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to:	Company Law Attachés
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Subject:	Proposal for a Regulation of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities - Presidency compromise text

Delegations will find in the Annex I a Steering Note and in the Annex II a revised Presidency compromise text. Changes compared to the previous Presidency compromise text (doc.12662/13) are underlined.

Presidency Steering Note - Regulation
Changes for Attachés meeting on 2-3 September 2013

Presidency Steering Note - Regulation
Changes for meeting on 2-3 September 2013 are underlined

General: some MS requested whether the reference should be made to national law transposing Directive instead of Directive itself. The Commission is of the view that it is normal legislative technique to refer to the Directive and not to the national law transposing the Directive.

Article 2 – Scope

Paragraphs 3 and 4 transferred from Article 11 as they concern the scope of the whole Regulation and not only the scope of Chapter on independence (the corresponding provisions were in Article 38 of the original Commission's proposal).

Article 9 – Audit fees

Paragraph 2 – Several MS expressed their concerns about the ambiguity of the first subparagraph, saying that it is not clear how the calculation should be done in the first year or in other situations. In order to clarify this provision the Presidency proposes following amendment:

2. *When the statutory auditor or audit firm, for a period of three or more consecutive financial years, provides to the audited entity services other than the ones referred to in Article 10(1), the fees for such services shall be limited to no more than 70% of the fees paid in average for the last three consecutive financial year by the audited entity for the statutory audit.*

In order to clarify the Presidency is proposing to amend the second subparagraph like this:

For the purposes of the limits specified in the first subparagraph, services, ~~related to audit work~~ other than the ones referred to in Article 10(1), imposed by national and Union legislation, shall be excluded.

The last subparagraph deleted because of the clarifications in the first subparagraph:

~~*The said percentage should be applied to the average of annual revenue generated from statutory audit of audited public interest entity during three consecutive years.*~~

Paragraph 3 – Some MS asked to include in the scope of fees subject to threshold not only the fees received from the public-interest entity but also the fees received from subsidiaries of such public sector entity. Based on that the Presidency proposes the following amendments:

3. *When the total fees received from a public-interest entity and, in case of group statutory audit, from its subsidiaries, subject to the statutory audit represent for last three consecutive financial years more than 15% of the of the total annual fees received by the statutory auditor or audit firm or, when applicable, group auditor carrying out the statutory audit, such auditor or firm shall disclose that fact to the audit committee and discuss with the audit committee the threats to their independence and the safeguards applied to mitigate those threats. The audit committee shall consider whether the audit engagement shall be subject to a quality control review by another statutory auditor or audit firm prior to the issuance of the audit report. The audit committee shall decide on the basis of objective grounds whether the group auditor, statutory auditor or audit firm of such entity or group of entities may continue to carry out the statutory audit for an additional period which in any case shall not be longer than two years.*

In addition, based on the comments provided by some MS, the Presidency proposes to insert new paragraph 4: “Member States may apply more stringent requirements than provided in this Article.”

Article 10 – Prohibition of the provision of non-audit services

Paragraph 1 first subparagraph - the Presidency proposes to simplify the wording and shorten the cool-off period based on the comments provided by MS at Coreper I on the 17th July and in Company law WP meetings, that 12 months period following the issuing of the audit report might cause practical problems and disproportional burden to audit companies:

1. *A statutory auditor or an audit firm carrying out the statutory audit of a public-interest entity, and any member of a network where the statutory auditor or audit firm belongs to such network, shall not directly or indirectly provide to the audited entity, to its parent undertaking or to its controlled undertakings within the Union any prohibited non-audit services ~~in the financial year to which the audit of the financial statements in question relates,~~*
 - (i) *the financial year immediately preceding that financial year in relation to the services listed at subparagraph 3 (g),*

(ii) *the period between the ~~end of that financial year~~ beginning of the period audited and the issuing of the audit report; and*

(iii) *the period of [...] six months immediately following the issuing of the audit report.*

Paragraph 1 second subparagraph letter (a)(iv) and (v) – based on the comments received from MS:

(iv) *identification of public subsidies and tax incentives [...], unless support from the statutory auditor in respect of such services is required by law,*

(v) *support regarding tax inspections and inquiries by tax authorities unless support from the statutory auditor in respect of such inspections and enquiries is required by law;*

Paragraph 1 second subparagraph letter (d) – “services related with” has a very wide meaning, which could be interpreted as including every service, therefore it is replaced by “that involve”:

(d) *services ~~related with~~ that involve playing any part in the management or decision-making process of the audited entity including:*

Paragraph 1 second subparagraph letter (d) (vii) and (f) – payroll services after amendment the preface of letter (d) were moved back to (f).

Paragraph 1 second subparagraph letter (g) – the Presidency proposes to delete excessive words “for inclusion in the financial statements”.

Paragraph 5 - A significant number of MS require deleting this paragraph. “Black list” is essential element of this Regulation and getting agreement required a lot of time and efforts, therefore it shouldn’t be changed by secondary legislation.

~~5. The Commission shall be empowered to adopt delegated acts in accordance with Article 68 for the purpose of adapting the list of non-audit services referred to in paragraph 1 of this Article. When using such powers, the Commission shall take into account developments in auditing and the audit profession.~~

Article 11 – Preparation for the statutory audit and assessment of threats to independence

Paragraph 1: “without prejudice to Directive 2005/60/EC, the integrity of the public-interest entity”.

There was an inquiry whether this requirement should not be deleted, besides some MS asked about the meaning of integrity. Integrity implies not merely honesty but fair dealing and truthfulness. According to ISA 220 „Quality control for an audit of financial statements“ audit firms are required to obtain information on the integrity of the principal owners, key management and those charged with governance of the entity before the Acceptance and Continuance of Client Relationships and Audit Engagements. Directive 2005/60/EC (Money laundering Directive), which is applicable to auditors and audit firms in the exercise of their professional activities, also sets the similar requirements. Based on the aforementioned the Presidency does not propose deleting this requirement in Article 11, but in order to clarify, that individuals demonstrate integrity not organisations, proposes the following amendment:

- *without prejudice to Directive 2005/60/EC, the integrity of the members of the supervisory body or the senior management of the public-interest entity.*

Paragraph 1A – during the meeting on the 30th July it was asked, what is meant by “core team”, “conflicts of interest”. In order to clarify the Presidency proposes to merge letters (a) and (b):

- (a) confirm annually in writing to the audit committee that the statutory auditor, the audit firm and partners, senior managers and managers, conducting the statutory audit are independent, his, her or its independence from the audited entity;*
- ~~(b) confirm annually in writing to the audit committee the names of the audit partners, senior manager and manager of the core team conducting the statutory audit, certifying that there are no conflicts of interest;~~*

Paragraphs 2 and 3 were transferred to Article 2 as they concern the scope of the whole Regulation and not only the scope of Chapter on independence.

Article 17 – Incidents and Irregularities

Paragraph 1 – one MS requested to replace “*the outcome of the statutory audit*” in the first subparagraph by the “*audit activity or the viability of the statutory auditor or the audit firm*” as the incidents referred to in this paragraph should be the ones that would affect the audit activity (its functioning or continuance of its operations, its viability, and so on), so they would not affect the audit opinion. Because they are not related to a specific audit as it occurs with paragraph 2. In other words paragraph 1 deals with incidents related with the audit activity and paragraph 2 with the outcome of statutory audit. The Presidency considers this separation and clarification helpful and relevant, therefore it proposes following amendments:

1. *Where the statutory auditor or an audit firm becomes aware of any development which is likely to have ~~material~~ significant consequences for the ~~outcome~~ audit activity, integrity or viability of the statutory auditor or audit firm, the statutory auditor or the audit firm shall:*
 - (a) *keep a record of the development;*
 - (b) *take appropriate measures in response to the event or development;*
 - (c) *inform the relevant competent authority referred to in Article 35 of the event or development forthwith if, having taken appropriate measures, the auditor continues to believe that the event or development is likely to have material consequences for the ~~audit opinion~~ the statutory auditor or audit firm.*

Paragraph 2 – in the last subparagraph the word “*legal*” replaced by “*any*”. Some MS were of the view that it is not appropriate to regulate how contracts should be interpreted and asked to delete subparagraph 3. The Presidency would like to note that this provision has been agreed in other EU legislation, and is not proposing any amendments with this regard.

Article 19 - Engagement quality control review

Paragraph 2b – some MS asked to clarify the wording of this paragraph, therefore the Presidency proposes to delete the words “*who may be not a member of an audit firm*“, as excessive ones.

Paragraph 3 – besides minor drafting amendments the Presidency proposes to delete letter (c), as it's requirement is included in letter (a).

3. *When ~~conducting~~ performing the engagement quality control review, the reviewer shall record at least the following:*
- (a) the oral and written information provided by the statutory auditor or key audit partner to support the main findings of the audit procedures carried out and the conclusions drawn from those findings, whether or not at the request of the engagement quality control reviewer;*
 - (c) ~~the main findings of the audit procedures carried out and the conclusions drawn from those findings;~~*

In addition the Presidency would like to note that this paragraph is consistent with ISA 220 and ISA 230.

Paragraph 6 – after the paragraph 2a was deleted during previous amendments the reference to this paragraph should be also deleted:

6. *The audit firm, ~~and where paragraph 2a applies,~~ or the statutory auditor and the engagement quality reviewer, shall keep a record of the results of the engagement quality control review, together with the considerations underlying those results.*

Article 21 - Results of the statutory audit

As provisions from Article 24 are transferred to other Articles, the reference is replaced to Article 23 instead of the Article 24.

Article 22 - Audit Report

Some MS continue to request to transfer this Article to Directive. The Presidency would like to note that some provisions of this Article are applicable only in the case of statutory audit of PIEs, therefore is not proposing to transfer the whole Article, but only those provisions which are applicable to all audits.

Paragraph 2 – Taking into account that this provision should be applicable to all audits, the Presidency proposes to transfer this provision to Article 28 of Directive as letter (b1):

- (f) *state whether the statutory audit was conducted in accordance with the international standards on auditing as referred to in Article 26 of the Directive;*

Regarding letter (k) the Presidency checked ISA 315, ISA 700 and ISA 706. Taking into account that this provision should be applicable to all audits, the Presidency proposes to transfer this provision to Article 28 of Directive a letter (f2):

- (k) *state whether, in the course of conducting the audit, he/she/it has become aware of any key areas of risk of material misstatement of the annual or consolidated financial statements;*

Regarding letter (l) the Presidency checked ISA 570. Based on this revision, aiming to align wording with this ISA, and taking into account that this provision should be applicable to all audits, the Presidency proposes to transfer this provision to Article 28 of Directive a letter (f1) with the following amendment:

- (l) *provide a statement on ~~risks and~~ any material uncertainty(ies) related to events or conditions that may cast significant doubt about the entity's ability to continue as a going concern;*

Material uncertainty is defined in paragraph 17 of ISA 570.

A couple of MS asked to delete letter (n) because it contains boiler-plate language. The Commission explained that this was included as a result of the public consultation and can be useful information for the broader public. Based on that, the Presidency is not proposing to delete this letter.

Paragraph 3 moved to Article 28 of the Directive as paragraph 1B.

Paragraph 8 – based on unanimous request of MS to delete this paragraph, the Presidency proposes to delete it:

~~8. — The Commission shall be empowered to adopt delegated acts in accordance with Article 68 for the purpose of adapting the content of the audit report referred to in paragraph 2 of this Article. When using such powers, the Commission shall take into account any amendments brought to the ISAs by the IFAC, the opinion of the Public Interest Oversight Board on such amendments as well as any other developments in auditing and the audit profession.~~

Article 23 - Additional report to the audit committee

Paragraph 1 – based on the comments of MS the Presidency proposes to amend the second sentence like this: “*This additional report shall be submitted to the audit committee of the audited entity ~~with~~ not later than the audit report referred to in article 22.*“ Some MS asked for a possibility to disclose this report to the third parties, therefore the Presidency proposes to insert the sentence „*The audited entity may provide this report to the third parties on their request.*“ at the end of the second subparagraph.

Regarding the last subparagraph it is not clear when and why the report should be given to the audited entity’s management and other bodies to comment therefore the Presidency proposes to delete it:

~~—The statutory auditor(s) or audit firm(s) shall give the opportunity to comment on the additional report to the management, administrative or supervisory body of the audited entity.~~

Paragraph 2 – in letter (ab) the wording aligned with the code of Ethics:

(ab) activities to be conducted by another statutory auditor or audit firm that is not a part of the same network, or has used the work of external experts, the report shall indicate that fact and shall confirm that the statutory auditor or audit firm received a confirmation from another statutory auditor or audit firm and / or the external expert used have remained independent regarding their independence and objectivity;

Regarding letter (ga) the Presidency checked ISA 265. ISA 265 defines significant deficiency in internal control, not in the internal financial control and detail requirements for communication of the deficiencies. The Presidency is not proposing to delete the word “financial” as there is no reference to ISA in this Article, but is proposing to insert words “explaining their potential effects“ at the end of this provision in order to align the wording of it with ISA.

Regarding letter (h) the Presidency checked ISA 250. Based on this revision, aiming to align wording with this ISA 250.22, the Presidency proposes following amendment:

(h) indicate and explain ~~all instances of~~ any matters involving identified or suspected non-compliance with laws and regulations or articles of association which were identified during the course of the audit other than when the matters are clearly inconsequential;

Some MS asked for further redrafting of letter (l). The Presidency proposes following:

- (l) *in the case of a statutory audit of consolidated financial statements indicate and explain the scope of consolidation ~~in~~ and the exclusion criteria applied to the non-consolidated entities, if any, applied by the audited entity ~~in the case of a statutory audit of consolidated financial statements~~ and if whether the criteria applied are in accordance with the financial reporting framework;*

At the end of this paragraph the Presidency inserted a provision from Article 24. See comments on that Article.

Paragraph 3 – as joint audit is not defined, the Presidency proposes to replace it with “*Where more than one statutory auditor or audit firm have been simultaneously engaged*”

Article 24 - Monitoring of the statutory audit by the audit committee

Subparagraph 1 – for consistency this provision transferred to Article 31:

~~The audit committee shall monitor the work of the statutory auditor(s) or audit firm(s) carrying out the statutory audit.~~

Subparagraph 2 is proposed to move to Article 23(2) amended as follows:

~~The statutory auditor(s) or audit firm(s) shall report to the audit committee on key matters arising from the statutory audit, and in particular on significant deficiencies in internal control in relation to the financial reporting process. Upon request of a statutory auditor, an audit firm or the audit committee, the statutory auditor(s) or audit firm(s) shall discuss these key matters arising from the statutory audit, referred to in the additional report to the audit committee, and in particular in point (ga), with the audit committee.~~

Subparagraph 3 – as it defines one of the tasks of the audit committee, the provision is transferred to Article 38a(6) of the directive:

~~Where an audited entity has an audit committee, the audit committee shall inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit. The audit committee shall explain how the statutory audit contributed to the integrity of financial reporting and what its role was in this process.~~

The last subparagraph deleted as it duplicates paragraph 2 of Article 31.

~~Where the audited entity is exempted from the obligation to have an audit committee, the audited entity shall decide which body or organ of the entity shall engage with the statutory auditor(s) or audit firm(s) for the purposes of the obligations set out in this Article.~~

Article 25 - Report to supervisors of public-interest entities

In the first subparagraph of paragraph 1 the Presidency replaced “*relevant as defined*” with “*determined*”.

In the last sentence of this Article the word “*liability*” was requested to be “*responsibility*”. The Presidency would like to refer to already agreed wording in other Directives (2013/36/EU) and proposes to end the sentence this way: “*shall not involve such persons in any liability of any kind*”.

Article 26 - Disclosure of financial information

Some MS did not see the added value of this report, expressed concerns about the burden it would create for small auditors, considered the transparency report sufficient and asked to delete this article. Taking into account this remark, also the duplication of some provisions, the Presidency proposes to merge this Article with Article 27:

1) paragraphs 1 and 2 transferred to Article 27(2)(l):

~~1. — An audit firm that carries out statutory audits of public-interest entities shall prepare and make public an annual financial report within the meaning of Article 4(2) of Directive 2004/109/EC at the latest four months after the end of each financial year.~~

~~2. — The annual financial report shall show the total turnover divided into fees from the statutory audit of annual and consolidated financial statements of public-interest entities and entities belonging to a group of undertakings whose parent undertaking is a public-interest entity, fees from the statutory audit of annual and consolidated financial statements of other entities and fees charged for permitted non-audit services.~~

~~The annual financial report shall be audited~~

2) paragraph 3 transferred to Article 27(2)(b):

~~3.—Where the statutory auditor or the audit firm belongs to a network, the statutory auditor or the audit firm shall provide the following additional information in the annual financial report or in the Transparency Report, referred in Article 27:~~

~~(a) the name of each statutory auditor who operates as sole practitioner or audit firm belonging to the network;~~

~~(b) the country(ies) in which each statutory auditor or audit firm belonging to the network is qualified as statutory auditor or has his, her or its registered office, central administration or principal place of business;~~

~~(c) the total turnover by the statutory auditors who operate as sole practitioners and audit firms belonging to the network, resulting from the statutory audit of annual and consolidated financial statements;~~

~~By derogation from the first subparagraph, the statutory auditor or the audit firm may not provide the additional information where it is disclosed by the legal entity governing the network or another representative of the network. In this case, the statutory auditor or the audit firm shall indicate in the annex to the annual financial report where that information is accessible.~~

3) the provision of paragraphs 4 is provided in Article 27(1):

~~4.—The annual financial report shall be published on the website of the audit firm and shall remain available on that website for at least five years from the date of first publication.~~

~~—Statutory audit firms shall communicate to the competent authorities, referred to in Article 35(1) that the annual financial report has been published on the website of the statutory audit firm.~~

4) paragraph 5 was previously transferred from Article 29. As the major part of Article 26 is deleted, this paragraph is reinserted back into the Article 29 with the following amendments:

~~5.—In addition to annual financial report a statutory auditor or audit firm shall provide annually to his, her or its competent authority a list of the audited public-interest entities by revenue~~

generated from them, dividing those revenues into revenues for statutory audit and other services referred in Article 9.

Article 27 - Transparency Report

Paragraph 1 – in the last subparagraph deleted “to CEAOB and”.

Paragraph 2 – for amendments see comments on Article 26. In addition, in letter (f) the word “consolidated” replaced by “total”.

Article 29 - Information to competent authorities

The provision reinserted back from Article 26. For more explanation see comment on Article 26.

Article 31 - Audit Committee

Paragraph 3 – transferred from Article 24, as Article 24 deleted.

Article 32 - Appointment of the statutory auditors or audit firms

Paragraph 3 - One MS asked to explain what is meant by “validated by the audit committee” in paragraph 3(f). This means that the report on the conclusions of the selection procedure should be officially approved. The Presidency is not proposing any amendments with this regard.

The Presidency proposes to delete the last subparagraph as not necessary:

~~For the purposes of point (a) of the first subparagraph, the competent authority referred to in Article 35(1) shall make public a list of the auditors and audit firms concerned which shall be updated on an annual basis.~~

Paragraph 4 – one MS expressed concern with regard of reference to point (t), saying that the reference is made to the original 2003 Prospectus Directive in which there is no letter t) in Art. 2 para. 1. Such letter has only been introduced later by Directive 2010/73/EU which is a reform of the original Prospectus Directive. CLS confirmed that a reference to the "old" prospectus directive is sufficient to capture also any legal acts amending the basic prospectus directive we would not have any problem, as there were no repeal of Directive 2003/71/EC in Directive 2010/73/EU. Also the Presidency would like to note that different thresholds are applied to small and medium-sized enterprises, defined in Article 2 point (f) of Directive 2003/71/EC and defined in points 17 and 18 of Article 2 of the Directive 2006/43/EC, therefore the reference cannot be changed to the latter Directive as proposed by one MS.

Paragraph 5 – the word “*recommendation*” replaced with “*preference*” as this is referred in the second subparagraph of paragraph 2. In order to consider situations when the audit committee’s functions are provided by the supervisory body, the Presidency proposes the following amendments:

5. *The proposal of the administrative or supervisory board to the general meeting of shareholders or members of the audited entity for the appointment of statutory auditors or audit firms shall include the [...] preference made by the audit committee or the body performing equivalent functions.*

If the proposal of the administrative or supervisory board departs from the [...] preference of the audit committee, the proposal shall justify the reasons for not following the recommendation of the audit committee. This provision shall not apply in the case when the audit committee’s functions are performed by supervisory board.

Paragraph 6 – taking into account the comments provided by MS, the Presidency proposes following amendment:

6. *In the case of a credit institution or insurance undertaking, the administrative or supervisory board shall ~~submit its draft proposal to~~ immediately inform about the proposed statutory auditor or audit firm the competent authority referred to in Article 35(2).*

Paragraph 7 – the Presidency was requested to delete first subparagraph as it duplicates the provision of Article 37(3)., however the Presidency is not proposing deleting as it would make difficult understanding of subparagraph 2.

Paragraph 9 – taking into account the tasks of CEAOB, the Presidency proposes to delete words “and CEAOB thereof”.

Article 33 – Duration of audit engagement

After analysing the comments of all MS the Presidency does not propose any substantial changes to this Article. In order to explain its decision the Presidency would like to note that two scenarios of possible amendments have been considered:

- 1) to add one more condition, which could be comprehensive assessment by the audit committee of the audited entity.

During the Coreper meeting at 17 July this was requested to be reintroduced by 5 MS. However it should be noted that a number of MS is opposing to reintroducing of such condition as too vague and weaker if to compare it with tendering process or joint audit condition.

The Presidency was considering to strengthen it by requiring the comprehensive assessment be approved by the competent authority referred to in Article 35 (1) which, based on the bilateral discussions, would not satisfy promoters of comprehensive assessment. Therefore taking into account the complexity of mandatory rotation system and in order to avoid adding even more complexity, the Presidency is not proposing to reintroduce the comprehensive assessment condition.

- 2) to extent the maximum duration of engagements to non-systemic entities.

During the Coreper meeting at 17 July this was mentioned by some MS. The majority of MS indicated that could agree with the maximum period already proposed. Some MS would like a shorter period. The Presidency would like to note that the 13 and 16 year periods are long enough and most probably will be extended even more during the trilogies with EP stage, therefore the maximum period is proposed to remain unchanged.

However, the Presidency has introduced many linguistic amendments to this Article:

Paragraphs 1 and 1A:

1. *A public-interest entity shall appoint a statutory auditor or audit firm for an initial engagement of at least one year which ~~can~~ engagement may be renewed.*

~~The maximum duration of the combined engagements shall not exceed ten years. Neither the engagement of a particular statutory auditor or audit firm, nor the combined duration of any renewed engagements shall exceed a maximum duration of ten years.~~

1A *By way of derogation from paragraph 1 Member States may*

- (a) require ~~that the an~~ initial engagement referred to in paragraph 1 be for a period ~~of in excess of~~ longer than one year;*
- ~~(b) permit more than one renewal subject to the overall maximum duration of combined engagements set out at paragraph 1 subparagraph 2 or as appropriate in paragraph (c) of this paragraph; and~~*
- (c) ~~prescribe~~ set a maximum duration of ~~combined~~ less than ten years for the engagement or renewed engagement or renewed engagements set out at referred to in the second subparagraph of paragraph 1 sub paragraph 2 lower than that set out at paragraph 1 sub paragraph 2.*

Letter (b) is deleted as excessive. The Presidency was asked to determine what is meant by engagement period, could it be equated with the statutory audit contract duration. The Presidency notes that engagement period is defined in the Code of Ethics (290.44):

“The period of the engagement starts when the assurance team begins to perform assurance services and ends when the assurance report is issued, except when the assurance engagement is of a recurring nature. If the assurance engagement is expected to recur, the period of the assurance engagement ends with the notification by either party that the professional relationship has terminated or the issuance of the final assurance report, whichever is later.”

Paragraph 2:

2. *After the expiry of the maximum durations ~~of the engagement referred to in the second subparagraph of paragraph 1 subparagraph 2 or and in point (c) of paragraph 1A(e)~~ as appropriate, neither the statutory auditor or audit firm nor, where applicable, any members of ~~its~~ their networks within the Union, ~~where applicable,~~ shall ~~not~~ undertake the statutory audit of the same public-interest entity concerned until a period of at least four years has elapsed within the following four-year period.*

Paragraph 3 – the Presidency proposes to delete the last sentence of the first subparagraph as excessive, and to move the second subparagraph to the separate paragraph 3aa:

3. *By way of derogation from paragraphs 1 and 2, Member States may provide that where:*
- (a) a public tendering process for the statutory audit is conducted, in accordance with paragraphs 2 to 6 of Article 32; or*
 - (b) ~~where throughout the the continuous engagement of the maximum duration period referred to in paragraph 1 subparagraph 2 or paragraph 1A(e)~~ a given period which has reached the relevant maximum duration, more than one auditor or audit firm has been ~~appointed~~ simultaneously engaged*
- the extension of the maximum durations period of the combined engagements referred to in the second subparagraph of paragraph 1 subparagraph 2 or and in point (c) of paragraph 1A (e) be extended to shall not exceed a maximum of:*
- (i) thirteen years in the case of statutory audit of the public interest entities referred in ~~the~~ points (b) and (c) of Article 2(13) (b) and (e) of Directive 2006/43/EC, where the requirement in subparagraph (a) is satisfied; and condition in point (a) is met;*
 - (ii) sixteen years in the case of statutory audit of the public interest entities referred in ~~the~~ points (b) and (c) of Article 2(13) (b) and (e) of Directive 2006/43/EC, where the requirement in subparagraph (b) is satisfied condition in point (b) is met;*
 - (iii) sixteen years in the case of statutory audit of public interest entities other than those referred to in points (b) and (c) of Article 2(13) (b) and (e) of Directive 2006/43/EC, where at least one of the requirement set out in subparagraph (i)(a) or (i)(b) is satisfied both the conditions in points (a) and (b) are met.*

~~Member States may prescribe a lower maximum duration period of additional engagement permitted in this paragraph than that set out in this paragraph.~~

3aa. The maximum duration periods referred to in the second subparagraph of paragraph 1 subparagraph 2 or and in paragraph 1A(c) shall ~~only~~ be extended only if, upon a recommendation of the audit committee, the administrative or supervisory board in accordance with national law proposes to the general meeting of shareholders to renew the engagement and ~~the that proposal meets its approval~~ is approved.

Paragraph 3a:

3a After the expiry of the maximum duration of the engagement referred to in the second subparagraph of paragraph 1 subparagraph 2, in paragraph 1A(c), or in paragraph 3(ii) as appropriate, ~~on an exceptional basis~~ the public interest entity may, on an exceptional basis, request that the competent authority referred to in Article 35(1) ~~to~~ grant an extension to re-appoint the statutory auditor or audit firm for ~~an additional~~ a further engagement. ~~In case of appointment of~~ If more than one statutory auditor or audit firm had previously been appointed, this third such an additional engagement shall not exceed three years. ~~In case of appointment of one~~ If single statutory auditor or audit firm had previously been appointed, this third such an additional engagement shall not exceed two years.

Paragraph 4 the first subparagraph:

4. The key audit partner(s) responsible for carrying out a statutory audit shall cease his, her or their participation in the statutory audit of the audited entity ~~after a period of not more not~~ later than seven years from the date of their appointment ~~has elapsed~~. He, she or they may participate again in the statutory audit of the audited entity ~~again after a period of at least no~~ sooner than three years after that cessation.

Article 33a – Hand-over file

Paragraph 1 – the Presidency proposes to amend the first subparagraph by deleting excessive wording:

1. ~~Where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm shall provide the incoming statutory auditor or audit firm with a handover file. Such file shall include relevant information concerning the audited entity as may reasonably be necessary to understand the nature of the business and the internal organisation of the audited entity and to ensure the continuity of the statutory audit and the comparability with the audits carried out in previous years comply with the requirements referred to in Article 23(3) of Directive 2006/43/EC.~~

Paragraph 2 – all delegations were against delegated acts, some noted that it should be sufficient that the CEA OB developed best practices only. Besides, the Presidency would like to point out that ISA already specify the content of the handover file and procedures for implementing ISA are already addressed in the Directive, therefore there is no need for delegated acts provision in this Article. The Presidency proposes the following amendments:

2. ~~The CEA OB shall develop prepare draft regulatory technical standards to specify technical requirements guidelines on the content of the handover file referred to in paragraph 1 according to the international auditing standards referred to in Article 26 of Directive 2006/43/EC and shall provide advice to the competent authorities referred to Article 35(1) for the purposes of ensuring uniform application of it.~~

~~The Commission shall be empowered to adopt delegated acts in accordance with Article 68 for the purpose of adopting the regulatory technical standards referred to in the first subparagraph of this Paragraph.~~

Article 34 - Dismissal and resignation of the statutory auditors or audit firms

Paragraph 2 - Some MS expressed concerns with regard to national corporate law, therefore the Presidency is proposing to move this provision to Article 38 of Directive.

2. ~~Shareholders, which represent 5% or more of the voting rights or the share capital, or the competent authorities referred to in Article 35(1) or 35(2) shall be able to bring a claim before a national court for the dismissal of the statutory auditor(s) or audit firm(s) where there are proper grounds.~~

Article 35 - Designation of competent authorities

Paragraph 2 – on the 26th June 2013 EP and the Council adopted Directive 2013/36/EU repealing Directives 2006/48/EC and 2006/49/EC. Taking into account that Directive 2009/110/EC was amending those Directives, the Presidency proposes to delete letters (c) and (h) of this paragraph and amend letter (f) like this:

- (c) ~~Article 40 of Directive 2006/48/EC;~~
- (f) Article ~~34~~(1) of Directive ~~2009/110/EC~~2013/36/EU;
- (h) ~~Article 97 of Directive 2009/110/EC;~~

Article 4(1) of Directive 2013/36/EU provides for “*1. Member States shall designate competent authorities that carry out the functions and duties provided for in this Directive and in Regulation (EU) No 575/2013. They shall inform the Commission and EBA thereof, indicating any division of functions and duties.*”

Paragraph 5 – the Presidency proposes to transfer the provision to Article 32 of the Directive.

~~*5.—The competent authorities shall be adequately staffed, with regard to capacity and expertise, and shall have the adequate resources in order to be able to fulfill their tasks provided for under this Regulation.*~~

Article 36 - Conditions of independence

Based on the comments received during the last WP meeting the Presidency proposes to insert “*or involved in the decision making*” after “*body*” in the third subparagraph.

Article 38 - Powers of competent authorities

In **paragraph 1** the Presidency proposes to delete reference to Article 41 as not relevant.

Paragraph 2 - the Presidency proposes to amend the first sentence like this:

Member States shall ensure that ~~In order to carry out their tasks under this Regulation, the competent authorities shall, in conformity with national law, have all the supervisory and investigatory powers that are necessary for the exercise of their functions under this Regulation in accordance of provisions of Chapter VII of the Directive 2006/43/EC.~~

And to transfer the second sentence to separate paragraph 3a.

Paragraph 3 - The Presidency proposes to redraft this paragraph in a following way:

3. ~~In order to carry out their tasks under this Regulation, the competent authorities shall, in conformity with national law, have the power in their supervisory capacity to~~ The powers mentioned in paragraph 2 of this Article shall, in particular, include:

(a) supervisory powers, such as powers to collect all the information necessary for the performance of the competent authority's supervisory duties;

(b) investigatory powers, such as:

(i) ~~access any document~~ data, related to the statutory audit or other documents held by statutory auditors or audit firms, in any form relevant to the carrying out of their tasks and to receive or take a copy thereof ;

(ii) ~~demand~~ obtain information related to the statutory audit from any person ~~and if necessary to summon and question a person with a view to obtaining information;~~

(iii) carry out on-site inspections of business premises of statutory auditors or audit firms or of the audited entity in relation to the statutory audit ~~with or without announcement;~~

(d) [deleted]

(e) refer matters for criminal prosecution;

(f) request experts to carry out verifications or investigations;

(g) take the administrative measures and sanctions referred to in Article 30B of Directive 2006/43/EC.

~~The competent authorities may use the powers referred to in the first subparagraph only in relation to statutory auditors and audit firms carrying out statutory audit of public interest entities, persons involved in the activities of statutory auditors and audit firms carrying out statutory audit of public interest entities, audited entities, their affiliates and related third parties, third parties to whom the statutory auditors and audit firms carrying out statutory audit of public interest entities have outsourced certain functions or activities, and persons otherwise related or connected to statutory auditors and audit firms carrying out statutory audit of public interest entities.~~

Paragraph 3a – moved from paragraph 2 and the preface amended like this:

~~They shall exercise their~~ Member States shall ensure that the competent authorities may exercise their supervisory and investigative powers in any of the following ways:

In the **paragraph 4** the Presidency proposes minor drafting amendments.

Article 38a - Delegation of tasks

Some MS expressed their concerns that the provisions of this Article overlaps with Directive and asked to allow delegation with limited prohibition as regards important disciplinary tasks. Besides, it should be for the MS and not for the competent authority to decide. The Presidency would like to remind that in the initial proposal only approval and registration was allowed to be delegated and that the current text is already improved in a spirit of compromise. For consistency with Directive, the Presidency proposes following drafting amendments:

1. *The competent authority referred to in Article 35(1) may delegate any of its tasks required to be undertaken pursuant to this Regulation to other authorities or bodies designated or otherwise authorised by law to carry out such tasks, except for tasks related with:*
 - (i) ...
 - (ii) *investigations as referred in Article 41 ~~38~~ of this Regulation and 32 of the Directive 2006/43;*

Article 39 - Cooperation with other competent authorities at national level

The Presidency amends the reference:

- (a) *the competent authorities ~~designated under~~ referred to in Article 35(1) 32(4) of Directive 2006/43/EC;*

Article 40 - Quality assurance

Paragraph 1 – in point (a) the reference to Article 41 replaced to 32(5) of Directive 2006/43/EC. In point (b) there was a request to replace the word „employed“ by „responsible to“. The Presidency proposes the following amendment: „employed or otherwise contracted“. The same is proposed in the last subparagraph of **Paragraph 4**.

Paragraph 2 – taking into account the comments by MS, the Presidency proposes following amendment of the second subparagraph:

The competent authority shall carry out quality assurance reviews of statutory auditors and audit firms that carry out statutory audits of public-interest entities on the basis of an analysis of the risk in case of statutory audits for public interest entities defined in Articles 2(17) and Article 2(18) of Directive 2006/43/EC and in other cases at least every three years.

In **paragraph 5** the last subparagraph was deleted for the previous meeting:

~~“Inspections shall be appropriate and proportionate in view of the scale and complexity of the activities of the reviewed audit firm or statutory auditor.”~~

Some MS requested this to be included into the Recitals.

Article 41 – Investigation

Subparagraph 1 is deleted because it is identical to paragraph 1 of Article 30 of Directive.

~~The competent authorities designated under Article 35(1) shall establish effective systems of investigation with a view to detecting, examining and deterring inadequate carrying out of the statutory audit of public interest entities.~~

Subparagraphs 2 and 3 are transferred to Article 32 paragraph 5 of Directive, as they are applicable for the investigations not only in cases of statutory audits of public interest entities, but of all statutory audits.

~~Where a competent authority contracts experts, as defined in Article 40, for carrying out specific assignments, the authority shall ensure that there are no conflicts of interest between these experts and the statutory auditor or audit firm under investigation.~~

~~These experts shall comply with the same requirements as those provided for at Article 40(4) of this Regulation.~~

Article 44 - Transparency of Competent Authorities

In letter (d) the Presidency amended reference from Article 40(7) to Article 40(6) as some MS has identified.

Article 46 - Establishment of CEAOB

The Presidency took into the account the opinions of delegations which were provided in Coreper meeting on the 17th July, when majority of MS supported the model when CEAOB is chaired by elected representative from MS with any involvement of ESMA. Some MS expressed their continuous support to cooperation model which should involve ESMA.

(The Presidency is going to prepare a separate paper on analysis of discussed cooperation models)

Based on the comments provided by MS and by the CLS, the Presidency prepared the amended Article 46:

- 1) inserted new paragraph 2a, specifying the frequency of meetings;
- 2) inserted new paragraph 5a, specifying the tasks of CEAOB;
- 3) in paragraph 5 deleted the comply or explain requirement;
- 4) deleted paragraph 6 as excessive one. The task on letter (h) shall be included in Article 29 of Directive;

5) amended paragraph 10:

10. The Secretariat of the CEAOB shall be provided by the Commission. ~~The CEAOB shall meet on Commission premises in accordance with the procedures and schedule established by it. The sub-groups shall meet on Commission premises or premises provided by one of the Members States in accordance with the procedures established by the CEOAB. The~~ expenses of the CEAOB shall be included in the estimates of the Commission.

6) In paragraph 11 deleted the requirements for provisional agenda as it is the subject of Rules of procedures;

7) Deleted paragraph 12 specifying the reimbursement of meeting expenses as this should be the subject of Rules of Procedures;

8) Amended paragraph 15:

15. The CEAOB shall adopt its rules of procedure ~~on the basis of the standard rules of procedure adopted by the Commission.~~

Article 47 – Home Member State principle

The provisions of this Article are identical to the provisions of Article 34 of Directive, therefore the Presidency proposes to delete this Article.

Article 49 – Cooperation with regard to quality assurance reviews and investigations or on-site inspections

In paragraph 3 the Presidency proposes to replace „participate“ with „assist“, in order to avoid interpretation that there could be a joint action team.

3. *Where a competent authority receives a request from a competent authority of another Member State to ~~participate~~ assist in the quality assurance review of a statutory auditors or audit firm belonging to a network carrying out significant activities in that Member State, it shall allow the requesting competent authority to ~~participate~~ assist in such quality assurance review.*

In paragraph 6 the following amendment is made:

- (a) *such an investigation or on-site inspection might breach national security rules or adversely affect the sovereignty, security or public order of the requested Member State*;

In paragraph 6 letters (b) and (c) there was provided request to delete “*the same persons*” and “*such persons*”. The presidency didn’t delete those words because there could be a situation when one MS passed judgement on legal person, and the other MS might initiate judicial proceedings against natural person for the same action. **This has to be checked with CLS**. The Presidency is proposing only minor drafting amendment.

Article 53 - Colleges of competent authorities

Paragraph 1 – reference amended.

Article 55 - Confidentiality and professional secrecy in relation to CEAOB

The words “, *including experts contracted by CEAOB*” are deleted at the end of the first sentence as excessive.

Article 57 - Agreement on exchange of information

The Presidency proposes to amend Paragraph 1:

1. *The competent authorities ~~and CEAOB, upon request by a competent authority,~~ may conclude cooperation agreements on exchange of information with the competent authorities of third countries only if the information disclosed is subject, in the third countries concerned, to guarantees of professional secrecy which are at least equivalent to those set out in Articles 37 and 55. The competent authorities shall immediately communicate to CEAOB and notify the Commission of such agreements.*

Also to insert new paragraph 4:

4. The CEAOB shall prepare guidelines on the content of cooperation agreement and exchange of information referred to in this Article.

Article 58 - Disclosure of information received from third countries

Because according to Article 57, CEAOB is not concluding agreements on exchange of information, in This Article the Presidency proposes to delete “CEAOB”.

Article 59 - Disclosure of information transferred to third countries

Because according to Article 57, CEAOB is not concluding agreements on exchange of information, in This Article the Presidency proposes to delete “CEAOB”.

Article 60 - Cooperation with international organisation and bodies

It was identified that CEAOB as not being a legal person, could not cooperate with other organisations and bodies. The Presidency does not see any obstacles to CEAOB, which is not legal personality, to cooperate with the international organisations and bodies issuing international auditing standards. It is worth to mention that a similar task is already successfully carried out by EAIG which is currently an independent working group established by the competent authorities of MS to promote better cooperation regarding audit inspections which also examines ISA and cooperates with IAASB.

TITLE VI

~~DELEGATED ACTS, REPORTING AND TRANSITIONAL AND FINAL PROVISIONS~~

Article 68 Exercise of the delegation

As the Regulation does not provide for any delegated act related provision the Presidency proposes to delete this Article.

~~1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.~~

~~2. [deleted]~~

~~3. [deleted]~~

~~4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.~~

~~5. [deleted]~~

Article 70 - Transitional provision

Some MS requested for the lengthening of transitional period. The Presidency, taking in the account the provisions of Article 33 and the concerns of some MS requesting a longer mandatory rotation period, in a spirit of compromise proposes the following amendment in point (c):

Such renewed contract shall be subject to the following maximum durations:

- (i) ~~1 year: if the auditor has been providing services to the audited entity for a consecutive period exceeding 100 years;~~*
- (ii) ~~2 years: if the auditor has been providing services to the audited entity for a consecutive period between 51 and 100 years;~~*
- (iv) 3 years: if the auditor has been providing services to the audited entity for a consecutive period ~~between 21 and 50~~ exceeding 20 years;*
- (v) 4 years: if the auditor has been providing services to the audited entity for a consecutive period between 11 and 20 years;*
- (vi) 5 years: if the auditor has been providing services to the audited entity for a consecutive period not exceeding 10 years.*

Article 71a - Repeal of Commission Decision 2005/909/EC

The Commission explained that it would need to repeal the Commission decision because it cannot be done in the Regulation. The Presidency will check this with the CLS.

Article 72 - Entry into force

References amended.

2011/0359 (COD)

Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
on specific requirements regarding statutory audit of public-interest entities

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the European Data Protection Supervisor²,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Statutory auditors and audit firms are entrusted by law to conduct statutory audits of public-interest entities with a view to enhancing the degree of confidence of the public in the annual and consolidated financial statements of such entities. The public-interest function of statutory audit means that a broad community of people and institutions rely on the quality of a statutory auditor's or audit firm's work. Good audit quality contributes to the orderly functioning of markets by enhancing the integrity and efficiency of financial statements. Thereby, auditors fulfil a particularly important societal role.
- (2) Union legislation requires that the financial statements, comprising annual accounts or consolidated accounts, of credit institutions, insurance undertakings, issuers of securities admitted to trading on a regulated market, payment institutions, UCITS, electronic money institutions and alternative investment funds be audited by one or more persons entitled to

¹ OJ C , , p. .

² Date of the opinion of the EDPS

carry out such audits in accordance with Union law, namely: Article 1(1) of Council

Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions³, Article 1(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings⁴, Article 4(4) of Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC⁵, Article 15(2) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC⁶, Article 73 of Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS)⁷, Article 3(1) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC⁸, and Article 22(3) of Directive 2011/61/EC of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010⁹. Moreover, Article 4(1)(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC¹⁰ also requires that the annual financial statements of investment firms be audited when Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European

³ OJ L 372, 31.12.1986, p. 1.

⁴ OJ L 374, 31.12.1991, p. 7.

⁵ OJ L 390, 31.12.2004, p. 38.

⁶ OJ L 319, 5.12.2007, p. 1.

⁷ OJ L 302, 17.11.2009, p. 32.

⁸ OJ L 267, 10.10.2009, p. 7.

⁹ OJ L 174, 1.7.2011, p.1.

¹⁰ OJ L 145, 30.4.2004, p. 1.

Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC¹¹ [...] is not applicable.

- (3) The conditions for the approval of the persons responsible for carrying out the statutory audit as well as the minimum requirements for carrying out such statutory audit are laid down in Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC¹².
- (4) During the recent financial crisis, numerous banks revealed huge losses from 2007 to 2009 on the position they had held both on and off balance sheet. This raised not only the question of how auditors could give unqualified audit reports to their clients for those periods but also about the suitability and adequacy of the current legislative framework. The Commission published on 13 October 2010 a Green Paper on Audit Policy: Lessons from the Crisis¹³, which launched a wide public consultation, in the general context of financial market regulatory reform, on the role and scope of audit and how the audit function could be enhanced in order to contribute to increased financial stability. It resulted from the public consultation that the rules of Directive 2006/43/EC regarding the carrying out of the statutory audit of annual and consolidated accounts of public-interest entities could be substantially improved. The European Parliament issued an own initiative report on the Green Paper on 13 September 2011. The European Economic and Social Committee also adopted a report on that Green Paper on 16 June 2011.
- (5) It is important to lay down detailed rules with a view to ensuring that the statutory audits of public-interest entities are of adequate quality and are carried out by statutory auditors and audit firms subject to stringent requirements. A common regulatory approach should enhance the integrity, independence, objectivity, responsibility, transparency and reliability of statutory auditors and audit firms carrying out statutory audit of public-interest entities, contributing to the quality of statutory audit in the Union, thereby contributing to smooth functioning of the internal market, while achieving a high level of consumer and investor protection. The development of a separate act for public-interest entities should also ensure consistent harmonisation and uniform application and thus contribute to a more effective functioning of the internal market.

¹¹ OJ L 182, 29.6.2013, p. 19

¹² OJ L 157, 9.6.2006, p.87.

¹³ COM(2010)561 final.

(5a) The statutory audit of cooperatives and savings banks is characterised by a system that does not allow cooperatives and savings banks to choose their statutory auditor or audit firm freely. The audit association to which the cooperative or savings bank belongs as a member is obliged by law to carry out the statutory audit (permanent mandate). These audit associations act on a non-profit-making basis not pursuing commercial interests which results from their legal nature. In addition, the organisational units of these associations are not associated with a common economic interest, which could jeopardise their independence. Accordingly, Member States should have the possibility to exempt cooperatives within the meaning of Article 2(14) of Directive 2006/43/EC, savings banks or similar entities as referred to in Article 45 of Directive 86/635/EEC or their subsidiaries or legal successors from this Regulation provided that the principles of independence as laid down in Directive 2006/43/EC are complied with.

(6) [...]

(7) [*Transferred to Directive, recital 6a*]

(8) [*Transferred to Directive, recital 6e*]

(9) [*Transferred to Directive, recital 6b*]

(10) The level of fees received from one audited entity and the structure of fees can also threaten the independence of a statutory auditor or audit firm. Thus, it is important to ensure that audit fees are not based on any form of contingency and that, when the audit fees from a single client including its subsidiaries are significant, a specific procedure involving the audit committee is established to secure the quality of the audit. [...] If the dependency on a single client becomes excessive, the audit committee should decide on the basis of proper grounds whether the statutory auditor or the audit firm may continue to carry out the statutory audit. When taking such decision, the audit committee should take threats to independence and the consequences of such decision amongst others into consideration.

- (11) The provision of certain services other than statutory audit (non-audit services) to audited entities by statutory auditors, audit firms or members of their networks may compromise their independence. Therefore, it is appropriate to [...] prohibit the provision of certain non-audit services such as specific tax, consultancy and advisory services (“black list”) to the audited entity, to its parent undertaking and to its controlled undertakings within the Union. In order to ensure an appropriate level of independence, it is important that this prohibition does not only apply to the financial year audited but also relates in addition to defined periods before and after. However, statutory auditors and audit firms should be allowed to provide such services where such obligation is defined by law.
- (12) With a view to avoiding conflicts of interest it is important that the statutory auditor or the audit firm, before accepting or continuing an engagement for a statutory audit of a public-interest entity, assesses whether the independence requirements are met, and in particular whether any threats to independence arise as a result of the relationship with that entity. In order to maintain this independence, it is also important that they keep records of all threats to their independence [...], as well as the safeguards applied to mitigate those threats. [...] The statutory auditor or the audit firm should confirm annually to the audit committee of the audited entity their independence and discuss with such committee any threat to their independence as well as the safeguards applied to mitigate those threats.
- (13) Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data¹⁴ govern the processing of personal data carried out in the Member States in the context of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. [...] Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC [...].
- (14) [*Transferred to Directive, recital 6d*]
- (15) [*Transferred to Directive, recital 6f*]

¹⁴ OJ L 281, 23.11.1995, p. 31.

(16) [partly transferred to Directive, recital 6c]

[...] The integrity of the statutory auditor, audit firm and their staff is essential to ensure the public confidence in statutory audits and financial markets. Therefore, any [...] development that may have [...] significant consequences for the [...] audit activity, integrity or viability of the statutory auditor or the audit firm should be appropriately managed. The statutory auditor or the audit firm should [...] document the audit work. Auditors should recognise the possibility that a material misstatement due to fraud or error could exist, notwithstanding the auditor's past experience of the honesty and integrity of the audited entity's management. Therefore, the statutory auditor or audit firm should inform the audited entity and invite it to investigate the matter where the he/she/it suspects or has reasonable grounds to suspect irregularities with regard to the financial statements.

(17) [...]

(18) A sound engagement quality control review of the work carried out in each statutory audit engagement should be conducive to high audit quality. Therefore, the statutory auditor or the audit firm should not issue his, her or its audit report until such an engagement quality control review has been completed.

(19) The results of the statutory audit should be presented to the stakeholders in the audit report. In order to increase the confidence of stakeholders in the financial statements of the audited entity, it is particularly important that the audit report is well-founded and solidly substantiated. [...] In addition to the information required to be provided according to Article 28 of Directive 2006/43/EC, it should in particular include sufficient information on the independence of the statutory auditor or audit firm and on whether the statutory audit was considered capable of detecting irregularities, including fraud.

(20) The value of statutory audit for the audited entity would be particularly enhanced if the communication between the statutory auditor or the audit firm, on the one hand, and the audit committee, on the other hand, was reinforced. [...] It is important that the statutory auditor or the audit firm submits to the audit committee an additional and more detailed report on the results of the statutory audit. This additional report should be submitted to the audit committee no later than the audit report. Upon request, the statutory auditor or the audit firm should discuss key matters which have been mentioned in the additional report with the audit committee. In addition, it should be possible to make such additional detailed report available

to the supervisors of [...] statutory auditors and audit firms and third parties where it is requested.

- (21) Statutory auditors or audit firms already provide supervisors of public-interest entities with information on facts or decisions which could constitute a breach of the rules governing the activities of the audited entity or the impairment of the continuous functioning of the audited entity. Supervisory tasks would also be facilitated if supervisors of credit [...] institutions and insurance undertakings were required to establish an effective dialogue with their statutory auditors and audit firms.
- (22) In order to increase the confidence in and the liability of the statutory auditors and audit firms carrying out the statutory audit of public-interest entities, it is important that the transparency reporting by statutory auditors and audit firms is increased. Therefore, statutory auditors and audit firms should be required to disclose audited financial information, showing in particular their total turnover divided into audit fees paid by public-interest entities, audit fees paid by other entities and fees for other services. They should also disclose financial information at the level of the network to which they belong. [...] Additional supplementary information on audit fees should be provided to competent authorities with a view to facilitating their supervisory tasks.
- (23) *[Mainly transferred to Directive, recital 11a]*
- Audit committees, or bodies performing an equivalent function within the audited entity, have a decisive role in contributing to high-quality statutory audit. [...] Therefore, each public-interest entity shall have an audit committee. Further requirements regarding its tasks, composition and independence are laid down in Directive 2006/43/EC.
- (24) It is [...] important that the role of the audit committee in the selection of a new statutory auditor or audit firm be reinforced, for the benefit of a more informed decision of the general meeting of shareholders or members of the audited entity. Hence, when making a proposal to the general meeting, the board should explain whether it follows the [...] preference of the audit committee and, if not, why. The recommendation of the audit committee should include at least two possible choices for the audit engagement and a duly justified preference for one of them, so that [...] a real choice can be made. In order to provide a fair and proper justification in its recommendation, the audit committee should use the results of a mandatory selection procedure organised by the audited entity, under the responsibility of the audit committee. In such selection procedure, the audited entity should invite statutory auditors or

audit firms [...] to present proposals for the audit engagement. Tender

documents should contain transparent and non-discriminatory selection criteria to be used for the evaluation of proposals. Considering, however, that this selection procedure could entail disproportionate costs for companies with reduced market capitalisation or small and medium-sized public-interest entities having regard to their dimension, it is appropriate to relieve such entities from this obligation.

- (25) The right of the general meeting of shareholders or members of the audited entity to choose the statutory auditor or the audit firm would be of no value if the audited entity were to enter into a contract with a third party providing for a restriction of such choice. Therefore any contractual clause entered into by the audited entity with a third party regarding the appointment or restricting the choice of a particular auditor or audit firm should [...] have no legal effect.
- (26) The appointment of more than one statutory auditor or audit firm by the public-interest entities would reinforce the professional scepticism and contribute to increasing audit quality. Also, this measure combined with the presence of smaller audit firms would facilitate the development of the capacity of such firms, thus contributing to increasing the choice of statutory auditors and audit firms for public-interest entities. Therefore, the latter should be encouraged and incentivised to appoint more than one statutory auditor or audit firm to carry out the statutory audit.
- (27) In order to address the familiarity threat and therefore reinforce the independence of auditors and audit firms, it is important to establish a maximum duration of the audit engagement of a statutory auditor or audit firm in a particular audited entity. An appropriate gradual rotation mechanism should also be established with regard to [...] the key audit partners carrying out the statutory audit on behalf of the audit firm. It is also important to provide for an appropriate period within which such statutory auditor or audit firm may not carry out the statutory audit of the same entity. In order to ensure a smooth transition, the former auditor should transfer a handover file with relevant information to the incoming auditor.
- (28) [*Partly transferred to Directive, recital XX*]

In order to protect the independence of the auditor, it is important that dismissal should be possible only where there are proper grounds and if those grounds are communicated to the authority or authorities responsible for supervision. [...]

- (29) In order to ensure a high level of investor and consumer confidence in the internal market by avoiding conflicts of interests, statutory auditors and audit firms should be subject to appropriate supervision by competent authorities which are independent from the audit profession and which have adequate capacity, expertise and resources. The competent authority may delegate any of its tasks except tasks related with the quality assurance system, investigations and disciplinary systems. The national competent authorities should have the necessary powers to undertake their supervisory tasks, including the capacity to access [...] data, obtain information and carry out inspections. They should specialize in the supervision of financial markets, in the compliance with financial reporting obligations or in statutory audit oversight. However, it should be possible that the supervision of the compliance with the obligations set on public-interest entities is carried out by the competent authorities responsible for the supervision of those entities. The funding of the competent authorities should be free from any [...] undue influence by statutory auditors or audit firms.
- (30) The quality of supervision should improve if there is effective cooperation between authorities charged with different tasks at national level. Therefore, the authorities competent to supervise compliance with the obligations on statutory audit of public-interest entities should cooperate with the authorities responsible for the [...] tasks provided for in Directive 2006/43/EC, with those supervising public-interest entities and with the Financial Intelligence Units referred to in Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2006 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing¹⁵.
- (31) External quality assurance for the statutory audit is fundamental for high quality audit. It adds credibility to published financial information and provides better protection of shareholders, investors, creditors and other interested parties. Statutory auditors and audit firms should therefore be subject to a system of quality assurance under the responsibility of the competent authorities, thus ensuring objectivity and independence from the audit profession. Quality assurance reviews should be organised in such a manner that each statutory auditor or each audit firm undertaking audits of public-interest entities is subject to a quality assurance review at least every three years. The Commission Recommendation of 6 May 2008 on external

¹⁵ OJ L 309, 25.11.2005, p. 15.

quality assurance for statutory auditors and audit firms auditing public interest entities¹⁶ provides information on how inspections should be undertaken.

Quality assurance reviews should be appropriate and proportionate in view of the scale and complexity of the business of the reviewed audit firm or statutory auditor.

(32) [...]

(33) The market for the provision of statutory audit services to public-interest entities evolves over time. It is therefore necessary that competent authorities monitor the developments in the market, particularly as regards [...] the risks that arise from high market concentration and the need to adopt measures to mitigate those risks.

(34) [...]

(35) The transparency of the activities of competent authorities should contribute to increase the confidence of investors and consumers in the internal market. Therefore, competent authorities should be required to regularly report on their activities and to publish [...] aggregated information on inspection findings and conclusions.

(36) The cooperation between the competent authorities of the Member States can make an important contribution to ensuring consistently high quality in the statutory audit in the Union. Therefore, the competent authorities of the Member States should cooperate with each other, where necessary, for the purpose of carrying out their supervisory duties regarding statutory audits. They should respect the principle of home-country regulation and oversight by the Member State in which the statutory auditor or audit firm is approved and the audited entity has its registered office. The cooperation between competent authorities [...] should be organized within the framework of a Committee of European Auditing Oversight Bodies (CEAOB). It should be composed of high level representatives of the competent authorities. In order to enhance consistent application of this Regulation, the CEAOB may adopt non-binding guidelines or opinions. In addition, it should facilitate the exchange of information, provide advice to the Commission and contribute to technical assessments and technical examination.

(36a) [...]

¹⁶ OJ L 120, 7.5.2008, p.20.

- (37) The scope of cooperation between the competent authorities of Member States should include [...] cooperation with regard to quality assurance assurance reviews and assistance to investigations related to the carrying out of statutory audits of public-interest entities, including in cases where the conduct under investigation does not constitute an infringement of any legislative or regulatory provision in force in the Member States concerned [...]. The modalities of cooperation between the competent authorities of the Member States may include the creation of colleges of competent authorities and the delegation of tasks among themselves. The concept of network in which auditors and firms operate should be taken into account in such cooperation. Competent authorities [...] should respect appropriate confidentiality and professional secrecy rules.
- (38) [...]
- (39) The interrelation of capital markets calls for empowering national competent authorities [...] to cooperate with supervisory authorities and bodies of third countries regarding the exchange of information or quality assurance reviews. However, where the cooperation with third country authorities is related to audit working papers or other documents held by statutory auditors or audit firms, the procedures of Directive 2006/43/EC should apply.
- (40) [...]
- (41) [*Transferred to Directive, recital 8a*]
- (42) [*Transferred to Directive, recital 8c*]
- (43) [...]
- (44) [...]
- (45) In order to ensure legal certainty and the smooth transition to the regime introduced by this Regulation, it is important to introduce a transitional regime regarding the entry into force of the obligation to rotate audit firms and the obligation to organise a selection procedure for the choice of audit firm [...].

- (46) Since the objectives of this Regulation, namely clarifying and better defining the role of statutory audit regarding public-interest entities, improving the information that the statutory auditor or audit firm provides to the audited entity, investors and other stakeholders, improving the communication channels between auditors and supervisors of public-interest entities, preventing any conflict of interest arising from the provision of non-audit services to public-interest entities, mitigating the risk of any potential conflict of interest due to existing system of "auditee selects and pays the auditor" or to familiarity threat, facilitating the switching of statutory auditor or audit firm and the choice of an audit provider to public-interest entities, increasing the choice of audit providers to public-interest entities and improving the effectiveness, independence and consistency of the regulation and supervision of statutory auditors and audit firms providing statutory audits to public interest entities including as regards cooperation at Union level, cannot be sufficiently achieved by the Member States and can, therefore, by reason of their scale, be better achieved at Union level, the Union may adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Regulation does not go beyond what is necessary in order to achieve those objectives.
- (47) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8), the freedom to conduct a business (Article 16), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and right of defence (Article 48), the principles of legality and proportionality of criminal offences and penalties (Article 49), the right not to be tried or punished twice for the same offence (Article 50), and has to be applied in accordance with those rights and principles,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down requirements for the carrying out statutory audit of annual and consolidated financial statements of public-interest entities, rules on the selection of statutory auditors and audit firms by public-interest entities to promote their independence and the avoidance of conflicts of interest and rules on the supervision of compliance by statutory auditors and audit firms with those requirements.

Article 2

Scope

1. This Regulation applies to the following:
 - (a) statutory auditors and audit firms who carry out statutory audits of public-interest entities;
 - (b) public-interest entities.
2. This Regulation applies without prejudice to Directive 2006/43/EC.
3. Where a cooperative within the meaning of Article 2(14) of Directive 2006/43/EC, a savings bank or a similar entity as referred to in Article 45 of Directive 86/635/EEC, or a subsidiary or a legal successor of a cooperative, a savings bank or a similar entity as referred to in Article 45 of Directive 86/635/EEC is required or permitted under national law to be a member of a non-profit-making auditing entity, the Member State may decide that this Regulation shall not apply to the statutory audit of such entity provided that
 - (i) the principles of independence laid down in Directive 2006/43/EC are complied with by the statutory auditor carrying out the statutory audit and by persons who may be in a position to influence the statutory audit.

(ii) an objective, reasonable and informed party would not conclude that the membership-based relationship compromises the statutory auditor's independence, provided that when such an auditing entity is conducting a statutory audit of one of its members, the principles of independence are applied to the auditors carrying out the audit and those persons who may be in a position to exert influence on the statutory audit.

4. The Member State shall inform Commission and a Committee of European Auditing Oversight Bodies, hereinafter referred to as 'CEAOB', referred to in Article 46, of such exceptional situations of non-application of certain provisions of this Regulation. It shall communicate to Commission and CEAOB the list of provisions of this Regulation that have not been applied to the statutory audit of the entities referred to in paragraph 3 and the reasons that justified the exemption granted for such non-application.

Article 3

Definitions

For the purposes of this Regulation, the definitions laid down in Article 2 of Directive 2006/43/EC shall apply, except for the definition of 'competent authority'.

Article 4

Large public-interest entities

[deleted]

TITLE II

CONDITIONS FOR CARRYING OUT STATUTORY AUDIT OF PUBLIC-INTEREST ENTITIES

CHAPTER I

INDEPENDENCE AND AVOIDANCE OF CONFLICTS OF INTEREST

Article 5

Independence and objectivity

[transferred to the Directive, Article 22(5)]

Article 6

Internal organisation of auditors and audit firms

[transferred to Directive, Article 24a]

Article 7

Independence from the audited entity

[transferred to Directive, Article 22]

Article 8

Employment by public-interest entities of former statutory auditors or of employees of statutory auditors or audit firms

[transferred to Directive, Article 22c]

Article 9

Audit fees

1. Fees for the provision of statutory audits to public-interest entities shall not be contingent fees.

Without prejudice of Article 25 of the Directive, for the purposes of the first subparagraph, contingent fees means fees for audit engagements calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. Fees shall not be regarded as being contingent if a court or a competent authority has established them.

2. When the statutory auditor or audit firm provides to the audited entity, for a period of three or more consecutive financial years, services other than the ones referred to in Article 10(1), the fees for such services shall be limited to no more than 70% of the fees paid in average for the last three consecutive financial years by the audited entity for the statutory audit.

For the purposes of the limits specified in the first subparagraph, services, [...] other than the ones referred to in Article 10(1), imposed by national and Union legislation shall be excluded.

[...]

3. When the total fees received from a public-interest entity and, in case of group statutory audit, from its subsidiaries, subject to the statutory audit represent for last three consecutive financial years more than 15% of the of the total annual fees received by the statutory auditor or audit firm or, when applicable, group auditor carrying out the statutory audit, such auditor or firm shall disclose that fact to the audit committee and discuss with the audit committee the threats to their independence and the safeguards applied to mitigate those threats. The audit committee shall consider whether the audit engagement shall be subject to a quality control review by another statutory auditor or audit firm prior to the issuance of the audit report. The audit committee shall decide on the basis of objective grounds whether the group auditor, statutory auditor or audit firm of such entity or group of entities may continue to carry out the statutory audit for an additional period which in any case shall not be longer than two years.
4. Member States may apply more stringent requirements than provided in this Article.

Article 10

Prohibition of the provision of non-audit services

1. A statutory auditor or an audit firm carrying out the statutory audit of a public-interest entity, and any member of a network where the statutory auditor or audit firm belongs to such network, shall not directly or indirectly provide to the audited entity, to its parent undertaking or to its controlled undertakings within the Union any prohibited non-audit services in [...]
- (i) the financial year immediately preceding that financial year in relation to the services listed at subparagraph 3 (g),

- (ii) the period between the [...] beginning of the period audited and the issuing of the audit report; and
- (iii) the period of [...] six months immediately following the issuing of the audit report.

For the purposes of this Article, prohibited non-audit services shall mean:

- (a) provision of services relating to:
 - (i) preparation of tax forms,
 - (ii) payroll tax,
 - (iii) customs duties,
 - (iv) identification of public subsidies and tax incentives [...], unless support from the statutory auditor in respect of such services is required by law,
 - (v) support regarding tax inspections and inquiries by tax authorities unless support from the statutory auditor in respect of such inspections and enquiries is required by law;
- (b) calculation of direct and indirect tax and deferred tax;
- (c) provision of advice where the effectiveness of the advice depends on a particular accounting treatment or presentation in the financial statements;
- (d) services[...] that involve playing any part in the management or decision-making process of the audited entity including:
 - (i) working capital management,
 - (ii) providing financial information,
 - (iii) business process optimization,
 - (iv) cash management,
 - (v) transfer pricing and,
 - (vi) creating supply chain efficiency and

- (vii) [...].
- (e) bookkeeping and preparing accounting records and financial statements;
- (f) payroll services;

- (g) designing and implementing internal control or risk management procedures related to the preparation and/or control of financial information [...] or financial information technology systems;
- (h) valuation services, including valuations performed in connection with actuarial services or litigation support services;
- (i) legal services, with respect to:
 - (i) the provision of general counsel,
 - (ii) negotiating on behalf on the audit client, or
 - (iii) acting in an advocacy role in the resolution of litigation;
- (j) services related to the audit client's internal audit function;
- (k) corporate finance services, except those required by European Union or national legislation;
- (l) human resources services with respect to:
 - (i) management in a position to exert significant influence over the preparation of the accounting records or financial statements which are the subject of the statutory audit, where such services involve:
 - (1) searching for or seeking out candidates for such positions; or
 - (2) undertaking reference checks of candidates for such positions.
 - (ii) structuring the organisation design and
 - (iii) cost control.

1A. Member States may prohibit services other than those listed in paragraph 1 which could represent a threat to independence. Member States shall communicate to the Commission any additions to the list referred to in paragraph 1.

2. A statutory auditor or an audit firm carrying out statutory audit of public-interest entities and, where the statutory auditor or audit firm belongs to a network, any member of such network, may provide to the audited entity, to its parent undertaking or its controlled undertakings non audit services other than the prohibited non-audit services referred to in paragraphs 1 and 1A subject to the approval of the audit committee after having properly assessed threats and potential safeguards to independence in accordance with Article 22d of Directive 2006/43/EC. Member States may establish additional rules setting out the conditions under which a statutory auditor, an audit firm or a member of a network to which the auditor or audit firm belongs may provide to the audited entity, to its parent undertaking or its controlled undertakings non audit services other than the prohibited non-audit services referred to in paragraph 1.
3. When a member of the network to which the statutory auditor or the audit firm carrying out statutory audit of a public-interest entity belongs provides non-audit services, referred to in the paragraphs 1 and 1A of this Article, to an undertaking incorporated in a third country controlled by or under control of the audited public-interest entity, the statutory auditor or the audit firm concerned shall assess whether his, her or its independence would be compromised by such provision of services by the member of the network. If his, her or its independence is affected, the statutory auditor or the audit firm shall apply safeguards where applicable in order to mitigate the threats caused by such provision of services in a third country. The statutory auditor or the audit firm may continue to carry out the statutory audit of the public-interest entity only if he, she or it can justify, in accordance with Article 11 of this Regulation and Article 22d of Directive 2006/43/EC, that such provision of services does not affect his, her or its professional judgement and the audit report.

For the purpose of this paragraph:

- (a) being involved in the decision-taking of the audited entity and the provision of the services referred to in points (d) (e) and (g) of paragraph 1 shall be considered as affecting such independence in all cases and be incapable of mitigation by any safeguards.

- (b) The provision of the services referred to in points other than (d) (e) and (g) of paragraph 1 shall be presumed to affect such independence and therefore to require safeguards to mitigate the threats caused thereby.

4. *[deleted]*

5. *[...]*

6. *[deleted]*

Article 11

Preparation for the statutory audit and assessment of threats to independence

1. Before accepting or continuing an engagement for a statutory audit of a public interest entity, a statutory auditor or audit firm shall assess and document additionally to the provisions of Article 22d of Directive 2006/43/EC the following:
 - whether he, she or it complies with the requirements and Articles 9 and 10 of this Regulation;
 - whether the conditions of Article 33 are complied with;
 - without prejudice to Directive 2005/60/EC, the integrity of the members of the supervisory body or the senior management of the public-interest entity.
- 1A. A statutory auditor or audit firm shall:
 - (a) confirm annually in writing to the audit committee that the statutory auditor, the audit firm and partners, senior managers and managers, conducting the statutory audit are independent [...] from the audited entity;
 - (b) [...]
 - (c) discuss with the audit committee the threats to their independence and the safeguards applied to mitigate those threats, as documented by them pursuant to paragraph 1.
2. [...] *(moved to Article 2)*
3. [...] *(moved to Article 2)*

CHAPTER II
CONFIDENTIALITY AND PROFESSIONAL SECRECY

Article 12

Confidentiality and professional secrecy *[deleted]*

Article 13

Disclosure to third country auditors and to third country authorities

[transferred to Directive, Article 23(5)]

CHAPTER III
PERFORMANCE OF THE STATUTORY AUDIT

Article 14

Scope of the statutory audit *[transferred to Directive, Article 23(5)]*

Article 15

Professional scepticism *[transferred to the Directive, Article 22e]*

Article 16

Organisation of the work *[Transferred to the Directive, Article 22f]*

Article 17

Incidents and Irregularities

1. Where the statutory auditor or an audit firm becomes aware of any development which is likely to have [...] significant consequences for the [...] audit activity, integrity or viability of the statutory auditor or audit firm, the statutory auditor or the audit firm shall:
 - (a) keep a record of the development;
 - (b) take appropriate measures in response to the event or development;

- (c) inform the relevant competent authority referred to in Article 35 of the event or development forthwith if, having taken appropriate measures, the auditor continues to believe that the event or development is likely to have material consequences for the [...] the statutory auditor or audit firm.

The record referred in point (a) of the first subparagraph shall include the facts and circumstances of the development, information about the person or persons involved and details of the measures that have been taken pursuant to point (b) of that subparagraph.

2. Without prejudice to Article 25 and Directive 2005/60/EC, when a statutory auditor or an audit firm carrying out the statutory audit of a public-interest entity suspects or has reasonable grounds to suspect that irregularities with regard to the financial statements of the audited entity is being or has been committed or attempted, he, she or it shall inform the audited entity and invite it to investigate the matter and take appropriate measures to deal with such irregularities and to prevent any recurrence of such irregularities in the future.

Where the audited entity does not investigate the matter, the statutory auditor or audit firm shall inform the authorities as defined by the Member States for investigating such irregularities.

The disclosure in good faith to the authorities, by the statutory auditor or audit firm, of any irregularities referred to in the first subparagraph shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in [...] any liability.

Article 18

Audit of consolidated financial statements

[transferred to the Directive, Article 27]

Article 19

Engagement quality control review

1. Before the reports referred to in Articles 22 and 23 are issued, an engagement quality control review shall be performed to assess whether the statutory auditor or the key audit partner could reasonably have come to the opinion and conclusions expressed in the draft of these reports.

2. The engagement quality control review shall be performed by an engagement quality control reviewer. Such reviewer shall be a statutory auditor who is not involved in the performance of the statutory audit to which the engagement quality review relates.
- 2a. *[deleted]*
- 2b. By derogation from paragraph 2 above, where the audit is carried out by an audit firm where all the statutory auditors were involved in the performance of the statutory audit, or where the statutory audit is carried out by a statutory auditor and the statutory auditor is not a member of an audit firm, he/she/it shall arrange that another statutory auditor [...] shall perform an engagement quality control review. The disclosure of documents or information to the independent reviewer for the purposes of this Article shall not constitute a breach of professional secrecy. Documents or information disclosed to the engagement quality reviewer for the purposes of this Article shall be subject to professional secrecy.
3. When [...] performing the engagement quality control review, the reviewer shall record at least the following:
- (a) the oral and written information provided by the statutory auditor or key audit partner to support the main findings of the audit procedures carried out and the conclusions drawn from those findings, whether or not at the request of the engagement quality control reviewer;
 - (c) [...]
 - (d) the opinions of the statutory auditor or key audit partner, as expressed in the draft of the reports referred to in Articles 22 and 23;
4. The engagement quality control review shall at least assess the following elements:
- (a) the independence of the statutory auditor or audit firm from the audited entity;
 - (b) the significant risks which are relevant to the statutory audit and that the statutory auditor or key audit partner has identified during the performance of the statutory audit and the measures that he or she has taken to adequately manage those risks;
 - (c) the reasoning of the statutory auditor or key audit partner, in particular with regard to the level of materiality and the significant risks referred to in point (b);

- (d) any request for advice made to external experts and the implementation of such advice;

- (e) the nature and scope of the corrected and uncorrected misstatements in the financial statements that were identified during the performance of the audit;
 - (f) the subjects discussed with the audit committee and the management and/or supervisory bodies of the audited entity;
 - (g) any subjects discussed with competent authorities and, if applicable, with other third parties;
 - (h) whether the documents and information selected from the file by the engagement quality control reviewer support the opinion of the statutory auditor or key audit partner as expressed in the draft of the reports referred to in Articles 22 and 23.
5. The engagement quality control reviewer shall discuss the results of the engagement quality control review with the statutory auditor or the key audit partner. The audit firm shall establish procedures for determining the manner in which any disagreement between the key audit partner and the engagement quality reviewer are to be resolved. Where paragraph 2a applies, the statutory auditor and the engagement quality reviewer shall establish equivalent procedures, which may include submitting the specific issues to a third independent statutory auditor. The procedures shall provide for the documentation of decisions reached and the reasons for them.
6. The audit firm [...] or the statutory auditor and the engagement quality reviewer shall keep a record of the results of the engagement quality control review, together with the considerations underlying those results.

Article 20

Use of international standards on auditing *[deleted]*

CHAPTER IV

AUDIT REPORTING

Article 21

Results of the statutory audit

The statutory auditor or the audit firm shall present the results of the statutory audit in the following reports:

- an audit report in accordance with Article 22;
- an additional report to the audit committee in accordance with Article 23.

The statutory auditor or the audit firm shall present the results of the statutory audit to the audit committee of the audited entity in accordance with Article [...] 23 and to supervisors of public-interest entities in accordance with Article 25.

Article 22

Audit Report

1. The statutory auditor(s) or the audit firm(s) shall present the results of the statutory audit of the public-interest entity in an audit report.
2. The audit report shall be prepared in accordance with the provisions of Article 28 of Directive 2006/43/EC and additionally shall at least:
 - (a) *[transferred to Article 28(1)(a) of the Directive]*
 - (b) *[transferred to Article 28(1)(a) of the Directive]*
 - (c) explain, where additional reports, as required by the national law of the Member State, have been reviewed and/or audited, the scope of such review/audit;
 - (d) *[deleted]*
 - (e) indicate the date of the appointment and the period of total uninterrupted engagement including previous renewals and reappointments;

(f) *[deleted]*

- (g) *[transferred to Article 28(1)(a) of the Directive]*
- (h) *[transferred to Article 23(2)(ea)]*
- (i) *[transferred to Article 23(2)(eb)]*
- (j) *[transferred to Article 23(2)(ec)]*
- (k) *[transferred to Article 28(1)(f2) of the Directive];*
- (l) *[transferred to Article 28(1)(f1) of the Directive];*
- (m) *[transferred to Article 23(2)(ga)]*
- (n) explain to what extent the statutory audit was considered capable of detecting irregularities, including fraud;
- (o) *[deleted]*
- (p) confirm that the audit opinion is consistent with the additional report to the audit committee referred to in Article 23;
- (q) declare that the prohibited non-audit services referred to in Article 10(1) were not provided and that the statutory auditor(s) or the audit firm(s) remained independent of the audited entity in conducting the audit.; *[Second sentence transferred to Article 23(2)(a)]*
- (r) *[deleted]*
- (s) *[deleted]*
- (t) *[Deleted except the final sentence transferred to 28(1)(f) of the Directive]*
- (u) *[deleted]*
- (v) *[deleted]*
- (w) *[moved to 28(1)(g) of Directive]*
- (x) indicate any services in addition to the statutory audit, which were provided by the statutory auditor or audit firm to the audited entity and its controlled undertaking, and which have not been disclosed in the annual report or financial statements.

Member States may set additional requirements in relation to the content of the audit report.

3. *[transferred to Article 28(1b) of the Directive]*
4. Except as required at paragraph 2(p) above the audit report shall not contain any cross-references to the additional report to the audit committee referred to in Article 23 and shall be in clear and unambiguous language.
5. *[Included in Article 28(2) of the Directive]*
6. *[deleted]*
7. The statutory auditor or audit firm shall not use the name of any competent authority in such a way that would indicate or suggest endorsement or approval by that authority of the audit report.
8. [...]
9. *[deleted]*

Article 23

Additional report to the audit committee

1. The statutory auditor(s) or the audit firm(s) carrying out statutory audit of public-interest entities shall submit an additional report to the audit committee of the audited entity. This additional report shall be submitted to the audit committee of the audited entity ~~with~~ not later than the audit report referred to in article 22. Member States may additionally require that this additional report be submitted to the administrative or supervisory board of the audited entity.

If the audited entity does not have an audit committee, the additional report shall be submitted to the body performing equivalent functions within the audited entity. The audit committee or the body performing equivalent functions may provide this report to the third parties on their request.

[...]
2. The additional report to the audit committee shall be in writing. It shall explain the results of the statutory audit carried out and shall at least:

(aa) *[deleted]*

- (a) include a declaration of independence as provided for in point (q) of Article 22(2);
Where the statutory audit was carried out by an audit firm, the report shall identify each key audit partner who was involved in the audit and shall state that all members of the audit engagement team remained independent of the audited entity;
- (ab) where the statutory auditor or audit firm has made arrangements for any of his/her activities to be conducted by another statutory auditor or audit firm that is not a part of the same network, or has used the work of external experts, the report shall indicate that fact and shall confirm that the statutory auditor or audit firm received a confirmation from another statutory auditor or audit firm and / or the external expert [...] regarding their independence and objectivity;
- (b) identify the dates of the meetings with the audit committee or the body performing equivalent functions within the audited entity;
- (c) identify the dates of the meetings, if any, with the management, administrative or supervisory body of the audited entity;
- (d) *[deleted]*
- (e) where two or more auditor(s) or audit firms have been appointed describe the distribution of tasks among the statutory auditor(s)s and/or the audit firm(s);
- (ea) describe the methodology used, including which categories of the balance sheet have been directly verified and which have been based on system and compliance testing, including an explanation of any substantial variation in the weighting of substantive and compliance testing when compared to the previous year, even if the previous year's statutory audit had been conducted by another statutory auditor(s) or audit firm(s);
- (eb) *[deleted]*
- (ec) disclose the quantitative level of materiality applied to perform the statutory audit for the financial statements as a whole and if applicable the materiality level or levels for particular classes of transactions account balances or disclosures, and disclose the qualitative factors which were considered when setting the level of materiality;

- (f) indicate and explain judgments about events or conditions identified during the course of the audit that may cast significant doubt on the entity's ability to continue as a going concern and whether they constitute a material uncertainty; and provide a summary of all guarantees, comfort letters, undertakings of public intervention and other support measures that have been taken into account when making a going concern assessment
- (g) *[deleted]*
- (ga) report on any significant deficiencies in the entity's or, in case of consolidated financial statements, the parent undertaking's internal financial control system, as well as in the accounting system, explaining their potential effects;
- (h) indicate and explain [...] any matters involving identified or suspected non-compliance with laws and regulations or articles of association which were identified during the course of the audit other than when the matters are clearly inconsequential;
- (i) assess the valuation methods applied to the various items in the annual or consolidated financial statements including any impact of changes of such methods;
- (j) *[deleted]*
- (k) if applicable where stocktakes or physical verifications have taken place, confirm any attendance at stocktakes as well as the other instances of physical verification and indicate the proportion of the total stock or other assets that was physically verified by the auditor(s) or audit firm(s);
- (l) in the case of a statutory audit of consolidated financial statements indicate and explain the scope of consolidation [...] and the exclusion criteria applied to the non-consolidated entities, if any, applied by the audited entity [...] and [...] whether the criteria applied are in accordance with the financial reporting framework;
- (m) where applicable indicate which audit work is performed by third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) in case of a statutory audit of consolidated financial statements;
- (n) indicate whether all requested explanations and documents were provided by the audited entity.

(na) *[deleted]*

(nb) indicate:

- (i) significant difficulties, if any, encountered during the audit;
- (ii) significant matters, if any, arising from the audit that were discussed, or subject to correspondence with management; and
- (iii) other matters, if any, arising from the statutory audit that in the auditor's professional judgement, are significant to the oversight of the financial reporting process.

Member States may set additional requirements in relation to the content of the additional report to the audit committee.

Upon request of a statutory auditor, an audit firm or the audit committee, the statutory auditor(s) or audit firm(s) shall discuss key matters arising from the statutory audit, referred to in the additional report to the audit committee, and in particular in point (ga), with the audit committee.

3. In the case [...] when more than one statutory auditor or audit firm have been simultaneously engaged in the case of a disagreement between the appointed statutory auditors or audit firms on auditing procedures, accounting rules or any other issue regarding the conduct of the statutory audit, the reasons for such disagreement shall be explained in the additional report to the audit committee.
4. The additional report to the audit committee shall be signed and dated. Where an audit firm carries out the statutory audit, the additional report to the audit committee shall be signed by the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm.
5. Upon request, and in accordance with national law, the statutory auditor(s) or the audit firm(s) shall make available without delay the additional report to the competent authorities within the meaning of article 35(1) of this Regulation.

Article 24

Monitoring of the statutory audit by the audit committee

[transferred to other Articles]

Article 25

Report to supervisors of public-interest entities

1. Without prejudice to Article 55 of Directive 2004/39/EC, Article 53 of Directive 2006/48/EC of the European Parliament and of the Council¹⁷, Article 15(4) of Directive 2007/64/EC, Article 106 of Directive 2009/65/EC, the first paragraph of Article 3 of Directive 2009/110/EC and Article 72 of Directive 2009/138/EC of the European Parliament and of the Council¹⁸, the statutory auditor or audit firm carrying out the statutory audit of a public-interest entity shall have a duty to report promptly to the competent authorities supervising the public-interest entity and, where [...] determined by the Member State to the competent authority supervising the auditor or audit firm, any information concerning that public-interest entity of which he, she or it has become aware while carrying out that statutory audit and which has brought about or has the potential to bring about any of the following:
 - (a) a material breach of the laws, regulations or administrative provisions which lay down, where appropriate, the conditions governing authorisation or which specifically govern the activities of such public-interest entity;
 - (b) a material threat or doubt concerning the continuous functioning of the public-interest entity;
 - (c) a refusal to issue an audit opinion on the financial statements or the issuing of an adverse or qualified opinion .

The statutory auditor(s) or the audit firm(s) shall also have a duty to report any information referred to in paragraph 1 (a) (b) or (c) above of which he, she or it becomes aware in the course of carrying out the statutory audit of an undertaking having close links with the public-interest entity for which he, she or it is also carrying out the statutory audit. In this article, close links shall have the meaning assigned to it in article 4(46) of Directive 2006/48/EC.

2. An effective dialogue between the competent authorities supervising credit institutions and insurance undertakings and the statutory auditor(s) and audit firm(s) carrying out the statutory audit of those institutions and undertakings shall be established. The responsibility for this requirement shall rest with both parties.

¹⁷ OJ L 177, 30.6.2006, p.1.

¹⁸ OJ L 335, 17.12.2009, p.1.

In order to facilitate the exercise of the tasks referred to in the first subparagraph, EBA and EIOPA shall, taking current supervisory practices into account, issue guidelines addressed to the competent authorities supervising credit institutions and insurance undertakings, in accordance with Article 16 of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010, respectively.

3. The disclosure in good faith to the competent authorities, by the statutory auditor or audit firm, of any fact information or opinion referred to in paragraph 1 or of any fact information or opinion emerging during the dialogue provided for in paragraph 2 shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in any liability[..].

CHAPTER V

TRANSPARENCY REPORTING BY STATUTORY AUDITORS AND AUDIT FIRMS AND RECORD KEEPING

Article 26

Disclosure of financial information [merged with Article 27, and 29]

Article 27

Transparency Report

1. A statutory auditor or an audit firm that carries out statutory audit(s) of public-interest entities shall make public an annual transparency report at the latest four months after the end of each financial year. The annual transparency report shall be published on the website of the statutory auditor or audit firm and shall remain available on that website for at least five years. If the auditor is employed by an audit firm, the obligations established by this Article lie on the audit firm.

A statutory auditor or audit firm shall be allowed to update its published annual transparency report. In such a case, the auditor or firm indicate that it is an updated version of the report and the original version of the report shall continue to remain available on the website.

Statutory auditors and audit firms shall communicate [...] to the competent authorities that the transparency report has been published on the website of the statutory auditor or audit firm or, as appropriate, that it has been updated.

2. The annual transparency report shall include at least the following:
 - (a) a description of the legal structure and ownership of the audit firm;
 - (b) where the statutory auditor or audit firm belongs to a network
 - (i) a description of the network and the legal and structural arrangements in the network;

(ii) the name of each statutory auditor who operates as sole practitioner or audit firm belonging to the network;

(iii) the country(ies) in which each statutory auditor or audit firm belonging to the network is qualified as statutory auditor or has his, her or its registered office, central administration or principal place of business;

(iv) the total turnover by the statutory auditors who operate as sole practitioners and audit firms belonging to the network, resulting from the statutory audit of annual and consolidated financial statements.

- (c) a description of the governance structure of the audit firm;
- (d) a description of the internal quality control system of the audit firm and a statement by the administrative or management body on the effectiveness of its functioning;
- (e) an indication of when the last quality assurance review referred to in Article 40 was carried out;
- (f) a list of public-interest entities for which the statutory auditor or audit firm has carried out statutory audits during the preceding financial year and a separate list of those entities and groups, the [...] total audit fee income from which, represents more than 5% of the statutory auditor or audit firm's annual audit revenue;
- (g) a statement concerning the statutory auditor's or audit firm's independence practices which also confirms that an internal review of independence compliance has been conducted;
- (h) a statement on the policy followed by the statutory auditor or audit firm concerning the continuing education of statutory auditors referred to in Article 13 of Directive 2006/43/EC;
- (i) information concerning the basis for the partners' remuneration in audit firms;
- (j) a description of its policy concerning the rotation of key audit partners and staff in accordance with Article 33(4);

(k) [deleted]

(l) annual financial report within the meaning of Article 4(2) of Directive 2004/109/EC, showing total turnover divided into:

(i) fees from the statutory audit of annual and consolidated financial statements of public-interest entities and entities belonging to a group of undertakings whose parent undertaking is a public-interest entity.

(ii) fees from the statutory audit of annual and consolidated financial statements of other entities and

(iii) fees charged for permitted non-audit services.

The statutory auditor or audit firm may, in exceptional circumstances, decide not to disclose the information required in point (f) of the first subparagraph to the extent necessary to mitigate an imminent and significant threat to the personal security of any person. The statutory auditor or audit firm shall be able to demonstrate to the competent authority the existence of such threat.

3. The transparency report shall be signed by the statutory auditor or audit firm.

Article 28

Corporate governance statement *[deleted]*

Article 29

Information to competent authorities

A statutory auditor or audit firm shall provide annually to his, her or its competent authority a list of the audited public-interest entities by revenue generated from them, dividing those revenues into revenues for statutory audit and other services referred in Article 9.

Article 30

Record keeping

Statutory auditors and audit firms shall keep the documents and information referred to in Article 9(3), 11, Article 17(1) and (2), Article 19(3) to (6), Articles 22, 23 and 24, Article 25(1) and (2), Article 29, Article 32(2), (3), (5) and (6), and Articles 22d, 24a, 24b, 27 and 28 of the Directive 2006/43 for a period of at least five years following the creation of such documents or information.

Member States may require statutory auditors and audit firms to keep the documents and information referred to in the first subparagraph for a longer period in accordance with their rules on personal data protection and administrative and judicial proceedings.

TITLE III

THE APPOINTMENT OF STATUTORY AUDITORS OR AUDIT FIRMS BY PUBLIC-INTEREST ENTITIES

Article 31

Audit Committee

1. Each public interest entity shall have an audit committee as referred to in Article 38a of Directive 2006/43/EC.
2. Where the audited entity is exempted from the obligation to have an audit committee, the audited entity shall decide which body or organ of the entity shall perform its functions for the purposes of the obligations set out in this Regulation and Directive 2006/43/EC.
3. The audit committee shall monitor the work of the statutory auditor(s) or audit firm(s) carrying out the statutory audit.

Article 32

Appointment of [...] statutory auditors or audit firms

1. For the purposes of the application of Article 37 of Directive 2006/43/EC, for the appointment of statutory auditors or audit firms by public-interest entities, the conditions set out in paragraphs 2 to 6 of this Article shall apply.

Where Article 37(2) of Directive 2006/43/EC applies, the public-interest entity shall inform the competent authority of the use of the alternative systems or modalities referred to in that Article. In this case the paragraphs 2 to 6 of this article may not apply.

2. The audit committee shall submit a recommendation to the administrative or supervisory board of the audited entity for the appointment of statutory auditors or audit firms. The audit committee shall justify the recommendation made.

The recommendation shall contain at least two choices for the audit engagement and the audit committee shall express a duly justified preference for one of them. When it concerns the renewal of an audit engagement in accordance with Article 33(3), the audit committee shall, for the preparation of its recommendation, take into consideration any findings and conclusions on the recommended statutory auditor or audit firm referred to in Article 40(6) and published by the competent authority pursuant to Article 44(d).

In its recommendation, the audit committee shall state that its recommendation is free from influence by a third party and that no contractual clause as referred to in paragraph 7 has been imposed upon it.

3. The recommendation of the audit committee referred to in paragraph 2 of this Article, shall be prepared following a selection procedure organized by the audited entity and approved by the audit committee respecting the following criteria:
 - (a) the audited entity shall be free to invite any statutory auditors or audit firms to submit proposals for the provision of the statutory audit service on the condition that Article 33(2) is respected.
 - (b) the audited entity shall be free to choose the method to contact the invited statutory auditor(s) or audit firm(s) and shall not be required to publish a call for tenders in the *Official Journal of the European Union* and/or in national gazettes or newspapers;
 - (c) the audited entity shall prepare tender documents for the intention of the invited statutory auditor(s) or audit firm(s). Those tender documents shall allow them to understand the business of the audited entity and the type of statutory audit that is to be carried out. The tender documents shall contain transparent and non-discriminatory selection criteria that shall be used by the audited entity to evaluate the proposals made by statutory auditors or audit firms;
 - (d) the audited entity shall be free to define the selection procedure and may conduct direct negotiations with interested tenderers in the course of the procedure;
 - (e) where, in accordance with national law or Union law, the competent authorities referred to in Article 35, require statutory auditors and audit firms to comply with certain quality standards, those standards shall be included in the tender documents;

- (f) the audited entity shall evaluate the proposals made by the statutory auditors or audit firms in accordance with the selection criteria predefined in the tender documents. The audited entity shall prepare a report on the conclusions of the selection procedure, which shall be validated by the audit committee. The audited entity and the audit committee shall take into consideration any findings or conclusions of any inspection report on the applicant statutory auditor or audit firm referred to in Article 40(6) and published by the competent authority pursuant to Article 44(d);
- (g) the audited entity shall be able to demonstrate to the competent authority referred to in Article 35 that the selection procedure was conducted in a fair manner.

The audit committee shall be responsible for the selection procedure referred to in the first subparagraph.

[...]

- 4. Public-interest entities which meet the criteria set out in points (f) and (t) of Article 2(1) of Directive 2003/71/EC shall not be required to apply the selection procedure referred to in paragraph 3.
- 5. The proposal of the administrative or supervisory board to the general meeting of shareholders or members of the audited entity for the appointment of statutory auditors or audit firms shall include the [...] preference made by the audit committee or the body performing equivalent functions.

If the proposal of the administrative or supervisory board departs from the [...] preference of the audit committee, the proposal shall justify the reasons for not following the recommendation of the audit committee. This provision shall not apply in the case when the audit committee's functions are performed by supervisory board.

- 6. In the case of a credit institution or insurance undertaking, the administrative or supervisory board shall [...] immediately inform about the proposed statutory auditor or audit firm the competent authority referred to in Article 35(2).
- 7. Any contractual clause entered into between a public-interest entity and a third party restricting the choice by the general meeting of shareholders or members of that entity pursuant to Article 37 of Directive 2006/43/EC to certain categories or lists of statutory auditors or audit firms to carry out the statutory audit of that entity shall have no legal effect.

The public-interest entity shall inform the competent authorities referred to in Article 35 of any attempt by a third party to impose such a contractual clause or to otherwise influence the decision of the general meeting of shareholders on the selection of a statutory auditor or audit firm.

8. *[transferred to Article 31]*

9. Member States may decide that a minimum number of statutory auditors or audit firms shall be appointed by public-interest entities in certain circumstances and establish the conditions governing the relations between the auditors or firms appointed.

If a Member State establishes any such requirement, it shall inform the Commission[...].

10. *[deleted]*

Article 33

Duration of the audit engagement

1. A public-interest entity shall appoint a statutory auditor or audit firm for an initial engagement of at least one year which [...] engagement may be renewed.

[...] Neither the engagement of a particular statutory auditor or audit firm, nor the combined duration of any renewed engagements shall exceed a maximum duration of ten years.

1A By way of derogation from paragraph 1 Member States may

(d) require that the an initial engagement referred to in paragraph 1 be for a period [...] longer than one year;

(e) [...]

(f) [...] set a maximum duration of [...] less than ten years for the engagement or renewed engagement or renewed engagements [...] referred to in the second subparagraph of paragraph 1 [...].

2. After the expiry of the maximum durations [...] referred to in the second subparagraph of paragraph 1 [...] and in point (c) of paragraph 1A [...], neither the statutory auditor or audit firm nor, where applicable, any members of [...] their networks within the Union [...] shall [...] undertake the statutory audit of the same public-interest entity [...] within the following four-year period.

3. By way of derogation from paragraphs 1 and 2, Member States may provide that where:

(c) a public tendering process for the statutory audit is conducted, in accordance with paragraphs 2 to 6 of Article 32; or

(d) [...] throughout [...] a given period which has reached the relevant maximum duration, more than one auditor or audit firm has been [...] simultaneously engaged

the extension of the maximum durations [...] referred to in the second subparagraph of paragraph 1 [...] and in point (c) of paragraph 1A [...] shall not exceed a maximum of:

(iv) thirteen years in the case of statutory audit of the public interest entities referred in points (b) and (c) of Article 2(13) [...] of Directive 2006/43/EC, where the [...] condition in point (a) is met;

(v) sixteen years in the case of statutory audit of the public interest entities referred in [...] points (b) and (c) of Article 2(13) [...] of Directive 2006/43/EC, where the [...] condition in point (b) is met;

(vi) sixteen years in the case of statutory audit of public interest entities other than those referred to in points (b) and (c) of Article 2(13) [...] of Directive 2006/43/EC, where [...] both the conditions in points (a) and (b) are met.

[...]

3aa. The maximum duration periods referred to in the second subparagraph of paragraph 1 [...] and in paragraph 1A(c) shall [...] be extended only if, upon a recommendation of the audit committee, the administrative or supervisory board in accordance with national law proposes to the general meeting of shareholders to renew the engagement and [...] that proposal [...] is approved.

3a After the expiry of the maximum duration of the engagement referred to in the second subparagraph of paragraph 1 [...], in paragraph 1A(c), or in paragraph 3 [...] as appropriate, [...] the public interest entity may, on an exceptional basis, request that the competent authority referred to in Article 35(1) [...] grant an extension to re-appoint the statutory auditor or audit firm for [...] a further engagement. [...] If more than one statutory auditor or audit firm had previously been appointed, [...] such an additional engagement shall not exceed three years. [...] If single statutory auditor or audit firm had previously been appointed, [...] such an additional engagement shall not exceed two years.

4. The key audit partner(s) responsible for carrying out a statutory audit shall cease his, her or their participation in the statutory audit of the audited entity [...] not later than seven years from the date of their appointment[...]. He, she or they may participate again in the statutory audit of the audited entity [...] no sooner than three years after that cessation.

The statutory auditor or audit firm shall establish an appropriate gradual rotation mechanism with regard to the most senior personnel involved in the statutory audit, including at least the persons who are registered as statutory auditors. The gradual rotation mechanism shall be undertaken in phases on the basis of individuals rather than of a complete team. It shall be proportionate in view of the scale and the dimension of the activity of the statutory auditor or audit firm.

The statutory auditor or audit firm shall be able to demonstrate to the competent authority that such mechanism is effectively applied and adapted to the scale and the dimension of the activity of the statutory auditor or audit firm.

Article 33a

Hand-over file

1. Where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm shall [...] comply with the requirements referred to in Article 23(3) of Directive 2006/43/EC.

Subject to Article 30, the former statutory auditor or audit firm shall also grant access to the incoming statutory auditor or audit firm to the additional reports to the audit committee referred to in Article 23 of previous years and to any information transmitted to competent authorities pursuant to Articles 25 and 27.

The former statutory auditor or audit firm shall be able to demonstrate to the competent authority that such information has been provided to the incoming statutory auditor or audit firm.

2. The CEAOB shall [...] prepare [...] technical [...] guidelines on the content of the handover file referred to in paragraph 1 according to the international auditing standards referred to in Article 26 of Directive 2006/43/EC and shall provide advice to the competent authorities referred to Article 35(1) for the purposes of ensuring uniform application of it.

[...]

Article 34

Dismissal and resignation of the statutory auditors or audit firms

[...] Without prejudice to Article 38(1) of Directive 2006/43/EC, the audited entity and the statutory auditor or audit firm shall inform the competent authority concerning the dismissal or resignation of the statutory auditor or audit firm during the term of appointment and give an adequate explanation of the reasons thereof.

Where a Member State has appointed competent authorities for the purpose of Title III of this Regulation in accordance with Article 35(2), such competent authority shall forward this information to the competent authority referred to in Article 35(1).

2. *[transferred to Article 38(3) of Directive 2006/43/EC]*

TITLE IV

SURVEILLANCE OF THE ACTIVITIES OF AUDITORS AND AUDIT FIRMS CARRYING OUT STATUTORY AUDIT OF PUBLIC-INTEREST ENTITIES

CHAPTER I COMPETENT AUTHORITIES

Article 35

Designation of competent authorities

1. Competent authorities responsible for carrying out the tasks provided for in this Regulation and for ensuring that the provisions of this Regulation are applied shall be amongst the following:
 - (a) the competent authority referred to in Article 24(1) of Directive 2004/109/EC;
 - (b) the competent authority referred to in Article 24(4)(h) of Directive 2004/109/EC;
 - (c) the competent authority referred to in Article 32 of Directive 2006/43/EC.
2. By derogation from paragraph 1, Member States may decide that the responsibility for ensuring that all or part of the provisions of Title III of this Regulation are applied shall be entrusted to, as appropriate, the competent authorities referred to in:
 - (a) Article 24(1) of Directive 2004/109/EC;
 - (b) Article 24(4)(h) of Directive 2004/109/EC;
 - (c) [...];
 - (d) Article 30 of Directive 2009/138/EC;
 - (e) Article 20 of Directive 2007/64/EC;
 - (f) Article 4(1) of Directive [...] 2013/36/EU;
 - (g) Article 48 of Directive 2004/39/EC;

- (h) [...];
- (h) Article 44 of Directive 2011/61/EU, or
- (i) to other authorities designated by national law.

3. Where more than one competent authority has been designated pursuant to paragraphs 1 and 2, those authorities shall be organised in such a manner that their tasks are clearly allocated.
4. Paragraphs 1, 2 and 3 shall be without prejudice to the rights of a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.
5. [...]
6. The Member States shall inform the Commission of the appointment of competent authorities for the purposes of this Regulation.

The Commission shall consolidate this information and make it public.

Article 36

Conditions of independence

The competent authorities shall be independent of statutory auditors and audit firms.

The competent authority may consult experts, as referred to in Article 40(1)(c), for the purpose of carrying out specific tasks and may also be assisted by experts when this is essential for the proper execution of its tasks. The competent authority shall not involve these experts in any decision which it makes in these instances.

A person shall not be a member of the governing body or involved in the decision making of those authorities if in the course of the three previous years he or she:

- (a) has carried out statutory audits of public-interest entities;
- (b) held voting rights in an audit firm;
- (c) was member of the administrative, management or supervisory body of an audit firm;
- (d) was an employee of or otherwise associated with an audit firm.

The funding of those authorities shall be secure and free from any undue influence by statutory auditors and audit firms.

Article 37

Professional secrecy - competent authority

The obligation of professional secrecy shall apply to all persons who are or have been employed or independently contracted by or involved in the governance of competent authorities or by any authority to which the competent authority referred to in Article 35(1) has delegated tasks.

Article 38

Powers of competent authorities

1. Without prejudice to Articles 40 [...], in carrying out their tasks under this Regulation, the competent authorities or any other public authorities of a Member State may not interfere with the content of audit reports.
2. [...] Member States shall ensure that the competent authorities shall [...] have all the supervisory and investigatory powers that are necessary for the exercise of their functions under this Regulation in accordance of provisions of Chapter VII of the Directive 2006/43/EC. [...]
3. [...] The powers mentioned in paragraph 2 of this Article shall, in particular, include:
 - (a) supervisory powers, such as powers to collect all the information necessary for the performance of the competent authority's supervisory duties:
 - (b) investigatory powers, such as:
 - (i) access any [...] data, related to the statutory audit or other documents held by statutory auditors or audit firms, in any form relevant to the carrying out of their tasks and to receive or take a copy thereof ;
 - (ii) [...] obtain information related to the statutory audit from any person [...];
 - (iii) carry out on-site inspections of business premises of statutory auditors or audit firms or of the audited entity in relation to the statutory audit [...];
 - (d) *[deleted]*

- (e) refer matters for criminal prosecution;
- (f) request experts to carry out verifications or investigations;

- (g) take the administrative measures and sanctions referred to in Article 30B of Directive 2006/43/EC.

[...]

- 3a. Member States shall ensure that the competent authorities may exercise their supervisory and investigative powers in any of the following ways:
 - (a) directly;
 - (b) in collaboration with other authorities;
 - (c) under their responsibility by delegation to entities to which tasks have been delegated according to Article 35(2);
 - (d) by application to the competent judicial authorities.
- 4. The supervisory and investigatory powers [...] of competent authorities shall be exercised in full compliance with national law of the Member State, in particular the principles of respect for private life and with the right of defence.
- 5. *[deleted]*
- 6. The processing of personal data processed in the exercise of the supervisory and investigative powers pursuant to this Article shall be carried out in accordance with Directive 95/46/EC.

Article 38a

Delegation of tasks

- 1. The competent authority referred to in Article 35(1) may delegate any of its tasks required to be undertaken pursuant to this Regulation to other authorities or bodies designated or otherwise authorised by law to carry out such tasks, except for tasks related with:
 - (i) quality assurance system as referred in Article 40;
 - (ii) investigations as referred in Article [...] 38 of this Regulation and 32 of the Directive 2006/43;
 - (iii) disciplinary system as referred in Chapter VII of the Directive 2006/43.

2. Any execution of tasks by other authorities or bodies shall be expressly delegated by the competent authority. The delegation shall specify the delegated tasks and the conditions under which they are to be carried out.

3. The authorities or bodies shall be organized in such a manner that there are no conflicts of interest. The ultimate responsibility for supervising compliance with this Regulation and the implementing measures adopted pursuant thereto shall lie with the delegating competent authority.

The competent authority shall inform the Commission and the competent authorities of Member States of any arrangement entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations.

Article 39

Cooperation with other competent authorities at national level

The competent authority designated pursuant to Article 35(1) and, where appropriate, any authority to whom that competent authority has delegated tasks shall cooperate at national level with:

- (a) the competent authorities [...] referred to in Article [...] 32(4) of Directive 2006/43/EC;
- (b) the authorities referred to in Article 35(2), whether they have been designated competent authorities for the purposes of this Regulation or not;
- (c) the financial intelligence units and the competent authorities referred to in Articles 21 and 37 of Directive 2005/60/EC.

For the purposes of this cooperation, the obligations under Article 37 shall apply.

CHAPTER II

QUALITY ASSURANCE, INVESTIGATION, MARKET MONITORING, AND TRANSPARENCY OF COMPETENT AUTHORITIES TASKS

Article 40

Quality assurance

1. For the purposes of this Article:
 - (a) "inspections" means quality assurance reviews of statutory auditors and audit firms, which are led by an inspector and which do not represent an investigation within the meaning of Article [...] 32(5) of Directive 2006/43/EC;
 - (b) "inspector" means a reviewer who meets the requirements set out in point (a) of the second subparagraph of paragraph 4 of this Article and is employed or otherwise contracted by a competent authority;
 - (c) "expert" means a natural person, who has specific expertise in financial markets, financial reporting, auditing or other fields relevant for inspections, including practising statutory auditors.
2. The competent authorities designated under Article 35(1) shall establish an effective system of audit quality assurance.

The competent authority shall carry out quality assurance reviews of statutory auditors and audit firms that carry out statutory audits of public-interest entities on the basis of an analysis of the risk in case of statutory audits for public interest entities defined in Articles 2(17) and Article 2(18) of Directive 2006/43/EC and in other cases at least every three years.
3. The competent authority shall be responsible for the quality assurance system and shall organise it in a manner that is independent of the reviewed statutory auditors and audit firms. The competent authority shall have the following responsibilities which may not be delegated to any association or body affiliated with the accounting or audit profession:
 - (a) approval and amendment of the inspection methodologies, including inspection and follow-up manuals, reporting methodologies and periodic inspection programmes;
 - (b) approval and amendment of inspection reports and follow up reports;
 - (c) approval and assignment of inspectors for each inspection.

The competent authority shall allocate adequate resources to the quality assurance system.

4. The competent authority shall ensure that appropriate policies and procedures related to the independence and objectivity of the staff, including inspectors, and the management of the inspection system are put in place.

The competent authority shall comply with the following criteria when appointing inspectors:

- (a) inspectors shall have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance reviews;
- (b) a person who is a practising statutory auditor or is employed or otherwise associated with a statutory auditor or an audit firm shall not be allowed to act as an inspector;
- (c) a person shall not be allowed to act as an inspector in an inspection of the statutory auditor or audit firm until at least two years have elapsed since that person ceased to be a partner or employee of that auditor or in that audit firm or to be otherwise associated therewith;
- (d) inspectors shall declare that there are no conflicts of interest between them and the statutory auditor and audit firm to be inspected.

By way of derogation from 1(b) of this Article, the competent authority may contract experts for carrying out specific inspections when the number of inspectors within the authority is insufficient. The competent authority may also be assisted by experts when this is essential for the proper conduct of an inspection. In such instances, the competent authorities and the experts shall comply with the requirements of this paragraph. Experts shall not be involved in the governance of, or employed or otherwise contracted by professional associations and bodies but may be members of such associations or bodies.

5. The scope of inspections shall cover:
 - (a) an assessment of the design of the internal quality control system of the audit firm or of the statutory auditor;
 - (b) adequate compliance testing of procedures and a review of audit files of public interest entities in order to verify the effectiveness of the internal quality control system;

- (c) in the light of the inspection findings under points (a) and (b) of this paragraph, an assessment of the contents of the most recent annual transparency report published by a statutory auditor or an audit firm in accordance with Article 27.

At least the following internal control policies and procedures of the statutory auditor or the audit firm shall be reviewed:

- (aa) compliance by the statutory auditor or the audit firm with applicable auditing and quality control standards, and ethical and independence requirements, including those related to Chapter IV of Directive 2006/43/EC and Articles 2 to 10 of this Regulation, as well as relevant laws, regulations and administrative provisions of the Member State concerned;
- (bb) the quantity and quality of resources used, including compliance with continuing education requirements as set out in Article 13 of Directive 2006/43/EC;
- (cc) compliance with the requirements set out in Article 9 on the audit fees charged.

For the purposes of testing compliance, audit files shall be selected on the basis of an analysis of the risk of an inadequate carrying out of the statutory audit.

The competent authorities shall also periodically review the methodologies used by statutory auditors and audit firms to carry out statutory audit.

- 6. The findings and conclusions of inspections on which recommendations are based, including the findings and conclusions related to a transparency report, shall be communicated to and discussed with the inspected statutory auditor or audit firm before an inspection report is finalised.

Recommendations of inspections shall be implemented by the inspected statutory auditor or audit firm within a reasonable period set by the competent authority. Such period shall not exceed 12 months in the case of recommendations on the internal quality control system of the audit firm.

- 7. The inspection shall be the subject of a report which shall contain the main conclusions of the quality assurance review.

Article 41

Investigation *[merged with the Directive (Articles 30 and 32)]*

[...]

Article 42

Market monitoring

1. The competent authorities designated under Article 35(1) or the competition authorities of the Member States, as appropriate, shall regularly monitor the developments in the market for providing statutory audit services to public-interest entities.

The competent authorities shall in particular assess the following:

- (a) the risks arising from high concentration, including the demise of any audit firm(s) with significant market share, the disruption in the provision of statutory audit services whether in a specific sector or across sectors, the further accumulation of risk in the market and the impact on the overall stability of the financial sector;
 - (b) the need to adopt measures to mitigate those risks.
2. By X X 20XX *[2 years after the entry into force of the Regulation]*, and at least on a three-year basis thereafter, each competent authority or competition authority, whichever is appropriate, shall draw up a report on this issue and submit it to CEAOB, EBA and EIOPA. CEAOB, EBA and EIOPA shall use those reports to draw up a joint report on the situation at Union level. The report shall be submitted to the Commission, the European Central Bank and the European Systemic Risk Board.

Article 43

Contingency planning *[deleted]*

Article 44

Transparency of Competent Authorities

Competent authorities shall be transparent and shall at least publish:

- (a) annual activity reports regarding the tasks the competent authorities are required to carry out under this Regulation;
- (b) annual work programmes regarding the tasks the competent authorities are required to carry out under this Regulation;
- (c) a report on the overall results of the quality assurance system on an annual basis. This report shall include information on recommendations issued, follow-up on the recommendations, supervisory measures taken and penalties imposed. It shall also include quantitative information and other key performance information on financial resources and staffing, and the efficiency and effectiveness of the quality assurance system;
- (d) the aggregated information on the inspections findings and conclusions referred to in Article 40([...]6).

CHAPTER III

COOPERATION BETWEEN COMPETENT AUTHORITIES AND RELATIONS WITH THE EUROPEAN SUPERVISORY AUTHORITIES

Article 45

Obligation to cooperate

The competent authorities of the Member States shall cooperate with each other where it is necessary for the purposes of this Regulation, including in cases where the conduct under investigation does not constitute an infringement of any legislative or regulatory provision in force in the Member State concerned.

Article 46

Establishment of CEAOB

1. Without prejudice to the organisation of national auditing oversight, the cooperation between competent authorities shall be organised within the framework of a Committee of European Auditing Oversight Bodies, hereinafter referred to as ‘CEAOB’.
2. The CEAOB shall be composed of one Member from each Member State who shall be high level representatives from the competent authorities referred to in Article 32(1) of Directive 2006/43/EC, hereinafter referred to as ‘Members’.
- 2a The CEAOB shall meet at regular intervals and, where necessary, at the request of the Commission or a Member State.
3. Member of the CEAOB shall have one vote. Unless otherwise stated, CEAOB decisions shall be taken by simple majority of its Members.
4. The Chair of the CEAOB shall be elected or removed by the 2/3 majority of Members from a list of applicants representing the competent authorities referred to in Article 32(1) of Directive 2006/43/EC. The Chair shall be elected for a four-year term. The Chair may not serve consecutive terms in the same position, but may be re-elected after a cooling-off period of four years.

The Vice Chair shall be appointed or removed by the European Commission.

The Chair and the Vice Chair shall not have voting rights.

In case the Chair resigns or is removed before the end of the term , the Vice Chair shall act as a Chair until the next meeting of the CEAOB which shall elect a Chair for the remainder of the term.

5a. The CEAOB shall:

- (a) facilitate the exchange of information, expertise and best practices for the implementation of this Regulation and Directive 2006/43/EC.
- (b) provide expert advice to the Commission, at its request, with issues related to the implementation of this Regulation and Directive 2006/43/EC:
- (c) contribute to the technical assessment of public oversight systems of third countries and to the international cooperation between Member States and third countries in this area:
- (d) contribute to the technical examination of international auditing standards, including the processes for their elaboration, with a view to their adoption at the Union level:
- (e) provide advice to the Competent authorities in the cases provided for in this Regulation and Directive 2006/43/EC.
- (f) contribute to the improvement of the cooperation mechanisms regarding oversight of public interest entities' audit firms or the networks they belong to
- (g) carry out other coordinating tasks in cases provided for in this Regulation or Directive 2006/43/EC.

5. For the purposes of carrying out its tasks, the CEAOB [...] may adopt non-binding guidelines [...] or opinions [...].

[...]

The Commission shall publish the guidelines and [...] opinions adopted by the CEAOB.

6. [...]

7. The CEAOB shall assume all existing and on-going tasks, as appropriate, of the European Group of Audit Oversight Bodies (EGAOB) created by Commission Decision 2005/909/EC.

8. The CEAOB may establish sub-groups on a permanent or ad hoc basis to examine specific issues under the terms of reference established by the CEAOB. Participation in the sub-group discussions may be extended to competent authority from the countries of the European Economic Area (hereinafter referred to as EEA) in the field of audit oversight or by invitation, on a case-by-case basis, to competent authorities from non-EU/EEA countries, subject to the approval of the CEAOB members. The participation of the non-EU/EEA member may be subject to a limited time period.

9. At the request of at least three Members, or on its own initiative, where this is considered useful and/or necessary, the Chair of the CEAOB may invite experts, including practitioners, with specific competence on a subject on the agenda to participate in the CEAOB's or its sub-group's deliberations as observers. The CEAOB may invite representatives of competent authorities from third countries which are competent in the field of audit oversight to participate in the CEAOB's or its sub-group's deliberations as observers.
10. The Secretariat of the CEAOB shall be provided by the Commission. [...] The expenses of the CEAOB shall be included in the estimates of the Commission.
11. The Chair shall prepare the provisional agenda of each CEAOB meeting with due regard to Members written contributions. [...]
12. [...]
13. The Chair or, in his or her absence, the Vice Chair shall communicate CEAOB views or positions only with the approval of the Members.
14. The CEAOB's discussions shall not be public.
15. The CEAOB shall adopt its rules of procedure [...].

Article 47

Home Member State principle

[identical to Article 34 of Directive, therefore deleted]

Article 48

Exchange of information

[Transferred to Directive as Article 49]

Cooperation with regard to quality assurance reviews and investigations or on-site inspections

1. Competent authorities shall take measures to ensure effective cooperation at Union level in respect of quality assurance reviews.
2. The competent authority of one Member State may request the assistance of the competent authority of another Member State with regard to the quality assurance reviews of statutory auditors or audit firms belonging to a network carrying out significant activities in that Member State.
3. Where a competent authority receives a request from a competent authority of another Member State to [...] assist in the quality assurance review of a statutory auditors or audit firm belonging to a network carrying out significant activities in that Member State, it shall allow the requesting competent authority to [...] assist in such quality assurance review. The requesting competent authority shall not have the right to access information which might adversely affect the sovereignty, security or public order of the requested Member State or breach national security rules.
4. Where a competent authority concludes that activities contrary to the provisions of this Regulation are being carried out or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State of that conclusion in as specific a manner as possible. The competent authority of the other Member State shall take appropriate action. It shall inform the notifying competent authority of the outcome and, to the extent possible, of significant interim developments.
5. A competent authority of one Member State may request that an investigation is carried out by the competent authority of another Member State on the latter's territory. It may also request that some of its own personnel be allowed to accompany the personnel of the competent authority of that Member State in the course of the investigation, including with regard to on-site inspections. The investigation or inspection shall be subject throughout to the overall control of the Member State on whose territory it is conducted.

6. The requested competent authority may refuse to act on a request for an investigation to be carried out as provided for in paragraph 2, or on a request for its personnel to be accompanied by personnel of a competent authority of another Member State as provided for in the first subparagraph of paragraph 3, in the following cases:
- (a) such an investigation or on-site inspection might breach national security rules or adversely affect the sovereignty, security or public order of the requested Member State;
 - (b) judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the requested Member State;
 - (c) a final judgment has already been passed in respect of the same actions [...] and the same persons by the competent authorities of the requested Member State.
7. In the event of a quality assurance review, investigation or inspection with cross-border effects, the competent authorities of the Member States concerned may address a joint request to CEA OB to coordinate the investigation or inspection.

Article 50

European Quality Certificate [deleted]

Article 51

Cooperation with regard to investigations or on-site inspections

This article has now been combined with Article 49

,Article 52

Cooperation with regard to contingency planning

[deleted]

Article 53

Colleges of competent authorities

1. In order to facilitate the exercise of the tasks referred to in Articles 40, [...] 49(4)-(6), 61 and Article 30A of the Directive with regard to specific statutory auditors, audit firms or their networks, colleges may be established with the participation of the competent authority of the home Member State and any other competent authority, provided that:
 - (a) the statutory auditor or audit firm is providing statutory audit services to public interest entities within its jurisdiction; or
 - (b) a branch which is a part of the audit firm is established within its jurisdiction.
2. In the case of specific statutory auditors or audit firms, the competent authority of the home Member State shall act as facilitator.
3. With regard to specific networks, competent authorities of the Member States where the network carries out significant activities may request CEA OB to establish a college with the participation of the requesting competent authorities.
4. Within 15 working days of the establishment of the college of competent authorities with regard to a specific network, its members shall select a facilitator. In the absence of agreement, CEA OB shall appoint a facilitator among the members of the college.

Members of the college shall review the selection of the facilitator at least every five years to ensure the selected facilitator remains the most appropriate.
5. The facilitator shall chair the meetings of the college, coordinate the actions of the college and ensure efficient exchange of information among members of the college.
6. The facilitator shall, within 10 working days of his or her selection, establish written coordination arrangements within the framework of the college regarding the following matters:
 - (a) information to be exchanged between competent authorities;
 - (b) cases in which the competent authorities must consult each other;
 - (c) cases in which the competent authorities may delegate supervisory tasks in accordance with Article 54.

7. In the absence of agreement concerning the written coordination arrangements under paragraph 6, any member of the college may refer the matter to CEAOB. The facilitator shall give due consideration to any advice provided by CEAOB concerning the written coordination arrangements before agreeing their final text. The written coordination arrangements shall be set out in a single document containing full reasons for any significant deviation from the advice of CEAOB. The facilitator shall transmit the written coordination arrangements to the members of the college and to CEAOB.

Article 54

Delegation of tasks

The competent authority of the home Member State may delegate any of its tasks to the competent authority of another Member State subject to the agreement of that authority. Delegation of tasks shall not affect the responsibility of the delegating competent authority.

Article 55

Confidentiality and professional secrecy in relation to CEAOB

1. The obligation of professional secrecy shall apply to all persons who work or who have worked for CEAOB, or for any other person to whom CEAOB has delegated tasks[...]. Information covered by professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings.
2. Paragraph 1 of this Article and Article 37 shall not prevent CEAOB and the competent authorities from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy, to which persons employed or formerly employed by competent authorities are subject.
3. All the information exchanged under this Regulation between CEAOB, the competent authorities and other authorities and bodies shall be treated as confidential, except where such disclosure is required as a matter of law.

Article 56

Protection of personal data

1. Member States shall apply Directive 95/46/EC to the processing of personal data carried out in the Member States pursuant to this Regulation.
2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by CEA OB in the context of this Regulation and Directive 2006/43/EC.

CHAPTER IV

COOPERATION WITH THIRD COUNTRY AUTHORITIES AND WITH INTERNATIONAL ORGANISATION AND BODIES

Article 57

Agreement on exchange of information

1. The competent authorities [...] may conclude cooperation agreements on exchange of information with the competent authorities of third countries only if the information disclosed is subject, in the third countries concerned, to guarantees of professional secrecy which are at least equivalent to those set out in Articles 37 and 55. The competent authorities shall immediately communicate to CEAOB and notify the Commission of such agreements. Information shall only be exchanged under this Article where such exchange of information is necessary for the performance of the tasks of those competent authorities under this Regulation.
Where such exchange of information involves the transfer of personal data to a third country, Member States shall comply with Directive 95/46/EC and CEAOB shall comply with Regulation (EC) No 45/2001.
2. The competent authorities shall cooperate with the competent authorities or other relevant bodies of third countries regarding the quality assurance reviews and investigations of auditors and audit firms. Upon request by a competent authority, CEAOB shall contribute to this cooperation and to the establishment of supervisory convergence with third countries.
3. Where the cooperation or exchange of information is related to audit working papers or other documents held by statutory auditors or audit firms, Article 47 of Directive 2006/43/EC shall apply.
4. The CEAOB shall prepare guidelines on the content of cooperation agreement and exchange of information referred to in this Article.

Article 58

Disclosure of information received from third countries

The competent authority of a Member State [...] may disclose the confidential information received from competent authorities of third countries unless where provided for in a co-operation agreement, only if it has obtained the express agreement of the competent authority that has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that competent authority gave its agreement, or where such disclosure is required by national or EU legislation.

Article 59

Disclosure of information transferred to third countries

The competent authority of a Member State [...] shall require that confidential information communicated by them to a competent authority of a third country may be disclosed by that competent authority to third parties or authorities only with the prior express agreement of the competent authority which has transmitted the information, in accordance with its national law and provided that the information is disclosed only for the purposes for which that competent authority of the Member State [...] has given its agreement, or where such disclosure is required by law or where such disclosure is necessary for legal proceedings in that third country.

Article 60

Cooperation with international organisation and bodies

The CEAOB shall cooperate with the international organisations and bodies issuing international auditing standards.

TITLE V

ADMINISTRATIVE SANCTIONS AND MEASURES

Article 61

Administrative sanctions and measures

[first part transferred to Directive, Article 30A, other part deleted]

Article 62 [transferred to Directive, Article 30B]

Sanctioning powers

Article 63 [transferred to Directive, Article 30C]

Effective application of sanctions

Article 64 [transferred to Directive, Article 30D]

Publication of sanctions and measures

Article 65 [transferred to Directive, Article 30E]

Appeal

Article 66 [transferred to Directive, Article 30F]

Reporting of breaches

Article 67 [transferred to Directive, Article 30G]

Exchange of information with [ESMA]

TITLE VI

~~DELEGATED ACTS~~, REPORTING AND TRANSITIONAL AND FINAL PROVISIONS

Article 68

Exercise of the delegation

[deleted]

Article 69

Report

By X X 20XX *[five years after the end of the transitional period]* the Commission shall prepare a report on the application of this Regulation. The report shall take due account of the report prepared by CEAOB referred to in the fourth subparagraph of Article 46(4).

Article 70

Transitional provision

1. By derogation from Articles 32 and 33, the following requirements shall apply to contracts for the provision of statutory audit to public-interest entities which are in force at [date of entry into force of this Regulation]:
 - (a) any audit contract entered into before XX/XX/XXXX *[the date of adoption of the Commission proposal]* which is still in force on *[the date of entry into force of this Regulation]* shall remain applicable for a maximum period of four accounting years after *[the date of entry into force of this Regulation]*;
 - (b) any audit contract entered into after XX/XX/XXX *[the adoption of the Commission proposal]* but before XX/XX/XXXX *[the date of entry into force of this Regulation]* and which is still in force shall remain applicable for a maximum period of five accounting years after XX/XX/XXXX *[the date of entry into force of this Regulation]*;
 - (c) when an audit contract referred to in points (a) or (b) of this paragraph expires or is terminated, the public-interest entity may renew such contract once with the same audit statutory auditor or audit firm, without the provisions Article 32(3) being applicable. Such renewed contract shall be subject to the following maximum durations:
 - (i) [...]

- (ii) [...]
- (iv) 3 years: if the auditor has been providing services to the audited entity for a consecutive period [...] exceeding 20 years;
- (v) 4 years: if the auditor has been providing services to the audited entity for a consecutive period between 11 and 20 years;
- (vi) 5 years: if the auditor has been providing services to the audited entity for a consecutive period not exceeding 10 years.

By derogation from the criteria set out in point (c), the audit contract may remain applicable until the end of the first accounting year ending after [*2 years after the entry into force of this Regulation*].

By derogation from points (a) to (c), when national rules establish a maximum duration of the contractual relationship between the statutory auditor or the audit firm and the audited entity which does not exceed maximum audit engagement period, referred to in Article 33(3) and require the audited entity to select a different statutory auditor or audit firm when such maximum duration is reached, the audit contract may remain applicable until the end of that maximum duration period.

2. Article 33 shall apply to any audit contract entered into after [...] [*the date of the entry into force of this Regulation*] but before [...] [*2 years after the entry into force of this Regulation*]. Article 32(3) shall only apply to such contract after the expiration of the period referred to in Article 33(1) subparagraph 2.

Article 71

National provisions

The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

Article 71a

Repeal of Commission Decision 2005/909/EC

Commission Decision 2005/909/EC is hereby repealed.

Article 72

Entry into force

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

It shall apply from [2 years after the entry into force].

However, Article 32(7) shall apply from [...] [*the date of the entry into force of the Regulation*] [...] shall apply from [...] [*3 years after the entry into force of the Regulation*].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament

For the Council

The President

The President

[Transferred to the Directive]

[...]

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