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NOTE

From: General Secretariat
To: Company Law Attachés
On: 20-21 June 2013

No. prev. doc.: 10923/13 DRS 117 CODEC 1456
No. Cion prop.: 16971/11 DRS 121 CODEC 2039

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
- Presidency compromise text

Delegations will find attached a steering note and a revised Presidency compromise text.

Presidency Steering Note - Directive

Company Law Attachés meeting

20/21 June, 2013

Changes for meeting on 21 June 2013 are marked out as out as underlining of text of Articles.

The meeting on 20/21 June will consider both the documents which issued for the Working Party meeting on 14 June last - 10922/13 DRS116 CODEC 1455 and 10923/13 DRS 117 CODEC 1456 as well as the documents on individual Articles circulated for the meeting on 20/21 June.

Article 45 - Registration and oversight of third-country auditors and audit entities

This Article has been revised in the light of Member States comments and discussion at the meeting on 14 June 2013.

Article 15 – Public Register

A proposed amended wording was presented to the Member States at the meeting of 14 June, in the interests of clarity. As no Member States objected and one supported, Article 15 has been amended to incorporate the improved wording.

Article 23 – Confidentiality and professional secrecy

As no Member State objected to the proposed addition to the wording of this Article presented for the meeting of 14 June, the Article has now been amended to incorporate these words.

Audit Reporting to be discussed under sequence set out in the Regulation Steering Note

ARTICLE 28 – DIRECTIVE

ARTICLES 22 AND 23 – REGULATION

These Articles have been again re-worked by the Presidency with a view to seeking final agreement at the meeting on 20/21 June.

Article 3b – Approval of statutory auditors and audit firms

This amendment has been “tidied” up and the terminology used here has been harmonised with Article 34.2 (see below).

Article 34 - Mutual recognition of regulatory arrangements between Member States

The amendment in the Compromise Text produced for 14 June has been further amended to enhance clarity and to harmonise with a similar provision in Article 3b.

Steering Note farewell message

Following the meeting on 20-21 June, the Presidency will endeavour to carry out a general technical “sweep” through the Articles of the Directive and Regulation before transfer to the incoming Lithuanian Presidency. Adieu from the Irish Presidency.

Presidency compromise text on specific Articles of the Directive

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. Audit firms falling within the scope of this Article shall be subject to supervision of quality assurance in the home Member State and [...] supervision of the audit in the host Member State.

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 disapply 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.

[...] The competent authority referred to in Article 32 shall ensure that arrangements are established to set up and maintain the public register.

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 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 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 28

Audit reporting

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.

1. 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;
 - (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 give a true and fair view in accordance with the relevant financial reporting framework and have been prepared in accordance with the relevant financial reporting framework, 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 based on the work undertaken in the course of the audit, referred to in the second subparagraph of Article 34(1) of Directive xxx (accounting directive);

- (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.
- (g) identify where the statutory auditor(s) or audit firm(s) is established.

2. The 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. 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.".

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 previous sub-paragraph, audit firms approved in one Member State that perform audit services in another Member State pursuant to Article 3(b) of this Directive shall be subject to be subject to supervision of quality assurance in the home Member State and supervision of the audit in the host Member State.

2. In the case of a statutory audit of consolidated accounts, the Member State requiring the statutory audit of the consolidated accounts 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 accounts of that company.

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

(a) every third-country auditor, other than a natural person registered as a statutory auditor in any Member State as a consequence of approval in accordance with Articles 3 or 44, [...] and

(b) every third-country audit entity other than one registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3,

[...] 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 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, [...] not being one registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3 [...] only if:
 - (a) it meets requirements which are equivalent to those laid down in Article 3(3);
 - (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 to 10;
 - (c) the third-country auditor carrying out the audit on behalf of the third-country audit entity, if he or she is not registered as a statutory auditor in any Member State as a consequence of approval in accordance with Articles 3 or 44, otherwise meets requirements which are equivalent to those laid down in Articles 4 to 10;
 - (d) the audits of the annual or consolidated accounts 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, 24 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 X of Regulation [XXX] of [XXX] or it complies with equivalent disclosure requirements.

- 5a. A Member State may register a third-country auditor, not being a natural person registered as a statutory auditor in any Member State as a consequence of approval in accordance with Articles 3 or 44, only if he or she meets the requirements set out in points 5(a), (d) and (e) of this Article.
- 5b. Where a third-country auditor or audit entity is exempt from the registration requirement under paragraph 1 by virtue of already being registered as a statutory auditor or audit firm in any Member State as a consequence of approval in accordance with Article 3 or 44, that Member State shall subject that third-country auditor or audit entity to its system of oversight, its quality assurance system and its system of investigation and penalties in respect of every audit that is the subject of an audit report referred to in paragraph 1.
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, 24 and 25. Such criteria which are applicable to all third countries shall be used by Member States when assessing equivalence at national level.