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to:	Working Party on Company Law
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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 - Presidency compromise text

Delegations will find in Annex I a Steering Note and in Annex II a revised Presidency compromise text.

Presidency Steering Note - Directive
Changes for meeting on 24 July 2013 are underlined

Article 2 – Definitions

Paragraph 1 – The comment was provided to amend sub-paragraph (c) in such a way that voluntary audits would not cover informal audits or audits undertaken for a specific purpose in a Member State eg a tax audit, however the Presidency considers it unnecessary because audit of financial statements is not the same as tax audit or expenses' legitimacy audit which should not be the subject of this Directive at all.

Paragraphs 4 and 5 – the definitions of third country audit entity and third-country auditor amended in accordance with comments provided by some MS.

Paragraph 15 – the following amendment is based on the comment that statutory audits should not be carried out not only 3 years before but at the time of involvement in the governance of public oversight system as well:

15. *'non-practitioner' means any natural person who, for at least last three years ~~before his or her involvement in the governance of the public oversight system,~~ has not carried out statutory audits, has not held voting rights in an audit firm, has not been a member of the administrative or management body of an audit firm and has not been employed by, or otherwise associated with, an audit firm;*

Paragraph 20 – the definition is amended accordingly”

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 ~~recognition of such approval~~ to be registered in accordance with Article 3b.'*

Article 3b – Recognition of audit firms

Paragraph 4 – deleted because the same provision was in Article 34(1).

~~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 5 – Withdrawal of approval

Paragraph 3 – the provision is amended to address a situation when an audit firm from a home MS is **registered** by the competent authority in the host MS based on art. 3b.

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 ~~approved which are entered in the first named Member State's register~~ in accordance with Article 3b, Article 16(1), point (c) and Article 17(1), point (i).*

Article 8 – Test of theoretical knowledge

The Presidency tried to amend wording of paragraphs 3 and 4.

Article 14 – Approval of statutory auditors from another Member State

Following amendments are made:

1. *The competent authorities referred to in Article 32 shall establish procedures for the approval of statutory auditors who have been approved in other Member States. Those procedures shall ~~comply with Articles 11 and 12 of Directive 2005/36/EC and shall not go beyond the requirements contained in Articles 13 and 14 of that Directive~~ 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 ~~offer~~ 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. ~~For the purposes of this Article, Article 14(3) of Directive 2005/36/EC shall not apply.~~*

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

The last three subparagraphs of paragraph 2 have been deleted in order not to repeat the same provisions as in the Qualifications Directive.

Article 15 – Public Register

Minor drafting amendments in paragraph 1:

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~~ 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.*

Member States shall ensure that the competent authority referred to in Article 32 shall ~~ensure that arrangements are established to~~ set up and maintain the public register.

Article 22 – Independence and objectivity

In paragraph 1 new subparagraph is added:

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

In paragraphs 3 and 4 improved drafting: holdings in replaced by interests owned indirectly through.

Paragraph 4 – the concept of recent employment has been clarified.

- (c) *have , within the twelve months preceding involvement in the audit of a particular audited entity, had a ~~recent~~ employment, or a business or other relationship with the that audited entity that may cause or may be generally perceived as causing a conflict of interest.*

Paragraph 5 has been amended because the term “contractual relationship” is very wide.

5. *Persons or firms referred to in paragraph 3 shall not solicit or accept money, gifts or favours from ~~anyone with whom the statutory audit or audit firm has a contractual relationship~~ 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.*

New paragraph 5a is inserted. It covers the situation when during the period covered by the financial statements, the audited entity is acquired, acquires or merges with a public interest entity to which Articles from 7 to 11 of Regulation.

Paragraph 6 deleted. There is no need for this provision. Now, when the provisions of art. 7 of the Regulation have been moved to the Directive, it is obvious that MS should not enact any national provisions on ethics which would contradict the provisions of art. 22.

- ~~6. — National measures on professional ethics enacted pursuant to Article 21 of this Directive which are not compatible with paragraphs 2, 3 and 4 shall not apply.~~

Paragraph 7 deleted.

- ~~7. — Member States shall ensure that threats to the statutory auditor's or audit firm's independence, referred in Article 22d, are dealt as required in that Article.~~

Article 22c – Employment by audited companies of former statutory auditors or of employees of statutory auditors or audit firms

During the meeting on 5 July some MS expressed their views that this Article should only be applied to PIEs. The Presidency would like to pay the attention that this Article should be applied by all audited companies as provides for ensuring of independence from an audited entity. Besides this Article doesn't impose additional administrative burdens neither to audit firm nor to audited company.

As only PIEs have an obligation to have an audit committee and now Article 22c shall apply to all audited entities, not only PIEs, in point b of paragraph 1 have been included words: "*if applicable*".

Paragraph 2 – minor drafting amendments.

2. *Employees 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 or other natural persons are personally approved as statutory auditors, before a period of at least ~~one~~ two years has elapsed since he or she was directly involved in the statutory audit ~~activities~~ engagement, take up any of the duties referred to in points (a), b) and (c) of paragraph 1.*

Article 22d – Preparation for the statutory audit and assessment of threats to independence

In paragraph 2 one MS proposed to merge both subparagraphs, allowing threats of self-review and self-interest to be addressed by safeguards, however taking into account the seriousness of the implications to independence, the presidency does not propose any amendment here.

In paragraph 4 moved to Article 11 of Regulation, as it is applicable only in case of public-interest entities.

- ~~4. Member States shall ensure that in the case of statutory audit of public interest entities a statutory auditor or audit firm shall:~~
 - ~~(a) confirm annually in writing to the audit committee his, her or its independence from the audited entity;~~
 - ~~(b) confirm annually in writing to the audit committee the names of the audit partners, senior manager and manager of the core team conducting the statutory audit, certifying that there are no conflicts of interest;~~

~~(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.~~

~~Where the audited entity is exempted from the obligation to have an audit committee, the audited entity shall decide which body or organ of the entity shall perform the functions assigned to the audit committee in this paragraph.~~

Paragraph 5 (delegated acts) and paragraph 6 (implementing acts) were replaced with one new paragraph 5 (implementing acts).

5. ~~The Commission shall be empowered to adopt to delegated acts in accordance with Article 48a identifying the criteria to be applied when specifying:~~

~~(a) — the threats and safeguards referred to in paragraph 2 of this Article;~~

~~(b) — the situations in which the significance of the threats, as referred to in paragraph 2 of this Article, is such that the independence of the statutory auditor or audit firm is compromised.~~

6. ~~The Commission shall be empowered to adopt implementing acts identifying those threats and safeguards, as well as potential situations, which, after applying the criteria identified in accordance with paragraph 4, it considers that compromise the independence of the statutory auditor or audit firm. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2).~~

Article 22e - Professional scepticism

Minor drafting amendments.

Article 24a – Internal organisation of auditors and audit firms

In paragraph 1(d) and 1(k) the reference to the Directive has been added.

In paragraph 1(e) references to articles 22 and 22c inserted.

In paragraph 1(f) the reference to public interest entities has been deleted as an auditor/audit firm should have appropriate procedures and standards established for carrying out all audits and not only those relating to PIEs.

An audit firm should establish an internal quality control system to ensure the quality of all audits and not only those of PIEs. Therefore the reference to PIEs in paragraph 1(g) has been deleted.

Paragraph 2 – minor drafting amendments.

2. *The statutory auditor or audit firm shall take into consideration the scale and complexity of his, her or its ~~size and complexity of~~ 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 35(1) that such policies and procedures designed to achieve compliance are appropriate given the scale ~~compliance is proportionate to the size and complexity of activities of the statutory auditor or audit firm.~~

Article 24b – Organisation of the work

Paragraph 1 amended as follows:

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 ~~with the appropriate competence, capabilities and authority.~~

Key audit partner according to the definition is a statutory auditor being responsible for the carrying out the audit. The definition by itself implicates certain qualities of the person.

In paragraph 5, where reference is made to Regulation, the words “where appropriate” were inserted.

Paragraph 6 – the words “made in writing” have been added.

Article 25a – Scope of the statutory audit

At paragraph 1 the reference has been corrected to Article 28.

The words “if applicable” have been added before the reference to the Regulation.

Article 26 Auditing standards

Considering the question raised in the WP meeting on the 5th July and the explanation the Commission kindly gave, the Presidency proposes in paragraph 2 to clarify what is the scope of term “international auditing standards” by adding to it ISQC1. Also a reference to the procedure referred to in Article 48(2) in the second subparagraph added.

In paragraph 3 words “or revoking” inserted.

Article 27 Statutory audits of consolidated financial statements

In paragraph 1(a) reference to Article 22 of the Regulation (audit report for PIEs) added.

It is very difficult to “secure” an agreement with the third-country auditor. The group auditor should rather be under an obligation to “request” an agreement. If such an agreement is not possible (e.g. because of third-country national law) the auditor would be under the procedure in paragraph 2. Based on that The Presidency proposes to replace “secure” by “request”.

Article 28 – Audit reporting

In paragraph 1(e) the words “both of which shall be” are inserted. The rationale for that is the auditor otherwise will have to put the client to considerable expense to cover the cost of verifying the client entity’s entire factual situation. This would be needed to give the necessary assurance that the annual report was “balanced and comprehensive” in accordance with Article 20 of the Accounting Directive.

Article 29 – Quality assurance systems

New paragraph 1A is inserted to set some minimum requirements for the reviewers.

New paragraph 1B is inserted. It with the amended wording was transferred from Article 43a.

Paragraph 2 (delegated acts) replaced by provision with implementing acts.

Article 30A – Administrative sanctions and measures

The Presidency proposes to delete reference to CEAOB, when there is requirement to notify of the rules for administrative sanctions on infringements which are subject to national criminal law . CEAOB is not supposed to be a supervising committee. Consistent application of criminal law provisions doesn't fall under the tasks of CEAOB.

Article 30B – Sanctioning powers

The respective articles on sanctioning are already based on a violation of the respective requirements as laid down in the Directive and the Regulation. Now adding additional provisions in the annex seem to be just an overlap of the provisions included in the main body of the Directive. Therefore there is no need for the annex and it is proposed to delete. As a consequence of this it is suggested amend the text of the first sentence in paragraph 1 and in points g, h of this paragraph. The reference to the Regulation has been changed to the Directive.

In paragraphs 1(a) and 1(d) reference to Article 28 of the Directive added.

In paragraph 1(a) the word an “order” replaced by a ”notice”

In point c of paragraph 1 the term “temporary” has been specified in order to increase legal certainty. The words “until the breach has been brought to an end” deleted.

- (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 of public-interest entities and/or signing audit reports within the meaning of Article 28 of Directive or Article 22 of Regulation XXX, ~~until the breach has been brought to an end~~. This temporary prohibition shall be notified to CEAOB and CEAOB shall transmit the information to the other competent authorities of the Member States.*

Paragraph 1(f) has been deleted, as the determination of the amount of the profits gained or losses avoided will be questionable. Besides points (g) and (h) already contain a possibility to impose pecuniary sanctions.

~~(f) administrative pecuniary sanctions of up to twice the amount of the profits gained or losses avoided because of the breach where those can be determined;~~

In subparagraph 1(g) following amendment is proposed:

(g) in the case of a natural or legal person, in respect of breaches of Annex I, Part I statutory auditors, audit firms and key audit partners, 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;

In subparagraph 1(h) “legal person” replaced by “public interest entity”.

Since point f deleted, the final subparagraph of paragraph 1 amended as follows:

The administrative pecuniary sanctions referred to ~~in paragraph (f) and those referred to in paragraphs (g) and (h)~~ shall not be taken against or imposed on the same natural or legal person for the same breach.

In addition, new subparagraph 2a is introduced as the EU legal acts in the field of financial markets, as well as audit regulation (Article 38.2) include the following paragraph regarding exercising of sanctioning powers:

“2a. The competent authorities shall 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) under their responsibility by delegation to such entities/authorities which tasks have been delegated;

(d) by application to the competent judicial authorities.”

Article 30C - Effective application of sanctions

In paragraph 1 point (d) “importance” replaced by “amount”.

Article 30F - Reporting of breaches

Paragraph 1 amended as follows:

1. *Member States shall ensure that ~~Competent Authorities establish~~ effective mechanisms are established to encourage reporting of breaches of this Directive or of Regulation XXX to the competent authorities.*

In paragraph 2(b) “potential” replaced by “suspected”.

In paragraph 2(c) minor drafting amendments, proposed to define persons, the protection of whose personal data is concerned, more clearly.

Article 32 – Principles of public oversight

The structure of paragraph 3a changed as the delegation of tasks related to PIE public audit oversight is now more broadly envisaged in the Article 38a of Regulation and references to certain articles in the Directive inserted.

The structure of paragraph 4 changed and due to the fact that the ISAs and ISQC 1 will be adopted in the future by the Commission and according to the Presidency information at least one MS wish to keep the practice where the adoption national standards is the responsibility of Ministry, not the competent authority, in letter (b) we propose following amendment:

- (b) *the compliance with and, where relevant, adoption of standards on professional ethics, internal quality control of audit firms and auditing; and*

Paragraph 5 amended based on MS comments to clarify what kind of documents competent authority have the access to. New subparagraph inserted clarifying the “any person” notion in the second subparagraph.

Article 34 – Mutual recognition of regulatory arrangements between Member State

Paragraph 1 second subparagraph – improved drafting for clarity.

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 review in the home Member State and ~~supervision~~ oversight in respect of any the audit carried out in the host Member State

Article 36 - Professional secrecy and regulatory cooperation between Member States

Few MS had proposed to merge this Article with the Article 45 of Regulation. The presidency decided not to do that due to different scope of these Articles.

The presidency proposes though to merge this Article with the Article 49 as their in major points repeat each other. By doing so, Article 49 is deleted and paragraphs 1 and 3 are amended, by adding reference to competent authorities under the Regulation and European Supervisory Authorities. Accordingly, the new paragraph 4a is added, transferring it from deleted Article 49.

Paragraph 7 (delegated acts) replaced by provision with implementing acts.

Article 37 - Appointment of statutory auditors or audit firms

The Presidency returns the previous version of Paragraph 2, based on MS comments that additional text proposed by the Presidency narrowed the scope of cases in which a Member State may allow alternative systems or modalities. In some MS law envisages that sometimes it is the supervisory board that chooses the auditor/audit firm.

2. *~~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~~*

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.

Article 38a – Audit Committee

In paragraphs 1 and 2 “board” is replaced with “supervisory body of the audited entity” for consistency for terminology.

Paragraph 1 – has been changed reference to points of Article 2(13) because Article 2(13) has changed.

According to some MS comments in last subparagraph of paragraph 1 the words “or by the supervisory body of the audited entity” inserted.

According to the amendmends above, the Presidency proposes to delete point (i) in paragraph 1B, as that is standard practice in some of MS and not exceptional situation that should depend on the prior agreement of competent authority to appoint the chairman of audit committee on the decision of the supervisory body. Also there is not enough justification for this unnecessary administrative burden on the competent authority.

~~(i) — allow the chairman of the audit committee to be appointed by the supervisory body of the audited entity.~~

One MS expressed concern regarding paragraph 1A, saying that this exemption seems to be too wide. The effect of this paragraph will be that a MS will be able to exempt its PIEs from any requirement as to independent members by requiring audit committees to have only 1 union representative. However, the Presidency does not propose to amend it because MS may decide regarding exemption.

In paragraph 3(a) have been changed references to Articles of Directive and added references to Articles of Regulation.

The reference to the Regulation XXX in points c and e of paragraph 6 added.

Article 43a – Medium-sized undertakings

Based on MS comments the Presidency proposes to delete article by moving one provision to Article 29.

Article 43b – Small undertakings

As limited reviews are outside the scope of the Directive, the Presidency proposes to delete the whole Article as the provision on proportionality is moved to the Article 29.

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

Paragraph 3 is amended to reflect the situation when third-country auditor or audit firm is registered in another member state.

With the view of amending the definitions of third-country audit entity and third-country auditor (Article 2(4)) the paragraphs 1 and 5 are amended accordingly.

- In paragraph 5 the following words deleted:

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:

- 5(a) deleted because reference to 3(3) is applicable to natural persons and is identical to the provision of Article 45(5)(c):

~~(a) — it meets requirements which are equivalent to those laid down in Article 3(3);~~

- In 5(b) and 5(c) reference to Article 5 is excluded.
- In 5(c) :

(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;~~

- In 5(d) – the reference to Article 22d added.

In paragraph 5a reference to point (a) is replaced to (c). Besides, there is a concern whether a requirement to prepare the transparency report in order to be registered in a MS might be imposed on a third country statutory auditor. The Presidency believes that as requirement allows to provide equivalent disclosure of information when transparency report is not prepared under third-country's requirements, it is feasible.

The new paragraph 5b is added to explain situation when third-country auditor or audit firm want to operate in more than on MS:

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.

In paragraph 6 the reference to Article 22d added.

Article 47 - Cooperation with competent authorities from third countries

The adjustment of the wording of this provision is done so it explicitly states that MS may allow the transfer of the inspection and investigation reports as the wording before it was not so obvious and referred to other documents held by statutory auditors/audit firms and inspection reports are held rather by the competent authorities:

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:

Article 49 - Exchange of Information (transferred from Article 48 of Regulation)

The Article is deleted (see the comment on the Article 36).

The Annexes

The Annexes are deleted as the relevant Articles on sanctions were amended and the provisions in the Annexes do not give any more additional

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) 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

¹ OJ C , p. .

requirements applying to such persons and to enhance their independence and objectivity in the performance of their tasks. 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.

- (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) In order to allow audit firms to grow, Member States should allow them to have access to external capital. Therefore, Member States should no longer require that a minimum amount of capital or of voting rights in an audit firm is held by statutory auditors or audit firms, provided that a majority of the members of the administrative body are audit firms approved in any Member State or statutory auditors of good repute.
- (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. The statutory auditor concerned should be allowed to choose between an aptitude test and 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.
- (6) 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.
- (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 which are part of the Clarity Project issued by the International Federation of Accountants (IFAC) in 2009 insofar as they are relevant to statutory audits. 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, and only 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.

² OJ L 255, 30.9.2005, p. 22.

- (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.
- (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.
- (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 particular, Member States should ensure that the public oversight authorities have the power to initiate and carry out investigations, and that they have access to any documents held by statutory auditors or audit firms relevant to the performance of their tasks. 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. The competent authority should have the possibility to delegate tasks to other authorities or bodies only with regard to the approval and

registration of the statutory auditors. Such delegation should be subject to several conditions and the competent authority should bear the ultimate responsibility for it.

- (12) The "Small Business Act"³ adopted in June 2008 and revised in February 2011⁴ recognises the central role played by small and medium-sized enterprises in the Union's economy and aims at improving the overall approach to entrepreneurship and to anchor the "Think Small First" principle in policy making. The Europe 2020 Strategy⁵ adopted in March 2010 also calls for an improvement of the business environment, especially for small and medium-sized enterprises, including through reducing the transaction costs of doing business in the Union. Article [34] of Directive [XXX] of the European Parliament and of the Council of [XXX] on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings does not require small undertakings to have their financial statements audited.
- (13) The burdens weighing on small and medium-sized undertakings within the Union in connection to the audit of their financial statements should be reviewed to the necessary minimum without compromising investor protection. Member States should ensure that the application of auditing standards according to which the statutory audit of the financial statements of those undertakings is performed is proportionate to the scale of small and medium-sized undertakings.
- (14) Some Member States have replaced the statutory audit of small undertakings with a limited review of their financial statements. It is appropriate to allow those Member States to maintain this practice instead of providing for a proportionate application of auditing standards to small undertakings.

³ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A "Small Business Act" for Europe {SEC(2008)2102}.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Review of the "Small Business Act" for Europe COM(2011)78 final.

⁵ Communication from the Commission Europe 2020- A Strategy for smart, sustainable and inclusive growth, COM(2010)2020 final.

- (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/EC⁶. 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 Council⁷. 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.
- (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

⁶ OJ L 345, 31.12.2003, p. 64.

⁷ OJ L 327, 11.12.2010, p. 1.

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 powers⁸.
- (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,

HAVE ADOPTED THIS DIRECTIVE:

⁸ OJ L 55, 28.2.2011, p. 13.

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;
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, unless this entity 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, unless this person 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, for at least last three years [...] has not carried out statutory audits, has not held voting rights in an audit firm, has not been a member of the administrative or management 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 3(3) of Directive 2013/34/EU;
18. ‘small undertakings’ means the undertakings referred to in 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 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 referred to in Article 32 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.

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. For the purposes of adapting the test of theoretical knowledge to the developments in auditing and audit profession, the Commission shall be empowered to adopt delegated acts in accordance with Article 48a identifying the criteria to be applied when adapting the list of subjects to be included in the test of theoretical knowledge referred to in paragraph 1 of this Article.

4. The Commission ~~shall be empowered to~~ may adopt implementing acts identifying those subjects which, after applying the criteria identified in accordance with paragraph 3, it considers necessary to be included in the test of theoretical knowledge referred to in paragraph 1 of this Article. 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 penalties as referred to in Article 30.

Article 14

Approval of statutory auditors from another Member State

1. The competent authorities referred to in Article 32 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 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.

Member States shall ensure that the competent authority referred to in Article 32 shall [...] 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 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 holder of voting rights in the audit firm is independent of the audited entity and is not involved in the decision-taking of the audited entity.

Independence shall be required 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 the statutory auditor, audit firm, or network and the audited entity from which an objective, reasonable and informed third party 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 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 determination 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, within the twelve months preceding involvement in the audit of a particular audited entity, had a [...] employment, or a business or other relationship with that audited entity 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 money, 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, a public interest entity to which Articles from 7 to 11 of Regulation XXX apply, the statutory auditor or audit firm shall identify and evaluate any current or recent interests or relationships, including any non-audit services provided, with that entity that, 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. [...]
7. [...]

*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 companies 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 two years has elapsed since he or she resigned as a statutory auditor or key audit partner from the audit engagement, take up any of the following duties:
- (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 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 or other natural persons are personally approved as statutory auditors, 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;

2. Member States shall ensure that, where independence of the statutory auditor's or audit firm's independence is affected by threats of self-review or self-interest, the statutory auditor or audit firm shall not carry out the statutory audit.

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, 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. [...]

5. [...]

The Commission may adopt implementing acts identifying:

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

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

6. [...]

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 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 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 appropriate procedures and standards 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 procedures and standards described in point (f). In the case of an audit firm, the responsibility of the internal quality control system shall be with a person that 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 a policy 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 employees 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, if 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.

Any outsourcing of audit functions as referred to in point (d) shall not affect the liability 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 35(1) 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. The statutory auditor or the audit firm shall keep records of any breaches of the provisions of this Directive and, as appropriate, Regulation XXX. 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 appropriate, 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 appropriate, 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 appropriate, 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.

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. Member states shall ensure that, when carrying out the statutory audit, the statutory auditor or audit firm shall take the necessary steps with a view to forming an opinion as referred in Article 28 of this Directive and if applicable, Articles 21 to 25 of Regulation XXX.

Such steps shall include at least the requirements set out in Articles 22e, 24b and 27 of the Directive and, if applicable, Articles 17 and 19 of Regulation XXX.

2. Without prejudice to the reporting requirements as referred to in Article 28 of this Directive and if 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.

Member States may apply a national auditing standard as long as the Commission has not adopted an international auditing standard covering the same subject-matter. Adopted international auditing standards shall be published in full in each of the official languages of the Union in the *Official Journal of the European Union*.

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 which are part of the Clarity Project issued by the International Federation of Accountants (IFAC) in 2009 insofar as they are relevant to the statutory audit.

The Commission may decide, in accordance with the procedure referred to in Article 48(2), on the applicability of international auditing standards within the Union.

The Commission shall adopt international auditing standards for application in the Union only 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.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of adopting or revoking the international standards on auditing referred to in paragraph 1 of this Article.

The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of amending the definition of international auditing standards in paragraph 1 of this Article. When using such powers, the Commission shall take into account any amendments brought to the ISAs by the IFAC, the opinion of the Public Interest Oversight Board on such amendments as well as any other developments in auditing and the audit profession.

Article 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, if 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 documents which 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;

- (b) the group auditor carries out a review and maintains documentation of his or her review of 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. 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 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;
 - (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 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 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.
- (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.

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.

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 governed by the competent authority referred to in Article 32 and organized in such a manner that it is independent of the reviewed statutory auditors and audit firms;
 - (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) the persons who carry out quality assurance reviews shall have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance reviews;
 - (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 at least every six years on the basis of an analysis of the risk;
- (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 or penalties referred to in Article 30;

1A. For the purpose of paragraph 1 point (e) at least following criteria in order to appoint the reviewer shall be applicable:

- (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 quality assurance review of the statutory auditor or audit firm in which that person has been a partner or employee otherwise associated therewith;
- (c) reviewers shall declare that there are no conflicts of interest between them and the statutory auditor and audit firm to be inspected.

- 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 points (a), (b) and (e) to (j) of the first subparagraph of paragraph 1. 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.
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.

Article 30A
(ex. Article 61 Regulation)
Administrative sanctions and measures

1. Member States may decide not to lay down rules for administrative sanctions on infringements which are subject to national criminal law. In this case they shall communicate to the Commission the relevant criminal law provisions.
2. By *[24 months after the entry into force of these provisions]* the Member States shall notify the rules referred to in paragraph 1 to the Commission [...]. They shall notify the Commission [...] without delay of any subsequent amendment thereto.

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) *[deleted]*
 - (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 of public-interest entities and/or signing audit reports within the meaning of Article 28 of Directive or Article 22 of Regulation XXX [...]. This temporary prohibition shall be notified to CEAOB and CEAOB shall transmit the information to the other competent authorities of the Member States.
 - (d) a declaration that the audit report does not meet the requirements of Article 28 of Directive or 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. This temporary prohibition shall be notified to CEAOB and CEAOB shall transmit the information to the other competent authorities of the Member States;
- (f) [...];
- (g) in the case of a [...] statutory auditors, audit firms and key audit partners, 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 [...] public interest entities, administrative pecuniary sanctions of up to 2½% of its total annual turnover in the preceding business year; where the [...] public interest entity 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.

The administrative pecuniary sanctions referred to [...] in paragraphs (g) and (h) shall not be taken against or imposed on the same natural or legal person for the same breach.

2a. The competent authorities shall 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) under their responsibility by delegation to such entities/authorities which tasks have been delegated;
- (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.

Article 30C
(*ex. Article 63 Regulation*)
Effective application of sanctions

1. 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 [...] amount 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.

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 maximum period of ten years after all rights of appeal have been exhausted or have expired.

The publication of sanctions 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.

Article 30E
(ex. Article 65 Regulation)
Appeal

Member States shall ensure that decisions taken by the competent authority in accordance with this Directive 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) appropriate protection for persons who report [...] suspected or actual breaches;
 - (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. Audit firms and public-interest entities shall 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 Commission and CEAOB annually with aggregated information regarding all administrative measures, sanctions and fines imposed in accordance with Articles 30A, 30B, 30C, 30D, 30E and 30F. CEAOB shall publish this information in an annual report.
2. Where the competent authority has disclosed administrative measures, sanctions and fines to the public, it shall simultaneously report that fact to [...] CEAOB.

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 may allow non-practitioners who are knowledgeable in the areas relevant to statutory audit to be involved in the governance of the public oversight system, provided that they are selected in accordance with an independent and transparent nomination procedure.

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

- 3a. The competent authority may delegate any of its tasks to other authorities or bodies, except for tasks related with [...]:
 - (i) investigations as referred in Article 30;
 - (ii) disciplinary system as referred in Chapter VII.

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.

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 compliance with and, where relevant, adoption of standards on professional ethics, internal quality control of audit firms and auditing; and
 - (c) continuing education, [...]
 - (d) quality assurance system;
 - (e) investigative and disciplinary systems.
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. It shall have adequate resources to initiate and conduct such investigations.

In order to carry out its tasks under this Directive, the competent authority shall have access to any document in any form related to the statutory audit or other documents relevant to its tasks held by statutory auditors or audit firms and to receive and retain a copy thereof. It shall also have the right to demand information from any person and if necessary to summon and question a person with a view to obtaining information.

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

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. 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 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 [...] quality assurance review in the home Member State and oversight of any of the 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.

Article 35
Designation of competent authorities

1. Member States shall designate one or more competent authorities for the purposes of the tasks provided for in this Directive. Member States shall designate only one competent authority bearing the ultimate responsibility for the purpose of Article 32(4). Member States shall inform the Commission of their designation.
2. The competent authorities shall be organised in such a manner that conflicts of interests are avoided.

Article 36
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 therefor.

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 statutory auditors or audit firms 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 statutory auditors or audit firms 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
- (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 therefor.

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, as referred to in Article 31 of the Regulation XXX, 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.

For public-interest entities as defined

- (a) in point 13(a) of Article 2, that had an average market capitalisation of more than EUR 70 000 000 on the basis of end-year quotes for the previous three calendar years and
- (b) in points 13(b) and 13(c) of Article 2, which on their balance sheet date has a balance sheet total exceeding EUR 70 000 000

at least one member of the audit committee shall have competence in auditing and another member 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. Where the national law of a member state require trade unions to be represented on the committee of the administrative body or on the audit committee of the audited entity, the Member State may decide to exempt public interest entities from the independence requirements of paragraph 1, subparagraph 5.

- 1B A Member State may decide, on an exceptional basis, that the relevant competent authority referred to at Article 35(1)(c) of Regulation XXX may [...] allow a public-interest entity that has a body 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, to be exempt from the requirement to have an audit committee. In such a case the entity shall disclose which body carries out those functions and how that body is composed.
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. [deleted]

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*:

- (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, internal audit where applicable, and risk management systems;
- (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 consult with the nomination committee as regards said selection.

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) [...];

- (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, 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 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. 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, 22d, 24 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 persons before the 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 therefor;
 - (e) the conditions referred to in paragraph 2 are respected.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of defining the exceptional cases referred to in paragraph 4 of this Article in order to facilitate cooperation between competent authorities.
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 8(3), 22(4), 26(3), 29(2), 36(7), 45(6), 46(2), 47(3) and 47(5) shall be conferred on the Commission for an indeterminate period of time from [date of entry into force of this Directive].

3. The delegation of power referred to in Articles 8(3), 22(4), 26(3), 29(2), 36(7), 45(6), 46(2), 47(3) and 47(5) 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 8(3), 22(4), 26(3), 29(2), 36(7), 45(6), 46(2), 47(3) and 47(5) 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

1. Directive 78/660/EEC is hereby amended as follows:

- (a) in Article 43(1) the following point shall be added:

‘(15) separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of annual accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services.

Member States may provide that this requirement shall not apply where the company is included within the consolidated accounts required to be drawn up under Article 1 of Directive 83/349/EEC, provided that such information is given in the notes to the consolidated accounts.’;

(b) paragraph 1 of Article 44 shall be replaced by the following:

‘1. Member States may permit the companies referred to in Article 11 to draw up abridged notes on their accounts without the information required in Article 43(1)(5) to (12), (14)(a) and (15). However, the notes must disclose the information specified in Article 43(1)(6) in total for all the items concerned.’;

(c) paragraph 2 of Article 45 shall be replaced by the following:

‘2. Paragraph 1(b) shall also apply to the information specified in Article 43(1)(8).

The Member States may permit the companies referred to in Article 27 to omit disclosure of the information specified in Article 43(1)(8). The Member States may also permit the companies referred to in Article 27 to omit disclosure of the information specified in Article 43(1)(15), provided that such information is delivered to the public oversight system referred to in Article 32 of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts (*) when requested by such a public oversight system.

(*) OJ L 157, 9.6.2006, p. 87.’

2. In Article 34 of Directive 83/349/EEC the following point shall be added:

‘(16) Separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of the consolidated accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services.’

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 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 29 June 2008 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.

[...]
