics for professional accountants ("the Code").

Please note that Mrs. I. Sapet, although she is the Chair of our Ethics Committee, did not take part in our response as she was a member of the IESBA task force on non-compliance with laws and regulations.

Our response is twofold: it comprises general comments and answers to some of the questions raised by the ED.

If you have comments or queries regarding our response, please do not hesitate to contact us.

Yours sincerely,

Denis LESPRIT
President of the CNCC

Philippe ARRAOU
President of the CSOEC

Envoyer obligatoirement toute correspondance aux deux adresses ci-dessous :

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General Comments

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

Secondly, both Institutes draw your attention to the fact that in France, according to a long lasting legislation, statutory auditors are subject to a compulsory disclosure requirement. When a statutory auditor in the course of an audit becomes aware of non-compliance with laws, he has to report the fact to the general assembly of shareholders of the company. Moreover, depending on the nature of the audited entity, the auditor has also a reporting obligation to certain regulatory bodies such as the AMF (The French security regulator) and the ACPR (banking and insurance supervisory authority). Finally, the auditor can also become aware of a breach of the law which he considers could be subject to criminal sanctions; in such a case he is required by law to report the fact to the Public Prosecutor, and, if applicable, to Tracfin (anti money laundering supervisory authority).

According to the legal framework in France, the Public Prosecutor is the only authority which has the right to determine if the act is illegal or not and should be sued. Any failure in reporting in due time by the statutory auditor of the identified breach of law 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 if done in good faith. 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 and eventually stopped, such breach must be reported to the Public Prosecutor.

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. For the statutory auditors, 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. The French Institutes consider that national laws and regulations, and not IESBA, should deal with breaking auditor's client confidentiality. Given that the IESBA Code of ethics 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 the auditor having disclosed a suspected illegal act to an appropriate authority without being required to do so by law, it eventually appears that there was in fact no illegal act.

Both Institutes would like to highlight that they support the position taken in the ED that the scope of laws and regulations covered by the NOCLAR requirements should absolutely be similar to the one provided by ISA 250 and that they therefore suggest that the list of examples mentioned in paragraph 225.6 be deleted in order to avoid any confusion as to the current scope.

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 service providers outside the profession.

Both Institutes are globally supportive of the provisions proposed in the ED but would like to raise concerns on the two following issues (see below our answers to the questions):

- The list of the examples in the paragraph 225.6 to be deleted in order to avoid any confusion about the exact scope : see our comment mentioned above.

- The interpretation of the paragraph 225.30 as we don't see neither which other actions may be needed to achieve the professional accountant's objectives nor how to be totally compliant with the requirements of section 210 when withdrawal is the only available course of action.

Answers to questions

General Matters

1. Where law or regulation requires the reporting of identified or suspected NOCLAR to an appropriate authority, do respondents believe the guidance in the proposals would support the implementation and application of the legal or regulatory requirement ?

No, both Institutes do not agree.

2. Where there is no legal or regulatory requirement to report identified or suspected NOCLAR to an appropriate authority, do respondents believe the proposals would be helpful in guiding PAs in fulfilling their responsibility to act in the public interest in the circumstances ?

As an overall comment, both Institutes believe that the ED contains substantial improvements compared with previous versions provided by IESBA. We particularly welcome the last sentence of paragraph 225.27 which states very clearly that "disclosure would be precluded if it would be contrary to law or regulation". Both Institutes understand the logic which is contained in the guidance suggested to PAs (professional accountants) concerning their responsibility to act in the public interest. We recognize the importance of public interest for the credibility of the accountancy profession. However there is currently no clear definition or even no common understanding of the notion of "public interest". We consider the definition proposed by § 225.4 not to be useful, being too large or somehow indefinite by including "or the wider public", a term which is also used in §225.7. We are concerned that without robust criteria as to what constitutes the public interest allowing the PA to determine whether the reporting of a particular individual suspected illegal act is or is not in the public interest will lead to inconsistent application. Subjective and cultural differences cannot be properly dealt with in an international code and will probably lead, too, to inconsistent application.

We also draw your attention to the fact that all our members are currently subject to a reporting obligation under certain conditions exclusively in the case of suspicion of money laundering, terrorist financing and proceeds of crimes.

Accordingly any other type of disclosure (but the ones specifically applicable to the statutory auditors) in our country would constitute a serious breach of professional secrecy which can be subject to criminal sanctions (cf. our general comments above).

3. The Board invites comments from preparers (including TCWG), users of financial statements (including regulators and investors) and other respondents on the practical aspects of the proposals, particularly their impact on the relationships between :

(a) Auditors and audited entities;

(b) Other PAs in public practice and their clients; and

(c) PAIBs and their employing organizations.

NA

Specific Matters

4. Do respondents agree with the proposed objectives for all categories of PAs ?

Yes, both Institutes agree but, as mentioned above in our general comments, we draw your attention to the fact that our answer covers only professional accountants in public practice. We would also like to draw your attention to the fact that the statistics footnoted in the ED for France concerning the number of suspicious activity related to money laundering and reported to the appropriate authority do not reflect the reality of disclosure since they do not take in to account the reporting by the statutory auditors to the public prosecutors.

5. Do respondents agree with the scope of laws and regulations covered by the proposed Sections 225 and 360 ?

Both Institutes strongly believe that it is essential to have a scope equivalent to that of ISA 250 (cf. our general comments above).

We suggest deleting the list of examples in paragraph 225.6 which may create confusion as to which laws or regulations fall under category a) or b) for the purpose of applying ISA 250.

We also suggest deleting the last sentence of paragraph 225.7 in order to stick to the content of ISA 250.

The proposed Section 360 is not applicable to us (please refer to our general comments above).

6. Do respondents agree with the differential approach among the four categories of PAs regarding responding to identified or suspected NOCLAR ?

As mentioned above, the CSOEC and the CNCC comprise exclusively members in public practice, therefore we have no responsibilities for PAs acting in different positions.

We agree with the fact that it would be difficult to create a disclosure requirement in connection with the provision of non-audit services to a non-audit client. This type of engagement is a contractual arrangement for which it is difficult to argue that the Public interest is as much at stake as for an audit engagement.

Concerning non-audit services, we understand that, in the context of this particular ED, it includes all other assurance engagements or non-assurance services, by reference to § 81 to 83 of the Explanatory memorandum. Since the term "audit" used in IESBA Code includes also "Review assurance engagements" such as "Review historical financial statements", we are of the opinion that the scope related to the provisions for professional services other than audits of financial statements (§ 225.33 to 225.48) should be further clarified and made consistent with the related section in the Explanatory memorandum.

7. With respect to auditors and senior PAIBs:

(a) Do respondents agree with the factors to consider in determining the need for, and the nature and extent of, further action, including the threshold of credible evidence of substantial harm as one of those factors ?

In the last paragraph 225.21, we are questioning the notions of "credible evidence" and "potential substantial harm" which may be clear in certain jurisdictions but with no exact equivalent in others. In addition, we would suggest limiting the notion of "substantial harm" to the actual financial consequences of the NOCLAR.

(b) Do respondents agree with the imposition of the third party test relative to the determination of the need for, and nature and extent of, further action ?

Yes, both Institutes agree.

(c) Do respondents agree with the examples of possible courses of further action? Are there other possible courses of further action respondents believe should be specified ?

This question is not applicable in France.

(d) Do respondents support the list of factors to consider in determining whether to disclose the matter to an appropriate authority ?

Consistent with our previous comments to limit the “substantial harm” to “actual financial consequences of the NOCLAR”, we suggest to delete the third bullet in 225.27 first paragraph.

8. For PAs in public practice providing services other than audits, do respondents agree with the proposed level of obligation with respect to communicating the matter to a network firm where the client is also an audit client of the network firm ?

Yes, both Institutes agree with the provisions as stated.

9. Do respondents agree with the approach to documentation with respect to the four categories of PAs ?

Yes, both Institutes agree.

Request for General Comments

In addition to the request for specific comments above, the Board is also seeking comments on the matters set out below:

(a) PAIBs working in the public sector— Recognizing that many PAIBs work in the public sector, the Board invites respondents from this constituency to comment on the revised proposals and, in particular, on their applicability in a public sector environment.

NA

(b) Developing Nations—Recognizing that many developing nations have adopted or are in the process of adopting the Code, the Board invites respondents from these nations to comment on the proposals, and in particular, on any foreseeable difficulties in applying them in their environment.

NA

(c) Translations—Recognizing that many respondents may intend to translate the final pronouncement for adoption in their environments, the Board welcomes comment on potential translation issues respondents may note in reviewing the revised proposals.

Both bodies reiterate their comments on the fact that “credible evidence” and “substantial harm” are closely linked to certain legal systems and therefore without any clear equivalent in others.