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SPECIAL ISSUE ARTICLE

Can prohibitions of non-audit services and an expanded auditor liability improve audit quality?

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1 | INTRODUCTION

Law entrusts auditors to conduct statutory audits. They fulfil a societal role in providing an opinion on the truth and fairness of the financial statements of audited entities and reducing the risk of misstatement. The purpose of an audit is to enhance the credibility of financial reports prepared by management (Watts & Zimmerman, 1986). Thereby, audits contribute to financial stability, trust and market confidence in the economy by protecting investors from agency risk, which in turn reduces the cost of capital for companies (European Commission, 2010). To fulfil this function, auditors need to provide an adequate service quality. According to the generally accepted definition of DeAngelo (1981), audit quality is the market-assessed joint probability that an auditor will discover material misstatements (auditor competence) and report them (auditor independence). This definition stresses that providing a high factual audit quality is insufficient but that users must also perceive audit quality as appropriate. Accounting scandals like Carillion, a UK construction and facility services company, or Wirecard, a German fintech company, raise public suspicion of auditing failures and result in regulatory initiatives, which seek to improve audit quality.

In the UK, the regulatory response mainly focused on expanding the prohibition of non-audit services (NAS) by audit firms (Department for Business, Energy, & Industrial Strategy, 2021). The provision of NAS to a public-interest entity (PIE) audit client is now limited to services regarding legally required reports and audit-related services (FRC, 2019). Moreover, the Big 4 audit firms have to operationally separate their audit and NAS practices by 30 June 2024 (FRC, 2020). The latter should ensure a focus on audit quality and protect auditors from influences from the NAS practice. The UK regulator even considered an audit-only firm approach, which would have resulted in a spin-off of UK audit firms' consulting arms (Marriage, 2018). The German legislator, who originally made use of the European Union (EU) Member State option to allow certain tax

and valuation services from the blacklist of prohibited NAS, just recently reversed this decision in response to the Wirecard scandal. More importantly, Germany significantly increased the existing liability caps in case of negligent misconduct. In audits of PIEs, auditor liability is now unlimited in cases of gross negligence. The EU also considers eliminating or setting more appropriate liability caps (Council of the European Union, 2021).

2 | PROHIBITION OF NON-AUDIT SERVICES

From a theoretical point of view, the joint provision of audit and NAS exerts opposing effects on audit quality, and the overall impact remains unclear. The provision of NAS to audit clients may improve auditor's ability to detect material misstatements through knowledge spillovers (Arruñada, 1999; Knechel et al., 2012). The auditor obtains additional insights into the client's business and operations, improving the understanding of the client's procedures and controls and the assessment of the client's business and financial risks (for further advantages, see Quick & Warming-Rasmussen, 2005).

However, if the auditor renders NAS to audit clients, auditor independence could be threatened, due to economic and social bonding (Antle et al., 2006; Ferguson et al., 2004; Svanström, 2013). Total revenue from one particular client increases, which creates an economic bond between auditor and auditee (self-interest threat, Arruñada, 1999; Ruddock et al., 2006; Zhang & Emanuel, 2008). Moreover, NAS establishes a unique bond of trust between the consultant (i.e., the audit firm) and management, and this social bonding may hamper the auditor's professional scepticism, which is necessary for an objective testing of a client's accounting data (familiarity threat). A further threat to independence exists when the auditor reviews facts, which were influenced by the consulting activities, threatening an objective distance (self-review threat) (IESBA Code of Ethics 2021,

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120.6 A3). Finally, the representation of the client's interests towards third parties by the auditor also creates an advocacy threat (IESBA Code of Ethics 2021, 120.6 A3). An additional reason for a potentially negative effect of high NAS fee levels is that a focus on NAS provision could distract from auditing services (Beardsley et al., 2019).

Prior research on the impact of a simultaneous provision of audit and NAS on factual audit quality is extensive and not completely conclusive. However, the majority of previous studies failed to identify significant effects. Archival studies predominate and use proxies for audit quality, like earnings management (e.g., Al-Okaily et al., 2020; Antle et al., 2006; Campa & Donnelly, 2016; Hohenfels & Quick, 2020; Lim & Tan, 2008), audit opinions (e.g., Ianniello, 2012; Lennox, 1999), going concern opinions (e.g., Basioudis et al., 2008; Causholli et al., 2014) or restatements (e.g., Knechel et al., 2012; Lisic et al., 2019). The provision of tax services seems to be less problematic and may even improve audit quality (e.g., Castillo-Merino et al., 2020; Huang et al., 2007; Krishnan & Visvanathan, 2011).

In contrast, the majority of research on the relationship between NAS fees and perceived audit quality identifies a negative influence. Related research methods are surveys (e.g., Dart, 2011; van Liempd et al., 2019), experiments (Aschauer & Quick, 2018; Meuwissen & Quick, 2019; Quick & Warming-Rasmussen, 2015) and archival studies. The latter measure capital market reactions to disclosed non-audit fees paid to the auditor (e.g., Eilifsen et al., 2018) or their impact on the cost of capital (e.g., Alsadoun et al., 2018; Hollingsworth & Li, 2012). Again, results regarding tax fees show a different pattern, often with positive perceptions (e.g., Chen et al., 2019; Cook et al., 2020).

The perceived effect of NAS fees on audit quality differs by type of service. This confirms the blacklist approach chosen by the EU. In contrast, a general prohibition of the provision of NAS services to audit clients, or even an audit firm only-approach, seems unnecessarily strict. In addition, the perceptions vary between stakeholder groups and become more negative as the auditing expertise of subjects decline. Hence, regulators face the problematic decision to which stakeholders they should address prohibitions of NAS.

Despite extensive prior research, promising avenues for future research exist. In conjunction with the idea of pure audit firms, it would be of interest to analyse whether NAS revenues earned from non-audit clients affect audit quality. Moreover, the association between NAS provision to audit clients and audit quality could be nonlinear. Knowledge spillover effects may occur at low levels of NAS with diminishing benefits at higher levels. In contrast, it is less (more) likely that economic bonding reduces audit quality at lower (higher) NAS levels. Non-linearity is the underlying assumption of the 70% NAS fee cap by the EU. In summary, knowledge spillovers and economic bonding may not equally offset each other across the NAS fee distribution. A working paper by Beardsley et al. (2018) has already taken up this idea. There is some research on the impact of future NAS fees on current audit quality (e.g., Castillo-Merino et al., 2020; Causholli et al., 2014). However, the EU recently introduced mandatory audit firm rotation, which may result in a cyclic alteration of audit firm roles as providers of audits and NAS. Therefore, it may be worth to revisit this association. Lastly, there is still a lack of research

investigating the effects of a simultaneous audit and NAS provision on an office and, in particular, a partner level.

3 | EXPANDED AUDITOR LIABILITY

Individuals will take higher risk and the likelihood of moral hazard increases if they can assume that third parties suffer the potential consequences of a risk (theory of moral hazard). Furthermore, people adjust their behaviour in response to perceived levels of risk, becoming more careful where they sense greater risk and less careful when feeling more protected (theory of risk compensation; e.g., Levym & Miller, 2000). Thus, auditors will have incentives to reduce their performance level and increase their risk exposure if they do not bear the full costs of that risk, i.e., if they are not unlimitedly liable for damages resulting from audit failure. Therefore, an expanded auditor liability may create an incentive for higher audit quality, prevent lowly qualified public accountants from performing audits and foster the credibility of audits.

However, a higher liability exposure of auditors may also cause negative effects. Insurance premiums, and thereby also audit costs, will increase. Moreover, it is likely that auditors will intensify their efforts in preparing sufficient and appropriate audit documentation with similar effects on audit costs. As a consequence, audit fees may increase. In the likely case that (some) clients will not accept higher fees, margins will decrease and the attractiveness of audit services will further diminish. This may result in a further loss of focus on audit services and a decrease of audit quality (Boyd, 2004). Moreover, there is reason to fear that some public accounting firms get deterred by costs and risks and will not offer audit services anymore. This would result in a further increase of audit market concentration and contradict the EU's objective to reduce such concentration. The market already appears to be too concentrated in certain segments, entailing a systemic risk and limiting clients' auditor choice (European Commission, 2010). Finally, clients associated with a high litigation risk, e.g., financially distressed firms, might have problems to find any auditor (Bockus & Gigler, 1998; Laux & Newmann, 2010; Shu, 2000).

Analytical research demonstrates that a high liability exposure of the auditor or an unlimited auditor liability fosters an appropriate audit quality. However, the optimal liability level depends on the potential reputation loss an auditor suffers in case of an accounting scandal. If the reputation risk is high, a moderate level of liability is adequate (e.g., Bigus, 2015; Deng et al., 2012; Liao & Radhakrishnan, 2020). In addition, analytical research shows that proportionate liability is superior to joint and several liability (e.g., Narayanan, 1994) and that strict liability, in contrast to negligence liability, results in a socially optimal auditor effort level (Liu & Wang, 2006).

Findings from archival studies consistently indicate that a higher liability exposure results in increased audit quality. The Private Securities Litigation Reform Act of 1995 made it more difficult for plaintiffs' attorneys to successfully pursue class-action litigation against auditors and provided proportionate liability in damage awards. This relief to the public accounting profession resulted in a loss of audit quality (Francis & Krishnan, 2002; Geiger et al., 2001; Geiger &

Raghunandan, 2001). Gaver et al. (2012) provide evidence that more stringent state-level liability standards for third-party claims against the auditor for negligence are associated with higher audit quality. Evidence from China suggests that auditors in partnership public accounting firms are more likely to issue modified audit reports than auditors in limited liability public accounting firms (Firth et al., 2012) and that the removal of a cap on the liability exposure of negligent auditors improves audit quality (He et al., 2017). Cross-country studies show similar results (e.g., Choi et al., 2008; Francis & Wang, 2008).

Future archival research could investigate whether the expanded auditor liability impacts audit quality in Germany. In addition, it would be of interest to explore the optimal size of a liability cap. Furthermore, research evidence on the best way to limit auditor liability, capped vs. proportional, is missing. According to the deterrence theory (Becker, 1968), deterrence from the threat of punishment is multifaceted; i.e., it depends on the certainty, severity and swiftness of punishment. Future research should consider this multidimensionality. Moreover, auditors are not only exposed to a litigation threat but also to other types of legal punishments (like disciplinary sanctions or criminal conviction) and to a reputation threat. Therefore, an isolated scientific assessment of the effects of auditor liability is insufficient. Future research should rather investigate interactions between different types of punishment and search for an optimal mix.

4 | CONCLUSION

Results on the impact of NAS provision to audit clients on factual and perceived audit quality are conflicting and indicate that it is quite likely that NAS fees are not related to factual audit quality but that the users of audited financial statements do not believe in an unaffected audit quality. This indicates the existence of a specific type of an expectation gap (Quick, 2020). Currently, regulators' attempts to narrow this gap are characterized by stricter prohibitions of NAS, which means an adaption of standards towards misperceptions. Alternatively, regulators could have chosen to focus on education and reassuring of the public (Humphrey et al., 1992).

Prior research shows that the expansion of auditor liability may improve audit quality but is associated with some disadvantages. The economically optimal liability level remains an open question.

A recent survey of auditors and investors by Quick et al. (2021) broadens the perspective on PIE-auditor independence beyond the above-discussed issues. It reveals that improved audit committees, stricter penalties under criminal law, more severe disciplinary sanctions, expanded auditor rights during general assemblies and enhanced auditor oversight are the top priorities of auditors. Investors have similar preferences for penalties and sanctions. However, they also favour a higher liability exposure of the auditor, an application of the external rotation principle to audit team members and joint audits and do not prioritize measures regarding audit committees and general assemblies.

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