RESPONSIBILITY AND ROLE OF INTERNAL AND EXTERNAL STATUTORY AUDITORS IN EXTRAORDINARY OPERATIONS

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OPEN ACCESS

How to cite this paper: Rija, M. (2018). Responsibility and role of internal and external statutory auditors in extraordinary operations. *Corporate Ownership & Control, 15(3),* 66-79. http://doi.org/10.22495/cocv15i3art6

ISSN Online: 1810-3057
ISSN Print: 1727-9232

Received: 30.01.2018
Accepted: 12.03.2018

JEL Classification: M10, M20, M40, M42
DOI: 10.22495/cocv15i3art6

Abstract

In the current work, the figures and functions of the external statutory auditor and internal statutory auditor are analysed. Before examining this subject, the historical and critical periods which have characterized the history of the subjects concerned is recalled; from the beginning will be shown the historical and regulatory process of auditing rules (activities engaged in by these subjects). From the dedicated and practical study of several documents, it is shown that with the progress of time, internal control carried out by the supervisory board is supported by an external control by the auditors or an audit firm. Until the mid-70s, auditing control was voluntary and the companies, without any impositions, believed it preferable to remain anchored to a purely internal control rather than an audit company. The law 136/1975 which made the external accounting control by an auditing company compulsory is under control of the Consob and the Draghi law clearly distinguishes the roles carried out by the auditors and work done by the supervisory board. After alluding to the reform of the commercial law, which took place in 2003, the law 39/2010 is analysed, modified by the recent law 135/2016. Successively, civil, criminal and administrative responsibility of the external and internal statutory auditors are analysed since with the EU Recommendation of 2008 (2008/473/EC) the state members are encouraged to limit the civil responsibility making the auditors no longer unlimitedly and jointly responsible but responsible relatively to the damage caused in the first person. Finally, in a comparative context, a study is carried out on the effects of the recommendation in other European countries pointing out any dissimilarities/similarities from both the criminal and administrative aspect.

Keywords: Auditing, Extraordinary Operations, Internal and External Control, Audit Committee

1. INTRODUCTION

The organization and management of companies are affected by significant economic, financial and administrative risks. The cause of all this is to be found in the changing relationships between business and the environment which can generate favourable or unfavourable events. For this reason, the company must equip itself with internal and external control systems capable of safeguarding company resources and creating value for stakeholders. The objective of this work is to analyse the role and functions of the board of statutory auditors and of the statutory auditors of the companies in extraordinary transactions, in environmental contexts characterized by a significant turbulence in the financial markets and by a continuous oriented normative emanation, the latter, to safeguard the interests of all stakeholders.

The phases of the research mainly consist in a careful study of the normative evolution of this argument compared with the roles, duties and

powers of the control bodies of the time. This showed that often, only after major financial disasters, the competent Authorities have taken steps to counter opportunistic behaviour and against the good performance of the companies, by tightening the control system and increasing the duties and responsibilities of the controllers. This study could be used in the future to get ideas and to be able to make some reflections, comparisons and repercussion on the behaviour of the control bodies following the new regulatory obligations that will be operational in the coming months (for examples introduction of quality controls).

2. THE AUDITING DISCIPLINE: REVIEW OF THE LITERATURE

The origins of the audit can be considered substantially similar to the first forms of accounting entry in around 4000 B.C. The control as organized activities of accounting auditing developed intuitively with the most ancient civilizations (including Eastern and Middle Eastern) through the Greek and Roman period, up to the Middle Ages, the Renaissance and the modern and contemporary age (Pantani, 2014). The first evidence of accounting auditing activities comes from the Sumerian civilization in around 2000 B.C. In the XI and XII centuries, cases of accounting control for the account of Church and State; relatively to the church have been found. In the XV century, the control was extended to comparable entities to today's businesses and to the banks such as the bank of St. George and the Bank Giro Credit of Venice, whose auditing was made to operate arbitration.

In Great Britain, auditing on companies is a common activity; the oldest examples of the proper preparation of accounts are offered by public accounting. The auditor's office of the Exchequer which was established in 1314 was responsible for the control of the state balance and the institution of general comptroller and the auditor was reformed. In 1400 the first corporations were established, known as corporations to split shares, in which they developed a kind of control performed by the participants themselves who undertook verification to prevent fraud and irregular conduct on the part of whoever managed the assets of the corporation. In the XVIII century, the figure of the independent auditing company became widespread, in charge of carrying out external audits on the accounting records of entrepreneurs (Al-Shaer et al., 2017).

In the US, the first audit company was formed in 1867; the Anglo-American auditing model was aimed mainly to control the accounting documents to verify the informative and representative capacity of the balance sheet to the actual situation of the company. The American Institution of Certified Public Accountants (AICPA) was established in 1887 and then a series of different institutions, all united to develop the generally accepted accounting principles (GAAP) and standards for auditing procedures. Between 1920 and 1941, the accounting audit affirmed its title as an independent audit of the financial and economic results of the company. The facts happening at the New York Stock Exchange on Tuesday, October 29, 1929, and in the subsequent weeks marked a decisive turning point in the economic history of the US and the world (Galbraith, 1954; Byrnes et al., 2012).

The spread of accounting audit in Italy followed a particular procedure: initially introduced as a requirement of the multinationals operating in Italy in the '30s and then becoming a need of the same Italian market (D'Amico, 1990). It was a voluntary audit involving checking the financial statements of branches of multinational companies, which had made investments in Italy. The law 1966/1939 defines the auditing company and the trust and introduces the voluntary accounting audit, which established the first legislative action in the matter. Therefore, the law in discussion does not introduce an obligation on the part of companies to place themselves under external accounting control or to certify financial statements, this still remains their choice whether to opt for external control to the extent that they want to improve their accounting and administrative structure. In practice, few companies entrust the control to an external party, the control system was to take, a long period almost of 40 years, a private form being carried out by the board of auditors (Bondi & Palama, 2013). This also influenced Italian legislative activity negatively: from the late '30s until the middle of '70s provisions that are not recorded would regulate the accounting audit.

The supervisory audit board is the traditional organ of internal control of the capital company; the current appearance of the supervisory audit board is the result of a complex historical evolution. With the promulgation of the Code of Commerce in 1882, the need was felt for a vigilant organ controlling the exact law fulfilment, memorandum and articles of association. With the entry into force in 1942 of the Civil Code (c.c.), the function of the supervisory audit board remained substantially unchanged; the supervisory audit board had to control the administration of the company, monitor the compliance with the law and the constitutive act and ensure the regular fulfilment of corporate accounting and correspondence of the financial statements and account of profits and losses to the books and the accounting records. The supervisory audit board also had to verify at least quarterly the form of cash and the existence of values and company securities or property received by the company as security, bail or custody. At any time, the internal statutory auditors might, individually, carry out inspections and control. The supervisory audit board could ask the directors information regarding the performance of company operation or of certain operations. A wait of more than 70 years was needed to see the Institute of supervisory audit board change thanks to the introduction of legislative modifications which was to expand the operative field more and more (Fortunato, 2015; Mucciarelli, 1998).

The legislation on auditing activity following the '70s, it has imposed on certain companies the obligation to have their annual and consolidated accounts controlled by a qualified auditor, an obligation has solicited a harmonization of the review process at European level. In 2003, the IAASB

started to re-examine the international principles, introducing the Clarified ISAs, which are an evolution of the previous ISA. This project, the Clarity Project, was completed in 2008. With Directive 43/2006/EC the European legislator sanctioned the requirement that the legal control of accounts should be carried out across Europe in a homogeneous manner and in accordance with international auditing standards developed according to a proper procedure, under public control, with the necessary transparency. Relative to the Italian legislative framework, law 216/1974 should be mentioned, which established the National Commission for companies and the stock exchange, which introduced external audit by an auditing company under the control of Consob, but giving rise to a problem of coordination with the rules (not repealed) of the c.c. and an overlap of functions with the supervisory audit board that was to be resolved with the reform of 1998. This legislative design was completed the following year with the law 136/1975, which introduced the mandatory audit and certification of financial statements of the listed company and set up a special register in which the auditing companies responsible for accounting control have to be registered. Article 1 of the law stipulates that the mandatory audit be reserved for an auditing company registered in a special register maintained by Consob which supervises the activity of the company to ensure that their work is carried out in a transparent manner and in absolute independence. Lagging 42 years behind the United States, even in Italy a rule which introduced a form of mandatory certification of financial statements for companies that wanted to use the stock market to sell, subscribe or exchange their bonds was approved. In non-listed companies, the supervisory audit board continued to have the monopoly over controlling. In subsequent years the obligation of the audit, initially provided only for listed companies on the stock exchange, was to be extended to other companies or entities (banks, insurance companies, subsidiaries companies to public agencies and large-sized companies). With the law 88/1992, the so-called consistent two-way audit was introduced so that such activities could be exercised either by a company or by physical individuals, with certain professional skills and registered in the register of auditors held at the Ministry of Grace and Justice. In this condition of profound change, the consolidated law on financial intermediation appears, known as the Consolidated Finance Act (CFA) – Draghi law. The decree is aimed at clarifying the relationship between the role of the supervisory audit board and the role carried out by the audit company, solving the inefficient overlap between the two roles introduced by law 216/1974. The auditor is required to give a report stating whether or not the financial statements are in compliance with the accounting records (Caldarone & Tucci, 1995; Baglioni & Colombo, 2013).

There are four types of auditing judgment, they are positive, positive with comments, negative and declaring the impossibility of making a judgment. The law 6/2003 reform of company law, also known as the Vietti reform, modified the rules of the capital companies and extended the obligation of an audit of the non-listed limited company. Therefore this decree introduced the separation of management control and accounting control also for non-listed companies. It changed the role of the supervisory audit board which examines the compliance of the law and the bylaws, respecting the principles of correct administration and in particular the adequacy of the organizational, administrative assets and accounting adopted by the company (Marchetti et al., 2005). From 1 January 2004, the commercial law recognizes the possibility of choosing between three different systems of management and control, also called governance systems: the traditional system, one-tier system and two-tier system (Pontani, 2014).

The activities of the external statutory auditor, today, is governed by law no. 39 of 2010 which modified the discipline of the accounting control replacing the figure of the auditor with that of the external statutory auditor of the annual accounts and consolidated accounts, acknowledging the European Directive 2006/43/EC (Directive VIII also known as directive audit). This decree amends the structured legal framework previously in force gathering the provisions on legal review into a single legislative context and repealing art.2409-b, 2409-c, 2409-quinqiues, 2409-sexies of the c.c. Under the new article 2409-bis in the c.c., in the listed company, the legal audit was exercised by an external statutory auditor or by an auditing company or by the supervisory audit board if it is expressly provided for in the bylaws. In the joint-stock companies which adopt the one-tier or two-tier system, the legal audit must always be exercised by an auditor or by a legal auditing company registered in the register. In limited liability companies, the decree extends the cases in which the legal audit is mandatory. The new article 2477 of the c.c. introduces, in addition to the two indicated criteria from the previous legislation, the following new criteria: a) company required to prepare consolidated financial statements; b) companies that control a company obliged to legal accounting audit (Gasparri, 2013).

The legal audit cannot be exercised by the supervisory audit board in Public Interest Entities, in the company controlled by PIE, in companies that control PIE and the company subject to common control with the latter.

In the organization of public interest entities, the figure of the "committee for internal control and accounting audit" which has the competence to ensure the smooth functioning of some activities and, as a rule, is identified with the organs of internal control is also important. Regarding the appointment, the source of law wished to maintain the conferment of the task of legal audit in the powers of the assembly. The most important news is that now the assembly requires a motivated proposal of the control body, which has, therefore, the power of initiative on the choice of auditor. The reasons for this decision can be different, but the one that seems most interesting is the willingness of the legislator to guarantee a certain quality level of an audit that has recently been lacking. In fact, in the past, the administrators chose to entrust these tasks to individuals who require lower fees, basing

their choice on the amount to be spent rather than on the quality of work done, a convenient strategy for the administrators because, a lower fee is synonymous with less auditing, therefore less control. Because of this unease, it led to the response that the choice of the auditor belongs to the control body with the objective of ensuring a certain level of competence through a conscious decision, not according to the proposed arbitrator but according to the type of audit that it is intended to exercise (Montalenti, 2015).

The activity of the auditor, although carried on in the field of privatization, has a publicity significance since the weight of the collectivity rests on the shoulders of the professional auditor; for this reason in achieving his responsibility, it is necessary to remain independent and autonomous, avoiding any situation that could harm the interests of third parties, in terms of fraudulence. The auditors, in their work, cannot in any way be involved in the decision-making process of the company being audited. The auditor must also be independent of the subject under auditing, he must be a mere and aseptic controller almost completely alien compared to the strategic vision of the audited company (De Ruvo, 2011). In recent years, concerns about the threats to independence have increased; another concern comes from the fact that more and more auditing services have been awarded after bidding around low priced services. It sets a competitive mechanism in motion and the auditors assume the roles of "business owners" willing to provide services at low prices, hence the paradox: a selection procedure, such as bidding, always dispensers of transparency and guarantee, becomes the cause of providing non-professional services (because the auditors accept no challenging tasks, characterized by ridiculously low fees); it is the fact that the auditors seek to recover the effective cost of the audit through counselling services to the company which constitutes the element that undermines their independence. To strengthen the concept of independence, the law 135/2016 introduced, by statute, the concept of scepticism, to which the value of the general principle is assigned to be respected in carrying out the legal audit such as the principles of professional ethics, independence, objectivity, confidentiality and professional secret. The legislator identifies professional scepticism to be an attitude characterized by a doubting approach, by constant monitoring of the conditions that could indicate a potential inaccuracy due to an error of judgment as well as a critical evaluation of the inherent documentation. Another important new aspect regards independence understood in the strict sense; for example, independence is also required "to any physical person able to directly or indirectly influence the outcome of the audit» in addition to the external statutory auditor. It extends, therefore, to the managers of the auditing company, its auditors, to its employees and to «any physical person whose services are placed at the disposal or under the control of the external statutory auditor or any person directly or indirectly linked to the auditor". The legislative decree finds its source in the Directive 2014/56/EU of 16 April 2014, which obliged reception by the state members within 17 June 2016 and modified the Directive 2006/43/EC in several points. On 14 July 2016, the long-awaited green light of the Council of Ministers to the framework of the legislative decree in implementing Directive 2014/56/EC on legal auditing audit arrived, after approval given the previous 15 April. The new provisions for continuous training specify that the auditor must participate from 1 January 2017 in a triennial period of continuous training. And for each year he must acquire 20 training credits. Training is carried out by participating in professional programs defined by the Ministry of the Economy and Finance. The measure mentioned above, besides strengthening the existing disciplines on the independence plan and objectivity in the performance of audit, also introduces novelties in terms of maintenance of the register, with the overcoming of the distinction between active and inactive auditors and the distribution list into 2 sections, called A and B. On the operational level, article 13 of the framework of decree introduces the articles from 10-bis to 10-d in the law 39/2010, in order to specify the modalities of carrying out a legal audit. In particular, the new article 10-bis concerns the activities of risk assessment of independence, which must precede the initiation of responsibility and which requires the auditor to document their independence or, if necessary, the possible risks to which it may be subjected, the countermeasures and the available resources. The regulation states that auditors should establish appropriate internal procedures, including quality control systems and effective procedures for the risk assessment. The obligation of subjection to quality control will be triggered for all persons in the register who perform audit tasks (Cavaluzzo & Martignoni, 2016). The periodicity of these checks will take place at regular intervals not exceeding six years in the case where the auditor performs duties in public interest entities or in companies that exceed at least two of the following dimension limits, or total assets of the balance sheet: 4,000,000 euros, net revenues from sales and services: 8,000,000 euro, average number of employed: 50 employees.

The penalty regime was also affected by the reform. Those changes must take into account not only the auditors and the auditing company but also the members of the supervisory audit boards to which the audit is entrusted.

Regarding the supervisory audit board, the most recent reforms are the legal reference in law 183/2011 and 5/2012, which were close to the formulation of art. 2397 and 2477 of the c.c., governing the composition and the relationship between supervisory audit board and legal accounting audit. The activity of internal statutory auditors is to supervise, and originates from article 2403 of the c.c., under which the supervisory audit board supervises on the compliance with the law and the statute, in respect of the principles of correct administration and, in particular, the organizational, administrative and accounting structure adopted by the company and its operation. Furthermore, under article 2391 of the c.c., the supervisory audit board supervises the fact that the

directors respect the obligation of diligence in the performance of their mandate.

The mandatory appointment of the supervisory audit board, of the internal statutory auditor or of the external statutory auditor in the limited liability company a) is required to prepare consolidated financial statements; b) controls a company obliged to legal accounting audit; c) exceeded 2 of the limits indicated out in article 2 of the 2435-bis of the Italian c.c. for 2 consecutive fiscal years (Cavalluzzo, 2014).

On 30 September 2015, the new regulations of the behaviour of supervisory audit board for listed companies and non-listed companies approved by the National Council of Chartered Accountants and Professional Commercialists (CNDCEC) came into force.

As mentioned before, the legislative evolution which lasted nearly half a century shows the importance of the role played by the professionals under discussion.

3. THE ROLE OF EXTERNAL STATUTORY AUDITORS AND INTERNAL STATUTORY AUDITORS IN EXTRAORDINARY OPERATIONS

The external statutory auditors (or the auditing company) have an active role since the company, subjected to their control, undertakes extraordinary operations that have the purpose of modifying the structure or the juridical form of the company, transferring the ownership or control of the company. This implies, initially, the need to carry out a valuation of company complexes or assets that as a result of the operation, are incorporated separated or otherwise aggregated (Parmeggiani, 2009). Therefore, the auditor will conduct a useful evaluation to the third parties, he will provide crucial and relevant information sources, take into account all the documents drawn up by administrators and experts to implement the operation. In case of increasing share capital, the subject appointed to the control is the supervisory audit board, but in case of an in-kind capital increase, who contributes in kind or credits, has to present the sworn report of an external statutory auditor or an audit company registered in the appropriate register. The case of reducing capital is a complex case because the legislation regarding this situation is not clear. According to the article 2482 bis of the c.c., in case of reduction of capital to cover losses over a third of the share capital, the directors must convene the assembly without delay for appropriate action; at the assembly a report of the directors on the balance sheet together with the opinion of the supervisory audit board must be submitted or of the auditor or auditing company. The preparation of the opinion does not fall in the work of audit and, therefore, if in the company, both bodies are presented, the supervisory audit board will give its opinion. If in the company, the supervisory audit board is absent, in this case, the auditor does not have the right to give the opinion unless the administrators specially have not given this additional assignment (De Angelis, 2016).

The transfer of business is one of the extraordinary transactions as it falls outside the normal management events. It is said that this operation through which the company or its branch given autonomous capacity of income, after being separated, is given to a legally distinct entity by the transferor (transferee entity). That compensation amount is given into quota or shares of the company which received the conferment not money. The first performance of auditor will be verifying the presence of one of the necessary conditions so that it is possible to speak of contribution: in reality, given a set of in-kind (in case of transferring a business branch) itself like to conduct a particular activity (Galbiati, 1995). The contribution must be distinguished in total (assuming it is realized when the entire enterprise is conferred) and partial (when a branch is given). The activities of the auditor's assessment, therefore, will be divided into two distinct moments that are focusing on the procedures of the transferring shutter and post conferment. The auditor will have to verify the adjustment entries and the transfer. The auditor will verify the adjustment entries and the transfer. The value of the investment in the transferee company is established at the date of examination or writing of the expert. The higher or lower values of the company complex to be transferred to the date of signing of the act will be an adjustment of debit or credit. In the case the adjustment of transferring is in credit, the auditor will have to verify the existence and correctness of the claim. In the opposite case, the auditor will verify the actual payment of money to the debit of the transferee. Symmetrically to what happens in the conferee, the transferee must accept in its accounting assets and liabilities subjected to transfer by providing to enter them in the current value based on the agreed price; the auditor must verify transfer records and the increase in the capital (Acierno, 2011).

The company crisis sends a warning, or an alarm signal, for those who carry out the function of the internal statutory auditor and external statutory auditor. Business continuity is the basic principle laid down by the c.c. for the preparation of the financial statements of the companies in operating; the lack of business continuity requirement implies that the financial statements must be prepared in accordance with the liquidation criteria, or realizing the assets and extinction of liabilities. The responsibility of the external statutory auditor is to verify and evaluate the risk that the company is no longer in a situation of business continuity. With the split, the company that splits divides its assets and transfers it to one or more other companies; in return, its members (not the company) receive a certain amount of shares of the latter. The split can be proportional, non-proportional and total when the spit company transfers to beneficiary all of its assets (Poddighe, 2004).

The documents which the auditor must take into account are the balance sheet, the board of director's report and the demerger plan.

First of all, the control body must verify that on the date of the split, the administrative bodies have drawn up a report of assets situation. In particular, in the demerger plan, all the details of the extraordinary operation will have to be identified, such as the identification of participated companies,

the list of assets that will be transferred and the method of accommodation of the interests of members. In the case of a total split, the control body lapses, which will limit to verify that the costs and revenues common to several companies involved in the transfer, to the various companies benefiting have been properly allocated. The transfer of business operation is the transfer of ownership of a set of assets and resources organized for the exercise of the company. The administrative body must draw up an inventory of assets by transferring, by updating with reference to the time of actual transfer of the business complex if necessary. The control body must verify, therefore, that the inventory has been drawn up by the administrative body. On the day of the transfer, it is necessary for the transferor to write a report on the situation of the assets including the adjustment entries on which the auditor will carry out a control on the exact accounting of capital gains/losses from the transfer and the closing entries relating to the past period from the beginning of the fiscal year (Pesenato & Barbacovi, 2012).

The merger is the unification of two or more companies into one. The administrators in the companies participating in the merger have to draw up an assets situation report of their company, referring to a date not earlier than 120 days after the date on which the merger plan is deposited at the registered office; this situation can be replaced by the financial statements for the last financial year, provided that it is closed no later than six months prior to the deposit of the merger project, and as long as there have not been changes in the assets situation of the participating companies. The merger is called own if several merged companies transfer all their assets and liabilities into a company of new foundation and for incorporation when one or more companies transfer all their assets and liabilities to a pre-existing company. There are other particular mergers, such as heterogeneous mergers, subsequent mergers to acquire with debt and reverse mergers. The financial statements of the companies which merger (fuse) will never be the subject of auditing from no control organ because the merger, which determines the extinction of the merged company, causes the extinction of control bodies in office. The first step of the auditor is to obtain all the documentation that the administrators used to implement the operation. In particular, the auditor must be provided with various documents such as the merger plan, the act of merger, the report of the directors and experts, the balance sheets (drawn up ad hoc or on the last financial statements) related to all companies involved in the operation, the potential reports and sworn evaluation and any other necessary documents to determine the expression of a judgment. Regarding the merger for incorporation, for accounting purposes, the incorporated company will recognize the assets (assets and liabilities, different from the net accounts) coming from the incorporated company; the controlling organ, as part of its obligations of verifying the correct record of management, will have to pay particular attention to the arithmetical accuracy of the attributed values to assets and liabilities elements (which must match with what is attributed on the closure of accounts by the incorporated company) and to the correct classification of assets and liabilities in appropriate accounting system. In the merger for the union, the total extinction of the participated companies and the formation of a new company is verified; in this case, the backdating of the accounting effects (possible in case of the merger for incorporation) is not feasible, since the newly formed company exists only on the date of the merger. In the reverse merger, the incorporated company is faced with two possibilities: assigning the shares directly to shareholders of the merged company, or cancelling its shares and simultaneously issuing new shares. The supervisory body will have to assess the correctness of the operation. In the merger with debt, the supervisory body will have to ensure the sustainability of the debt, using the merger plan and the directors' report (Gentile, 2014).

Regarding company liquidation, article 2437-ter of the c.c. provides that the liquidation value of the shares for which the shareholder exercises the withdrawal is determined by the directors, consulting the opinion of supervisory audit board and the appointed subject of the legal accounting audit, taking into account the equity of the company and its earnings prospects as well as the possible the market value of shares. It should also distinguish the opinion of the auditors in the case of non-listed companies and in case of listed companies listed. In the first case, it must concentrate on the adequacy, under a profile of reasonableness and non-arbitrariness, the valuation method was adopted by administrators to determine the value of liquidation of shares. Relating to the listed companies, it is necessary to distinguish between companies that have or have not exercised the faculty of art. 2437-ter, third paragraph, second sentence, of the c.c.; the first period of that article states that the liquidation value of the shares corresponds to the arithmetic average of the closing prices in the 6 months prior to the publication/ reception of the meeting announcement whose deliberations legitimize the withdrawal. The second period gives the company the faculty to determine the value of these shares based on the opinion made by the supervisory audit board or auditor, taking into account the equity of the company, its earnings prospects and the market value of shares, or at least on the basis as provided by the statutes. If the company renounces the faculty just cited, the liquidation value of the shares will coincide with the arithmetical mean of the prices; therefore, while in this case, the approach tends not to request an opinion of the subject carrying out the legal audit on the liquidation value of the shares, on the other hand, an academic view expressed on the topic believes that the opinion of the subject appointed to audit could be appropriately released in this case, with reference to the rules for applying the method of evaluation. In the absence of previous citation of authorities, it is believed that the choice can be left to the discretion of directors whether to request or not the expression of an opinion on the correct application of the average arithmetic of the prices charged to the subject of the statutory audit (Coronella, 2000; Caratozzolo, 2005).

To be able to analyse the role of the supervisory audit board in the extraordinary operations, it is necessary to dwell on the regulation of conduct n.10 that deals with the activity of the supervisory audit board in extraordinary operations and other corporate events.

The operation to increase the share capital is defined act or operation with extraordinary characteristics because it is produced either with the change in net assets or with the allocation of reserves or available funds; the capital increases can be paid in kind, free of charge. Particularly, in the increases of paid capital, the supervisory audit board ensures that in the listed company, the previously issued shares have been completely paid (art. 2438 c.c.) and in the limited liability company, the previous contributions have been fully executed (art. 2482, co. 2, c.c.).

In the case of increasing capital by the contribution of assets in kind and in credits, the internal statutory auditors verify that the valuation report which referred to the listed company by the art. 2343 c.c. has been prepared or in the case of transferring securities or money market instruments the evaluation according to the art. 2343-ter c.c. In case of increasing the capital free of charge, the supervisory audit board verifies that the reserves and the funds to be attributed to the increase in share capital are available. In the case the authority to raise the share capital has been delegated to the administrative body, for any tasks that are not fulfilled by the latter the supervisory audit board will be replaced.

Relating to the transaction of reduction, it must be distinguished among voluntary reduction, reduction in losses and reduction below the legal limits. In the case of voluntary reduction of share capital, the supervisory audit board verifies, in particular, that the extraordinary general meeting of shareholders has been convened and the resolution is carried out only after the expiry of 90 days from the same day in the register of the companies, provided that there have not been objections of creditors. This can cause the unpleasant situation in which the share capital is reduced by over a third as a result of losses and in this case, the supervisory audit board verifies that the administrative body has proceeded to the timely convening the assembly and to the presentation to the latter of a timely report on the financial situation of the company. If the administrators omit that convention, the supervisory audit board will arrange it personally. The assembly can decide to postpone the adoption of these appropriate provisions and, in this case, during the approval of the next annual financial statements, the supervisory audit board must verify that the assembly will reduce the share capital in proportion to verified losses, losses if the loss is not reduced to less than a third or if the other resolved provisions have not been adopted and in case of further inertia of the assembly, the supervisory audit board will make a request to the court in order to make the decision to decrease the share capital. If the administrators convene the meeting, the internal statutory auditors will send their judgments which remain deposited at the registered office of the company, together with the administrative report during eight days preceding the date set for the assembly (Acierno, 2011).

With the transformation, the shareholders may change the legal form of a company, or move from a private company to a capital company or vice versa from one form to another. In the case of transformation of the company, the supervisory audit board/auditor verifies that the resolution transformation is taken with the presence of the necessary and deliberative quorum, and the advertising obligations are fulfilled. Moreover, to each member must be attributed participation proportional to the value of his quota or his shares in the company resulting from the transformation.

In the possibility of a merger or a split of the company, the supervisory audit board verifies the compliance of all formalities required by law. Following the changes introduced by law 123/2012, the law allows addressing the preparation of the balance sheet, the experts' report and the administration board's report if the shareholders and holders of other securities renounce unanimously to attribute the vote of each participated company in the merger.

In the transfer of the company, the supervisory audit board, of both the transferring company and the transferee company, ensures the applicable regime to the corporate contributions, possibly urging the administrative organ to the regular and timely execution of the formalities and to the compliance with legal provisions and the bylaws. In addition, it verifies that the criteria used in determining the contribution value and the value of shares or units received in payment are correct. The supervisory audit board of the company transferee verifies that the submission is accompanied by the necessary expertise estimation or by a sworn report prepared pursuant to art. 2465 c.c. and the administrative organ prepare the evaluation of the expert's estimate in the provided terms. Regarding the phase of liquidation and dissolution of the company, the supervisory audit board assesses the existence of the causes of dissolution and promptly informs the administrative body. To verify the occurrence of a cause of the dissolution of the company, the supervisory audit board requires, if the administrative body remains inert, the convocation of the board of directors and the Assembly to pass resolutions relating to liquidation. Moreover, the supervisory audit board verifies that the management in the meantime is carried out in a perspective of conservation of the integrity and of the value of the assets. Declaring the dissolution of the company, in case of failure or delay on the part of the administrative body, the supervisory audit board asks the court to arrange the convocation of the assembly. The supervisory audit board also has the task of verification in the liquidation phase (De Molli, 2015).

The behavioural norm n.10.8 "Withdrawal and exclusion of a member" shows a list of verifications by type of company that the supervisory audit board or only one internal statutory auditor has to respect. The supervisory audit board monitors compliance with legal dispositions, compliance with the modalities and timeframe for exercising the

withdrawal right and the communication to the companies register of the withdrawal.

In the case of issuing bonds or equity instruments, the supervisory audit board monitors compliance with the law, the principles of proper administration and the adequacy of the administrative and accounting organizational structure in relation to the specific operation. The supervisory audit board or unique internal statutory auditor verifies that the funding if it is granted for use in the situation of excessive imbalances, are not returned in a moment of crisis and undercapitalization (especially if it is known that the crisis is a prelude to a possible declaration of bankruptcy). An additional testing must be done in case of repayment of the loan to shareholders. In particular, interest is the required verification in case of intercompany financing. In that case, the supervisory audit board or single internal statutory auditor must ensure that the administrators can give appropriate motivation for the company interest of the operation and of the mutual benefits arising from it (Dalmaggioni, 2015).

The presence and the active role of the supervisory audit board and the external statutory auditors in operations of this kind demonstrates the will of our legislature to ensure high protection of third parties and to the minority shareholders who, very often, have to undergo strategic choices for the company, bearers of self-interest only for the majority.

4. THE CIVIL, CRIMINAL AND ADMINISTRATIVE RESPONSIBILITY OF THE EXTERNAL AND OF THE INTERNAL STATUTORY AUDITORS

For investors the auditing report, whether issued with a positive or negative judgment, serves to address their capital towards those companies that are healthy from the point of view of assets, earnings and finance. When the auditors are responsible for actions committed with intent or negligence to the prejudice of consumers to which they had shown an illusory and apparent solidity, the collapse of trust has a logical consequence and the input to promote the responsible actions towards themselves. Depending on within which legal sector the violated obligation falls, there are three types of responsibility: civil, criminal or administrative (Fioritti, 2005; Bertoli & Perrotta, 2013).

In terms of the civil responsibility, it is necessary to start from the recommendation of the EU commission in 2008 (2008/473/EC), which called on the state member to take action in the direction of a limitation of responsibility of the auditors (both the open companies and the closed companies) to be achieved by: a) the fixing of a maximum financial amount or a formula that allows calculation of that amount; b) proportionate, or partial, responsibility, which excludes an auditor's involvement beyond his actual contribution. The propulsive reasons of such application residing in the verification that 1) the damage invoked by investors can often lead to catastrophic sentences, more than the maximum amount that the insurance companies are willing to pay and not proportionate to the degree of fault of the auditors; 2) several subjects (the audited company, its directors, the internal control organs) contribute to the production of such damage; 3) based on experience, the auditing company is the main target of the stakeholders and even a very small percentage of the responsibility raises the risk of compensating the entire damage; 4) the regression of the audit company in comparison with other co-debtors in solidarity (directors, internal statutory auditors) is often useless, since the latters are unable to cope with their quota of responsibility (often higher than judicially determined for the audit company). Moreover, affecting this pressing, is the matter of an extremely uncompetitive market that could lose ulterior competitors, whenever other audit companies should succumb to maxi-conviction compensations (Philipsen, 2014; Ojo, 2009).

On the other hand, arguing in favour of the preservation of a certain rigor on this issue the centrality of the function of the legal audit bestows on the market and its an enrichment of information through a professional opinion expressing with standardized principles users If this is the motivation that underlies those currents reluctant towards the recommendation, there are questions about the rightness of a discipline that makes the auditor respond for all damages which they contributed to cause, considering further that the verification of the auditors are characterized for insurmountable technical limits resulting first of all, from the objective impossibility that they extend to all economically relevant businesses. In the writer's opinion, they can verify the scarce effect of this operating method that aims to operate strictly ex-post rather than ex-ante spreading around the auditors a culture that colours the accuracy of their way of working Koch & Schunk, 2009; Storey, 2013).

Regarding the regulation of the responsibility of the auditors in Europe before the recommendation in 2008, in all European countries (except Germany, Austria, and Belgium) it was not allowed, under any circumstances, to limit the responsibility of these professional auditors because the role that they played was (and is considered) a pillar of the economic life of the European market (Doralt et al., 2008; Laitinen, 2008).

In Italy two years after the recommendation, the legislative decree 39/2010 entered into force which governs art. 15, 24 and from art. 27 to art. 31 the civil, administrative and criminal responsibility (Salerno, 2013). That legislative source operated an increase in attributable penalties to the internal statutory auditors and the accounting auditors but considered that article 15 of the 2010 decree builds on article 31 of the recommendation of the European Commission on 8 June 2008; frantically searches for this limitation of responsibility.

The external statutory auditors and the audit company respond jointly and severally with each other and with the administrators towards the company that conferred the task of auditing, its shareholders and third parties for the damages arising from their duties. In internal relations between company debtors, they are responsible for the limit of the contribution to the damage caused (Acierno, 2015). Therefore, we can notice the presence of an extension rather than a limitation of

responsibility as a direct responsibility is side by side with an indirect responsibility; the auditors' situation continues, therefore, to be especially burdensome if it also reflects the fact that practical experience so far has taught us that, in case that several people have contributed to the creation of damage to third parties (companies, directors, control organs control and auditors), the victims usually prefer to turn to the auditors, because they are the most creditworthy. In addition, the practice also teaches us how difficult to calculate the actual contribution to the damage caused to the company and third parties. If the damage derives from the defective fulfilment of the monitoring obligation which in turn leads to the missed caution in expressing opinions on the financial statements, however, the offence comes from the administrators: the auditor is liable for the violation of their supervisory duties but relating to acts or omissions of the administrators. Once the damage has occurred, it is a daunting task to be able to separate with precision the causal contribution of the creators of the damage with that of the supervisors.

In the second paragraph of that article, this concept is also reiterated regarding the relationship between the person in charge of the audit and the parties that cooperated in the auditing activity who are also responsible for each other and with the audit company always within the limit of the actual contribution to the damage caused (Salerno, 2013). The second paragraph, on the one hand, reaffirms the joint and several liability, on the other hand introduces a restriction to create a contradiction that can only be resolved by considering the limitation in view of a precise breakdown of the temporary limits, not being a responsibility by continuation and being responsible only during the time in which he operates. Considering the objective of limiting the liability of the auditor in the third and last paragraph of that article, which provides that an action for liability be prescribed after a period of five years from the date of the audit report on the financial statements, whether it is fiscal or consolidated. Before the introduction of the law 39/2010, on the other hand, the prescription was after ten years . The responsibility that the audit company has towards the audited company for damages arising from the breach of his duties, has a contractual source. In such cases, the audit company will be required to answer for responsibility under ex art. 1218 c.c., in relation to the contractual relationship between the company that confers the task and the audit company. Regarding the liability towards the creditors and other third parties, a majority doctrine mentions to the non-contractual relation which would be used for the case of extra-contractual liability under arts. 2043 c.c. and comings (the principle of no damage) although there is currently still discussion about the existence of such liability.

One of the most interesting topics is also about the possibility of extending a liability of auditing company subject to the ordinary regime for a fault or, on the contrary, the applicability of former art. 2236 c.c. to the cases of fraud and serious negligence in the assumptions of a solution of technical problems of special difficulty. This question (both applicable to contractual and non-contractual liability) does not seem to be addressed specifically by either the doctrine or the law (Pavich, 2013).

The doctrine has properly reported how the practical relevance attributed to the application of art. 2236 c.c. (if the performance involves solving technical problems of special difficulty, the person undertaking the work is not liable for damages, except in the cases of fraud and serious crime) for the audit company, in any case, it should not be overestimated, as the cases of technical problems of special difficulty would be marginal and however conceivable only in the most serious cases. From another perspective, there are different cases in which a conduct of the audit company can be considered culpable. The law considers, for example, the behaviour of the audit companies which has omitted, with reference to a trust company, to cross-check on the accounts of the settlors justifying themselves with the existence of fiduciary secrecy brought against them by the audited company. Even if it implicitly appears to admit being responsible for negligence.

The external statutory auditors can incur criminal liability by themselves or in conjunction with other subjects. Among the particular cases of crime, there is a case of falseness in the report or in the communications of the person in charge of audit under art. 27 in law 39/2010; another crime of external statutory auditors is a case of corruption provided by art. 28 which indicates a crime of damage in the first paragraph, and a crime of danger in the second paragraph. However, the corruptive case under examination differs from that of the first paragraph not only by the nature of the danger offence, which does not require the verification of harm to the company due to the integration of illegal conduct but also to the different field of application, both subjective and objective. In fact, on the one hand, the range of active subjects of this case is broader, as among the potential offenders, are included even the directors, members and employees of the audit firm, apart from the person in charge of audit, on the other hand, the law punishes only the corrupt acts committed in the performance of audit at public interest entities or companies they control. In order to ensure the independence of the external statutory auditors and the fulfilment by them of the ethical principles, the legislator has also provided, in art. 30, the further crime of illegal remuneration, in the case when the person in charge of the audit and the members of the administration board, members and employees of the audit firm receive, directly or indirectly, from the companies subjected to audit, remuneration in cash or in other forms, besides those legitimately agreed. They want to avoid any pact aimed at the fulfilment of acts contrary to the explicated office; for this reason, the case is structured as a crime of alleged danger, even indicating the hypothesis in which the same payment does not constitute consideration for an audit conducted with some tamed method (Montalenti, 2015). The last of the crimes covered by the law 39/2010 and the illicit financial transactions with the audited company remains to be considered. The active subjects of this

crime can be the administrators, members, the managers and employees of the audit company, who borrow, under any form, either directly or through intermediaries, with the company subject to audit or with a company that controls the audit company, or is controlled by the audit company, or they borrow from one of these companies guarantees for their debts. Since it is a crime of alleged danger, the prohibition formulated in the exposition is absolute. The criminal penalty system as in law 39/2010, contemplates, finally, in art. 29 a hypothesis of a misdemeanour crime in the case of impeded control of the legal audit, set, this time, as protection for external statutory auditors and audit companies. If the damage is not caused, there will be only the penalty of a fine or even imprisonment up to one year.

There are two legislative decrees (no. 7 and no. 8, published in the G.U no. 17 22 January 2016) issued with the intent to decriminalize crimes to lighten the working load of the courts. All the violations (first crime) for which there is only the penalty of a fine or a restitution are decriminalized and payable as an administrative penalty. From 6 February 2016, the members of the administrative board who, concealing documents or with other devices, prevent or obstruct the performance of the legal audit (so-called prevented control: art. 29 co 1 law 39/2010) do not commit more than one corporate crime, but an administrative punishable crime with administrative penalty (Messina, 2016).

The law 39/2010 brought an announcement introducing administrative responsibility (art. 24); powers are given to the MEF (if the auditor carries out his work in respect of an institution not in the public interest) and the Consob (when the auditor performs the audit in respect of an institution of public interest) to be able to impose an administrative penalty such as a financial penalty, revocation, suspension and deletion from the register.

After describing in detail the discipline of responsibility at the national level, it is necessary to make comparisons and, in terms of civil liability, to highlight, the different reaction of the various European countries towards the EU recommendation, which not being binding is not adopted equally by all the countries. In a world characterized by an increasing mobility of people as well as of goods and services, it is useful and especially interesting to analyze the various disciplines presented at the European level. I aim to explain both the concordances and the formal and substantive divergences (Armour & McCahery, 2006; Ewert, 1999).

Until 2006, not even in the UK was the limitation of liability for the auditors still contemplated; this no limitation had as an obvious consequence, the possibility, that an external statutory auditor would pay for full damage which he partly caused, since the auditor always appeared to be more solvent among the subjects causing the damage, and therefore he was the only one by whom the creditors could be compensated. Therefore, the joint responsibility began to be considered as a threat to auditors, who were no longer be able to operate on the market, thus causing the lack of an essential service. Considering that the Companies Act 2006 introduced the limitation of liability within a reasonable and fair limit. This limited liability (limited liability agreements, or LLAS), entered into force on 6 April 2008. The criminal violation in which the auditor can incur are provided in the Companies Act and the Criminal Court will judge the professional auditor. In the UK, the equivalent of the Italian Consob is represented by the "Financial Conduct Authority" with a supervisory function which, at least once a year must carry out a meeting with the most important auditors to try to make their control more productive. The auditors can be dismissed for a right reason. In Austria, becoming effective from 1 January 2012, the risk of internal responsibility of an honorary administrator is limited, and the same thing applies to the auditor. Criminal liability is provided by the criminal code (StBG) which also punishes unethical behaviour and violation of official secrets by the auditors (art. 122 StBG). The administrative responsibility is entrusted to an organization founded in 1948 by Wirtschaftskammergesetz known by the acronym KWT with the task of controlling the auditor or audit firm when conduct is contrary to the public interest, providing administrative sanctions, such as fines and dismissal. The German situation should be considered as a model for all European countries to follow because, in spite of the limitation of liability, both administrators and auditors direct their work to the public interest. There are two types of external statutory auditors in Germany known as Wirtschaftsprüfer (WP) and vereidigter Buchprüfer (VBP). The latter deals with audits in the medium-sized companies (medium companies). Their task is the same as that of auditors in other European countries; they are governed by the German Civil Code by the German Commercial Code and by the Wirtschaftsprüferordnung (WPO), the legal act that regulates the performance of the auditors. Civil liability is provided from the tort law and from other special provisions; the responsibility of the WP and vBP is limited except in cases where such persons act intentionally and therefore voluntarily fail to fulfil their duties. Regarding criminal responsibility, it is necessary that the conduct is intentional then malicious, or negligent. The auditor is responsible criminally if he fails to inform the public authorities of the violations committed in the financial statements. Regarding administrative responsibility, the competent authority is an organization known by the acronym WPK (also known as Chamber of public accountants). In Belgium, there is a limited civil liability and a maximum ceiling within which the sanction ceases to be fair and reasonable; the applicable penalty is EUR 3 million for the non-listed companies and 12 million for the listed companies. The criminal offences are contained in the Belgian penal code and are similar to those provided by the 39/2010. The Disciplinary Committee has the power to impose different penalties such as withdrawal, prohibition to accept new duties, suspension for one year, and expulsion according to the seriousness of the violation. In France, in the French Commercial Code, which governs the activities of the Commissaire aux Comptes (known as CAC) an unlimited responsibility of the auditors is found.

Articles L820-5 to L820-7 provide that an incomplete draft of a report, false information, incorrect information and breach of professional secrecy are criminal offences; furthermore the statutory auditor has an obligation to inform the public authorities of the violations of the law committed by the audited company. The CAC is also subjected to administrative liability (professional liability) since its role is subordinated to a license (authorization) of the National Company for Commissaires aux Comptes which has disciplinary powers towards the auditors. The external statutory auditors in Spain are known as Auditor de cuentas. After the EU Recommendation, in Spain a law which was also enacted, echoing neighbouring European countries, governing the civil liability of auditors who for a long time were subjected to a regime of unlimited liability; after two years of the recommendation, the Spanish authorities introduced a limitation of liability governed by article 11.2 of L.12/2010. This law makes the auditors responsible only for damage caused directly by them and for loss of profits caused by their professional activities, towards the audit company or any third party. As in each member country, in Spain the auditor can be punished for criminal liability if he provides false information on the performance of the audited company either intentionally or by mistake. Regarding the administrative responsibilities, these professional auditors are under the control of Account Auditing Institute which imposes administrative sanctions provided by art. 17 of the Act of auditing consisting of fines, suspension from office, or removal from the register (European Commission, 2008; Dufour et al., 2014; Bigus, 2008; Roach, 2010).

Regarding the supervisory audit board, the system of the responsibility is characterized, in particular in our country, by an obvious disproportion between the limited powers of action and reaction of which the internal statutory auditor has to carry out his supervisory role in management, and the limitlessness of the responsibilities which is exposed in the event that the company, the creditors and the third parties are damaged by unlawful behaviours of administrators escaping the control of the internal statutory auditors.

Basically, there are two types of responsibilities:

- direct, relating to the lack of professionalism and diligence, not only of the good father but also specific and technical, which is related to false claims and possible violations of the secrecy on the facts and documents of the company;
- indirect, solidarity with the administrators for facts and omissions, when the damage would not have occurred if the auditors had supervised in conformity with the obligations of their term (fault in supervising).

The liability of the members in the supervisory audit board of a capital company has undoubtedly a supportive nature compared to that of the directors (Civil Cassation, Sec. I, 14 December 2015, no 25178). It has supportive nature, however, even in the internal relations among internal statutory auditors, in accordance with the ordinary legislative provisions laid down by the law relating to joint and several liabilities. A unique case of exclusion of the liability of the individual in the supervisory audit board is when the internal statutory auditor, if dissenting, has to register the reasons for their dissent in the minutes. We have to consider that in this case the individual member of the supervisory audit board will be exempt from joint liability when he can show evidence of having monitored with proper diligence, and having called promptly for the activation of the supervisory audit organ and, faced with the refusal of the supervisory audit board to take the proposed initiatives to protect the company interest, has recorded dissociation from the behaviour of the majority in the minutes. Another important point to be resolved concerns resignation used as a ploy to avoid incurring liability. Firstly, it is necessary to understand what the obligation of vigilance consists in. It can be concluded that it is considered as a duty of activation and intervention, aimed to prevent or mitigate the detrimental consequences arising from the unlawful behaviour of the administrators, it requires an active behaviour for which resignations are not enough to exonerate the internal statutory auditor from his responsibility. A resignation can be accepted, without the risk of incurring additional liability, only after the irreconcilable conflict between the position of the dissenting internal statutory auditor and that of other members of the supervisory audit board has emerged and has been recorded.

Regarding criminal liability, the internal statutory auditors can be held accountable for their own crimes or involvement with other parties (mostly administrators). This occurs through a conduct of commissive type (material or moral) or omission, thanks to their supervisor position, if they have failed to monitor the work of the administrators, prevents the verification of the constitutive event of the crime. The first description of liability for own crimes is conceivable within the framework of corporate and bankruptcy crimes. Among the particular cases of corporate listed offences, the most important is a falsification of financial statements. The ratio of the incrimination of the internal statutory auditors in his own name for the crime in question is to be found in the pregnant control function assigned to the supervisory audit board by the law. The second aspect of responsibility in the title of involvement can be configured in two different situations: when there is evidence of a prior criminal agreement between internal statutory auditors and administrators (or other qualified subjects) to commit a particular crime of a malicious nature, or in the event of omissive behaviour of the member in the control organ that finds its legal foundation in the provisions of art. 40, second paragraph of the criminal code, which states that not preventing an event, which has a legal obligation to prevent, is equivalent to causing it. The internal statutory auditor, being the recipient of legal obligations of supervision and control established by law, is in a position which is called a position of guarantee for the non-occurrence of the crime, aimed, in particular, at the impediment of unlawful actions of the directors in the management of the company. Therefore, whenever the administrator commits an

offence in the company performance, there is a corresponding criminal liability of the internal statutory auditor for failure to control (Zamberlan, 2015).

With regard to administrative responsibility, the internal statutory auditor can be dismissed only for just cause. The decision that demands the revocation of the internal statutory auditor belongs to the ordinary assembly. Exceptions are companies limited by shares that do not resort to the market risk capital but are participated in by the State or public entities, in which the internal statutory auditors appointed by the latter can be removed only by the entities that appointed them. The above resolution must be approved by the competent Court, after consulting the concerned party (Tona, 2013).

For the comparison of the supervisory audit board, the distinction between the three models of governance should be remembered.

In Germany, where the dual model (two-tier board structure) prevails, the shareholders appoint the members of the supervisory board (Wirth et al., 2010) (Aufsichtsrat), the body in charge of the company, which in turn appoints the Management Board. From the combined provisions of Articles 116 and 93 of the "German stock corporations act" (Aktiengesetz, AktG) it is noted that each member is personally liable if he fails to fulfil his obligations (individual civil liability). The council members can be held responsible also on the basis of criminal law if the violation of their duties was made either intentionally or negligently, and if it results in an event considered a crime. The members of the supervisory board are judged by the Federal Court of Justice and can be revoked for just cause. In the one-tier model, the most developed in the United Kingdom (one-tier board structure), the assembly nominates the board of directors which, in its interior, chooses a number of directors to entrust the control functions. What distinguishes the one-tier model is the dual role of controller and manager of the board of directors. The members appointed to control can be revoked at any time. Accordance with the law of tort, the directors do not respond in solidarity to the damage to the shareholders except that their conduct is negligent or malicious, they are responsible if they do not prepend the company interest to their private interest. The directors are criminally liable if they falsify company books, give incorrect information, and enter into agreements with individuals on the basis of false declarations; in such cases they can be punished with imprisonment up to 5 years and a financial penalty (Sanders, 2009; Sun et al., 2014; Oxera, 2007; Bigus, 2008).

This study, which also contains international comparisons, could be used in the future to get ideas and to be able to make some reflections and comparisons following the new regulatory obligations that will be operational in the coming months. In particular, it would be interesting to study what will be the repercussions on the behaviour of the control bodies, not only from the ethical-professional point of view but also in terms of economic and financial results, following the introduction of quality controls and rotation of tasks.

5. DISCUSSION AND CONCLUSIONS

Based on the above knowledge, it can be said that it is impossible to ignore the impacts resulting from the existence, in the different countries, of the varied discipline systems of civil liability of the auditors on the internal market. The legal audit can be much more onerous in the member countries where there are a large number of contentious cases which could increase the insurance premiums across the European Union and this could lead to a further concentration of the market for audit services in the hands of a limited number of audit firms. The existence of a limit of contractual or legal responsibility in certain member countries, and not in others, can make the companies sue the auditor in those member countries where there is no such limit. The Italian discipline of the external statutory auditors experiences a problem diametrically opposite to that of the Anglo-Saxon legal systems, where the use of auditors' liability had assumed too broad and dangerous a dimension in the protection of the system. In our legal system there also remains the smallness of the instrument of private enforcement. One of the main limitations of the research is that the costs of the controls, as well as the responsibilities, are different in the different world contexts: to date it is not possible to have reference standards. In a world that is now more and more globalized, the competent authorities should try to harmonize and standardize more and more, as is happening for accounting standards and auditing, as was the case for XBRL (eXtensible Business Reporting Language), regulations and procedures that could, in some way, make a significant contribution to avoid systemic financial and economic crises.

In the field of civil law, there are many detected divergences, whereas in criminal and administrative law, the discipline in different countries tends essentially to converge.

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