



**COUNCIL OF  
THE EUROPEAN UNION**

**Brussels, 2 April 2013**

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**Interinstitutional Files:  
2011/0389 (COD)  
2011/0359 (COD)**

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**8070/13**

**LIMITE**

**DRS 62  
CODEC 712**

**NOTE**

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from: General Secretariat  
to: Working Party on Company Law  
on 3 April 2013

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No Cion prop.: 16971/11 DRS 121 CODEC 2039  
16972/11 DRS 122 CODEC 2040

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Subject: Proposal for a Directive of the European Parliament and of the Council  
amending Directive 2006/43/EC on statutory audits of annual accounts and  
consolidated accounts

Proposal for a Regulation of the European Parliament and of the Council on  
specific requirements regarding statutory audit of public-interest entities

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

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

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

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

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

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

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

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

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

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

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

- Firstly, Article 46 of the Draft Regulation needs to be moved to the Directive. It should be applicable to the oversight concerning all audit firms that means to PIE-auditors as well as to non-PIE-auditors.
- Secondly, the basic guideline is that EGAOB should be strengthened and should be developed further. It should become the new **“European Board of Auditors' Oversight Bodies (EBAOB)”**.
- Therefore, we propose to add several new paragraphs relating to the composition and structure of the future EBAOB. Our suggestions are based on the Commission Decision 2005/909/EC (establishing the EGAOB – “the EGAOB Decision”) (and slightly adapted to new tasks – this is generally in line with the Commission’s proposal). Moreover, the new legal regime is based on Articles 64 to 72 of the Proposal for a General Data Protection Regulation (COM(2012) 11 final). These Articles establish the new European Data Protection Board.
- From a technical point of view, in order to keep the new provision legible, we propose to split Article 46 of the Draft Regulation in two new Articles. One Article shall concern the composition and structure of the EBAOB (amending Article 46 para 1 of the Draft

Regulation) and another Article shall particularly concern the tasks of the EBAOB (amending Article 46 para 2 to 5 of the Draft Regulation).

- There are further amendments to be made in the Commission's proposals referring to ESMA. The draft Articles empowering ESMA should be adapted (particularly in order to empower the EBAOB or the national competent authorities), amended in their content or deleted according to the discussion of the meeting on 6<sup>th</sup> March 2013.

In detail:

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

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

- Para 1 subpara 3 of Article x (NEW) of the Directive should deal with the composition of EBAOB and should correspond to Article 2 of the EGAOB-decision and Article 64 para 2 of the Proposal for a General Data Protection Regulation without losing sight of the specific situation of auditors' oversight in Europe.
- It should be made clear in para 2 of Article x (NEW) that EBAOB will be financed by Member States (by means of the competent authorities designated in accordance with Article 35 of the Draft Regulation).
- Para 3 of Article x (NEW) would introduce a rule on decision-making.
- Para 4 of Article x (NEW) should correspond to Article 69 and 70 of the Proposal for a General Data Protection Regulation on make clear who should chair EBAOB's meetings and what tasks the chair should have.

- Para 5 of Article x (NEW) on the importance and role of a secretariat corresponds to Article 71 of the Proposal of the General Data Protection Regulation. Hereby, it shall be made clear that the Commission within its remits will continue to represent the EU vis-à-vis third parties.
- Based on the Article 68 para 2 of the Proposal for a General Data Protection Regulation the EBAOB shall have the possibility to install sub-groups (para 6 of Article x (NEW)).
- Para 7 of Article x (NEW) corresponds to Article 64 (4) of the Proposal for a General Data Protection Regulation and gives the Commission the right to participate in EBOAB activities and meetings. Para 8 deals with confidentiality issues; the EBOAB should be able to safeguard confidentiality.
- Para 1, 2 and 3 of Article xa (NEW) define the tasks of EBOAB and are based on Article 2 (2) of the EGAOB-decision and Article 46 of the Commission's draft Regulation.
- Para 4 of Article xa (NEW) is based on Article 67 (1) of the Proposal for a General Data Protection Regulation and requires EBOAB to publish an annual report. There is no need for a more detailed reporting as proposed by Article 46 (4) and (5) of the draft Regulation.

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## **Articles x and xa (NEW) of the Directive**

### **Article x (NEW)**

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

The cooperation between competent authorities shall be organised within the framework of EBAOB. EBAOB shall take over, as appropriate, all existing and ongoing tasks from the European Group of Audit Oversight Bodies (EGAOB) created by Decision 2005/909/EC.

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

2. The representatives shall not be paid for their duties; meeting expenses shall not be reimbursed. If the EBAOB so requests, the Commission shall provide meeting facilities for the Board and sub-groups.
3. EBAOB shall take decisions on the basis of a qualified majority of its members.
4. EBAOB shall elect a chair and two deputy chairpersons from amongst its members. The term of office of the chair and of the deputy chairpersons shall be four years and be renewable.

The chair shall have the following tasks:

- (a) to convene the meetings of EBAOB and prepare its agenda;
- (b) to ensure the timely fulfilment of the tasks of EBAOB.

5. EBAOB shall have a secretariat. The secretariat is to be provided by the national competent authority designated by the Member State that provides the chair of EBAOB if not otherwise agreed on by EBAOB.

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

- (a) the day-to-day business of EBAOB;
  - (b) the communication between the members of EBAOB, its chair and the Commission;
  - (c) without prejudice to Articles 45 (6), 46 (2) and 47 (3) of this Directive for communication with the public and institutions other than the Commission;
  - (d) the use of electronic means for the internal and external communication;
  - (e) the preparation and follow-up of the meetings of EBAOB and
  - (f) the preparation, drafting and publication of texts adopted by EBAOB.
6. EBAOB shall organize its own operational arrangements and adopt its own rules of procedure. In particular, it shall provide for the continuation of exercising duties when a member's term of office expires or a member resigns, for the establishment of sub-groups for the examination of specific questions, the composition of such sub-groups and the involvement of experts.
7. The Commission shall have the right to participate in the activities and meetings of EBAOB and shall therefore designate a representative, who shall be non-voting.

8. The discussions of EBOAB shall be confidential. Documents submitted to members of the Board, the Commission's representative and experts and representatives of third parties shall be confidential, unless access is granted to those documents in accordance with Regulation (EC) No 1049/2001 or EBAOB otherwise makes them public.

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

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

#### **Article xa (NEW)**

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

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

2. EBAOB shall in particular:
- (a) facilitate cooperation between the competent authorities of Member States designated in accordance with Article 35 (1) of Regulation (EU) No. xxx and to bring about an exchange of good practice concerning the establishment and ongoing cooperation of such systems;
  - (b) contribute to the technical assessment of public oversight systems of third countries and to the international cooperation between Member States and third countries in this area;
  - (c) contribute to the technical examination of international auditing standards, including the processes for their elaboration, with a view to their adoption at the community level and
  - (d) improve the cooperation mechanisms that will be put in place regarding PIEs auditors or the networks they belong to.
3. In order to facilitate the exercise of the tasks provided for in this Directive and Regulation (EU) No. xxx, EBAOB may issue guidelines as appropriate, on:
- (a) the content and presentation of the report referred to in Article 27 of Regulation (EU) No. xxx;
  - (b) for conducting quality assurance reviews provided for in Article 40 of Regulation (EU) No. xxx, taking into consideration in particular:
    - (i) the different scale and dimension of activity of statutory auditors and audit firms and policies and
    - (ii) the commonality of quality standards, policies and procedures to which members of networks of statutory auditors and audit firms adhere;
  - (c) conducting investigations provided for in Article 41 of Regulation (EU) No. xxx;
  - (d) procedures for the exchange of information provided for in Article 48 of Regulation (EU) No. xxx;
  - (e) procedures and modalities for cooperation with regard to quality assurance reviews provided for in Article 49 of Regulation (EU) No. xxx;

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

The Commission shall ensure the publication of the guidelines.

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

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