

OBSERVATION MEMO | IESBA

June, 12-16/New York

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Disclaimer: The observer applies her own judgment in identifying and communicating matters of public interest and due process at the meeting and is responsible to the PIOB Technical Committee in doing so and in reporting on the observation. The views and opinions expressed in this Observation Memo are personal and belong solely to the observer and do not necessarily reflect or preclude the PIOB Board's position.

Summary of key issues from the meeting:

The IESBA meeting was held at the IFAC offices, in New York, USA, with almost all Board Members and attendees in person.

The meeting was chaired by the IESAB Chair. She introduced the new Board member, Hector Lehuede, and also welcomed the new technical advisors. She made a detailed explanation about the many outreach activities in which IESBA has been represented in the last quarter. She made a comment on the need to read the Public Interest issues mentioned by the PIOB in its last report.

The meeting run smoothly and allowed for the very active participation of all attendants, not only the TFs Chairs and members and the staff, but all Board members and observers.

The main topic of the agenda that covered the 3 first days of the meeting was Sustainability. It was divided into 3 agenda items (2 to 4) following the previous structuring of the topic. Two workstreams, WS 1 dealing with independence standards for sustainability assurance for both Professional Accountants (PAs) and non-PAs (agenda item 3), and WS2 dealing with ethics standards for sustainability assurance for both PAs and non-PAs, and for sustainability reporting only for PAs (agenda item 4). As a consequence, unlike the rest of the Code, which is for a Profession (Accountants), the new Part 5 will not be based on a Profession, but on a Service (Sustainability

Reporting & Assurance). In addition, item 2 in the agenda was devoted to some common issues to both WS.

The agenda was as follows:

- 2 – SUSTAINABILITY (COMMON ISSUES)
- 3 – SUSTAINABILITY WS1
- 4 – SUSTAINABILITY WS2
- 5 – USE OF EXPERTS
- 6 – TAX PLANNING AND RELATED SERVICES
- 7 – PIE ROLLOUT
- 8 – IAASB - IESBA COORDINATION
- 9 – TECHNOLOGY (WG UPDATE)

Before starting with the agenda, there was a very interesting presentation, followed by some questions, by an institution devoted to ESG or sustainability reporting: AccountAbility. They have been working on the field for more than 20 years and have issued some standards aiming at preparing the information, which implies helping to identify key stakeholders and engage them, as well as the verification of the resulting information. They are monitoring the developments at the international level, ISSB and IAASB, although not so much about the EU, neither from the reporting perspective, EFRAG, nor from the assurance, the EC. One representative has been included in the Sustainability Reference Group (see below).

Agenda Item 2 - SUSTAINABILITY (COMMON ISSUES)

Objective of the Agenda Item

To receive a presentation on the common issues (item 2) and specific proposals from the two sustainability workstreams (items 3 and 4), after the 4 roundtables that have taken place during March and April in Paris, Sydney, Singapore and New York, and the several discussions of the task forces.

As for the timeline of the sustainability project:

- December 2023 approval of an ED
- June/September 2024 analysis of comment letters
- December 2024 approval of the standard by the Board

IESBA Key discussion points

A summary of the participants in the roundtables and the main conclusions were presented at the meeting. There was a varied participation of the several categories of stakeholders: Accounting Firms (25%), PAOs (16%), Regulators (14%), Users/Investors (9%), non-PAs (8%), Preparers/TCWG (6%) and others. Not surprisingly the profession was the largest group.

After the roundtables, the consultation with the CAG and the application of the PIF, the Task Force (TF) proposal is Option B (see agenda paper item 2A), which was well received by the Board, and after some comments and clarifications received full support. It implies having a new Part 5 in the Code to capture ethical and independence standards for both PAs and non-PAs, this is a profession agnostic approach towards assurance, while Parts 1 and 2, for PA in business, will be revised to accommodate the ethical dimension of sustainability reporting but for PAs only. This made some members ask about how the Code could be enforced to non-PAs, and as the IESBA Senior Director said, the idea is that the quality of the standards will make others to follow it, if prepared with an open mind, so it can be used by non-PAs. Members also asked whether the name of the Code should be changed to consider non-PAs practitioners, but this is not considered at the moment.

During the roundtables, the IESBA sought expressions of interest from non-PAs, with expertise in sustainability, to be part of the 10-member Sustainability Reference Group (SRG), that was to be organized immediately. It should serve to complement the current members of the task forces, providing input and assisting in implementation, and allowing to test the proposals/standards in companies. 29 candidates showed an interest, and following the established terms of reference, 7 have been already selected with diversity in terms of gender, background, and geographical area. One is still pending, and the other 2 seats have been reserved 1 to Africa and 1 to Latin America, due to the need to incorporate these regions, in which no roundtables were organized. Details about the candidates for these seats were provided in an executive session at the end of the second day.

It was also mentioned that IESBA and IAASB are participating in ISO working groups.

Agenda item 2B was presented in which changes in the definitions are made to accommodate sustainability in both reporting and assurance.

PIOB Observer's comments

I highlighted the tremendous effort made during the last months to achieve the proposal for the revised Code, which is obvious given the volume of agenda papers for the meeting. I said that it is in the public interest that standards for non-PAs that provide sustainability reporting and assurance are at the same level as those for PAs. PIOB understands that now the immediate focus is on the independence and ethics for assurance (PAs and non-PAs), but reporting is also relevant to avoid greenwashing, and although at the moment this is limited to PAs, it is in the public interest not to forget the role of non-PAs in the reporting.

Agenda Item 3 - SUSTAINABILITY WS1

Objective of the Agenda Item (independence)

To present the draft Part 5 of the Code, to be applied by PAs and non-PAs when performing attestation assurance engagements. This is where a party other than the sustainability assurance practitioner measures or evaluates the underlying subject matter against the criteria, which is in line with the scope in ISSA 5000. Part 5 refers to both ethics and independence, but WS 1 only deals with independence (WS2 with ethics).

IESBA Key discussion points

The initial proposal of the task force was that Part 5 would be used for sustainability assurance engagements of heightened public interest (HPI), while other engagements should consider Part 4B of the Code. The HPI concept in principle referred to those cases where:

- "1 a) The assurance is provided on sustainability information reported in accordance with a general-purpose framework; and*
b) the sustainability information is:
- i) publicly available to support decision-making by investors or other stakeholders; or*
 - ii) required to be provided in accordance with law or regulation.*

2. Law or regulation determines a sustainability assurance engagement as being of heightened public interest".

However, this was not very well received by Board members that questioned the meaning and implementation of this new category HPI. Is it referred to the engagement or to the company/client? Some commented that the several uses of the expression PI could create confusion. And some even questioned if a definition for HPI was needed at all. Other questioned if having publicly available information was needed, as stated in b) i). Other required some examples and application guidance.

The TF members concluded that a different name, if any, should be used instead of HPI, and were committed to come back with new ideas about it and its application. In fact, the last day, the TF made a brief comment on some changes already considered and stated the expression HPI had been eliminated. Thus, in essence when the conditions indicated in the paragraph above are met, then Part 5 should be applied (otherwise Part 4B should be followed).

There were also some comments on the request to have a Quality Management System to perform a sustainability assurance engagement. And it was argued that this is in line with ISSA 5000. It was agreed to keep it, although it could happen that there are no other frameworks for non-PAs comparable to ISQM 1, and, in that case, nothing could be required.

The determination of a PIE within the context of Part 5 also attracted some discussion. In particular, if a different definition to the one used for audit engagements should be adopted. After some comments, it was decided to keep it as it is and leave the local bodies to change it if they wish.

PIOB Observer's comments

I said that the discussion had been very relevant, and, as mentioned by others, the proposal changes the focus of attention of the assurance engagement from the company/client to the nature of the engagement. I also added that in the PIOB's view, words and in particular new words have to be very clear, and HPI does not seem to be clear enough. Moreover, in this case, it is especially relevant because it conditions which part of the Code should be applied. And I also added that to me the expression used is not very adequate as it is qualifying the public interest concept.

I also questioned if the last paragraph was needed at all, since it could be argued that it is covered by b) ii).

Another aspect that was subject to discussion was the approach towards group sustainability engagements. It should be noted that the IAASB has decided to deal with this issue later on. It could happen that ISSA 5000 extends the reporting boundary and captures the value chain. This issue connects with the “use of experts” project that is dealt by another task force.

The IESBA Chair mentioned that she agreed with the inclusion of group sustainability engagements, and thus go forward, but this should be decided by the Board. A member mentioned that the CSRD (Corporate Sustainability Reporting Directive) requires consolidated sustainability reporting. Other members also expressed their support, but suggested being cautious since changes could be needed. Other insisted in coordination with the IAASB.

PIOB Observer’s comments

I said that we are working in a moving field, since neither the reporting frameworks are clear yet, nor the assurance standards completely designed. And, in this particular case, IESBA is ahead of the IAASB, PIOB hopes that coordination between both Boards will continue being a priority, although this does not mean IESBA should stop and wait, but be flexible.

Other aspects discussed

Two other aspects that were widely discussed at the Board meeting were turnover and fees. As for turnover there was general agreement that the two engagements, audit and sustainability assurance, should be considered together to compute the 7 years. Moreover, after some questions and comments, it was clarified that not only those assurance engagements under Part 5 but also under Part 4B should be considered for that purpose. Thus, conforming amendments should be made in the Code in Part 4A. Regarding the fees, this is the proportion of fees received from a client that could be seen as a threat for independence, there were some comments/questions on the Table presented (page 37 in Agenda item 3 WS update), which suggested the Table is not

clear enough (in fact the last day a new Table was presented). In the case of PAs should the fees due to sustainability assurance be considered in the same way as those coming from other non-auditing services (NAS)? Or alternatively like audit fees? Would there be any difference if the assurance fee is due to an engagement classified in Part 4B or in Part 5?

Some members intervened to justify the current distinction between audit vs non-audit services, while others were not so much in favor of that. The TF considered that since audit is a regulated activity the distinction audit vs non-audit should be maintained. But it was suggested and agreed to include in the consultation a question about how the categories should be: audit vs non-audit, or audit and sustainability assurance engagement vs other services.

There were other comments on terminology, such as engagement partner replaced by engagement leader, although Part 5 only refers to leader, and Part 4B uses partner, and it was mentioned that it should be clarified that both have the same meaning. Some questioned the word “leader” that could capture individuals with other abilities, different to assurance. Despite that issue was acknowledged, there is not a good replacement for partner within the non-PAs, and it was agreed to coordinate with the IAASB.

Then the presenter turned into materiality in relation to sustainability information, and the inclusion to a reference to the double materiality concept. I made the comment that by considering impact materiality, the reference to user’s needs is not obvious, and it would be good to refer to stakeholders and even potential affected stakeholders (as in the European Sustainability Reporting Standards).

PIOB Observer’s comments

I took the floor to confirm whether classifying the engagement on Part 4B or Part 5 would not affect the interpretation. I said that in my view if a principle-based approach is followed, that should be the case, and the treatment should be the same as for turnover (no difference). I also questioned whether it makes sense to add sustainability assurance engagements to other non-assurance services (NAS). I added that in my view, the consultation is a good decision.

Objective of the Agenda Item (ethics)

To present the Board the proposal to focus on the service, sustainability reporting and assurance, rather than on the practitioner, since the services can be provided by several professions. The TF recommends setting ethics standards for sustainability assurance engagements, no matter if the practitioner is a PA or a non-PA, while when dealing with preparation of sustainability reporting only considering ethics for PAs. That means that the WS is working in the development of Part 5, to be used by non-PAs (with WS1) and in the adaptation of Part 2, which is oriented to PAs. Besides, it should be kept in mind that there are other assurance engagements included in Part 4B that are provided only by PAs.

IESBA Key discussion points

The TF Chair introduced the issue and highlighted that although the Code refers to the ethics of the profession, regarding sustainability there is not just one profession. Although the Code has several parts, stakeholders do not know which part the practitioner follows, and this might add difficulties for them to understand the content of their reports.

The proposal received support from some members. It was stated that those parts of the Code that are oriented to PAs (1, 2 and 3) should be presented as applicable on a voluntary basis by non-PAs, more than as non-applicable (see page 12, Agenda item 4A), with the aim of encouraging non-PAs to use them. There were some questions about not having ethics standards for non-PAs dealing with reporting, particularly due to the risk of "greenwashing". A suggestion was made to expand the text in Part 5 to refer to the risk of "greenwashing" when providing the assurance. A comment was made on importing Part 2 in the new Part 5, but that would face the problem of how to enforce the preparation of sustainability information by non-PAs, and there is a problem of time and resources. The general view was to revise Part 2, which is only for PAs, and issuing guidance for non-PAs.

The IESBA Chair mentioned that this is a strategic decision, and it could be concluded that they would need to cover the ethics of reporting for non-PAs, although it might not be feasible at the moment.

Board members that intervened expressed the convenience to focus on assurance and leave reporting. Besides one argued that most of the big companies affected by sustainability reporting will have the information prepared and assured by PAs, thus it is not critical to cover reporting by non-PAs.

PIOB Observer's comments

I congratulated the Board for the very interesting and fruitful discussion, and added that although reporting goes before assurance, assurance gives credibility to the information. In my view, from a public interest perspective, Part 5 that is also for non-PAs could have a big "warning" about the risk of "greenwashing", which is a real danger that reporting faces and assurance practitioners will encounter.

Other aspects discussed

The drafting of new Part 5, and the changes in Part 2 were discussed with the aim of illustrating the most relevant aspects. In particular, the inclusion of section 270. *Pressure to breach fundamental principles*, in new Part 5. The TF agreed on that. It was also considered convenient to add some text related to 230, *Acting with sufficient expertise*, since Part 5 is going to deal with non-PAs, although not all members agreed. The TF will continue the discussions and will try to have a new text to be circulated to the Board.

The treatment of NOCLAR was also discussed: should examples be expanded to consider other laws and regulations related to sustainability? Board members made comments on the communication between sustainability assurance practitioner and auditor. Should something be added about voluntary commitments related to environmental or societal issues? Should there be changes in Part 3, and not only mentioned in Part 5? Should the last paragraph in page 42 (about the materiality of an audit matter in relation to a component of a group for the materiality of the group) be eliminated when referring to assurance engagements as suggested by the TF? Some members did not agree with that. Some suggested to use the different word such as "significant" to replace "materiality." Further discussion at the TF level will continue in July.

There were also discussions about relevant concepts such as: sustainability information (not entirely consistent with the one of the IAASB), sustainability assurance practitioners, and professional activity; about this, the Chair suggested to add a

reference to sustainability reporting, although not all members agreed. Further work will be done to introduce some of the comments made by Board members, in particular to better capture the notion of impact materiality in the definition of sustainability information.

It is relevant to mention that in the view of some Board members, the review of the Code has been too much devoted to adapting the current provisions (referred to the audit service and accounting) to a different field, sustainability reporting and assurance, while there are some relevant differences in the characteristics and objective of the new field that would have needed a different approach.

The Board was asked if they agreed with revising Part 2 to contemplate ethics in sustainability reporting only for PAs, and having Part 5, ethics and independence in the sustainability assurance engagements for PAs and non-PAs.

Most of the members intervened to agree with the TF proposal, although expressed some doubts about having an Ethics Code that only covers ethics entirely for one group of practitioners, PAs? How to move forward?

PIOB Observer's comments

I commented that since Part 5 is also for non-PAs, all changes that are made to have a less-auditor-focused language would be welcome, and in that sense, the discussion about the NOCLAR has been very illuminating. The help of the SRG would be very important since they have been chosen from the non-PA group of stakeholders. That said since some provisions are inspired in Part 3 there should be also consistency in the language for PAs. I also mentioned the importance of coordination with the IAASB. I also mentioned that although it is understandable the solution that has been achieved, all the Code for PAs and part also for non-PAs, in fact results a hybrid code that contains independence and ethics standards for both PAs and non-PAs when engaged in sustainability assurance, while ethics in reporting is only for PAs.

Although it is true that, as someone mentioned, another way of looking at it is that the Code has been expanded to include a new service to be provided by non-PAs.

Agenda item 5 – USE OF EXPERTS

Objective of the Agenda Item

The objective of this project is to address ethics and independence considerations concerning the use of experts in the preparation, audit, assurance of financial and sustainability information.

In this agenda item, the TF aimed to present the Board the responses received in the roundtables, and provide proposals included in the strawman for further deliberation.

IESBA Key discussion points

There were different views at the roundtables. Some participants asked about the need of the project, and the need of independence for external experts, while others considered it was needed especially in sustainability reporting and assurance. Some participants emphasized the importance of independence and argued that if practitioners are not seen as independent this should be disclosed.

It is understood that external experts perform work that the PA uses only if she/he considers it is adequate, hence external experts cannot directly influence the outcome of the engagement and are not part of the audit team (AT). However other experts/individuals might influence the outcome of the engagement, and are included in the AT, and in other assurance and review engagements they will be in the Assurance and Review Team. Among other individuals, the Code refers to "*(ii) Those who provide consultation regarding technical or industry-specific issues, transactions or events for the engagement*". In the view of the TF, it is clear that this group can influence because the practitioner is "obliged" to follow the advice.

The TF identified some difficulties with requiring independence to external experts and proposes to incorporate the evaluation of objectivity in Part 3 of the Code, based on Part 4, to allow the PA to decide about the objectivity of the expert. Similarly, this should be applied to sustainability providers. In the TF's view, the engagement practitioner has the ability to decide if the report of an expert is reliable or not and could be used or not.

The CAG Chair joined online for this agenda item and made the point that financial interests should be considered as independence threats. Some other member insisted on that. Why having a different answer if the client hires the expert or if the PA does it? The CAG Chair said that it would be in the public interest to raise the bar.

There was a comment from a Board member about who should support the cost of the determination if the information is or is not reliable, the practitioner or the stakeholders. And to the extent that the independence is not clear, the stakeholders are in a difficult position and support the cost. Thinking of the value chain, this could be very important in sustainability reporting, as well as in assurance. Thus, knowing whether the external experts are independent or not is critical.

Another member referred to the need for independence not only at the individual level, the expert, but at the employer level, due to the pressures she/he might suffer.

The likely lack of external experts in the sustainability field was also discussed, and how to handle the problem. Should the PA or the non-PA use the report of a non-independent expert, or not use it? Or should that condition be disclosed? Members had different views on the convenience to disclose this situation.

A member referred to the need of a due process to clarify what an expert is, and when to use her/his job, but the IESBA Chair replied that the Code already has provisions to help with that, and at the end is the PAs who decides. Other member insisted that the Code is principles-based, and the PA has to decide if using the job of an expert or not. Nevertheless, it is true that in the sustainability field, with the existence of other practitioners, things might be more difficult in the assurance engagements.

The use of several experts in the same engagement could add more difficulties to the case, and it was also discussed at what extent a practitioner could be seen as the "author" of the report, if a large proportion of her/his report is based on external experts, and if, in that case, the client, or those charged with governance (TCWG) should be informed. Some questioned if this section should remain, and others that this could be an issue for small PAs only, and some guidance could be useful.

The IESBA Chair wrapped up the discussion and said that it had been a very interesting one, which shows the project is needed despite the doubts of some roundtable participants. There are strong expectations when PAs and non-PAs use external expert reports, and independence is still an issue.

Board members showed their support to the proposal of the TF, although some doubts remain: Why is the objectivity of the external expert in this project and not in the one on independence? Do they need to look at the independence differently if PIEs or non-PIEs?

Regarding sustainability assurance engagements, the TF Chair clarified that the framework has been designed thinking on Part 5 of the Code, but if it is captured by Part 4B it should apply as well.

PIOB Observer's comments

I made the point that we very much welcome the inclusion of this topic in the IESBA agenda, which was required by the PIOB some time ago, and we consider that additional clarity is still needed. The discussion on the use of the work and objectivity of an expert had been very relevant. I mentioned that at the PIOB we don't see clear the limit between those who provide consultation regarding technical or industry-specific transactions or events for the engagement (included in the Audit Team, and in the Assurance and Review Team) and the external experts. Furthermore, we understand that there could be more problems when dealing with sustainability experts, and the value chain. Since this is critical for independence requirements, we think that it is in the public interest to have a clearer defining line between these concepts, as well as providing guidance and examples. We also recommend integrating more the PIF in the argumentation of this project.

Agenda item 6 – TAX PLANNING AND RELATED SERVICES

Objective of the Agenda Item

To develop a principles-based framework to guide PAs ethical conduct when providing tax planning (TP) and related services to employing organizations and clients.

As for the timeline of the project:

- An exposure draft was published in December 2022
- A full review of the significant comments will be provided in September 2023
- The purpose is approving the final pronouncement in December 2023.

IESBA Key discussion points

The TF Chair explained the comments received in some outreach events that have taken place and made a brief introduction of the 47 comment letters received in the consultation period, most of them, 89%, are from the accounting profession. He mentioned that some commentators questioned why the Code is dealing with the topic, although they gave sensible opinions. The slides provided at the meeting show a summary of the comments received. I mention below some of the concerns discussed.

Some commentators have concerns about definitions, such as tax minimization vs tax efficiency, tax evasion, and about the enforcement of the provisions. The role of the PA in pursuing the public interest was also questioned, could that put PAs at a disadvantage with other professions? What about tax planning provided by other professionals? How to apply it when dealing with cross-border transactions?

Regarding disagreements and documentation, the role of the Board of Directors and TCWG was discussed, and they should be informed. One member mentioned the need to require documentation and increase transparency with external parties, and referred to the PIOB's suggestion on that. It was also mentioned that perhaps it would be good to state in the standard that the PA is expected to act in good faith. There were some comments about the conflict between minimizing tax payments and sustainability, but the TF Chair argued that this is part of a sustainable framework although this is not said.

PIOB Observer's comments

I commented that, as indicated in previous IESBA meetings, and in PIOB briefing memos and observation memos, we think that having the ethical framework that is being proposed for tax planning services provided by PAs goes in the right direction, and meets our recommendations and is in the public interest. I thanked the reference made by one member to the PIOB's suggestion on transparency and communication. I insisted on the need to keep the demands for ethical requirements even if they go beyond those of other unregulated professions, and consequently create some disadvantages for the accounting profession. I also highlighted the need to expand

the contacts with stakeholders since at the moment they have not been very active, at least in terms of sending comment letters. To conclude, in my view it is very good to realize that if everything goes as expected there will be a standard soon.

Agenda item 7 – PIE ROLLOUT

An update of the IAASB PIE project was provided. It aims at determining whether the auditor's report is an appropriate mechanism to enhance transparency about ethical issues on independence applied when dealing with auditing. This will be discussed by the IAASB in the June meeting (next week). The project is aligned with the transparency provision of IESBA, and also with adding a new requirement on communication to TCWG.

The Board was informed about a database released at the end of April, in which the PIE definition in 78 jurisdictions is summarized. This is available in the IESBA website.

I congratulated the staff for having prepared such an interesting document and suggested making more publicity of its existence.

Agenda 8 – IAASB - IESBA COORDINATION

At the moment there are coordination actions regarding several projects, mainly fraud, sustainability, going concern, LCEs, PIEs. A brief summary was made.

Agenda 9 – TECHNOLOGY (WG UPDATE)

An educational session by Danielle Supkis Cheek took place. She made a very interesting presentation on the impact of artificial intelligence (AI) and Chat GPT in the work of the PA.

The working group gave an update of the last activities and asked for confirmation from the Board on the terms of reference of the group.

CONCLUDING OBSERVATION COMMENTS



I congratulated the Board for the very intense week in which several projects had been deeply discussed, although sustainability and the related external expert projects had been those that received more attention. They are extremely relevant from the public interest perspective, and with some additional effort there are no doubts that there will be EDs at the end of the year as planned. I also indicated that due to my scheduled flight, I would not attend the Executive Session since I had to go to the airport.