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NOTE

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To:	Delegations
No. prev. doc.:	14053/13 DRS 175 CODEC 2120
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Subject:	Proposal for a Directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts Proposal for a Regulation of the European Parliament and of the Council on specific requirements regarding statutory audit of public-interest entities - Mandate for the first informal trilogue

Following the meeting of the Permanent Representatives Committee on 4 October 2013, delegations will find in Annexes I and II the mandate provided to the Presidency for the first informal trilogue on the Audit Directive and Regulation with the European Parliament which has been scheduled for 22 October 2013.

2011/0389 (COD)

Proposal for a

DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL
amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated
accounts

(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 50 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,

Acting in accordance with the ordinary legislative procedure,

Whereas:

¹ OJ C , p. .

- (1) 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/EEC lays down the conditions for the approval and registration of persons that carry out statutory audits, the rules on independence, objectivity and professional ethics applying to them, as well as the framework for their public supervision. However, it is necessary to further harmonize those rules at Union level in order to allow for more transparency and predictability of the requirements applying to such persons and to enhance their independence and objectivity in the performance of their tasks. It is also important to increase convergence with respect to the auditing standards on the basis of which the statutory audits are carried out. Moreover, in order to reinforce investor protection it is important to strengthen the public oversight of statutory auditors and audit firms by enhancing the independence of Union public oversight authorities and entrusting them with adequate powers, including investigative and sanctioning powers to detect, deter and prevent breaches in the context of the auditing services.
- (2) Because of the significant public relevance of public-interest entities, which arises from the scale and dimension of their business or from the nature of their business, the credibility of the audited financial statements of public-interest entities needs to be reinforced. Therefore, the special provisions for the statutory audits of public-interest entities set out in Directive 2006/43/EC have been further developed in Regulation (EU) No [XXX] of [XXX] on specific requirements for the audit of public interest entities. As a consequence, the provisions on the statutory audits of public-interest entities of Directive 2006/43/EC should be deleted from that Directive and statutory audits of public-interest entities should be regulated by Regulation (EU) No [XXX] of [XXX].
- (3) *[deleted]*

- (4) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. It is necessary to enable statutory auditors and audit firms to develop their statutory audit service activities within the Union by offering them the possibility to provide such services in a Member State other than that in which they were approved. Enabling statutory auditors and audit firms to provide statutory audits under their home-country professional titles in a host Member State addresses, in particular, the needs of groups of undertakings which, owing to the increasing trade flows resulting from the internal market, establish financial statements in several Member States and must have them audited under Union law. The elimination of barriers to the development of statutory audit services between Member States would contribute to the integration of the Union audit market.
- (5) Statutory audit requires adequate knowledge of matters such as company law, fiscal law and social law which may vary from one Member State to another. Therefore, to ensure the quality of the statutory audit services provided on its territory it should be possible for a Member State to impose a compensation measure where a statutory auditor approved in another Member State wishes to be approved also on the territory of that Member State in order to set up a permanent establishment. Such measure should take account of the statutory auditor's professional experience. It should not lead to a disproportionate burden on the statutory auditor concerned nor hinder or render less attractive the provision of statutory audit services. Member States should be allowed to approve the applicant statutory auditors either on the basis of an aptitude test or of an adaptation period such as defined in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications². At the end of the adaptation period, the statutory auditor should be able to integrate into the profession in the host Member State after the assessment that he possesses professional experience in that Member State.

² OJ L 255, 30.9.2005, p. 22.

- (6) It is particularly relevant to reinforce independence as an essential element when carrying out statutory audits. In order to enhance the independence of statutory auditors and audit firms from the audited entity when carrying out statutory audits, any person or entity that holds rights in an audit firm should be independent of the audited entity and should not be involved in the process of decision making of the audited entity.
- (6a) Statutory auditors and audit firms should be independent when carrying out statutory audits of such entities and conflicts of interest should be avoided. In order to determine the independence of auditors and audit firms, the concept of network in which auditors and firms operate has to be taken into account. The independence requirement should be fulfilled during the period covered by the audit report, including both the period covered by the financial statements to be audited and the period during which the statutory audit is carried out.
- (6b) Auditors, audit firms and their employees should in particular refrain from carrying out the statutory audit of an entity if they have a business interest or financial interest in it and from engaging on trading in financial instruments issued, guaranteed or otherwise supported by an audited entity, other than holdings in diversified collective investment schemes. The statutory auditor or audit firm should abstain from the internal decision-making processes of the audited entity. Statutory auditors or their employees directly involved in the statutory audit engagement should be prevented from taking up duties in the audited entity at managerial or board level until an appropriate period has elapsed since the end of the audit engagement.
- (6c) Whilst the primary responsibility for delivering financial information should rest with the management of the audited entities, auditors play a role by actively challenging management from a user's perspective. In order to improve audit quality, it is therefore important that the professional scepticism exercised by auditors vis-à-vis the audited entity is reinforced. 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.

- (6d) It is important that statutory auditors and audit firms respect the rights to private life and data protection of their clients. They should therefore be bound by strict rules on confidentiality and professional secrecy which, however, should not impede the proper enforcement of this Directive and of Regulation [XXX] or the cooperation with the group auditor during the performance of the audit of consolidated financial statements when the parent undertaking is in a third country, provided that Directive 95/46/EC is complied with. However, such rules would not allow a statutory auditor or audit firm to cooperate with third country authorities outside the cooperation channels foreseen in Chapter XI. Those confidentiality rules should also apply to any statutory auditor or audit firm which has ceased to be involved in a specific audit task.
- (6e) Adequate internal organisation of statutory auditors and audit firms should contribute to preventing any threats to their independence. Thus, owners or shareholders of an audit firm, as well as those managing it, should not intervene in the carrying out of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm. Additionally, statutory auditors and audit firms should establish appropriate internal policies and procedures in relation to employees and other persons involved in the statutory audit activity within their organisations in order to ensure compliance with their statutory obligations. Those policies and procedures should in particular seek to prevent and address any threats to independence and ensure the quality, integrity and thoroughness of the statutory audit. Those policies and procedures should be proportionate in view of the scale and complexity of the business of the statutory auditor or audit firm.
- (6f) The statutory audit results in an opinion on the truth and fairness of the financial statements of the audited entities. Stakeholders, however, might be unaware of the limitations of an audit (materiality, sampling techniques, role of the auditor in the detection of fraud and the responsibility of managers), which can lead to an expectation gap. In order to reduce such gap, it is important to provide more clarity on what the scope of the statutory audit is.

- (7) It is important to ensure high quality statutory audits within the Union. All statutory audits should therefore be carried out on the basis of the international auditing standards adopted by the Commission. As international auditing standards are designed to be usable for entities of all sizes, of all types, in all jurisdictions, the competent authorities in Member States should take into account the scale and complexity of the business of small undertakings when assessing the application scope of international auditing standards. Member States should be allowed to impose additional national audit procedures or requirements only if they stem from specific national legal requirements relating to the scope of the statutory audit of annual or consolidated financial statements, meaning that those requirements have not been covered by the adopted international auditing standards, [...] or if they add to the credibility and quality of annual financial statements and consolidated financial statements and are conducive to the Union public good. The Commission should continue to be involved in the monitoring of the content and adoption process of the international auditing standards by the IFAC.
- (8) In order to enhance the credibility and transparency of the quality assurance reviews performed in the Union, Member States' quality assurance systems should be governed by the competent authorities designated by the Member States to ensure the public oversight of statutory auditors and audit firms. Quality assurance reviews aim at preventing or addressing potential deficiencies in the manner in which statutory audits are carried out. In order to ensure that the quality assurance reviews attain their scope, when performing the reviews, the competent authorities should take into account the scale and dimension of the activity of the statutory auditors and audit firms.
- (8a) In order to improve compliance with the requirements of this Directive and of Regulation [XXX] and following the Commission Communication of 9 December 2010 entitled 'Reinforcing sanctioning regimes in the financial sector', the power to adopt supervisory measures and the sanctioning powers of competent authorities should be enhanced. Administrative pecuniary sanctions on statutory auditors, audit firms and public-interest entities for identified violations should be foreseen. The competent authorities should be transparent about the sanctions and measures they apply. The adoption and publication of sanctions should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8) and the right to an effective remedy and to a fair trial (Article 47).

- (8b) Competent authorities should be able to impose administrative pecuniary penalties that are actually deterring. Such goal is better achieved by relating the pecuniary sanction to the financial situation of the breacher. Without prejudice to the possibility of withdrawing the license of the statutory audit or audit firm, other types of sanctions which have a relevant deterring effect should be envisaged. In any case, Member States should apply identical criteria when determining the sanction to be imposed.
- (8c) Whistleblowers can bring new information to the attention of competent authorities which assists them in detecting and sanctioning irregularities, including fraud. However, whistleblowers may be deterred from doing so for fear of retaliation, or may lack incentives to do so. Member States should therefore ensure that adequate arrangements are in place to encourage whistleblowers to alert them to possible breaches of this Directive and of Regulation [XXX] and to protect them from retaliation. Member States may also provide them with incentives for doing so; however, whistleblowers should only be eligible for such incentives where they bring to light new information which they are not already legally obliged to notify and where this information results in a sanction for a breach of this Directive and of Regulation. Member States should also ensure that whistleblowing schemes they implement include mechanisms that provide appropriate protection of a reported person, particularly with regard to the right to the protection of his personal data and procedures to ensure the right of the reported person of defence and to be heard before the adoption of a decision concerning him as well as the right to seek effective remedy before a tribunal against a decision concerning him. The mechanisms established should also provide appropriate protection of the whistleblowers, not only with regard to the right to the protection of personal data, but also by ensuring that they are not victims of undue retaliation.

- (9) The public oversight of statutory auditors and audit firms encompasses the approval, registration of statutory auditors and audit firms, the adoption of standards on professional ethics and internal quality control of audit firms, the continuing education, as well as the systems of quality assurance, investigation, and penalties for statutory auditors and audit firms. In order to enhance the transparency of the auditor supervision and to allow for more accountability, each Member State should designate a single authority in charge of the public oversight of statutory auditors and audit firms. The independence of such public oversight authorities from the audit profession is a core prerequisite for integrity, efficiency and orderly functioning of the public oversight of statutory auditors and audit firms. Therefore, the public oversight authorities should be governed by non-practitioners and Member States should establish independent and transparent procedures for the selection of non-practitioners.
- (9a) Member States should have the possibility to create exemptions to the requirements imposed on auditing services when they are provided to cooperatives and savings banks.
- (9b) The competent authority should have the possibility to delegate tasks to other authorities or bodies authorised or designated by law. Such delegation should be subject to several conditions and the competent authority should bear the ultimate responsibility for it.
- (10) In order to ensure that the public oversight authorities fulfil their tasks in an effective manner, they should have sufficient powers to do so. In addition, the public oversight authorities should have enough human and financial resources to perform their tasks.
- (11) Adequate supervision of statutory auditors and audit firms that have cross-border activities or are part of networks requires the public oversight authorities of the Member States to exchange information. In order to protect the confidentiality of the information that may be thus exchanged, Member States should subject to the obligation of professional secrecy not only the employees of the public oversight authorities, but also all persons to whom the public oversight authorities have delegated tasks.

- (11a) Audit committees, or bodies performing an equivalent function within the audited entity, have a decisive role in contributing to high-quality statutory audit. It is particularly important to reinforce the independence and technical competence of the audit committee by requiring that a majority of its members is independent and that at least one member of the committee has competence ~~in auditing and another one~~ in auditing and/or accounting. The Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board sets out how audit committees should be established and function. Considering, however, the dimension of boards in companies with reduced market capitalisation and in small and medium-sized public-interest entities, it would be appropriate that the functions assigned to the audit committee for those entities, or to a body performing equivalent functions within the audited entity, may be performed by the administrative or supervisory body as a whole. Public-interest entities which are UCITS or alternative investment funds should also be exempted from the obligation to have an audit committee. This exemption takes into account the fact that where those funds function merely for the purpose of pooling assets, the employment of an audit committee is not appropriate. UCITS and alternative investments funds, as well as their management companies, operate in a strictly defined regulatory environment and are subject to specific governance mechanisms such as controls exercised by their depositary.
- (11b) Where there are proper grounds, but the audited entity does not act, the audit committee, the shareholders, the competent authorities responsible for the supervision of auditors and audit firms or when provided by national law, the competent authorities responsible for the supervision of the public-interest entity should be empowered to bring a case before a national court on the dismissal of the auditor.

(12) *[deleted]*

(13) *[deleted]*

(14) *[deleted]*

- (15) In order to preserve the rights of the parties concerned when the competent authorities of Member States cooperate with the competent authorities of third countries on the exchange of audit working papers or other relevant documents for the assessment of the quality of the audit performed, Member States should ensure that the working arrangements entered into by their competent authorities based on which any exchange of such papers takes place comprise enough safeguards to protect the business secrecy, commercial interests, including the industrial and intellectual property rights of the audited entities.
- (16) The threshold of EUR 50 000 in Article 45(1) of Directive 2006/43/EC was aligned on Article 3(2)(c) and (d) of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC³. The thresholds set out in Directive 2003/71/EC have been increased to EUR 100 000 by Article 1(3) of Directive 2010/73/EU of the European Parliament and of the Council⁴. For that reason, corresponding adjustments should be made to the threshold set out in Article 45(1) of Directive 2006/43/EC.
- (17) In order to give full effect to the new framework provided for in the Treaty on the Functioning of the European Union, it is necessary to adapt and replace the implementing powers designed under Article 202 of the Treaty establishing the European Community with the appropriate provisions in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union.

³ OJ L 345, 31.12.2003, p. 64.

⁴ OJ L 327, 11.12.2010, p. 1.

- (18) The alignment of the procedures for the adoption of delegated and implementing acts by the Commission to the Treaty on the Functioning of the European Union and, in particular, to Articles 290 and 291 thereof, should be effected on a case-by-case basis. The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in order to take into account the developments in auditing and the audit profession and to facilitate the supervision of statutory auditors and audit firms. ~~In particular, the use of delegated acts is necessary to specify the requirements regarding the approval of natural persons as statutory auditors and the principles of independence and objectivity that statutory auditors and audit firms have to comply with, and to amend the definition of international auditing standards.~~ In the field of auditor supervision the use of delegated acts is necessary to develop the procedures for the exchange of information between the competent authorities of Member States, the modalities in which cross-border investigations should take place and the modalities of cooperation between the competent authorities of Member States and those of third countries. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level.

The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

- (19) In order to ensure uniform conditions for the implementation of the declarations on the equivalence of third country auditor oversight regimes or the adequacy of third country competent authorities, in so far as they concern individual third countries or individual competent authorities of third countries, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁵.

⁵ OJ L 55, 28.2.2011, p. 13.

(20) Since the objective of this Directive, namely reinforcing investor protection in the financial statements published by undertakings by further enhancing the quality of statutory audits that are performed within the Union cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, 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 Directive does not go beyond what is necessary in order to achieve that objective.

(21) Directive 2006/43/EC should therefore be amended accordingly.

(21a) In accordance with the Joint Political Declaration of Member States and the Commission on explanatory documents of 28 September 2011, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified.

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I
SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Directive establishes rules concerning the statutory audit of annual and consolidated financial statements.

Article 29 of this Directive shall not apply to the statutory audit of annual and consolidated financial statements of public-interest entities unless specified in Regulation (EU) No [xxx].

Article 2

Definitions

For the purpose of this Directive, the following definitions shall apply:

1. ‘statutory audit’ means an audit of annual financial statements or consolidated financial statements insofar as:
 - (a) required by Union law;
 - (b) required by national law as regards small undertakings;
 - (c) voluntarily conducted by small undertakings, which meet national legal requirements that are equivalent to those for an audit under point (b), where national legislation defines such audits as statutory audits;
2. ‘statutory auditor’ means a natural person who is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits;
3. ‘audit firm’ means a legal person or any other entity, regardless of its legal form, that is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits;

4. 'third-country audit entity' means an entity, regardless of its legal form, which carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than an entity which is registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3;
5. 'third-country auditor' means a natural person who carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than a person who is registered as a statutory auditor in any Member State as a consequence of approval in accordance with Article 3 and 44;
6. 'group auditor' means the statutory auditor(s) or audit firm(s) carrying out the statutory audit of consolidated financial statements;
7. 'network' means the larger structure:
 - which is aimed at cooperation and to which a statutory auditor or an audit firm belongs, and
 - which is clearly aimed at profit- or cost-sharing or shares common ownership, control or management, common quality-control policies and procedures, a common business strategy, the use of a common brand-name or a significant part of professional resources;
8. 'affiliate of an audit firm' means any undertaking, regardless of its legal form, which is connected to an audit firm by means of common ownership, control or management;
9. 'audit report' means the report referred to in Article 28 of this Directive incorporating, in the case of public interest entities, the additional requirements of Article 22(2) of Regulation XXX, issued by the statutory auditor or audit firm;
10. 'competent authorities' means the authorities designated by law that are in charge of the regulation and/or oversight of statutory auditors and audit firms or of specific aspects thereof; the reference to 'competent authority' in a specific Article means a reference to the authority responsible for the functions referred to in that Article;

11. *[deleted]*

12. 'international accounting standards' means International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and related Interpretations (SIC-IFRIC interpretations), subsequent amendments to those standards and related interpretations, and future standards and related interpretations issued or adopted by the International Accounting Standards Board (IASB);

13. 'public-interest entities' means:

- (a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC;
- (b) credit institutions as defined in point 1 of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council(*), unless they fall under Article 2 of that Directive;

(*) OJ L 177, 30.6.2006, p.1.

- (c) insurance undertakings within the meaning of Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings(**);

(d) *[deleted]*

(e) *[deleted]*

(f) *[deleted]*

(g) *[deleted]*

(h) *[deleted]*

Member States may also designate other entities as public-interest entities, for instance entities that are of significant public relevance because of the nature of their business, their size or the number of their employees.

14. 'cooperative' means a European Cooperative Society as defined in Article 1 of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE) ⁽²⁾, or any other cooperative for which a statutory audit is required under Community law, such as credit institutions as defined in point 1 of Article 1 of Directive 2000/12/EC and insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC;
15. 'non-practitioner' means any natural person who, during his or her involvement in the governance of the public oversight system and during the period of the 3 years immediately preceding that involvement, has not carried out statutory audits, has not held voting rights in an audit firm, has not been a member of the administrative, management or supervisory body of an audit firm and has not been employed by, or otherwise associated with, an audit firm;
16. 'key audit partner(s)' mean(s):
- (a) the statutory auditor(s) designated by an audit firm for a particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm; or
- (**) OJ L 335, 17.12.2009, p. 1.
- (b) in the case of a group audit, at least the statutory auditor(s) designated by an audit firm as being primarily responsible for carrying out the statutory audit at the level of the group and the statutory auditor(s) designated as being primarily responsible at the level of material subsidiaries; or
 - (c) the statutory auditor(s) who sign(s) the audit report.
17. 'medium-sized undertakings' means the undertakings referred to in Article 1(1) and Article 3(3) of Directive 2013/34/EU;
18. 'small undertakings' means the undertakings referred to in Article 1(1) and Article 3(2) of Directive 2013/34/EU;

19. 'home Member State' means a Member State in which a statutory auditor or audit firm is approved in accordance with Article 3(1);
20. 'host Member State' means a Member State in which a statutory auditor approved by his or her Member State seeks to be also approved in accordance with Article 14, or a Member State in which an audit firm approved by its home Member State seeks to be registered or is registered in accordance with Article 3b.'

CHAPTER II

APPROVAL, CONTINUING EDUCATION AND MUTUAL RECOGNITION

Article 3

Approval of statutory auditors and audit firms

1. A statutory audit shall be carried out only by statutory auditors or audit firms which are approved by the Member State requiring the statutory audit.
2. Each Member State shall designate the competent authority as authority responsible for approving statutory auditors and audit firms.
3. Without prejudice to Article 11, the competent authorities of the Member States may approve as statutory auditors only natural persons who satisfy at least the conditions laid down in Articles 4 and 6 to 10.
4. The competent authorities of the Member States may approve as audit firms only those entities which satisfy the following conditions:
 - (a) the natural persons who carry out statutory audits on behalf of an audit firm must satisfy at least the conditions imposed by Articles 4 and 6 to 12 and must be approved as statutory auditors in the Member State concerned;

- (b) a majority of the voting rights in an entity must be held by audit firms which are approved in any Member State or by natural persons who satisfy at least the conditions imposed by Articles 4 and 6 to 12. Member States may provide that such natural persons must also have been approved in another Member State. For the purpose of the statutory audit of cooperatives, savings banks and similar entities as referred to in Article 45 of Directive 86/635/EEC, a subsidiary or legal successor of a cooperative, a savings bank or a similar entity as referred to in Article 45 of Directive 86/635/EEC Member States may establish other specific provisions in relation to voting rights;
- (c) a majority — up to a maximum of 75 % — of the members of the administrative or management body of the entity must be audit firms which are approved in any Member State or natural persons who satisfy at least the conditions imposed by Articles 4 and 6 to 12. Member States may provide that such natural persons must also have been approved in another Member State. Where such a body has no more than two members, one of those members must satisfy at least the conditions in this point;
- (d) the firm must satisfy the condition imposed by Article 4.

Member States may set additional conditions only in relation to point (c). Such conditions shall be proportionate to the objectives pursued and shall not go beyond what is strictly necessary.

Article 3a

Cross border provision of services by statutory auditors

[deleted]

Article 3b

Recognition of audit firms

1. By derogation from Article 3(1), an audit firm which is approved in a Member State shall be entitled to perform statutory audits in another Member State provided that the key audit partner who carries out the statutory audit on behalf of the audit firm complies with Article 3(4)(a) in the host Member State.

2. An audit firm that wishes to carry out statutory audits in a Member State other than the one in which it has been approved shall register with the competent authority in the host Member State in accordance with Articles 15 and 17.
3. The competent authority in the host Member State shall register the audit firm upon satisfying itself that the audit firm is registered with the competent authority in the home Member State. Where the host Member State intends to rely on a certificate attesting to the registration of the audit firm in the home Member State, the competent authority in the host Member State may require that the certificate issued by the competent authority in the home Member State should be not more than three months old. The competent authority in the host Member State shall inform the competent authority in the home Member State of the registration of the home Member State audit firm.
4. *[deleted]*

Article 4

Good repute

The competent authorities of a Member State may grant approval only to natural persons or firms of good repute.

Article 5

Withdrawal of approval

1. Approval of a statutory auditor or an audit firm shall be withdrawn if the good repute of that person or firm has been seriously compromised. Member States may, however, provide for a reasonable period of time for the purpose of meeting the requirements of good repute.
2. Approval of an audit firm shall be withdrawn if any of the conditions imposed in Article 3(4), points (b) and (c) is no longer fulfilled. Member States may, however, provide for a reasonable period of time for the purpose of fulfilling those conditions.

3. Where the approval of a statutory auditor or of an audit firm is withdrawn for any reason, the competent authority of the home Member State where the approval is withdrawn shall communicate that fact and the reasons for the withdrawal to the relevant competent authorities of host Member States where the statutory auditor or audit firm is also registered in accordance with Article 3b, Article 16(1), point (c) and Article 17(1), point (i).

Article 6

Educational qualifications

1. Without prejudice to Article 11, a natural person may be approved to carry out a statutory audit only after having attained university entrance or equivalent level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level, organised or recognised by the Member State concerned.
2. The competent authorities referred to in Article 32 shall cooperate with a view to achieving a convergence of the requirements set out in this Article. When engaging in such cooperation, these competent authorities shall take into account developments in auditing and the audit profession, and in particular, convergence that has already been achieved by the profession. They shall cooperate with the Committee of European Auditing Oversight Bodies (CEAOB) and the competent authorities referred to in Article 35 of Regulation [XXX] of the European Parliament and of the Council in so far as such convergence relates to the statutory audit of public-interest entities.

Article 7

Examination of professional competence

The examination of professional competence referred to in Article 6 shall guarantee the necessary level of theoretical knowledge of subjects relevant to statutory audit and the ability to apply such knowledge in practice. Part at least of that examination shall be written.

Article 8

Test of theoretical knowledge

1. The test of theoretical knowledge included in the examination shall cover the following subjects in particular:
 - (a) general accounting theory and principles;
 - (b) legal requirements and standards relating to the preparation of annual and consolidated accounts;
 - (c) international accounting standards;
 - (d) financial analysis;
 - (e) cost and management accounting;
 - (f) risk management and internal control;
 - (g) auditing and professional skills;
 - (h) legal requirements and professional standards relating to statutory audit and statutory auditors;
 - (i) international auditing standards as referred to in Article 26;
 - (j) professional ethics and independence.
2. It shall also cover at least the following subjects insofar as they are relevant to auditing:
 - (a) company law and corporate governance;
 - (b) the law of insolvency and similar procedures;

- (c) tax law;
- (d) civil and commercial law;
- (e) social security law and employment law;
- (f) information technology and computer systems;
- (g) business, general and financial economics;
- (h) mathematics and statistics
- (i) basic principles of the financial management of undertakings.

3. *[deleted]*

4. The Commission may, taking into account developments in auditing and the audit profession or developments in national law, adopt implementing acts concerning specific topics related to the subjects referred to in paragraph 1 of this Article, which it considers necessary to be included in the test of theoretical knowledge. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

Article 9

Exemptions

1. By way of derogation from Articles 7 and 8, a Member State may provide that a person who has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in Article 8 may be exempted from the test of theoretical knowledge in the subjects covered by that examination or degree.

2. By way of derogation from Article 7, a Member State may provide that a holder of a university degree or equivalent qualification in one or more of the subjects referred to in Article 8 may be exempted from the test of the ability to apply in practice his or her theoretical knowledge of such subjects if he or she has received practical training in those subjects attested by an examination or diploma recognised by the State.

Article 10

Practical training

1. In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, a trainee shall complete a minimum of three years' practical training in, *inter alia*, the auditing of annual financial statements, consolidated financial statements or similar financial statements. At least two thirds of such practical training shall be completed with a statutory auditor or audit firm approved in any Member State.
2. Member States shall ensure that all training is carried out with persons providing adequate guarantees regarding their ability to provide practical training.

Article 11

Qualification through long-term practical experience

A Member State may approve a person who does not satisfy the conditions laid down in Article 6 as a statutory auditor, if he or she can show either:

- (a) that he or she has, for 15 years, engaged in professional activities which have enabled him or her to acquire sufficient experience in the fields of finance, law and accountancy, and has passed the examination of professional competence referred to in Article 7, or
- (b) that he or she has, for seven years, engaged in professional activities in those fields and has, in addition, undergone the practical training referred to in Article 10 and passed the examination of professional competence referred to in Article 7.

Article 12

Combination of practical training and theoretical instruction

1. Member States may provide that periods of theoretical instruction in the fields referred to in Article 8 shall count towards the periods of professional activity referred to in Article 11, provided that such instruction is attested by an examination recognised by the State. Such instruction shall not last less than one year, nor may it reduce the period of professional activity by more than four years.
2. The period of professional activity and practical training shall not be shorter than the course of theoretical instruction together with the practical training required in Article 10.

Article 13

Continuing education

Member States shall ensure that statutory auditors are required to take part in appropriate programmes of continuing education in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level, and that failure to respect the continuing education requirements is subject to appropriate sanctions as referred to in Article 30.

Article 14

Approval of statutory auditors from another Member State

1. The competent authorities shall establish procedures for the approval of statutory auditors who have been approved in other Member States. Those procedures shall not go beyond the requirement to pass an aptitude test or to complete an adaptation period referred to in points (h) and (g) of Article 3(1) of Directive 2005/36/EC.
2. The host Member State shall decide whether the applicant seeking approval be subject to an adaptation period as defined in point (g) of Article 3(1) of Directive 2005/36/EC or an aptitude test as defined in point (h) of that Article.

The adaptation period shall not exceed three years and the applicant shall be subject to an assessment.

The aptitude test shall be conducted in one of the languages permitted by the language rules applicable in the host Member State concerned. It shall cover only the statutory auditor's adequate knowledge of the laws and regulations of that host Member State in so far as it is relevant to statutory audits.

3. The competent authorities referred to in Article 32 shall cooperate through CEAOB with a view to achieving a convergence of the requirements of the adaptation period and the aptitude test. They shall enhance the transparency and predictability of the requirements. They shall cooperate with CEAOB and the competent authorities referred to in Article 35 Regulation [XXX] of the European Parliament and of the Council in so far as such convergence relates to the statutory audits of public-interest entities.

CHAPTER III

REGISTRATION

Article 15

Public register

1. Each Member State shall ensure that statutory auditors and audit firms are entered in a public register in accordance with Articles 16 and 17. In exceptional circumstances, Member States may derogate from the requirements laid down in this Article and Article 16 regarding disclosure only to the extent necessary to mitigate an imminent and significant threat to the personal security of any person.
2. Member States shall ensure that each statutory auditor and audit firm is identified in the public register by an individual number. Registration information shall be stored in the register in electronic form and shall be electronically accessible to the public.

3. The public register shall also contain the name and address of the competent authorities responsible for approval as referred to in Article 3, for quality assurance as referred to in Article 29, for investigations and penalties on statutory auditors and audit firms as referred to in Article 30, and for public oversight as referred to in Article 32.

Article 16

Registration of statutory auditors

1. As regards statutory auditors, the public register shall contain at least the following information:
 - (a) name, address and registration number;
 - (b) if applicable, the name, address, website address and registration number of the audit firm(s) by which the statutory auditor is employed, or with whom he or she is associated as a partner or otherwise;
 - (c) all other registration(s) as statutory auditor with the competent authorities of other Member States and as auditor with third countries, including the name(s) of the registration authority(ies), and, if applicable, the registration number(s).
2. Third-country auditors registered in accordance with Article 45 shall be clearly indicated in the register as such and not as statutory auditors.

Article 17

Registration of audit firms

1. As regards audit firms, the public register shall contain at least the following information:
 - (a) name, address and registration number;
 - (b) legal form;

- (c) contact information, the primary contact person and, where applicable, the website address;
 - (d) address of each office in the Member State;
 - (e) name and registration number of all statutory auditors employed by or associated as partners or otherwise with the audit firm;
 - (f) names and business addresses of all owners and shareholders;
 - (g) names and business addresses of all members of the administrative or management body;
 - (h) if applicable, the membership of a network and a list of the names and addresses of member firms and affiliates or an indication of the place where such information is publicly available;
 - (i) all other registration(s) as audit firm with the competent authorities of other Member States and as audit entity with third countries, including the name(s) of the registration authority(ies), and, if applicable, the registration number(s).
 - (j) if applicable, whether the audit firm is registered pursuant to Article 3b.
2. Third-country audit entities registered in accordance with Article 45 shall be clearly indicated in the register as such and not as audit firms.

Article 18

Updating of registration information

Member States shall ensure that statutory auditors and audit firms notify the competent authorities in charge of the public register without undue delay of any change of information contained in the public register. The register shall be updated without undue delay after notification.

Article 19

Responsibility for registration information

The information provided to the relevant competent authorities in accordance with Articles 16, 17 and 18 shall be signed by the statutory auditor or audit firm. Where the competent authority provides for the information to be made available electronically, that can, for example, be done by means of an electronic signature as defined in point 1 of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures ⁽¹⁾.

Article 20

Language

1. The information entered in the public register shall be drawn up in one of the languages permitted by the language rules applicable in the Member State concerned.
2. Member States may additionally allow the information to be entered in the public register in any other official language(s) of the Community. Member States may require the translation of the information to be certified.

In all cases, the Member State concerned shall ensure that the register indicates whether or not the translation is certified.

CHAPTER IV

PROFESSIONAL ETHICS, INDEPENDENCE, OBJECTIVITY, CONFIDENTIALITY, PROFESSIONAL SECRECY AND INTERNAL ORGANISATION

Article 21

Professional ethics

Member States shall ensure that all statutory auditors and audit firms are subject to principles of professional ethics, covering at least their public-interest function, their integrity and objectivity and their professional competence and due care.

Article 22

(first subparagraph of paragraph 1 = ex. Article 5 Regulation)

Independence and objectivity

1. Member States shall ensure that when carrying out a statutory audit, the statutory auditor and/or the audit firm and any natural person being in a position to influence the outcome of the statutory audit is independent of the audited entity and is not involved in the decision-taking of the audited entity.

Independence shall be required at least during both the period covered by the financial statements to be audited and the period during which the statutory audit is carried out.

Member States shall ensure that a statutory auditor or audit firm shall take all necessary steps to ensure that when carrying out a statutory audit, his, her or its independence is not affected by any existing or potential conflict of interest or business or other direct or indirect relationship involving the statutory auditor or audit firm carrying out the statutory audit and, where appropriate, its network, managers, auditors, employees, any other natural persons whose services are placed at the disposal or under the control of the statutory auditor or audit firm, or any person directly or indirectly linked to the statutory auditor or audit firm by control.

The statutory auditor or audit firm shall not carry out a statutory audit if there is any direct or indirect financial, business, employment or other relationship between:

- (i) the statutory auditor, audit firm, or network, or any natural person in a position to influence the outcome of the statutory audit, and
- (ii) the audited entity

from which an objective, reasonable and informed third party, taking into account the safeguards applied, would conclude that the statutory auditor's or audit firm's independence is compromised.

2. Member States shall ensure that the owners or shareholders of an audit firm as well as the members of the administrative, management and supervisory bodies of such a firm, or of an affiliated firm, do not intervene in the execution of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm.
3. Member States shall ensure that a statutory auditor, an audit firm, their key audit partners, their employees as well as any other natural person whose services are placed at the disposal or under the control of such auditor or firm and who is directly involved in statutory audit activities, and persons closely associated with them within the meaning of Article 1(2) of Commission Directive 2004/72/EC shall not hold or have a material and direct beneficial interest in or engage in any transaction in any financial instrument issued, guaranteed, or otherwise supported by any audited entity within their area of statutory audit activities other than interests owned indirectly through diversified collective investment schemes, including managed funds such as pension funds or life insurance.
4. Member States shall ensure that persons or firms referred to in paragraph 3 shall not participate in or otherwise influence the outcome of a statutory audit of any particular audited entity if they:
 - (a) own financial instruments of the audited entity, other than interests owned indirectly through diversified collective investment schemes;
 - (b) own financial instruments of any entity related to an audited entity, the ownership of which may cause or may be generally perceived as causing a conflict of interest, other than interests owned indirectly through diversified collective investment schemes;
 - (c) have had an employment, or a business or other relationship with that audited entity within the period referred in paragraph 1 that may cause or may be generally perceived as causing a conflict of interest.

5. Persons or firms referred to in paragraph 3 shall not solicit or accept pecuniary and non-pecuniary gifts or favours from the audited entity or any entity related to an audited entity unless a reasonable and informed third party would consider the value as trivial or inconsequential.
- 5a. If an audited entity, during the period covered by the financial statements, is acquired by, merges with, or acquires another entity, the statutory auditor or audit firm shall identify and evaluate any current or recent interests or relationships, including any non-audit services provided to that entity which, taking into account available safeguards, could compromise its independence and its ability to continue with the statutory audit after the effective date of the merger or acquisition. The statutory auditor or audit firm shall take the steps necessary to terminate any current interests or relationships that would compromise its independence as soon as possible, and in all cases within six months, and adopt safeguards, where possible, to minimise any threat to independence from prior and current interests and relationships.
6. *[deleted]*
7. *[deleted]*

Article 22a –(moved to Article 24a)
(ex Article 6 Regulation)

Article 22b – (merged with the Article 22)
(ex Article 7 Regulation)

Article 22c

(ex Article 8 Regulation)

Employment by audited entities of former statutory auditors or of employees of statutory auditors or audit firms

1. Member states shall ensure that a statutory auditor or a key audit partner who carries out a statutory audit on behalf of an audit firm shall not, before a period of at least one year, or in the case of statutory audit of public-interest entities before a period of at least two years, has elapsed since he or she ceased to act as a statutory auditor or key audit partner in connection with the audit engagement:
 - (a) take up a key management position in the audited entity;
 - (b) if applicable, become a member of the audit committee of the audited entity or, where such committee does not exist, of the body performing equivalent functions to an audit committee;
 - (c) become a non-executive member of the administrative body or a member of the supervisory body of the audited entity.
2. Employees or partners of a statutory auditor or an audit firm carrying out a statutory audit as well as any other natural person whose services are placed at the disposal or under the control of such auditor or firm shall not, when such employees, partners or other natural persons are personally approved as statutory auditors, before a period of at least one year, or in the case of statutory audit of public-interest entities before a period of at least two years, has elapsed since he or she was directly involved in the statutory audit engagement, take up any of the duties referred to in points (a), (b) and (c) of paragraph 1.

Article 22d

(ex Article 11 Regulation)

Preparation for the statutory audit and assessment of threats to independence

1. Member States shall ensure that, before accepting or continuing an engagement for a statutory audit, a statutory auditor or audit firm shall assess and document the following:
 - whether he, she or it complies with the internal organisation requirements of Article 24a of this Directive;
 - whether he, she or it complies with the requirements of Article 22 of this Directive;
 - whether there are threats to his, her or its independence, as well as the safeguards applied to mitigate those threats;
 - whether he, she or it has the competent employees, time and resources to carry out the audit in an appropriate manner;
 - whether, in the case of an audit firm, the key audit partner is approved as statutory auditor in the Member State requiring the statutory audit;

Member States may provide simplified requirements for the audits referred in Article 2 paragraph 1 (b) and (c).

2. Member States shall ensure that if the statutory auditor's or audit firm's independence is affected by threats, such as advocacy, familiarity or trust or intimidation, self-review or self-interest, the statutory auditor or audit firm shall apply safeguards in order to mitigate those threats. If the significance of the threats compared to the safeguards applied is such that his, her or its independence is compromised, the statutory auditor or audit firm shall not carry out the statutory audit.
3. *[deleted]*
4. *[deleted]*
5. The Commission may adopt implementing acts identifying
 - (a) *[deleted]*

- (b) the safeguards capable of mitigating threats to independence as referred in paragraph 2, as well as
- (c) situations in which the significance of those threats is such as to compromise the independence of the statutory auditor or audit firm.

Those implementing acts shall be adopted in accordance with the examination procedure referred to Article 48 (2).

6. *[deleted]*

Article 22e
(ex Article 15 Regulation)
Professional scepticism

Member States shall ensure that when the statutory auditor or audit firm carries out the statutory audit, he, she or it shall maintain professional scepticism throughout the audit, recognizing the possibility that a material misstatement due to facts or behaviour indicating irregularities, including fraud or error could exist, notwithstanding the auditor's or audit firm's past experience of the honesty and integrity of the audited entity's management and of the persons charged with its governance.

The statutory auditor or the audit firm shall maintain professional scepticism in particular when reviewing management estimates relating to fair values, the impairment of assets, provisions, and future cash flow relevant to the consideration of the going concern.

For the purposes of this Article, 'professional scepticism' means an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud and a critical assessment of audit evidence.

22f – (moved to Article 24b)
(ex Article 16 Regulation)

Article 23

(paragraph 5 = ex. Article 13 Regulation)

Confidentiality and professional secrecy

1. Member States shall ensure that all information and documents to which a statutory auditor or audit firm has access when carrying out a statutory audit are protected by adequate rules on confidentiality and professional secrecy.
2. Confidentiality and professional secrecy rules relating to statutory auditors or audit firms shall not impede enforcement of the provisions of this Directive or of Regulation XXX.
3. 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 access to all relevant information concerning the audited entity and the most recent audit.
4. A statutory auditor or audit firm who has ceased to be engaged in a particular audit assignment and a former statutory auditor or audit firm shall remain subject to the provisions of paragraphs 1 and 2 with respect to that audit assignment.
5. Where a statutory auditor or an audit firm carries out statutory audit of an undertaking which is part of a group whose parent undertaking is situated in a third country, the confidentiality and professional secrecy rules referred to in paragraph (1) of this Article shall not impede the transfer by the statutory auditor or audit firm of relevant documentation of the audit work performed to the group auditor situated in a third country if such documentation is necessary for the preparation of the audit of consolidated financial statements of the parent undertaking. The transfer of information to the group auditor situated in a third country shall comply with Chapter IV of Directive 95/46/EC and the applicable national rules on personal data protection.

A statutory auditor or audit firm that carries out the statutory audit of an undertaking which has issued securities in a third country or which forms part of a group issuing statutory consolidated financial statements in a third country may only transfer the audit working papers or other documents related to the audit of that entity that he, she or it holds to the competent authorities in the relevant third countries under the conditions set out in Article 47 of this Directive.

Article 24– (moved to 22)

Article 24a

Internal organisation of auditors and audit firms

1. Member states shall ensure that a statutory auditor or audit firm shall comply with the following organisational requirements:
 - (a) an audit firm shall establish adequate policies and procedures to [...] ensure that its owners or shareholders as well as the members of the administrative, management and supervisory bodies of the firm, or of an affiliate firm, do not intervene in the carrying out of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm;
 - (b) a statutory auditor or an audit firm shall have sound administrative and accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems. Those internal control mechanisms shall be designed to secure compliance with decisions and procedures at all levels of the audit firm or of the working structure of the statutory auditor.

A statutory auditor or an audit firm shall implement and maintain decision-making procedures and organisational structures which clearly and in a documented manner specify reporting lines and allocate functions and responsibilities;

- (c) a statutory auditor or an audit firm shall establish adequate policies and procedures to ensure that his, her or its employees and any other natural persons whose services are placed at its disposal or under its control and who are directly involved in the statutory audit activities have appropriate knowledge and experience for the duties assigned;
- (d) a statutory auditor or an audit firm shall establish adequate policies and procedures to ensure that outsourcing of important audit functions is not undertaken in such a way as to impair the quality of the statutory auditor's or audit firm's internal control and the ability of the competent authorities to supervise the statutory auditor's or audit firm's compliance with the obligations laid down in this Directive and, where applicable, in Regulation XXX;
- (e) a statutory auditor or an audit firm shall establish appropriate and effective organisational and administrative arrangements to prevent, identify, eliminate or manage and disclose any threats to independence referred to in Articles 22, 22c and 22d;
- (f) a statutory auditor or an audit firm shall establish adequate policies and procedures for carrying out statutory audits, coaching, supervising and reviewing employees activities and organising the structure of the audit file referred to in Article 24b(5);
- (g) a statutory auditor or an audit firm shall establish an internal quality control system to ensure the quality of the statutory audit.

The quality control system shall at least cover the policies and procedures described in point (f). In the case of an audit firm, the responsibility of the internal quality control system shall be with a person who qualifies as statutory auditor;

- (h) a statutory auditor or an audit firm shall use appropriate systems, resources and procedures to ensure continuity and regularity in the performance of its statutory audit activities;

- (i) a statutory auditor or an audit firm shall establish policies to preclude his, her or its involvement and that of his, her or its employees in any criminal offence or breach of the law in the conduct of their work. The statutory auditor or the audit firm shall also establish appropriate and effective organisational and administrative arrangements for dealing with and recording incidents which have or may have serious consequences for the integrity of his, her or its statutory audit activities;
- (j) a statutory auditor or an audit firm shall have adequate remuneration policies providing sufficient performance incentives to secure audit quality. In particular, compensation and performance evaluation of any person involved in or able to influence the outcome of the audit shall not be contingent on the amount of revenue that the statutory auditor or the audit firm derives from the audited entity;
- (k) a statutory auditor or an audit firm shall monitor and evaluate the adequacy and effectiveness of his, her or its systems, internal control and internal quality control mechanisms and arrangements established in accordance with this Directive and, where applicable, Regulation XXX and take appropriate measures to address any deficiencies. A statutory auditor or an audit firm shall in particular carry out an annual evaluation of the internal quality control system, referred to in point (g). A statutory auditor or an audit firm shall keep records of the findings of that evaluation and any proposed measure to modify the internal quality control system.

The policies and procedures referred to in the first subparagraph shall be documented and communicated to the employees of the statutory auditor or audit firm.

Member States may provide simplified requirements for the audits referred in Article 2 paragraph 1 (b) and (c).

Any outsourcing of audit functions as referred to in point (d) shall not affect the responsibility of the statutory auditor or audit firm towards the audited entity.

2. The statutory auditor or audit firm shall take into consideration the scale and complexity of his, her or its activities when complying with these requirements as regards the obligations at paragraph 1 of this Article.

The statutory auditor or audit firm shall be able to demonstrate to the competent authority referred to in Article 32 that such policies and procedures designed to achieve compliance are appropriate given the scale and complexity of activities of the statutory auditor or audit firm.

Article 24 b

(ex Article 16 Regulation)

Organisation of the work

1. Member States shall ensure that when the statutory audit is carried out by an audit firm, that audit firm shall designate at least one key audit partner. The audit firm shall provide the key audit partner(s) with sufficient resources to carry out his, her or their duties appropriately. Securing audit quality, independence and competence shall be the main criteria for the audit firm to select the key audit partner(s) to be designated.

The key audit partner(s) shall be actively involved in the carrying out of the statutory audit.

2. When carrying out the statutory audit, the statutory auditor shall devote sufficient time to the engagement and shall assign sufficient resources to carry out his or her duties appropriately.
3. Member States shall ensure that the statutory auditor or the audit firm keep records of any breaches of the provisions of this Directive and, where applicable, Regulation XXX. Member States may exempt statutory auditors and audit firms from this obligation with regard to minor breaches. It shall also keep records of any consequence thereof, including the measures taken to address those breaches and to modify its internal quality control system. The statutory auditor or the audit firm shall prepare an annual report with an overview of any such measures taken and communicate this internally.

When the statutory auditor or the audit firm ask external experts for advice, he, she or it shall document the request made and advice received.

4. A statutory auditor or an audit firm shall maintain a client account record. Such record shall include the following data for each audit client:
 - (a) the name, the address and the place of business;
 - (b) in the case of an audit firm, the key audit partner(s);
 - (c) the fees charged for the statutory audit and the fees charged for other services in any financial year.
5. A statutory auditor or an audit firm shall create an audit file for each statutory audit that it undertakes.

The statutory auditor or audit firm shall at least document the data recorded pursuant to Articles 22d(1), and, where applicable, Articles 11, 17 and 19 of Regulation XXX.

The statutory auditor or audit firm shall retain any other data and documents that are of importance in support of the report referred to in Articles 28 of this Directive and, where applicable, Article 22 of Regulation XXX and for monitoring compliance with this Directive and other applicable legal requirements.

The audit file shall be closed no later than sixty days after the date of signature of the audit report referred to in Article 28 of this Directive and, where applicable, Article 22 of Regulation XXX.

6. The statutory auditor or the audit firm shall keep records of any complaints made in writing about the performance of the statutory audits undertaken by it.
7. Member States may provide simplified requirements with regard to paragraphs 3 and 6 for the audits referred in Article 2 paragraph 1 (b) and (c).

Article 25

Audit fees

Member States shall ensure that adequate rules are in place which provide that fees for statutory audits:

- (a) are not influenced or determined by the provision of additional services to the audited entity;
- (b) cannot be based on any form of contingency.

Article 25a

(ex Article 14 Regulation)

Scope of the statutory audit

- 1. *[deleted]*
- 2. Without prejudice to the reporting requirements as referred to in Article 28 of this Directive and where applicable, Articles 22 and 23 of Regulation XXX, the scope of statutory audit shall not include the assurance on the future viability of the audited entity nor the efficiency or effectiveness with which the management or administrative body has conducted or will conduct the affairs of the entity.

CHAPTER V

**AUDITING STANDARDS, STATUTORY AUDITS OF CONSOLIDATED FINANCIAL
STATEMENTS AND AUDIT REPORTING**

Article 26

Auditing standards

- 1. Member States shall require statutory auditors and audit firms to carry out statutory audits in compliance with international auditing standards adopted by the Commission in accordance with paragraph 2a.

Member States may apply national auditing standards, procedures or requirements as long as the Commission has not adopted an international auditing Standard covering the same subject-matter.

2. For the purposes of paragraph 1, 'international auditing standards' means International Standards on Auditing (ISAs), International Standard on Quality Control 1 and other related Standards issued by the International Federation of Accountants (IFAC) through the International Auditing and Assurance Standards Board (IAASB), insofar as they are relevant to the statutory audit.
- 2a. In order ensure the uniform application of rules laid down in this Directive, the Commission shall be empowered to adopt implementing acts concerning the adoption of the international standards on auditing referred to in paragraph 1 of this Article for the purposes of their application within the Union.

Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

The international auditing standards may only be adopted if they:

- (a) have been developed with proper due process, public oversight and transparency, and are generally accepted internationally;
- (b) contribute a high level of credibility and quality to the annual or consolidated financial statements in conformity with the principles set out in Article 4(3) of Directive 2013/34/EC of the European Parliament and of the Council; and
- (c) are conducive to the Union public good;

In case the provisions of adopted international standards on auditing differ from the corresponding provisions of this Directive or Regulation XXX, the provisions of the Directive or Regulation XXX shall prevail.

- 2b. Notwithstanding the second subparagraph of paragraph 1, Member States may impose audit procedures or requirements in addition to the international auditing standards adopted by the Commission, only
- (a) if those audit procedures or requirements are necessary to give effect to national legal requirements relating to the scope of statutory audits; or,
 - (b) to the extent necessary to add to the credibility and quality of financial statements.

Member States communicate them to the Commission at least three months before their entry into force or, in the case of requirements already existing at the time of adoption of an international auditing standard, at the latest within three months of the adoption of the relevant international auditing standard.

3. Where a Member State requires the statutory audit of small undertakings, it may provide that application of the auditing standards referred to in paragraph 1 is proportionate to the scale and complexity of the activities of those undertakings. Member States may take measures in order to ensure the proportionate application of the auditing standards to the statutory audits of small undertakings.

Article 27

Statutory audits of consolidated financial statements

1. Member States shall ensure that in the case of a statutory audit of the consolidated financial statements of a group of undertakings:
- (a) the group auditor bears the full responsibility for the audit report referred to in Article 28 of this Directive and, where applicable, Article 22 of Regulation XXX and where applicable, for the additional report to the audit committee as referred to in Article 23 of Regulation XXX, in relation to the consolidated financial statements;

- (ab) the group auditor evaluates the audit work ~~is performed~~ by third-country auditor(s) or statutory auditor(s) and third-country audit entity(ies) or audit firm(s) for the purpose of the group audit and documents the nature, timing and extent of the involvement in the work performed by those auditors, including where applicable, the auditor's review of relevant parts of those auditors' audit documentation.;
- (b) the group auditor reviews the audit work performed by third-country auditor(s) or statutory auditor(s) and third-country audit entity(ies) or audit firm(s) for the purpose of the group audit and documents it.

The documentation retained by the group auditor shall be such as enables the relevant competent authority to review the work of the group auditor.

For the purpose of point (b) of the first subparagraph of this paragraph, the group auditor shall request the agreement of the third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) to the transfer of relevant documentation during the conduct of the audit of consolidated financial statements, as a condition of the reliance by the group auditor on the work of that third-country auditor(s), statutory auditor(s), third country audit entity(ies) or audit firm(s).

2. Where the group auditor is unable to comply with point (b) of the first subparagraph of paragraph 1, he, she or it shall take appropriate measures and inform the competent authority referred to in Article 32 and, where applicable, in Article 35 of Regulation XXX, accordingly.

Such measures shall, as appropriate, include carrying out additional statutory audit work, either directly or by outsourcing such tasks, in the relevant subsidiary.

3. Where the group auditor is subject to a quality assurance review or an investigation concerning the statutory audit of the consolidated financial statements of a group of undertakings, the group auditor shall, when requested, make available to the competent authority the relevant documentation he, she or it retains concerning the audit work performed by third country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) for the purpose of the group audit, including any working papers relevant to the group audit.

The competent authority may request additional documentation on the audit work performed by statutory auditor(s) or audit firm(s) for the purpose of the group audit from the relevant competent authorities pursuant to Article 36.

When a component of a group of undertakings is audited by auditor(s) or audit entity(ies) from a third country, the competent authority may request additional documentation on the audit work performed by third-country auditor(s) or third country audit entity(ies) from the relevant competent authorities from third countries through the working arrangements referred to in Article 47.

By way of derogation from the third subparagraph, when a component of a group of undertakings is audited by auditor(s) or audit entity(ies) from a third country that has no working arrangement as referred to in Article 47, the group auditor shall, when requested, also be responsible for ensuring proper delivery of the additional documentation of the audit work performed by third-country auditor(s) or audit entity(ies), including the working papers relevant to the group audit. To ensure such delivery, the group auditor shall retain a copy of such documentation, or alternatively agree with the third-country auditor(s) or audit entity(ies) his, her or its permitted and unrestricted access upon request, or take any other appropriate action. Where audit working papers for legal or other reasons cannot be passed from a third country to the group auditor, the documentation retained by the group auditor shall include evidence that he or she has undertaken the appropriate procedures in order to gain access to the audit documentation, and in the case of impediments other than legal ones arising from the legislation of the third country, evidence supporting such an impediment.

Article 28

Audit reporting

1. The statutory auditor(s) or the audit firm(s) shall present the results of the statutory audit in an audit report. The report shall be prepared in accordance with the requirements of auditing standards adopted by the Union or Member State as referred to in Article 26.

1a. The audit report which shall be in writing shall at a minimum:

- (a) identify the entity whose annual or consolidated financial statements are the subject of the statutory audit; specify the annual or consolidated financial statements and the date and period they cover; and identify the financial reporting framework that has been applied in their preparation;
- (b) describe the scope of the statutory audit which shall, at a minimum, identify the auditing standards in accordance with which the statutory audit was conducted;
- (b1) state whether the statutory audit was conducted in accordance with the international standards on auditing as referred to in Article 26;
- (c) include an audit opinion, which shall be either unqualified, qualified or an adverse opinion and shall state clearly the opinion of the statutory auditor(s) or the audit firm(s) as to:
 - (i) whether the annual financial statements have been prepared in accordance with the relevant financial reporting framework and give a true and fair view, and,
 - (ii) where appropriate, whether the annual financial statements comply with statutory requirements,

If the statutory auditor(s) or audit firm(s) are unable to express an audit opinion, the report shall contain a disclaimer of opinion;

- (d) refer to any matters to which the statutory auditor(s) or audit firm(s) draws attention by way of emphasis without qualifying the audit opinion;
- (e) include an opinion and statement, both of which shall be based on the work undertaken in the course of the audit, referred to in the second subparagraph of Article 34(1) of Directive 2013/34/EU;

- (f) in the case of a qualified or an adverse opinion or a disclaimer of opinion, the report shall explain the reasons for such a decision and shall identify and explain material breaches and misstatements of the applicable accounting rules and material breaches and misstatements of legal requirements including articles of incorporation, identified in the course of the audit, that are significant for the governance of the entity or to its continued operation and shall provide explanations when the auditor is unable to obtain sufficient and appropriate audit evidence;
- (f1) provide a statement on 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;
- (f2) report if, 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;
- (g) identify where the statutory auditor(s) or audit firm(s) is established.

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

- 1b. When the statutory audit was carried out by more than one auditor or audit firm the statutory auditor(s) or audit firm(s) shall agree on the results of the statutory audit and submit a joint report and opinion. In case of disagreement, each statutory auditor or audit firm shall submit his, her or its opinion in a separate paragraph of the audit report and state the reason for the disagreement.
- 2. The audit report shall be signed and dated by the statutory auditor. Where an audit firm carries out the statutory audit, the audit report shall bear the signature of at least the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm. Where more than one statutory auditor or audit firm have been simultaneously engaged the audit report shall be signed by all statutory auditors or at least statutory auditors carrying out the statutory audit on behalf of every audit firm. In exceptional circumstances Member States may provide that such signature(s) need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person.

In any case the name(s) of the person(s) involved shall be known to the relevant competent authorities.

3. The report of the statutory auditor or audit firm on the consolidated financial statements shall comply with the requirements set out in of paragraphs 1 and 2. In reporting on the consistency of the management report and the financial statements as required by paragraph 1(e), the statutory auditor or audit firm shall consider the consolidated financial statements and the consolidated management report. Where the annual financial statements of the parent undertaking are attached to the consolidated financial statements, the reports of the statutory auditors or audit firms required by this Article may be combined.

CHAPTER VI

QUALITY ASSURANCE

Article 29

Quality assurance systems

1. Each Member State shall ensure that all statutory auditors and audit firms are subject to a system of quality assurance which meets at least the following criteria:
 - (a) the quality assurance system shall be organized in such a manner that it is independent of the reviewed statutory auditors and audit firms and is subject to public oversight;
 - (b) the funding for the quality assurance system shall be secure and free from any possible undue influence by statutory auditors or audit firms;
 - (c) the quality assurance system shall have adequate resources;
 - (d) *[deleted]*

- (e) the selection of reviewers for specific quality assurance review assignments shall be effected in accordance with an objective procedure designed to ensure that there are no conflicts of interest between the reviewers and the statutory auditor or audit firm under review;
- (f) the scope of the quality assurance review, supported by adequate testing of selected audit files, shall include an assessment of compliance with applicable auditing standards and independence requirements, of the quantity and quality of resources spent, of the audit fees charged and of the internal quality control system of the audit firm;
- (g) the quality assurance review shall be the subject of a report which shall contain the main conclusions of the quality assurance review;
- (h) quality assurance reviews shall take place on the basis of an analysis of the risk and in the case of statutory auditors and audit firms carrying out statutory audits as defined in point (a) of Article 2(1) at least every six years;
- (i) the overall results of the quality assurance system shall be published annually;
- (j) recommendations of quality reviews shall be followed up by the statutory auditor or audit firm within a reasonable period;
- (k) quality assurance reviews shall be appropriate and proportionate in view of the scale and dimension of the activity of the reviewed audit firm or statutory auditor.

If the recommendations referred to in point (j) are not followed up, the statutory auditor or audit firm shall, if applicable, be subject to the system of disciplinary actions and penalties referred to in Article 30;

- 1A. For the purpose of paragraph 1 point (e) at least the following criteria shall apply to the appointment of reviewers:
- (a) reviewers 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 shall not be allowed to act as a reviewer in a quality assurance review of a statutory auditor or audit firm until at least three years have elapsed since that person ceased to be a partner or an employee or otherwise associated with that statutory auditor or audit firm;
 - (c) reviewers shall declare that there are no conflicts of interest between them and the statutory auditor and audit firm to be reviewed.
- 1B. For the purpose of paragraph 1 point (k) Member States shall require competent authorities, when undertaking quality assurance reviews of the statutory audits of annual or consolidated financial statements of medium-sized and small undertakings, to take account of the fact that the auditing standards adopted in accordance with Article 26 are designed to be applied in a manner that is proportionate to the scale and complexity of the business audited entity.
2. The Commission may adopt implementing acts for the purposes of ensuring uniform application of paragraph 1, except points (b) and (c). Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

CHAPTER VII

INVESTIGATIONS AND PENALTIES

Article 30

Systems of investigations and penalties

1. Member States shall ensure that there are effective systems of investigations and penalties to detect, correct and prevent inadequate execution of the statutory audit.
2. Without prejudice to Member States' civil liability regimes, Member States shall provide for effective, proportionate and dissuasive penalties in respect of statutory auditors and audit firms, where statutory audits are not carried out in conformity with the provisions adopted in the implementation of this Directive, and, where applicable, Regulation XXX.

Member States may decide not to lay down rules for administrative sanctions on infringements which are already subject to national criminal law. In this case they shall communicate to the Commission the relevant criminal law provisions.

3. Member States shall provide that measures taken and penalties imposed on statutory auditors and audit firms are appropriately disclosed to the public. Penalties shall include the possibility of the withdrawal of approval. Member States may decide that such disclosure shall not contain personal data within the meaning of Article 2(a) of Directive 95/46/EC.
4. By *[24 months after the entry into force of these provisions]* the Member States shall notify the rules referred to in paragraph 2 to the Commission. They shall notify the Commission without delay of any subsequent amendment thereto.

Article 30A

(ex. Article 61 Regulation)

Administrative sanctions and measures

[merged with Article 30]

Article 30B

(ex. Article 62 Regulation)

Sanctioning powers

1. Member States shall provide for competent authorities to have the power to take and or impose at least the following administrative measures and sanctions for breaches of the provisions of this Directive and, where applicable, Regulation XXX:
 - (a) a notice requiring the natural or legal person responsible for the breach to cease the conduct and to desist from a repetition of that conduct;
 - (b) a public statement which indicates the person responsible and the nature of the breach, published on the website of competent authorities;
 - (c) a temporary prohibition of up to three years for the statutory auditor, the audit firm or the key audit partner to carry out statutory audits and/or signing audit reports.
 - (d) a declaration that the audit report does not meet the requirements of Article 28 of Directive or, where applicable, Article 22 of Regulation XXX;
 - (e) a temporary ban of up to three years against a member of an audit firm or a public interest entity administrative or management body to exercise functions in audit firms or public-interest entities;
 - (f) *deleted*

- (g) in the case of a natural person, administrative pecuniary sanctions of up to EUR 1 500 000 or, in the Member States where the Euro is not the official currency, at the exchange rate applying on the date of entry into force of this Directive;
 - (h) in the case of a legal person or any other entity, administrative pecuniary sanctions of up to 2½% of its total annual turnover in the preceding business year; where the legal person is a parent undertaking or a subsidiary of a parent undertaking which has to prepare consolidated financial statements in accordance with Directive 2013/34/EU, the relevant total annual turnover shall be the total annual turnover or the corresponding type of income as defined in Directive 86/635/EC for banks and Directive 91/674/EC for insurance companies resulting from the consolidated financial statements of the ultimate parent undertaking in the preceding business year.
- 1a. Member States shall ensure that the competent authorities may exercise their sanctioning powers in accordance with this Directive and national law and in any of the following ways:
 - (a) directly;
 - (b) in collaboration with other authorities;
 - (c) *[deleted]*
 - (d) by application to the competent judicial authorities.
 - 2. Member States may give to competent authorities other sanctioning powers in addition to those referred to in paragraph 1 and may provide for higher levels of administrative pecuniary sanctions than those established in that paragraph.
 - 3. Member States may provide for a lower level of administrative pecuniary sanctions than established in paragraph 1(g) for natural persons when the audit which is to be sanctioned is an audit referred to in article 2, paragraph 1 (b) and (c).

4. By derogation from paragraph 1, Member States may to give to authorities supervising public interest entities, when they are not designated as the competent authority according to art. 35 (2) of the Regulation XXX, powers to impose sanctions for breaches of reporting duties provided by the Regulation XXX.

Article 30C

(ex. Article 63 Regulation)

Effective application of sanctions

1. When establishing rules under Article 30, Member States shall require that when determining the type and level of administrative sanctions and measures, competent authorities shall take into account all relevant circumstances, including where appropriate:
 - (a) the gravity and the duration of the breach;
 - (b) the degree of responsibility of the responsible person;
 - (c) the financial strength of the responsible person, for example as indicated by the total turnover of the responsible undertaking or the annual income of the responsible natural person;
 - (d) the amounts of the profits gained or losses avoided by the responsible person, insofar as they can be determined;
 - (e) the level of cooperation of the responsible person with the competent authority;
 - (f) previous breaches by the responsible legal or natural person.

Additional factors may be taken into account by competent authorities, if such factors are specified in national law.

Article 30D

(ex. Article 64 Regulation)

Publication of sanctions and measures

1. Competent authorities shall publish on their official website at least any administrative sanction imposed for breach of the provisions of this Directive or of Regulation XXX in respect of which all rights of appeal have been exhausted or have expired as soon as reasonably practicable immediately after the person sanctioned is informed of that decision, including information on the type and nature of the breach and the identity of a natural or legal person on whom the sanction is imposed.

Where Member States permit publication of sanctions which are subject to appeal, Competent Authorities shall, as soon as reasonably practicable, also publish on their official website information on the appeal status and outcome thereof.

1A. *[deleted]*

2. Competent Authorities shall publish the sanctions on an anonymous basis, in a manner which is in conformity with national law, in any of the following circumstances:
 - a) where, in case the sanction is imposed on a natural person, publication of personal data is shown to be disproportionate by an obligatory prior assessment of the proportionality of such publication;
 - b) where publication would jeopardise the stability of financial markets or an on-going criminal investigation;
 - c) where publication would cause disproportionate damage to the institutions or individuals involved.

3. Competent Authorities shall ensure that any publication in accordance with paragraph 1 shall be of proportionate duration and shall remain on their official website for a minimum period of five years after all rights of appeal have been exhausted or have expired.

The publication of sanctions and measures and any public statement shall respect fundamental rights as laid down in the EU Charter of Fundamental Rights, in particular the right to respect for private and family life and the right to the protection of personal data. Member States may decide that such publication or any public statement shall not contain personal data within the meaning of Article 2(a) of Directive 95/46/EC.

Article 30E

(ex. Article 65 Regulation)

Appeal

Member States shall ensure that decisions taken by the competent authority in accordance with this Directive and Regulation XXX are subject to the right of appeal.

Article 30F

(ex. Article 66 Regulation)

Reporting of breaches

1. Member States shall ensure that effective mechanisms are established to encourage reporting of breaches of this Directive or of Regulation XXX to the competent authorities.
2. The mechanisms referred to in paragraph 1 shall include at least:
 - (a) specific procedures for the receipt of reports of breaches and their follow-up;
 - (b) *[deleted]*
 - (c) protection of personal data concerning both the person who reports the suspected or actual breaches and the person who is suspected of committing, or who allegedly has committed a breach, in compliance with the principles laid down in Directive 95/46/EC;

- (d) appropriate procedures to ensure the right of the accused person to a defence and to be heard before the adoption of a decision concerning him and the right to seek effective remedy before a tribunal against any decision or measure concerning him.
3. Member States shall ensure that audit firms establish appropriate procedures for their employees to report potential or actual breaches of this Directive or of Regulation XXX internally through a specific channel.

Article 30G

(ex. Article 67 Regulation)

Exchange of information

1. Competent Authorities shall provide the CEAOB annually with aggregated information regarding all administrative measures, sanctions and fines imposed in accordance with this chapter. CEAOB shall publish this information in an annual report.
2. *[deleted]*
- Competent Authorities shall immediately communicate to CEAOB all temporary prohibitions referred to in Article 30B.

Article 31

[deleted]

CHAPTER VIII
**PUBLIC OVERSIGHT AND REGULATORY ARRANGEMENTS BETWEEN MEMBER
STATES**

Article 32

Principles of public oversight

1. Member States shall organise an effective system of public oversight for statutory auditors and audit firms based on the principles set out in paragraphs 2 to 7 and shall designate a competent authority responsible for such oversight.
2. All statutory auditors and audit firms shall be subject to public oversight.
3. The competent authority shall be governed by non-practitioners who are knowledgeable in the areas relevant to statutory audit. They shall be selected in accordance with an independent and transparent nomination procedure.

The competent authority may engage practitioners to carry out specific tasks and may also be assisted by experts when this is essential for the proper fulfilment of its tasks. In such instances, both the practitioner and the experts shall not be involved in any decision-making.

4. The competent authority shall have the ultimate responsibility for the oversight of:
 - (a) the approval and registration of statutory auditors and audit firms;
 - (b) the adoption of standards on professional ethics, internal quality control of audit firms and auditing, except where those standards are adopted or approved by other Member State authorities;
 - (c) continuing education,
 - (d) quality assurance system;
 - (e) investigative and administrative disciplinary systems.

- 4a. Member States shall designate one or more competent authorities for the purposes of the tasks provided for in this Directive, except for the purpose of the statutory audit of cooperatives, savings banks or similar entities as referred to in Article 45 of Directive 86/635/EEC, or a subsidiary or legal successor of a cooperative, a savings bank or a similar entity as referred to in Article 45 of Directive 86/635/EEC, Member States shall designate only one competent authority bearing the ultimate responsibility for the tasks referred in this Article. Member States shall inform the Commission of their designation.

The competent authorities shall be organised in such a manner that conflicts of interests are avoided.

- 4b. Member States may delegate or allow the competent authority to delegate any of its tasks to other authorities or bodies designated or otherwise authorised by law to carry out such tasks.

The delegation shall specify the delegated tasks and the conditions under which they are to be carried out. The authorities or bodies shall be organized in such a manner that there are no conflicts of interest.

Where the competent authority delegates tasks to other authorities or bodies, it shall be able to reclaim these competences on a case-by-case basis.

5. The competent authority shall have the right, where necessary, to initiate and conduct investigations in relation to statutory auditors and audit firms and the right to take appropriate action.

Where a competent authority contracts experts 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 in question. These experts shall comply with the same requirements as those provided for at Article 29(1A).

The competent authority shall be given the powers necessary to carry out its tasks and responsibilities under this Directive.

6. The competent authority shall be transparent. This shall include the publication of annual work programmes and activity reports.
7. The system of public oversight shall be adequately funded and shall have adequate resources to initiate and conduct investigations, referred to in paragraph 5. The funding for the public oversight system shall be secure and free from any undue influence by statutory auditors or audit firms.

Article 33

Cooperation between public oversight systems at Community level

Member States shall ensure that regulatory arrangements for public oversight systems permit effective cooperation at Community level in respect of Member States' oversight activities. To that end, each Member State shall make one entity specifically responsible for ensuring that cooperation.

Article 34

Mutual recognition of regulatory arrangements between Member States

1. Regulatory arrangements of Member States shall 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.

Without prejudice to the first sub-paragraph, audit firms approved in one Member State that perform audit services in another Member State pursuant to Article 3b of this Directive shall be subject to quality assurance review in the home Member State and oversight of any audit carried out in the host Member State.

2. In the case of a statutory audit of consolidated financial statements, the Member State requiring the statutory audit of the consolidated financial statements may not impose additional requirements in relation to the statutory audit concerning registration, quality assurance review, auditing standards, professional ethics and independence on a statutory auditor or audit firm carrying out a statutory audit of a subsidiary established in another Member State.
3. In the case of a company whose securities are traded on a regulated market in a Member State other than that in which that company has its registered office, the Member State in which the securities are traded may not impose any additional requirements in relation to the statutory audit concerning registration, quality assurance review, auditing standards, professional ethics and independence on a statutory auditor or audit firm carrying out the statutory audit of the annual or consolidated financial statements of that company.
4. Where a statutory auditor or audit firm is registered in any Member State as a consequence of approval in accordance with Article 3 or 44 and that statutory auditor or audit firm provides audit reports concerning annual financial statements or consolidated financial statements referred to in paragraph 1 of Article 45, the Member State in which the auditor or audit firm is registered shall subject that statutory auditor or audit firm to its systems of oversight, its quality assurance systems and its systems of investigation and penalties.

Article 35

Designation of competent authorities

[merged with Article 32]

Professional secrecy and regulatory cooperation between Member States

1. The competent authorities of Member States responsible for approval, registration, quality assurance, inspection and discipline, the competent authorities designed in accordance with Article 35 of Regulation XXX and the relevant European Supervisor Authorities shall cooperate with each other whenever necessary for the purpose of carrying out their respective responsibilities and tasks under this Directive and the Regulation XXX. The competent authorities in a Member State shall render assistance to competent authorities in other Member States and the relevant European Supervisor Authorities. In particular, competent authorities shall exchange information and cooperate in investigations related to the carrying-out of statutory audits.
2. The obligation of professional secrecy shall apply to all persons who are employed or who have been employed by competent authorities. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the laws, regulations or administrative procedures of a Member State.
3. Paragraph 2 shall not prevent 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. The obligation of professional secrecy shall also apply to any other person to whom the competent authorities have delegated tasks in relation to the purposes set out in this Directive.
4. Competent authorities shall, on request, and without undue delay, supply any information required for the purpose referred to in paragraph 1. Where necessary, the competent authorities receiving any such request shall, without undue delay, take the necessary measures to gather the required information. Information thus supplied shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities that received the information are subject.

If the requested competent authority is not able to supply the required information without undue delay, it shall notify the requesting competent authority of the reasons therefore.

The competent authorities may refuse to act on a request for information where:

- (a) supplying information might adversely affect the sovereignty, security or public order of the requested Member State or breach national security rules; or
- (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; or
- (c) final judgment has already been passed in respect of the same actions and on the same persons by the competent authorities of the requested Member State.

Without prejudice to the obligations to which they are subject in judicial proceedings, competent authorities or European Supervisory Authorities which receive information pursuant to paragraph 1 may use it only for the exercise of their functions within the scope of this Directive or the Regulation XXX and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

- 4a. The competent authorities may transmit to the competent authorities responsible for supervising public-interest entities, central banks, the European System of Central Banks and the European Central Bank, in their capacity as monetary authorities, and the European Systemic Risk Board confidential information intended for the performance of their tasks. Such authorities or bodies shall not be prevented from communicating to the competent authorities information that the competent authorities may need in order to carry out their duties under the Regulation XXX.

5. Where a competent authority concludes that activities contrary to the provisions of this Directive are being 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.
6. A competent authority of one Member State may also request that an investigation be carried out by the competent authority of another Member State on the latter's territory.

It may further request that some of its own personnel be allowed to accompany the personnel of the competent authority of that other Member State in the course of the investigation. The investigation shall be subject throughout to the overall control of the Member State on whose territory it is conducted.

The competent authorities may refuse to act on a request for an investigation to be carried out as provided for in the first subparagraph, 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 second subparagraph, where:

- (a) such an investigation might adversely affect the sovereignty, security or public order of the requested Member State or breach national security rules; or
 - (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; or
 - (c) final judgment has already been passed in respect of the same actions on such persons by the competent authorities of the requested Member State.
7. The Commission may adopt implementing acts (containing detailed rules on) concerning procedures for the exchange of information and the modalities for cross-border investigations provided for in paragraphs 2 and 4 of this Article. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).

CHAPTER IX
APPOINTMENT AND DISMISSAL

Article 37

Appointment of statutory auditors or audit firms

1. The statutory auditor or audit firm shall be appointed by the general meeting of shareholders or members of the audited entity.
2. The Member States may allow alternative systems or modalities for the appointment of the statutory auditor or audit firm, provided that those systems or modalities are designed to ensure the independence of the statutory auditor or audit firm from the executive members of the administrative body or from the managerial body of the audited entity.
3. Any contractual clause entered into between the audited entity, its members or any person on its behalf and a third party restricting the choice by the general meeting of shareholders or members of that entity pursuant to paragraph 1 to certain categories or lists of statutory auditors or audit firms regarding the appointment of a particular statutory auditor or audit firm to carry out the statutory audit of that entity shall have no legal effect.

Article 38

Dismissal and resignation of statutory auditors or audit firms

1. Member States shall ensure that statutory auditors or audit firms may be dismissed only where there are proper grounds. Divergence of opinions on accounting treatments or audit procedures shall not be proper grounds for dismissal.
2. Member States shall ensure that the audited entity and the statutory auditor or audit firm inform the authority or authorities responsible for public oversight 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 therefore.

3. Shareholders, which represent 5% or more of the voting rights or the share capital, the other bodies of the audited entities when defined by national legislation, or the competent authorities referred to in Article 32 of this Directive or designated in accordance with Article 35(1) or, when provided by national law, to Article 35(2), of Regulation XXX 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 38a

Audit Committee

1. Member States shall ensure that each public-interest entity shall have an audit committee as required at Article 31 of Regulation XXX. The audit committee shall be either a stand-alone committee or a committee of the administrative body or supervisory body of the audited entity. The audit committee shall be composed of non-executive members of the administrative body and/or members of the supervisory body of the audited entity and/or members appointed by the general meeting of shareholders of the audited entity or, for entities without shareholders, by an equivalent body.

At least one member of the audit committee shall have competence in accounting and/or auditing.

The committee members as a whole shall have competence relevant to the sector in which the audited entity is operating.

A majority of the members of the audit committee shall be independent of the audited entity. The chairman of the audit committee shall be appointed by its members or by the supervisory body of the audited entity and shall be independent of the audited entity.

1A. *[deleted]*

1B. *[deleted]*

2. By derogation from paragraph 1, Member States may decide that in the case of public-interest entities which meet the criteria set out in points (f) and (t) of Article 2(1) of Directive 2003/71/EC of the European Parliament and of the Council, the functions assigned to the audit committee may be performed by the administrative or supervisory body as a whole, provided that where the chairman of such a body is an executive member, he or she shall not act as chairman whilst such body is performing the functions of the audit committee

Where an audit committee forms part of the administrative body or the supervisory body of the audited entity in accordance with paragraph 1 Member States may permit or require that the administrative body or the supervisory body as appropriate performs the functions of the audit committee for the purpose of the obligations set out in this directive and in Regulation XXX.

3. By derogation from paragraph 1, Member States may decide that the following public-interest entities are not required to have an audit committee:
 - (a) any public-interest entity which is a subsidiary undertaking within the meaning of Article 2 of Directive 2013/34/EU if the entity complies with the requirements in paragraphs 1, 2 and 6 of this Article, subparagraph 2 of Article 24 and paragraph 5 of Article 32 and of the Regulation XXX at group level;
 - (b) any public-interest entity which is an undertaking for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC or an alternative investment fund (AIF) as defined in Article 4(1)(a) of Directive 2011/61/EU;
 - (c) any public-interest entity the sole business of which is to act as issuer of asset backed securities as defined in Article 2(5) of Commission Regulation (EC) No 809/2004;

(d) any credit institution within the meaning of Article 1(1) of Directive 2006/48/EC whose shares are not admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC and which has, in a continuous or repeated manner, issued only debt securities admitted to trading in a regulated market, provided that the total nominal amount of all such debt securities remains below EUR 100 000 000 and that it has not published a prospectus under Directive 2003/71/EC.

4. By derogation from paragraph 1, Member States may decide or allow a public-interest entity not to have an audit committee provided that it has a body or bodies performing equivalent functions to an audit committee, established and functioning according to provisions in place in the Member State in which the entity to be audited is registered. In such a case the entity shall disclose which body carries out those functions and how that body is composed.

4a. Where all members of the audit committee are members of the supervisory body of the audited entity, the Member State may provide that the audit committee is exempted from the independence requirements of paragraph 1, subparagraph 4.

5. *[deleted]*

6. Without prejudice to the responsibility of the members of the administrative, management or supervisory bodies, or of other members who are appointed by the general meeting of shareholders of the audited entity, the audit committee shall, *inter alia*:

(aa) inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit and explain how the statutory audit contributed to the integrity of financial reporting and what its role was in this process;

(a) monitor the financial reporting process and submit recommendations or proposals to ensure its integrity;

(b) monitor the effectiveness of the undertaking's internal control and risk management systems and, where applicable, internal audit, affecting the financial reporting of the audited entity;

- (c) monitor the statutory audit of the annual and consolidated financial statements ~~and monitor the completeness and integrity of the draft reports in accordance with Articles 22 to 23 of Regulation XXX;~~
- (d) review and monitor the independence of the statutory auditors or audit firms in accordance with Articles 22, 22c, 22d, 24a and 24b, and Article 11 of Regulation XXX, and in particular the appropriateness of the provision of additional services to the audited entity in accordance with Article 10 of Regulation XXX;
- (e) be responsible for the procedure for the selection of statutory auditor(s) or audit firm(s) and recommend the statutory auditor(s) or audit firm(s) to be appointed in accordance with Article 32 of Regulation XXX. ~~Where the audited entity has a nomination committee where shareholders have a considerable influence and which has the task of making recommendations on the selecting of auditors, the audit committee shall be consulted by the nomination committee as regards said selection. except when provision of Article 32(10) of Regulation XXX is applied.~~

CHAPTER Xa

SPECIAL PROVISIONS FOR THE STATUTORY AUDIT OF SMALL AND MEDIUM-SIZED UNDERTAKINGS

Article 43a

Medium-sized undertakings [deleted]

Article 43b

Small undertakings [deleted]

CHAPTER XI

INTERNATIONAL ASPECTS

Article 44

Approval of auditors from third countries

1. Subject to reciprocity, the competent authorities of a Member State may approve a third-country auditor as statutory auditor if that person has furnished proof that he or she complies with requirements equivalent to those laid down in Articles 4 and 6 to 13.
2. The competent authorities of a Member State shall, before granting approval to a third-country auditor who meets the requirements of paragraph 1, apply the requirements laid down in Article 14.

Article 45

Registration and oversight of third-country auditors and audit entities

1. The competent authorities of a Member State shall, in accordance with Article 15, 16 and 17, register every third-country auditor and audit entity, where that third country auditor or audit entity provides an audit report concerning the annual or consolidated financial statements of a company incorporated outside the Union whose transferable securities are admitted to trading on a regulated market of that Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC, except when the company is an issuer exclusively of outstanding debt securities for which one of the following applies:
 - (i) they are admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(b) of Directive 2004/109/EC of the European Parliament and of the Council(*) prior to 31 December 2010 the denomination per unit of which is at least EUR 50 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 50 000;

- (ii) they are admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(b) of Directive 2004/109/EC from 31 December 2010 the denomination per unit of which is at least EUR 100 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 100 000.

2. Articles 18 and 19 shall apply.
3. Member States shall subject third-country auditors and audit entities, registered in accordance with this Article, to their systems of oversight, their quality assurance systems and their systems of investigation and penalties. A Member State may exempt a registered third-country auditor or audit entity from being subject to its quality assurance system if another Member State's or third country's system of quality assurance that has been assessed as equivalent in accordance with Article 46 has carried out a quality review of the third-country auditor or audit entity concerned during the previous three years.
4. Without prejudice to Article 46, audit reports concerning annual financial statements or consolidated financial statements referred to in paragraph 1 of this Article issued by third-country auditors or audit entities that are not registered in the Member State shall have no legal effect in that Member State.
5. A Member State may register a third-country audit entity only if:
 - (a) *deleted*
 - (b) the majority of the members of the administrative or management body of the third-country audit entity meet requirements which are equivalent to those laid down in Articles 4 and 6 to 10;
 - (c) the third-country auditor carrying out the audit on behalf of the third-country audit entity meets requirements which are equivalent to those laid down in Articles 4 and 6 to 10;

- (d) the audits of the annual or consolidated financial statements referred to in paragraph 1 are carried out in accordance with international auditing standards as referred to in Article 26, as well as the requirements laid down in Articles 22, 22d and 25, or with equivalent standards and requirements;
- (e) it publishes on its website an annual transparency report which includes the information referred to in Article 27 of Regulation [XXX] of [XXX] or it complies with equivalent disclosure requirements.

5a. A Member State may register a third-country auditor, only if he or she meets the requirements set out in points 5(c), (d) and (e) of this Article.

5b. *[deleted]*

6. In order to ensure the uniform conditions of application of paragraph 5(d) of this Article, the Commission shall be empowered to decide upon the equivalence referred to therein by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Member States may assess the equivalence referred to in paragraph 5(d) of this Article as long as the Commission has not taken any such decision.

The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of establishing the general equivalence criteria to be used when assessing whether the audits of the financial statements referred to in paragraph 1 of this Article are carried out in accordance with international auditing standards as referred to in Article 26 and the requirements laid down in Articles 22, 22d and 25. Such criteria which are applicable to all third countries shall be used by Member States when assessing equivalence at national level.

Article 46

Derogation in the case of equivalence

1. Member States may disapply or modify the requirements in Article 45(1) and (3) on the basis of reciprocity only if the third-country auditors or audit entities are subject to systems of public oversight, quality assurance and investigations and penalties in the third country that meet requirements equivalent to those of Articles 29, 30 and 32.
2. In order to ensure uniform conditions of application of paragraph 1 of this Article, the Commission shall be empowered to decide upon the equivalence referred to therein by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Once the Commission has recognized the equivalence referred to in paragraph 1 of this Article, Member States may decide to rely on such equivalence partially or entirely and thus to disapply or modify the requirements in Article 45(1) and (3) partially or entirely. Member States may assess the equivalence referred to in paragraph 1 of this Article or rely on the assessments carried out by other Member States as long as the Commission has not taken such a decision. If the Commission decides that the requirement of equivalence referred to in paragraph 1 of this Article is not complied with, it may allow the auditors and audit entities concerned to continue their audit activities in accordance with the requirements of the relevant Member State during an appropriate transitional period.

The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of establishing the general equivalence criteria, based on the requirements laid down in Articles 29, 30 and 32, which shall be used when assessing whether the public oversight, quality assurance, investigation and penalties systems of a third country are equivalent to those of the Union. Such general criteria shall be used by Member States when assessing equivalence at national level in the absence of a Commission decision in respect of the third country concerned.

3. Member States shall communicate to the Commission:
 - (a) their assessments of the equivalence referred to in paragraph 2; and
 - (b) the main elements of their cooperative arrangements with third-country systems of public oversight, quality assurance and investigations and penalties, on the basis of paragraph 1.

Article 47

Cooperation with competent authorities from third countries

1. Member States may allow the transfer to the competent authorities of a third country of audit working papers or other documents held by statutory auditors or audit firms approved by them, and inspection or investigations reports related to the audits in question provided that:
 - (a) those audit working papers or other documents relate to audits of companies which have issued securities in that third country or which form part of a group issuing statutory consolidated financial statements in that third country;
 - (b) the transfer takes place via the home competent authorities to the competent authorities of that third country and at their request;
 - (c) the competent authorities of the third country concerned meet requirements which have been declared adequate in accordance with paragraph 3;
 - (d) there are working arrangements on the basis of reciprocity agreed between the competent authorities concerned;
 - (e) the transfer of personal data to the third country is in accordance with Chapter IV of Directive 95/46/EC.

2. The working arrangements referred to in paragraph 1(d) shall ensure that:
- (a) justification as to the purpose of the request for audit working papers and other documents is provided by the competent authorities;
 - (b) the persons employed or formerly employed by the competent authorities of the third country that receive the information are subject to obligations of professional secrecy;
 - (c) the competent authorities of the third country may use audit working papers and other documents only for the exercise of their functions of public oversight, quality assurance and investigations that meet requirements equivalent to those of Articles 29, 30 and 32;
 - (d) the request from a competent authority of a third country for audit working papers or other documents held by a statutory auditor or audit firm can be refused:
 - where the provision of those working papers or documents would adversely affect the sovereignty, security or public order of the Community or of the requested Member State, or
 - where judicial proceedings have already been initiated in respect of the same actions and against the same statutory auditors or audit firms before the authorities of the requested Member State, or
 - final judgment has already been passed in respect of the same actions and on the same statutory auditors or audit firms by the competent authorities of the requested Member State.
 -
 - (da) the protection of the commercial interests of the audited entity, including its industrial and intellectual property is not undermined.

3. In order to facilitate cooperation, the Commission shall be empowered to decide upon the adequacy referred to in paragraph 1(c) of this Article by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Member States shall take the measures necessary to comply with the Commission's Decision.

The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of establishing the general adequacy criteria in accordance with which the Commission shall assess whether the competent authorities of third countries may be recognized as adequate to cooperate with the competent authorities of Member States on the exchange of audit working papers or other documents held by statutory auditors and audit firms. The general adequacy criteria shall be based on the requirements of Article 36 or essentially equivalent functional results to a direct exchange of audit working papers or other documents held by statutory auditors or audit firms.

4. In exceptional cases and by way of derogation from paragraph 1, Member States may allow statutory auditors and audit firms approved by them to transfer audit working papers and other documents directly to the competent authorities of a third country, provided that:
- (a) investigations have been initiated by the competent authorities in that third country;
 - (b) the transfer does not conflict with the obligations with which statutory auditors and audit firms are required to comply in relation to the transfer of audit working papers and other documents to their home competent authority;
 - (c) there are working arrangements with the competent authorities of that third country that allow the competent authorities in the Member State reciprocal direct access to audit working papers and other documents of that third-country's audit entities;
 - (d) the requesting competent authority of the third country informs in advance the home competent authority of the statutory auditor or audit firm of each direct request for information, indicating the reasons therefore;

(e) the conditions referred to in paragraph 2 are respected.

5. *[deleted]*

6. Member States shall communicate to the Commission the working arrangements referred to in paragraphs 1 and 4.

CHAPTER XII TRANSITIONAL AND FINAL PROVISIONS

Article 48

Committee procedure

1. The Commission shall be assisted by a committee (hereinafter referred to as the Committee). That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council(*).

(*) OJ L55, 28.2.2011, p.13.

2. Where reference is made to this paragraph, Article 5 of Regulation (EU) No 182/2011 shall apply.

3. By 31 December 2010 and, thereafter, at least every three years, the Commission shall review the provisions concerning its implementing powers and present a report to the European Parliament and to the Council on the functioning of those powers. The report shall examine, in particular, the need for the Commission to propose amendments to this Directive in order to ensure the appropriate scope of the implementing powers conferred on the Commission. The conclusion as to whether or not an amendment is necessary shall be accompanied by a detailed statement of reasons. If necessary, the report shall be accompanied by a legislative proposal to amend the provisions conferring implementing powers on the Commission.

Article 48a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles ~~26(2a)~~, 45(6), 46(2) and 47(3) shall be conferred on the Commission for a period of 5 years from [date of entry into force of this Directive]. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5 year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles ~~26(2a)~~, 45(6), 46(2) and 47(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles ~~26(2a)~~, 45(6), 46(2) and 47(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 49

Exchange of Information (transferred from Article 48 of Regulation)

[deleted]

Article 49a

Amendment of Directive 78/660/EEC and Directive 83/349/EEC

[deleted]

Article 50

Repeal of Directive 84/253/EEC

Directive 84/253/EEC shall be repealed with effect from 29 June 2006. References to the repealed Directive shall be construed as references to this Directive.

Article 51

Transitional provision

Statutory auditors or audit firms that are approved by the competent authorities of the Member States in accordance with Directive 84/253/EEC before the entry into force of the provisions referred to in Article 53(1) shall be considered as having been approved in accordance with this Directive.

Article 51a

Transitional provision

Statutory auditors or audit firms that are approved by the competent authorities of the Member States in accordance with Directive 2006/43/EC before the entry into force of the provisions referred to in Article 53(1) shall be considered as having been approved in accordance with this Directive as amended by those provisions.

Article 52

Minimum harmonisation

Member States requiring statutory audit may impose more stringent requirements, unless otherwise provided for by this Directive.

Article 53

Transposition

1. Before [2 years after the entry into force of this Directive amending Directive 2006/43/EC] Member States shall adopt and publish the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.
2. When Member States adopt those provisions they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. The methods of making such reference shall be laid down by Member States.
3. Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 54

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

Article 55

Addressees

This Directive is addressed to the Member States.

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 Committee⁶,

After consulting the European Data Protection Supervisor⁷,

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.

⁶ OJ C , , p. .

⁷ Date of the opinion of the EDPS

- (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 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 institutions⁸, Article 1(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings⁹, 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/EC¹⁰, 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/EC¹¹, 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)¹², 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/EC¹³, 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 1095/2010¹⁴. 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

⁸ OJ L 372, 31.12.1986, p. 1.

⁹ OJ L 374, 31.12.1991, p. 7.

¹⁰ OJ L 390, 31.12.2004, p. 38.

¹¹ OJ L 319, 5.12.2007, p. 1.

¹² OJ L 302, 17.11.2009, p. 32.

¹³ OJ L 267, 10.10.2009, p. 7.

¹⁴ OJ L 174, 1.7.2011, p.1.

Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC¹⁵ 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 Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC¹⁶ 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/EEC¹⁷.
- (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 Crisis¹⁸, 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.

¹⁵ OJ L 145, 30.4.2004, p. 1.

¹⁶ OJ L 182, 29.6.2013, p. 19

¹⁷ OJ L 157, 9.6.2006, p.87.

¹⁸ COM(2010)561 final.

- (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.
- (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) *[deleted]*
- (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 data¹⁹ 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]*

(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) *[deleted]*

¹⁹ OJ L 281, 23.11.1995, p. 31.

- (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 administrative or supervisory body 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 financing²⁰.

²⁰ OJ L 309, 25.11.2005, p. 15.

(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 carrying out audits of public-interest entities is subject to a quality assurance review on the basis of an analysis of the risk in case of statutory auditors and audit firms carrying out statutory audits of public interest entities other than those defined in Article 2(17) and Article 2(18) of Directive 2006/43/EC at least every three years; and, in other cases at least every six years. The Commission Recommendation of 6 May 2008 on external quality assurance for statutory auditors and audit firms auditing public interest entities²¹ 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) *[deleted]*

(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) *[deleted]*

(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.

²¹ OJ L 120, 7.5.2008, p.20.

(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) *[deleted]*

(37) The scope of cooperation between the competent authorities of Member States should include cooperation with regard to quality 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) *[deleted]*

- (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) *[deleted]*
- (41) *[Transferred to Directive, recital 8a]*
- (42) *[Transferred to Directive, recital 8c]*
- (43) *[deleted]*
- (44) *[deleted]*
- (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.
- (45a) References to provisions of Directive 2006/43/EC should be understood as references to the [...] national provisions transposing those provisions of Directive 2006/43/EC. The new European audit framework replaces existing requirements laid down in Directive 2006/43/EC and should be interpreted without referring to any preceding instruments such as Commission recommendations adopted under the previous framework.

- (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 or certain provisions of it shall not apply to the statutory audit of such entity, provided that the principles of independence laid down in Directive 2006/43/EC are complied with by the statutory auditor when carrying out the statutory audit of one of its members and by persons who may be in a position to influence the statutory audit.

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 provisions to be a member of a non-profit-making auditing entity, 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, ~~its parent undertaking or its controlled undertakings~~, for a period of three or more consecutive financial years, services other than the ones referred to in Article 10(1), the ~~total~~ fees for such services shall be limited to no more than 70% of the average of the fees paid in the last three consecutive financial years by the audited entity for the statutory audit(s) ~~of the audited entity and, where applicable, of its parent undertaking, its controlled undertakings and of the consolidated financial statements of that group of undertakings.~~

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.

Member States may provide that a competent authority may, upon a request by the statutory auditor or audit firm, on an exceptional basis, allow that statutory auditor or audit firm to be exempted from the requirements in subparagraph 1 for a period of no more than two financial years.

3. When the total fees received from a public-interest entity in each of the last three consecutive financial years are more than 15% of the of the total fees received by the statutory auditor or audit firm or, when applicable, group auditor carrying out the statutory audit in each such financial year, 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.

Where the fees received from such public-interest entity continue to exceed 15% of the total fee income of such audit firm, 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 period between the beginning of the period audited and the issuing of the audit report;
 - (ii) the financial year immediately preceding the period audited in relation to the services listed at subparagraph (g); 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 or audit firm in respect of such services is required by law ~~and has been approved by the competent authority referred to in Article 35(1),~~
 - (v) support regarding tax inspections and inquiries by tax authorities unless support from the statutory auditor or audit firm in respect of such inspections and enquiries is required by law ~~and has been approved by the competent authority referred to in Article 35(1);~~
- (b) calculation of direct and indirect tax and deferred tax;
- (c) provision of tax advice where the effectiveness of the tax 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 or,
 - (vi) creating supply chain efficiency.
 - (vii) *[deleted]*
- (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 of 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 stricter 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 any of the 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. *[deleted]*

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, in addition to the provisions of Article 22d of Directive 2006/43/EC, the following:
 - whether he, she or it complies with the requirements of 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, administrative body and 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) *[deleted]*
 - (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
Irregularities

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 may occur or have occurred, 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.

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 control 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) *[deleted]*(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 which 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.
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.

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 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 of the statutory auditor(s) or audit firm(s)
- (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 [...] a way that would indicate or suggest endorsement or approval by that authority of the audit report.
8. *[deleted]*
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 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. Member States may allow the audit committee to provide this report to such third parties as provided in national law.

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 the declaration of independence referred to in the paragraph 1A of Article 11;
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;

- (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 the other statutory auditor or audit firm and / or the external expert regarding their independence;
- (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) report 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;
- (h) report [...]any significant matters involving [...] actual or suspected non-compliance with laws and regulations or articles of association which were [...] identified during the course of the audit;
- (i) report and 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) where stocktakes or physical verifications have taken place, report 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 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 identify any audit work ~~is~~ performed by third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) in relation to a statutory audit of consolidated financial statements other than by members of the same network as the auditor of the consolidated financial statements;

(n) indicate whether all requested explanations and documents were provided by the audited entity.

(na) *[deleted]*

(nb) report:

(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 by 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, administrative body or where applicable supervisory body of the audited entity.

3. Where 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]

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 Council²², 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 Council²³, 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 or, 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.

²² OJ L 177, 30.6.2006, p.1.

²³ OJ L 335, 17.12.2009, p.1.

Member States may require additional information from the statutory auditor or audit firm provided it is necessary for effective financial market supervision.

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.

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.

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]

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 shall 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 is a member of 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 that is a member of the network;

- (iii) the country(ies) in which each statutory auditor who operates as sole practitioner or audit firm that is a member of 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 that are members of 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 the audit firm;
- (j) a description of the statutory auditor or audit firm's policy concerning the rotation of key audit partners and staff in accordance with Article 33(4);
- (k) *[deleted]*
- (l) information about the statutory auditor or audit firm's total turnover divided into, if this information is not disclosed in its financial statement within the meaning of Article 4(2) of Directive 2013/34/EC:
 - (i) revenues 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) revenues from the statutory audit of annual and consolidated financial statements of other entities;
 - (iii) revenues from permitted non-audit services to entities that are audited by the statutory auditor or audit firm, and;
 - (iv) revenues from non-audit services to other entities.

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:

- (i) revenues for statutory audit;
- (ii) revenues for other services referred in Article 9 which are required by national law and Union legislation; and,
- (iii) revenues for other services referred to in Article 9 which are not required by national law and Union legislation.

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 Member States 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. *[deleted]*

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 body 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 attention 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 body~~ to the general meeting of shareholders or members of the audited entity for the appointment of statutory auditors or audit firms shall include the recommendation and preference referred to in paragraph 2 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 the supervisory body.

- 6. *[deleted]*

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.
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. Where the audited entity has a nomination committee where shareholders have a considerable influence and which has the task of making recommendations on the selecting of auditors, Member State may allow a nomination committee to perform the functions of the audit committee that are laid down in this Article and require to submit the recommendation referred to in paragraph 2 to the general meeting of shareholders.

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 initial engagement of a particular statutory auditor or audit firm, nor this in combination with any renewed engagements therewith shall exceed a maximum duration of ten years.

- 1A By way of derogation from paragraph 1 Member States may
- (a) require that the initial engagement referred to in paragraph 1 be for a period longer than one year;
 - (b) *[deleted]*
 - (c) set a maximum duration of less than ten years for the engagements referred to in the second subparagraph of paragraph 1.
2. After the expiry of the durations of engagements referred to in the second subparagraph of paragraph 1 or 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:
- (a) a public tendering process for the statutory audit is conducted in accordance with paragraphs 2 to 6 of Article 32; or
 - (b) throughout a given period which has reached the relevant maximum duration, more than one auditor or audit firm has been simultaneously engaged 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:
 - (i) fifteen ~~xx~~ 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;
 - (ii) twenty ~~xx~~ 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;

- (iii) ~~twenty~~ ~~xx~~ 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 either the conditions in points (a) or (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.

Member States may require that the key audit partner(s) responsible for carrying out a statutory audit shall cease his, her or their participation in the audit engagement earlier than seven years from the date of their appointment.

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.

5. For the purposes of this Article, the duration of the audit engagement shall be calculated as from the date of the first financial year covered in the audit engagement letter in which the statutory audit or audit firm has been appointed for the first time for the carrying-out of consecutive statutory audits for the same public-interest entity.

For the purposes of this Article, the audit firm shall include other firms that the audit firm has acquired or that have merged with it.

If there is uncertainty as to the date the audit firm began carrying out consecutive statutory audits for the public-interest entity, such as due to firm mergers, acquisitions, or changes in ownership structure, the auditor should immediately report such uncertainties to the competent authority, who will ultimately determine the relevant date for the purposes of the first subparagraph.

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.

Article 34

Dismissal and resignation of the statutory auditors or audit firms

Without prejudice to Article 38(1) of Directive 2006/43/EC 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 the information concerning the dismissal or resignation of the statutory auditor or audit firm during the term of appointment and adequate explanation of the reasons thereof 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) *[deleted]*
 - (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) *[deleted]*
 - (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. *[deleted]*

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 responsible for the decision making of those authorities if during his or her involvement or in the course of the three previous years he or she:

- (a) has carried out statutory audits;
- (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.

Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the laws, regulations or administrative procedures of a Member State.

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, at least include to:
 - (a) access 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 ;
 - (b) obtain information related to the statutory audit from any person;
 - (c) carry out on-site inspections of statutory auditors or audit firms;
 - (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.

- 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) *[deleted]*;
 - (d) by application to the competent judicial authorities.
- 4. The supervisory and investigatory powers of competent authorities shall be exercised in full compliance with the national laws 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 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(ies) referred to in Article 35(1) may delegate any of the 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 to:
 - (i) ~~the operation of~~ the quality assurance system referred in Article 40;
 - (ii) investigations referred in Article 38 of this Regulation and 32 of the Directive 2006/43/EC arising out of that quality assurance system or from a referral by another authority; and
 - (iii) the imposition of penalties, including sanctions and measures, referred in Chapter VII of the Directive 2006/43/EC related to the quality assurance inspections or investigation of statutory audits of public interest entities.
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.

Where the competent authority delegates tasks to other authorities or bodies, it shall be able to reclaim these competences on a case-by-case basis.
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.

4. By derogation from paragraph 1, Member States may decide to delegate the tasks referred to in point (iii) of paragraph 1 to another authority or body, when:
- (i) the competent authority is authorised to issue the rules governing the other authority or body
 - (ii) the competent authority is authorised to appoint the members of the other authority or body, and
 - (iii) that authority or body is independent from the audit profession.

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 inspections of statutory auditors and audit firms that carry out statutory audits of public-interest entities on the basis of an analysis of the risk and

- (i) in case of statutory auditors and audit firms carrying out statutory audits of public interest entities other than those defined in Article 2(17) and Article 2(18) of Directive 2006/43/EC at least every three years; and,

(ii) in other cases at least every six years.

3. The competent authority shall organize the quality assurance system in a manner that is independent of the reviewed statutory auditors and audit firms.

The competent authority shall have the following responsibilities:

- (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 a statutory auditor or audit firm until at least three 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 with that statutory auditor or audit firm;
- (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 at least 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 9 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.

In addition to the inspection covered by the first subparagraph, the competent authority shall have the power to perform other inspections.

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 recommendations and 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, and one Member appointed by the European Securities and Market Authority, hereinafter referred to as ‘Members’.
- 2aa. ~~The European Supervisory Authorities (European Banking Authority and European Insurance and Occupational Pensions Authority, European Securities and Market Authority)~~ shall be invited to attend the meetings of CEAOB as observers.
- 2a The CEAOB shall meet at regular intervals and, where necessary, at the request of the Commission or a Member State.

3. Each member of the CEAOB shall have one vote, except a member appointed by ESMA, who shall not have voting rights. 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 as well as to the Competent authorities, at their request, on 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) *[deleted]*

(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.;

5b. For the purpose of carrying out tasks, referred in paragraph 5a (c), the CEAOB ~~may~~ **shall** request the assistance from the ESMA, EBA or EIOPA insofar as this request is related to the international cooperation between Member States and third countries in the field of statutory audit of public interest entities supervised by these European Supervisory Authorities. In case such assistance is requested, the ESMA, EBA or EIOPA shall assist the CEAOB in this task.

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. *[deleted]*

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 authorities 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. *[deleted]*
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 in the first subparagraph of paragraph 5, 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 or in the second subparagraph of paragraph 5, 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) and Article 30 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 CEAOB 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, CEAOB 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 cooperation among competent authorities

1. The obligation of professional secrecy shall apply to all persons who work or who have worked for bodies involved in cooperation framework between competent authorities, referred to in Articles 46. Information covered by professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings or required as a matter of law.

2. Article 37 shall not prevent bodies involved in a cooperation framework between competent authorities, referred to in Articles 46, 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 bodies involved in a cooperation framework between competent authorities, referred to in Articles 46, and 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 CEAOB 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 56a

International relations

[deleted]

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 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

[deleted]

TITLE V

ADMINISTRATIVE SANCTIONS AND MEASURES

Article 61

Administrative sanctions and measures

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

Article 62

Sanctioning powers

[transferred to Directive, Article 30B]

Article 63

Effective application of sanctions

[transferred to Directive, Article 30C]

Article 64

Publication of sanctions and measures

[transferred to Directive, Article 30D]

Article 65

Appeal

[transferred to Directive, Article 30E]

Article 66

Reporting of breaches

[transferred to Directive, Article 30F]

Article 67

Exchange of information with [ESMA]

[transferred to Directive, Article 30G]

TITLE VI

REPORTING AND TRANSITIONAL AND FINAL PROVISIONS

Article 68

Exercise of the delegation

[deleted]

Article 69

Review

1. The Commission shall review and report on the operations and effectiveness of the system of cooperation between competent authorities within the framework of the CEAOB, referred in the Article 46, in particular as regards the performance of the CEAOB tasks defined in the paragraph 5a.
2. The review shall take into account international developments, in particular with regard to strengthening the cooperation in the field of international cooperation with the competent authorities of the third countries and contributing to the improvement of cooperation mechanisms for the oversight of statutory auditors of public interest entities belonging to the international audit networks. It shall be completed by XX XXX 201X *[5 years after this Regulation will come in force]*.
3. The report shall be submitted to the European Parliament and to the Council, together with a legislative proposal, if appropriate. That report shall consider the progress in the field of cooperation between competent authorities within the framework of the CEAOB from the beginning of operation of this framework and propose further steps to enhance the effectiveness of the cooperation between Member States' competent authorities.
4. 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.

Article 70

Transitional provision

1. By derogation from Articles 32 and 33, the following requirements shall apply to statutory audit services being provided to public-interest entities which are in force at [date of entry into force of this Regulation]:
 - (a) statutory audit services that were provided before XX/XX/XXXX *[the date of adoption of the Commission proposal]* may continue to be provided for a maximum period of four accounting years after *[the date of entry into force of this Regulation]*;

- (b) statutory audit services commenced before XX/XX/XXXX [*the date of entry into force of this Regulation*] may continue to be provided for a maximum period of five accounting years after XX/XX/XXXX [*the date of entry into force of this Regulation*];
- (c) upon the expiry of the maximum periods referred to in points (a) or (b) of this paragraph, the public-interest entity may engage the same audit statutory auditor or audit firm to provide statutory audit services, without the provisions of Article 32(3) being applicable. Such renewed engagement(s) shall be subject to the following maximum durations:
 - (i) *[deleted]*
 - (ii) *[deleted]*
 - (iv) 3 years: if the auditor has been providing statutory audit services to the audited entity for a consecutive period exceeding 20 years;
 - (v) 4 years: if the auditor has been providing statutory audit services to the audited entity for a consecutive period between 11 and 20 years;
 - (vi) 5 years: if the auditor has been providing statutory audit services to the audited entity for a consecutive period not exceeding 10 years.

[deleted]

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 the maximum audit engagement period referred to in Article 33(3) and as consequence requires 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 engagement commenced 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 engagement after the expiry 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
The President

For the Council
The President

ANNEX

[Transferred to the Directive]

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