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## Sustainable Companies: We Make it Happen

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Working Paper

**Title**

Regulating third party assurance engagements on sustainability reports  
in Sweden – issues and challenges

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## Abstract

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The well-institutionalised notion of audits put forth that information subjected to independent examination by third parties potentially contribute to better quality information for decision making (towards more sustainable companies?). The presence of different assurance providers offering a myriad of services in the name of “sustainability assurance” led to concerns about their quality and comparability and as a consequence a call for standards to regulate these services. This study analyses how standards by the accountancy profession interplay with hard law to regulate assurance engagements on sustainability reports in Sweden. Sustainability assurance engagements by the accountancy profession are performed according to RevR6, developed based on international standards representing the accountancy profession’s commercial logic and conceptual understanding of assurance. These engagements are however potentially “supervised” by The Supervisory Board of Accountants (RN) whose role could apply by default due to the arguable over-inclusive definition of “audit business” in the Auditors Act. As RevR6 only serve as “guidance material” to legal institutions, these engagements are supervised according to the legal audit concept and the auditors’ role as professional trustees. The fragmentation of regulatory systems, within which sustainability assurance engagements operate leads to legal uncertainty and systemic challenges. It is crucial for legal institutions to better deal with the lack of clarity through regulatory conversations or other means to better coordinate or steer the emergence of regulatory initiatives by private organisations in these new areas of “audit like” services as it clarifies the role assurance services can play in the drive towards sustainable companies.

## 1. Background

Two issues have dominated the global political agenda in recent years: the financial and climate crisis. The quest for new models of capitalism and regulating a re-ordering world has revived debates on the role and accountability of corporations in society significantly impacting corporate reporting and auditing (assurance) practices. Corporations are increasingly legitimizing their existence and operations in society through reporting externally on how they balance shareholder primacy and their larger role in society.<sup>1</sup> The approach to corporate disclosures on risk, governance and sustainability has not been integrated but has taken the form of “add-ons” to financial reporting. This has been accompanied by fragmented developments in reporting standards by states and civil society organisations that incorporate values of normative frameworks such as the UN Global compact and the OECD Guidelines for Multinational Enterprises.<sup>2</sup>

The struggles with the increasing web of standards and credibility of reported information has created a market for assurance services grounded on the well-institutionalised notion that information subjected to independent examination by a third party is more credible hence potentially contributes to better decision making. The ubiquitous nature and different conceptions of “sustainability” and “assurance” has allowed the presence of a variety of assurance providers including professional accounting firms, quality and corporate social responsibility assurance consultancy firms, civil society assurers and Non-governmental organizations to provide a variety of assurance services.<sup>3</sup> The presence of different assurance providers offering a myriad of services in the name of “sustainability assurance” led to concerns about their quality and comparability particularly when assurance on sustainability reports is an area that is largely voluntary.<sup>4</sup> Furthermore, reporting organizations have the choice as to whether to engage assurance services as well as the type of provider. The regulatory gap pertinent to the quality of engagements and need for harmonisation led to different initiatives from non-state actors to call for or /and set standards to regulate assurance services.

## 2. Regulation of sustainability assurance

The complexity and dynamic nature of problems, in light of how contemporary society operates makes it difficult for one single actor to be equipped with sufficient resources to regulate.<sup>5</sup> Knowledge, power and control tend to be fragmented and dispersed between actors in the space. Regulation is increasingly “decentred” represented by the shifts in locus of regulation from the state to different polymorphous actors (i.e., non-state actors organized in different forms and constitutions). These actors, due to the different interest they represent and different philosophical groundings, have different ideas of what they intend to achieve with standard setting, and the powers or resources they

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<sup>1</sup> Beate Sjøfjell (2011) “Why Law Matters. Corporate Social Irresponsibility and the Futility of Voluntary Climate” *European Company Law*, Kluwer Law International, Special Issue on CSR, 2011, volume 8, issue 2-3

<sup>2</sup> Other frameworks include UN Guiding Principles on Business and Human Rights; ILO Tripartite declaration of principles concerning multinational enterprises and social policy, Principles for Responsible Investment Reporting Framework etc. Developments in reporting include European Commission proposal for the amending Council Directives 78/660/EEC and 83/349/EEC; Global Reporting Initiative’s G4 standard, and IIRC draft of the International Integrated Reporting Framework

<sup>3</sup> For more information refer to O’Dwyer, B.; Owen, D. (2005) “Assurance Statement Practice in Environmental, Social and Sustainability Reporting: a Critical Evaluation” *The British Accounting Review*, 37(2), p. 205-229; Buhr, N “Histories of and rationales for sustainability reporting” in Unerman, J et al (2007) *Sustainability Accounting and Accountability* London, New York: Routledge; Zadek, S. & Raynard, “The future of sustainability assurance” ACCA Research Report No, 86 by ACCA working with AccountAbility 2004

<sup>4</sup> Ball, A.; Owen, D.; Gray, R. (2000) “External Transparency or Internal Capture? The Role of Third-Party Statements in Adding Value to Corporate Environmental Reports”, *Business Strategy and the Environment*, 9(1), p. 1-23 ; Deegan, C. Cooper, B & Shelly, M. (2005) “An Investigation of TBL Report Assurance Statements: International Evidence” *European Accounting Association Conference Paper*; Kamp-Roelands, N. (2002) *Towards a Framework for Auditing Environmental Reports*, Tilburg University

<sup>5</sup> Peters, A.; Koechlin, L.; Förster, T.; Zinkernagel, G. (2009) *Non-state Actors as Standard Setters*, Cambridge University Press; Black, J. (2001) “Decentring Regulation: Understanding the Role of Regulation and Self-Regulation in a ‘Post-Regulatory’ World”, *Current Legal Problems*, 54(1), p. 103-146

have to achieve them particularly in areas where their concerns are inadequately addressed.<sup>6</sup> Without a hierarchical structure standards are set in ‘many rooms’ grounded on different objectives and can prescribe different courses of action to users. Decentred regulation is challenged functionally and systematically by the lack of a central authority body to coordinate these efforts, leading to regulatory gaps and overlaps.<sup>7</sup> These “alternatives to legal rules”, such as “soft law”, “best practice codes” and “standards” have been adopted by members or groups in society due to either authority given to it by hard law; requirements to gain access to memberships, resources or certifications; or simply socialization, acculturation or normative pressures.<sup>8</sup>

Sustainability assurance is an area where non-state standard setters have rapidly developed standards. Sustainability assurance standards carry the notion of improving the quality of assurance engagements, which result in more credible sustainability reports to be used for decision makers. Until 2003, there were no internationally accepted standards providing guidance to assurance providers in this field. Today, sustainability assurance engagements are performed according to standards set at the international, national levels or a combination of them. Important international standards include the International Standard on Assurance Engagements (ISAE3000) by the International Auditing and Assurance Standards Board (IAASB) of the International Federation of Accountants (IFAC) and AA1000 Assurance standard (AA1000AS) by AccountAbility, a private global organisation. National standards include RevR6 by Far in Sweden, 3410N by The Netherlands Institute of Chartered Accountants (NBA)<sup>9</sup> among others.<sup>10</sup> Assurance providers adopting the above-mentioned standards however, operate within the national jurisdiction. It is therefore crucial to determine the status of standards set by private actors and whether sustainability assurance already falls within the scope of national law. If so, how the different regulatory systems interplay to regulate sustainability assurance to determine the form and nature of assurance services and the role it can play to contribute to more sustainable companies. This paper presents an analysis of how sustainability assurance is regulated in Sweden. The study applies divergent paradigm lenses empirically using the different insights and distinct frame of references of the socio-legal and legal paradigms sequence and in parallel, to understand the regulation of sustainability assurance.

### 3. Sustainability reporting and assurance in Sweden

Understanding the sustainability reporting landscape is important as it provides context within which sustainability assurance services develop. The following section briefly presents sustainability reporting and assurance in Sweden prior to examining the regulation of sustainability assurance services.

#### 3.1 Sustainability reporting in Sweden

Interest in environmental / sustainability reporting in Sweden began in the 1990s and the increase in the publication of such reports kept pace with global trends. In the mid-90s reporters were the large listed companies, state owned companies or high profile private companies with operations in sustainability sensitive areas who felt the need for a fair representation of their work in the environmental area to be given to stakeholders. Legislation, the pressure from the financial investment

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<sup>6</sup> Peters, A. et al. (2009), p. 2.

<sup>7</sup> Black (2001)

<sup>8</sup> Djelic, M.; Sahlin-Andersson, K. (2007) *Transnational Governance*, Cambridge University Press, p. 6. See also Henning, R. (2000) “Selling Standards” in Brunsson, N.; Jacobsson, B. (2000) “A World of Standards”, Oxford University Press, p. 115-124 for examples.

<sup>9</sup> Royal NIVRA in the Netherlands has merged with the Nederlandse Orde van Accountants-Administratieconsulenten (NOvAA) and has adopted the abbreviation NBA. In the thesis, due to the timeframe of this study, NIVRA is used.

<sup>10</sup> Country specific standards have been published in the Netherlands, Sweden, Germany, France, Japan and Australia. Also refer to Carrots and Sticks: Sustainability reporting policies worldwide –today’s best practice, tomorrow’s trends, 2013 Edition

community and state ownership policy has been the prominent driving factors of sustainability reporting in the last decade.<sup>11</sup>

Companies have been required to publish environmental information in the Board of Directors' report since the revision made in 1999 on the Annual Accounts Act (1995:1554). The Act placed disclosure requirements on issues that are of importance for the appraisal of a company's status, results and future performance of a company. Corporations that are operating under licenses or have an obligation to report according to the Swedish environmental code were required to provide disclosures on the impact of the corporations' production activities on the natural environment. The Swedish Accounting Standards Board (Bokföringsnämnden (BFN)), a governmental body with the main objective of promoting the development of generally accepted accounting principles through issuing of general advice and information material on accounting matters and accounting practices published a statement to provide guidance on environmental information in the Board of Directors.<sup>12</sup> Provisions include disclosures of activities stated in the license, importance of the license, renewal of the license and prospective injunctions. The transposition of the EU directive Accounts Modernisation Directive 2003/51/EC in 2005 provided a more generalised provision, broadening the scope of disclosures. The Annual Accounts Act (1995:1554)<sup>13</sup> was revised to include relevant disclosure requirements of non-financial information in the Board of Directors' reports required for the purpose stated in the EU Accounts Modernization Directive 2003/51EC. The Directive requires certain companies to disclose *"to the extent necessary for an understanding of the company's development, performance or position, the analysis shall include both financial and, where appropriate, non-financial key performance indicators relevant to the particular business, including information relating to environmental and employee matter"*<sup>14</sup>, to provide a fair review of the development of the company's business and of its position, in the company's annual report.

State-owned companies in Sweden are subject to the general legal framework applicable to corporations as well as state ownership policy guidelines that impose on these companies certain important principles with regard to their administration. According to state ownership policy, the boards of the state-owned companies are responsible for "matters relating to ethical issues, the environment, human rights, gender equality and diversity". These companies are required to have a well-considered sustainability strategy which is to be communicated both internally and externally.<sup>15</sup> In November 2007, the Ministry of Enterprise, Energy and Communications issued "Guidelines for external reporting by state-owned companies" requiring state-owned companies to report their non-financial information according to the Global Reporting Initiative (GRI) reporting guidelines on a "comply or explain basis".<sup>16</sup> In 2010, further guidance was provided for state-owned companies to include a brief analysis of the sustainability issues considered as important, a clear report of the stakeholder analysis and stakeholder dialogue to identify and take a position on significant risks and opportunities.<sup>17</sup> State-owned companies have either opted to publish a separate sustainability report or include a section on sustainability within the annual report.

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<sup>11</sup> For example, Sustainability Sweden Index by NASDAQ OMX launched the OMX GES Sustainability index series, DJSI and FTSE4Good; the Principles for Responsible Investment was launched and analyst and rating agencies were increasingly interested in the area.<sup>11</sup>

<sup>12</sup> BFN U 98:2 Environmental information in the Board of Directors report. (Miljöinformation i förvaltningsberättelsen) For more information see, <http://www.bfn.se/>.

<sup>13</sup> Årsredovisningslagen (1995:1554) ch. 6, sec. 1.

<sup>14</sup> DIRECTIVE 2003/51/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 18 June 2003 amending Directives 78/660/EEC, 83/349/EEC, 86/635/EEC and 91/674/EEC on the annual and consolidated accounts of certain types of companies, banks and other financial institutions and insurance undertakings, Art. 1(14b). Currently a proposal to revise the directive has been published.

<sup>15</sup> Swedish Ministry of Enterprise, Energy and Communications "Guidelines for external reporting by state-owned companies", 29<sup>th</sup> November 2007, p. 1.

<sup>16</sup> *ibid*, p. 2.

<sup>17</sup> Annual report state-owned companies 2010.

In addition to mandatory reporting obligations, privately owned companies report on a voluntary basis drawing from international standards and best practices. The current sustainability reporting framework is regulated by a mix of mandatory requirements and standards set by various non-state actors with different ideas about sustainability reporting.<sup>18</sup> Sustainability information can therefore be found in the annual report (Board of Directors report, Notes of the accounts), in a separate report or website that can stand alone, referenced to or attached to the annual report. More importantly, the contents of sustainability reports (aside from what is required specifically by law) are determined by the management of the company applying guidance provided by the various ( and often combination of) best practice standards.

### 3.2 Sustainability Assurance in Sweden

Companies are not required by law to engage assurance on their sustainability reports in Sweden. Third party assurance on sustainability reports has not been a common practice.<sup>19</sup> From 1995-2007, only about 18 corporations (not at the same time) had commissioned third party assurance. State owned companies however are mandated by the state as an owner to have their sustainability report quality assured by independent scrutiny and assurance.<sup>20</sup> Sustainability reports of state-owned companies, like financial reporting are therefore to be reviewed by a third party. The difference, however, lies with the fact that the government has not expressed a preference on the type, nature and provider of assurance. In 2009, forty-three reports (both state owned and privately owned companies) were assured by third party providers. 81% were state-owned, 19% were privately owned. Accountancy firms have 90% of the market many of whom are the financial auditors of the respective companies.<sup>21</sup> This paper therefore focuses how the accountancy profession is regulated when performing these services in Sweden.

### 3.3 Regulating sustainability assurance in Sweden

The Föreningen Auktoriserade Revisorer (today – Far) founded in 1923 by authorized public accountants publishes standards guiding the accountancy profession. It is a non-profit private organization representing approximately 6500 authorized public accountants, approved public accountants and other highly qualified professionals or specialist, in the accountancy sector in Sweden.<sup>22</sup> In 2011, the institute has the vision to serve its member needs through commitment and initiative, to deliver the right support at the right time to members, whether it involves global industry issues or practical tools. Among Far's core values are to build confidence and trust between business and community through showing leadership by pursuing and express clear opinions on issues concerning its members and developing members' professional roles and services.<sup>23</sup>

Far issues guidance in two areas pertaining to the review of sustainability information. RevU5 provides guidance to auditors in carrying out the statutory audit of a company pertaining to non-financial information required by the Annual Accounts Act.<sup>24</sup> Guidance is provided on the planning, work to be carried out, working with environmental experts and responsibilities of providers.<sup>25</sup> RevR6, the other standard, guides members to provide assurance on sustainability information in companies' reports.

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<sup>18</sup> At the international level, KPMG report Carrot and Stick Chapter 4 provides a summary of mandatory and non-mandatory guidance on reporting of various countries.

<sup>19</sup> European Sustainability Reporting Association report for Sweden 2006. The percentage of assured reports in Sweden stood at 8% the lowest among the 11 European countries that participate in ESRA.

<sup>20</sup> Swedish Ministry of Enterprise, Energy and Communications "Guidelines for external reporting by state-owned companies", 29<sup>th</sup> November 2007, p. 4.

<sup>21</sup> Tan-Sonnerfeldt (2011) The Development and Use of sustainability assurance standards. Lund University: Doctoral Dissertation

<sup>22</sup> [www.far.se](http://www.far.se) (October 2011)

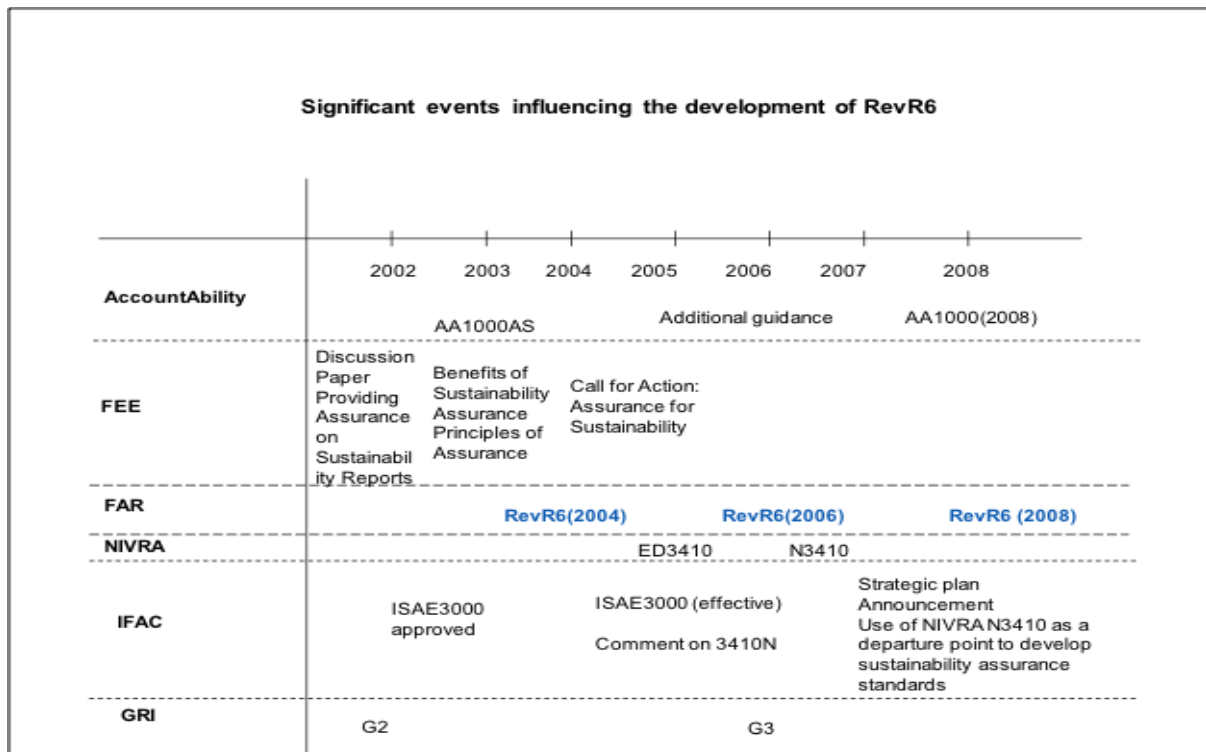
<sup>23</sup> Ibid.

<sup>24</sup> RevU5 "Revisorns beaktande av icke-finansiella upplysningar vid granskning av årsredovisningen"

<sup>25</sup> Ibid. sec. 3-6.

### 3.3.1 The development of RevR6

Far holds membership in IFAC and FEE (Federation of European Accountants) and with its representatives, played an active role in the development sustainability assurance standards.<sup>26</sup> With no profession holding sole jurisdiction to set standards in this area, the regulatory space for international assurance standards can be characterized by its complexity. On one hand there debates center on the objective of standards, definition of terms and the weight of regulatory issues, on the other, there was learning and cooperation between actors in the regulatory space.<sup>27</sup> The regulatory logic of sustainability assurance standards are developed and shaped through interactions, patterns of influences and power relationships between AccountAbility, FEE, GRI, NBA, the large accounting firms and the IAASB/IFAC. The development of RevR6 had been influenced by events in the international context.



Prior to the develop of RevR6, 1999-2002 marked a period where the number and scope of sustainability reports internationally were on a rapid increase. The development for sustainability assurance standards lagged behind sustainability reporting. Up till 2002, no standard had been published internationally to guide sustainability assurance engagements.<sup>28</sup> FEE through the publication of discussion and position papers created a space for identifying and discussing core regulatory issues serve to support and catalyse standard setters' efforts towards setting sustainability reporting and

<sup>26</sup> Far has participated in the sustainability assurance regulatory space in its own capacity, it commented on various exposure drafts including IAASB's ISAE2000. It has also participated through its membership in FEE that commented on NIVRA's ED3410 published in January 2005. The representatives of Far held key positions FEE's Sustainability Assurance Subgroup from 2002-2006 when FEE played a prominent in international standard setting activities; presidency of IFAC among others.

<sup>27</sup> For example, through cross representations among different actors and cooperative efforts e.g, AccountAbility and KPMG Sustainability lifted materiality on to a "meta-level" suggesting that stakeholder materiality had influence on the assurance process i.e. AA1000AS and the five part materiality test could be used to determine subject matter, objective, criteria, planning, performance and communication of assurance engagements and the joint use of ISAE3000 and AA1000AS would result in a win-win situation.

<sup>28</sup> Some countries had standards guiding the environmental audit e.g., IDW, Far



assurance standards.<sup>29</sup> The logic behind their active role in this field can be summed up by the following quote: “*Sustainability reporting is in its infancy and accountants, in particular, have an opportunity to influence the way that it develops in parallel with financial reporting. Accounting profession should also recognize urgency of engaging in those quickly developing areas to ensure expertise is usefully put to work for the public interest and to maintain a position of influence and leadership for the benefit of its members.*”<sup>30</sup> Acknowledging the need to establish the “business case” for sustainability assurance, FEE invited not only the accountancy profession but also other actors such as business and regulators into the standard setting discussion.

Between 2003-2005, several standards based on different conceptions of sustainability assurance were published to provide guidance on sustainability assurance. At the international level, the ISAE3000 by the IAASB provided the accountancy profession generic guidance of assurance services through lifting the broad idealistic notions of, and decontextualizing knowledge from the financial audit domain to a global abstract level which can be re-embedded into other subject matter retaining terminology used in financial audits. The IAASB believed that a standard at institutional level would enable consistency in performance of assurance engagements by the profession globally; and establish the accountancy profession as primary providers of such services.<sup>31</sup> Another standard that staked claims in the regulatory space was AA1000AS (2003) which provided an open source standard to providers on assessing, attesting to, and strengthening the credibility and quality of organizations’ sustainability reporting, and their underlying processes, systems and competencies. It took on a more stakeholder oriented approach stressing inclusivity through reporting principles of materiality, responsiveness to stakeholders and completeness or balance of reports.<sup>32</sup> The accountancy profession did not take a common stance on AA1000AS. At a national level in Europe, NBA, IDW, Far and CNCC published pronouncements to guide their members on providing assurance on sustainability reports. Far issued a “Proposed recommendation: Independent review of voluntary separate sustainability report” (RevR6(2004)) in 2004, drawing from the work of FEE, IAASB and AccountAbility.<sup>33</sup> The standard was drafted reflecting best practice at that time drawing on the *experience the accountancy profession had that time in the market*” making references to international practices and applying it in a local context.<sup>34</sup> The first key revision of the proposed recommendation was published in December 2006 to align RevR6(2004) with ISAE3000 which was obligatory to all IFAC members in 2005.

The IAASB who refrained from involvement from setting sustainability assurance standards, took its first step by setting up a task force and appointing the Sustainability Expert Advisory Panel to comment on NBA’s exposure draft (ED3410) on sustainability assurance which tested the interpretation boundaries of ISAE3000 with regard to reporting materiality, test for completeness and responsibilities of assurance providers drawing on the developments in GRI reporting guidelines and AA1000AS. The logic of its involvement to build on the work of national standard setters, in which case NBA’s ED3410 was identified as being a potential starting point when it engages in setting standards in this specific subject matter. NBA revised the exposure draft in line with IFAC’s clarity convention and published 3410N Assurance engagements relating to sustainability reports. In this context, the second key revision by Far entailed replacing the contents of RevR6(2006) with a direct translation of the NBA standard N3410 “Assurance Engagements Relating to Sustainability Reports” in 2008, making only minimal changes to apply to the Swedish context. RevR6 was drafted by Far adopting its due process, it was not exposed for public comments.

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<sup>29</sup> The FEE also gained influential representation in the work of GRI and had been active in responding to the invitation for comments in IAASB’s work towards a generic assurance engagement standard.

<sup>30</sup> FEE Update on Sustainability Issues Nov 2001: Sustainability and the accounting profession (with part ref to GRI)

<sup>31</sup> ED 1: Reporting on the credibility of information, explanatory memorandum, sec. 6.

<sup>32</sup> The principles are today inclusivity, responsiveness and materiality

<sup>33</sup> Förslag till recommendation: Oberoende översiktlig granskning av frivillig separat hållbarhetsredovisning” “proposed recommendation” carries the same authority as a standard and had been drafted following a due process. A clarification sought with Far revealed that the term ‘proposed’ suggest that it is newly introduced an adaptation period and revisions may be needed.

<sup>34</sup> Tan-Sonnerfeldt (2011)

### 3.3.2 The effect of RevR6

RevR6 adopts a principles based drafting convention. Black puts forth the notion that principles-based regulation sits well within the dynamism of contemporary society, with decentred regulation. Whilst rules emphasise the rhetoric of “directing and controlling” to achieve the regulatory purpose, principles-based regulation moves the operations of the provisions to the sites of application where discretion is exercised by the users of standards to a greater extent compared to a rules-based regime.<sup>35</sup> The extent which discretion is distributed in a multi-levelled regulatory regime depends on the choices exercised by standard setters at each level. Discretion is granted to standard setters at the next level who decides the extent of discretion it intends to exercise; discretion that is not exercised is left to the end user.

The provision stating the objective of an assurance engagement in IFAE, ISAE3000 and RevR6 were drafted specifying certain requirements with emphasis on the process and elements of assurance. Tracing the events in the regulatory space informs that IFAE and ISAE were drafted to promote greater consistency on how assurance engagements by the profession globally and establish the accountancy profession as primary providers of such services. The purpose of RevR6 seems to be less clear and evolving. Although RevR6(2006) state that assurance seeks to increase the users’ perception of the credibility of the report, through the assurance provider’s reported conclusion that the report has been drafted based on some stated criteria and there had been no material deviations<sup>36</sup>, the purpose of the standard remain unclear as to whose interest it has been drafted. In 2004, Dan Brännström, general secretary of Far has attributed its importance to ensure better quality and transparency<sup>37</sup> in performance of these engagements. Legitimacy of the standard was constructed as keeping abreast with international harmonisation efforts.<sup>38</sup> The interest of the financial community was added in RevR6(2006) but drafted out in RevR6(2008) when adopting the provisions of NIVRA’s standard 3410N.<sup>39</sup> The clarity of purpose or objectives in a principles based regulation for it to function effectively. The unclear purpose of RevR6 leaves the discretion of practitioners to be exercised without a common goal and contribute to the difficulties to drafting provisions that match the regulatory purpose of the standard.

An empirical analysis carried out on how sustainability assurance standards work in Sweden from 2002-2010 show that the assurance providers exercised wide discretion on the elements of assurance in engagements performed according to RevR6(2006). The amorphousness of RevR6(2006) allowed their necessary adaptation to suit practical circumstances and assurance providers to customise the scope of the assurance to each engagement. The wide discretion has also allowed users of standards to cherry pick or jointly-use different standards, performing reconciliations of any potential conflicts through interpretation. This was evident in engagements where assurance providers adopted the AA1000AS in conjunction with RevR6.<sup>40</sup>

Black puts forth “The greater the shared understanding of the rule and practices it is addressing, the more the rule maker can rely on tacit understanding as to the aim of the rule and the context in which it operates, the less the need for explicitness, and the greater the degree to which simple, vague rules can be used”<sup>41</sup> Can we look to shared understanding of interpretive community, in this case assurance providers in Sweden to ameliorate rules’ limitations? In the Swedish case, empirical findings suggest that assurance providers share in common the importance of the “business case”. Sustainability assurance engagements have been put forth by the profession to “make reports better” with emphasis placed on the quality of reports and its internal benefits to the reporting organisation. The purpose of

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<sup>35</sup> Black, J. (2007) “ Making a success of principles-based regulation” Law and Financial Market Review, p. 193-196.

<sup>36</sup> RevR6 sec. 2.1

<sup>37</sup> Far press release, 11<sup>th</sup> March 2004.

<sup>38</sup> The introductory paragraph of RevR 6(2004), sec. 1. RevR 6(2006), sec. 1. RevR 6(2008).

<sup>39</sup> RevR 6 (2006), sec. 1.

<sup>40</sup> Tan-Sonnerfeldt (2011), ch. 8

<sup>41</sup> Black, J (1997), p. 31.

each engagement is left to the practitioners and the engaging party which has implications on engagement acceptance, planning, performing and reporting of an engagement. For example, practitioners vary in their decisions as to which users' needs should be considered, whether the accuracy or relevance of information should be prioritized, how suitable criteria is should be determined according to each engagement. Interviews with companies further reveal the range of engagement performed under RevR6 and the "role of providers". The representatives of all companies interviewed state that the purpose of engaging assurance is to improve reporting and the credibility of their sustainability reports. These empirical observations of standards in action provided better understanding of the regulatory instrument, its properties and inherent limitations. Findings show that the scope, linguistic structure and character of standards affect how and who interprets the standard.

#### 4. Are sustainability assurance engagements regulated by law?

Regulation by the profession in sustainability assurance exists and works alongside state-centred regulation. Although RevR6 is developed by a Far and used by the members of Far; the fact that the users of the standard operate under state jurisdiction hints that an understanding of how it works cannot preclude a legal analysis of whether sustainability assurance is already regulated by existing legal framework and the "legal status" of RevR6 and its interplay with hard law.

The following section analyses the provisions under the Auditors Act (2001:883) and Chapter 9 of the Companies Act (2005:551) that governs the statutory audit in Sweden for companies limited by shares.

The Supervisory Board of Public Accountants<sup>42</sup> (Revisorsnämnden; thereafter RN) was established in 1995 when the Auditors Act came into force and operates under the Department of Justice. It serves the role of as a public oversight body. Its function and authority are stipulated in the Auditors Act. The RN is financed by application and annual fees from qualified auditors and, registration and renewal fees from audit firms ordained by the government.<sup>43</sup> The Auditors Act grants the RN authority of supervise audit business; auditors (approved or authorised public accountants, qualified auditors) and registered public accounting firms. RN also has the role to ensure that generally accepted auditing standards are developed in an appropriate way.<sup>44</sup>

*Section 2(8) of the Auditors Act defines audit business as:*

*"a. business that consists of such examination of administration or financial information as follows from statute, articles of association, by-law, or contract and which results in a report or some other document that is intended to constitute a basis for assessment also for a person other than the client; and*

*b. advice or other assistance occasion by observations during the examination in accordance with a"*

The aforementioned provisions highlight two unique features pertaining to the supervisory powers of RN. First, the supervision of auditors is not confined to the statutory audit but engagements that fall under the definition of 'audit business'. Second, the supervision does not only apply to qualified auditors but also the registered public accounting firms. If the sustainability assurance engagement falls within the legal definition of 'audit business'; the engagement is regulated by law. It will fall

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<sup>42</sup> Within the RN is a board that may set rules or standards and take decisions in disciplinary hearings. The board consists of nine members appointed by the government: a chairman and eight other members. The ordinance instructing the RN provides that the Chairman or Vice Chairman should be a lawyer or has experience as a judge. Two members should be authorized or approved public accountants and other members of the board should have worked with or been involved in activities that deal with auditing.<sup>42</sup>

<sup>43</sup> <http://www.revisorsnamnden.se/rn/english/supervision.html>.

<sup>44</sup> Auditors Act, sec. 3(2) and 3(4).

under the supervision of RN and qualified auditors are required to comply with rules such as those regarding auditor independence and the acceptance of extraneous business that could undermine confidence of the audit.<sup>45</sup>

The legal concept of ‘audit business’ was developed using the statutory audit as a focal point or point of departure.<sup>46</sup> From the statutory audit, the purpose, scope and elements of audit is derived. From a legal view point, the purpose of auditing is to ensure the accuracy of and confidence in reported financial information<sup>47</sup> and administration of the company by the board of directors<sup>48</sup> through engagements where auditor independence and competence are guaranteed.<sup>49</sup> The audit serves not only to protect shareholders but the interest of other parties in society.<sup>50</sup> Within its scope, ‘audit business’ includes the examination of the financial report and administration of the company. It provides that auditors have the duty to provide management with criticism and comments required by the generally accepted accounting principles.<sup>51</sup> The recommendations provided by auditors as a result of the engagement, have been regarded in other preparatory works as necessary and desirable to the company.<sup>52</sup>

The provision in Section 2(8) of the Auditors Act identifies three criteria to evaluate whether sustainability assurance falls within the definition of the ‘audit business’: the examination entails the administration and financial information; the assurance engagement should be required by legislation, articles of association, by-law, or contract and that the engagement should result in a report or other document that is relied upon by third parties constituting a basis to make assessments, i.e. whether there is a third party dimension.

#### Administration or financial information

There is no clear specific guidance defining administration or financial information in both the Companies Act and the Auditors Act. Drawing from the reporting requirements of auditors from the Companies Act, the auditor is obliged not only to report his or her conclusions on the financial report of the company, but also other matters. These include the management’s performance or non-performance of duty that may give rise to liability of the firm, and any decisions that are contrary to the articles of association, accounting, taxation and Company Law requirements.<sup>53</sup> The recent developments in sustainability reporting strongly associate the reporting of environmental and social matters with financial information and the administration of the company. First, the 1999 amendment to the Annual Accounts Act, required environmental disclosures that are important for the appraisal of the corporation’s status, results and future performance, to be included in the Board of Directors’ report.<sup>54</sup> It was expressed in Proposition 1996/97:167 *Miljödovisning och miljöinformation i näringslivet*, that environmental disclosures on the impact of a corporation’s activities on the natural environment could improve the financial information issued by the reporting organisation.<sup>55</sup> Second, in the transposition of the Accounts Modernisation Directive, the Annual Accounts Act imposed

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<sup>45</sup> Auditors Act, sec. 20-21 and 25.

<sup>46</sup> Prop. 2000/01:146 p. 39-40.

<sup>47</sup> Prop. 2001/01:146 p. 40.

<sup>48</sup> Ibid.

<sup>49</sup> Prop. 2001/01:146 p. 40.

<sup>50</sup> Prop. 1975:103, p. 244, prop 1997/98:99 p. 132.

<sup>51</sup> Companies Act, Ch 9. sec. 4, 6, 27-34.

<sup>52</sup> Prop. 2001/01:146 p. 40-41.

<sup>53</sup> Companies Act, ch. 9 sec. 33.

<sup>54</sup> Annual Accounts Act, ch. 6 sec. 1.

<sup>55</sup> Prop. 1996/97:167. p. 13 and 20.

relevant disclosure requirements of non-financial information in the Board of Directors' reports to the extent needed to understand the development and performance of the reporting company.<sup>56</sup> Third, although the external reporting guidelines issued to state-owned companies is not a source of law, the guidelines stated that reporting (including sustainability reporting) provides a basis for feedback and assessment of the activities, targets and objectives set by the company. The guidelines further state that *"the boards of the state-owned companies are responsible for the companies' accounting and reporting complying with these adopted guidelines"*<sup>57</sup> and that reports are required by the owners and other stakeholders to assess the company's sustainability performance.<sup>58</sup> This establishes a link between sustainability reporting and the administration of the company.

### The type of engagement and third party dimension

The proposition to the Auditors Act states that an 'audit business' is not confined to the statutory audit, but can include three other types of audit-like engagements under specific conditions. The three types of engagements include: other audits that are required by law (e.g., audit of control balance sheet, issue prospectus, etc.); other reviews than audit by statute and engagements commissioned by virtue of the reporting companies contract with third parties (e.g. Stockholm Stock exchange quotation contract requiring interim financial statements be audited).<sup>59</sup> With reference to section 3, sustainability information can be reported in the board of directors' report; in a sustainability report attached to the end of the annual report; or in a separate sustainability report. This begs the investigation on whether sustainability information, reported in the three above-mentioned reports, fall under the scope of the statutory audit and if not do they fall within the scope of 'audit business'?

Chapter 9 of the Companies Act contains provisions relevant to the audit of a company limited by shares. According to Chapter 9 section 3 of the Companies Act:

"An auditor shall examine the company's annual report and financial statements, as well as the management of the company by the board of directors and the managing director. The audit shall be as detailed and extensive as required by generally accepted auditing principles"

The subject matter that falls under the definition of the statutory audit includes the financial accounts, the annual report and the administration of the company. With reference to the aforementioned paragraph, it is highly likely that assurance services performed on sustainability information reported in the Board of Directors report, with the conclusions of the auditor expressed in the audit report, would fall within the scope of an audit by statute.

When sustainability information is reported in a separate report, with the conclusions of the auditor expressed in an assurance report separate from the audit report; the situation becomes more ambiguous. As the nature of the engagement and terms of agreement between the auditor and reporting organisation vary, the evaluation of whether it can fall within the scope of the statutory audit has to be performed on a case by case basis. The following evaluates possible two scenarios. Chapter 9, section 4 of the Companies Act, requires auditors to comply with instructions issued at the shareholders' meeting, where such request do not contravene applicable law, the articles of association or general generally accepted accounting principles. In a scenario whereby the auditor has received instructions at the shareholders meeting to perform assurance services on the sustainability report, it is likely that the assurance engagement on the sustainability report falls under the scope of the statutory

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<sup>56</sup> Annual Accounts Act, ch. 6 sec. 1.

<sup>57</sup> Swedish Ministry of Enterprise, Energy and Communications "Guidelines for external reporting by state-owned companies", 29<sup>th</sup> November 2007, p. 1 and 2.

<sup>58</sup> Ibid.

<sup>59</sup> Prop. 2001/01:146, p. 40-42

audits.<sup>60</sup> Even if there are “no instructions from the shareholders meeting”, it is still possible to argue that assurance of a sustainability report by the financial auditor of a company can be an audit by statute. This can be supported by judgment of the Supreme Court, in the case NJA1996 p.224.

#### Case summary

*Scandinavian Clinics AB (SCAB) appointed BJ as their auditor during the fall in 1985 to 86, the period where the company had financial difficulties. Scandinavian Clinics Försäljnings AB (SCFAB) was established from October 85 to autumn 86 which carried out sales activities. BJ established a preliminary balance sheet showing SCAB's assets to be worth 2 462 006 SEK which actual worth only amounted to 350 000 SEK. The assets were transferred to SCFAB for 2 530 000 SEK. Första Sparbanken granted SCFAB a loan of 1 200 000 SEK made use of preliminary balance sheet by BJ. The company was unable to repay the loan which led to the legal action taken by the bank against BJ.*

The Supreme Court judgement was as follows:

*“Even if the contribution made by the auditor in respect of the re-construction of SCAB and the transfer of its assets to some degree went beyond his strict obligations as auditor, it was in his capacity as auditor that the company management turned to him for assistance in the reconstruction of the company. His action must therefore to classified among such measures, relating to management, as are referred to in chapter 10 section7 (now chapter 9 section 3) of the Swedish Companies Act. To the extent that the auditor has acted contrary to generally accepted auditing standards, he has therefore also violated this section of the law.”<sup>61</sup>*

The auditor of the company may be commissioned to perform sustainability assurance engagements by virtue of his or her capacity as an auditor for the company. In such a scenario, with reference to the Supreme Court's reasoning, it can be argued that there is a presumption that sustainability assurance engagements can fall under the definition of the statutory audit by virtue of the Companies Act.

Following the above analysis an attempt is made to evaluate whether sustainability assurance engagements that are not statutory audits can fall within the scope of ‘audit business’ as ‘other review that audit by statute’. In the scenarios evaluated above, the financial auditors of the company had been commissioned to perform the sustainability assurance services. In a scenario where the sustainability information is reported in a separate sustainability report accompanied by an assurance report, and the qualified auditor commissioned to perform the engagement is not the financial auditor; the engagement is likely to falls outside the scope of the statutory audit. The proposition to the Auditors Act 2001/01:146 *Oberoende, ägande och tillsyn i revisionsverksamhet*, sets forth three criteria that guide the interpretation of an ‘audit business’.<sup>62</sup>

First, an evaluation has to be made on whether the engagement resembles an audit or requires the auditor to apply various auditing techniques. In the preparatory works, the review of the control balance sheet, issue of prospectus, auditing of the accounts and administration of non-profit organizations were given as examples of activities that within the scope of audit business. The subject matter of these examples is financial in nature, audited or reviewed against established criteria. This raises the question if assurance on sustainability information can be regarded as an activity resembling an audit? Although the methodology had been developed drawing from the financial audit, the nature and characteristics of sustainability information is different from financial information. Sustainability information unlike financial information does not have a common unit of measurement or self-balancing double entry system. Sustainability reports contain more qualitative disclosures requiring a

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<sup>60</sup> Diamant, A. (2004) “Revisors Oberoende” p. 158-161.

<sup>61</sup> NJA 1996 p.224, translated by Moberg, K.(2004) in “Auditors’ Liability for Damages” Scandinavian Studies in Law, 45, Stockholm University Law Faculty p.229-230.

<sup>62</sup> Prop. 2001/01:146, p.41.

greater reliance on subjective assessments of the assurance provider. In addition, the internal control systems cannot be relied on for all sustainability information as they may not be available or sufficiently mature. As such, even though the broad purpose of the financial audit and sustainability assurance is to improve the credibility of information, the specific techniques which assessments are made differ. Furthermore, reporting standards making up the criteria of sustainability assurance are not as mature as the financial audit and is undergoing rapid development.

Second, consideration is given on whether sustainability assurance engagements results in a report intended for third parties other than the client<sup>63</sup>. The proposition to the Auditors Act 2001/01 specifies that engagements that have no resemblance to audit e.g. tax advisory services and engagements that are not for third parties e.g., agreed-upon procedures are not ‘audit business’.<sup>64</sup> With reference to RN case Ö11, the RN further guides that without the third party intention, the fact that the client encloses the report to a third party does not affect bring the engagement within the legal scope of the audit.<sup>65</sup> A company may engage an audit firm to provide advisory services to the management, if the report is solely for the use of management, the engagement fall outside the scope of an audit business. Assurance engagements from the audit profession’s perspective (following the assurance framework), results in the issue of a report addressed to readers that expresses his or her conclusion and conveys a level of assurance based on the work performed. This raises the questions if it fulfils this criterion if the assurance provider has been commissioned by the management; and whether it makes a difference if assurance providers are appointed at the annual general meeting by the shareholders as in the case of financial audits. Some uncertainty prevails, but the judgment NJA 1996:224 from the Supreme Court in Sweden can be an argument to support that an agreement with the management is sufficient to regard the engagement as ‘other review than audit by statute’.

Third, consideration is given to whether assurance providers are engaged, or if their reports have been relied on due to the competence and qualifications as approved or authorised public accountants.<sup>66</sup> Sustainability assurance engagements carried out in multidisciplinary teams and co-signed or in a particular case signed by specialist members of Far, reflecting the extent an engagement rely on skills other than that of the traditional audit. From one perspective, statutory audits in Sweden require financial auditors to audit the administration of the company; auditors are familiar with broader issues environmental and social issues. On the other hand, to perform sustainability assurance engagements require the assurance provider to have knowledge and competence to *assess sustainability and associated technical risk*, national and/or international agreements, rules, conventions related to sustainability and knowledge of standards, such as ISO 14001 and SA 8000; GRI’s “Sustainability Reporting Guidelines”. These areas are not given any mention in the list of theoretical courses of study specified in the Auditors Ordinance.<sup>67</sup> Although interested candidates can choose to study these areas, it is to a large extent optional. This raises the question if the auditor is commissioned by virtue of his qualifications as an auditor or is the audit firm engaged to perform such services as it has the resources to assemble multidisciplinary teams to undertake such engagements?

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<sup>63</sup> Prop. 2001/01, p. 41.

<sup>64</sup> Ibid, p. 42.

<sup>65</sup> RN Ö11, sec 3.1.5.

<sup>66</sup> Prop.2000/01:146 p. 41.

<sup>67</sup> Auditors Ordinance, RNFS 1996:1 60 points in business administration which accounting, auditing, financial, financial control given priority, 30points in law 20points in tax, 20 in either computer science, economics, statistics or mathematics and 10 points where the undergraduate can make a choice.

## 5. The interplay of RevR6 with hard law to regulate sustainability assurance

The above analysis highlights that the legal concept of an audit defined by the Auditor's Act as 'audit business' includes within its scope not only the statutory audit, but for example other reviews than audit by statute. The fact that the legal concept of an audit is built on the statutory audit creates a link and interplay between the two statutes in the regulation of audit business by legal institutions.

Chapter 9 section 3 of the Companies Act require the statutory audit to be performed in accordance with generally accepted auditing standards. Likewise, section 3 of the Auditors Act grants RN supervisory authority over 'audit business', auditors and registered public accounting firms and public oversight over the development according to generally accepted auditing standards. The supervision of 'audit business' by RN according to the proposition to the Auditors Act 2001/01:146 should include the quality of work performed by auditors defined by generally accepted auditing practices and the professional code of ethics.<sup>68</sup> How are standards of the profession linked to this legal concept?

Doctrinal writings characterises requirements such as "generally accepted auditing standards" as an "incomplete rule".<sup>69</sup> Generally accepted auditing standards is therefore a legal concept where material content is not provided by statutes but will be specified and evolve through standards and practice outside the legal system.<sup>70</sup> This legislative technique awards flexibility for generally accepted auditing practices to continually adapt to the dynamic conditions in practice.<sup>71</sup> According to preparatory works, proposition 1997/98:99 *Aktiebolagets organisation*, standards serve as guidance.<sup>72</sup> The standards of the profession have no legal status but can be used as guidance to determine generally accepted auditing standards in Sweden. It also makes explicit that the final interpretation of the generally accepted auditing practices lies with the courts and not the standard setting organisations of the audit profession.<sup>73</sup> This raises the question if there is a statute requiring RevR6 provide guidance to fill the gap?

Three scenarios can be drawn from the above analysis. First, if sustainability assurance is considered to lie within the scope of the statutory audit, the engagement is to be conducted and undergoes quality supervision by RN according to generally accepted auditing standards as stipulated by the Companies Act and Auditors Act respectively. In the performance of an engagement, generally accepted auditing standards is complied with presumable through following standards set by Far in this case RevR6. RN would use RevR6 as a guideline in supervising the quality of sustainability assurance engagements. Though RevR6 has no legal status, it nevertheless has some effect as it is used as a tool to define quality. Although the RN relies to a large extent on standards set by Far, they retain the preferential right of interpretation in cases of disagreements.

Second, if sustainability assurance falls outside the scope of the statutory audit but within the scope of the 'audit business' as other review than audit by statute; the engagement falls within the scope of RN supervision according to the Auditors Act. Third, if sustainability assurance falls outside the scope of 'audit business', the RN has no statutory rights to challenge the quality of those services, RN's scope of supervision for activities is confined to whether the engagement has been performed abiding by the

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<sup>68</sup> Prop. 2001/01:146, p. 43-44.

<sup>69</sup> Thorell, P. "Redovisning rättsliga ställning" Thorell refers to "Ofullständigt regler" translated by the author as "incomplete rule". p.115

<sup>70</sup> Ibid., p.115-116

<sup>71</sup> SOU 1971:15 p. 266.

<sup>72</sup> Prop. 1997/98:99 p. 147.

<sup>73</sup> Ibid.



professional code of ethics.<sup>74</sup> RevR6 will be used by Far members by virtue of their Far membership there is no direct interplay with hard law.

The developments in sustainability assurance in practice have been heavily influenced by developments in sustainability reporting and international trends in this area. The diversity in reporting practices and terms of assurance engagement and dealing with interpreting existing statutes' in the regulation of a new phenomenon has raised legal issues that could be interesting for research in the future.

In this section, an analysis has been performed to determine the larger regulatory space which RevR6 works with the objective of analysing the potential interplay of RevR6 with hard law in regulating sustainability assurance performed by the accountancy profession in Sweden. Building the analysis from the relevant legal sources and raising issues particular to sustainability assurance allows the conclusion that sustainability engagement can fall under the definition of 'audit business'.

## 6. Discussion – A decentred view of regulation

The legal analysis concludes that RevR6 had been developed "outside" the existing legal institutions regulating auditors in Sweden. RevR6 is a standard by a private organisation. From a legal point of view, the RevR6 is not a source of law in itself. Its role in the legal system, if any is dependent on its status granted by hard law. A legal analysis of the regulatory framework regulating auditors indicates a potential interplay between RevR6 and hard law by virtue of the Companies Act and Auditors Act. If sustainability assurance is considered 'audit business' RevR6 could serve as guidance to both RN when it conducts its supervisory role and the court. As it stands today (in 2011), until jurisdiction is exercised by a legal authority, this fact remains unclear.

The decentred view of regulation takes us away from this traditional mode of thought. It forces an examination of "what is it we are looking at, and looking for, when we seek to analyse regulation."<sup>75</sup> Decentred regulation involves not only a shift in regulatory locus of from the state to potentially multiple sites but also the adoption on the state's part, of particular strategies of regulation.<sup>76</sup> This theoretical framework recognizes the initiatives that can come from different non-state actors. These actors have different philosophical beliefs, different legitimate communities of account to and operate in different context. Without a hierarchical structure or a 'central co-ordinator', a regulated community can therefore be subjected to different courses of actions, prescribed by different actors.

The expansion of business activities across borders in the era of globalization has driven professional accounting firms to grow out of their national regulatory structure and engage in other services than the traditional audit. In the light of the difficulties faced by legislators, one strategy adopted by legislators when drafting the 1975 Swedish Companies Act was to impose a general requirement for auditors to perform the audit according to "generally accepted auditing standards". With this provision, the locus of regulating the profession shifts from the state to the standard setting bodies of the profession. This has been based on the belief that these standard setters are more equipped with the resources and capacity to keep up with the complex dynamic environment in which their members operate. Even if the courts remain the final interpreter of generally accepted auditing standards, the shift in the regulatory locus is accompanied by systemic challenges as the profession has different interests and ideas with regards to what is regulation and they regulatory goals.

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<sup>74</sup> Prop 2001/01:146 p. 43-45

<sup>75</sup> Black, J. (2002), p. 27.

<sup>76</sup> Ibid.

Findings from chapters 5 and 6 suggest that the profession's logic for regulating assurance or sustainability assurance differs from the state. The profession was primarily interested in establishing standards to maintain the quality of services and the "business case" to establish the profession as primary providers of the service. In the light of the financial scandals and IFAC's goal to restore confidence in the audit, the profession also made attempts through the structure of its standards to separate the core financial audit from other assurance services. The analysis of the contents of RevR6 showed that although the standard had been drafted to guide its members to perform engagements on assuring sustainability reports (a specific subject matter), the provisions of IFAE and ISAE3000 were in many key areas replicated. The choice of Far to limit its own discretion indicate its intention of granting assurance providers a in performing assurance engagements in Sweden. Analysis of the linguistic structure showed that RevR6(2006) was packed with vague, evaluative and technical terms and potentially over-inclusive provisions. The empirical evidence up to 2008 illustrated the amorphousness of RevR6. The construction of the provisions of the standard has allowed assurance providers the discretionary space to exercise discretion in a way that is compatible with existing practices catering to the needs of reporting organisations and resources allocated to assurance activities. Providers have accepted a range of engagements of varying scope and purpose and applied other standards jointly with it in performing an engagement.

It is important to point out that the supervisory role that RN might have over sustainability assurance was not designed specifically to supervise these engagements but could apply by default due to the arguable over-inclusive definition of audit business in the Auditors Act. This leads to the question if there are clashes in regulatory goals and logic between the standard setter (the profession) and the body potentially supervising sustainability assurance engagements (the RN)? From the documentation of the profession and legal sources of law, both parties have a common objective of improving audit or assurance quality. However, differences are prevalent in the way the role of the auditor (assurance provider) and the concept of audit are defined. The commercial logic of the profession has been evident from the emphasis on the business case to encourage the commission of sustainability assurance.<sup>77</sup> According to the legal preparatory works, auditors has the role of a professional trustee ensuring quality to protect the various communities that place reliance on the assurance providers report pertaining to the information provided by the firm.<sup>78</sup> The dominant logic of regulation could be dependent on whether the state exercises jurisdiction in the field and the extent enforcement bodies perceives the risk and significance of the activity and exercise their supervisory powers.

In light of the above findings, RevR6 could be utilized by RN as a guide determining general accepted auditing practice in performing its supervisory role. This raises the questions as to whether the quality of supervision will be bounded by the quality of standards and what the potential impact of RN supervision would bring to the quality of assurance on sustainability reports. On the other hand, the RevR6 had kept pace with developments in international sustainability reporting and assurance exposing a rather passive Swedish market to international best practices in this field, the very reason why legislators left standards to the profession. These dilemmas can perhaps be better dealt with through regulatory conversations, or other means to better coordinate or steer the emergence of regulatory initiatives in these new areas of "audit like" services and alleviate systemic problems of decentred regulation.

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<sup>77</sup> Refer to chapter 4 and 5 of the thesis

<sup>78</sup> Prop 2000/01:146

## 7. A way forward

Does the regulation of sustainability assurance lead to better quality reports and better decision making to enable sustainable companies? The above analysis concludes that the existing regulatory structures could be better utilised to facilitate this objective. The cartography of decentred regulation extends the map of regulation to forms of control which are not formally part of the state centric legal system.<sup>79</sup> It places importance on the understanding of the function and essential characteristics of these non-state forms of control that operate outside the existing legal institutional structures. At the same time, this perspective does not dislodge the state.<sup>80</sup>

Swedish law requires an audit on the administration of companies. This offers the presence of legal infrastructure to support reforms. Legislators can more clearly specify the duties of the board of directors and management in administrating the companies to achieve sustainability policy objectives. The state could also better integrate the fragmented reporting landscape through clearer reporting requirements for both public and private sector organisations as the effectiveness of good quality sustainability assurance is contingent on good quality reporting and how the information is used to make decisions.

In the Swedish context, the historical and institutional context has led to the accountancy profession as being the choice providers of companies. The large accountancy firms are increasingly taking a mediating role between companies and stakeholders as well as experts on different reporting standards. The role of assurance and assurance providers should be clarified. Supervising these engagements like the financial audits could lead to expectation gaps of stakeholders, at the same time constraint assurance providers from sharing their expertise with the company if an assurance engagement is contracted due to independence issues. At the same time, it is important to note that other assurance providers such as environmental and management consultants and producing the same reports and are not subject to the same stringent regulatory framework.

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<sup>79</sup> Smith, D. (2002) "What is Regulation? A Reply to Julia Black" *Australian Journal of Legal Philosophy* 27, p. 39.

<sup>80</sup> Morgan, B.; Yeung, K. (2007) p. 4.; Black, J. (2001), p. 145-146.