European Public Interest

Christopher Hossfeld, Yvonne Muller-Lagarde, David Alexander, Moritz Pöschke, Lionel Zevounou

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This final report, written by Christopher Hossfeld and Yvonne Muller-Lagarde, is based on the contributions of members of the research group (listed in the annex). We would like to express particular thanks to David Alexander, Moritz Pöschke and Lionel Zevonou.

Abbreviations

ARC: Accounting Regulatory Committee

EC: European Community

ECB: European Central Bank

ECJ: European Court of Justice

ECOFIN: Economic and Financial Affairs Council

EFFAS: European Federation of Financial Analysts Societies

EFRAG: European Financial Reporting Advisory Group

EU: European Union

FASB: Financial Accounting Standards Board

GAAP: Generally Accepted Accounting Principles

HLEG: High-Level Expert Group

IAS: International Accounting Standards

IASB: International Accounting Standards Board

IASC: International Accounting Standards Committee

ICAEW: Institute of Chartered Accountants in England and Wales

IFAC: International Federation of Accountants

IFRS: International Financial Reporting Standards

IOSCO: International Organization of Securities Commissions

TEU: Treaty on European Union

TFEU: Treaty on the Functioning of the European Union

US-GAAP: United States – Generally Accepted Accounting Principles

EXEXUTIVE SUMMARY

The European public interest is one of the criteria for the EU's adoption of IFRS under Art. 3 no. 2 of Regulation no. 1606/2002: "The international accounting standards can only be adopted if they are not contrary to the principle set out in Article 2(3) of Directive 78/660/EEC and in Article 16(3) of Directive 83/349/EEC and are conducive to the European public interest[1]".

Until the financial crisis of 2008, the European public interest criterion was purely formal and was not actually used when IFRS were endorsed. Following the financial crisis, IFRS are directly questioned as factors aggravating the financial crisis and the issue of European sovereignty over the international accounting standard-setting process is then raised. The Maystadt report (2013) emphasises that accounting standard-setting policy is in the public interest and states that the ARC is the body that should represent the European public interest.

Therefore, the EU's political decision to define the European public interest for the purpose of truly assessing the conformity of international accounting standards with this interest is part of the more general desire to regain European sovereignty in the international accounting standard-setting process. Defining "the European public interest" is therefore of both technical and political interest.

Our study is structured, in addition to an introduction and conclusion, into three parts (chapters 2, 3 and 4).

We first research the existence of a definition at the European level and at the level of European countries (chapter 2). A first result is that the notion of public interest is not defined in European law and that in its application at the European level this interest may correspond to the interests of public institutions but also to private interests. Then, based on the idea of constructing a European definition based on national definitions or at least on common criteria from the different countries, we examine six European countries (Germany, England, Spain, France, Italy, Romania), representing the main civil law and common law countries.

In summary of the country approach, there is a diversity of terminology in the law of the countries examined (public interest, general interest, common good, etc.). Regardless of the term used, no country proposes a definition of its concept, neither in general nor in the field of

[1] As stated in the "Preliminary remarks regarding terminology" we will use throughout this report the term "European public interest" corresponding to the terminology used in the French original version of this report.

financial and accounting regulation. The public interest concepts used are interpreted differently. For example, the public interest in Spain corresponds to the interest of public institutions while in Romania it corresponds to the national interest. The public interest in Italy is a concept applied to administrative procedures or the protection of public goods. Finally, in England, the public interest is mainly used to justify or legitimize the activity of various private or public organizations, and is a suspect notion.

In the end, our analysis by country did not allow us to find either a common concept at the European level or at least common definition or delimitation criteria.

In Chapter 3 we analysed Regulation no. 1606/2002 directly to try to find elements of definition. In order to be able to make a teleological and systemic interpretation of the "public interest" criterion of Regulation no. 1606/2002, we trace the history of the application of IFRS in the EU for the sake of understanding the objectives of this approach. Here, we also analyse how this criterion has been applied in practice in order to possibly extract a definition or implicit elements of definition.

In conclusion, it can be seen that the reference to "the European public interest" is not initially mobilised. The reference appears for the first time in a compromise text from the General Secretariat of the Council. Very quickly, a number of cleavages between countries emerge when it comes to giving content to the expression "public interest". The most likely hypothesis seems to be that the polysemy related to the meaning of public interest has precisely allowed satisfying several important actors in the negotiation of Regulation no. 1606/2002. For France, this has made it possible to give a number of "pledges" to the banking profession and to relay the position of a number of French (and Italian) political leaders who were opposed to a simple mechanism for approving or rejecting IAS. On the contrary, it should be possible to adapt the adoption of an IAS standard to the "specificities" of the European financial market. Finally, the European Commission has seen support for the "public interest" as a means of protecting itself against possible criticism of a mechanism by which the EU has renounced its sovereignty over the transposition of accounting standards borrowed by a totally private standards body and over which Europe exercises only relative control.

The analysis of the origin of the "European public interest" and its theoretical (legal) interpretation shows that the mechanism for adopting IFRS provided for in Regulation no. 1606/2002 and the mobilisation of the "European public interest" served to legitimise a posteriori the idea that IFRS are first adopted in accordance with the interests of the main financial actors in

European markets. The interpretation of the autonomous criterion of "European public interest" must be consistent with the objectives of Regulation no. 1606/2002, namely the harmonisation of financial reporting in order to ensure transparency and comparability of financial statements and thus the efficient functioning of the Community capital market.

Since the creation of the European endorsement mechanism, we can see an extension of activities and scope of analysis. After a first phase in which EFRAG formally assessed only the technical criteria and informally the cost-benefits, impact assessments of a new standard are carried out in the second phase and EFRAG states in its endorsement advice that it has not found (where applicable) any elements that hinder the European public interest. Its reform in 2014 following the Maystadt report has considerably expanded EFRAG's missions. It is now in charge of verifying all the criteria of Art. 3 of the IFRS Regulation, formally providing an impact assessment (including at least a cost-benefit analysis) and, where appropriate, other elements requested by the Commission. While initially the European public interest was considered through purely economic aspects (functioning of financial markets, economic development, among others), its assessment has become "politicized" and recently elements of sustainable development have been added.

Chapter 4 analyses this politicization. The political stakes were highlighted by the financial crisis, which revealed differences between European interests and those of the IASB. Before the crisis, the EU and the IASB shared the economic objectives of transparency and well-functioning markets. After that, the political dimension of accounting sovereignty became more important for the EU while the IASB remained on the economic field.

Today, the European Commission (still) wants to broaden the scope of accounting regulation by including sustainable finance objectives. While we welcome and support these objectives, their inclusion in accounting standards requires some clarification. For example, the objective of promoting long-term investment as an economic objective can be integrated into accounting objectives. With regard to sustainability integrating environmental, social or governance criteria (energy efficiency, employee relations or the composition of the board of directors) into financial decisions, this raises the question of the roles that accounting standards are capable of fulfilling. This means adopting a uni-functional vision of accounting standards (true and fair view) as opposed to a multifunctional vision (true and fair view, financial stability, sustainable development).

Since the European public interest is nowhere defined and can be interpreted very freely by the European institutions - environmental and social aspects are already part of the European public interest today - we do not see the use, let alone the need, to integrate sustainable development directly into the Regulation. On the contrary, we believe it is preferable to leave the criterion vague as it is in order not to limit the flexibility of its political interpretation. Not changing the Regulation would also make it easier to adjust the public interest in the future in the light of new political injunctions, since a simple reinterpretation would suffice.

However, the question of whether an expansion - already underway - of the notion of public interest was desirable was assessed in different ways in our working group. This expansion may be politically desirable, but in the view of some, it is at the expense of the effectiveness and relevance of financial reporting. Originally, (international) accounting standards are developed to give a true and fair view of the company's situation. The desire to achieve other and multiple objectives (financial stability, sustainable development) with the same instrument (financial statements) certainly affects the quality of information. We then recall the Tinbergen rule: One economic policy instrument can serve (effectively) only one objective.

The result of our study is:

1) that there is no European or general (universal) definition of public interest. All members of the research group concluded that there is no definition for their country (including in the accounting field); the same is true in the EU;
2) that the notion contains "interests" to be protected/defended
3) that the notion makes it possible to "legitimize" an action and/or standards
4) that the notion is (therefore) a tool at the service of a policy
5) that it is not necessary - or even politically counterproductive - to define the public interest (precisely)
6) that the question of whether a broadening of the notion of "public interest" with the integration of financial stability and sustainable development is desirable requires a nuanced answer: if it is justified at the political level to be able to use accounting standards as a tool of public policy; it does not seem appropriate from an economic point of view, and more precisely with regard to the main objective of financial information (true and fair view) and its effectiveness.

Preliminary remarks regarding terminology

In our study we use the expression European "public interest" because it corresponds to the vocabulary used in the French version of Regulation no. 1606/2002 and to the call for projects of the Autorité des normes comptables to which we have responded. But it should be noted that other terms may be used in other languages. For example, the English version employs European "public good"[2]. This difference is not the result of a diversity of concepts but "simply" a question of translation[3]. Thus, in some of the working documents that gave rise to the Regulation and were translated into French, the expression may change (common good, general interest, public interest) over time without this apparently representing a change in concept. This linguistic problem is not specific to Regulation no. 1606/2002 but recurrent in European law as EU texts are published and valid in all 24 official languages.[4]

As regards the interpretation of terms translated differently, the TEU and TFEU do not contain provisions. The ECJ refers in its methodology to the Vienna Convention[5], which deals with the interpretation of treaties. Its article 33 regulates linguistic diversity: among other provisions, it stipulates that where a treaty has been authenticated in two or more languages, the text is equally authentic in each language. Applied to our research, it is therefore necessary to disregard the different expressions used in the different languages and they must not influence the interpretation of them at European level (principle of linguistic equality in EU law; Lenaerts/Gutiérrez-Fons (2013); Zedler, 2015).

[2] There is also another difference in the wording between languages. For example, in French, IFRS must "respond" to the public interest, while in English they must be "conducive" to and in Spanish "favorezcan" (favor) the public interest.

[3] For example, Art. 26 para. 2 (c) of the Directive 2006/43/EC on the audit of financial statements also uses the term "European public good". In its French version, the expression used is "intérêt général européen".

[4] The same diversity of expressions can be found, for example, in the Service Directive (2006/123/EU).

[5] Vienna Convention on the Law of Treaties, 1969.

1. Introduction

European public interest is one of the criteria for the adoption, by the EU, of IFRS by virtue of Art. 3 no. 2 of Regulation no. 1606/2002 of 19 July 2002 on the application of international accounting standards: "International accounting standards can only be adopted if they are not contrary to the principle set out in Article 2, paragraph 3, of Directive 78/660/EEC and Article 16, paragraph 3, of Directive 83/349/EEC, and if they are conducive to the European public interest".

Until the financial crisis of 2008, the criterion of European public interest seemed, in practice, purely formal and was not actually applied during the approval of IFRS.

Following the financial crisis, the IFRS were directly implicated as aggravating factors of the financial crisis (Barth/Landsman, 2010; Kothari/Lester, 2012; Maystadt, 2017; Pinnuck, 2012). This raised the question of European sovereignty in the international accounting standardisation process, with the adoption of IFRS, which are produced by the IASB, being interpreted as a relinquishment of sovereignty by the EU.[6] Philippe Maystadt was appointed by European Commissioner Michel Barnier to draft a report on European accounting sovereignty and the EU's contribution to the development of international accounting standardisation (Maystadt, 2013). On several occasions, the report stresses that the policy of accounting standardisation is in the public interest;[7] it stated that the ARC should represent the public interest, whereas EFRAG, as a technical body consisting of experts primarily from the private sector, has no mandate from the Member States.

Consequently, the EU's political decision to define public interest (i.e. to specify the criteria for it) with a view to effectively assessing the compliance of international accounting standards with this interest, contributes to the more general desire to regain European sovereignty in the process of international accounting standardisation.

Therefore, defining the "European public interest" is beneficial on two levels: technical (→effective application of the criterion during the adoption of IFRS) and political (→protection of European sovereignty by guaranteeing the compliance of IFRS with the European public interest).

[6] Maystadt (2013, p. 4): "Given the difficulty of achieving a European framework, the EU chose to renounce its regulatory sovereignty in accounting and decided to apply the standards drawn up by a not-for-profit private sector organisation based in London, the IASB".

[7] Maystadt (2013, p. 5): "Policy choices in the field of accounting involve public interest stakes that should be considered more thoroughly."

In June 2016, the Autorité des norms comptables (ANC) launched a Call for Proposals on the European Public Interest "to stimulate reflection" on the concept launched by the European Commission. The objective of the ANC is precisely to "identify whether it is possible to propose and finalize a definition that would be accepted by all unambiguously during the standards endorsement process". The study proposed below was carried out within the framework of this Call for Proposals. It is organized into several chapters:

Chapter 2 aims to seek at the European level the existence of a definition of public interest. In the event that it does not exist, we then descend to the level of six European countries (Germany, England, Spain, France, Italy, Romania), representing the main countries of civil law and common law. The idea is that a European definition could possibly be constructed on the basis of national definitions or at least on the basis of common criteria of the different countries.

Chapter 3 traces the history of the application of IFRS in the EU in order to understand the objectives of this approach and to provide a teleological and systemic interpretation of the “public interest” criterion of Regulation no. 1606/2002. Here, we also analyse how this criterion has been applied in practice in order to possibly extract a definition or implicit elements of definition.

Following Chapter 3, we note a greater politicization of accounting regulation in general and of the application of the "public interest" criterion in particular. We devote Chapter 4 to the reasons and developments of this process. Chapter 5 with our conclusions closes this report.

2 Public interest in European law and national law

2.1. The European approach: is the expression "public interest" defined by European law?

The issue of public interest has been widely researched in the fields of law and political research. Locke (1689/2017) and Rousseau (1762/2011), for example, consider the pursuit of the "common good" to be the goal of society or of governmental action. It is not possible to present an exhaustive overview of the development of this concept in this report. The British Economic & Social Research Council recently financed an extensive research project on public interest in Europe,[83] which was carried out by Queen's University in Belfast, ranging from legislation and statutory texts to jurisprudence (CJEU, European Court of Human Rights). It would be a truism to assert that this is a polysemic notion. Nevertheless, we must guard against using this polysemy as grounds for asserting that the public interest is a meaningless concept. From a pragmatic standpoint, the concept relates to the general idea of a collective management of specific interests. This management may cover category-specific (professional) interests or political interests (justification for government intervention in society), as shown by the notion of public interest in EU law.

Although Art. 17 of the TEU stipulates that the Commission promotes the "general interest of the Union" and implements appropriate initiatives to do so, EU law does not clearly define the term "general interest" (Boutayeb, 2003; Hamoniaux, (2001);; Herault, 2009; Kauff-Gazin, 2001), as is the case when it is employed to legitimise action taken by the French government. In practice, numerous expressions are used in the European context: "common interest", "Community interest", "interest of the Community", "general interest of the Community"; e.g. the TFEU mentions the notion of "public interest" in relation to access to documents (Art. 15 para. 3). Other expressions are also used, such as those including "general" interest (Art. 285 para. 2, Art. 300 para. 4) and "common" interest (Art. 107, Art. 121 para. 1). These expressions are also used in a different way by the CJEU, often to unify the aims of common sectoral policies which are under the exclusive jurisdiction of the Union (agricultural policy, policy on State aid, etc.).

In addition, the very notion of "public interest" may have several meanings under EU law. While the public interest of the EU is necessarily separate from the interests of each Member State (i), it may, however, encompass private interests (ii).

[8] publicinterest.info

(i) Primary EU legislation identifies the interest of the Union as a whole (be it a financial interest or any other interest) which cannot, under any circumstances, be reduced to the interest of each Member State. The EU has its own interests, as Art. 3 para. 5 of the TEU clearly states: “In its relations with the wider world, the Union shall uphold and promote its values and interests and contribute to the protection of its citizens” (a similar declaration is made in Art. 13 para. 1; 20 para. 1; 24 para. 3; 32; 34 para. 2 and 42 para. 5 of the TEU. Some of these interests are fundamental or strategic, such as Art. 21 para. 2; 22 para. 1; 26 para. 1, 26 para. 1 and 31 para. 2 of the TEU). There are several provisions where such a European interest can be identified. However, in both primary and secondary law, references to the (public or general) interest of Member States are much more frequent, which is often considered as a legitimate justification for introducing derogations or exemptions from the application of Community law.

ii) In certain fields, this means the interest of governmental institutions, but in other fields, it will include private interests. In the Services Directive (2006/123/EC), for example, it is stated that different arrangements may be put in place, where justified by “overriding reasons relating to the public interest, including a legitimate interest of third parties” (Art. 13 para. 4). Thus, public institutions do not monopolize interests worthy of protection and the government must protect the general interest which is outside the bureaucratic apparatus. Public bodies do not represent the general interest, but serve the general interest. The interest of public bodies is not above the interest of society, which is identified with the general interest. There is no predominance of the public over the private, but of the general over the particular.

Another example of the interweaving of private interests in the public interest can be found in Directive 2006/43/EC on the audit of financial statements. It uses and defines the notion of "public interest entities" referring to private entities, such as companies whose securities are listed, credit institutions or insurance companies. Here again, the term public interest does not refer to an interest represented by public institutions, whether common EU institutions or Member States, but private entities.

This apparent "confusion" is rooted in the very meaning of the adjective public. While in continental Europe, the term "public" often refers to public institutions (but not always), in Anglo-Saxon jurisdiction, the term generally encompasses society as a whole and not government or public bodies. In these latter jurisdictions, what is done in the public interest is done in the interest of society. This is not to say that in continental Europe, the term "public" is never used in the sense of "society" as a whole, but only that, as a trend, continental EU Member States tend to identify the public with governments and their institutions and/or bodies.

The intertwining of public interest and private interests is also encountered in the production of public policies. Over the past few years, European legislative drafting has been profoundly transformed by the Treaty of Lisbon. Indeed, the “Better Law-Making” strategy (De la Rosa, 2013) aims to improve the efficiency of European public policies from the adoption of the law onwards, by ensuring the involvement of the stakeholders for whom it is intended. This strategy forms part of the broader “Lisbon” strategy designed to promote the Union’s “competitiveness”. Inspired by the White Paper on European Governance, private stakeholders have more upstream involvement in the creation of public policies. The legitimacy of this new strategy relies on mobilising the expertise of public and private “experts”. In so doing, “co-regulation” and “self-regulation” become the preferred means of producing and applying the European standard.

Self-regulation refers to a process in which “private stakeholders (…) organise themselves in order to propose an alternative to the legal standard, either due to the failure of the latter, or to remedy its inability to regulate a given sector” (Peraldi-Leneuf, 2013, p. 193). As for co-regulation, “the movement most frequently occurs on the initiative of public stakeholders and is directed at private stakeholders, with the former requesting the participation of the latter in a standard-setting activity” (Peraldi-Leneuf, 2013, p. 192-193). Added to this, it should be noted that public stakeholders retain control over the content of standards derived from co-regulation. This “new” way of legislating is devised on the basis of categories of EU law. The institutional agreement of 2003 (between the Parliament, the Council and the Commission) justifies the use of co- or self-regulation with reference to the principle of horizontal subsidiarity, which is reflected by the principle of orienting legislative output and public policy towards the “interested” stakeholders. As mentioned by Peraldi-Leneuf once again (2013, p. 201): “This form shows the benefit of promoting the actions of stakeholders in civil society, organisations of citizens and individuals, which have the opportunity to engage in actions oriented towards the public interest, alone or in cooperation with institutions”. Co-regulation is envisaged as “value added for the general interest” (Peraldi-Leneuf, 2013, p. 201). In actual fact, there is nothing entirely new in this way of developing European public policies. It first took hold in the field of technical standardisation, within what can be referred to as the “New Approach”.[9] Thereafter, the White Paper on the new European governance system brought the practices of this new approach into widespread use in all European policies. This last observation enables us to better define the elements of continuity relating to the adoption of Regulation no. 1606/2002. From the perspective of the “New Approach”, there is nothing very original in the mechanism.

The question of “European public interest” in Regulation no. 1606/2002 should be understood on the basis of this broader scheme. On this account, Regulation no. 1606/2002 is quite unusual because it does not conform to the definition of self-regulation or co-regulation, in which the Union is likely to retain control over the content of the standards it adopts. Indeed, an IFRS standard is adopted in the EU according to the identical adoption model. In other words, the Union either adopts the standard as is, or it rejects it.

The EU decided to entrust the harmonisation of the accounting standards applying to listed companies to the IASB, a private body which produces a set of harmonised accounting standards. The IASB’s articles of association stipulate that the body serves the “public interest”. For all that, it would be simplistic to consider that the expression public interest, as it appears in Regulation no. 1606/2002 merely mirrors that championed by the IASB and were therefore purely and simply a reflection of the vision of the concept in English-speaking countries. We are more inclined to consider it to be a convergence of views between the EU and the IASB (see Chapter 4.2. below).

In conclusion, it can be seen that the concept of public interest is not defined in European law, that it also uses concepts that can be qualified as identical (e. g. general interest or common interest) and that in its application at European level this interest may correspond to the interests of public institutions but also to private interests. It is therefore not intended to be defined rigidly but rather to remain a concept with variable content allowing texts to be adapted.

In the following section we analyze whether at the level of European countries we can identify a common definition or meaning of the respective public interest, or at least find common definition criteria. If so, a definition of public interest at European level could be developed based on country elements.

[9] Council Resolution 85/C 136/01, of 7 May 1985, concerning a new approach to technical harmonisation and standardisation.

2.2. The country-specific approach: is the public interest defined by the EU Member States?

For our analysis by country, we have selected Germany, England, Spain, France, Italy and Romania. This selection allows us to represent the two main legal systems (common/code) and to be able to operate legal systems and accounting regulations that are sufficiently developed to provide a minimum of resources (legislative and regulatory texts, doctrine, case law) for our study.

2.2.1. The concept of public interest in Germany

It should be noted that in political science in Germany, the term “Gemeinwohl” (common good) is generally used instead of the term “öffentliches Interesse” (public interest). “Gemeinwohl” is defined as the well-being of all members of a society, as opposed to the promotion of individual interests (Frantz/Schubert, 2010, p. 145).

More specifically, there is no definition of the term “öffentliches Interesse” in German accounting law. However, this term was used once in the second recital of the law on publication (Publizitätsgesetz), enacted in 1969. According to the Publizitätsgesetz, companies – of any legal form but exceeding certain size criteria – are required to conform to stricter accounting standards and German publication requirements. This rule differs from the general rule of German law which states that stricter accounting standards and publication requirements only apply to companies that adopt the structure of companies with share capital. It has been justified by the German government as being in the “öffentliches Interesse” (Deutscher Bundestag, 1968, p. 14). This point of view was explicitly based on the macroeconomic importance of these companies and on the fact that their collapse would (i) cause serious economic losses for a large number of market stakeholders and (ii) require public expenditure to avoid such consequences (Deutscher Bundestag, 1968, p. 14).

If we analyse the broader scope of the financial regulation (excluding accounting), the general term "öffentliches Interesse" is used in a variety of legal provisions of German laws relating to the regulation of financial markets and capital markets. However, none of these provisions propose a legal definition of the term "öffentliches Interesse". Consequently, and pursuant to the general legal methodology, the term must be defined in each specific context, with particular reference to the objectives of the specific statutory provision. The following analysis, however, shows that the different definitions of "öffentliches Interesse" overlap to a considerable extent. As previously stated, because there is no “official” legal definition of the term "öffentliches Interesse", the guidelines presented for the interpretation of the term are therefore solely based on legal comments and court decisions.

For example, Art. 4 para. 4 of the Law on the creation of the Federal Financial Monitoring Authority (Finanzdienstleistungsaufsichtsgesetz) and Art. 4 para. 2 of the Federal Law on take-over bids (Wertpapierübernahme-Gesetz) stipulate: "The tasks and powers of the Federal Financial Monitoring Authority … can only be exercised in the public interest." Here, "öffentliches Interesse" is defined as the operation of the securities markets as a whole and the guarantee of public confidence in the orderly execution of take-over bids. Protecting the interests of any market operator that takes part in a take-over bid or is affected by it is not considered part of “öffentliches Interesse”.

Similarly, Art. 37o para. 1 of the Law on Stock Brokerage (Wertpapierhandels-Gesetz; also Art. 37q para. 2) stipulates: "The Monitoring Authority shall order an audit if there is specific proof of a breach of the accounting regulations; no order shall be issued if the clarification of the case does not serve the public interest." In this case, “öffentliches Interesse” is defined as the provision of correct accounting information for the entire market. An order of the Monitoring Authority is deemed to serve the “öffentliches Interesse” if the respective breach of the accounting regulations is likely to influence the decision of a potential investor in the securities issued by the company concerned. This must be determined on an objective basis, i.e. the perspective of an “average investor” behaving in a rational manner must prevail. The protection of an individual investor does not form part of the “öffentliches Interesse”.

According to Art. 25d para. 12 of the German Law on Banks (Kreditwesen-Gesetz): "The Remuneration Committee... prepares the Monitoring Committee’s decisions on the remuneration of the board of directors and, when doing so, takes particular account of the impact of these decisions on the company’s risks and the management of corporate risks; the long-term interests of the shareholders, investors, other stakeholders and the public interest are taken into consideration.” There is nothing in the legal literature pertaining to the definition of “öffentliches Interesse” in this article. However, given that the term “öffentliches Interesse” is used here in addition to the long-term interests of shareholders, investors and other stakeholders, it seems likely that it refers to the operation and stability of financial institutions and finance in general.

From these different examples, we can finally infer that “öffentliches Interesse” is generally defined as the operation of the financial markets/the financial system as a whole, whereas the interest of any individual market player is not protected (Fuchs/Schlette/Bouchon, 2016 WpHG, § 4 no. 10). When, in addition, “öffentliches Interesse” is determined from the standpoint of potential investors, an objective basis, e.g. the perspective of an average investor, is applied (Assmann/Schneider/Hönsch, 2012 WpHG, § 37o no. 10). In other words: if, for example, there is reference to the “securities market”, the standard of interpretation is always objective, i.e. the expectations of an “average” investor or market participant acting in a rational manner are assumed. In one sense, “öffentliches Interesse” could be said to have a top-down definition in the regulation of the financial and capital markets. In no part of the current financial and capital market regulation system is the behaviour of an actual group taken into account (e.g. in an empirical manner) in order to determine what “öffentliches Interesse” actually means.

Conclusion: the term "öffentliches Interesse" is not used in German accounting law and has only been mentioned once by the German legislator to justify the 1969 Publizitätsgesetz. Due to the macroeconomic importance of some companies, their disclosure obligations under this law have been declared as being in the "öffentliches Interesse". Today, the term "öffentliches Interesse" is used in various legal provisions of German legislation on the regulation of financial and capital markets. Although none of these laws provides a legal definition of "öffentliches Interesse", the definitions in the legal commentaries and court decisions in these different areas of law overlap to a large extent. To summarize these definitions, the term "öffentliches Interesse" is generally defined as referring to the functioning of financial markets and the financial system as a whole. In order to determine whether a particular act is likely to favour the "öffentliches Interesse", it is necessary to take an objective view, i.e. the perspective of an average and reasonable market participant. On the other hand, the protection of actual individual interests is not part of the "öffentliches Interesse".

2.2.2. The concept of public interest in the UK

An employee of the UK Regulatory Body, the Financial Reporting Council (FRC), which has, among others, a role as accounting regulator equivalent to the ANC, was asked to comment, on any UK pronouncements and requirements regarding the “public interest”. His essential response was short and clear[10]:

"I have consulted several colleagues here and we are not aware of any definition of “public interest” published by the FRC. The public interest responsibility of accountants was a major issue in the FRC enquiry into the actions of the auditors and accounting advisers of the MG Rover car company. The outcome of the enquiry raised some questions about the clarity of the ICAEW Code of Ethics as regards the meaning of “public interest”. … Whilst the ICAEW Code of Ethics is issued by a professional body, it was nevertheless very influential in the Tribunal’s deliberations in the MG Rover case".

The MG Rover case is indeed important, but also complicated. There were two hearings, an investigative tribunal into alleged misconduct by Deloitte and Touche (as it then was), and a named partner, Mr Maghsoud Einollahi, and later an appeal hearing against the original decisions. The two reports are in the public domain. They are the original Investigation Report (Tribunal, 2013) and the Appeal Report (Appeal Tribunal, 2015). They are remarkably different in argumentation and in findings. The 2013 report confirmed that there was a failure to take necessary account of the public interest, and did indeed regard the ICAEW Code of Ethics as 'very influential'. The 2015 Appeal Report, however, firmly rejected the original findings, and described the ICAEW Code of Ethics as 'vague and unhelpful'.

More formally, the salient charge of relevance here is that during 2001 both Deloitte and Touche, and Mr Einollahi, "failed adequately to consider the public interest before accepting or continuing their engagement in relation to....." (Tribunal 2013, para. 6 (1.1); and similarly for a second engagement in 2002 (Tribunal 2013, para. 7 (2.1)). Both charges were 'proved' to the satisfaction of the 2013 Tribunal, and firmly, almost vehemently, dismissed on Appeal by the 2015 Tribunal.

We can most efficiently present the key issues by direct quotation from the Appeal Report of 2015. This quotes at some length from the ICAEW "Guide to Professional Ethics" as issued in the 2000 "Members Handbook (in para. 66-73 of the report), noting that the "public interest responsibility" consists essentially of "requirements of objectivity and integrity" (para. 70), and that the various detailed statements quoted "do not assist in giving guidance as to how the public interest is to be taken into account by an accountant, i.e., how any decision of his is to be affected, beyond the requirements for him to act with integrity,

[10] Email of 22 February 2017 from James Calder to David Alexander.

honesty, objectivity and competence" (para. 72). We now quote major key elements of para. 79-85 of the Appeal Report (Appeal Tribunal, 2015).

> "79. Of course, the maintenance of MGRG as a successful manufacturer could be said to have been of public concern, and the livelihoods of many people depended on it. This undoubtedly added to the importance of the Appellants' work, and doubtless the risk of any deficiencies in their work incurring public opprobrium. But, we ask rhetorically, how specifically could such considerations have affected the work of the Appellants?
>
> 80. The (2013) Tribunal's conclusions on this charge are to be found in para. 57 to 60 of its report: 57. We are quite satisfied that MG Rover was a public interest company. We do not accept the evidence of Mr Einollahi when he said in evidence that he had difficulty in identifying the public interest issue. 58. We are further satisfied that the Respondents were aware of the public interest. We find it difficult to see how they could possibly not have been. 59. We are further satisfied that the public interest aspect was relevant to the Respondents as a member and member firm. 60. In the circumstances and in the light of the above we are as satisfied as we have to be that (the) allegation is proven.
>
> 81. The Tribunal did not answer the question: what did the Appellants do or fail to do by reason of their failure to take account of the public interest? They did not identify what was wrong with something that took profits or assets out of MGRG if it would not have been wrong in the case of a smaller company. After all, salaries, bonuses and dividends all take profits or assets out of a company, but it is not regarded as misconduct for an accountant to be a party to their lawful payment.
>
> The public interest: other considerations.
> 82. There are more general considerations that were raised ... on behalf of the Appellants and which in our view were not successfully answered ... .Take as an hypothetical example a proposed takeover bid by a foreign company of a large UK manufacturer. Let us assume that there is a risk, even a known risk, that if the takeover is successful the predator will close down UK factories. The predator approaches UK lawyers and accountants for advice and other work for the purpose of the takeover. The UK lawyers undoubtedly are free to accept the instructions provided the proposed takeover and the work involved are lawful, that their proposed instructions involve no

dishonesty or want of integrity, and they are competent to carry out the engagement. The Guide to Ethics requires the accountant to take account of the public interest before accepting the engagement, but the question is how, and to what extent? How is the public interest to be ascertained? Is it the maintenance of a free market? Should the accountant assess whether the threatened factories have a real expectancy of continuation under the current ownership? Should they assess the possibilities of a friendlier takeover? Should they consult the government of the day? We regard the suggestion, if it be made, that the accountants are not free to accept the engagement without considering the vague question whether the takeover is in the public interest as absurd.

83. We consider another example, based on an actual case. A foreign patent holder brings infringement proceedings against a major UK utility. The claimant seeks injunctive relief and damages. The process in which the patent is used is highly important, and the relief claimed, if granted, will have an important effect on costs in the UK for businesses and consumers. The patent holders lawyers are free to accept its instructions without considering the public interest ... . The judge will decide the case on the facts and the law relating to the patent dispute: he cannot have regard to the effect of a decision in favour of the claimant on the public interest in the UK. Indeed, it may be said that it is in the public interest that the judge decide the case only on the basis of the facts proved or admitted before him and the law. Can it really be the case that accountants approached by the client have to consider the public interest (and to determine what it requires) in deciding whether to accept the engagement?

84. No such duty is founded in the law. It can only be derived from the Guide to Professional Ethics. Yet, as we have seen, that is vague and unhelpful.

85. Our conclusion is that the requirements in the Guide as to the public interest cannot alone form the basis of any charge that an accountant has been guilty of misconduct."

So in summary conclusion regarding the U.K. perspective, there is no relevant statement of law, there is no relevant statement by the current regulatory body (the FRC), and there is no case precedent for taking public interest arguments seriously in law (note the strength of the use of the word "absurd" in para. 82 as quoted above). We emphasize that this section of the report deals only with the UK legal position, and not with academic appraisals and arguments.

The ICAEW (2012) contemplates in its report on ‘Public Interest’ that “there can be a natural suspicion that the phrase may be used as a smokescreen to garner support for something that is actually in the advocate's own interests. … In most societies there is a basic presumption that people should be able to go about their own business in their own interests. In the course of this they will interact with other people and influence and be influenced by their activities. However, there are further influences on people’s activities: when governments, regulators and others seek to intervene in the public interest. The form of intervention we concentrate on is usually by organizations seeking to change people’s actions through laws, regulations or other methods of persuasion. However, individuals can intervene by taking public interest actions themselves, for example by overriding confidentiality requirements to disclose bad behavior by others. … The public interest is an abstract notion. Asserting that an action is in the public interest involves setting oneself up in judgment as to whether the action or requirement to change behavior will benefit the public overall – a far greater set of people than can be interacted with directly. It involves interference in people’s ability to go about their business or sometimes, as a positive policy decision, non-interference in the face of alternative actions. Other terms can be used, largely interchangeably. Examples include public benefit, the public good, and the common good – the latter in the sense of the public having a common purpose, rather than goods to which there is common access. While we use the public interest throughout, the same issues apply to use of these other terms. Invoking the public interest requires justification of an ability and right to decide what is for the greater good, in the face of a natural suspicion that those proposing an action in the public interest are actually acting in their own interests”.

Conclusion: it can be seen for the United Kingdom that the notion of public interest is widely cited as a key consideration with regard to the validity of the activities of various British (or international), governmental or private bodies, but that there is no legal definition. In addition, its use often raises suspicion, sometimes tending to derision. The academic and philosophical considerations (e.g., Cochran, 1974), discussed at some length in the preliminary work of this research group, are generally in line with this position.

2.2.3. The concept of public interest in Spain

Researching the notion of “interés publico” in the legal, financial and accounting sectors in Spain leads to the conclusion that there is no specific definition of this expression, except in the auditing sector (see below). However, several Spanish laws mention “interés publico” and it can be noted that an attempt was made to define it in the past. Experts have concluded that if something is of general interest, or better: of “public interest”, it is of interest to the nation. This particular interpretation leads to the concept of national sovereignty because it means that anything of interest to the nation is therefore of “interés publico”. Consequently, for something to be of “interés publico”, it needs to satisfy certain national needs or aspirations. Another differentiating factor is the comparison of the notions of public and private interest. In fact, from a general standpoint, it may even seem intuitive to distinguish between these two notions. However, according to the Spanish legislation, if a private interest also satisfies the national interest, it can be considered of “interés publico”.

From the accounting or auditing perspective, the new Law 22/2015 on the auditing of accounts aims to reconcile the national Spanish interest of having open and transparent economic activity, as described in Art. 38 of the Constitution, with the European interest of implementing IFRS to promote long-term growth. This idea of bridging the two interests could be indirectly interpreted as the desire to obtain a common public interest sharing the principles of IFRS. In fact, this new law targets auditing activities and mentions their importance in guaranteeing the validity and transparency of financial economic information for all users of this information. In its preface, the law places the public interest in a context of financial economics and links it to auditing activities. In particular, it defines the public interest in the following manner: “The new regulation was based on the idea that auditing activities serve an “interés publico” function, meaning the existence of a wide range of people and institutions that count on the performance of the statutory auditor, insofar as their correct and appropriate actions constitute factors that contribute to the proper operation of the financial markets by increasing the integrity and efficiency of financial statements as instruments for the transmission of information.” Consequently, and as we have already mentioned, there is no direct definition of public interest in the Spanish financial legal system. However, there is a definition that links “interés publico” to auditing activities by referring to characteristics similar to those targeted by IFRS.

Regarding the Spanish Constitution it makes 15 references to the general (interés general) or social interest, but it only mentions public interest twice. Both of these references were slip-ups by the authors: in one case, the adjective “public” equates to “social” (Art. 76), and when Art. 124 states that the public prosecutor must defend the public interest via the law, the adjective “public” can be identified with the interest of public administrations. In this way, the Constitution moves on from the public interest to the general interest. Public institutions neither represent nor possess the only interests worthy of protection. The State must uphold the general interest, which is outside the bureaucracy, as something that is different from the public interest. Public organisations do not represent the general interest, but rather serve the general interest (Art. 103 of the Constitution). The interest of public bodies is not above the interest of society, which is identified as the general interest. The public does not prevail over the private, but the general holds sway over the individual.

As far as Spanish administrative law is concerned, Spanish Procedural Law (law no. 39 of 1 October 2015) makes four references to the “general interest” and eight references to the “public interest”. This use of old terminology can be explained by the fact that the current text of the law is inspired by the procedural law of 1958 and its terminology. During these years (1958-1978), the expression “public interest” was used more frequently than the expression “general interest”. For example, Art. 107 governs what is termed “nuisance procedure”: administrative acts may be annulled on grounds of absolute nullity or relative nullity. Acts that have led to relative nullity and have given a right to an individual cannot be annulled by the government itself, but only by the judiciary. However, before applying for a judicial review of the said law, the government must declare that the act is contrary to the “public interest”. In this context, the term “public” is understood in the broad sense and is interchangeable with the expression “general”. In other words, the government can take action to have the act annulled by the judiciary not only if the act is contrary to the public interests which are protected by the government, but also if the act is contrary to the right of an individual (since the notions of “general interest” cover the protection of the individuals’ rights).

Furthermore, “interés publico” provides the bases for the initiatives of governments and also justifies them. Indeed, any government activity related to the social or economic sectors must be based on the principle that such an intervention serves the “public interest”. It can be considered as the legal translation of the concept of “bien comùn” (common good) which the majority of States’ aims and objectives incorporate. Consequently, the generic concept of “interés publico” becomes concrete once the government uses its powers to create a public interest/general interest.

Conclusion: there is no definition of the terms "interés público" and "interés general" in Spanish law. Since the 1978 Constitution, there has been a tendency to replace the expression "interés público" by "interés general". This may be explained by the need to move away from the pre-democratic legal order, where there was both a too strong dichotomy between "public interest" and "private interest", and a tendency to give precedence to "public interest" over "private interest". In general, the "interés publico" is the interest of public institutions, insofar as they have a duty to protect the interest of all, not that of a particular citizen. The notion of "interés general" is broader and also covers the rights of individuals.

2.2.4. The concept of public interest in France

“Intérêt public” is not a customary term in French law, whereas general interest (intérêt general) is a central notion of public law. Central because it constitutes both the basis and the justification for the government’s actions, and central because the notion forms the basis of the major categories of administrative law – of public service, public works, public procurement, and administrative liability. The appearance of the notion also reflects the secularisation of power in which the general interest, by means of the law, becomes the expression of the general will. As mentioned in the annual report of the Conseil d'Etat (1999), "the general interest is rightly regarded as the cornerstone of public action, whose purpose it determines and whose legitimacy it underpins ".

Despite numerous efforts to do so, it remains difficult, or even impossible, to propose a global and precise definition of the general interest. The difficulty stems from the multiplicity of forms of government intervention. However, one major consideration should be borne in mind: the role of the general interest is to legitimise government action in different forms, and to make it acceptable within society.

In certain circumstances, determining the general interest requires the public authorities to arbitrate between several competing private interests. This arbitration is performed by applying two criteria. The major concern of the first quantitative criterion, in terms of general interest, tends to be the interest of the largest group. In other cases, considerations based on expediency may contribute to determining the general interest. Under these circumstances, the general interest is taken to be a value that transcends individual interests.

This means that the traditional opposition between the general interest and private interests is not satisfactory. The broadening of the notion of public utility proves, if proof were required, that the general interest does not exclude private interests. The distinction between general interest and private interest has also been blurred by infringements of the organic criterion of administrative law. Public corporations no longer monopolise the general interest, as private corporations can now be associated with activities in the general interest by obtaining authorisations or be appointed to manage a public service. While it remains difficult to provide an unambiguous definition of the general interest, it is easier to find examples of its occurrences in legal texts. Numerous laws explicitly enshrine a “general-interest mission” delegated to the government. However, such general-interest missions do not always appear in the texts. For example, an order applying to the accounting sector that is issued by the Minister for Finance may be justified on the grounds of general interest. In France, for example, in light of the status of the Public Accounting Standards Board (CNOCP), its position in the organic hierarchy and the scope of its actions, everything indicates that this entity participates in a general-interest mission.

Another notion – similar to that of public interest – could be the notion of public order introduced by Art. 6 of the French Civil Code (Code civil), but today, it is only employed in association with terms such as “public morality”. This is far removed from economic issues.

In French private accounting law, a literature search for possible references to the concept of “intérêt public” (or “intérêt general”) unsurprisingly produces no results. On Légifrance, there are no responses related to accounting regulation to the query “intérêt public ou général”. Since public interest is not explicitly defined in French accounting law, it is interesting to discover whether a definition can be indirectly obtained by studying the conception of French accounting law.

Examining the French accounting regulations and standards from a historical perspective reveals that they are driven by a desire to serve the general interest, which corresponds to the protection of creditors’ and savers’ interests, the provision of information for shareholders and employees, and the calculation of bases for taxes such as VAT and corporate income tax.

Colbert’s Trade Ordinance, enacted in March 1673, made book-keeping according to formal rules a mandatory requirement for merchants, for three main reasons relating to the general interest that remain valid to this day: protecting creditors, enabling the monitoring of funds invested in companies, and increasing the confidence in trade. In addition to the obligation to draw up an inventory, a balance sheet, a profit an loss account and notes to the accounts (Code commercial Art. L123-12), the legislator has intervened to protect the interests of shareholders, savers, employees and third parties in general by requiring companies to present or publish information about their financial situation (Law of 24 July 1966 applying to all trading companies and also adopted in the French Commercial Code – Book II).

Since the 1980s, the legislator has taken steps to protect the interests of employees and/or to strengthen their right to be informed and consulted. As far as information for employees is concerned, the Ordinance of 22 February 1945 on works councils (amended by the Law of 28 October 1982 – Auroux Laws) granted works councils the same rights to the transmission of accounting documents as shareholders. In general, the legislator has provided for the transmission of information to third parties, including via the submission of the corporate accounts of companies to the registry of commercial courts, even though lower requirements depending on the size of the company apply.

Conclusion: French law uses the term “intérêt general” instead of “intérêt public”, a central notion of public law. The general interest is the expression of the general will but a precise definition is impossible to formulate. In order to determine the general interest, a quantitative criterion (the interest of the largest group) or a qualitative criterion (an interest that transcends particular interests) is used. The general interest is therefore not necessarily opposed to private interests. French accounting law does not mention the general (or public) interest, but its existence is in the general interest (protection of creditors' interests, for example).

2.2.5. The concept of public interest in Italy

Interpreting “interesse pubblico” in Italy in financial/accounting terms is a difficult task because no explicit use of this verbal expression has been found in the Italian accounting literature or regulations. Nevertheless, a link has been identified between the purpose of financial reports according to the Civil Code, and interesse pubblico. The Italian legal system is a civil law system and, as a consequence, the accounting regulations originate from the State’s interventions in the form of legislative statements. This legal approach to accounting began with the Commercial Code in 1882 and continued with the Civil Code in 1942, which has been amended over the years, including by the implementation of European Directives in 1991. In recent decades, the "objective perspective" has prevailed in the interpretation of accounting regulations, which acknowledges that the main function of accounting information, according to the Civil Code, is to provide impartial information for the interested parties (Colombo/Portale, 1994), and that the purpose of the regulations is to protect third parties - generally the public - by enabling them to obtain reliable information from companies. The accounting rules of the Italian Civil Code traditionally have a strong attitude towards prudence and historical cost-accounting, aimed at maintaining the integrity of capital in order to safeguard the proprietary interests of third parties, in particular creditors (Macchioni, 2008). The economic environment characterised mainly by small and medium-sized family businesses and financing largely from the banking system explains the creditor orientation in Italian accounting regulations (Leuz, 2010).

Following thus the Public Interest Theory, the legislation is implemented in the public interest by regulators who serve the stakeholders' interests (Godfrey et al., 2010; Scott, 2012; Deegan, 2014). This theoretical approach expects the regulations to provide a response to the public demand to correct inefficient or unfair market practices (Posner, 1974).

In Italian law in general, the idea that standards form the basis of an administrative power which aims to acquire, select and evaluate the facts and balance the interests, became quite popular between the 1950s and 1960s 1960 (Guarino, 1949; Benvenuti, 1952; Casetta, 1957; Paolantonio, 1996). Making government action more functional necessarily means obliging it to take only normatively qualified "interesse pubblico" into consideration. Several years later, the nature of the "interesse pubblico" involved in this functionality became relevant in the form of the rationale for the administrative rulings: the control of power moved increasingly towards verifying the consistency and rationality of rulings; the interests involved were those of the centre for the judicial review of administrative acts (Allegretti, 1965; Ottaviano, 1957).

In the 1970s, the attention of specialists in administrative law moved clearly from the reason for the choice towards the representation of interests within the proceedings (Bazoli, 1964; Ali, 1970; Ghetti, 1973; Pubusa, 1984). The participation of private subjects and collective organisations in proceedings now seemed to shape the notion of "interesse pubblico" in a completely different and more open manner. "Interesse pubblico" now resembles the outcome of an amalgamation: private interests are no longer excluded from the scope of the government's concerns; they must be represented in proceedings to enable the government to develop a more accurate image of the "interesse pubblico" to be served. All proceedings must be structured in such a way as to include the presence of private subjects from the outset. Jurisprudence now requires the most widespread participation as a prerequisite for the legitimacy of proceedings (Virga, 1998; Cognetti 2000; Caranta, 2005). More and more new interests are attaining public or at least collective status. Today, "interesse pubblico" can assume many different forms and may be devolved to private subjects; the Italian Council of State even assumes that certain subjects can change in nature and move from private law in certain fields to public law in others.

Another source for determining the meaning of "interesse pubblico" in Italy is the Court of Auditors, one of the oldest institutions in Italian constitutional history. Different types of interests are included in the notion of "interesse pubblico" as understood by the Italian Court of Auditors. Several of them have been identified in its jurisprudence; some of them emerge from time to time according to cycles in the economic and financial situation of the State and other public authorities, while others have become stable and are frequently mentioned in rulings.

Firstly, the Italian Court of Auditors integrates in "interesse pubblico" the interests of protection and of operation of public goods due to their contribution to the collective needs. Secondly, certain collective interests can be acknowledged when they can be given an economic value and when their utility cannot be evaluated individually and separately. Collective goods are the best example of this, some of which have been recognised by the Constitution. The protection of the environment may be the most important example. Thirdly, collective interests may also concern intangible property whose control is entrusted to public authorities. Given the number and scope of collective interests in a welfare state, the jurisprudence of the Court of Auditors makes frequent reference to infringements of these interests. For example, infringements may relate to the inefficient use of public resources or the inability to attain the prescribed standards by investing financial and human resources in a public service. Even moral prejudice or intangible losses may be associated with serious damage to the image of a public authority, which equates to an "interesse pubblico", or even to a right (Venturini, 2000).

Conclusion: the term "interesse pubblico" is not used in Italian accounting regulations or literature. Implicitly, however, legislation in this area serves the public interest by protecting the property interests of creditors in particular. In Italian law in general, the public interest is not defined. It is considered to be respected if multiple interests (private, collective, etc.) are represented in the administration's decision-making procedure, thus giving legitimacy to this procedure. The Italian Court of Audit has also established a notion of "interesse pubblico", including the protection and exploitation of public property or intangible property whose control is entrusted to public authorities.

2.2.6. The concept of public interest in Romania

In Romania, the major changes made to the accounting system in recent years have sought to adapt it to the new economic, political, legal and social conditions. A new accounting system based on the French accounting system has been operating since 1994. From 1994-1999, the accounting system was envisaged as an instrument of control in which the State played a dual role: as the standardising authority for the accounting system, on the one hand, and as a leading user of accounting information, on the other.

Public interest (“interesului public”) is not defined or mentioned in Romanian accounting law or financial regulations, except within the accounting profession. Indeed, the accounting profession plays a vital role in society. The beneficiaries of the information provided by the accounting system include clients, creditors, the government, employers, employees, investors, the business community and others who rely on the objectivity and integrity of accounting information to keep the economy operating efficiently. This confidence requires the profession to assume public liability for its actions. The behaviour and attitude of professional accountants in the provision of these services have an impact on the economic well-being of the entities in which they work, but also of the community and the country in general.

Following the bankruptcies of entities in which the independence of the accounting profession has been called into question, the involvement of the regulating bodies has been considered essential to ensure the protection of the public interest (Fülöp, 2013). At the national level, the rules of professional conduct applying to members of the accounting profession are established by professional bodies such as the Body of Romanian Chartered Accountants and Certified Accountants, and the Romanian Chamber of Financial Auditors. The members of the accounting profession provide services not in their own interest but for the sake of public well-being, primarily to meet the stakeholders’ need for confidence

(Fülöp, 2013). This professional liability must include the protection of certain public interests such as (Fülöp, 2013):

- A sound financial reporting process;
- The comparability of financial information originating from different States;
- Budgetary prudence in the spending of public funds and money;
- Improvement of the performance of organisations.

With regard to Romanian law in general constitutional law in the pre-communist period assimilated the idea of "interesului public" to the concept of "national interest", which not only embraced Romanian political goals, such as national unity and the preservation of territorial integrity, but also included any political actions designed to attain these objectives. In this sense, the concept of "national interest" still dominates the political and public debates in contemporary Romania. Constitutional law applies this concept to the need to promote the national interest in the international relations developed by the Romanian State pursuant to Art. 10 of the Romanian constitution. The Romanian Constitution of 1991 (revised in 2003) only expressly mentions "interesului public" in a single case. Art. 31 al. 1 regulates and guarantees the right of individuals to have access to any information of "interesului public" within the limits defined by Art. 31 al. 3, i.e. the protection of adolescents and national security.

Under the influence of French administrative law, Romanian administrative law in the inter-war period (1918-1945) tended to use the concept of "interes general" rather than "interesului public" to define the aims of the general government as a separate branch of the executive power. It was opposed to the "individual" or "private interest"; it was assimilated to all needs of the communities operating at the level State or commune level, and the public services were supposed to satisfy these needs. Certain general needs could have been met by private initiatives, provided they were legally recognised as "public utility institutions".

There was no clear and regular definition of the "interes general", including with regard to the extent of the "general needs", which were a somewhat variable concept, depending entirely on the characteristics of a specific society and its organic development. Nevertheless, it has been agreed that at least three general needs have always existed, which have been the remit of public services: justice, domestic security, order and peace, and, in the end, national defence. As it is a general concept, the main characteristic of the "general interest" was that it clearly prevailed over individual interests.

After the fall of the communist regime, the concept of “interesului public” became popular in the study of Romanian administrative law. There is no clear or widely accepted legal or doctrinal definition of "interesului public". In theory, it is said to represent the physical and spiritual needs of the citizens at a given moment in time (Tofan, 2014). “Interesului public” would seem to encompass both the individual interests and the common interests of citizens. The legal definitions of “interesului public” suggest this type of approach. The law on administrative disputes defines the public interest as “the interest that concerns the principle of the rule of law and the constitutional democracy, guaranteeing the fundamental freedoms and duties of citizens, the satisfaction of common needs, and the fulfilment of the public authorities’ obligations” (Art. 2 al. 1; similar to Art. 4 c Law no. 7/2004 relating to the Code of Professional Ethics for Civil Servants).

However, an “interesului public” is only legally recognised and served by a public service insofar as it is recognised by the political power (the government). It is each government’s fundamental responsibility to identify and protect an “interesului public” by means of a public service, according to its own policy (Iorgovan, 2005). For this reason, the “interesului public” is often considered to be situated between the political interest and the social interest, which establishes a balance between political interest groups and citizens’ interests (Tomescu, 2014).

Indeed, the most important public interests to be legally promoted today are protecting citizens (including by combating organised crime and pollution) and guaranteeing a decent life for them. These objectives must be achieved by means of public order for the former and good governance for the latter. Public order requires a state of legality upheld by the police and law enforcement authorities. The existence of efficient and effective public order ensures national security, among other benefits. On the other hand, for reasons of “interesului public” (e.g. national security), the enjoyment of certain rights may be restricted according to the Romanian Constitution and the international treaties and regulations ratified by the Romanian State. Good governance is based on the principle of the primacy of citizens’ interests over the political interest.

Conclusion: the public interest ("interesului public") is not defined or mentioned in Romanian accounting law or financial regulations, with the exception of the field of the accounting profession. The latter has the responsibility to protect certain public interests, mainly the proper functioning of the economy. Romanian constitutional law equates the public interest with the concept of national interest (e. g. territorial integrity) without definition. The same lack of definition can be found in Romanian administrative law according to which the public interest can include individual (sometimes grouped) and common interests of citizens, and represents a balance between these potentially divergent interests.

2.2.7. Conclusion of the country-specific approach

First of all, there is a diversity of terminology in the law of the countries examined. While in England, Italy and Romania the term "public interest" is used, German law mainly refers to the "common good" (except for our field of study; see below), France to the ”general interest" and Spain to the “public interest" and the “general interest". Regardless of the term used, no country proposes a definition of its concept, neither in general nor in the field of financial and accounting regulation.

German law contains elements that are most closely related to our topic of "public interest" in accounting: a direct use of the term in the recitals of a law on financial reporting and in various regulations of financial markets and sectors. In these areas, the public interest consists in the proper functioning of financial markets and the financial system. Similarly, Romanian law attributes a public interest to the accounting profession in order to maintain the proper functioning of the economy.

Apart from financial and accounting regulation, the concepts of public interest etc. used are interpreted differently. For example, the public interest in Spain corresponds to the interest of public institutions while in Romania it corresponds to the national interest. The public interest in Italy is a concept applied to administrative procedures or the protection of public property. Finally, in England, the public interest is mainly used to justify or legitimize the activity of various private or public organizations, and is a suspicious notion.

In the end, our analysis by country did not allow us to find either a common concept at European level or at least common definition or delimitation criteria of the public interest. Since neither European law in general (Chapter 2.1.) nor national laws determine the content of the European public interest, we will in a next step (Chapter 3) analyse Regulation no. 1606/2002 directly to try to find elements of definition.

3. European public interest as an economic criterion for the adoption of IFRS

3.1. The adoption of IFRS in Europe and the origin of the public interest criterion in Regulation no. 1606/2002[11]

To examine the notion of “European public interest” in Regulation no. 1606/2002, we first need to look back at the historical context for this expression and the adoption of this regulation. Indeed, in order "to interpret a provision of [Union] law, it is necessary to take into account not only its wording, but also the context in which it is embedded and the purpose of the rules of which it forms part" (ECJ, 1983). In addition to the textual approach and context, teleological and systemic methods of interpretation also play an important role in the ECJ's legal reasoning. None of the interpretation methods applied should be considered in isolation (Lenaerts/Gutierrez-Fons, 2013). Therefore, we will first look back at the origin of the IASB, and then place IFRS in the context of harmonising accounting standards in the EU, followed by a description of the development of the regulation. Finally, we will analyze the introduction of the "public interest" criterion in the regulation followed by its legal interpretation.

3.1.1. The emergence of the IASB as an international accounting regulator

Before addressing the inclusion of public interest in the adoption of Regulation no. 1606/2002, it is beneficial to look back briefly at key moments in the history of international accounting standardisation (Muller-Lagarde, 2015). The reform leading to the creation of the IASB in the early 2000s took a long time to materialise. Created on the initiative of the accounting profession, the IASB – formerly known as the IASC – is now considered to be a body with an international remit whose standards apply (barring exceptions) to the entire European Union by means of an original mechanism commonly referred to as the “endorsement procedure”. In 1973, the IASC’s mission was defined by its founder, Sir Henry Benson, as a body with the power to influence the accounting sector at the international level. In association with the Coopers & Lybrand London office (the predecessor of the firm that would be involved in the merger to create PWC), Henry Benson managed to persuade the accountants’ association in England and Wales to join forces with other professional associations in different countries, primarily members of the Commonwealth but also Germany, Australia, Canada, the United States, Japan, France, the Netherlands, Mexico and Ireland. All of these members, represented by their professional associations, participated in the creation of the IASC in 1973, whose

[11] The analysis proposed in this report is based on the documents published by the official register of the EU Council and the European Parliament. Numerous documents mentioned in minutes which have been made public are not accessible, among them the notes written by particular delegations on specific points, including the subject of public interest.

president was no other than Henry Benson himself. In 1982, the IASC received the support of the IFAC, the international professional body uniting the main representatives of the auditing profession (Camfferman/Zeff, 2007).

The creation of the IASC in 1973 coincided with two major events that would have an impact on the institutional development of the IASC: the first relates to the creation, in the United States, of the FASB, a body governed by private law to which a certain number of regulatory powers are delegated, including the ability to adopt accounting standards that apply at the federal level (US GAAP). The second event is better known, because 1st January 1973 is the date on which the United Kingdom joined the Common Market. Why is it important to emphasise these two events? Although the answer to this question is complex, it can be explained in general terms. The legal form of the FASB inspired the creation of what would become the IASB in the 2000s. Regarding the United Kingdom's membership of the EEC, it was carried out in the accounting field "subject to the suspension of directives in progress, in particular accounting directives, whose intentions were strongly influenced by the German and more generally continental approach" (Chambost/Laporte, 2005).[12]

Indeed, since 1968, the harmonisation of the accounting systems of listed companies has been linked to that of corporate law in the EEC. This harmonisation takes the legal form of directives adopted by the Council. It should be borne in mind that directives, at least in general, leave the States some leeway in their transposition. This movement towards harmonisation has led to several acts bearing the same name. The first Directive, of 14 March 1968, introduces a unified system for the publication of annual accounts. Other acts have followed, of which the following are the most important. The 4th Directive of 25 July 1978 (78/660/EEC of the Council of 25 July 1978 on the annual accounts of certain types of companies) for individual accounts, sets the minimum amount of information required for the comparison of corporate accounts within the Single Market; the 7th Directive of 13 June 1983 (83/349/EEC of the Council on consolidated accounts) supplemented the 1978 Directive's stipulations concerning the definition of a "group", and indeed of the scope of a consolidated entity. This point on the comparability of accounts is the key issue for the standardisation of accounting information. To this can be added, from an institutional standpoint, the establishment of a Contact Committee at the European level (consisting of representatives of the States and the Commission). This was followed, in 1991, by the Accounting Advisory Forum which, in contrast to the Contact Committee, was open to international accounting standardisation bodies, certain academics and the accounting professions,

[12] This hypothesis, according to which the UK accounting profession wanted to limit the influence of continental accounting principles, is defended by Hopwood (1994).

mainly represented by transnational accounting and auditing firms. Both of these institutions are responsible for facilitating the application of the 4th Directive and, more generally, for facilitating accounting harmonisation.

Nor was it a coincidence that an institutional change started to be observed in the 1990s, with the involvement of the private sector in the Commission's decisions. This was firstly a cultural change reflecting the attractiveness of the UK model which grants significant organisational and operational leeway to professional accounting bodies (Ramirez, 2003). It was then influenced by the globalisation of the capital markets, a phenomenon which began at the end of the 1980s, promoting an environment that is propitious to an approach essentially based on ensuring the comparability of listed companies' consolidated accounts. To this can be added the internationalisation of auditing and accounting firms, starting in the 1960s in the UK (Ramirez, 2003). This is an important point because it partly explains the key issues that prevailed in the accounting field at the time of the United Kingdom's accession to the EC, when the UK accounting profession was already partly organised around major Anglo-American multinational firms with representatives in the IASC and FASB. In other words, the United Kingdom's accession to the Single Market also opened up a new market for the auditing and accounting multinationals seeking to establish themselves in the EU.

Therefore, it would be naive to think that the IASC or the Federation of Accountants did not engage in a form of direct or indirect lobbying of European institutions. For example, the IASC's "due process" involved the Commission as an observer in the early 1990s with a view to proposing a "turnkey" solution to the problem of accounting harmonisation in the Single Market. The accounting harmonisation of European listed companies was a priority in a context in which some of them were already financing their activities on the American stock market. The IOSCO then asked the IASC to propose a solution that would allow for the resolution of the problem of comparing the consolidated accounts of multinational listed companies: a set of reporting standards to be used by companies seeking to raise capital on "markets other than those of their countries of origin" (Perier, 1995). This is what the IASC endeavoured to do at the start of the 1990s.

The mission entrusted to the IASC by the IOSCO to propose international accounting standards was accompanied by the promise of the possible recognition of these standards. However, against all expectations, the IOSCO initially refused to recognise the new IAS standards. Some observers attributed this to the fact that certain European companies had already been applying the US-GAAP standards since the start of the 1990. This setback did nothing to discourage the IASC which, at the IOSCO's annual congress in Paris in 1995, announced a new work programme with the aim of securing the adoption of IAS standards by the IOSCO (Colasse, 2004). The IASC's legitimacy was strengthened by the agreement signed by the IOSCO and the IASC concerning the international recognition of the IAS standards by March 1998 (Flower, 1997). Recognising the IAS also meant recognising the IASC's legitimacy to define accounting principles for global application. This process of recognition required the IASC to undertake an in-depth institutional reform based on the FASB model. This transformation was completed in 2001 with the creation of the IASB, at the very start of the debates that would lead to the adoption of Regulation no. 1606/2002. It culminated with the adoption of an IASB "constitution", which included the following objective: "to develop, in the public interest, a single set of high quality, understandable, enforceable and globally accepted financial reporting standards based upon clearly articulated principles". Just as a State's constitution takes its legitimacy from the sovereign people, the IASB sought to take its own legitimacy from the "community" of the main financial market operators (transnational firms, international financial stakeholders and States) and, in doing so, strengthened its claim to be acting on behalf of the public interest.

3.1.2. The trend in European accounting harmonisation towards the adoption of IFRS

Where does Europe stand in all this? Bogged down in political delays due to the inability to agree on a common financial reporting framework,[138] the EU eventually turned its attentions towards the IASB's standards. This was beneficial to both parties: the EU could claim to be acquiring a financial reporting framework that could compete with the system in force in the United States, and the IASB could boast of entering into a first-rate partnership with the world's leading commercial power. In reality, however, things did not quite turn out this way (Delvaille, 2001).

Several indications suggest that from the outset, the United Kingdom's strategy was to obtain the admission of the accounting standards produced by the IASC into the EU, to the detriment of an alternative continental accounting culture (promoted by France and Germany). An important indication was the above-mentioned creation of the IASC in the year of the accession of the United Kingdom (and Ireland) to the EC. Another troubling aspect – the often-repeated declaration that the inability to harmonise the financial reporting framework in the European Union forced the Commission to turn towards the IASC – must, upon analysis, be

[13] Failures of the 4th and 7th Directives.

qualified.[14]

The majority of observers stressed that the IASC's mission to develop accounting standards enabling the comparison of the consolidated accounts of multinational companies would inevitably cause conflict with the accounting directives adopted by the EU. This was the context in which a conference on accounting harmonisation was held in January 1990, based on a review of the application of the Directive of 25 July 1978 (European Commission, 1990). The conference was attended by several national, European and international stakeholders in accounting harmonisation. A certain number of representatives declared themselves in favour of a harmonisation of accounting standards at the European level that would be compatible with the harmonisation on international markets (European Commission, 1990). According to Hopwood (European Commission, 1990), such harmonisation would require a more binding legal form than the directive. He also proposed the creation of an independent European accounting regulator, based on the FASB model. This idea was rejected by the Commission on grounds of the non-binding nature of the decisions likely to arise from the decisions taken by this new independent regulator. Financial considerations also contributed to this rejection. Indeed, "subcontracting" the accounting regulations was a more economical solution in a period marked by budgetary constraints. In the end, only the Accounting Advisory Forum (cf. above) would be created after this conference.

At a later date, the European Commission announced its intention to increase its influence in the IASC. Once again, the explanation given is both complex and interpretable on many different levels. It is less to do with there being a substantial technical difference between the IAS and US-GAAP than with the political will of certain European countries to "sell" the IAS as a political alternative to the American standards. The Commission notice "Accounting Harmonization: A new Strategy vis-a-vis International Harmonization", published in 1995 proposes, in the words of the Commission, a "new approach" in the form of an institutional organisation aiming towards a transposition of the IAS.

The new approach stemmed from the observation of several problems relating to European harmonisation via directives. Firstly, international companies were required to prepare a new set of financial statements, often based on local accounting standards, for the international capital markets, particularly in the USA. Accounts drawn up according to European rules were not recognised at the international level. Therefore, it was also necessary to avert the risk of

[14] In this respect, Delvaille (2001) mentions a report by the Federation of European Accountants (1992) which may have helped to impose this idea.

increasing numbers of European countries abandoning the "European" accounting system and turning towards the US-GAAP. Another problem was insufficient comparability between financial statements in Europe, which was hindering efforts to finalise the implementation of the Single Market (European Commission, 1995). The adoption of the IAS seemed to solve both these problems. The political will to speed up the advent of economic and monetary union, including the introduction of the Euro on 1st January 1999, gave a certain urgency to the implementation of the new approach.

To encourage acceptance of the idea that the IAS meet the needs of European markets, a plan for transposition in compliance with European public policies was introduced in the Commission's 1999 report on European financial market harmonisation strategy (European Commission, 1999). This choice of a compliant transposition was consolidated by the notice of 13 June 2000 that preceded the adoption of Regulation no. 1606/2002. In substance, the Commission stated that the transposition mechanism for the IAS authorises a presumption of the conformity of the said standards to the needs of European markets (European Commission, 2000). It contains absolutely no reference to the European public interest.

3.1.3. The origin of the "European public interest"[15] criterion in Regulation no. 1606/2002

To understand how the expression "European public interest" was introduced into Regulation no. 1606/2002, first should be borne in mind that Regulation no. 1606/2002 was adopted under the authority of the French presidency. This is an important observation in light of the fact it was the Council that made sure that the expression "European public interest" was introduced into Regulation no. 1606/2002. Reviewing the debates that took place during this period could help us form a better idea of the causes that led to the inclusion of the European public interest criterion.

The works that led to the adoption of Regulation no. 1606/2002 started in 2000. The co-decision procedure began after the publication of the Commission notice entitled: "The EU's Financial Reporting Strategy: the Way Forward" of 13 June 2000 (European Commission, 2000). In substance, this proposes a single accounting reference standard – that proposed by the IASC. The proposal won political support from the ECOFIN Council meeting of 17 July 2000 (under French presidency). The conclusions set out in point 3 of the "European Accounting Strategy" section mention: "In recognising these international accounting standards, the European Community will ensure that they are in fact conducive to the European public interest

[15] We recall the "preliminary remarks regarding terminology". Throughout this paper we use the expression of the French translation of the regulation "European public interest", not the English language term "European public good".

and that they can be used by European undertakings with full legal certainty" (Council/00/263, Brussels, 17 July 2000, 10328/00 Press 263). The Council's conclusions stress the need for the comparability of listed companies, financial establishments and insurance companies in order to achieve the objective of improving the integration of European financial markets. In compliance with the "new approach" presented in the previous chapter, this should be interpreted as improved capital integration, enabling European companies to use a similar set of accounting standards to those used on the American financial market.

The Commission's proposed regulation on the IAS (COM [2001] 80 Final COD 2001/0044 of 13 Feb. 2001), introduced in February 2001, initially contained no reference to the "European public interest". In the same vein, no observation concerning the "European public interest" was formulated by the Council Legal Service or by the presidency. That said, Art. 3, which would finally contain a reference to the "European public interest", is of considerable importance in that it defines the power bestowed on the European Commission with regard to the adoption of the future international accounting standards. The question of how this power is exercised arises in relation to the control that the States are supposed to exert over the adoption of international accounting standards: should the Commission possess extensive discretionary powers, or should the leeway in how this discretionary power is exercised be limited by attaching a political "safety net" to it, involving all of the European accounting standards authorities (the future ARC)? And above all, how can such a discretionary power be legitimised? These are questions which shed light on the position of support for the European public interest adopted by the Commission in the debates that would lead to the adoption of Regulation no. 1606/2002.

As is the case for any preparatory document, those which preceded the adoption of Regulation no. 1606/2002 were discussed in advance by a group of experts: the "Company Law" Group (Accounting and Statutory Auditing) (Council Note of 6 June 2001, DG C II/9542/01 DRS 28/CODEC 517). The discussions initially concerned the content of the endorsement mechanism for international accounting standards. Should this mechanism involve a regulation or a directive? In the case of a regulation, what steps could be taken to ensure that these new IFRS standards would not conflict with the accounting standards already in force?[16] Incidentally and from a purely legal standpoint, there is the question of whether a regulation can validly include provisions liable to repeal one or more directives. The question of the Commission's technical competency is also broached, in response to which it proposed to enlist

[16] 4th and 7th Directive, in addition to Council Directive 86/635/EEC on the annual accounts of banks and other financial institutions, and Council Directive 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings.

the services of a panel of experts in EFRAG.

The first reference to the European public interest in the draft regulation was made in the meeting of 26 September 2001 organised under the Belgian presidency (Council Note of 26 September 2001, DG C II/12205/01 DRS 45 CODEC 933). It would seem that the Secretariat of the Presidency echoed the conclusions of the ECOFIN Council of 17 July 2000 by making an explicit reference to European public interest. Art. 3 no. 1 was amended in the following manner: " … International accounting standards can only be adopted if they are not contrary to **European public interest**". The underlying justification for the inclusion of this expression was partly found in the newly added ninth recital of the draft regulation: "To adopt an international accounting standard for application in the European Union, **it … must be adapted to financial reporting within the European Union** …". A similar expression could also be found in the Draft Regulation of 5 September 2001(Council Note of 5 September 2001, DG C II 11294/01 DRS 39 CODEC 796), and was specified in the ninth recital of the said draft. Consequently, for an international accounting standard to be adopted, it would need to … "provide a **suitable basis for financial reporting**[17] by European companies, that is to say for instance that it does not create a disproportionate charge for companies, that it produces sensible results and is socially and economically acceptable".

The meeting that followed the inclusion of this expression, held on 2 October 2001, made no mention of any discussion about the appropriateness of referring to the "European public interest". The Minutes for 2 October 2001 (Council Note of 2 October 2001, DG C II 12314/01 DRS 47 CODEC 952) simply mentioned that Art. 3 should be interpreted in light of the ninth (see above) and eleventh[18] recitals of the Draft Regulation.

The Minutes for 4 October (Council Note of 4 October 2001, DG C II, 12441/01, DRS 49 CODEC 967), however, provided a hint of the first discussions concerning the European public interest. The German delegation maintained that this expression lacked precision, as it was simply based on minutes mentioned in an ECOFIN Council press release. The vagueness of the expression was considered liable, by the German delegation, to be the subject of an amendment before the European Parliament. A debate then began between the Commission (supported by France and Italy), and Germany (supported by the United Kingdom and the Netherlands). Contrary to what might initially be thought, this debate did not revolve around cultural differences (the opposition between a transcendent and an aggregative conception of the

[17] This same expression is already found in the general description of the endorsement mechanism for the first proposal of the Regulation (COM [2001] 80 Final COD 2001/0044 of 13 Feb. 2001, p. 7) without being specified.
[18] The eleventh recital addresses the way in which the Commission envisages creating a link between the IASC and the Member States.

public interest). Instead, it focused on the degree of linguistic precision likely to justify the rejection of an IFRS standard by the EU. The German delegation considered that, in the interests of transparency, the conditions in which an IFRS standard might not be compatible with the European public interest should be more clearly defined. Simply referring to the "European public interest" seemed much too vague. The French delegation, however, considered that the substance of the "public interest" could be expressed in more concrete terms according to the vital interests of the Member States. A compromise consisting of placing the reference to the "European public interest" in the ninth recital was proposed by the Council Legal Service.[19]

Finally, a new compromise text was proposed on 24 October 2001 (Council note of 24 October 2001, DG C II, 12441/01, DRS 50, CODEC 974) by the General Secretariat of the Council. This text reformulates the ninth recital of the draft regulation in the following manner: "It is necessary that, **in accordance with the conclusions of the ECOFIN Council of 17 July 2000, it is conducive to the European public interest..."** The new wording of the ninth recital aims to shed more light on the content of the public interest that is mentioned in Art. 3 no. 2 of Draft Regulation no. 1606/2002.

On 26 November 2001 (this date is stated in the Note of the GS of the Council of 22 May 2002, DG C II, 9072/02, DRS 34 CODEC 625), a more political meeting was held during which the ECOFIN Council announced that it had managed to define a "general approach". The content of the debates that followed this meeting has not been made public.

The Minutes of the meeting on 4 December 2001 (Council Note of the Council of 4 December 2001, DG C II, 14789/01, DRS 65, CODEC 1300) also allude to significant differences in relation to the European public interest. For example, the Dutch and British delegations proposed that the expression should not be used. The Presidency of the Council then suggested maintaining the reference to the public interest, while allowing the Accounting Regulatory Committee to define its substance under the authority of the Commission. The addition of paragraph 12 b was supposed to clarify this point: "When defining the positions to be taken on documents and papers issued by the IASB in the process of developing international accounting standards and the decision-making process concerning the adoption of these standards (IFRS and SIC), the Commission should take into account, to the maximum possible extent, the views expressed by the delegations in the Accounting Regulatory Committee".

At the same meeting, and in response to the criticisms expressed by the German and UK

[19] Which also considered the use of the term "public interest" in an article to be "problematic".

delegations in relation to the text of 24 October 2001, the French delegation (backed by Greece) attempted to specify its meaning in the ninth recital (Council Note of 4 December 2001, DG C II, 14789/01, DRS 65, CODEC 1300, p.4). An IFRS standard is conducive to the European public interest when it offers “companies in the EU similar opportunities for competition to those offered to third countries and conforms to the objective of overall convergence”. As for the German delegation[20] (Council Note of 4 December 2001, DG C II, 14789/01, DRS 65, CODEC 1300, p.7), far from opposing the initial French proposal, it attempted to clarify its substance in Art. 3 in the following terms: “The international accounting standards shall be adopted unless **they do not conform to the principles of the Directives** … or they are **contrary to the European public interest** …”.

In the end, in the compromise text adopted by the Council (Council Note of 10 December 2001, DG C II, 14789/1/01 Rev.1, DRS 65, CODEC 1300), the proposed formulation for nonconformity was only used for the Directives (“The international accounting standards can only be adopted if they are not contrary to the principles set out in the Directives…”), but not for the criterion of European public interest, which remained unchanged (“and if they are conducive to the **European public interest”**).

These are the bases on which the ensuing negotiations were carried out in the Council and Parliament. The Minutes of the Council meeting of 10 December 2001 (Council Note of 4 December 2001, DG C II, 14789/01, DRS 65, CODEC 1300) again mentions the reservations of the Dutch delegation, now the only one to clearly oppose the inclusion of the public interest in Art. 3 no. 2 of the draft regulation. However, numerous reservations were expressed about the French delegation’s proposed addition concerning “similar opportunities for competition”, with the result that the reference to the European public interest was permitted, but without any precise substance. On 10 December 2001, the General Secretariat of the Council proposed the wording for a recital 12 bis that was supposed to incorporate the French concerns regarding the substance of the European public interest: “… the Commission should take into account, to the maximum possible extent, the views expressed by the delegations in the Accounting Regulatory Committee and, in particular, the importance of **not introducing a competitive disadvantage to the detriment of European companies that do business on the global market”** (Camfferman/Zeff, 2015).

Regarding the integration of the criterion of compliance with the European public interest into Regulation no. 1606/2002 – adopted under the Belgian Presidency – we also have

[20] Supported by Austria and the United Kingdom, and possibly by Portugal. The Netherlands proposed the removal of the reference to the public interest.

the account of Yvan Stempnierwsky[21] who participated in the work leading up to the regulation. He states that this approach was not the fruit of a legal or academic analysis but aimed exclusively and very pragmatically to obtain a sufficiently vague (and all-embracing) criterion that could prevent the Member States from having to adopt certain standards and interpretations that have been/might be issued by the IASB. This was a reaction to the proposal by certain Member States to apply the IFRS, without amendments and as issued by the IASB, to the listed companies governed by the laws of the Member States. Nor did these same Member States envisage any mechanism for the endorsement of the IFRS by the EU and their translation into the official languages of the EU. However, although it was one thing to recognise – by the adoption of the European Regulation – the failure of European accounting standardisation regarding the consolidated accounts of listed companies, especially after the listing of Daimler Benz on the New York stock market in 1993, it was quite another to relinquish any form of accounting sovereignty.

This attempt to retrace the events leading up to the adoption of Regulation no. 1606/2002 reveals that the mobilisation of the "European public interest" has been used for the a posteriori legitimisation of the idea that the IAS and then the IFRS standards are firstly adopted in compliance with the interests of the main financial stakeholders on the European financial markets (listed companies, national regulators, users of accounts, transnational accounting and auditing firms). This "vested" interest applies to broader objectives: the creation of the internal market for which the harmonisation of financial markets is an essential component, and the competitiveness of European enterprises on the international financial markets.

As conclusion we can note that the reference to "the European public interest" was not initially made in the Commission's draft regulation. The reference appears for the first time in a compromise text originating from the General Secretariat of the Council. A number of rifts occurred as soon as attempts were made to give substance to the expression "public interest". It is difficult to identify what "drove" the French delegation to support the inclusion of the expression "public interest" in Regulation no. 1606/2002. This difficulty stems directly from a negotiating procedure that is inherent to European institutions, which often involves multiple institutions that do not always share the same interests. On the basis of this observation, the most likely assumption seems to be that the polysemic nature of the public interest is actually what made it possible to satisfy several important stakeholders in the negotiations for Regulation no. 1606/2002. For France, it gave a certain number of "guarantees" to the banking

[21] Lawyer at the bars Brussels and Madrid bars; interview of 5 September 2017.

profession, which, since the negotiation stage, had been hesitant about applying IAS 39 (introducing at the time significantly “fair value” accounting). The reference to the “public interest” also revealed the position of a certain number of French (Assemblée Nationale, 2001) and Italian political leaders, who were opposed to a simple mechanism for the endorsement or refusal of IAS standards, who considered that on the contrary, it should be possible to adapt an IAS standard to the “specificities” of the European financial market. Lastly, the European Commission saw support for the “public interest” as being a way to guard against any criticisms that might be made concerning a mechanism through which the EU has relinquished exercising its sovereignty in the transposition of the accounting standards used by a totally private standardisation body over which Europe exercises only relative control.

3.1.4. The meaning of the “European public interest” criterion according to legal interpretation methods

Since a literal or textual interpretation of the term "European public interest" cannot be used[22] and after placing the origin of the criterion in its historical context, we hereafter apply systemic and teleological interpretation methods in order to capture the concept of European public interest in Regulation no. 1606/2002.

In particular, the term "European public interest" should be analyzed with reference to the objectives pursued by Regulation no. 1606/2002 and the broader legislative context of that Regulation. The legislative objectives are explicitly stated in Art. 1 of the Regulation: "This Regulation has as its objective the adoption and use of international accounting standards in the Community with a view to harmonising the financial information presented by the companies referred to in Article 4, in order to ensure a high degree of transparency and comparability of financial statements and hence an efficient functioning of the Community capital market and the Internal market.”

It should be noted that the legislator has incorporated this declaration into the regulation itself (as Art. 1). The fact that the legislator did not limit the declarations of objectives to the recitals - as would generally be the case - demonstrates in our opinion that it intended to place particular emphasis on the objectives mentioned in the regulation. However, the statement in Art. 1 is supported by various references in the recitals to the underlying objectives of the regulation, namely the functionality, efficiency and competitiveness of the Community capital market(s) and the completion of the internal market as objectives of the regulation.

[22] See the “Preliminary remarks regarding terminology » at the beginning of this report.

In summary, the overall objective of the EU IAS Regulation can be summarised as improving the functionality, efficiency and competitiveness of EU capital markets by providing (through the implementation of IFRS) better information to capital market participants.

However, as is common in Community and national capital market regulation, the objective of providing reliable information to market participants only seems to serve to ultimately ensure the functioning of the capital market as a whole. On the other hand, it seems that Regulation no. 1606/2002 is not intended to protect the interests of the various market participants. In other words, although the term "European public interest" refers to the functioning of the Community financial markets and the internal market as a whole and thus protects the collective interests of all market participants, it does not seem to refer to the interest of an individual market participant itself.

However, the question can be asked whether Regulation no. 1606/2002 aims to particularly protect the interests of creditors. Indeed, European accounting rules are traditionally closely linked to creditor protection. This is because creditor protection in Community company law is based to a large extent on the capital maintenance system. Since this system is based on balance sheet figures, a harmonized capital maintenance system (as implemented by the EU Company Law Directives) requires a harmonized set of accounting rules. Given this link between accounting and company law in the EU, a legitimate question is therefore whether creditor protection should also be considered as an objective of the regulation and as part of the "European public interest".

An argument in favor of this point of view can be drawn from Art. 3 no. 2 of Regulation no. 1606/2002 itself as it provides as a criterion for the adoption of IFRS that they do not conflict with the principle of a true and fair view of the European Accounting Directives. However, if the legislator intended to promote creditor protection with the regulation, it seems difficult to argue that it has simply "forgotten" to mention this objective in Art. 1 and the recitals since this protection has always been at the heart of the Accounting Directives. Moreover, even assuming that creditor protection is implicit in the regulation, it is already covered by the true and fair view criterion. In other words, since creditor protection is indirectly ensured by the true and fair view criterion, it does not seem convincing to strengthen this protection by interpreting it as an objective of the regulation and, therefore, to consider it for the interpretation of the “European public interest".

Finally, the question remains whether the use of the term "European public interest" represents a "real" additional requirement for the transposition of IFRS into EU law or is only a political message, for example with regard to promoting convergence between European accounting regulation and US-GAAP (in line with the latter opinion, e. g. van Hulle, 2003; Schön, 2004).

The answer lies in a systemic interpretation of the place of the European public interest in the regulation. Given its position in Art. 3 no. 2, the European public interest apparently has the same "legal consequences" as the criterion of not being contrary to the true and fair view of the Accounting Directives. With regard to the latter criterion, the legislator itself has made it very clear in subsequent legislative acts (see in particular recitals 4 and 15 of Directive 2003/51/EC) that this criterion is in fact intended to provide an additional requirement for the transposition of IFRS into Community law. This opinion is also clearly expressed by the European Commission (2015a) in a non-paper of 17 September 2015 dealing with the "meaning of the true and fair view criterion and its relevance in the adoption process".

Given the identical systemic importance granted to the two criteria in Art. 3 no. 2 of the regulation, it is clear that the "European public interest" criterion represents an additional requirement for the adoption of IFRS in the EU (Hennrichs, 2006; Hennrichs/Schubert, 2007; Pöschke, 2009). Consequently, the European Commission must determine, as part of the endorsement process, whether the adoption of an international standard is conducive to the functioning of the Community financial markets and the internal market as a whole. A analysis that has to be based - in theory - on objective criteria. However, since the application of the term "European public interest" in a particular case necessarily leaves a wide margin of interpretation and the guidance provided by the objectives of the Regulation being rather vague, it can easily be concluded that - comparable to complex cases of proportionality (see ECJ, 1996, no. 58) - the European Commission has a wide discretion to determine whether or not an international standard serves the European public interest (Pöschke, 2009).

In conclusion of the analysis of the origin of the "European public interest" and its theoretical (legal) interpretation, it can be seen that the approach of using IFRS in the EU resulted from the failure of European accounting harmonization via the directives. The IFRS endorsement mechanism provided for in Regulation no. 1606/2002 and the reference to the "European public interest" served to legitimize ex post the idea that IFRS are first adopted in accordance with the interests of the main financial actors in European markets. The interpretation of the autonomous criterion "European public interest" must be consistent with the objectives of Regulation no. 1606/2002, namely the harmonization of financial reporting in order to ensure the transparency and comparability of financial statements and, therefore, the efficient functioning of the Community capital market.

We discuss in the next chapter the practical application of the criterion in the IFRS endorsement process.

3.2. The application of the "European public interest" criterion by the European Union

3.2.1. The first phase, including the carve-out

Since the publication of Regulation no. 1606/2002, it has been possible to identify different periods which differ according to the way in which the IFRS adoption process has been conducted. The first phase lasted from 2001, when EFRAG was created by private organizations in the area of financial reporting (the so-called "founding fathers"), to the formal recognition of EFRAG by the European Commission in 2006 through the signature of a "working arrangement" (European Commission, 2006). The segregation of duties took place in the manner provided for by the regulation: in the form of technical support for the Commission provided by EFRAG, and a political committee – the ARC.

The Commission also asked EFRAG systematically and in addition to the technical aid to carry out a cost-benefit analysis of the standard to be adopted. Indeed, it had been agreed from the outset that an IFRS standard would not be conducive to the European public interest if it were not subject to a cost-benefit analysis (Hulle, 2003; Hulle, 2004; Heinrichs/Schubert, 2007; Pöschke, 2009). This (unofficial) analysis informed the Commission's discussions with the ARC during the adoption process.

This five-year term also saw the wholesale adoption of the existing IFRS on 1st March 2002 and the carve-out relating to IAS 39. One of the factors at the origin of the carve-out was a statement by the President of the French Republic to the Commission which insisted on verifying the compatibility of the proposed standards with the "European public interest" (Klee/Chambost, 2009).

In 2004[23] the European Commission adopted IAS 39 on financial instruments after amending it by deleting certain paragraphs and adding others related to macro-hedging (so-called "carve-out"). The carve-out was proposed to the Commission by the ARC which – in line with its proposal – had given a positive opinion on its adoption. Similarly, EFRAG adopted a position in favour of the carve-out in a statement dated 26 September 2004, after initially

[23] Regulation no. 2086/2004 of 19 November 2004.

abstaining during the discussion on the original version of IAS 39 (Dewing/Russell, 2008).

The statement of grounds for Regulation no. 2086/2004 of 19 November 2004 is quite clear on the scope of the application of the carve-out, which concerns two clearly defined subjects: the fair value option and hedge accounting ("macro-hedging"). In reality, two types of difficulties were raised in this way: Legal (the "fair value" option as initially provided for by IAS 39 was in reality contrary to the 4th Directive), and Financial (concerning the conditions set by IAS 39 regarding eligibility for hedge accounting). In practice, the carve-out consisted quite simply of removing the "fair value" option from the IAS 39 text, and additional provisions were inserted into IAS 39 for macro-hedging.

This was the first time the Commission had used its right of amendment. The question is on which of the criteria set out in Art. 3 no. 2 of Regulation no. 1606/2002 the amendment is based on. Regarding the justification for the carve-out, the European Commission ruled out any reference to the true and fair view principle or to the European public interest in the defence of its position[24]. It pointed out that the provisions of IAS 39 in force at that time were probably temporary insofar as, at the IASB's request, they were being debated by a variety of regulatory bodies. The Commission would naturally have preferred to have waited until these debates had concluded and to express its opinion on a more established standard, but it was bound by Art. 4 of the 2002 regulation requiring the application of the IFRS standards to the consolidated accounts of European companies from 1 January 2005. This is the context in which it opted for a carve-out which, to its mind, could only be provisional. This is what clearly appears in recital 11 of the statement of grounds. Recital 14 confirms that the position adopted by the Commission conforms to Art. 3 of Regulation no. 1606/2002, without any other details. The carve-out is essentially an exceptional and temporary measure enabling the Commission to comply with Regulation no. 1606/2002, whose effective date could not conceivably be changed. Seen from this perspective, the Commission's decision could be considered conducive to public order and certainly to the European public interest. The fact that the criterion of the European public interest was not emphasized to justify the carve-out can be interpreted as a sign that this criterion was of a purely formal nature without any direct application.

Although the Commission's reasoning on the "fair value option" does not call for comments in the framework of our research, this is not the case for the second subject – macro-

[24] It is implicit in Regulation no. 2086/2004, and it is explicit in the Questions/Answers of 17 November 2004 (European Commission, 2004a): "The two issues were carved out because the Commission considered that the related provisions are not yet suitable for adoption and require further revision. The two carve-outs were not based on any arguments related to the "true and fair view principle" under the European Accounting Directives **or the European public interest**, as mentioned in the IAS Regulation."

hedging. By taking a stand on an issue of pure expediency, the Commission avoided having to put forward a more fundamental reason for its decision – the opposition of certain banks[25] to an accounting rule:

- that forced them to revise their asset/liability management system, at a cost they considered excessive,
- that, if they did not change their asset/liability management systems, would lead to a significant deterioration in their annual results.

As there was no prudential reason requiring the banks to change their asset/liability management systems, they would find themselves publishing downgraded results, which they considered to be an unjustified attack on their competitive position and their ratings.

The European public interest could have been invoked:

- on the internal level: certain European banks were not treated as well as others,
- on the international level: certain European banks were disadvantaged, especially in relation to the American banks.

In this perspective, the carve-out, by extending the conditions for hedge accounting, restored a kind of balance. Essentially, we are not very far from the "Economics for the Common Good" espoused by Jean Tirole.[26]

The evolution of the carve-out: the part of the carve-out relating to the deletion of the "fair value" option was removed in November 2005 (European Commission, 2005) after the modification of IAS 39 by the IASB in June 2005. However, the reservation about hedging still applies thirteen years later. Indeed, IAS 39 was replaced by IFRS 9 for mandatory application in 2018, and the rules on hedging were relaxed, but the question of macro-hedging was deliberately set aside, with the IASB reserving the right to examine the issue as part of a specific project…which is still in progress.[27] The European Regulation for the endorsement of IFRS 9 logically mentions in (3) that the carve-out added to IAS 39 remains valid.[28]

3.2.2. The second phase through to the 2014 EFRAG reform

After the debates on the carve-out, a second phase began with the official recognition of EFRAG by the Commission with the signature of the "Working Arrangement between European

[25] Primarily, the banks financing the economy via the transformation of deposits.
[26] Without providing a precise definition, Jean Tirole considers the common good to be that which optimizes individual interests and the general interest (Tirole, 2016, p. 18).
[27] The IASB website identifies the project under the heading: "Accounting for dynamic risk management : a portfolio revaluation approach to macro hedging".
[28] "For the sake of the consistency of the Union's legislation, this Regulation does not apply an amendment of IAS 39 relating to fair value hedge accounting". Regulation no. 2016/2067 of 22 November 2016.

Commission and EFRAG" of March 2006 (European Commission, 2006). In Point 2.2, it defined the mission of the EFRAG TEG in the framework of the IFRS adoption process in Europe. The TEG was responsible for analysing whether the standard to be adopted corresponded to Community law, and especially to "the requirements of Regulation no. 1606/2002 relating to intelligibility, relevance, reliability and comparability, as well as to the true and fair view principle as defined in the 4th and 7th Directives". The Commission therefore asked EFRAG to check all the criteria of Article 3 no. 2 except for the European public interest. EFRAG's work on endorsement began with an endorsement letter from the Commission asking it to analyse the IFRS to be adopted. Until October 2012, this statement only mentioned the technical criteria of Article 3 mentioned above. Consequently, EFRAG analysed the technical criteria and if they were met, it assumed that the public interest criterion was satisfied. This was still consistent with the rationale of appointing a technical body (EFRAG) to analyse the technical criteria and leaving the political organs (Commission, ARC) to adjudicate on the political criterion of the European public interest (Maystadt, 2013, p. 7, citing discussions during the ECOFIN Council of 13 November 2012; also see Chiapello/Medjad, 2009; Crawford et al., 2014).

In 2010, however, appears a change[29] in the formulation of the endorsement advice because EFRAG now writes that the technical criteria are met (where applicable) and that it had found nothing in the standard in question that was of detriment to the European public interest. By this wording, the President of EFRAG wished to recall that EFRAG was created to provide technical advice to the European Commission on the new standards proposed by the IASB and that it was therefore not, in principle, its task to consider whether the proposed standards were in the European public interest. Political advice here was the responsibility of the ARC and the Commission. Regardless of the wording of the advice, the European public interest test remained in substance a formal criterion presumed to have been met in the absence of evidence to the contrary.[30]

In October 2012, the criterion of European public interest was added to the Commission's endorsement letter to EFRAG, without any apparent reason given that EFRAG's mission had not changed. Consequently, EFRAG continued its technical work as before and still did not specifically analyse this criterion.

[29] This change was initiated by the new Chairman and CEO of EFRAG. Interview of 29 March 2018 with Françoise Flores, Chairman and CEO of EFRAG from 2010 to 2016.
[30] Interview of 29 March 2018 with Françoise Flores, Chairman and CEO of EFRAG from 2010 to 2016. Aussi Van Mourik/Walton (2018).

In 2006, a new joint decision-making procedure – the Regulatory Procedure with Scrutiny – was defined, giving greater powers to the European Parliament (Klee/Chambost, 2009; Malo, 2014). This procedure did not formally enter into force until 2008, but the Parliament anticipated its introduction by applying it in advance in 2006 on IFRS 8 whose endorsement process was ongoing. The reason for doing so was not that there were specific concerns about this standard but rather that it was simply included in the adoption process at that particular time. Also, this was essentially more of a political issue than a technical one (content of the standard). It related to dissatisfaction with the IFRS adoption procedure in general, and with what IFRS 8 represented, i.e. an exact copy of the US- GAAP standards. The European Parliament wanted to ensure that in the adoption processes, the IFRS were not simply endorsed, but had to be "politically, socially and economically" justified (Crawford et al., 2014). Consequently, and for the first time, the Parliament asked the Commission to carry out an impact assessment of the new standard. In the end, and despite a degree of uncertainty, the Parliament adopted IFRS 8 in November 2017 – with no amendments in relation to the American standard.

In the same spirit of improving the scrutiny of the endorsement process, the Commision created in early 2007 the Standards Advisory Review Group (SARG) (European Commission, 2006a; European Commission, 2007). Given that the IFRS are produced by a private body and subsequently analysed for endorsement by another private body – EFRAG – there was a need to ensure that EFRAG's work was balanced and objective. Members of the SARG were appointed by the Commission and independent accounting experts. The SARG operated until 2011 and always found that EFRAG's work conformed to the above-mentioned expectations. One practical consequence of the establishment of the SARG was that EFRAG began adding Bases of Conclusion to its endorsement advice (Van Mourik/Walton, 2018), which have now become Annex 2 of EFRAG's endorsement advice.

3.2.3. The second phase since the 2014 EFRAG reform

Following the Maystadt Report (2013) EFRAG was radically reformed (reform effective in October 2014) in terms of both its organisational structure and its missions, to make it more representative and legitimate (Maystadt, 2017). In terms of its organisational structure, the decision-making authority was transferred to the committee of experts (TEG), which kept its technical advisory role, on the EFRAG board. The latter – previously "only" a Supervisory Board with a purely administrative function – became now the central body of EFRAG, with 17 members:[31] 8 national accounting standard setters, 8 representatives of European stakeholder bodies (auditors, preparers etc.) and one president, appointed by the Commission. The fact that the current president[32] is a former Member of the European Parliament reflects the more political role of EFRAG today.

The considerable extension of EFRAG's missions since the Maystadt reform in 2014 is also reflected in the new Working Arrangement of June 2016 (European Commission, 2016a), which replaces the 2006 version. In this way, according to the new point 4, "Endorsement process", EFRAG remains the technical advisor to the Commission, but from now on, it must analyse ALL criteria in Article 3 of the IFRS regulation, which therefore includes the European public interest criterion (EFRAG, 2015). EFRAG is also required to provide an impact assessment including a cost-benefit analysis and an assessment of broader impacts including those of a macro-economic nature. The Commission can also ask EFRAG to analyse any other subject related to the IFRS adoption process and to supplement its adoption advice with "specific elements". In addition, point 6 – "Other activities" – of the Working Arrangement makes it possible for the Commission to ask EFRAG in general to "undertake activities relating to wider reporting developments". Therefore, EFRAG's basic mission is now wider ranging, but the Commission can extend it even further. One example is the proposal under discussion to create a European Corporate Reporting Lab within EFRAG with the mission to promote innovation and best practices in the environmental and sustainable reporting field (European Commission, 2018).

In light of its new missions, in November 2014 (after the Maystadt reform entered into force on 31 October 2014), EFRAG published a staff paper: "Approach to endorsement" (EFRAG, 2014). In the chapter on the "European public good (interest)", this paper states that the objectives of Regulation no. 1606/2002 (to ensure a high degree of transparency and comparability) are conducive to the European public interest because they contribute to the efficient operation of the capital markets. It is considered that the adopted norms must not endanger the financial stability or hinder the economic development of the EU, but the adopted standards are not required to contribute to this stability or development.

The document then lists elements that the Board could analyse when assessing the public interest criterion: transparency, protection of investors, confidence in financial markets,

[31] The Board also consisted of 17 members before the Maystadt reform, but these people "only" represented EFRAG's founding professional organizations.
[32] The current president, Jean-Paul Gauzes, appointed on 1st July 2016, was a Member of the European Parliament from 2004 to 2014.

competitiveness of accounting standards, particularly vis-à-vis the American standards, the impacts on the behaviour of investors and preparers of financial information, economic growth and financial stability.

In 2015, the report from the Commission to the European Parliament and Council concerning the evaluation of Regulation (EC) no. 1606/2002 on the application of international accounting standards (European Commission, 2015, p. 6) observes that “the notion of the public interest is not defined but can be understood as embracing financial stability and economic considerations. In particular, it is necessary to evaluate the possibility that the accounting standards are harmful to the economy or to certain stakeholders, such as long-term investors”. This report (European Commission, 2015, p. 9) also observes that “certain stakeholders considered that it would be helpful to be more specific about what European public interest encompasses, while others considered that the term is generic enough to have meaning and allows flexibility in practice”.

Following the EFRAG staff paper and the discussions concerning the aforementioned report, a European Commission working document (non-paper) was produced in 2016 (European Commission, 2016). The document was entitled “European Public Good (Interest)” and was discussed within the ARC on the meaning and relevance of the criterion. The document specifies (p. 2) that “when assessing whether a standard meets the criterion of public interest, the following elements should generally be taken into consideration:

- It should not endanger financial stability;
- It should not hinder the EU economic development;
- The impact of the new standard on the competitiveness of European undertakings;
- It should have added value for the Union, for example it is an improvement of the accounting rules with respect to the issues at stake.

The above mentioned shall not be considered, in any case, as exhaustive.”

The non-paper contains nothing really new in relation to the EFRAG document. It repeats that the analysis of public interest should include an evaluation to make sure that financial stability is not endangered and economic development is not hindered, an assessment of the impacts on the competitiveness of European undertakings and an analysis that the new standards provide added value for the Union, for example by improving the accounting rules. Reading the non-paper therefore gives us no further information about the definition of European public interest.

Lastly, the European Parliament (2016) adopted a resolution in June 2016 concerning "The evaluation of the activities of the IFRS Foundation, EFRAG and the PIOB" and asking the Commission to follow as a matter of urgency the Maystadt recommendations regarding the extension of the "public interest" criterion ensuring that it is fully respected during the endorsement process. It "urges the Commission to publish, in collaboration with EFRAG, clear guidelines on the meaning of the notion of public interest (…)" (European Parliament, 2016, p. 6). Given that the Commission's non-paper was published prior to this resolution, it remains to be seen whether its stipulations are definitive. For the moment, they are not further developed.

Regarding the application by EFRAG, the following reasoning can be observed in the statements of adoption advice: If the standard in question improves financial reporting with an acceptable cost-benefit balance, and if the standard has no negative impacts on the European economy (including financial stability and economic growth), then it is conducive to the European public interest. In practice, the statement of adoption advice currently contains three annexes: a first annex explaining the elements of the standard to be adopted, a second annex covering the technical criteria and a third annex wholly dedicated to the criterion of European public interest including a description of the impacts and relevant stakeholders. By analysing the endorsement advices after October 2014 relating to the most recently adopted significant standards (IFRS 15, IFRS 9, IFRS 16), the ever-increasing importance of Annex 3 can be observed (see Table 1 below).

Table 1: Analysis of EFRAG endorsement advices after the 2014 reform

Standard (date of EFRAG endorsement advice letter on adoption)	**IFRS 15 (March 2015)**	**IFRS 9 (September 2015)**	**IFRS 16 (March 2017)**
Number of pages in the letter	43	97	84
Importance of Annex 3 "Public interest" in the letter (% number of pages)	19%	39%	46%
Content of Annex 3	a) 1 paragraph with sundry considerations (no negative effects on the economy, better transparency, reduced cost of capital, no competitive disadvantage) b) cost-benefit analysis -- costs for preparers (single, continuous) -- costs for users (single, continuous) -- benefits	a) improvement of financial reporting b) lack of convergence with US-GAAP (competitiveness) c) effects on behaviour of investors and issuers d) relationship between IFRS 9 and IFRS 17 e) European carve-out f) cost-benefit analysis -- costs for preparers (single, continuous) -- costs for users (single, continuous) -- benefits	a) improvement of financial reporting b) effects on stakeholders' behaviour: quantitative effects, effects on behaviour of users and lessees c) impacts on the leasing industry d) effects on SMEs e) effects on financial stability f) effects on competitiveness g) cost-benefit analysis h) other (timing of adoption process, effects on regulatory capital requirements)
Specificities		"IFRS 9 is conducive to the public interest except for the impact on the insurance sector"	In its letter to EFRAG, the Commission asks it to analyse the impacts on stakeholders, including "the environmental and social aspects, if relevant". EFRAG commissioned an external economic study; it also carried out two quantitative analyses of its own

After consulting the ARC the Commission adds from time to time special points for consideration. For example, the letter asking for EFRAG's opinion in relation to IFRS 16 lists quite specific questions in Annex 2 (e.g. "Is the definition of 'lease' appropriate or does it also cover certain service contracts?") in different fields (behaviour of stakeholders, competitiveness, financial stability, cost-benefit analysis). A similarly structured letter and Annex 2 is found in the letter on IFRS 17.

Table 1 reveals a similar structure to Annex 3 for the last three adoptions of significant standards. It confirms to the approach already mentioned: improvement of financial reporting with an acceptable cost-benefit balance and no negative impacts on the European economy, which are analysed in a different way according to the standard in question.

Here are two observations concerning the specificities mentioned in Table 1:

(i) IFRS 9 is, for the moment, the sole standard that, according to EFRAG, does not completely satisfy the public interest criterion. It is intriguing to see the public interest shared between insurance and "everything else". One might also ask how the public interest can be served for only a proportion of the "public", given that the public interest often requires compromises between the advantages (for some) and disadvantages (for others). If the public interest is served, the advantages outweigh the disadvantages. These disadvantages (for some people) exist without calling into question the public interest.

The reservation expressed by EFRAG did not prevent the Commission from adopting IFRS 9 but prompted it to insert a temporary European exemption ultimatum into the adoption regulation[33] if the IASB failed to provide a deferred application option for the insurance sector, which would be valid until a certain date. The IASB published an amendment to this effect in September 2016[34] but it was insufficient in the eyes of the Commission. Consequently, upon the adoption of the amendment, Art. 2 of Regulation no. 2017/1988[35] provides for a temporary exemption enlarging the scope of companies eligible for differed application: insurance sector operators belonging to financial conglomerates are thus also allowed to postpone the application of IFRS 9 until 1st January 2021.

Regarding the application date of IFRS 9 by insurance companies we can note that the reservations (of EFRAG) concerning the public interest prompted the IASB to adapt its standards. Deeming the amendments unsatisfactory, the Commission implemented a temporary exemption for certain companies.

(ii) In its statement on the adoption of IFRS 16[36] and IFRS 17[37] the Commission asked EFRAG to analyse the impacts on stakeholders, including economic aspects, but also "if relevant environmental and social aspects". This extended the scope of analysis beyond the

[33] 5th recital of Regulation no. 2016/2067 of 22 November 2016.
[34] On 12 September 2016, the International Accounting Standards Board (IASB) published amendments to the International Financial Reporting Standard IFRS 4, entitled "Applying IFRS 9 Financial Instruments with IFRS 4 Insurance Contracts".
[35] Regulation no. 2017/1988 of 3 November 2017 amending Regulation (EC) no. 1126/2008 adopting certain international accounting standards pursuant to Regulation (EC) no. 1606/2002 of the European Parliament and Council, regarding the International Financial Reporting Standard IFRS 4.
[36] Letter of 9 June 2016.
[37] Letter of 27 October 2017.

economic sector. In the same spirit, a draft motion of the European Parliament concerning IFRS 17[38] asked the Commission and EFRAG to consider the benefits of the standard for investors “and society” (point 13) and referred to the COP21 and the Task Force on Climate-related Financial Disclosure (in the recitals and point 15). Still in relation to IFRS 17, Stolojan, a Member of the European Parliament and the author of the aforementioned motion, in an oral question to the Commission asked how it intended to ensure compliance with the criterion of European public interest, and particularly with its objective of “sustainability”.[39] In its “Action Plan: Financing Sustainable Growth” of March 2018 (European Commission, 2018a) the Commission commits itself - "if appropriate" - to requesting EFRAG to analyse the impact of an IFRS on "sustainable investments" as part of the verification of the European public interest criterion.

It is therefore clear that there is a willingness to broaden the scope of analysis that EFRAG is supposed to cover beyond the "simple" economic or financial market considerations. In the same vein and following a request from the Commission (European Commission, 2018a) EFRAG created the European Corporate Reporting LAB in September 2018[40]. According to the EFRAG website, "the European Lab will initially focus on non-financial reporting, including sustainability reporting. Preliminary projects may include climate-related disclosures in line with the recommendations of the Financial Stability Board's Task Force on Climate-related Financial Disclosures. Other topics may be environmental accounting and, in the medium term, integrated reporting, digitalisation and innovations in various other aspects of corporate reporting."[41] From now on, EFRAG will therefore work on financial and non-financial reporting. This extension of EFRAG's scope of action may be seen as the beginning of a new, fourth phase in the life of this organisation.

In conclusion, since the creation of the European endorsement mechanism, there has been an extension of activities and scope of analysis. After a first phase in which EFRAG formally assessed the technical criteria alone and carried out an unofficial cost-benefit analysis, impact analysis of a new standard were carried out in the second phase and EFRAG stated in its endorsement advice that it had not found (where applicable) any elements that would hinder the European public interest. Its reform in 2014 following the Maystadt report has considerably

[38] Draft motion for a resolution further to Question for Oral Answer B8-0000/2018 pursuant to Rule 128(5) of the Rules of Procedure on International Financial Reporting Standards: IFRS 17 Insurance Contracts (2018/2689(RSP)) of 27 April 2018.
[39] Parliamentary questions: Question to the Commission with request for an oral answer, Article 128 of the Regulation, Theodor Dumitru Stolojan, on behalf of the Committee on Economic and Monetary Affairs, 20 June 2018, O-000068/2018.
[40] http://www.efrag.org/Activities/1807101446085163/European-Corporate-Reporting-Lab-at-EFRAG# (last accessed on 4 October 2018)
[41] http://www.efrag.org/Activities/1807101446085163/European-Corporate-Reporting-Lab-at-EFRAG# (last accessed on 4 October 2018)

expanded EFRAG's missions. It is now in charge of verifying all the criteria of Art. 3 of the IFRS Regulation, formally providing an impact analysis (including at least a cost-benefit analysis) and, where appropriate, other elements requested by the Commission. While initially the European public interest was considered through purely economic aspects (functioning of financial markets, economic development, among others), its assessment has become "politicized" and recently elements of sustainable development have been added.

In the next chapter we analyse the reasons for an increasingly political interpretation of the "European public interest" by the EU. The adoption of IFRS in the EU was based solely on economic aspects and there was a convergence of the "public interests" of the EU and the IASB. The financial crisis has led to a divergence of interests and the EU has and continues to broaden the scope of its interest.

4. European public interest: The change from an economic criterion to a political criterion

4.1. The appearance of political issues at the forefront of European accounting regulation

4.1.1. Introduction

The IFRS were directly implicated in the financial crisis of 2008, when they were accused of being a factor leading mechanically to its acceleration (Barth/Landsman, 2010; Kothari/Lester, 2012; Maystadt, 2017; Pinnuck, 2012). On the technical level, most of the blame was assigned to the application of fair value, placing the emphasis on the measurement of corporate performance. As stated by Marteau/Morand (2010): "By obliging the banks – at the heart of the liquidity crisis – to re-evaluate their portfolios subject to fair value based on market prices associated with very low transaction volumes, which were consequently relatively unrepresentative of the 'fundamental' value of the assets being valued, the accounting regulations probably artificially downgraded the banks' results and triggered a procyclical process with major impacts on the global economy".

This event apparently confirmed the fear, which had been expressed before the crisis, of a systemic risk induced by the valuation method for securities held by banks in particular (IAS 39).[42] Beyond the purely technical analysis, the event revealed the political dimension (Marteau/Morand, 2010) of accounting standards by raising awareness of their "potential impact (…) on the performance posted by companies and on the economy as a whole" (Maystadt 2013a).

In 2009, Marteau/Morand (2010, p.69 and 70) pointed to "the formative dimension of the accounting standards", with the financial crisis "showing that the effects of the standards could have conflicting and highly damaging consequences for the real economy". Moreover, they add that in this case, the debate on accounting standards is not limited to the question of fair value, as numerous accounting concerns were raised by the financial crisis, such as the question of the consolidation of securitisation vehicles which gave no indication of the risk associated with the massive rise in securitisation operations. During the same period, Baert and Yanno (2009, p. 55), Members of the French Parliament, in their information report on accounting standards, emphasise in this spirit that "the accounting rules (…) induce behaviours" and that not only does

[42] This discussion is not the subject of our work. In their study for the European Parliament on the criteria for adopting IFRS in relation to IFRS 9, Bischof/Daske (2015; also Bischof/Daske, 2016) point out that there is still no evidence that specific accounting standards have played a significant role or have contributed to the crisis. In addition, they add that prudential regulators should counterbalance any potential negative effects of accounting that they may perceive in their own regulations.

accounting "reflect a certain reality of business" it also, in return, has "many impacts (economic, social and managerial) on it, and on the entire economy". Hence the idea that there are as many "accurate images of business as there are accounting standards" (p. 5).

The observation that accounting standards have an impact on the economy was taken up again in 2013 by Michel Barnier, the European Commissioner for the Internal Market and Services, who asserted that the accounting standards are "more than a simple linguistic convention. They can have an impact on the financial stability of markets by influencing the behaviour of operators on these markets". In the same way, the AFEP/MEDEF Report (2013) clearly stresses the "strategic nature" of accounting standards which can "significantly modify (...) the representation of the performance and economic value of companies, but also their actual existence, due to the influence they exert on the behaviour of stakeholders in the company".

That being the case, the financial crisis can be seen as a "real eye-opener": not only do accounting standards produce a reliable picture of the assets, income and financial situation of an entity, they also, according to the doctrine, "create a reality". On the theoretical level, accounting information is said to be "performative" in the sense that its pronouncement alone is sufficient for it to accomplish an action (Burlaud, 2017). More recently, and revealing the continuity of analysis in France, the Notat/Sénard Report (2018), states in the same spirit that the "highly technical nature of the accounting standards should not obscure the reality of the sometimes political choices they may reflect" (p. 62), emphasizing the "financialisation" of business since 1970 and the role played by accounting standards – and specifically by the fair value principle – in this movement.

Admittedly, the IASB and the IFRS Foundation adopt a more balanced position and assert, in the words of their presidents (Hoogervorst/Prada, 2015), that "the accounting standards aim to describe the economic reality rather than shape it", adding that "the way in which something is measured should not be changed just because the answer is not very appealing". However, they acknowledge that accounting often involves making judgements, and that it is not a completely objective or purely technical discipline; for this reason, they explain that they are working very hard "to avoid the adoption of an ideological approach to accounting".

Accounting standard setting therefore seems to pose a dual political and economic challenge which will place the European public interest at the heart of the debates that it generates.

4.1.2. The political issue of accounting sovereignty

Recognising any degree of subjectivity in accounting means that the picture of accounts that is given is at least partly dependent on the accounting conventions and on the political choices that determine them. This is the origin of the EU's desire to reassert its accounting sovereignty, i.e. to regain control of its accounting policy. This debate goes beyond the question of the accounting standard in the financial crisis to examine the way in which the standardisation institutions are governed (Marteau/Morand, 2010). Indeed, the criticism focuses on the EU's decision to "relinquish" accounting standardisation to a private body – the IASB – and be reduced to merely adopting or refusing a standard in whole or in part, without being able to modify it. In a manner of speaking, it means giving the IASB the power to determine the economic consequences of accounting information. This, however, may lead to the IASB making choices that do not take account of the needs of the European economy. In this manner, the AFEP/MEDEF Report (2013, p.13) points out that for several years, the IASB had carried out a revision of the accounting standards for the sake of convergence with the American standards (US-GAAP), giving a "far from optimal" result, and this at a time when "other issues were much more urgent" (also see Kavame Eroglu, 2017). The convergence process was considerably slowed down in 2012, with the SEC, among others, emphasising the need to consider and protect the American markets (AFEP/MEDEF, 2013).

4.1.3. The economic issue

To understand the link between Europe regaining control of its accounting policy and the defence of its economic interests, we need to look back to the adoption of the 2002 Regulation.[43] The Regulation forms part of a true "European strategy on financial reporting" (European Commission, 2000) intended to speed up the completion of the Internal Market. However, achieving this aim assumes, according to the Regulation, the convergence of the European accounting standards with the international accounting standards in order to create a "single set of global accounting standards" (Regulation no. 1606/2002, recital 2); this will enable listed companies in the Union to possess an internationally recognised financial reporting framework (European Commission, 2000, recital 13) and, in so doing, to achieve the aims of creating an integrated capital market, reinforcing the free movement of capital in the Internal Market and the competitiveness of the Community capital markets (Regulation no. 1606/2002, recital 4).

It means recognising that a single set of accounting standards serves the interests of the global economy just as much as the interests of the European economy, which in this case are

[43] See chapter 3.1.2. for the details.

convergent. The international accounting standards have indeed been “developed from an international perspective” (European Commission, 2000; Hulle, 2003; Schön, 2004; Scognamiglio, 2007), whereasUS-GAAP which are an alternative internationally are “tailor-made for the American environment” (European Commission, 2000).

Because it is rooted in the need for a set of international accounting standards, the public interest – whether it is expressed by the IASB or by the EU – takes on its full meaning in light of its purpose. In this way, it is characterised by the utility of a set of global accounting standards for economic development, which means that at the outset, and from a neoclassical economic perspective (Mourik, 2015), the public interest of the IASB and the European public interest converge.

4.2. The initial convergence of the IASB’s public interest and the European public interest, and their later separation

4.2.1. Introduction

The initial convergence of the IASB’s public interest and European public interest is based on the common idea that the notion of public interest must be defined in light of the objectives of the standardisation. In concrete terms, the notion of European public interest is defined with regard to the context of the adoption of the 2002 Regulation (Flores, 2014; see chapter 3.1.2.). It therefore assumes an economic and international dimension: accounting standardisation must contribute to the efficient operation of the markets at the European level, which assumes access to the international market. However, this objective naturally joins that of the IASB, which claims to have been acting in the public interest since the outset, i.e. by “promoting confidence, growth and long-term financial stability in the global economy” (Hoogervorst/Prada, 2015). In this case, the standardising body – private or public – is less important than the standard – with an international scope – that it publishes, and which contributes to the creation of a global normative order (Dufour, 1999). In this manner, accounting standardisation for listed companies is placed in an international dimension. However, in an international context with a globalised economy, the public interest is a political notion that can have different meanings for different people (van Mourik, 2015).

This is why both the IASB and the IFRS claim to be acting in “the public interest”, i.e. for standards that promote the transparency, responsibility and efficiency of financial markets throughout the world. One can therefore assume that the **public interest served by the IASB coincides with the European public interest**. This convergence is clearly apparent in the 2002

Regulation which emphasises the importance of the accounting standards published by European listed companies being accepted at the international level and constituting truly global standards: “this implies an increased convergence of the accounting standards currently applied at the international level, with the ultimate objective being the creation of a single set of global accounting standards” (recital 2). This single set of international accounting standards was therefore presented as being necessary to achieve the objective of contributing to the efficient functioning of the Community capital markets.

However, the financial crisis would lead not to the opposition, but to the differentiation of the IASB’s public interest and the European Union’s public interest. Once removed from the strict context of accounting standardisation, the public interest criterion becomes a public accounting tool, enabling the adaptation of accounting standardisation to broader objectives.

4.2.2. Resurgence of the European public interest criterion

(i) A criterion presumed before the financial crisis

In its communication of 13 June 2000 (European Commission, 2000), the European Commission asserted that “it is inconceivable that the European Union could delegate the power to define the financial reporting obligations incumbent on the Union’s listed companies to an external non-governmental body” and deemed it necessary for the Union’s authorities to have a true “right of scrutiny” over the production of the regulation (§19 and 20). This right of scrutiny would take the form of a “Community approval mechanism” (§ 20) making the adoption of proposed accounting standards subject to the satisfaction of four criteria including the need for them to be “conducive to the public interest” (Art. 3 Regulation no. 1606/2002).

Nevertheless, in this same communication, the European Commission (2000) limits the scope of the endorsement mechanism, with it only being intended to “confirm” that the standards are fully compatible with the Union’s overall approach (§ 21; in other words, and as mentioned in the notice (§21), the proposed standards would be presumed to satisfy the adoption criteria. The implementation of the regulation therefore led to an endorsement mechanism for the standards that was only designed to “confirm that this presumption is justified” (§21; and Camfferman/Zeff, 2015; Hulle, 2004).

This undoubtedly explains why in the beginning both EFRAG, for the technical dimension, and the ARC for the political dimension, played only a limited role in the adoption process for the accounting standards, which were systematically adopted (except for the carve-out for IAS 39). Therefore, it is unsurprising, in this context, that the European public interest criterion was neither clearly defined, nor actually evaluated by the ARC or by EFRAG (see chapter 3.2.1. and 3.2.2.).

(ii) A criterion verified after the financial crisis

The implication of accounting standards in the exacerbation of the financial crisis challenged the presumption made in this way (Bengtsson, 2011).

Of course, when described as “progress for Europe”, the very principle of adopting international accounting standards was not called into question. According to Pébereau/Gil (2014), it even meant “aiming to ensure the long-term use of the IFRS and reinforce them by considering them to be a Community acquis”. However, with the criticism of the role of international accounting standards in the economic crisis, the presumption of the standards’ conformity with the European public interest was no longer appropriate. Indeed, it became essential to reinforce the endorsement criteria for the standards to enable the EU to make sure, inter alia, that they did not jeopardise financial stability and, more generally, that they protected the European economy.

In this spirit, the Maystadt Report (2013) points out that “political choices in the accounting field involve key public interest issues that should be considered in a more detailed manner”.

The European Commission was therefore requested to improve its assessment of this criterion required for the adoption of accounting standards. The concrete analysis of public interest – which was not previously carried out expressly on grounds of the presumption of conformity – was now seen as a means of ensuring that the greater economic interest of the EU prevailed in the accounting standardisation process. What now remained was to ensure the actual consideration of the European public interest criterion by EFRAG, on the one hand, and to provide a clear definition of the European public interest, which had never yet been defined, on the other.

The European public interest criterion, previously a purely formal criterion, was now put into practice and needed to be actually applied. The Maystadt Report (2013) proposed on grounds of European sovereignty, to make sure that the European public interest is properly taken into consideration. Following on from the Maystadt Report, the European Commission adopted a more directive approach regarding the technical advice provided by EFRAG. In this manner, and following the reform of its governance on 31 October 2014, EFRAG’s scrutiny of the proposed accounting standards evolved; as mentioned previously (Chapter 3.2.3), the

European Commission amended its endorsement letter in which it requested EFRAG's advice on the adoption of a standard. Asking EFRAG to play a more active role in assessing the European public interest criterion required a definition of its meaning, which had previously not seemed necessary.

Regaining control over the European public interest criterion could not be considered a backward step; stemming from the failure of European harmonisation and imbued from the outset with an international importance, accounting standardisation by the IASB remained necessary and its effectiveness was commended. In a context of financial crisis and supposing that accounting standards to the crisis, however, the European public interest must be understood to include the security of financial markets. It was therefore a question of adding new objectives that were directly related to the financial crisis to the initial objectives set out in the Regulation. As a result, the notion of public interest retained in the Regulation in 2002 is no longer necessarily identical to that emerging as a result of the financial crisis and the challenge to accounting standards.[44] However, the criterion is broad enough to be adapted to current economic and political concerns (Pöschke, 2009). Following the recommendations of the Maystadt report (2013, p. 12) the criterion now encompassed the objective of financial stability and, more generally, the protection of the European economy. In concrete terms, the accounting standards must neither endanger the EU's financial stability nor hinder its economic development. This does not, in any manner, call into question the objectives of Regulation no. 1606/2002 initially identified as pertaining to the European public interest, but gives concrete expression to two components of this criterion.

The IASB and the IFRS Foundation seemed to be consistent concerning the European requirements by targeting the criterion of long-term financial stability in their contribution to the public interest. In particular, the IASB and the IFRS Foundation reacted in 2015 by publishing a mission statement in which they declared they were contributing to the public interest by promoting confidence, growth and, in a new reference: "long-term financial stability in the global economy" (Hoogervorst/Prada, 2015). While admitting that the primary aim of accounting standards is not to promote financial stability, and that they may even lead to short-term instability by bringing problems that are hidden away in the depths of corporate balance sheets to light, they assert that problems can be better resolved if they are firstly revealed by high-quality accounting procedures that ensure transparency, among their other benefits. This concern of the IASB and the IFRS Foundation with satisfying the new EU requirements reveals

[44] Interview with Valérie Ledure, Directorate-General for Financial Stability, Financial Services and Capital Markets Union on 15 September 2016.

how much sovereignty remains for States that have adopted the IFRS. Indeed, and as mentioned in the mission statement, the States will be more likely to adopt the IFRS if their suggestions and concerns have been taken into account (Hoogervorst/Prada, 2015).

However, while the EU, the IASB and the IFRS Foundation all claim to be acting in the public interest, including by contributing to financial stability, the manner in which they make this contribution differs in each case. While the IASB wants to contribute to financial stability "only" through transparency, the EU is pursuing a much broader approach.

In 2016, the Parliament asked the Commission to publish clear guidelines on the meaning of the notion of “public interest”, which were given in the non-paper of 24 May 2016 (see chapter 3.2.3.).

It presents the notion of European public interest as a flexible criterion that must be assessed in relation to each individual standard. And while four factors (financial stability, economic development, competitiveness and added value for the Union) are listed as components of the public interest, they are in no way exhaustive, as EFRAG, ARC and the Commission remain free to assess the public interest according to other factors, if necessary. This interpretation of the notion of European public interest was clearly that adopted by the European Commission (2018) in its public consultation on the “Fitness check on the EU framework for public reporting by companies”. Indeed, the European Commission (2018) specifies that until now, in the absence of a definition of the European public interest, it has “adopted a pragmatic approach enabling the identification of the main areas of concern, on a case-by-case basis”, with a reference to the non-paper in support of this statement.

For example and as mentioned in chapter 3.2.3., the European Commission does not hesitate to add to its endorsement request letter for EFRAG concerning the European public interest criterion that “environmental and social aspects, if necessary, in addition to financial reporting-related aspects” should be considered (see letter of 9 June 2016 for IFRS 16 and letter of October 2017 for IFRS 17). There is, however, no doubt that extending the analysis to include environmental and social aspects goes beyond the initial, stricter framework of the 2002 Regulation. Recently, the European Commission has shown its desire to go further still, in the context of its sustainable finance objectives.

4.3. International accounting standards, sustainable finance, and European public interest

In the framework of the Sustainable Development Programme adopted by the United Nations on 15 September 2015 and following the Paris Agreement on Climate Change of 12 December 2015, the EU began examining how to develop a sustainable economy. In this context, in December 2016, it appointed a high-level expert group (HLEG) responsible for issuing recommendations on the development of a global EU sustainable finance strategy in the framework of the Capital Markets Union. The report, submitted by the HLEG on 31 January 2018 (HLEG, 2018), highlights the "internationally unique" nature of the IFRS governance, with the EU having undertaken to apply the standards without being able to modify their content. While it mentions the existence of "considerable disagreement between the interested parties on the appropriate accounting treatment for long-term investments" – concerning the question of knowing whether or not long-term assets on investors' balance sheets should be valued at fair value – the report raises the possibility of another type of accounting treatment, designed for long-term investment portfolios. Consequently, and above all, it proposes modifications to the 2002 Regulation, one of which directly concerns the European public interest criterion (Art. 3 no. 2). It suggests that the current criterion, according to which international accounting standards can only be adopted if, inter alia, "they are conducive to the European public interest," should be specified in the following manner: the international accounting standards should only be adopted if they are "favourable to the European public interest, including its objectives of sustainability and long-term investment" (Art. 3 no. 2).

In other words, after the Maystadt Report (2013) had added two criteria respectively concerning the protection of financial stability and the lack of hindrance to the economic development of the Union as components of the European public interest, the HLEG Report (HLEG, 2018), in turn, added the objectives of sustainability and long-term investment. In this way, it can be observed that the European public interest criterion is currently seen as a tool enabling a change of policy in international accounting standardisation. It is modified and supplemented in response to the expression of any new economic policies that may be required.

In France, the Notat/Sénard (2018) Report considered that the HLEG Report "offers promising possibilities". It maintained that "the current accounting standards do not take account of social and environmental issues". This observation should be qualified here, since the Commission now invites EFRAG to consider "if necessary, the environmental and social aspects, in addition to the financial reporting-related aspects" (see chapter 3.2.3.). Subsequently, the Notat/Sénard Report (2018) proposed to "launch a collaborative study of the conditions that international accounting standards must meet in order to serve the general interest, and the consideration of social and environmental issues". It referred in particular to the CARE-TDL (Comptabilité adaptée au renouvellement de l'environnement and triple depreciation line) model by Rambaud and Richard (2015). Abel/Blanc (2017, p. 43) had already recommended experimenting with the CARE method, describing its objective in the following terms: "leading companies to charge off three amortisations in the profit and loss account instead of one. The rationale is to protect environmental and human capital in the same manner as financial capital".

The HLEG Report (HLEG, 2018) was also used as a core document by the European Commission for developing an "action plan to finance sustainable growth" (European Commission, 2018a).

Presented on 8 March 2018, this action plan incorporated questions and proposals relating to the international accounting regulations since they are perceived as being liable to hinder decision-making in favour of sustainable investments. For example, the standard on financial instruments (IFRS 9) could have an impact on long-term investments. The European Commission (2018a) also stressed the importance of making sure that accounting standards "do not have the direct or indirect effect of discouraging sustainable and long-term investments". The questions concern the power of the Commission in the adoption of accounting standards which could be amended, if necessary, in order to promote long-term investments.

Above all, the analysis of the role of the accounting regulations in the development of sustainable finance undertaken in this way gives the Commission an opportunity to incorporate the objective of sustainable finance into the European public interest criterion, a true standard whose flexibility is now confirmed. Indeed, the Commission intends to ask EFRAG to evaluate the impact of new or revised IFRS on sustainable investments "in the framework of the analysis of the criterion of European public interest by EFRAG" (European Commission, 2018a, p. 12, note 35 and p. 20 (Annex III, Action Plan)).

In line with this analysis, the Commission undertook an evaluation of the relevant aspects of Regulation no. 1606/2002 at the time of its "Fitness check" public consultation (European Commission, 2018). This concerned a "Review of the quality of the legislative framework of the European Union on the information to be published by companies" and devoted six questions (19 to 24) to international accounting standardisation and modifications that could usefully be made to it, if necessary by amending the 2002 Regulation. One of the questions, taking up the concerns expressed in the Action Plan for Sustainable Growth, concerned how the EU could ensure that the IFRS do not constitute an obstacle to sustainability and long-term investment. One possibility would be to base the analysis on the open criterion of European public interest – truly a standard notion which would now be extended to these new objectives. This adaptation could be flexible, with EFRAG being instructed, in the European Commission’s endorsement letter, to evaluate compliance with the new objective via compliance with the European public interest criterion. This adaptation could also be stronger and take the form of an amendment of the 2002 Regulation; the sustainable growth objectives would then be expressly mentioned on grounds of the European public interest criterion. Alternatively, in an even stronger possibility, the EU could include in Regulation no. 1606/2002 the opportunity to amend the standards if they do not promote the European public interest, with the European Commission mentioning the example of standards that might be considered to hamper long-term investment objectives (European Commission, 2018a, action no. 9, §6).

Michel Prada, President of the IFRS Foundation (until 31 December 2018), and Hans Hoogervorst, President of the IASB, reacted with a press release to the European Commission (2018) “Fitness Check” consultation by warning against the introduction of a mechanism designed to enable the modification of the content of accounting standards subject to the European Commission’s endorsement procedure (Prada/Hoogervorst, 2018). Taking up the reservations expressed by the Maystadt Report (2013), they emphasised that incorporating such a mechanism could encourage the creation of regional rather than global standards and increase the cost of capital and reporting for the European issuers. As for the possibility of adding two criteria to the European Commission’s adoption process for accounting standards, they commended the efforts to achieve the objectives of long-term investment and sustainability being made in this way, but stressed that the possible impact of accounting standards “should not be overestimated because accounting is above all a tool that is used to present an economic reality as accurately as possible” (Prada/Hoogervorst, 2018). In other words, the sustainable finance objectives are not intended to be integrated into the validation process for accounting standards via the adoption criteria, including the European public interest, as these accounting standards are simply tools used to present a reality without claiming to create it.

Beyond the role or impact that accounting standards might or might not be acknowledged to have on the economy, the European Commission’s desire – to integrate the sustainable growth objectives into the international accounting standards via the criterion of

European public interest – is likely to clash with the mission assigned to the IASB, which must be assessed in light of the mission entrusted to the IFRS Foundation by its trustees in 2001, which clearly focuses on reporting of a financial nature, whose comparability and quality needs to be ensured at the international level in order to enable the other financial stakeholders to make enlightened economic decisions (Danjou/Cordano, 2017). Similarly, the Foundation's trustees clearly stipulated that the scope of their intervention should remain focused on financial reporting (Danjou/Cordano, 2017). And, as previously mentioned by Trébucq (2014), the links between the IFRS and "responsible accounting" remain very widely ignored by the IASB. However, he concluded that new approaches, especially those based on accounting theory, should enable a radical reform of information systems. Consequently, following numerous studies on environmental accounting, which have sought to integrate wider-ranging data on the relationships of companies with their environment into the accounting rationale and principles, and in light of the numerous regulatory systems and frameworks proposed, such as the Global Reporting Initiative (Muller-Lagarde, 2015a), the Commission could urge the IASB to take account of these changes.

In conclusion we consider that the sustainable finance objectives should be commended and supported, given the enormity of the issues at stake for humanity. Certain details of how they can be integrated into accounting standards need to be explained in order to ensure that the standard, once adapted in this way, is effective. Concerning the objective of long-term investment, this is an economic objective that must indeed be integrated into the accounting objectives. In this perspective, it is interesting to note that according to the IFRS Foundation (2017), accounting standards contribute (already) to "long-term investment by requiring transparent financial reporting".

As far as sustainability is concerned, this notion relates to the sustainable finance objective, which is a "new paradigm" (Fatemi/Fooladi, 2013) that seeks to integrate environmental, social and governance criteria into financial decision-making (Krüger, 2016). Sustainable finance also embraces such varied goals as energy efficiency, employment relationships and the composition of boards of directors (Krüger, 2016). Under these conditions, before sustainable finance objectives can be imposed on accounting standards, we first need to define and specify the objectives that accounting standards, given their technical and economic dimensions, are designed to fulfil (Pigé, 2017). In this case, it means adopting a unifunctional view of accounting standards rather than a multifunctional view.

Since the European public interest is nowhere defined and can be interpreted very freely by the European institutions - environmental and social aspects are already part of the European public interest today - we do not see the use, let alone the need, to integrate sustainable development directly into the Regulation. On the contrary, we believe it is preferable to leave the criterion vague as it is in order not to limit the flexibility of its political interpretation. Not changing the Regulation would also make it easier to adjust the public interest in the future in the light of new political injunctions, since a simple reinterpretation would suffice.

However, the question of whether an expansion - already underway - of the notion of public interest was desirable was assessed in different ways in our working group. This expansion may be politically desirable, but in the view of some, it is at the expense of the effectiveness and relevance of financial reporting. Originally, (international) accounting standards are developed to give a true and fair view of the company's situation. The desire to achieve other and multiple objectives (financial stability, sustainable development) with the same instrument (financial statements) certainly affects the quality of information (Ballwieser/Kuhner, 1994). For example, in some countries, the negative impact of the application of tax rules in (individual) accounts on the relevance of financial information is well known (Kuhner, 1997). The same is true if financial information is asked to perform (yet) other functions. We then recall the Tinbergen rule (1952; Nobel Prize winner): An economic policy instrument can serve (effectively) only one objective (see also Dankert et al., 2018).

5. Conclusion: what is the European public interest?

We have demonstrated that the concept of the European public interest has gained much importance in European accounting regulation, both at the practical level (criterion specifically verified by EFRAG) and at the political level (European sustainable finance strategy). This raises the question of knowing the definition or content of this notion.

To begin with, we tried to determine the public interest at the European level and then at the level of six EU countries. First, we can see that there is a diversity of terminology in European texts (although without any real impact on the interpretation of the concept used), both in the same official language and between the different languages. This diversity also exists between countries. Secondly, there is no European definition and national interpretations may differ and are not necessarily based on the same approaches or criteria. Consequently, this European and country-by-country approach has not allowed us to define the European public interest or to delimit its contours.

Next, we have noted that since the implementation of EFRAG's new governance in October 2014, in line with the recommendations of the Maystadt report, EFRAG's work has specifically analyzed the European public interest criterion. While before 2014 a laconic sentence such as "EFRAG sees no reason why the standard should not contribute to the European public interest" addressed this criterion, today particular attention is being paid to this criterion. EFRAG's analysis in this respect has been based since 2016 on an unofficial document of the European Commission (2016) which does not define the European public interest but lists the elements to be considered in this respect (financial stability, economic development, etc.).

More recently, the EU wishes to include in this criterion - even directly in Regulation no. 1606/2002 - more political objectives for sustainable development, thus going beyond the functions traditionally attributed to financial reporting. In Chapter 4, we analyze the politicization of accounting standard setting in general and the move towards sustainable finance (or accounting) in particular.

It is the result of our study:

1) that there is no European or general (universal) definition of public interest. All members of the research group concluded that there is no definition for their country (including in the accounting field); the same is true in the EU

2) that the notion contains "interests" to be protected/defended

3) that the notion makes it possible to "legitimize" an action and/or standards

4) that the notion is (therefore) a tool at the service of a policy

5) that it is not necessary - or even politically counterproductive - to define the public interest (precisely)

6) that the question of whether a broadening of the notion of "public interest" with the integration of financial stability and sustainable development is desirable requires a nuanced answer: if it is justified at the political level to be able to use accounting standards as a tool of public policy, it does not seem appropriate from an economic point of view, and more precisely with regard to the main objective of financial information (true and fair view) and its effectiveness.

REFERENCES

Abel, J.-D./Blanc, M. (2017): Vers une bioéconomie durable, rapport 08 du Conseil économique et social, mars.

AFEP/MEDEF(2013): Renforcer le processus d'adoption des normes comptables internationales : un enjeu stratégique pour l'union européenne, juillet.

Alì, M. (1970): Studi sui procedimenti amministrativi e partecipazione popolare, Milan. Allegretti, U. (1965): L'imparzialità amministrativa, Padua.

Appeal Tribunal (2015): Report of the Appeal Tribunal in the matter of (1) Deloitte & Touche (2) Maghsoud Einollahi (Appellants/Respondents) and The Executive Counsel to the Financial Reporting Council (Respondent/Complainant), 28.1.2015.

Assemblée Nationale (2001): Rapport d'information déposé par la délégation de l'Assemblée Nationale pour l'Union européenne du 7 juin.

Assmann/Schneider/Hönsche (2012): Wertpapierhandelsgesetz (WpHG), 6. ed., Köln.

Baert, D./Yanno, G. (2009): Rapport d'information par la Commission des Finances, de l'Économie Générale et du Plan N.1508, presented to Assemblée Nationale on 10 March .

Ballwieser, W./Kuhner, C. (1994): Rechnungslegungsvorschriften und wirtschaftliche Stabilität, Gesellschaft für bankwissenschaftliche Forschung e.V., Köln.

Barth, M. E./Landsman, W. R. (2010) : How did Financial Reporting Contribute to the Financial Crisis, European Accounting Review, vol. 19, no. 3, pp. 399-423.

Bazoli, G. (1964): La collaborazione nell'attività amministrativa, Padua.

Bengtsson, E. (2011): Repoliticalization of accounting standard setting – The IASB, the EU and the global financial crisis, Critical Perspectives on Accounting, vol. 22, pp. 567-580.

Benvenuti, F. (1952): Funzione amministrativa, procedimento, processo, pp. 122 ff.

Bischof, J./Daske, H. (2015): IFRS Endorsement Criteria in Relation to IFRS 9, IP/A/ECON/2015-14, PE 563.460, October.

Bischof, J./Daske, H. (2016): Interpreting the European Union's IFRS Endorsement Criteria: The Case of IFRS 9, Accounting in Europe, Vol. 13, No. 2, pp. 129-168.

Boutayeb, C. (2003): Une recherche sur la place et les fonctions de l'intérêt général en droit communautaire, RTDE, p. 587.

Burlaud, A. (2017) : Comment introduire l'intérêt général dans la normalisation comptable, Actuel, Expert-comptable, 4 septembre 2009.

Camfferman, K./Zeff, S. (2007): Global Capital Markets: A History of the International Accounting Standards Committee, 1973-2000, Oxford University Press, Oxford.

Camfferman, K./Zeff, S. (2015): Aiming for Global Accounting Standards – The International Accounting Standards Board, 2001-2011, Oxford University Press, Oxford.

Caranta, R. (2005): La partecipazione al procedimento amministrativo, Milan. Casetta, E. (1957): Attività e atto amministrativo, Riv. trim. dir. pubbl., pp. 297 ff.

Chambost, I./Laporte, J.-P. (2005): Petite histoire de l'IASB, ou comment un organisme privé conquiert une légitimité publique, Les Cahiers de Syndex, n°7, p. 16-21.

Chiapello, E./Medjad, K. (2009): An unprecedented privatization of mandatory standard-setting: The case of European accounting policy, Critical Perspectives on Accounting, Vol. 20, pp. 448-468.

Cochran, C. E. (1974): Political science and "the public interest", The Journal of Politics, Vol. 36, No. 2, pp. 327-355.

Cognetti, S. (2000): Quantità e qualità della partecipazione: tutela procedimentale e legittimazione processuale, Milan.

Colasse, B. (2004): De la résistible ascension de l'IASC/IASB, Gérer et comprendre, Mars, n°75, p. 34-35.

Colombo, G. E./Portale, G. B. (1994): Trattato delle società per azioni, UTET.

Conseil d'Etat (1999): L'intérêt général, Rapport public, Paris, La documentation française, coll. "Etudes & Documents", n°50.

Crawford, L. et al. 2014). Control over accounting standards within the European Union: The political controversy surrounding the adoption of IFRS 8, Critical Perspectives on Accounting, Vol. 25, pp. 304-318.

Danjou, P./Cordano, E. (2017) : Normalisation internationale des informations non financières: le cas de la responsabilité sociétale des entreprises, Les Cahiers du chiffre et du droit, n° 4, supp. à la Revue Lamy Droit des affaires, December, p. 12-13.

Dankert, J. et al. (2018): A Green Supporting Factor – The Right Policy?, SUERF Policy Note no. 43, October.

De La Rosa, S. (2013): L'Union européenne en quête d'une meilleure législation. A propos du programme « mieux légiférer, in: Peraldi-Leneuf, F./De La Rosa, S. (dir.): L'Union européenne et l'idéal de la meilleur législation, Paris, Pedone, 2013, coll. « Cahiers européens-IREDIES », n°5, p. 49-66.

Deegan, C. (2014): Financial Accounting Theory, 4th ed., New York.

Delvaille, P. (2001): L'harmonisation comptable européenne en droit et en pratique, Thèse, Université Paris Dauphine.

Deutscher Bundestag (1968): Entwurf eines Gesetzes über die Rechnungslegung von Großunternehmen und Konzernen, Bundestags-Drucksache V/3197, 5 August.

Dewing, I./Russell, P. O. (2008): Financial integration in the EU: the first phase of EU endorsement of International Accounting Standards, Journal of Common Market Studies, vol. 46). 2, pp. 243-264.

Dufour, O. (1999): Entretien avec M-A Frison-Roche: L'élaboration d'un système comptable globalement unifié aboutira à la création d'un standard juridique mondial, Les Petites Affiches, 10 December, pp. 4-6.

ECJ (1983): Case C-292/82 Merck v Hauptzollamt Hamburg-Jonas, ECR 1983-3781.

ECJ (1996): Case C-84/94 United Kingdom of Great Britain and Northern Ireland v Council of the EU, ECR 1996 I-05755.

EFRAG (2014): Staff paper "Approach to endorsement", paper for the EFRAG Board meeting of 21 November, Paper 09.01.

EFRAG (2015): Moving Forward, Annual Review, Brussels.

EFRAG (2017): EFRAG's letter to the European Commission regarding endorsement of IFRS 16 Leases, 27 March.

European Commission (1990): The Future of Harmonization of Accounting Standards within the European Communities, Brussels, conference 17 and 18 January.

European Commission (1995): Accounting Harmonization: A new Strategy vis-a-vis International Harmonization, Brussels, COM 95 (508).

European Commission (1999): Implementing the Framework for Financial Markets: Action Plan, Brussels, 11 mai, COM (1999) 232 Final.

European Commission (2000): EU Financial Reporting Strategy: the way Forward, Brussels, 13 juin, COM (2000) 359 Final.

European Commission (2004): Commission Regulation (EC) No 2086/2004 of 19 November 2004 amending Regulation (EC) No 1725/2003 on the adoption of certain international accounting standards in accordance with Regulation (EC) no. 1606/2002 of the European Parliament and of the Council as regards the insertion of IAS 39, OJEU L 363 of 9 December.

European Commission (2004a): IAS 39 Financial Instruments: Recognition and Measurement - Frequently Asked Questions (FAQ), MEMO/04/265, Brussels, 19 November.

European Commission (2005): Commission regulation (EC) no. 1864/2005 of 15 November 2005 amending Regulation (EC) no. 1725/2003 adopting certain international accounting standards in accordance with Regulation (EC) no. 1606/2002 of the European Parliament and of the Council, as regards International Financial Reporting Standard No 1 and International Accounting Standards nos. 32 and 39, OJEU L 299 of 16 November.

European Commission (2006): Working Arrangement between European Commission and EFRAG, Brussels, 26 mars.

European Commission (2006a): Commission decision of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG’s) opinions (2006/505/EC), OJEU L 199 of 21 July.

European Commission (2007): Commission decision of 20 December 2006 on appointment of members of the Standards Advice Review Group created by the Commission Decision 2006/505/EC of 14 July 2006 setting up a Standards Advice Review Group to advise the Commission on the objectivity and neutrality of the European Financial Reporting Advisory Group's (EFRAG's) opinions (2007/73/EC), OJEU L 32 of 6 February.

European Commission (2015): Report from the Commission to the European Parliament and the Council: Evaluation of Regulation (EC) no. 1606/2002 of 19 July 2002 on the application of international accounting standards.

European Commission (2016): Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA): Non -paper – Meeting of the Accounting Regulatory Committee (ARC), agenda item V, Brussels, 24 mai.

European Commission (2016a): Working arrangement between the European Commission and EFRAG, Ref. Ares (2016)2613193, Brussels, 6 June.

European Commission (2018): Consultation Document: Fitness Check on the EU Framework for Public Reporting by Companies, Brussels.

European Commission (2018a): Communication from the Commission to the European Parliament, the European Council, the Council, the European Central Bank, the European Economic and Social Committee and the Committee of the Regions: Action Plan: Financing Sustainable Growth, 8 March Com (2018) 97.

European Parliament (2016): Report on International Accounting Standards (IAS) evaluation and the activities of the International Financial Reporting Standards Foundation (IFRS) Foundation, the European Financial Reporting Advisory Group (EFRAG) and the Public Interest Oversight Board (PIOB), (2016/0000(INI)), A8-0172/2016, 3 May.

European Parliament and Council (2002): Regulation (EC) no. 1606/2002 of the European Parliament and of the Council of 19 July 2002 on the application of international accounting standards, OJEU L243 of 11 September 2002.

Fatemi, A. M./Fooladi, I. J. (2013): Sustainable finance: A new paradigm, Global Finance Journal, vol. 24, no. 2, pp. 101-113.

Fédération des Experts-comptables Européens (1992): 1992 FEE analysis of European accounting and disclosure practices, London.

Florès, F. (2014): La normalisation comptable internationale: quel rôle pour l'Europe ? in: Muller-Lagarde, Y. (dir.): Normalisation comptable Actualités et Enjeux, Académie des sciences techniques comptables et financières, Université Paris Nanterre, pp. 64-68.

Flower, J. (1997): The future shape of harmonization: the EU versus the IASC versus the SEC, The European Accounting Review, vol. 6, no. 2, pp. 286-287.

Fondation IFRS (2017): IFRS Standards and long-term investments. https://www.ifrs.org/-/media/feature/around-the-world/policy/ifrs-standards-and-long-term-investments.pdf

Frantz, C./Schubert, K. (2010): Einführung in die Politikwissenschaft, 2. ed., Berlin.

Fuchs, A. /Schlette-Bouchon, M. (ed.) 2016). Wertpapierhandelsgesetz (WpHG), 2. ed., München.

Fülöp, M. T. (2013): To serve the Public Interest, the main characteristic of Accounting Profession, Journal of Accounting and Management; vol. 3, no. 3, pp. 27-37.

Ghetti, G. (1973): Considerazioni sugli aspetti giuridici della partecipazione democratica nello Stato regionale, Turin.

Godfrey, J. et al. (2010): Accounting Theory, 7th ed., Hoboken.

Guarino, G. (1949): Potere giuridico e diritto soggettivo, Rass. dir. pubbl., pp. 243 ff.

Hamoniaux, T. (2001): L'intérêt général et le juge communautaire, LGDJ, coll. "Système“.

Hennrichs, J. (2006): Kündbare Gesellschaftereinlagen nach IAS 32 – Ein Beispiel zur Auslegung und Rechtskontrolle von in Gemeinschaftsrecht übernommenen IFRS, WPg, pp. 1253 – 1262.

Hennrichs, J./Schubert, D. (2007): EG-Rechtswidrigkeit übermäßiger Angabepflichten nach IFRS, ZIP-Zeitschrift für Wirtschaftsrecht, pp. 563 – 569.

Herault, P. (2009): Penser l'intérêt européen, Du compromis entre intérêts nationaux à l'intérêt général européen, Mémoire IEP Paris.

HLEG (2018): High-Level Expert Group on Sustainable Finance, Financing a sustainable European economy, final report.

Hoogervorst, H./Prada, M. (2015): Working in the Public Interest: The IFRS Foundation and the IASB.

Hopwood, A. (1994): Some reflections on 'The harmonization of accounting within the EU', The European Accounting Review, vol. 3, no. 2, pp. 241-253.

Hulle, K. van (2003): Von den Bilanzrichtlinien zu International Accounting Standards, WPg, pp. 968 – 981.

Hulle, K. van (2004): From Accounting Directives to International Accounting Standards, in: Leuz, C./Pfaff, D./Hopwood, A. (ed.): The Economics and Politics of Accounting – International Perspectives on Research Trends, Policy, and Practice, Oxford, pp. 349-375.

ICAEW (2012): Acting in the Public Interest: A Framework For Analysis.

Iorgovan, A. (2005): Tratat de drept administrativ, Vol.1, AllBeck, Bucuresti.

Kauff-Gazin, F. (2001): La notion d'intérêt général, thèse Université Robert-Schumann de Strasbourg.

Kavame Eroglu, Z. (2017): The political economy of international standard setting in financial reporting: how the United States let the adoption of IFRS across the world, Northwestern Journal of International Law and Business, vol. 37, no. 3, pp. 459-516.

Klee, L./Chambost, I. (2009): La régulation comptable européenne: de l'articulation, de l'expertise et du politique, Conference Association Française de Comptabilité : La place de la dimension européenne dans la Comptabilité Contrôle Audit, May, Strasbourg.

Kothari, S. P./Lester, R. (2012): The Role of Accounting in the Financial Crisis: Lessons for the Future, Accounting Horizons, vol. 26, no. 2, pp. 335-351.

Krüger, P. (2016): En quoi consiste la finance durable, La vie économique (plateforme de politique économique), vol. 89, no 1-2, pp. 66-68.

Kuhner, C. (1997): Maintaining economic stability as a motive for statutory accounting requirements, European Accounting Review, vol. 6, no. 4, pp. 733-754.

Lenaerts, K./Gutiérrez-Fons, J. A. (2013): To Say What the Law of the EU Is: Methods of Interpretation and the European Court of Justice, European University Institute, Working Paper, AEL 2013/9, Academy of European Law Distinguished Lectures of the Academy.

Leuz, C. (2010): Different Approaches to Corporate Reporting Regulation: How Jurisdictions Differ and Why, Accounting and Business Research, vol. 40, issue 3, pp. 229-256.

Locke, J. (1689/2017): Two Treatises of Government, edition Everyman Paperbacks.

Macchioni, R. (2008): Informazione di bilancio e principi contabili internazionali, AA. VV., Il bilancio secondo i principi contabili internazionali IAS/IFRS, Giappichelli, Turin.

Malo, J.-L. (2014): Normalisation comptable: le reveil des parlémentaires européens, in: Burlaud, A. (ed.): Comptabilité, Finance et Politique: De la pratique à la théorie: l'art de la conceptualisation, Mélanges en l'honneur du professeur Christian Hoarau, ECS, pp. 111-120.

Marteau, D./Morand, P. (2010): Normes comptables et crise financière – Proposition pour une réforme du système de régulation comptable, La Documentation française.

Maystadt, P. (2013): Should IFRS standards be more European?, October.

Maystadt, P. (2013a): Communiqué de presse de la Commission européenne du 12 novembre. Maystadt, P. (2017): Why and how EFRAG was reformed, Accounting, Economics and Law:A Convivium, vol. 7, issue 2, pp.31-34.

Muller-Lagarde, Y. (2015): La normalisation comptable internationale: de l'Etat de droit au droit sans l'Etat, Cités, n°64, p. 65-76.

Muller-Lagarde, Y. (2015a): La RSE et l'outil comptable, in: Martin-Chenut, K./De Quenaudon, R. (dir.): La RSE saisie par le droit, Perspectives interne et internationale, A. Pedone, 2015, pp. 321-330.

Notat, N./Sénart, J.-D. (2018): L'entreprise, objet d'intérêt collectif, rapport aux Ministres de la Transition écologique et solidaire, de la Justice, de l'Economie et des Finances , du Travail, 9 mars.

Ottaviano, V. (1957): Merito (diritto amministrativo), Nss. Dig. it., Turin, vol. X, pp. 575 ff.

Paolantonio, N. (1996): Interesse pubblico specifico ed apprezzamenti amministrativi, Dir. amm., pp. 413 ff.

Pébereau, M./Gil, G. (2014): L'enjeu comptable et l'Europe, Commentaire, no. 4, pp. 837-844.

Peraldi-Leneuf, F. (2013): L'externalisation de la production du droit de l'Union européenne. L'exemple de la corégulation (policy coperation), in: Peraldi-Leneuf, F./De La Rosa, S. (dir.): L'Union européenne et l'idéal de la meilleur législation, Paris, Pedone, 2013, coll. "Cahiers européens-IREDIES", p. 193-208.

Perier, F. (1995): L'organisation internationale des Commissions de valeurs (OICV) et le rôle des régulateurs boursiers dans l'internationalisation des marchés, Revue d'économie financière, n°33, pp. 123-133.

Pigé, B. (2017): Les normes comptables: cadre conceptuel et gouvernance, EMS, Caen.

Pinnuck, M. (2012): A Review of the Role of Financial Reporting in the Global Financial Crisis, Australian Accounting Review, no. 60, vol. 22, issue 1, pp. 1-14.

Pöschke, M. (2009): Eigenkapital mittelständischer Gesellschaften nach IAS/IFRS, Frankfurt/M.

Posner, R. A. (1974): Theories of Economic Regulation, The Bell Journal of Economics and Management Sciences, vol. 5, no. 2 (autumn), pp. 335-358.

Prada, M./Hoogervorst, H. (2018): IASB and IFRS Foundation chairmen urge constituents to respond to European Commission consultation, 27 mars, https://www.ifrs.org/news-and-events/2018/03/iasb-and-ifrs-foundation-chairmen-urge-constituents-to-respond-to-ec-consultation.

Pubusa, A. (1984): Procedimento amministrativo e partecipazione, Milan.

Rambaud, A./Richard, J. (2015): The "Triple Depreciation Line" instead of the "Triple Bottom Line": Towards a genuine integrated reporting, Critical Perspectives on Accounting, vol. 33, pp. 92–116.

Ramirez, C. (2003): Du commissariat aux comptes à l'audit. Les BIG 4 et les professions comptables depuis 1970, Actes de la recherche en sciences sociales, n°1-2, p. 62-79.

Rebuffa, G. (1981): La formazione del diritto amministrativo in Italia, Bologna.

Rousseau, J.-J. (1762/2011): Du contrat social, éditions Flammarion.

Schön, W. (2004): Kompetenzen der Gerichte zur Auslegung von IAS/IFRS, Betriebs- Berater, pp. 763 – 768.

Scognamiglio, G. (2007): La ricezione dei principi contabili internazionali IAS/IFRS ed il sistema delle fonti del diritto commerciale, AA. VV., IAS/IFRS. La modernizzazione del diritto contabile in Italia, Milan.

Scott, W. R. (2012): Accounting Theory, 6th ed., Upper Saddle River.

Tinbergen, J. (1959): On the theory of economic policy, North-Holland Publishing, Amsterdam.

Tirole, J. (2016): Economie du bien commun, Paris.

Tofan, D. A. (2014): Drept administrativ, vol. 1, C.H. Beck, Bucuresti.

Tomescu, M. (2014): Interesul public, ProUniversitaria, Bucuresti.

Trébucq, S. (2014): IFRS et développement durable, in: Muller-Lagarde, Y. (dir.): Normalisation comptable Actualités et Enjeux, Académie des sciences techniques comptables et financières, Université Paris Nanterre, pp. 118-133.

Tribunal (2013): Report of the Tribunal in the matter of The Executive Counsel to the Financial Reporting Council (Complainant) and 1. Deloitte & Touche 2. Mr. Maghsoud Einollahi, 2.9.2013.

Van Mourik, C. (2015): The IASB’s concept of the public interest in IFRS, EUFIN Workshop, Paris.

Van Mourik, C./Walton, P. (2018): The European IFRS Endorsement Process – in Search of a Single Voice, Accounting in Europe, vol. 15, no. 1, pp. 1-32.

Venturini, A. (2000): Danno c.d. “morale” patito dal soggetto pubblico: natura e giurisdizione della Corte dei conti, Dir. proc. amm., pp. 907 ff.

Virga, G. (1998): La partecipazione al procedimento amministrativo, Milan.

Zedler, F. (2015): Mehrsprachigkeit und Methode - Der Umgang mit dem sprachlichen Egalitätsprinzip im Unionsrecht, NOMOS, Heidelberg.

Annex: The "European public interest" research group

BELGIUM	
Stempnierwsky, Yvan	Lawyer and accounting, Bruxelles and Luxemburg
FRANCE	
Burlaud, Alain	CNAM Paris, accounting
Hoarau, Christian	CNAM Paris, accounting
Kott, Sébastien	University Poitiers, law
Ledouble, Dominique	Lawyer and accounting, Paris
Muller-Lagarde, Yvonne	University Paris Ouest Nanterre, law
Zevounou, Lionel	University Paris Ouest Nanterre, law
GERMANY	
Hossfeld, Christopher	ESCP Europe, Paris, accounting
Pöschke, Moritz	University of Cologne, law
ITALY	
Ferrari, Giuseppe	Bocconi University, Milan, law
Saccon, Chiara	Ca' Foscari University, Venice, accounting
ROMANIA	
Farcane, Nicoleta	University Timisoara, accounting
Gutan, Manuel	University of Sibiu, law
SPAIN	
Guayo Castiella, Inigo del	Universidad de Almeria, law
Manini, Raffaele	Universitat Pompeu Fabra, accounting
UK	
Alexander, David	University of Birmingham, accounting
USA	
Baker, Richard	Adelphi University, New York, accounting