



# EUROPEAN UNION

THE EUROPEAN PARLIAMENT

THE COUNCIL

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Strasbourg, 16 April 2014  
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## DIRECTIVE OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL AMENDING DIRECTIVE 2006/43/EC ON STATUTORY AUDITS OF ANNUAL ACCOUNTS AND CONSOLIDATED ACCOUNTS

**DIRECTIVE 2014/56/EU**  
**OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

**of 16 April 2014**

**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 Committee<sup>1</sup>,

Acting in accordance with the ordinary legislative procedure<sup>2</sup>,

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<sup>1</sup> OJ C 191, 29.6.2012, p. 61.

<sup>2</sup> Position of the European Parliament of 3 April 2014 (not yet published in the Official Journal) and decision of the Council of 14 April 2014.

Whereas:

- (1) Directive 2006/43/EC of the European Parliament and of the Council<sup>1</sup> 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 those persons, and the framework for their public oversight. However, it is necessary to further harmonise those rules at Union level in order to allow for greater transparency and predictability of the requirements applying to such persons and to enhance their independence and objectivity in the performance of their tasks. It is also important to increase the minimum level of convergence with respect to the auditing standards on the basis of which the statutory audits are carried out. Moreover, in order to reinforce investor protection, it is important to strengthen public oversight of statutory auditors and audit firms by enhancing the independence of Union public oversight authorities and conferring on them adequate powers, including investigative powers and the power to impose sanctions, with a view to detecting, deterring and preventing infringements of the applicable rules in the context of the provision by statutory auditors and audit firms of auditing services.

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<sup>1</sup> 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 (OJ L 157, 9.6.2006, p. 87).

- (2) Because of the significant public relevance of public-interest entities, which arises from the scale and complexity 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. Consequently, 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 .../...<sup>+</sup> of the European Parliament and of the Council<sup>1</sup>. The provisions on statutory audits of public-interest entities laid down in this Directive should be applicable to statutory auditors and audit firms only in so far as they carry out statutory audits of such entities.
- (3) In accordance with the Treaty on the Functioning of the European Union (TFEU), 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 making it possible for them 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, draw up financial statements in several Member States and are required to 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.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

<sup>1</sup> Regulation (EU) No .../... of the European Parliament and of the Council of ... on specific requirements regarding statutory audit of public-interest entities (OJ L ...).

- (4) 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. Consequently, in order 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 there. Such measure should take account of the professional experience of the statutory auditor concerned. It should not lead to the imposition of a disproportionate burden on the statutory auditor nor hinder or render less attractive the provision of statutory audit services in the Member State imposing the compensation measure. Member States should be allowed to approve applicant statutory auditors on the basis either of an aptitude test or of an adaptation period such as that defined in Directive 2005/36/EC of the European Parliament and of the Council<sup>1</sup>. 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.
- (5) Whilst the primary responsibility for delivering financial information should rest with the management of the audited entities, statutory auditors and audit firms play a role by actively challenging the management from a user's perspective. In order to improve audit quality, it is therefore important that the professional scepticism exercised by statutory auditors and audit firms vis-à-vis the audited entity be reinforced. Statutory auditors and audit firms should recognise the possibility that a material misstatement due to fraud or error could exist, notwithstanding the auditor's past experience of the honesty and integrity of the audited entity's management.

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<sup>1</sup> Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).

- (6) It is particularly relevant to reinforce independence as an essential element when carrying out statutory audits. In order to enhance the independence of statutory auditors and audit firms from the audited entity when they are carrying out statutory audits, a statutory auditor or an audit firm, and any natural person in a position to directly or indirectly influence the outcome of the statutory audit, should be independent of the audited entity and should not be involved in the audited entity's decision-making process. In order to maintain that independence, it is also important that they keep records of all threats to their independence and of the safeguards applied to mitigate those threats. Moreover, where the threats to their independence, even after the application of safeguards to mitigate those threats, are too significant, they should resign or abstain from the audit engagement.
- (7) Statutory auditors and audit firms should be independent when carrying out statutory audits of audited entities, and conflicts of interest should be avoided. In order for the independence of statutory auditors and audit firms to be determined, the concept of a network in which statutory auditors and audit firms operate has to be taken into account. The independence requirement should at least be fulfilled during the period covered by the audit report, including both the period covered by the financial statements to be audited and the period during which the statutory audit is carried out.

- (8) Statutory auditors, audit firms and their employees should in particular refrain from carrying out the statutory audit of an entity if they have a business interest or financial interest in it, and from trading in financial instruments issued, guaranteed or otherwise supported by an audited entity, other than holdings in diversified collective investment schemes. The statutory auditor or the audit firm should abstain from participating in the internal decision-making processes of the audited entity. Statutory auditors, audit firms and their employees directly involved in the statutory audit engagement should be prevented from taking up duties in the audited entity at managerial or board level until an appropriate period has elapsed since the end of the audit engagement.
- (9) It is important that statutory auditors and audit firms respect the rights to private life and data protection of their clients. They should therefore be bound by strict rules on confidentiality and professional secrecy which should not, however, impede the proper enforcement of this Directive and of Regulation (EU) No .../...<sup>+</sup> or cooperation with the group auditor during the performance of the audit of consolidated financial statements when the parent undertaking is in a third country, provided that Directive 95/46/EC of the European Parliament and of the Council<sup>1</sup> is complied with. However, such rules should not allow a statutory auditor or an audit firm to cooperate with third-country authorities outside the cooperation channels provided for in Chapter XI of Directive 2006/43/EC. Those confidentiality rules should also apply to any statutory auditor or audit firm that has ceased to be involved in a specific audit task.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

<sup>1</sup> Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (OJ L 281, 23.11.1995, p. 31).

- (10) Adequate internal organisation of statutory auditors and audit firms should help to prevent any threats to their independence. Thus, owners or shareholders of an audit firm, as well as those managing it, should not intervene in the carrying-out of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm. Additionally, statutory auditors and audit firms should establish appropriate internal policies and procedures in relation to employees and other persons involved in the statutory audit activity within their organisations, in order to ensure compliance with their statutory obligations. Those policies and procedures should in particular seek to prevent and address any threats to independence and should ensure the quality, integrity and thoroughness of the statutory audit. Those policies and procedures should be proportionate, in view of the scale and complexity of the business of the statutory auditor or the audit firm.
- (11) The statutory audit results in the expression of an opinion that the financial statements give a true and fair view of the audited entities in accordance with the relevant financial reporting framework. Stakeholders, however, might be unaware of the limitations of an audit, as regards, for example, materiality, sampling techniques, the role of the auditor in the detection of fraud and the responsibility of managers, which can lead to an expectation gap. In order to reduce that gap, it is important to provide greater clarity as to the scope of the statutory audit.



- (12) It is important to ensure high-quality statutory audits within the Union. All statutory audits should therefore be carried out on the basis of the international auditing standards adopted by the Commission. As international auditing standards are designed to be usable for entities of all sizes, of all types and in all jurisdictions, the competent authorities in Member States should take into account the scale and complexity of the business of small undertakings when assessing the scope of application of international auditing standards. Any provision or measure adopted by a Member State in this regard should not result in statutory auditors or audit firms being unable to carry out statutory audits in compliance with the international auditing standards. Member States should be allowed to impose additional national audit procedures or requirements only if they stem from specific national legal requirements relating to the scope of the statutory audit of annual or consolidated financial statements, meaning that those requirements have not been covered by the adopted international auditing standards, or if they add to the credibility and quality of annual financial statements and consolidated financial statements. The Commission should continue to be involved in the monitoring of the content of the international auditing standards and the process for their adoption by the International Federation of Accountants (IFAC).
- (13) In the case of consolidated financial statements, it is important that there be a clear definition of the responsibilities of statutory auditors who audit different entities within the group concerned. For this purpose, the group auditor should bear full responsibility for the audit report.

- (14) 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 public oversight of statutory auditors and audit firms. Quality assurance reviews are designed to prevent or address potential deficiencies in the manner in which statutory audits are carried out. In order to ensure that the quality assurance reviews are sufficiently comprehensive, the competent authorities, when carrying out such reviews, should take into account the scale and complexity of the activity of the statutory auditors and the audit firms.
- (15) In order to improve compliance with the requirements of this Directive and of Regulation (EU) No .../...<sup>+</sup>, and in the light of the Commission Communication of 8 December 2010 entitled 'Reinforcing sanctioning regimes in the financial services sector', the power to adopt supervisory measures by, and the sanctioning powers of, competent authorities should be enhanced. Provision should be made for the imposition of administrative pecuniary sanctions on statutory auditors, audit firms and public-interest entities for identified infringements of the rules. The competent authorities should be transparent about the sanctions and measures that they apply. The adoption and publication of sanctions should respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life, the right to the protection of personal data, and the right to an effective remedy and to a fair trial.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

- (16) Competent authorities should be able to impose administrative pecuniary sanctions that have a real deterrent effect, for instance in an amount of up to one million euros or higher in the case of natural persons and up to a percentage of total annual turnover in the preceding financial year in the case of legal persons or other entities. That goal is better achieved by relating the pecuniary sanction to the financial situation of the person committing the breach. Without prejudice to the possibility of withdrawing the approval of the statutory auditor or audit firm concerned, other types of sanctions which have a suitable deterrent effect should be envisaged. In any case, Member States should apply identical criteria when determining the sanction to be imposed.

- (17) Whistleblowers can bring new information to the attention of competent authorities which may assist them in detecting and imposing sanctions for irregularities, including fraud. However, whistleblowers may be deterred from doing so for fear of retaliation, or may lack incentives to do so. Member States should therefore ensure that adequate arrangements are in place to encourage whistleblowers to alert them to possible infringements of this Directive or of Regulation (EU) No .../...<sup>+</sup> and to protect them from retaliation. Member States should also be able to provide them with incentives for doing so; however, whistleblowers should only be eligible for such incentives where they bring to light new information which they are not already legally obliged to notify and where that information results in a sanction for an infringement of this Directive or of Regulation (EU) No .../...<sup>+</sup>. However, Member States should also ensure that whistleblowing schemes implemented by them include mechanisms that provide appropriate protection for the reported persons, particularly as regards the right to the protection of their personal data and procedures to ensure their right of defence and their right to be heard before the adoption of a decision concerning them, as well as the right to seek an effective remedy before a tribunal against such a decision. The mechanisms established should also provide appropriate protection for whistleblowers, not only as regards the right to the protection of personal data but also by ensuring that they are not victims of undue retaliation.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

- (18) The public oversight of statutory auditors and audit firms encompasses the approval and registration of statutory auditors and audit firms, the adoption of standards in respect of professional ethics and internal quality control of audit firms, continuing education, and the systems of quality assurance, investigation and sanctions for statutory auditors and audit firms. In order to enhance the transparency of auditor oversight and to allow for greater accountability, each Member State should designate a single authority to be in charge of public oversight of statutory auditors and audit firms. The independence of such public oversight authorities from the audit profession is a core prerequisite for the integrity, efficiency and orderly functioning of public oversight of statutory auditors and audit firms. Consequently, the public oversight authorities should be governed by non-practitioners and Member States should establish independent and transparent procedures for the selection of such non-practitioners.
- (19) Member States should be able to create exemptions to the requirements imposed on auditing services when they are provided to cooperatives and savings banks.
- (20) Member States should be able to delegate or allow competent authorities to delegate the tasks of those competent authorities to other authorities or to bodies authorised or designated by law. Such delegation should be subject to several conditions and the competent authority concerned should bear the ultimate responsibility for the oversight.
- (21) Public oversight authorities should be vested with sufficient powers to fulfil their tasks in an effective manner. In addition, they should be provided with sufficient human and financial resources to perform their tasks.

- (22) Adequate oversight of statutory auditors and audit firms that engage in cross-border activities or are part of networks necessitates exchange of information between the public oversight authorities of the Member States. 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 may have delegated tasks.
- (23) Where there are proper grounds for acting, shareholders, other bodies of the audited entities when defined by national law or the competent authorities responsible for the oversight of statutory auditors and audit firms or, when provided for by national law, the competent authorities responsible for the supervision of the public-interest entity should be empowered to bring a claim before a national court for the dismissal of the statutory auditor.

- (24) Audit committees, or bodies performing an equivalent function within the audited public-interest entity, have a decisive role to play in contributing to high-quality statutory audit. It is particularly important to reinforce the independence and technical competence of the audit committee by requiring that a majority of its members be independent and that at least one of its members have competence in auditing and/or accounting. The Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board sets out the way in which audit committees should be established and the manner in which they should function. However, in view of the size of boards in companies with reduced market capitalisation and in small and medium-sized public-interest entities, it is appropriate to provide that the functions assigned to the audit committee for such entities, or to a body performing equivalent functions within the audited entity, may be performed by the administrative or supervisory body as a whole. Public-interest entities which are undertakings for collective investment in transferable securities (UCITS) or alternative investment funds should also be exempted from the obligation to have an audit committee. This exemption takes into account the fact that, where those funds function merely for the purpose of pooling assets, the employment of an audit committee is not appropriate. UCITS and alternative investments funds, as well as their management companies, operate in a strictly defined regulatory environment and are subject to specific governance mechanisms, such as controls exercised by their depositary.

- (25) The "Small Business Act" adopted by the Commission Communication of 25 June 2008 entitled ' "Think Small First"- A "Small Business Act" for Europe' and revised by the Commission Communication of 23 February 2011 entitled 'Review of the "Small Business Act" for Europe', 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 anchoring the "Think Small First" principle in policy-making. The Europe 2020 Strategy 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 2013/34/EU of the European Parliament and of the Council<sup>1</sup> does not require small undertakings to have their financial statements audited.
- (26) 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 on the basis of which any such exchange takes place include sufficient safeguards to protect the business secrecy and commercial interests, including the industrial and intellectual property rights, of the audited entities. Member States should ensure that those arrangements comply and are compatible with the provisions of Directive 95/46/EC.

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<sup>1</sup> Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).



- (27) The threshold of EUR 50 000 laid down in Article 45(1) of Directive 2006/43/EC was aligned on points (c) and (d) of Article 3(2) of Directive 2003/71/EC of the European Parliament and of the Council<sup>1</sup>. 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 Council<sup>2</sup>. For that reason, corresponding adjustments should be made to the threshold set out in Article 45(1) of Directive 2006/43/EC.
- (28) In order to give full effect to the new legal framework provided for in the TFEU, it is necessary to adapt and replace the implementing powers provided for under Article 202 of the Treaty establishing the European Community with the appropriate provisions in accordance with Articles 290 and 291 TFEU.

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<sup>1</sup> 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/EC (OJ L 345, 31.12.2003, p. 64).

<sup>2</sup> Directive 2010/73/EU of the European Parliament and of the Council of 24 November 2010 amending Directives 2003/71/EC on the prospectus to be published when securities are offered to the public or admitted to trading and 2004/109/EC on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ L 327, 11.12.2010, p. 1).

- (29) The alignment of the procedures for the adoption of delegated and implementing acts by the Commission to the TFEU and, in particular, to Articles 290 and 291 thereof, should be done on a case-by-case basis. In order to take into account the developments in auditing and the audit profession, and to facilitate the oversight of statutory auditors and audit firms, the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. In the field of auditor oversight, the use of delegated acts is necessary in order to develop the procedures for cooperation between the competent authorities of Member States and those of third countries. It is of particular importance that the Commission carry 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.
- (30) 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<sup>1</sup>.

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<sup>1</sup> 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 Member States of the Commission's exercise of implementing power (OJ L 55, 28.2.2011, p. 13).

- (31) Since the objective of this Directive, namely to reinforce investor confidence in the truth and fairness of 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 but can rather, 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.
- (32) Directive 2006/43/EC should therefore be amended accordingly.
- (33) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>1</sup> and delivered an opinion on 23 April 2012<sup>2</sup>.
- (34) In accordance with the Joint Political Declaration of 28 September 2011 of Member States and the Commission on explanatory documents<sup>3</sup>, Member States have undertaken to accompany, in justified cases, the notification of their transposition measures with one or more documents explaining the relationship between the components of a directive and the corresponding parts of national transposition instruments. With regard to this Directive, the legislator considers the transmission of such documents to be justified,

HAVE ADOPTED THIS DIRECTIVE:

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<sup>1</sup> Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

<sup>2</sup> OJ C 336, 6.11.2012, p. 4.

<sup>3</sup> OJ C 369, 17.12.2011, p. 14.

## *Article 1*

Directive 2006/43/EC is hereby amended as follows:

1. In Article 1 the following paragraph is added:

'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 .../.... of the European Parliament and the Council\*<sup>+</sup>.

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\* Regulation (EU) No .../... of the European Parliament and of the Council of ... on specific requirements regarding statutory audit of public-interest entities (OJ L ...).'

2. Article 2 is amended as follows:

- (a) point 1 is replaced by the following:

'1. "statutory audit" means an audit of annual financial statements or consolidated financial statements in so far as:

- (a) required by Union law;
- (b) required by national law as regards small undertakings;

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<sup>+</sup> OJ: please insert the number of the Regulation in document PE-CONS 5/14 to the text and complete the footnote.

- (c) voluntarily carried out at the request of small undertakings which meets national legal requirements that are equivalent to those for an audit under point (b), where national legislation defines such audits as statutory audits;
- (b) point 4 is replaced by the following:
  - '4. "third-country audit entity" means an entity, regardless of its legal form, which carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than an entity which is registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3;'
- (c) point 5 is replaced by the following:
  - '5. "third-country auditor" means a natural person who carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than a person who is registered as a statutory auditor in any Member State as a consequence of approval in accordance with Articles 3 and 44;'

(d) point 10 is replaced by the following:

'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;'

(e) point 11 is deleted;

(f) point 13 is replaced by the following:

'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 3(1) of Directive 2013/36/EU of the European Parliament and of the Council\*, other than those referred to in Article 2 of that Directive;

(c) insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC; or

- (d) entities designated by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees;

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\* Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC (OJ L 176, 27.6.2013, p. 338).'

- (g) point 15 is replaced by the following:

'15. "non-practitioner" means any natural person who, during his or her involvement in the governance of the public oversight system and during the period of three years immediately preceding that involvement, has not carried out statutory audits, has not held voting rights in an audit firm, has not been a member of the administrative, management or supervisory body of an audit firm and has not been employed by, or otherwise associated with, an audit firm;'

- (h) the following points 17 to 20 are added:

'17. "medium-sized undertakings" means the undertakings referred to in Article 1(1) and Article 3(3) of Directive 2013/34/EU of the European Parliament and of the Council\*;

18. "small undertakings" means the undertakings referred to in Article 1(1) and Article 3(2) of Directive 2013/34/EU;
19. "home Member State" means a Member State in which a statutory auditor or audit firm is approved in accordance with Article 3(1);
20. "host Member State" means a Member State in which a statutory auditor approved by his or her home Member State seeks to be also approved in accordance with Article 14, or a Member State in which an audit firm approved by its home Member State seeks to be registered or is registered in accordance with Article 3a.

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\* Directive 2013/34/EU of the European Parliament and of the Council of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, amending Directive 2006/43/EC of the European Parliament and of the Council and repealing Council Directives 78/660/EEC and 83/349/EEC (OJ L 182, 29.6.2013, p. 19).'



3. Article 3 is amended as follows:

(a) paragraph 2 is amended as follows:

(i) the first subparagraph is replaced by the following:

'Each Member State shall designate the competent authority to be responsible for approving statutory auditors and audit firms.'

(ii) the second subparagraph is deleted;

(b) point (b) of the first subparagraph of paragraph 4 is replaced by the following:

'(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, savings bank or similar entity as referred to in Article 45 of Directive 86/635/EEC, Member States may lay down other specific provisions in relation to voting rights;'

4. The following Article is inserted:

*'Article 3a*

*Recognition of audit firms*

1. By way of 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 point (a) of Article 3(4) in the host Member State.
2. An audit firm that wishes to carry out statutory audits in a Member State other than its home Member State 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 if it is satisfied 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 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 audit firm.'

5. In Article 5, paragraph 3 is replaced by the following:

'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 the audit firm is also registered in accordance with Article 3a, point (c) of Article 16(1) and point (i) of Article 17(1).'

6. In Article 6, the following paragraph is added:

'The competent authorities referred to in Article 32 shall cooperate with each other with a view to achieving a convergence of the requirements set out in this Article. When engaging in such cooperation, those competent authorities shall take into account developments in auditing and in 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 20 of Regulation (EU) No .../...<sup>+</sup> in so far as such convergence relates to the statutory audit of public-interest entities.'

7. Article 8 is amended as follows:

(a) in paragraph 1, point (i) is replaced by the following:

'(i) international auditing standards as referred to in Article 26;'

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

(b) paragraph 3 is deleted.

8. In Article 10, paragraph 1 is replaced by the following:

'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 an audit firm approved in any Member State.'

9. Article 13 is replaced by the following:

*'Article 13*

*Continuing education*

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

10. Article 14 is replaced by the following:

*'Article 14*

*Approval of statutory auditors from another Member State*

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

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 shall cooperate within the framework of the CEA OB 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 the CEA OB and with the competent authorities referred to in Article 20 of Regulation (EU) No .../...<sup>+</sup> in so far as such convergence relates to statutory audits of public-interest entities.

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\* Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications (OJ L 255, 30.9.2005, p. 22).'

11. In Article 15, paragraph 1 is replaced by the following:

'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.'

12. In Article 17(1), the following point is added:

'(j) where applicable, whether the audit firm is registered pursuant to Article 3a(3).'

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

13. Article 21 is amended as follows:

(a) the title is replaced by the following:

'Professional ethics and scepticism';

(b) paragraph 2 is replaced by the following:

'2. Member States shall ensure that, when the statutory auditor or the audit firm carries out the statutory audit, he, she or it maintains professional scepticism throughout the audit, recognising the possibility of a material misstatement due to facts or behaviour indicating irregularities, including fraud or error, notwithstanding the statutory auditor's or the 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 entity's ability to continue as a 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.'

14. Article 22 is amended as follows:

(a) paragraph 1 is replaced by the following:

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

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

Member States shall ensure that a statutory auditor or an audit firm takes all reasonable 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 the 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 the audit firm, or any person directly or indirectly linked to the statutory auditor or the audit firm by control.



The statutory auditor or the audit firm shall not carry out a statutory audit if there is any threat of self-review, self-interest, advocacy, familiarity or intimidation created by financial, personal, business, employment or other relationships between:

- the statutory auditor, the audit firm, its network, and any natural person in a position to influence the outcome of the statutory audit, and
- the audited entity,

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

(b) paragraph 2 is replaced by the following:

- '2. Member States shall ensure that a statutory auditor, an audit firm, their key audit partners, their employees, and any other natural person whose services are placed at the disposal or under the control of such statutory auditor or audit 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\*, do not hold or have a material and direct beneficial interest in, or engage in any transaction in any financial instrument issued, guaranteed, or otherwise supported by, any audited entity within their area of statutory audit activities, other than interests owned indirectly through diversified collective investment schemes, including managed funds such as pension funds or life insurance.

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\* Commission Directive 2004/72/EC of 29 April 2004 implementing Directive 2003/6/EC of the European Parliament and of the Council as regards accepted market practices, the definition of inside information in relation to derivatives on commodities, the drawing up of lists of insiders, the notification of managers' transactions and the notification of suspicious transactions (OJ L 162, 30.4.2004, p. 70).'

(c) paragraph 4 is replaced by the following:

'4. Member States shall ensure that persons or firms referred to in paragraph 2 do not participate in or otherwise influence the outcome of a statutory audit of any particular audited entity if they:

- (a) own financial instruments of the audited entity, other than interests owned indirectly through diversified collective investment schemes;
- (b) own financial instruments of any entity related to an audited entity, the ownership of which may cause, or may be generally perceived as causing, a conflict of interest, other than interests owned indirectly through diversified collective investment schemes;
- (c) have had an employment, or a business or other relationship with that audited entity within the period referred in paragraph 1 that may cause, or may be generally perceived as causing, a conflict of interest.'

(d) the following paragraphs are added:

'5. Persons or firms referred to in paragraph 2 shall not solicit or accept pecuniary and non-pecuniary gifts or favours from the audited entity or any entity related to an audited entity unless an objective, reasonable and informed third party would consider the value thereof as trivial or inconsequential.

6. If, during the period covered by the financial statements, an audited entity is acquired by, merges with, or acquires another entity, the statutory auditor or the audit firm shall identify and evaluate any current or recent interests or relationships, including any non-audit services provided to that entity, which, taking into account available safeguards, could compromise the auditor's independence and ability to continue with the statutory audit after the effective date of the merger or acquisition.

As soon as possible, and in any event within three months, the statutory auditor or the audit firm shall take all such steps as may be necessary to terminate any current interests or relationships that would compromise its independence and shall, where possible, adopt safeguards to minimise any threat to its independence arising from prior and current interests and relationships.'

15. The following Article is inserted:

*'Article 22a*

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

1. Member States shall ensure that a statutory auditor or a key audit partner who carries out a statutory audit on behalf of an audit firm does not, before a period of at least one year, or in the case of statutory audit of public-interest entities a period of at least two years, has elapsed since he or she ceased to act as a statutory auditor or key audit partner in connection with the audit engagement:
  - (a) take up a key management position in the audited entity;
  - (b) where 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. Member States shall ensure that employees and partners other than key audit partners of a statutory auditor or of 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 statutory auditor or audit firm, do not, when such employees, partners or other natural persons are personally approved as statutory auditors, take up any of the duties referred to in points (a), (b) and (c) of paragraph 1 before a period of at least one year has elapsed since he or she was directly involved in the statutory audit engagement.'

16. The following Article is inserted:

*'Article 22b*

*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 an audit firm assesses and documents the following:
  - 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 and the safeguards applied to mitigate those threats;

- whether he, she or it has the competent employees, time and resources needed in order to carry out the statutory audit in an appropriate manner;
- whether, in the case of an audit firm, the key audit partner is approved as statutory auditor in the Member State requiring the statutory audit;

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

17. Article 23 is amended as follows:

(a) paragraph 2 is replaced by the following:

'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 (EU) No .../...<sup>+</sup>.'

(b) paragraph 3 is replaced by the following:

'3. Where a statutory auditor or an 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 of that entity.';

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

(c) the following paragraph is added:

'5. Where a statutory auditor or an audit firm carries out a 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 the audit firm of relevant documentation concerning the audit work performed to the group auditor situated in a third country if such documentation is necessary for the performance of the audit of consolidated financial statements of the parent undertaking.

A statutory auditor or an audit firm that carries out the statutory audit of an undertaking which has issued securities in a third country, or which forms part of a group issuing statutory consolidated financial statements in a third country, may only transfer the audit working papers or other documents relating 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.

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.'



18. The following Article is inserted:

*'Article 24a*

*Internal organisation of statutory auditors and audit firms*

1. Member States shall ensure that a statutory auditor or an audit firm complies with the following organisational requirements:
  - (a) an audit firm shall establish appropriate 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 quality control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

Those internal quality 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;

- (c) a statutory auditor or an audit firm shall establish appropriate policies and procedures to ensure that his, her or its employees and any other natural persons whose services are placed at his, her or its disposal or under his, her or 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 appropriate 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 the audit firm's internal quality control and the ability of the competent authorities to supervise the statutory auditor's or the audit firm's compliance with the obligations laid down in this Directive and, where applicable, in Regulation (EU) No .../...<sup>+</sup>;
- (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 their independence as referred to in 22, 22a and 22b;
- (f) a statutory auditor or an audit firm shall establish appropriate policies and procedures for carrying out statutory audits, coaching, supervising and reviewing employees activities and organising the structure of the audit file as referred to in Article 24b(5);

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

- (g) a statutory auditor or an audit firm shall establish an internal quality control system to ensure the quality of the statutory audit.

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

- (h) a statutory auditor or an audit firm shall use appropriate systems, resources and procedures to ensure continuity and regularity in the carrying out of his, her or its statutory audit activities;
- (i) a statutory auditor or an 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 in place adequate remuneration policies, including profit-sharing policies, providing sufficient performance incentives to secure audit quality. In particular, the amount of revenue that the statutory auditor or the audit firm derives from providing non-audit services to the audited entity shall not form part of the performance evaluation and remuneration of any person involved in, or able to influence the carrying out of, the audit;

- (k) a statutory auditor or an audit firm shall monitor and evaluate the adequacy and effectiveness of his, her or its systems, internal quality control mechanisms and arrangements established in accordance with this Directive and, where applicable, Regulation (EU) No .../...<sup>+</sup> 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 the audit firm.

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

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

2. The statutory auditor or the audit firm shall take into consideration the scale and complexity of his, her or its activities when complying with the requirements set out in paragraph 1 of this Article.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

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

19. The following Article is inserted:

*'Article 24b*

*Organisation of the work*

1. Member States shall ensure that, when the statutory audit is carried out by an audit firm, that audit firm designates at least one key audit partner. The audit firm shall provide the key audit partner(s) with sufficient resources and with personnel that have the necessary competence and capabilities to carry out his, her or its duties appropriately.

Securing audit quality, independence and competence shall be the main criteria when the audit firm selects 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 enable him or her to carry out his or her duties appropriately.

3. Member States shall ensure that the statutory auditor or the audit firm keeps records of any breaches of the provisions of this Directive and, where applicable, of Regulation (EU) No .../...<sup>+</sup>. Member States may exempt statutory auditors and audit firms from this obligation with regard to minor breaches. Statutory auditors and audit firms shall also keep records of any consequence of any breach, including the measures taken to address such breach and to modify their internal quality control system. They shall prepare an annual report containing an overview of any such measures taken and shall communicate that report internally.

When a statutory auditor or an audit firm asks external experts for advice, he, she or it shall document the request made and the 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 name(s) of the key audit partner(s);
  - (c) the fees charged for the statutory audit and the fees charged for other services in any financial year.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

5. A statutory auditor or an audit firm shall create an audit file for each statutory audit.

The statutory auditor or the audit firm shall document at least the data recorded pursuant to Article 22b(1) of this Directive, and, where applicable, Articles 6 to 8 of Regulation (EU) No .../....<sup>+</sup>.

The statutory auditor or the audit firm shall retain any other data and documents that are of importance in support of the report referred to in Articles 28 of this Directive and, where applicable, Articles 10 and 11 of Regulation (EU) No .../...<sup>+</sup> and for monitoring compliance with this Directive and other applicable legal requirements.

The audit file shall be closed no later than 60 days after the date of signature of the audit report referred to in Article 28 of this Directive and, where applicable, Article 10 of Regulation (EU) No .../...<sup>+</sup>.

6. The statutory auditor or the audit firm shall keep records of any complaints made in writing about the performance of the statutory audits carried out.
7. Member States may lay down simplified requirements with regard to paragraphs 3 and 6 for the audits referred to in points (b) and (c) of point 1 of Article 2.'

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

20. The following Article is inserted:

*'Article 25a*

*Scope of the statutory audit*

Without prejudice to the reporting requirements referred to in Article 28 of this Directive and, where applicable, Articles 10 and 11 of Regulation (EU) No .../...<sup>+</sup>, the scope of the statutory audit shall not include assurance on the future viability of the audited entity or on the efficiency or effectiveness with which the management or administrative body has conducted or will conduct the affairs of the entity.'

21. Article 26 is replaced by the following:

*'Article 26*

*Auditing standards*

1. Member States shall require statutory auditors and audit firms to carry out statutory audits in compliance with international auditing standards adopted by the Commission in accordance with paragraph 3.

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

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.



2. For the purposes of paragraph 1, "international auditing standards" means International Standards on Auditing (ISAs), International Standard on Quality Control (ISQC 1) and other related Standards issued by the International Federation of Accountants (IFAC) through the International Auditing and Assurance Standards Board (IAASB), in so far as they are relevant to the statutory audit.
3. The Commission shall be empowered to adopt, by means of delegated acts in accordance with Article 48a, the international auditing standards referred to in paragraph 1 in the area of audit practice, independence and internal quality controls of statutory auditors and audit firms for the purposes of the application of those standards within the Union.

The Commission may adopt the international auditing standards 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;
- (c) are conducive to the Union public good; and
- (d) do not amend any of the requirements of this Directive or supplement any of its requirements apart from those set out in Chapter IV and Articles 27 and 28.

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

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

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

22. Article 27 is replaced by the following:

*'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) in relation to the consolidated financial statements, the group auditor bears the full responsibility for the audit report referred to in Article 28 of this Directive and, where applicable, Article 10 of Regulation (EU) No .../...<sup>+</sup> and for, where applicable, the additional report to the audit committee as referred to in Article 11 of that Regulation;
  - (b) the group auditor evaluates the audit work performed by any third-country auditor(s) or statutory auditor(s) and third-country audit entity(ies), or audit firm(s) for the purpose of the group audit, and documents the nature, timing and extent of the work performed by those auditors, including, where applicable, the group auditor's review of relevant parts of those auditors' audit documentation;
  - (c) the group auditor reviews the audit work performed by third-country auditor(s) or statutory auditor(s) and third-country audit entity(ies) or audit firm(s) for the purpose of the group audit and documents it.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

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

For the purposes of point (c) 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) concerned 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 those 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 (c) of the first subparagraph of paragraph 1, he, she or it shall take appropriate measures and inform the relevant competent authority.

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 the respective 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 any statutory auditor(s) or audit firm(s) for the purpose of the group audit from the relevant competent authorities pursuant to Article 36.

Where a parent undertaking or a subsidiary undertaking of a group of undertakings is audited by an auditor or auditor(s) or an audit entity(ies) from a third country, the competent authority may request additional documentation on the audit work performed by any 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, where a parent undertaking or a subsidiary undertaking of a group of undertakings is audited by an auditor or auditors or an audit entity or entities from a third country that has no working arrangements 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 such third-country auditor(s) or audit entity(ies), including the working papers relevant to the group audit. In order 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) that he, she or it is to be given unrestricted access to such documentation upon request, or take any other appropriate action. Where audit working papers cannot, for legal or other reasons, 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 concerned, evidence supporting the existence of such impediments.'

23. Article 28 is replaced by the following:

*'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 concerned, as referred to in Article 26.
2. The audit report shall be in writing and shall:
  - (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) include a description of the scope of the statutory audit which shall, as a minimum, identify the auditing standards in accordance with which the statutory audit was conducted;

- (c) include an audit opinion, which shall be either unqualified, qualified or an adverse opinion and shall state clearly the opinion of the statutory auditor(s) or the audit firm(s) as to:
  - (i) whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework; and,
  - (ii) where appropriate, whether the annual financial statements comply with statutory requirements.

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

- (d) refer to any other matters to which the statutory auditor(s) or the audit firm(s) draw(s) 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) provide a statement on any material uncertainty relating to events or conditions that may cast significant doubt about the entity's ability to continue as a going concern;



- (g) identify the place of establishment of the statutory auditor(s) or the audit firm(s).

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

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

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

5. The report of the statutory auditor or the audit firm on the consolidated financial statements shall comply with the requirements set out in paragraphs 1 to 4. In reporting on the consistency of the management report and the financial statements as required by point (e) of paragraph 1, the statutory auditor or the 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 the audit firms required by this Article may be combined.'

24. Article 29 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) point (a) is replaced by the following:

'(a) the quality assurance system shall be organised in such a manner that it is independent of the reviewed statutory auditors and audit firms and is subject to public oversight;';

(ii) point (h) is replaced by the following:

'(h) quality assurance reviews shall take place on the basis of an analysis of the risk and, in the case of statutory auditors and audit firms carrying out statutory audits as defined in point (a) of point 1 of Article 2, at least every six years;';

(iii) the following point is added:

'(k) quality assurance reviews shall be appropriate and proportionate in view of the scale and complexity of the activity of the reviewed statutory auditor or audit firm.';

(b) paragraph 2 is replaced by the following:

'2. For the purpose of point (e) of paragraph 1, at least the following criteria shall apply to the selection of reviewers:

- (a) reviewers shall have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance reviews;
- (b) a person shall not be allowed to act as a reviewer in a quality assurance review of a statutory auditor or an audit firm until at least three years have elapsed since that person ceased to be a partner or an employee of, or otherwise associated with, that statutory auditor or audit firm;
- (c) reviewers shall declare that there are no conflicts of interest between them and the statutory auditor and the audit firm to be reviewed.'

(c) the following paragraph is added:

'3. For the purpose of point (k) of paragraph 1, 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 of the audited entity.'

25. Chapter VII is replaced by the following:

'CHAPTER VII  
INVESTIGATIONS AND SANCTIONS

*Article 30*

*Systems of investigations and sanctions*

1. Member States shall ensure that there are effective systems of investigations and sanctions 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 sanctions 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 (EU) No .../...<sup>+</sup>.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

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

3. Member States shall provide that measures taken and sanctions imposed on statutory auditors and audit firms are to be appropriately disclosed to the public. Sanctions shall include the possibility of withdrawal of approval. Member States may decide that such disclosure shall not contain personal data within the meaning of point (a) of Article 2 of Directive 95/46/EC.
4. By ...<sup>+</sup> the Member States shall notify the rules referred to in paragraph 2 to the Commission. They shall notify the Commission without delay of any subsequent amendment thereto.

#### *Article 30a*

##### *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, of Regulation (EU) No .../...<sup>++</sup>:
  - (a) a notice requiring the natural or legal person responsible for the breach to cease the conduct and to abstain from any repetition of that conduct;

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<sup>+</sup> OJ: please insert date: 24 months after the entry into force of this Directive.

<sup>++</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

- (b) a public statement which indicates the person responsible and the nature of the breach, published on the website of competent authorities;
  - (c) a temporary prohibition, of up to three years' duration, banning the statutory auditor, the audit firm or the key audit partner from carrying out statutory audits and/or signing audit reports;
  - (d) a declaration that the audit report does not meet the requirements of Article 28 of this Directive or, where applicable, Article 10 of Regulation (EU) No .../...<sup>+</sup>;
  - (e) a temporary prohibition, of up to three years' duration, banning a member of an audit firm or a member of an administrative or management body of a public-interest entity from exercising functions in audit firms or public-interest entities;
  - (f) the imposition of administrative pecuniary sanctions on natural and legal persons.
2. Member States shall ensure that the competent authorities are able to 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) by application to the competent judicial authorities.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

3. Member States may confer on competent authorities other sanctioning powers in addition to those referred to in paragraph 1.
4. By way of derogation from paragraph 1, Member States may confer on authorities supervising public-interest entities, when they are not designated as the competent authority pursuant to Article 20(2) of Regulation (EU) No .../...<sup>+</sup>, powers to impose sanctions for breaches of reporting duties provided for by that Regulation.

#### *Article 30b*

##### *Effective application of sanctions*

When laying down rules pursuant to Article 30, Member States shall require that, when determining the type and level of administrative sanctions and measures, competent authorities are to 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 person, if that person is a natural person;
- (d) the amounts of the profits gained or losses avoided by the responsible person, in so far as they can be determined;

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

- (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, where such factors are specified in national law.

#### *Article 30c*

##### *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 (EU) No .../...<sup>+</sup> in respect of which all rights of appeal have been exhausted or have expired, as soon as reasonably practicable immediately after the person sanctioned has been informed of that decision, including information concerning the type and nature of the breach and the identity of the natural or legal person on whom the sanction has been 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 concerning the status and outcome of any appeal.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.



2. Competent authorities shall publish the sanctions imposed on an anonymous basis, and in a manner which is in conformity with national law, in any of the following circumstances:
  - (a) where, in the event that 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 ongoing 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 is of proportionate duration and that it remains on their official website for a minimum period of five years after all rights of appeal have been exhausted or have expired.

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

#### *Article 30d*

##### *Appeal*

Member States shall ensure that decisions taken by the competent authority in accordance with this Directive and Regulation (EU) No .../...<sup>+</sup> are subject to a right of appeal.

#### *Article 30e*

##### *Reporting of breaches*

1. Member States shall ensure that effective mechanisms are established to encourage reporting of breaches of this Directive or of Regulation (EU) No .../...<sup>+</sup> 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) protection of personal data concerning both the person who reports the suspected or actual breach and the person who is suspected of committing, or who has allegedly committed that breach, in compliance with the principles laid down in Directive 95/46/EC;
  - (c) 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 or her, and the right to seek an effective remedy before a tribunal against any decision or measure concerning him or her.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

3. Member States shall ensure that audit firms establish appropriate procedures for their employees to report potential or actual breaches of this Directive or of Regulation (EU) No .../...<sup>+</sup> internally through a specific channel.

#### *Article 30f*

##### *Exchange of information*

1. Competent authorities shall provide the CEAOB annually with aggregated information regarding all administrative measures and all sanctions imposed in accordance with this chapter. The CEAOB shall publish that information in an annual report.
2. Competent authorities shall immediately communicate to the CEAOB all temporary prohibitions referred to in points c) and e) of Article 30a(1).'

26. Article 32 is amended as follows:

- (a) paragraph 1 is replaced by the following:

- '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.';

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

(b) paragraph 3 is replaced by the following:

'3. The competent authority shall be governed by non-practitioners who are knowledgeable in the areas relevant to statutory audit. They shall be selected in accordance with an independent and transparent nomination procedure.

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

(c) paragraph 4 is replaced by the following:

'4. The competent authority shall have the ultimate responsibility for the oversight of:

- (a) the approval and registration of statutory auditors and audit firms;
- (b) the adoption of standards on professional ethics, internal quality control of audit firms and auditing, except where those standards are adopted or approved by other Member State authorities;
- (c) continuing education;
- (d) quality assurance systems;
- (e) investigative and administrative disciplinary systems.';

(d) the following paragraphs are inserted:

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

Member States shall inform the Commission of their designation.

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

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

The delegation shall specify the delegated tasks and the conditions under which they are to be carried out. The authorities or bodies shall be organised in such a manner that conflicts of interest are avoided.

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

(e) paragraphs 5 to 7 are replaced by the following:

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

Where a competent authority engages experts to carry out specific assignments, it shall ensure that there are no conflicts of interest between those experts and the statutory auditor or the audit firm in question. Such experts shall comply with the same requirements as those provided for in point (a) of Article 29(2).

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

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

27. Article 34 is amended as follows:

(a) the following subparagraph is added in paragraph 1:

'Without prejudice to the first subparagraph, audit firms approved in one Member State that perform audit services in another Member State pursuant to Article 3a shall be subject to quality assurance review in the home Member State and oversight in the host Member State of any audit carried out there.'

(b) paragraphs 2 and 3 are replaced by the following:

'2. In the case of a statutory audit of consolidated financial statements, the Member State requiring that statutory audit 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 an 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 an audit firm carrying out the statutory audit of the annual or consolidated financial statements of that company.';

(c) the following paragraph is added:

- '4. Where a statutory auditor or an audit firm is registered in any Member State as a consequence of approval in accordance with Article 3 or Article 44 and that statutory auditor or audit firm provides audit reports concerning annual financial statements or consolidated financial statements as referred to in Article 45(1), the Member State in which the statutory auditor or the audit firm is registered shall subject that statutory auditor or audit firm to its systems of oversight, its quality assurance systems and its systems of investigation and sanctions.'

28. Article 35 is deleted.



29. Article 36 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The competent authorities of Member States responsible for approval, registration, quality assurance, inspection and discipline, the competent authorities designated in accordance with Article 20 of Regulation (EU) No .../...<sup>+</sup> and the relevant European Supervisory Authorities shall cooperate with each other whenever necessary for the purpose of carrying out their respective responsibilities and tasks under this Directive and Regulation (EU) No .../...<sup>+</sup>. The competent authorities in a Member State shall render assistance to competent authorities in other Member States and to the relevant European Supervisory Authorities. In particular, competent authorities shall exchange information and cooperate in investigations relating to the carrying-out of statutory audits.';

(b) paragraph 3 is replaced by the following:

'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.';

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

(c) paragraph 4 is amended as follows:

(i) in the third subparagraph, point (b) is replaced by the following:

'(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';

(ii) in the third subparagraph, point (c) is replaced by the following:

'(c) final judgment has already been passed in respect of the same actions and on the same persons by the competent authorities of the requested Member State.'

(iii) the fourth subparagraph is replaced by the following:

'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 Regulation (EU) No .../...<sup>+</sup> and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.';

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

(d) the following paragraph is added:

'4a. Member States may allow competent authorities to transmit to the competent authorities responsible for supervising public-interest entities, to central banks, to the European System of Central Banks and to the European Central Bank, in their capacity as monetary authorities, and to 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 Regulation (EU) No .../...<sup>+</sup>!';

(e) in the fourth subparagraph of paragraph 6, point (a) is replaced by the following:

'(a) such an investigation might adversely affect the sovereignty, security or public order of the requested Member State or breach national security rules; or';

(f) paragraph 7 is deleted.

30. In Article 37, the following paragraph is added:

'3. Any contractual clause restricting the choice by the general meeting of shareholders or members of the audited entity pursuant to paragraph 1 to certain categories or lists of statutory auditors or audit firms as regards the appointment of a particular statutory auditor or audit firm to carry out the statutory audit of that entity shall be prohibited. Any such existing clauses shall be null and void. '

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

31. In Article 38, the following paragraph is added:

'3. In the case of a statutory audit of a public-interest entity, Member States shall ensure that it is permissible for

- (a) shareholders representing 5 % or more of the voting rights or of the share capital;
- (b) the other bodies of the audited entities when defined by national legislation; or
- (c) the competent authorities referred to in Article 32 of this Directive or designated in accordance with Article 20(1) of Regulation (EU) No .../...<sup>+</sup> or, when provided for by national law, with Article 20(2) of that Regulation,

to bring a claim before a national court for the dismissal of the statutory auditor(s) or the audit firm(s) where there are proper grounds for so doing.'

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

32. Chapter X is replaced by the following:

'CHAPTER X  
AUDIT COMMITTEE

*Article 39*

*Audit committee*

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

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

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

A majority of the members of the audit committee shall be independent of the audited entity. The chairman of the audit committee shall be appointed by its members or by the supervisory body of the audited entity, and shall be independent of the audited entity. Member States may require the chairman of the audit committee to be elected annually by the general meeting of shareholders of the audited entity.

2. By way of 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 of the supervisory body of the audited entity in accordance with paragraph 1, Member States may permit or require the administrative body or the supervisory body, as appropriate, to perform the functions of the audit committee for the purpose of the obligations set out in this Directive and in Regulation (EU) No .../...<sup>+</sup>.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

3. By way of 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 point 10 of Article 2 of Directive 2013/34/EU if that entity fulfils the requirements set out in paragraphs 1, 2 and 5 of this Article, Article 11(1), Article 11(2) and Article 16(5) of Regulation (EU) No .../...<sup>+</sup> at group level;
  - (b) any public-interest entity which is an UCITS as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council\*\* or an alternative investment fund (AIF) as defined in Article 4(1)(a) of Directive 2011/61/EU of the European Parliament and of the Council\*\*\*;
  - (c) any public-interest entity the sole business of which is to act as an issuer of asset backed securities as defined in point 5 of Article 2 of Commission Regulation (EC) No 809/2004\*\*\*\*;
  - (d) any credit institution within the meaning of point 1 of Article 3(1) of Directive 2013/36/EU 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.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

The public-interest entities referred to in point (c) shall explain to the public the reasons why they consider that it is not appropriate for them to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee.

4. By way of derogation from paragraph 1, Member States may require or allow a public-interest entity not to have an audit committee provided that it has a body or bodies performing equivalent functions to an audit committee, established and functioning in accordance with provisions in place in the Member State in which the entity to be audited is registered. In such a case the entity shall disclose which body carries out those functions and how that body is composed.
5. Where all members of the audit committee are members of the administrative or supervisory body of the audited entity, the Member State may provide that the audit committee is to be exempt from the independence requirements laid down in the fourth subparagraph of paragraph 1.



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) inform the administrative or supervisory body of the audited entity of the outcome of the statutory audit and explain how the statutory audit contributed to the integrity of financial reporting and what the role of the audit committee was in that process;
  - (b) monitor the financial reporting process and submit recommendations or proposals to ensure its integrity;
  - (c) monitor the effectiveness of the undertaking's internal quality control and risk management systems and, where applicable, its internal audit, regarding the financial reporting of the audited entity, without breaching its independence;
  - (d) monitor the statutory audit of the annual and consolidated financial statements, in particular, its performance, taking into account any findings and conclusions by the competent authority pursuant to Article 26(6) of Regulation (EU) No .../...<sup>+</sup>;

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

- (e) review and monitor the independence of the statutory auditors or the audit firms in accordance with Articles 22, 22a, 22b, 24a and 24b of this Directive and Article 6 of Regulation (EU) No .../...<sup>+</sup>, and in particular the appropriateness of the provision of non-audit services to the audited entity in accordance with Article 5 of that Regulation;
- (f) be responsible for the procedure for the selection of statutory auditor(s) or audit firm(s) and recommend the statutory auditor(s) or the audit firm(s) to be appointed in accordance with Article 16 of Regulation (EU) No .../...<sup>+</sup> except when Article 16(8) of Regulation (EU) No .../...<sup>+</sup> is applied.

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- \* 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/EC (OJ L 345, 31.12.2003, p. 64).
  - \*\* Directive 2009/65/EC of the European Parliament and of the Council of 13 July 2009 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 302, 17.11.2009, p. 32).
  - \*\*\* Directive 2011/61/EU of the European Parliament and of the Council of 8 June 2011 on Alternative Investment Fund Managers and amending Directives 2003/41/EC and 2009/65/EC and Regulations (EC) No 1060/2009 and (EU) No 1095/2010 (OJ L 174, 1.7.2011, p. 1).
  - \*\*\*\* Commission Regulation (EC) No 809/2004 of 29 April 2004 implementing Directive 2003/71/EC of the European Parliament and of the Council as regards information contained in prospectuses as well as the format, incorporation by reference and publication of such prospectuses and dissemination of advertisements (OJ L 149, 30.4.2004, p. 1).'

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

33. Article 45 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The competent authorities of a Member State shall, in accordance with Articles 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 an undertaking 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 undertaking in question is an issuer exclusively of outstanding debt securities for which one of the following applies:

(a) they have been admitted to trading on a regulated market in a Member State within the meaning of point (c) of Article 2(1) of Directive 2004/109/EC of the European Parliament and of the Council\* prior to 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 50 000 or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 50 000;

- (b) they are admitted to trading on a regulated market in a Member State within the meaning of point (c) of Article 2(1) of Directive 2004/109/EC from 31 December 2010 and the denomination per unit of which is, at the date of issue, 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.

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\* Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).';

- (b) paragraph 5 is amended as follows:

- (i) point (a) is deleted;

- (ii) point (d) is replaced by the following:

- '(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, 22b and 25, or with equivalent standards and requirements;'

(iii) point (e) is replaced by the following:

'(e) it publishes on its website an annual transparency report which includes the information referred to in Article 13 of Regulation (EU) No .../...<sup>+</sup> or it complies with equivalent disclosure requirements.';

(c) the following paragraph is inserted:

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

(d) paragraph 6 is replaced by the following:

'6. In order to ensure uniform conditions of application of point (d) of paragraph 5 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 point (d) of paragraph 5 of this Article as long as the Commission has not taken any such decision.

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<sup>+</sup> OJ: please insert number of the Regulation in document PE-CONS 5/14.

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 in assessing whether the audits of the financial statements referred to in paragraph 1 of this Article are carried out in accordance with international auditing standards as referred to in Article 26 and the requirements laid down in Articles 22, 24 and 25. Such criteria, which are applicable to all third countries, shall be used by Member States when assessing equivalence at national level.'

34. In Article 46, paragraph 2 is replaced by the following:

- '2. In order to ensure uniform conditions for the 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 recognised 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 any such 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 third-country auditors and third-country 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 are to be used in assessing whether the public oversight, quality assurance, investigation and sanctions 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.'

35. Article 47 is amended as follows:

(a) paragraph 1 is amended as follows:

(i) the introductory words are replaced by the following:

'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 of inspection or investigation reports relating to the audits in question, provided that:';

(ii) point (a) is replaced by the following:

'(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) in paragraph 2, the following point is inserted:

'(ba) the protection of the commercial interests of the audited entity, including its industrial and intellectual property, is not undermined;';

(c) in paragraph 2, the second indent of point (d) shall be replaced by the following:

- 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, or
- where 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.';

(d) paragraph 3 is replaced by the following:

'3. In order to facilitate cooperation, the Commission shall be empowered to decide upon the adequacy referred to in point (c) of paragraph 1 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 is to assess whether the competent authorities of third countries may be recognised 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 relating to a direct exchange of audit working papers or other documents held by statutory auditors or audit firms.';

(e) paragraph 5 is deleted.

36. In Article 48, paragraphs 1 and 2 are replaced by the following:

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

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\* 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 Member States of the Commission's exercise of implementing power (OJ L 55, 28.2.2011, p. 13).'

37. The following Article is inserted:

*'Article 48a*

*Exercise of the delegation*

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 26(3), 45(6), 46(2) and 47(3) shall be conferred on the Commission for a period of five years from ...<sup>+</sup>. The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the five-year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.
3. The delegation of power referred to in Articles 26(3), 45(6), 46(2) and 47(3) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

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<sup>+</sup> OJ: please insert date: date of entry into force of this Directive.

5. A delegated act adopted pursuant to Articles 26(3), 45(6), 46(2) and 47(3) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of four 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.'

38. Article 49 is deleted.

## *Article 2*

### *Transposition*

1. By ...<sup>+</sup> Member States shall adopt and publish the measures necessary to comply with this Directive. They shall immediately inform the Commission thereof. Member States shall apply those measures from ...<sup>+</sup>.
2. When Member States adopt those measures, they shall contain a reference to this Directive or shall 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 text of the main measures of national law which they adopt in the field covered by this Directive.

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<sup>+</sup> OJ: please insert date: two years after the entry into force of this Directive.

*Article 3*

*Entry into force*

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

*Article 4*

*Addressees*

This Directive is addressed to the Member States.

Done at Strasbourg,

*For the European Parliament*  
*The President*

*For the Council*  
*The President*