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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

- Suggestions by the CZ, DE, ES, AT, PL, SK, FI, SE and UK delegations

Delegations will find attached, in Annex I and II, suggestions on cooperation of national audit oversight bodies within Europe, forwarded by the CZ, DE, ES, AT, PL, SK, FI, SE and UK delegations and in Annex III background paper with contributions from CZ, DE, ES, AT, PL, SK, SE and UK delegations.

Cooperation of national audit oversight bodies within Europe
Proposals by Germany, United Kingdom, Spain, Austria, Slovakia,
Sweden, Czech Republic, Finland and Poland

We share the view that good co-ordination of supervision at European level is important. However, we would oppose the Commission's proposal insofar as this task shall be taken over by ESMA as a Securities and Markets Authority. ESMA should not be introduced as co-ordinator even if a separate body ("internal committee") within ESMA was established for this task. Securities and market oversight is fundamentally different from audit oversight.

In order to improve coordination we believe that the existing co-operation within the EGAOB may very well be improved and strengthened. The EGAOB is a well-functioning European Group of Auditors' Oversight Bodies. It could be placed on a new statutory basis and its task could be enhanced.

The idea to institutionalize an existing European Group is not a new idea: With its proposal for a General Data Protection Regulation the Commission itself proposed on 25. January 2012 (COM(2012) 11 final) to establish a European Data Protection Board. The Board shall replace the "Working Party on the Protection of Individuals with regard to the Processing of Personal Data" (so-called "Art. 29 - Committee"). This European Data Protection Board shall also contribute to the consistent application of the General Data Protection Regulation throughout the Union and should therefore also advise the Commission and promote cooperation of the national supervisory authorities. As to the Commission's proposal the Board should mainly consist of the heads of the supervisory authority of each Member State with the Commission having a right to participate in the activities and to be represented. The chairman of the Board should be elected from amongst the Board members and shall inter alia convene meetings and prepare the Board's agenda. The European Data Protection Board shall have a secretariat (provided by the European Data Protection Supervisor).

Adapting this model to the specific situation of auditors' oversight in Europe we suggest basing a new "EAOB +" on the following elements:

- The EAOB should be strengthened and should become the "**European Board of Auditors' Oversight Bodies**".
 - The European Board of Auditors' Oversight Bodies shall be set up by the prospective European legal act on statutory audits which is currently discussed.
 - The European Board of Auditors' Oversight Bodies would to be composed of the heads of the Member States supervisory authorities (as currently the EAOB). It would be chaired by one of its members. The day-to-day business of the Board would be handled by a secretariat that would be provided by the Chair's national supervisory authority (at least for a transitional period). Any decisions taken by the Board shall be taken by qualified majority of its members.
 - The European Board of Auditors' Oversight Bodies would receive a clear mandate by the European legislator in order to ensure the consistent application of the European law on statutory audits. Therefore, the Board would inter alia promote the co-operation between the supervisory authorities. The Board could take action on its own initiative and e.g. issue guidelines, recommendations and best practices addressed to the supervisory authorities. It would have the power to take formal (although non-binding) decisions. This is in line with the objective of the Commission's proposal for a Regulation on specific requirements regarding statutory audit of public-interest entities that also aims at supervisory convergence.
- Moreover, the Board could advise the Commission on issues related to the auditors' oversight. Thus, the Board would continue the EAOB's current work by providing technical input e.g. to the assessment of third countries' public oversight systems.

- If, in a cross-boarder case, one of its members requests a decision of the European Board of Auditors' Oversight Bodies and the other members concerned agree, the Board shall have to take over the case (e.g. with regard to quality assurance reviews). The Board's members may be bound by the Board's decisions on a voluntary basis.
 - The Commission would generally have the right to participate in the activities and meetings of the European Board of Auditors' Oversight Bodies. However, the Board would not be chaired by the Commission (in contrast to the EGAOB).
 - Vis-à-Vis third parties the Commission will continue to represent the European Union within its remits. It shall consult before hand with Member States and the (new) European Board of Auditors' Oversight Bodies when entering into negotiations with third parties. The Commission may delegate responsibilities to the European Board of Auditors' Oversight Bodies on a case-by-case basis.
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Cooperation of national audit oversight bodies within Europe
EXPLANATORY NOTE

During the last working group meetings most of the Member States have asked for an alternative model to ESMA, which is based on **EGAOB**.

Accordingly, we propose to **amend the existing text of Article 46 of the Draft Regulation and move it to the Directive as new Article x and xa** (as an example they could be **Article 47a and 47b of the Directive**).

- Firstly, Article 46 of the Draft Regulation needs to be moved to the Directive. It should be applicable to the oversight concerning all audit firms that means to PIE-auditors as well as to non-PIE-auditors.
- Secondly, the basic guideline is that EGAOB should be strengthened and should be developed further. It should become the new **“European Board of Auditors' Oversight Bodies (EBAOB)”**.
- Therefore, we propose to add several new paragraphs relating to the composition and structure of the future EBAOB. Our suggestions are based on the Commission Decision 2005/909/EC (establishing the EGAOB – “the EGAOB Decision”) (and slightly adapted to new tasks – this is generally in line with the Commission’s proposal). Moreover, the new legal regime is based on Articles 64 to 72 of the Proposal for a General Data Protection Regulation (COM(2012) 11 final). These Articles establish the new European Data Protection Board.

- From a technical point of view, in order to keep the new provision legible, we propose to split Article 46 of the Draft Regulation in two new Articles. One Article shall concern the composition and structure of the EBAOB (amending Article 46 para 1 of the Draft Regulation) and another Article shall particularly concern the tasks of the EBAOB (amending Article 46 para 2 to 5 of the Draft Regulation).
- There are further amendments to be made in the Commission's proposals referring to ESMA. The draft Articles empowering ESMA should be adapted (particularly in order to empower the EBAOB or the national competent authorities), amended in their content or deleted according to the discussion of the meeting on 6th March 2013.

In detail:

- A new Article x (NEW) should be introduced in the Directive. In para 1 subpara 1 of this Article the new Board should be set up. In general, this para of the Directive should be based on Article 46 para 1 of the Draft Regulation as it is proposed by the Commission.

However, instead of ESMA EBAOB should be empowered. For reasons of continuity the name of the new Board should only slightly differ from the current name of the European Group of Auditors' Oversight Bodies (EGAOB).

Accordingly, EBAOB will take over the tasks of EGAOB as created by Commission Decision 2005/909/EC (para 1 subpara 2). This decision could be repealed by the legislative act itself.

- Para 1 subpara 3 of Article x (NEW) of the Directive should deal with the composition of EBAOB and should correspond to Article 2 of the EGAOB-decision and Article 64 para 2 of the Proposal for a General Data Protection Regulation without losing sight of the specific situation of auditors' oversight in Europe.

- It should be made clear in para 2 of Article x (NEW) that EBAOB will be financed by Member States (by means of the competent authorities designated in accordance with Article 32 of the Directive and Article 35 of the current Draft Regulation). Meeting facilities shall be provided by the Commission or – alternatively – by the Chair’s national competent authority. On a voluntary basis, the meeting facilities may be provided also by other members of the EBAOB. The details may be regulated in the operational arrangements.
- Para 3 of Article x (NEW) would introduce a rule on decision-making. However, these decisions are not binding.
- Para 4 of Article x (NEW) should correspond to Article 69 and 70 of the Proposal for a General Data Protection Regulation on make clear who should chair EBAOB’s meetings and what tasks the chair should have.
- Para 5 of Article x (NEW) on the importance and role of a secretariat corresponds to Article 71 of the Proposal of the General Data Protection Regulation. Hereby, it shall be made clear that the Commission within its remits will continue to represent the EU vis-à-vis third parties. As an alternative and in order to unburden the first chair of EBAOB, the chair providing the secretariat’s functions could be supported by the two deputy chairmen and their national competent authorities. The amendment of lit. f) shall clarify that the members of EBAOB will further contribute to the work of the organisation through the working groups, e.g. by preparing papers etc. thereby reducing the work of the secretariat.
- Based on the Article 68 para 2 of the Proposal for a General Data Protection Regulation the EBAOB shall have the possibility to install sub-groups (para 6 of Article x (NEW)).
- Para 6a introduces the standard rules on the internal language arrangements which are used for all European entities according to Regulation No 1 of 15 April 1958 (see for example Art. 33 of Regulation 713/2009 establishing an Agency for the Cooperation of Energy Regulators). This enables EBAOB to choose English as internal working language thereby reducing the translation costs, if applicable, to documents of general application.

- Para 7 of Article x (NEW) corresponds to Article 64 (4) of the Proposal for a General Data Protection Regulation and gives the Commission the right to participate in EBOAB activities and meetings. Para 8 deals with confidentiality issues; the EBOAB should be able to safeguard confidentiality.
 - Para 1, 2 and 3 of Article xa (NEW) define the tasks of EBOAB and are based on Article 2 (2) of the EGAOB-decision and Article 46 of the Commission's draft Regulation.
 - Para 4 of Article xa (NEW) is based on Article 67 (1) of the Proposal for a General Data Protection Regulation and requires EBOAB to publish an annual report. There is no need for a more detailed reporting as proposed by Article 46 (4) and (5) of the draft Regulation.
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Articles x and xa (NEW) of the Directive

Article x (NEW)

1. A European Board of Auditors' Oversight Bodies is hereby set up (hereinafter referred to as EBAOB).

The cooperation between competent authorities shall be organised within the framework of EBAOB. EBAOB shall take over, as appropriate, all existing and ongoing tasks from the European Group of Audit Oversight Bodies (EGAOB) created by Commission Decision 2005/909/EC of 14 December 2005 setting up a group of experts to advise the Commission and to facilitate cooperation between public oversight systems for statutory auditors and audit firms. Decision 2005/909/EC is hereby repealed.

EBAOB shall be composed of high level representatives from the competent authorities designated by Member States in accordance with Article 32 of this Directive and Article 35 (1) of Regulation (EU) No. xxx. Each Member State shall designate one representative, who is a non-practitioner.

2. The representatives shall not be paid for their duties; meeting expenses shall not be reimbursed. If the EBAOB so requests, the Commission shall provide meeting facilities for the Board and its sub-groups. *[Alternatives: New 2nd sentence: Meeting facilities for the Board and its sub-groups are provided by the national competent authorities of the chairman [or the vice-chairmen] or – on a voluntary basis – by other national competent authorities.]*
3. EBAOB shall take decisions on the basis of a qualified majority of its members.
4. EBAOB shall elect a chair and two deputy chairpersons from amongst its members. The term of office of the chair and of the deputy chairpersons shall be four years and be renewable.

The chair shall have the following tasks:

- (a) to convene the meetings of EBAOB and prepare its agenda considering contributions by the members of EBAOB;

(b) to ensure the timely fulfilment of the tasks of EBAOB.

5. EBAOB shall have a secretariat. The secretariat is to be provided by the national competent authority designated by the Member State that provides the chair of EBAOB if not otherwise agreed on by EBAOB. *[Alternative: The two deputy chairpersons and their national competent authorities support the chair in providing the secretariat's functions.]*

The secretariat shall provide analytical, administrative and logistical support to EBAOB under the direction of the chair. The secretariat shall be responsible in particular for:

- (a) the day-to-day business of EBAOB;
 - (b) the communication between the members of EBAOB, its chair and the Commission;
 - (c) without prejudice to Articles 45 (6), 46 (2) and 47 (3) of this Directive for communication with the public and institutions other than the Commission;
 - (d) the use of electronic means for the internal and external communication;
 - (e) the preparation and follow-up of the meetings of EBAOB and
 - (f) the preparation, drafting and publication of texts adopted by EBAOB insofar as not provided by the members of EBAOB or its sub-groups.
6. EBAOB shall organize its own operational arrangements and adopt its own rules of procedure. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of sub-groups for the examination of specific questions, the composition of such sub-groups and the involvement of experts.
- 6a. The provisions of Regulation No 1 of 15 April 1958 determining the languages to be used by the European Economic Community shall apply to EBAOB.

EBAOB shall decide on the internal language arrangements.

The translation services required for the functioning of EBAOB shall be provided by the Translation Centre for the Bodies of the European Union.

7. The Commission shall have the right to participate in the activities and meetings of EBAOB and shall therefore designate a representative, who shall be non-voting.
8. The discussions of EBOAB shall be confidential. Documents submitted to members of the Board, the Commission's representative and experts and representatives of third parties shall be confidential, unless access is granted to those documents in accordance with Regulation (EC) No 1049/2001 or EBAOB otherwise makes them public.

The members of EBAOB, the Commission's representative and experts and representatives of third parties shall be required to respect the confidentiality obligations. The chair shall ensure that experts and representatives of third parties are made aware of the confidentiality requirements imposed upon them.

9. EBAOB shall take up its task at the latest on xx.xx.201x [three months after the entry into force of this Directive].

Article xa (NEW)

1. EBAOB shall ensure the consistent application of this Directive and Regulation (EU) No. xxx. To this effect, it shall provide advice to the Commission and to the competent authorities designated by Member States in accordance with Article 32 of this Directive and Article 35 (1) of Regulation (EU) No. xxx. The advice shall be considered before any final decision is taken under this Directive or Regulation (EU) No. xxx.

The Commission and the competent authorities designated by Member States in accordance with Article 32 of this Directive and Article 35 (1) of Regulation (EU) No. xxx may consult EBAOB on any issue related to this Directive and Regulation (EU) No. xxx or to the preparation of implementing measures of this Directive by the Commission. Where a competent authority or the Commission requests advice from EBAOB, it may lay out a time limit within which EBOAB shall provide such advice, taking into account the urgency of the matter and as based on the rules of procedure of EBAOB.

2. EBAOB shall in particular:
- (a) facilitate cooperation between the competent authorities of Member States designated in accordance with Article 32 of this Directive and Article 35 (1) of Regulation (EU) No. xxx and to bring about an exchange of good practice concerning the establishment and ongoing cooperation of such systems;
 - (b) 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;
 - (c) contribute to the technical examination of international auditing standards, including the processes for their elaboration, with a view to their adoption at the community level and
 - (d) improve the cooperation mechanisms that will be put in place regarding PIEs auditors or the networks they belong to.
3. In order to facilitate the exercise of the tasks provided for in this Directive and Regulation (EU) No. xxx, EBAOB may issue guidelines as appropriate, on:
- (a) the content and presentation of the report referred to in Article 27 of Regulation (EU) No. xxx;
 - (b) for conducting quality assurance reviews provided for in Article 40 of Regulation (EU) No. xxx, taking into consideration in particular:
 - (i) the different scale and dimension of activity of statutory auditors and audit firms and policies and
 - (ii) the commonality of quality standards, policies and procedures to which members of networks of statutory auditors and audit firms adhere;
 - (c) conducting investigations provided for in Article 41 of Regulation (EU) No. xxx;
 - (d) procedures for the exchange of information provided for in Article 48 of Regulation (EU) No. xxx;

- (e) procedures and modalities for cooperation with regard to quality assurance reviews provided for in Article 49 of Regulation (EU) No. xxx;
- (f) procedures and modalities for joint investigations and inspections provided for in Article 51 of Regulation (EU) No. xxx and
- (g) the operational functioning of the colleges provided for in Article 53, including on the modalities for determining the membership to the colleges, the selection of facilitators, the written arrangements for the operation of the colleges and the coordination arrangements between colleges.

The Commission shall ensure the publication of the guidelines.

4. EBAOB shall publish an annual report. The report shall be made public and transmitted to the European Parliament, the Council and the Commission.

**EU-wide cooperation on auditor oversight within a European
Board of Auditors Oversight Bodies (EBAOB)**

Background Paper

The Presidency has asked for additional information with regard to the proposal on the cooperation of national oversight bodies within Europe which has been presented by CZ, DE, ES, AT, PL, SK, FI, SE and UK (Council document 8070/13)

I. Reasons for a cooperation within a (new) EBAOB

Member States suggesting an alternative model for cooperation of national audit oversight bodies within Europe support the idea of intensified coordination at EU level but oppose the involvement of ESMA. The existing cooperation within today's EGAOB should be placed on a statutory basis and should be developed further. The main reasons are:

- 1) The current cooperation within today's EGAOB has developed very positively over recent years. The EGAOB is also recognized on the international level, e.g. by the PCAOB.
- 2) In order to achieve better cooperation of audit oversight bodies within the EU, better coordination mechanisms are necessary, but no formal measures need to be taken at EU level. This is very different from any EU level measures which might be necessary with regard to the banking and financial sector. Therefore there is no need for a European centralised authority and (costly) double structures of public audit oversight on European and national levels.
- 3) ESMA's main task is the supervision in the field of securities. The coordination of supervision of auditors does not match this portfolio. In all Member States apart from three, public auditors' oversight bodies are not part of the financial oversight authorities but are organised independently from the securities authorities. . Most of the national authorities represented in ESMA have no experience or expertise in the area of auditors' oversight. Moreover, it is unclear, how ESMA is competent to consider the characteristics and special needs of the national audit markets. National audit markets differ in size, structure etc. Entrusting any oversight to ESMA would hinder a flexible approach that is responsive to the needs of the national markets.

- 4) The conferral of competences to ESMA in relation to PIE-auditors could have an impact on national oversight structures of those 24 Member States where the audit and financial markets are not supervised by the same national authority. The oversight and regulatory activity with regard to PIE-auditors could also be influenced by the financial markets supervisory authority via ESMA while non-PIE-auditors would be regulated only on a national level. This could cause costly double regulation, inconsistencies within the oversight systems and lack of coordination between the national oversight structures – with negative consequences on the audit firms and the whole audit market. In this regard, EBAOB is the better model how to organise cooperation of audit oversight bodies.
- 5) It remains unclear how the task of auditors’ oversight should be legally assigned to ESMA. Even if a special permanent internal committee on auditing was established it would be ESMA’s Board of Supervisors which remains with the power of veto. Even according to the compromise proposal of the Irish presidency (Doc. 9065/13), it is still the Board of Supervisors that has the overall final responsibility and thus would be in a position to (ultimately) decide on matters of auditors’ oversight. The Council Legal Service has confirmed this understanding in the Working Group. On the basis of the proposed Audit Regulation and the existing ESMA Regulation there is no legal possibility to make the “audit standing committee” totally independent of the Board of Supervisors of ESMA. This is in contrast with the need to develop the cooperation of audit oversight in a way which ensures that there is no conflict of interests and that there is no undue influence on the decision-making process that could damage the ultimate objective of enhancing audit quality.
- 6) Also the discussions within ESMA showed how complicated it is to accommodate audit supervision within ESMA structures, in particular concerning the decision-making powers but also concerning financing: Some Member States opposed new ESMA powers over the audit issues because of unclear financing, they did not understand why funding should be provided to the 60 % extent by securities regulators and not by national audit oversight bodies. Moreover, they argued that the new audit supervision within ESMA structure would set a wrong precedent for other areas of EU legislation as money laundering supervision, which are currently not within powers neither of ESMA nor of the securities regulators. Therefore, there are still many open issues relating to the distribution of decision-making powers, e.g. whether the securities regulators represented in the Board of Supervisors should approve the ESMA working programme in relation to the audit agenda.

- 7) We especially reject authorising ESMA to issue guidelines. The main rules should be laid down by EU legislation itself. There is no need for ESMA guidelines. Coordination of implementation in the sense of “best practices” may very well take place in the context of enhanced coordination via the EBAOB. Furthermore guidelines for example relating to the audit committee will have severe implications on national company laws, which fall under national competence.

Therefore, it is better to strengthen the existing structures of cooperation.

The idea to establish a European Group is not a new idea: The Commission itself has suggested a similar group in its proposal of 25. January 2012 for a General Data Protection Regulation (COM(2012) 11 final) which establishes a European Data Protection Board. This Board replaces the “Working Party on the Protection of Individuals with regard to the Processing of Personal Data” (so-called “Art. 29-Committee”).

We propose giving to the new EBAOB only those tasks necessary to ensure the consistent application of the Directive (and a possible Regulation) by issuing best practices, to facilitate cooperation, to contribute technical support and to give advice to Commission and competent authorities. In our view, this form of cooperation does not require binding decisions by a European body. Neither does it need a large administration because the members of the EBAOB would continue to contribute to the work of the organisation through working groups, e.g. by preparing papers etc. This is common practice already in the current EGAOB and other platforms like the European Audit Inspection Group (EAIG) or the Colleges of Regulators established by competent authorities in relation to EY ELLP and KPMG ELLP. A very small secretariat would be sufficient for these tasks. Consequently, the proposed structure as a Board without legal personality and with a secretariat to be provided by the Chair’s authority would be sufficient and, therefore, according to the principle of subsidiarity, preferable.

In summary, the EBAOB-proposal has the following advantages, amongst others:

- Any decision on audit oversight is taken by an independent board of representatives of national audit oversight bodies and not by the heads of national public authorities competent for the supervision of financial market participants forming the ESMA-Board of Supervisors;
- immediate use of staff who are both knowledgeable and experienced in auditing with relevant background for the relevant task;
- quick formation and operating ability;
- flexibility e.g. with regard to the number of staff required and the relevant background;
- use of the existing infrastructure of the Chairperson's organisation, i.e. no investment in a separate infrastructure required on short notice;
- cost effective solution as it requires less funding, funding is provided by the national audit oversight bodies and as there is no financial burden neither for the Commission nor for the securities regulators.

Overall, these factors lead to well-founded decisions by a board of competent and experienced representatives of national auditors' oversight bodies and, in addition, to synergy effects that require less staff and less resources for the same amount of work compared to a stand-alone secretariat or a "division" that would have to be established in another organisation with no current expertise in the field of audit oversight (cf. ESMA work programme 2013, p. 28, where audit is conferred to the "investment and reporting division" and to the existing standing committee "corporate reporting").

II. Chair and Secretariat / Funding

1. The EBAOB proposal

According to the proposal, the secretariat of the EBAOB shall initially be provided by the chair. Should these costs, in practice, prevent smaller Member States from applying for the position of the chair, the EBAOB may agree to organise the secretariat differently (as foreseen in the EBAOB proposal – Council document 8070/13). As the secretariat shall only provide support to the EBAOB its organisation should be up to the EBAOB itself. Moreover, it seems very important that the EBAOB could take up its work quickly after it is established. Thus, the very first secretariat should be financed by the chair's national authority or Member State in order to allow a smooth and effective start of operation.

2. Alternatives

In order to reduce the burden for the first Chair of the EBAOB there may be additional safeguards: For example, the chair providing the secretariat's functions could be supported by two deputy chairmen and their national competent authorities. This would reduce the work and costs born by the chairman's competent authority/Member State. Several (smaller) Member States could also share the work and costs. Accordingly, in a possible revised draft of Article X (5) para 1 of the proposal a new sentence could be added:

The two deputy chairpersons and their national competent authorities support the chair in providing the secretariat's functions.

Moreover, members of the EBAOB could further contribute to the work of the organisation through its working groups, e.g. by preparing papers etc. thereby reducing the workload for any secretariat. We could clarify that in a possible revised draft of Art. X para. 5 subpara 2 lit. f) as follows:

the preparation, drafting and publication of texts adopted by EBAOB insofar as not provided by the members of EBAOB or its sub-groups.

The details could be agreed on by EBAOB in its operational arrangements. Non-binding commitments of the members to support the chair could be agreed within the Council minutes or in new recitals of the EU legislation.

3. Budget

In total, this model strengthening the existing advisory group EGAOB and upgrading it to the EBAOB should be less costly than conferring competences to ESMA:

Meeting, travel, and translation costs will be less than in the ESMA model: Meeting facilities are provided by the Commission or by the national competent authority of the chairman and possibly the two vice-chairmen. On a voluntary basis meeting facilities may also be provided by other members of the EBAOB. The details will be established in the operational arrangements. There is no remuneration of travel expenses for official representatives either within EBAOB nor within ESMA.

The decision on the internal language arrangements could be delegated to EBAOB itself (see for example Art. 33 of Regulation 713/2009 establishing an Agency for the Cooperation of Energy Regulators, to be adopted in a possible revised draft); the EBAOB could choose **English** as working language and reduce translation costs, if applicable, to documents of general application. English as working language would be in line with the current practice of ESMA (see below).

The costs for staff and office depend mainly on the tasks and, consequently, the number of employees. As mentioned above, the EBAOB would get material input from the competent authorities of the Member States. Moreover, it will not issue guidelines to the extent set out in Article 46 of the draft Regulation. Therefore, EBAOB would need only a small secretariat with about 1 or 2 staff members. This secretariat would be provided and funded by the chairman's [Alternative: and the vice-chairmen's] national competent authority and entail an appropriate organisational and technical support. This would entail costs for the Chair of *at the maximum* EUR 200,000 per annum (including staff, office, organisational and technical support). In general, there would not be a need to build up a new and costly institution. Instead we would be using the existing resources of the EBAOB members which are already in charge of organising the cooperation of national audit oversight bodies within the current EGAOB and outside (e.g. EAIG and colleges). The EBAOB model would allow the reintegration of these forms of cooperation within its structure thereby using the existing expertise and knowledge, saving resources and preventing costly double structures within ESMA.

III. Drafting issues

Those Member States suggesting an alternative model are open to discuss the best way to set up and define the tasks of a new EBAOB. EBAOB is neither an agency nor has it legal personality.

Similar to the European Data Protection Group, which was set up by the current Data Protection Directive 95/46/EC, and as confirmed by the Council legal service during the working party meeting there is no need to set up the EBAOB in a Regulation and it should be possible to set up the EBAOB by a Directive. It would be essential that the EBAOB would be competent for PIE-audits *as well as* for non-PIE-audits. As the draft Regulation is restricted to PIE-audits an EBAOB might not be better set up in the Regulation. The draft Directive or draft Regulation establishing the EBAOB could at the same time repeal COM-Decision 2005/090/EC which established the EGAOB (this could be adopted in a possible revised draft).

As described above the tasks given to a new EBAOB are to ensure the consistent application by issuing best practices, to facilitate cooperation, to contribute technical support and to give advice to Commission and competent authorities. As there is no need for binding decisions or binding technical standards in the field of audit oversight there is no need for a new EBAOB to have legal personality.

IV. Comparison ESMA – EBAOB

Meeting, travel, and translation costs of EBAOB should be less or at most the same as within ESMA. English as working language is the current practice of ESMA: even if, in general, Council Regulation No. 1 shall apply to ESMA, according to Article 73 of the ESMA Regulation 1095/2010 the Management Board shall decide on ESMA's internal language.

Staff and facilities for a new audit standing committee and a new division within ESMA will entail higher costs to the EU and Member States. It is highly improbable that the staff resources of ESMA can be reallocated from other activities (as asserted in the Commission's Impact Assessment, p. 54) as there is no scope to reduce ESMA's tasks in respect of financial market supervision. As the tasks of ESMA are very broadly defined in Article 46 of the draft Regulation, it is very unlikely that only two staff members within ESMA would be sufficient to fulfil the tasks. In ESMA's work programme 2013 audit is mentioned as "high-priority field" and conferred to the "investment and reporting division" of ESMA. Under No. 24 it foresees preparatory work on technical standards on audit regulation in quarter 4 of 2013 with the aim of a "single Rulebook" (p. 28). Under No. 27 ESMA shall monitor European developments in Audit Oversight and ISA developments (IAASB) (p. 28). Under No. 50 audit coordination by the management is mentioned (p. 32). Moreover, the current structures of voluntary cooperation within EAIG and colleges would probably not be integrated within ESMA which would additionally increase costs by introducing costly double structures.

Therefore, it has to be expected that ESMA would need new and additional personnel that would have to be financed also by Member States. It would not be simply possible to transfer personnel needed in other areas who are already under high pressure. This is reflected in the fact currently ESMA recruits additional staff every year. According to its 2012's and its 2013's budget the number of staff increased from 75 to 121 persons within only one year. Moreover, there is still a long list of vacancies on ESMA's website. Moreover, it will be difficult to recruit personnel with sufficient audit knowledge and expertise within short time to develop the new assigned functions.

Any new personnel would have to be paid for by the ESMA budget. This will lead to additional burdens for national authorities because currently ESMA receives 60 % of its funding from the national competent authorities, see Article 62 of the ESMA-Regulation. Any increase of staff for audit supervision will probably cost several million Euro for EU and national audit oversight bodies – much more than strengthening the existing structures of EBAOB and using their members' staff and facilities.

The Commission has not put forward any information in its Impact Assessment on the new tasks for ESMA. Neither has it included any budget setting out the resources necessary for ESMA to fulfil the significant activities on audit matters envisaged in its proposals.

	ESMA	EBAOB
Budget	Own budget (Art. 62 ESMA-Reg). ESMA Report on the annual accounts 2011: 16,9 million Euro; <u>60% financed by national competent authorities / Member States</u> 2013's budget: 28,2 million Euro Concerning the costs of new audit functions / staff for ESMA no information is provided by Commission or ESMA. Expected costs for EU and national audit oversight bodies: several million Euro.	No own budget. EBOAB is managed by the Chair's and the member's contributions: The material input comes from the national competent authorities. Secretariat functions are undertaken by the chairmen's [<u>Alternative</u> : and the vice-chairmen's] national competent authority(ies). Maximum expected annual costs for the Chair: 200,000 Euro.
Secretariat / Staff	Staff of ESMA: <u>121 persons</u> (in total, according to 2013's budget, number is increasing).	Staff (about <u>1 or 2 persons</u>) provided by the chair's [<u>Alternative</u> : and the vice-chairmen's] national competent authority(ies).
Working language:	English (see internal language arrangements). → no translation costs	English (to be decided in the internal language arrangements) → no translation costs
Frequency of meetings:	6 physical meetings per year. In addition, there are conference calls and written procedure in order to take short-term decisions.	Physical meetings and conference calls as often as necessary
Place of meetings:	ESMA (Paris).	[Premises of the Commission] <u>Alternative</u> : Premises of the chair and / or members
Reimbursement (travel costs):	No	No
Agenda set up and agenda papers produced by:	<u>Agenda</u> is set by the chair; i.e. in BoS by Stephen Majoor; in SCs by chair (representative from national authority) in cooperation with ESMA-staff <u>Decisions</u> of BoS are discussed and prepared in the SCs. The rules of procedure provide that the work of the group shall be distributed" between ESMA staff ("rapporteur") and those group members who have volunteered to lead work streams. (Art. 18, 21 Procedures for ESMA groups)	Agenda set up by the chair with input of the members Agenda papers produced by national Audit Oversight Bodies

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