

PE-CONS No/YY - 2011/0359 (COD)

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of

on specific requirements regarding statutory audit of public-interest entities

(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 114 thereof,

Having regard to the proposal from the European Commission,

After transmission of the draft legislative act to the national Parliaments,

Having regard to the opinion of the European Economic and Social Committee¹,

After consulting the European Data Protection Supervisor²,

Acting in accordance with the ordinary legislative procedure,

¹ OJ C , , p. .

² Date of the opinion of the EDPS.

Whereas:

- (1) Statutory auditors and audit firms are entrusted by law to conduct statutory audits of public-interest entities with a view to enhancing the degree of confidence of the public in the annual and consolidated financial statements of such entities. The public-interest function of statutory audit means that a broad community of people and institutions rely on the quality of a statutory auditor's *or audit firm*'s work. Good audit quality contributes to the orderly functioning of markets by enhancing the integrity and efficiency of financial statements. Thereby, auditors fulfil a particularly important societal role.
- (2) Union legislation requires that the financial *statements*, comprising annual accounts or consolidated accounts, of credit institutions, insurance undertakings, issuers of securities admitted to trading on a regulated market, payment institutions, UCITS, electronic money institutions and alternative investment funds be audited by one or more persons entitled to carry out such audits in accordance with Union law, namely: Article 1(1) of Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions¹, Article 1(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings², Article 4(4) of 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/EC³,

¹ OJ L 372, 31.12.1986, p. 1.

² OJ L 374, 31.12.1991, p. 7.

³ OJ L 390, 31.12.2004, p. 38.

Article 15(2) of Directive 2007/64/EC of the European Parliament and of the Council of 13 November 2007 on payment services in the internal market amending Directives 97/7/EC, 2002/65/EC, 2005/60/EC and 2006/48/EC and repealing Directive 97/5/EC¹, Article 73 of 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)², Article 3(1) of Directive 2009/110/EC of the European Parliament and of the Council of 16 September 2009 on the taking up, pursuit and prudential supervision of the business of electronic money institutions amending Directives 2005/60/EC and 2006/48/EC and repealing Directive 2000/46/EC³, and Article 22(3) of Directive 2011/61/EC 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 1095/2010⁴. Moreover, Article 4(1)(1) of Directive 2004/39/EC of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments amending Council Directives 85/611/EEC and 93/6/EEC and Directive 2000/12/EC of the European Parliament and of the Council and repealing Council Directive 93/22/EEC⁵ also requires that the annual financial statements of investment firms be audited when ***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/EEC⁶*** is not applicable.

¹ OJ L 319, 5.12.2007, p. 1.
² OJ L 302, 17.11.2009, p. 32.
³ OJ L 267, 10.10.2009, p. 7.
⁴ OJ L 174, 1.7.2011, p.1.
⁵ OJ L 145, 30.4.2004, p. 1.
⁶ OJ L 182, 29.6.2013, p. 19.

- (3) The conditions for the approval of the persons responsible for carrying out the statutory audit as well as the minimum requirements for carrying out such statutory audit are laid down in 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/EEC¹.
- (4) ■ The Commission published on 13 October 2010 a Green Paper on Audit Policy: Lessons from the Crisis ■ , which launched a wide public consultation, in the general context of financial market regulatory reform, on the role and scope of audit and how the audit function could be enhanced in order to contribute to increased financial stability. It resulted from the public consultation that the rules of Directive 2006/43/EC regarding the carrying out of the statutory audit of annual and consolidated accounts of public-interest entities could be ■ improved. The European Parliament issued an own -initiative report on the Green Paper on 13 September 2011. The European Economic and Social Committee also adopted a report on that Green Paper on 16 June 2011.

¹ OJ L 157, 9.6.2006, p.87.

- (5) It is important to lay down detailed rules with a view to ensuring that the statutory audits of public-interest entities are of adequate quality and are carried out by statutory auditors and audit firms subject to stringent requirements. A common regulatory approach should enhance the integrity, independence, objectivity, responsibility, transparency and reliability of statutory auditors and audit firms carrying out statutory audit of public-interest entities, contributing to the quality of statutory audit in the Union, thereby contributing to smooth functioning of the internal market, while achieving a high level of consumer and investor protection. The development of a separate act for public-interest entities should also ensure consistent harmonisation and uniform application and thus contribute to a more effective functioning of the internal market. ***These strict requirements should be applicable to statutory auditors and audit firms only insofar as they carry out statutory audits of public-interest entities.***
- (5a) ***The statutory audit of cooperatives and savings banks is characterised by a system that does not allow cooperatives and savings banks to choose their statutory auditor or audit firm freely. The audit association to which the cooperative or savings bank belongs as a member is obliged by law to carry out the statutory audit (permanent mandate). These audit associations act on a non-profit-making basis not pursuing commercial interests which results from their legal nature. In addition, the organisational units of these associations are not associated with a common economic interest, which could jeopardise their independence. Accordingly, Member States should have the possibility to exempt cooperatives within the meaning of Article 2(14) of Directive 2006/43/EC, savings banks or similar entities as referred to in Article 45 of Directive 86/635/EEC or their subsidiaries or legal successors from this Regulation provided that the principles of independence as laid down in Directive 2006/43/EC are complied with.***



- (10) The level of fees received from one audited entity and the structure of fees can also threaten the independence of a statutory auditor or audit firm. Thus, it is important to ensure that audit fees are not based on any form of contingency and that, when the audit fees from a single client ***including its subsidiaries*** are significant, a specific procedure ***involving the audit committee*** is established to secure the quality of the audit. If the ***dependency*** on a single client ***becomes*** excessive, the ***audit committee should decide on the basis of proper grounds whether the*** statutory auditor or the audit firm ***may continue to carry out the statutory audit. When taking such decision, the audit committee should take threats to independence and the consequences of such decision amongst others into consideration.***
- (11) The provision of ***certain services*** other than statutory audit (***non-audit services***) to audited entities by statutory auditors, audit firms or members of their networks may compromise their independence. Therefore, it is appropriate to ***prohibit*** the ***provision of certain*** non-audit services ***such as specific tax, consultancy and advisory services (“black list”) to the audited entity, to its parent undertaking and to its controlled undertakings within the Union. The services that involve playing any part in the management or decision-making process of the audited entity might include working capital management, providing financial information, business process optimization, cash management, transfer pricing, creating supply chain efficiency and similar. Services linked to the financing, capital structure and allocation, and investment strategy of the audit client should be prohibited except the provision of services such as due diligence services, issuing comfort letters in connection with prospectuses issued by the audit client and other assurance services.***

- (11a) Member States might decide to allow the statutory auditors and audit firms to provide certain tax and valuation services when they are immaterial or have no direct effect separately or in aggregate on the audited financial statements. Where such services involving aggressive tax planning should not be treated as immaterial. Accordingly a statutory auditor or audit firm should not provide such services to the audited entity. A statutory auditor or audit firm should be able to provide non-audit services other than prohibited non-audit services where the provision of those services has been approved in advance by the audit committee and the statutory auditor or audit firm is itself satisfied that provision of those services does not pose a threat to the independence of the statutory auditor or audit firm that cannot be reduced to a acceptable level by the application of safeguards.***
- (12) With a view to avoiding conflicts of interest it is important that the statutory auditor or the audit firm, before accepting or continuing an engagement for a statutory audit of a public-interest entity, assesses whether the independence requirements are met, and in particular whether any threats to independence arise as a result of the relationship with that entity. ■ The statutory auditor or the audit firm should confirm annually to the audit committee of the audited entity their independence and discuss with such committee any threat to their independence as well as the safeguards applied to mitigate those threats.

(13) 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 data¹ govern the processing of personal data carried *out* in the Member States in the context of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. ■ Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC ■.

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- (18) A sound *engagement* quality control review of the work carried out in each statutory audit engagement should be conducive to high audit quality. Therefore, the statutory auditor or the audit firm should not issue his, her or its audit report until such an *engagement* quality control review has been completed.
- (19) The results of the statutory audit should be presented to the stakeholders in the audit report. In order to increase the confidence of stakeholders in the financial statements of the audited entity, it is particularly important that the audit report is well-founded and solidly substantiated ■. *In addition to the information required to be provided according to Article 28 of Directive 2006/43/EC, it should in particular include sufficient information on the independence of the statutory auditor or audit firm and on whether the statutory audit was considered capable of detecting irregularities, including fraud.*

¹ OJ L 281, 23.11.1995, p. 31.

- (20) The value of statutory audit for the audited entity would be particularly enhanced if the communication between the statutory auditor or the audit firm, on the one hand, and the audit committee, on the other hand, was reinforced. Further to the regular dialogue during the carrying out of the statutory audit, it is important that the statutory auditor or the audit firm submits to the audit committee an additional and more detailed report on the results of the statutory audit. ***This additional report should be submitted to the audit committee no later than the audit report. Upon request, the statutory auditor or the audit firm should discuss key matters which have been mentioned in the additional report with the audit committee. In addition, it should be possible to make such additional detailed report available to the supervisors of statutory auditors and audit firms upon their request, and third parties where it is provided by national law.***
- (21) Statutory auditors or audit firms already provide ***competent authorities supervising*** public-interest entities with information on facts or decisions which could constitute a breach of the rules governing the activities of the audited entity or the impairment of the continuous functioning of the audited entity. Supervisory tasks would also be facilitated if supervisors of credit ■ institutions ***and insurance undertakings and their statutory auditors and audit firms*** were required to establish ***an effective dialogue with each other.***

- (21 a) The role of the European Systemic Risk Board (ESRB) is to monitor the build up of systemic risk in the Union. Given the information that audit firms of systemically important financial institutions have access to, their experience could help the ESRB in its work. Therefore an annual forum for dialogue between them on a sectoral, anonymised basis should be facilitated by this Regulation.***
- (22) In order to increase the confidence in and the liability of the statutory auditors and audit firms carrying out the statutory audit of public-interest entities, it is important that the transparency reporting by statutory auditors and audit firms is increased. Therefore, statutory auditors and audit firms should be required to disclose audited financial information, showing in particular their total turnover divided into audit fees paid by public-interest entities, audit fees paid by other entities and fees for other services. They should also disclose financial information at the level of the network to which they belong.
- Additional supplementary information on audit fees should be provided to competent authorities with a view to facilitating their supervisory tasks.

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(24) It is █ important that the role of the audit committee in the selection of a new statutory auditor or audit firm be reinforced, for the benefit of a more informed decision of the general meeting of shareholders or members of the audited entity. Hence, when making a proposal to the general meeting, the *administrative or supervisory body* should explain whether it follows the *preference* of the audit committee and, if not, why. The recommendation of the audit committee should include at least two possible choices for the audit engagement and a duly justified preference for one of them, so that █ a real choice *can be made*. In order to provide a fair and proper justification in its recommendation, the audit committee should use the results of a mandatory selection procedure organised by the audited entity, under the responsibility of the audit committee. In such selection procedure, the audited entity should *not restrict* statutory auditors or audit firms *from presenting* proposals for the audit engagement. Tender documents should contain transparent and non-discriminatory selection criteria to be used for the evaluation of proposals. Considering, however, that this selection procedure could entail disproportionate costs for companies with reduced market capitalisation or small and medium-sized public-interest entities having regard to their dimension, it is appropriate to relieve such entities from this obligation.

- (25) The right of the general meeting of shareholders or members of the audited entity to choose the statutory auditor or the audit firm would be of no value if the audited entity were to enter into a contract with a third party providing for a restriction of such choice. Therefore any contractual clause entered into by the audited entity with a third party regarding the appointment or restricting the choice *to* particular *auditors* or audit *firms* should be considered null and void.
- (26) The appointment of more than one statutory auditor or audit firm by the public-interest entities would reinforce the professional scepticism and contribute to increasing audit quality. Also, this measure combined with the presence of smaller audit firms would facilitate the development of the capacity of such firms, thus contributing to increasing the choice of statutory auditors and audit firms for public-interest entities. Therefore, the latter should be encouraged and incentivised to appoint more than one statutory auditor or audit firm to carry out the statutory audit.

- (27) In order to address the familiarity threat and therefore reinforce the independence of auditors and audit firms, it is important to establish a maximum duration of the audit engagement of a statutory auditor or audit firm in a particular audited entity. ***In addition, regular and open mandatory retendering or the appointment of more than one statutory auditor or audit firm by the public-interest entities can reinforce the professional scepticism and contribute to increasing audit quality. Also, the involvement of smaller audit firms in these measures would facilitate the development of the capacity of such firms, thus contributing to increasing the choice of statutory auditors and audit firms for public-interest entities. The Regulation therefore provides for these two alternatives, as a means of strengthening the independence of the statutory auditor or audit firm.*** An appropriate gradual rotation mechanism should also be established with regard to ■ the key audit partners carrying out the statutory audit on behalf of the audit firm. It is also important to provide for an appropriate period within which such statutory auditor or audit firm may not carry out the statutory audit of the same entity. In order to ensure a smooth transition, the former auditor should transfer a handover file with relevant information to the incoming auditor.
- (28) In order to protect the independence of the auditor, it is important that dismissal should be possible only where there are proper grounds and if those grounds are communicated to the authority or authorities responsible for supervision. ■

(29) In order to ensure a high level of investor and consumer confidence in the internal market by avoiding conflicts of interests, statutory auditors and audit firms should be subject to appropriate supervision by competent authorities which are independent from the audit profession and which have adequate capacity, expertise and resources. ***The member states may delegate or allow the competent authority to delegate any of its tasks except tasks related with the quality assurance system, investigations and disciplinary systems. However member states might choose to delegate tasks related with disciplinary system to other authorities and bodies provided that the majority of the persons involved in the governance of that authority or body are independent from the audit profession.*** The national competent authorities should have the necessary powers to undertake their supervisory tasks, including the capacity to access ***data, obtain*** information ■ and carry out inspections. They should specialize in the supervision of financial markets, ***in the*** compliance with financial reporting obligations or in statutory audit oversight. However, it should be possible that the supervision of the compliance with the obligations set on public-interest entities is carried out by the competent authorities responsible for the supervision of those entities. The funding of the competent authorities should be free from any ■ undue influence by statutory auditors or audit firms.

- (30) The quality of supervision should improve if there is effective cooperation between authorities charged with different tasks at national level. Therefore, the authorities competent to supervise compliance with the obligations on statutory audit of public-interest entities should cooperate with the authorities responsible for the **tasks provided for in Directive 2006/43/EC**, with those supervising public-interest entities and with the Financial Intelligence Units referred to in Directive 2005/60/EC of the European Parliament and of the Council of 26 October 2006 on the prevention of the use of the financial system for the purpose of money laundering and terrorist financing¹.
- (31) External quality assurance for the statutory audit is fundamental for high quality audit. It adds credibility to published financial information and provides better protection of shareholders, investors, creditors and other interested parties. Statutory auditors and audit firms should therefore be subject to a system of quality assurance under the responsibility of the competent authorities, thus ensuring objectivity and independence from the audit profession. Quality assurance reviews should be organised in such a manner that each statutory auditor or each audit firm **carrying out** audits of public-interest entities is subject to a quality assurance review **on the basis of an analysis of the risk in case of statutory auditors and audit firms carrying out statutory audits of public interest entities other than those defined in Article 2(17) and Article 2(18) of Directive 2006/43/EC at least every three years; and, in other cases at least every six years**. The Commission Recommendation of 6 May 2008 on external quality assurance for statutory auditors and audit firms auditing public interest entities¹ provides information on how inspections should be undertaken. Quality assurance reviews should be **appropriate and** proportionate in view of the scale and complexity of the business of the reviewed audit firm or statutory auditor.

¹ OJ L 120, 7.5.2008, p.20.

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- (33) The market for the provision of statutory audit services to public-interest entities evolves over time. It is therefore necessary that competent authorities monitor the developments in the market, particularly as regards █ the risks that arise from high market concentration █, *including within specific sectors, and the performance of audit committees.*

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- (35) The transparency of the activities of competent authorities should contribute to increase the confidence of investors and consumers in the internal market. Therefore, competent authorities should be required to regularly report on their activities and to publish *aggregated information on inspection findings and conclusions, or in individual form where Member States provide.*

- (36) The cooperation between the competent authorities of the Member States can make an important contribution to ensuring consistently high quality in the statutory audit in the Union. Therefore, the competent authorities of the Member States should cooperate with each other, where necessary, for the purpose of carrying out their supervisory duties regarding statutory audits. They should respect the principle of home-country regulation and oversight by the Member State in which the statutory auditor or audit firm is approved and the audited entity has its registered office. The cooperation between competent authorities *should be organized* within the framework of a *Committee of European Auditing Oversight Bodies (CEAOB)*. *It should be composed of high level representatives of the competent authorities. In order to enhance consistent application of this Regulation, the CEAOB may adopt non-binding guidelines or opinions. In addition, it should facilitate the exchange of information, provide advice to the Commission and contribute to technical assessments and technical examination. For the purpose of carrying out the technical assessment of public oversight systems of third countries and relating to the international cooperation between Member States and third countries in this area the CEAOB should establish a sub-group chaired by the Member appointed by the European Securities and Markets Authority and should request the assistance from the ESMA, EBA or EIOPA insofar as this request is related to the international cooperation between Member States and third countries in the field of statutory audit of public interest entities supervised by these European Supervisory Authorities. The Commission should provide its secretariat to the CEAOB and based on the work programme agreed by the CEAOB include related expenses in its estimates for the next year.*

(37) The scope of cooperation between the competent authorities of Member States should include ■ cooperation with regard to quality assurance assurance reviews *and* assistance to investigations related to the carrying out of statutory audits of public-interest entities, including in cases where the conduct under investigation does not constitute an infringement of any legislative or regulatory provision in force in the Member States concerned ■ . The modalities of cooperation between the competent authorities of the Member States may include the creation of colleges of competent authorities and the delegation of tasks among themselves. The concept of network in which auditors and firms operate should be taken into account in such cooperation. Competent authorities ■ should respect appropriate confidentiality and professional secrecy rules.

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(39) The interrelation of capital markets calls for empowering national competent authorities ■ to cooperate with supervisory authorities and bodies of third countries regarding the exchange of information or quality assurance reviews. However, where the cooperation with third country authorities is related to audit working papers or other documents held by statutory auditors or audit firms, the procedures of Directive 2006/43/EC should apply.

- (40) Sustainable audit capacity and a competitive market for statutory audit services in which there is a sufficient choice of audit firms capable of carrying out statutory audits of public-interest entities are required in order to ensure a smooth functioning of capital markets. *The competent authorities and European Competition Network (ECN)* should report on the changes brought in the audit market structure by this Regulation. When carrying such analysis, *the ECN* should take into account the impact of the national civil liability rules for statutory auditors on the structure of the audit market. Based on such report and other appropriate evidence, the Commission should present a report on the impact of the national liability rules for statutory auditors on the audit market structure and should take the steps it considers appropriate as a result of its findings.

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- (44a) *The alignment of the procedures for the adoption of delegated acts by the Commission to the Treaty on the Functioning of the European Union and, in particular, to Article 290 and 291 thereof, should be effected on a case-by-case basis. The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in order to take into account the developments in auditing and the audit profession.* In particular, the use of delegated acts is necessary to *adopt the international auditing standards in the area of audit practice, independence of and internal controls of* statutory auditors and audit firms. *The adopted international auditing standards should not supplement any of, except for the precisely defined, requirements of this Regulation.*

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.

- (45) In order to ensure legal certainty and the smooth transition to the regime introduced by this Regulation, it is important to introduce a transitional regime regarding the entry into force of the obligation to rotate audit firms **and** the obligation to organise a selection procedure for the choice of audit firm **■**.
- (45a) References to provisions of Directive 2006/43/EC should be understood as references to the national provisions transposing those provisions of Directive 2006/43/EC. The new European audit framework replaces existing requirements laid down in Directive 2006/43/EC and should be interpreted without referring to any preceding instruments such as Commission recommendations adopted under the previous framework.***

(46) Since the objectives of this Regulation, namely clarifying and better defining the role of statutory audit regarding public-interest entities, improving the information that the statutory auditor or audit firm provides to the audited entity, investors and other stakeholders, improving the communication channels between auditors and supervisors of public-interest entities, preventing any conflict of interest arising from the provision of non-audit services to public-interest entities, mitigating the risk of any potential conflict of interest due to existing system of "auditee selects and pays the auditor" or to familiarity threat, facilitating the switching of statutory auditor or audit firm and the choice of an audit provider to public-interest entities, increasing the choice of audit providers to public-interest entities and improving the effectiveness, independence and consistency of the regulation and supervision of statutory auditors and audit firms providing statutory audits to public interest entities including as regards cooperation at Union level, cannot be sufficiently achieved by the Member States and can, therefore, by reason of their scale, 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 Regulation does not go beyond what is necessary in order to achieve those objectives.

(47) This Regulation respects the fundamental rights and observes the principles recognised in particular by the Charter of Fundamental Rights of the European Union, notably the right to respect for private and family life (Article 7), the right to the protection of personal data (Article 8), the freedom to conduct a business (Article 16), the right to an effective remedy and to a fair trial (Article 47), the presumption of innocence and right of defence (Article 48), the principles of legality and proportionality of criminal offences and penalties (Article 49), the right not to be tried or punished twice for the same offence (Article 50), and has to be applied in accordance with those rights and principles,

HAVE ADOPTED THIS REGULATION:

TITLE I

SUBJECT MATTER, SCOPE AND DEFINITIONS

Article 1

Subject matter

This Regulation lays down requirements for the carrying out statutory audit of annual and consolidated financial statements of public-interest entities, rules on the organisation and selection of statutory auditors and audit firms by public-interest entities to promote their independence and the avoidance of conflicts of interest and rules on the supervision of compliance by statutory auditors and audit firms with those requirements.

Article 2

Scope

1. This Regulation applies to the following:
 - (a) statutory auditors and audit firms who carry out statutory audits of public-interest entities;
 - (b) public-interest entities.
2. This Regulation applies without prejudice to Directive 2006/43/EC.

3. *Where a cooperative within the meaning of Article 2(14) of Directive 2006/43/EC, a savings bank or a similar entity as referred to in Article 45 of Directive 86/635/EEC, or a subsidiary or a legal successor of a cooperative, a savings bank or a similar entity as referred to in Article 45 of Directive 86/635/EEC is required or permitted under national law to be a member of a non-profit-making auditing entity, the Member State may decide that this Regulation or certain provisions of it shall not apply to the statutory audit of such entity, provided that the principles of independence laid down in Directive 2006/43/EC are complied with by the statutory auditor when carrying out the statutory audit of one of its members and by persons who may be in a position to influence the statutory audit.*

Where a cooperative within the meaning of Article 2(14) of Directive 2006/43/EC, a savings bank or a similar entity as referred to in Article 45 of Directive 86/635/EEC, or a subsidiary or a legal successor of a cooperative, a savings bank or a similar entity as referred to in Article 45 of Directive 86/635/EEC is required or permitted under national provisions to be a member of a non-profit-making auditing entity, an objective, reasonable and informed party would not conclude that the membership-based relationship compromises the statutory auditor's independence, provided that when such an auditing entity is conducting a statutory audit of one of its members, the principles of independence are applied to the auditors carrying out the audit and those persons who may be in a position to exert influence on the statutory audit.

4. ***The Member State shall inform Commission and a Committee of European Auditing Oversight Bodies, hereinafter referred to as ‘CEAOB’, referred to in Article 46, of such exceptional situations of non-application of certain provisions of this Regulation. It shall communicate to Commission and CEAOB the list of provisions of this Regulation that have not been applied to the statutory audit of the entities referred to in paragraph 3 and the reasons that justified the exemption granted for such non-application.***

Article 3

Definitions

For the purposes of this Regulation, the definitions laid down in Article 2 of Directive 2006/43/EC shall apply, except for the definitions of █ 'competent authority'.

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Article 9

Audit fees

1. Fees for the provision of statutory audits to public-interest entities shall not be contingent fees.

Without prejudice of Article 25 of the Directive, for the purposes of the first subparagraph, contingent fees means fees for audit engagements calculated on a predetermined basis relating to the outcome or result of a transaction or the result of the work performed. Fees shall not be regarded as being contingent if a court or a competent authority has established them.

When the statutory auditor or audit firm provides to the audited entity **■**, *its parent undertaking or its controlled undertakings, for a period of three or more consecutive financial years, services other than the ones* referred to in Article 10(1), the *total* fees for such services shall be limited to no more than **70%** of the *average of the* fees paid *in the last three consecutive financial years for the statutory audit(s) of the audited entity and, where applicable, of its parent undertaking, its controlled undertakings and of the consolidated financial statements of that group of undertakings.*

For the purposes of the limits specified in the first subparagraph, services, other than the ones referred to in Article 10(1), imposed by national and Union legislation shall be excluded.

Member States may provide that a competent authority may, upon a request by the statutory auditor or audit firm, on an exceptional basis, allow that statutory auditor or audit firm to be exempted from the requirements in subparagraph 1 in respect of an entity for a period of no more than two financial years.

3. When the total fees received from a public-interest entity *in each of the last three* consecutive *financial* years *are* more than 15 % of the of the total █ fees received by the statutory auditor or audit firm *or, when applicable, group auditor* carrying out the statutory audit *in each such financial year*, such auditor or firm shall disclose *that fact* to the audit committee *and discuss with the audit committee the threats to their independence and the safeguards applied to mitigate those threats*. The audit committee shall consider whether the audit engagement shall be subject to a quality control review by another statutory auditor or audit firm prior to the issuance of the audit report.

Where the █ fees received from *such* public-interest entity *continues to exceed 15%* of the total *fee income of such audit firm, the audit committee* shall decide on the basis of objective grounds █ whether the *group auditor*, statutory auditor or audit firm of such entity *or group of entities* may continue to carry out the statutory *audit* for an additional period which in any case shall not be longer than two years.

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4. *Member States may apply more stringent requirements than provided in this Article.*

Article 10

Prohibition of the provision of non-audit services

1. A statutory auditor or an audit firm carrying out ***the*** statutory audit of ***a*** public-interest ***entity, and any member of a network where*** the statutory auditor ***or audit firm*** belongs to ***such network***, shall not directly or indirectly provide to the audited entity, to its parent undertaking ***or*** to its controlled undertakings within the Union any ***prohibited*** non-audit services ***in***
 - (i) ***the period between the beginning of the period audited and the issuing of the audit report;***
 - and(ii) the financial year immediately preceding that period in relation to the services listed at subparagraph (g);***

■ For the purposes of this Article, ***prohibited*** non-audit services shall mean:

- (a) ***provision of tax services relating to:***
 - (i) ***preparation of tax forms,***

- (ii) payroll tax,*
- (iii) customs duties,*
- (iv) identification of public subsidies and tax incentives unless support from the statutory auditor or audit firm in respect of such services is required by law,*
- (v) support regarding tax inspections by tax authorities unless support from the statutory auditor or audit firm in respect of such inspections is required by law;*
- (vi) calculation of direct and indirect tax and deferred tax;*
- (vii) provision of tax advice;*
- (d) services that involve playing any part in the management or decision-making process of the audited entity;*
- (e) bookkeeping and preparing accounting records and financial statements;*
- (f) payroll services;*

- (g) designing and implementing internal control or risk management *procedures* related to the preparation and/or control of *financial* information *or financial information technology systems*;
- (h) valuation services, *including valuations performed in connection with* actuarial *services or litigation support services*;
- (i) *legal services, with respect to:*
 - (i) *the provision of general counsel,*
 - (ii) *negotiating on behalf of the audit client, or*
 - (iii) *acting in an advocacy role in* the resolution of litigation;
- (j) *services related to* the audit client's internal audit **■** function;
- (k) *services linked to the financing, capital structure and allocation, and investment strategy of the audit client, except providing assurance services in relation to the financial statements, including the provision of comfort letters in connection with prospectuses issued by the audit client*;
- (ka) *promoting, dealing in, or underwriting shares in the audited entity*;

- (I) human resources services *with respect to:*
 - (i) *management in a position to exert significant influence over the preparation of the accounting records or financial statements which are the subject of the statutory audit, where such services involve:*
 - (1) *searching for or seeking out candidates for such positions; or*
 - (2) *undertaking reference checks of candidates for such positions.*
 - (ii) *structuring the organisation design and*
 - (iii) *cost control.*

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- 1a. *Member States may prohibit services other than those listed in paragraph 1 which could represent a threat to independence. Member States shall communicate to the Commission any additions to the list referred to in paragraph 1.*
- 1b. *By derogation from the second subparagraph of paragraph 1, Member States may allow the services referred to in points (a) (i), (a) (iv) - (vii) and (h), provided that they satisfy the following requirements:*
 - (i) *they have no direct or have immaterial effect separately or in aggregate on the audited financial statements;*

(ii) the estimation of the effect on the audited financial statements is comprehensively documented and explained in the additional report to the audit committee referred to in Article 23; and

(iii) the principles of independence laid down in Directive 2006/43/EC are complied with by the statutory auditor or audit firm.

2. *A statutory auditor or an audit firm carrying out statutory audit of public-interest entities and, where the statutory auditor or audit firm belongs to a network, any member of such network, may provide to the audited entity, to its parent undertaking or its controlled undertakings non audit services other than the prohibited non-audit services referred to in paragraphs 1 and 1a subject to the approval of the audit committee after having properly assessed threats and potential safeguards to independence in accordance with Article 22d of Directive 2006/43/EC. The audit committee shall where applicable issue guidelines with regard to services referred to in paragraph 1b.*

Member States may establish stricter rules setting out the conditions under which a statutory auditor, an audit firm or a member of a network to which the auditor or audit firm belongs may provide to the audited entity, to its parent undertaking or its controlled undertakings non audit services other than the prohibited non-audit services referred to in paragraph 1.

3. When a member of the network to which the statutory auditor or the audit firm carrying out statutory audit of a public-interest entity belongs provides **any of the** non-audit services, **referred to in the paragraphs 1 and 1a of this Article**, to an undertaking incorporated in a third country controlled by **or under control of** the audited public-interest entity, the statutory auditor or the audit firm concerned shall assess whether his, her or its independence would be compromised by such provision of services by the member of the network.

If his, her or its independence is affected, the statutory auditor or the audit firm shall apply safeguards **where applicable** in order to mitigate the threats caused by such provision of services in a third country. The statutory auditor or the audit firm may continue to carry out the statutory audit of the public-interest entity only if he, she or it can justify, in accordance with **Article 11 of this Regulation and Article 22d of Directive 2006/43/EC**, that such provision of services does not affect his, her or its professional judgement and the audit report.

For the purpose of this paragraph:

- (a) *being*** involved in the decision-taking of the audited entity and the provision of the services referred to in points **(d) (e)** and **(g)** of paragraph **1** shall be considered as affecting such independence in all cases **and be incapable of mitigation by any safeguards**.
- (b)** The provision of the services referred to in points **other than (d) (e)** and **(g)** of paragraph **1** shall be presumed to affect such independence **and therefore to require safeguards to mitigate the threats caused thereby**.

Article 11

Preparation for the statutory audit and assessment of threats to independence

1. Before accepting or continuing an engagement for a statutory audit of a public interest entity, a statutory auditor or audit firm shall assess and document, ***in addition to the provisions of Article 22d of Directive 2006/43/EC***, the following:

■

- whether he, she or it complies with the requirements of Articles 9 and 10 ***of this Regulation***;

■

- whether the conditions of Article 33 are complied with;
- without prejudice to Directive 2005/60/EC, the integrity of the ***members of the supervisory, administrative and management bodies of the*** public-interest entity.

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4. A statutory auditor or audit firm shall:

(a) confirm annually in writing to the audit committee *that the statutory auditor, the audit firm and* partners, senior *managers* and *managers*, conducting the statutory audit *are independent from the audited entity;*

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(e) discuss with the audit committee the threats to their independence and the safeguards applied to mitigate those threats, as documented by them pursuant to paragraph *1*.

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Article 17

Irregularities

Without prejudice to **Article 25 and** Directive 2005/60/EC, when a statutory auditor or an audit firm carrying out the statutory audit of a public-interest entity suspects or has reasonable grounds to suspect that irregularities, including fraud with regard to the financial statements of the audited entity **may occur or have occurred**, he, she or it shall inform the audited entity and invite it to investigate the matter and take appropriate measures to deal with such irregularities and to prevent any recurrence of such irregularities in the future.

Where the audited entity does not investigate the matter, the statutory auditor or audit firm shall inform the authorities **as defined by the Member States responsible for investigating** such irregularities.

The disclosure in good faith to **those** authorities, by the statutory auditor or audit firm, of any **irregularities** referred to in the first subparagraph shall not constitute a breach of any contractual or legal restriction on disclosure of information.

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Article 19

Engagement quality control review

1. Before the reports referred to in Articles 22 and 23 are issued, an **engagement** quality control review shall be performed to assess whether the statutory auditor or the key audit partner could reasonably have come to the opinion and conclusions expressed in the draft of these reports.
2. The **engagement** quality control review shall be performed by an **engagement** quality control reviewer. Such reviewer shall be a statutory auditor who is not involved in the performance of the statutory audit to which the **engagement** quality **control** review relates.
 - 2a. ***By derogation from paragraph 2 above, where the audit is carried out by an audit firm where all the statutory auditors were involved in the performance of the statutory audit, or where the statutory audit is carried out by a statutory auditor and the statutory auditor is not a member of an audit firm, he/she/it shall arrange that another statutory auditor shall perform an engagement quality control review. The disclosure of documents or information to the independent reviewer for the purposes of this Article shall not constitute a breach of professional secrecy. Documents or information disclosed to the engagement quality reviewer for the purposes of this Article shall be subject to professional secrecy.***

3. When *performing* the *engagement* quality control *review*, the reviewer shall record at least the following:
- (a) the oral and written information provided by the statutory auditor or key audit partner to support the *significant judgements and the* main findings of the audit procedures carried out and the conclusions drawn from those findings, whether or not at the request of the *engagement* quality control reviewer;
 -
 - (d) the opinions of the statutory auditor or key audit partner, as expressed in the draft of the reports referred to in Articles 22 and 23;
4. The *engagement* quality control review shall at least assess the following elements:
- (a) the independence of the statutory auditor or audit firm ■ from the audited entity;
 - (b) the significant risks *which are relevant to the statutory audit and which* the statutory auditor or key audit partner has identified during the performance of the statutory audit and the measures that he or she has taken to adequately manage those risks;
 - (c) the reasoning of the statutory auditor or key audit partner, in particular with regard to the *level of* materiality and the significant risks referred to in point (b);

- (d) any request for advice to external experts and the implementation of such advice;
- (e) the nature and scope of the corrected and uncorrected misstatements in the financial statements that were identified during the performance of the audit;
- (f) the subjects discussed with the audit committee and the management and/or supervisory bodies of the audited entity;
- (g) the subjects discussed with competent authorities and, if applicable, with other third parties;
- (h) whether the documents and information selected from the file *by the engagement quality control reviewer* support the opinion of the statutory auditor or key audit partner as expressed in the draft of the reports referred to in Articles 22 and 23.

5. The *engagement* quality control reviewer shall discuss the results of the *engagement* quality control review with the statutory auditor or the key audit partner. The *audit firm shall establish procedures for determining the manner in which any disagreement between the key audit partner and the engagement quality reviewer are to be resolved.*

6. The statutory *audit* or the audit firm *and the engagement quality reviewer* shall keep a record of the results of the *engagement* quality control review, together with the considerations underlying those results.

Article 20

International standards on auditing

The *Commission shall be empowered to adopt by means of delegated acts in accordance with Article 68* the international auditing standards referred to in Article 26 of Directive 2006/43/EC, to *supplement the requirements of Articles 17, 19 and 33a of this Regulation, in the area of audit practice, independence of and internal controls of statutory auditors and audit firms for the purposes of their application within the Union, provided they meet the requirements of points (a), (b) and (c) of Article 26(2a) of Directive 2006/43/EC and do not amend any of the requirements of this Regulation or supplement any of its requirements apart from those listed above.*

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Article 22

Audit Report

1. The statutory auditor(s) or the audit firm(s) shall present the results of the statutory audit of the public-interest entity in an audit report.
2. The audit report shall be *prepared in accordance with the provisions of Article 28 of Directive 2006/43/EC and additionally* shall at least:

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- (d) *state by whom or by* which body ■ the statutory auditor(s) or ■ audit firm(s) *was appointed;*
- (e) indicate the date of the appointment and the period of total uninterrupted engagement including previous renewals and reappointments *of the statutory auditor(s) or audit firm(s)*

(fa) provide, in support of the audit opinion, the following:

- (i) a description of the most significant assessed risks of material misstatement, including assessed risks of material misstatement due to fraud;**
- (ii) a summary of the auditor's response to those risks; and**
- (iii) where relevant, key observations arising with respect to those risks.**

Where relevant to the above information provided in the audit report concerning each significant audit risk, a clear reference to the relevant disclosures in the financial statements shall be provided.

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- (n) explain to what extent the statutory audit was *considered capable of detecting* irregularities, including fraud;**

■

- (p) confirm that the audit opinion is consistent with the additional report to the audit committee referred to in Article 23;
- (q) declare that the *prohibited* non-audit services referred to in Article 10(I) were not provided and that the statutory auditor(s) or the audit firm(s) remained ■ independent *of the audited entity* in conducting the audit ■ ;

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- (x) *indicate any services, in addition to the statutory audit, which were provided by the statutory auditor or audit firm to the audited entity and its controlled undertaking, and which have not been disclosed in the annual report or financial statements.*

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

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- 4. *Except as required at paragraph 2(p) above the audit report ■ shall not contain any cross-references to the additional report to the audit committee referred to in Article 23 and shall be in clear and unambiguous language.*

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- 7. The statutory auditor or audit firm shall not use the name of any competent authority in ■ a way that would indicate or suggest endorsement or approval by that authority of the audit report.

Article 23

Additional report to the audit committee

1. The statutory auditor(s) or the audit firm(s) carrying out statutory audit of public-interest entities shall submit an additional report to the audit committee of the audited entity. ***This additional report shall be submitted to the audit committee of the audited entity not later than the audit report referred to in article 22. Member States may additionally require that this additional report be submitted to the administrative or supervisory board of the audited entity.***

If the audited entity does not have an audit committee, the additional report shall be submitted to the body performing equivalent functions within the audited entity. ***Member States may allow the audit committee to provide this report to such third parties as provided in national law.***

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2. The additional report to the audit committee shall be in writing. It shall explain ■ the results of the statutory audit carried out and shall at least:

- (a) include *the* declaration of independence *referred to in the paragraph 4* of Article *II*;

Where the statutory audit was carried out by an audit firm, the report shall identify each key audit partner who was involved in the audit;

- (ab) *where the statutory auditor or audit firm has made arrangements for any of his/her activities to be conducted by another statutory auditor or audit firm that is not a part of the same network, or has used the work of external experts, the report shall indicate that fact and shall confirm that the statutory auditor or audit firm received a confirmation from the other statutory auditor or audit firm and / or the external expert regarding their independence;*

- (b) *describe the nature, frequency and extent of communication* with the audit committee or the body performing equivalent functions within the audited entity ■, the management *body and the* administrative or supervisory body of the audited entity, *including the dates of the meetings with those bodies;*

- (da) *include a description of the scope and timing of the audit;*

- (e) *where two or more auditor(s) or audit firms have been appointed*, describe the distribution of tasks among the statutory auditor(s)s and/or the audit firm(s);
- (ea) *describe the methodology used, including which categories of the balance sheet have been directly verified and which have been based on system and compliance testing, including an explanation of any substantial variation in the weighting of substantive and compliance testing when compared to the previous year, even if the previous year's statutory audit had been conducted by another statutory auditor(s) or audit firm(s)*;
- (eb) *disclose the quantitative level of materiality applied to perform the statutory audit for the financial statements as a whole and if applicable the materiality level or levels for particular classes of transactions account balances or disclosures, and disclose the qualitative factors which were considered when setting the level of materiality*;
- (f) *report* and explain judgments about *events or conditions identified during the course of the audit* that may cast *significant* doubt *on* the entity's ability to continue as a going concern *and whether they constitute a material uncertainty*; *and provide a summary* of all guarantees, comfort letters, undertakings of public intervention and other support measures that have been *taken into account* when making a going concern assessment;

(ga) report on any significant deficiencies in the entity's or, in case of consolidated financial statements, the parent undertaking's internal financial control system, as well as in the accounting system. For each such significant deficiency, the additional report shall state whether or not the deficiency in question has been resolved by the management;

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(h) report any significant matters involving actual or suspected non-compliance with laws and regulations or articles of association which were identified during the course of the audit, in so far as they are considered to be relevant in order to enable the audit committee to fulfil its tasks;

(i) report and assess the valuation methods applied to the various items in the annual or consolidated financial statements including any impact of changes of such methods;

(l) ■ in the case of a statutory audit of consolidated financial statements explain the scope of consolidation and the exclusion criteria applied to the non-consolidated entities, if any, applied by the audited entity and whether the criteria applied are in accordance with the financial reporting framework;

- (m) *where applicable identify any* audit work is performed by third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) in *relation to* a statutory audit of consolidated financial statements *other than by members of the same network as the auditor of the consolidated financial statements*;
- (n) indicate whether all requested explanations and documents were provided by the audited entity.

(na) report:

- (i) *significant difficulties, if any, encountered during the audit;*
- (ii) *significant matters, if any, arising from the audit that were discussed, or subject to correspondence with management; and*
- (iii) *other matters, if any, arising from the statutory audit that in the auditor's professional judgement, are significant to the oversight of the financial reporting process.*

Member States may set additional requirements in relation to the content of the additional report to the audit committee.

Upon request by a statutory auditor, an audit firm or the audit committee, the statutory auditor(s) or audit firm(s) shall discuss key matters arising from the statutory audit, referred to in the additional report to the audit committee, and in particular in point (ga), with the audit committee, administrative body or where applicable supervisory body of the audited entity.

3. ***Where more than one statutory auditor or audit firm have been simultaneously engaged, in the case of a*** disagreement between the appointed statutory auditors or audit firms on auditing procedures, accounting rules or any other issue regarding the conduct of the statutory audit, the reasons for such disagreement shall be explained in the additional report to the audit committee.
4. The additional report to the audit committee shall be signed and dated █ . Where an audit firm carries out the statutory audit, the additional report to the audit committee shall be signed by █ the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm.
5. Upon request, ***and in accordance with national law***, the statutory auditor(s) or the audit firm(s) shall make available without delay the additional report to the competent authorities ***within the meaning of article 35(1) of this Regulation***.

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Article 25

Report to supervisors of public-interest entities

1. Without prejudice to Article 55 of Directive 2004/39/EC, Article 53 of Directive 2006/48/EC of the European Parliament and of the Council¹, Article 15(4) of Directive 2007/64/EC, Article 106 of Directive 2009/65/EC, the first paragraph of Article 3 of Directive 2009/110/EC and Article 72 of Directive 2009/138/EC of the European Parliament and of the Council², the statutory auditor or audit firm carrying out the statutory audit of a public-interest entity shall have a duty to report promptly to the competent authorities supervising *the public-interest entity or, where determined by the Member State to the competent authority supervising the auditor or audit firm, any information* concerning that public-interest entity of which he, she or it has become aware while carrying out that statutory audit and which *may* bring about any of the following:
 - (a) a material breach of the laws, regulations or administrative provisions which lay down, where appropriate, the conditions governing authorisation or which specifically govern pursuit of the activities of such public-interest entity;
 - (b) *a material threat or doubt concerning* the continuous functioning of the public-interest entity;
 - (c) a refusal to *issue an audit opinion on* the financial statements or the *issuing of an adverse or qualified opinion*.

The statutory auditor(s) or the audit firm(s) shall also have a duty to report any ***information referred to in paragraph 1 (a) (b) or (c) above*** of which he, she or it becomes aware in the course of carrying out the statutory audit of an undertaking having close links with the public-interest entity for which he, she or it is also carrying out the statutory audit. ***In this article, close links shall have the meaning assigned to it in article 4(38) of Regulation 575/2013.***

Member States may require additional information from the statutory auditor or audit firm provided it is necessary for effective financial market supervision as provided in national law.

2. ***An effective dialogue between the competent authorities supervising credit institutions and insurance undertakings and the statutory auditor(s) and audit firm(s) carrying out the statutory audit of those institutions and undertakings shall be established. The responsibility for this requirement shall rest with both parties.***

At least once a year, the European Systemic Risk Board (ESRB) and CEAOB shall organise a meeting with the statutory auditors and audit firms or networks carrying out the statutory audit █, all global systemically important institutions authorised within the Union, as identified internationally in order to inform the ESRB of sectoral or any significant developments in those systemically important financial institutions.

In order to facilitate the exercise of the tasks referred to in the first subparagraph, EBA and EIOPA shall, *taking current supervisory practices into account*, issue guidelines addressed to the competent authorities supervising credit institutions and insurance undertakings, in accordance with Article 16 of Regulation (EU) No 1093/2010 and of Regulation (EU) No 1094/2010, respectively.

3. The disclosure in good faith to the competent authorities *or to ESRB and CEAOB*, by the statutory auditor or audit firm, of any *information* referred to in paragraph 1 or of any *information emerging* during the dialogue *provided for* in paragraph 2 shall not constitute a breach of any contractual or legal restriction on disclosure of information █.

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Article 27

Transparency Report

1. A statutory auditor or an audit firm that carries out statutory audit(s) of public-interest entities shall make public an annual transparency report at the latest **four** months after the end of each financial year. The annual transparency report shall be published on the website of the statutory auditor or audit firm and shall remain available on that website for at least five years ***from the day of its publication on the website. If the auditor is employed by an audit firm, the obligations under this Article shall be incumbent on the audit firm.***

A statutory auditor or audit firm shall be allowed to update its published annual transparency report. In such a case, the auditor or firm **shall** indicate that it is an updated version of the report and the original version of the report shall continue to remain available on the website.

Statutory auditors and audit firms shall communicate ■ to the competent authorities that the transparency report has been published on the website of the statutory auditor or audit firm or, as appropriate, that it has been updated.

2. The annual transparency report shall include at least the following:
 - (a) a description of the legal structure and ownership of the audit firm;

- (b) where the statutory auditor or audit firm ***is a member of*** a network
 - (i) a description of the network and the legal and structural arrangements in the network;
 - (ii) ***the name of each statutory auditor who operates as sole practitioner or audit firm that is a member of the network;***
 - (iii) ***the country(ies) in which each statutory auditor who operates as sole practitioner or audit firm that is a member of the network is qualified as statutory auditor or has his, her or its registered office, central administration or principal place of business;***
 - (iv) ***the total turnover by the statutory auditors who operate as sole practitioners and audit firms that are members of the network, resulting from the statutory audit of annual and consolidated financial statements.***
- (c) a description of the governance structure of the audit firm;
- (d) a description of the internal quality control system of the audit firm and a statement by the administrative or management body on the effectiveness of its functioning;
- (e) an indication of when the last quality assurance review referred to in Article 40 was carried out;

- (f) a list of public-interest entities for which the statutory auditor or audit firm has carried out statutory audits during the preceding financial year ■ ;
- (g) a statement concerning the statutory auditor's or audit firm's independence practices which also confirms that an internal review of independence compliance has been conducted;
- (h) a statement on the policy followed by the statutory auditor or audit firm concerning the continuing education of statutory auditors referred to in Article 13 of Directive 2006/43/EC;
- (i) information concerning the basis for the partners' remuneration in audit firms;

- (j) a description of *the statutory auditor or audit firm's* policy concerning the rotation of key audit partners and staff in accordance with Article [33(4)];

- (l) *information about the statutory auditor or audit firm's total turnover divided into, if this information is not disclosed in its financial statement within the meaning of Article 4(2) of Directive 2013/34/EC:*

- (i) *revenues from the statutory audit of annual and consolidated financial statements of public-interest entities and entities belonging to a group of undertakings whose parent undertaking is a public-interest entity,*
- (ii) *revenues from the statutory audit of annual and consolidated financial statements of other entities;*
- (iii) *revenues from permitted non-audit services to entities that are audited by the statutory auditor or audit firm, and;*
- (iv) *revenues from non-audit services to other entities.*

The statutory auditor or audit firm may, in exceptional circumstances, decide not to disclose the information required in point (f) of the first subparagraph to the extent necessary to mitigate an imminent and significant threat to the personal security of any person. The statutory auditor or audit firm shall be able to demonstrate to the competent authority the existence of such threat.

3. The transparency report shall be signed by the statutory auditor or audit firm.

Article 29

Information to competent authorities

A statutory auditor or audit firm shall provide annually to his, her or its competent authority a list of the audited public-interest entities by revenue generated from them, ***dividing those revenues into:***

- (i) revenues for statutory audit;***
- (ii) revenues for other services referred in Article 9 which are required by national law and Union legislation; and,***
- (iii) revenues for other services referred to in Article 9 which are not required by national law and Union legislation.***

Article 30

Record keeping

Statutory auditors and audit firms shall keep the documents and information referred to in **■ Article 9(3), Article 11, Article 17(1) and (2), ■ Article 19(3) to (6), Articles 22, 23 and 24, Article 25(1) and (2), Article 29, Article 32(2), (3), (5) and (6), and Articles 22d, 24a, 24b, 27 and 28 of the Directive 2006/43** for a period of ***at least*** five years following the ***creation*** of such documents or information.

Member States may require statutory auditors and audit firms to keep the documents and information referred to in the first subparagraph for a longer period in accordance with their rules on personal data protection and administrative and judicial proceedings.

Title III

The appointment of statutory auditors or audit firms by public-interest entities

■

Article 32

Appointment of ■ statutory auditors or audit firms

1. For the purposes of the application of Article 37(1) of Directive 2006/43/EC, for the appointment of statutory auditors or audit firms by public-interest entities, the conditions set out in paragraphs 2 to 6 of this Article shall apply, **but may be subject to paragraph 9.**

Where Article 37(2) of Directive 2006/43/EC applies, the public-interest entity shall inform the competent authority of the use of the alternative systems or modalities referred to in that Article. **In this case the paragraphs 2 to 6 of this article may not apply.**

2. The audit committee shall submit a recommendation to the administrative or supervisory **body** of the audited entity for the appointment of statutory auditors or audit firms ■ .

Unless it concerns the renewal of an audit engagement in accordance with ■ Article 33(1) **and 33(1a)**, the recommendation shall **be justified and** contain at least two choices for the audit engagement and the audit committee shall express a duly justified preference for one of them.

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In its recommendation, the audit committee shall state that its recommendation is free from influence by a third party and that no █ clause as referred to in paragraph 7 has been imposed upon it.

3. Unless it concerns the renewal of an audit engagement in accordance with █ Article 33(1) *and 33(1a)*, the recommendation of the audit committee referred to in paragraph 2 of this Article █ shall be prepared following a selection procedure organized by the audited entity respecting the following criteria:
 - (a) the audited entity shall be free to invite any statutory auditors or audit firms to submit proposals for the provision of the statutory audit service on the condition that Article 33(2) is respected and that *the organisation of the tender process does not in any way preclude the participation in the selection procedure of firms* who received *less* than 15 % of the total audit fees from █ public-interest entities in the Member State concerned in the previous calendar year;
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 - (c) the audited entity shall prepare tender documents *for the attention* of the invited statutory auditor(s) or audit firm(s). Those tender documents shall allow them to understand the business of the audited entity and the type of statutory audit that is to be carried out. The tender documents shall contain transparent and non-discriminatory selection criteria that shall be used by the audited entity to evaluate the proposals made by statutory auditors or audit firms;

- (d) the audited entity shall be free to define the selection procedure and may conduct direct negotiations with interested tenderers in the course of the procedure;
- (e) where, in accordance with national law or Union law, the competent authorities referred to in Article 35, require statutory auditors and audit firms to comply with certain quality standards, those standards shall be included in the tender documents;
- (f) the audited entity shall evaluate the proposals made by the statutory auditors or audit firms in accordance with the selection criteria predefined in the tender documents. The audited entity shall prepare a report on the conclusions of the selection procedure, which shall be validated by the audit committee. The audited entity and the audit committee shall take into consideration any *findings or conclusions of any* inspection report on the applicant statutory auditor or audit firm referred to in Article 40(6) and published by the competent authority pursuant to Article 44(d);
- (g) the audited entity shall be able to demonstrate, *upon request*, to the competent authority referred to in Article 35 that the selection procedure was conducted in a fair manner.

The audit committee shall be responsible for the selection procedure referred to in the first subparagraph.

For the purposes of point (a) of the first subparagraph, the competent authority referred to in Article 35(1) shall make public a list of the auditors and audit firms concerned which shall be updated on an annual basis. The competent authority shall use the information provided by statutory auditors and audit firms pursuant to Article 29 to make the relevant calculations.

4. Public-interest entities which meet the criteria set out in points (f) and (t) of Article 2(1) of Directive 2003/71/EC shall not be required to apply the selection procedure referred to in paragraph 3.
5. The proposal **■** to the general meeting of shareholders or members of the audited entity for the appointment of statutory auditors or audit firms shall include the recommendation *and preference referred to in paragraph 2* made by the audit committee *or the body performing equivalent functions*.

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If the proposal departs from the preference of the audit committee, the proposal shall justify the reasons for not following the recommendation of the audit committee.

However, the auditor or auditors recommended by the administrative or supervisory body must have participated in the selection procedure described in paragraph 3. This provision shall not apply in the case when the audit committee's functions are performed by the supervisory body.

7. Any contractual clause entered into between a public-interest entity and a third party restricting the choice by the general meeting of shareholders or members of that entity pursuant to Article 37 of Directive 2006/43/EC to certain categories or lists of statutory auditors or audit firms to carry out the statutory audit of that entity shall be null and void.

The public-interest entity shall inform the competent authorities referred to in Article 35 ***directly and without delay*** of any attempt by a third party to impose such a contractual clause or to otherwise ***improperly*** influence the decision of the general meeting of shareholders on the selection of a statutory auditor or audit firm.

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9. Member States may decide that a minimum number of statutory auditors or audit firms shall be appointed by public-interest entities in certain circumstances and establish the conditions governing the relations between the auditors or firms appointed.

If a Member State establishes *any* such requirement, it shall inform the Commission and *relevant European Supervisory Authority thereof*.

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10. *Where the audited entity has a nomination committee where shareholders have a considerable influence and which has the task of making recommendations on the selecting of auditors, Member State may allow a nomination committee to perform the functions of the audit committee that are laid down in this Article and require to submit the recommendation referred to in paragraph 2 to the general meeting of shareholders.*

Article 33

Duration of the audit engagement

1. *A public-interest entity shall appoint a statutory auditor or audit firm for an initial engagement of at least one year which engagement may be renewed.*



Neither the initial engagement of a particular statutory auditor or audit firm, nor this in combination with any renewed engagements therewith shall exceed a maximum duration of ten years.

- 1a. *By way of derogation from paragraph 1 Member States may*
 - (a) *require that the initial engagement referred to in paragraph 1 be for a period longer than one year;*
 - (b) *set a maximum duration of less than ten years for the engagements referred to in the second subparagraph of paragraph 1.*

2. After the expiry of the *durations of engagements referred to in the second subparagraph of paragraph 1 or in point (b) of paragraph 1a or after the expiry of the durations of engagements extended in accordance with paragraphs 3 or 3a*, neither the statutory auditor or audit firm *nor, where applicable*, any members of *their networks* within the Union ■ shall ■ undertake the statutory audit of the *same* public-interest entity *within the following four-year period*.
3. By way of derogation from paragraphs 1 and 2, *Member States may provide that the maximum durations referred to in the second subparagraph of paragraph 1 and in point (b) of paragraph 1a may be extended to the maximum duration of:*
 - (a) *twenty years where a public tendering process for the statutory audit is conducted in accordance with paragraphs 2 to 6 of Article 32, after the expiry of the maximum durations referred to in the second subparagraph of paragraph 1 and in point (b) of paragraph 1a; or*
 - (b) *twenty four years where throughout a given period which has reached the relevant maximum duration, after the expiry of the maximum durations referred to in the second subparagraph of paragraph 1 and in point (b) of paragraph 1a, more than one statutory auditor or audit firm has been simultaneously engaged provided that the statutory audit shall result in the presentation of the joint audit report, referred to in Article 28 of the Directive 2006/43/EC.*

- 3aa.** *The maximum duration periods referred to in the second subparagraph of paragraph 1 and in paragraph 1a(b) shall be extended only if, upon a recommendation of the audit committee, the administrative or supervisory board in accordance with national law proposes to the general meeting of shareholders to renew the engagement and that proposal is approved.*
- 3a.** *After the expiry of the maximum duration of the engagement referred to in the second subparagraph of paragraph 1 in paragraph 1a(b), or in paragraph 3 as appropriate, the public interest entity may, on an exceptional basis, request that the competent authority referred to in Article 35(1) █ grant an extension to re-appoint the statutory auditor or audit firm for a further engagement where the conditions in points (a) and (b) of paragraph 3 are met. Such an additional engagement shall not exceed two years.*
- 4.** The key audit partner(s) responsible for carrying out a statutory audit shall cease his, her or their participation in the statutory audit of the audited entity **not later than** seven years from the date of **their** appointment █ . He, she or they may participate **again** in the statutory audit of the audited entity **no sooner than** three years **after that cessation**.
- Member States may require that the key audit partner(s) responsible for carrying out a statutory audit shall cease his, her or their participation in the audit engagement earlier than seven years from the date of their appointment.*

The statutory auditor or audit firm shall establish an appropriate gradual rotation mechanism with regard to the most senior personnel involved in the statutory audit, including at least the persons who are registered as statutory auditors. The gradual rotation mechanism shall be undertaken in phases on the basis of individuals rather than of *the entire engagement* team. It shall be proportionate in view of the scale and the dimension of the activity of the statutory auditor or audit firm.

The statutory auditor or audit firm shall be able to demonstrate to the competent authority that such mechanism is effectively applied and adapted to the scale and the dimension of the activity of the statutory auditor or audit firm.

5. *For the purposes of this Article, the duration of the audit engagement shall be calculated as from the date of the first financial year covered in the audit engagement letter in which the statutory audit or audit firm has been appointed for the first time for the carrying-out of consecutive statutory audits for the same public-interest entity.*

For the purposes of this Article, the audit firm shall include other firms that the audit firm has acquired or that have merged with it.

If there is uncertainty as to the date the audit firm began carrying out consecutive statutory audits for the public-interest entity, such as due to firm mergers, acquisitions, or changes in ownership structure, the auditor should immediately report such uncertainties to the competent authority, who will ultimately determine the relevant date for the purposes of the first subparagraph.

Article 33a

Hand-over file

Where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm shall comply with the requirements referred to in Article 23(3) of Directive 2006/43/EC.

Subject to Article 30, the former statutory auditor or audit firm shall also grant access to the incoming statutory auditor or audit firm to the additional reports to the audit committee referred to in Article 23 of previous years and to any information transmitted to competent authorities pursuant to Articles 25 and 27.

The former statutory auditor or audit firm shall be able to demonstrate to the competent authority that such information has been provided to the incoming statutory auditor or audit firm.

Article 34

Dismissal and resignation of the statutory auditors or audit firms

Without prejudice to Article 38(1) of Directive 2006/43/EC **where** a Member State has appointed competent authorities for the purpose of Title III of this Regulation in accordance with Article 35(2), such competent authority shall forward ***the information concerning the dismissal or resignation of the statutory auditor or audit firm during the term of appointment and adequate explanation of the reasons thereof*** to the competent authority referred to in Article 35(1).

Title IV

Surveillance of the activities of auditors and audit firms carrying out statutory audit of public-interest entities

CHAPTER I

COMPETENT AUTHORITIES

Article 35

Designation of competent authorities

1. ***Competent authorities*** responsible for carrying out the tasks provided for in this Regulation and for ensuring that the provisions of this Regulation are applied shall be ***amongst*** the following:
 - (a) the competent authority referred to in Article 24(1) of Directive 2004/109/EC;
 - (b) the competent authority referred to in Article 24(4)(h) of Directive 2004/109/EC;
 - (c) the competent authority referred to in Article 32 of Directive 2006/43/EC.

2. By derogation from paragraph 1, Member States may decide that the responsibility for ensuring that all or part of the provisions of Title III of this Regulation are applied shall be entrusted to, as appropriate, the competent authorities referred to in:

- (a) Article 24(1) of Directive 2004/109/EC;
- (b) Article 24(4)(h) of Directive 2004/109/EC;

■

- (d) Article 30 of Directive 2009/138/EC;
- (e) Article 20 of Directive 2007/64/EC;
- (f) Article 4(1) of Directive **2013/36/EU**;
- (g) Article 48 of Directive 2004/39/EC;

■

- (i) *to other authorities designated by national law.*

3. Where more than one competent authority has been designated pursuant to paragraphs 1 and 2, those authorities shall be organised in such a manner that their tasks are clearly allocated.
4. Paragraphs 1, 2 and 3 shall be without prejudice to the *rights of* a Member State to make separate legal and administrative arrangements for overseas European territories for whose external relations that Member State is responsible.

■

6. The Member States shall inform ■ the Commission of the appointment of competent authorities for the purposes of this Regulation.

The Commission shall consolidate this information and make it public.

Article 36

Conditions of independence

The competent authorities ■ shall be independent of statutory auditors and audit firms.

The competent authority may consult experts, as referred to in Article 40(1)(c), for the purpose of carrying out specific tasks and may also be assisted by experts when this is essential for the proper execution of its tasks. The competent authority shall not involve these experts in any decision which it makes in these instances.]

A person shall not be *a member of the governing body or responsible for the decision making* of those authorities if *during his or her involvement or* in the course of the three previous years he or she:

- (a) has carried out statutory audits ■ ;
- (b) held voting rights in an audit firm;
- (c) was member of the administrative, management or supervisory body of an audit firm;
- (d) was *a partner*, employee or otherwise *contracted by* an audit firm.

The funding of those authorities shall be secure and free from ■ undue influence by statutory auditors and audit firms.

Article 37

Professional secrecy - competent authority

The obligation of professional secrecy shall apply to all persons who are or have been employed **or independently contracted by or involved in the governance of** competent authorities or by any authority to **which** the competent authority referred to in Article 35(1) has delegated tasks **■** . Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the obligations of this Regulation or **■** the laws, regulations or administrative procedures of a Member State.

Article 38

Powers of competent authorities

1. Without prejudice to Article 40 **■** , in carrying out their tasks under this Regulation, the competent authorities or any other public authorities of a Member State may not interfere with the content of audit reports.
2. **Member States shall ensure that** the competent authorities shall **■** have all the supervisory and investigatory powers that are necessary for the exercise of their functions **under this Regulation in accordance of provisions of Chapter VII of the Directive 2006/43/EC.**

■

3. ***The powers mentioned in paragraph 2 of this Article shall, at least include to:***
- (a) ***access data related to the statutory audit or other documents held by statutory auditors or audit firms*** in any form relevant to the carrying out of their tasks and to receive or take a copy thereof;
 - (b) ***obtain*** information ***related to the statutory audit*** from any person ■ ;
 - (c) carry out on-site inspections ***of*** statutory auditors ***or*** audit firms;
 -
 - (e) refer matters for criminal prosecution;
 - (f) request experts to carry out verifications or investigations;
 - (g) take the administrative measures and sanctions referred to in Article ***30B of Directive 2006/43/EC.***

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

3a. *Member States shall ensure that the competent authorities may exercise their supervisory and investigative powers in any of the following ways:*

(a) directly;

(b) in collaboration with other authorities;

(c) by application to the competent judicial authorities.

I

4. *The supervisory and investigatory powers of competent authorities shall be exercised in full compliance with the national laws of the Member State, in particular the principles of respect for private life and with the right of defence.*
6. The processing of personal data processed in the exercise of the supervisory and investigative powers pursuant to this Article shall be carried out in accordance with Directive 95/46/EC.

Article 38a

Delegation of tasks

1. *Member States may delegate or allow the competent authority(ies) referred to in Article 35(1) to delegate any of the tasks required to be undertaken pursuant to this Regulation to other authorities or bodies designated or otherwise authorised by law to carry out such tasks, except for tasks related to:*
 - (i) *the quality assurance system referred in Article 40;*
 - (ii) *investigations referred in Article 38 of this Regulation and 32 of the Directive 2006/43/EC arising out of that quality assurance system or from a referral by another authority; and*
 - (iii) *the imposition of penalties, including sanctions and measures, referred in Chapter VII of the Directive 2006/43/EC related to the quality assurance inspections or investigation of statutory audits of public interest entities.*

2. *Any execution of tasks by other authorities or bodies shall be expressly delegated by the competent authority. The delegation shall specify the delegated tasks and the conditions under which they are to be carried out.*

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

3. *The authorities or bodies shall be organized in such a manner that there are no conflicts of interest. The ultimate responsibility for supervising compliance with this Regulation and the implementing measures adopted pursuant thereto shall lie with the delegating competent authority.*

The competent authority shall inform the Commission and the competent authorities of Member States of any arrangement entered into with regard to the delegation of tasks, including the precise conditions for regulating the delegations.

4. *By derogation from paragraph 1, Member States may decide to delegate the tasks referred to in point (iii) of paragraph 1 to another authority or body designated or otherwise authorised by law to carry out such tasks, when:*

the majority of the persons involved in the governance of that authority or body is independent from the audit profession.

Article 39

Cooperation with other competent authorities at national level

The competent authority designated pursuant to Article 35(1) and, where appropriate, any authority to whom that competent authority has delegated tasks shall cooperate at national level with:

- (a) the competent authorities *referred to in Article 32(4) of Directive 2006/43/EC*;
- (b) the authorities referred to in Article 35(2), whether they have been designated competent authorities for the purposes of this Regulation or not;
- (c) the financial intelligence units and the competent authorities referred to in Articles 21 and 37 of Directive 2005/60/EC.

For the purposes of this cooperation, the obligations under Article 37 shall apply.

CHAPTER II
QUALITY ASSURANCE, INVESTIGATION, MARKET MONITORING, ■ AND
TRANSPARENCY OF COMPETENT AUTHORITIES TASKS

Article 40

Quality assurance

1. For the purposes of this Article:
 - (a) "inspections" means quality assurance reviews of statutory auditors and audit firms, which are led by an inspector and which do not represent an investigation within the meaning of Article **32(5) of Directive 2006/43/EC**;
 - (b) "inspector" means a reviewer who meets the requirements set out in point (a) of the second subparagraph of paragraph **4** of this Article and is employed [*or otherwise contracted*] by a competent authority;
 - (c) "expert" means a natural person, who has specific expertise in financial markets, financial reporting, auditing or other fields relevant for inspections, including practising statutory auditors.

2. The competent authorities ***designated under*** Article 35(1) shall establish an effective system of audit quality assurance.

The competent authority shall carry out quality assurance ***inspections*** of statutory auditors and audit firms that carry out statutory audits of public-interest entities ***on the basis of an analysis of the risk and***

(i) in case of statutory auditors and audit firms carrying out statutory audits of public interest entities other than those defined in Article 2(17) and Article 2(18) of Directive 2006/43/EC at least every three years; and,

(ii) in other cases at least every six years.

3. The competent authority shall ***organise*** the quality assurance system ■ in a manner that is independent of the reviewed statutory auditors and audit firms.

The competent authority shall have the following responsibilities ■ :

- (a) approval and amendment of the inspection methodologies, including inspection and follow-up manuals, reporting methodologies and periodic inspection programmes;
- (b) approval and amendment of inspection reports and follow up reports;
- (c) approval and assignment of inspectors for each inspection.

The competent authority shall allocate adequate resources to the quality assurance system.

4. The competent authority shall ensure that appropriate policies and procedures related to the independence and objectivity of the staff, including inspectors, and the management of the inspection system are put in place.

The competent authority shall comply with the following criteria when appointing inspectors:

- (a) inspectors 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 who is a practicing statutory auditor or is employed or otherwise associated with a statutory auditor or an audit firm shall not be allowed to act as an inspector;
- (c) a person shall not be allowed to act as an inspector in an inspection of *a* statutory auditor or audit firm until at least *three* years have elapsed since that person ceased to be a partner or employee of that auditor or in that audit firm or to be otherwise associated *with that statutory auditor or audit firm*;
- (d) inspectors shall declare that there are no conflicts of interest between them and the statutory auditor and audit firm to be inspected.

By way of derogation from 1(b) of this Article, the competent authority may contract experts for carrying out specific inspections when the number of inspectors within the authority is insufficient. The competent authority may also be assisted by experts when this is essential for the proper conduct of an inspection. In such instances, the competent authorities and the experts shall comply with the requirements of this paragraph. Experts shall ***not be involved in the governance of, or employed or otherwise contracted by*** professional associations and bodies ***but may be members of such associations or bodies.***

5. The scope of inspections shall ***at least*** cover:
- (a) an assessment of the design of the internal quality control system of the audit firm or of the statutory auditor;
 - (b) adequate compliance testing of procedures and a review of audit files of public interest entities in order to verify the effectiveness of the internal quality control system;
 - (c) in the light of the inspection findings under points (a) and (b) of this paragraph, an assessment of the contents of the most recent annual transparency report published by a statutory auditor or an audit firm in accordance with Article 27.

5a. At least the following internal control policies and procedures of the statutory auditor or the audit firm shall be reviewed:

- (a) compliance by the statutory auditor or the audit firm with applicable auditing and quality control standards, and ethical and independence requirements, including those related to Chapter IV of Directive 2006/43/EC and Articles 9 to 10 of this Regulation, as well as relevant laws, regulations and administrative provisions of the Member State concerned;
- (b) the quantity and quality of resources used, including compliance with continuing education requirements as set out in Article 13 of Directive 2006/43/EC;
- (c) compliance with the requirements set out in Article 9 on the audit fees charged.

For the purposes of testing compliance, ■ audit files shall be selected on the basis of an analysis of the risk of an inadequate carrying out of the statutory audit.

The competent authorities shall also periodically review the methodologies used by statutory auditors and audit firms to carry out statutory audit.

■

In addition to the inspection covered by the first subparagraph, the competent authority shall have the power to perform other inspections.

6. **The** findings and conclusions **of inspections** on which recommendations are based, including the findings and conclusions related to a transparency report, shall be communicated to and discussed with the inspected statutory auditor or audit firm before an inspection report is finalised.

Recommendations of inspections shall be **implemented** by the inspected statutory auditor or audit firm within a reasonable period set by the competent authority. Such period shall not exceed 12 months in the case of recommendations on the internal quality control system of the audit firm.

7. The inspection shall be the subject of a report which shall contain the main **recommendations and** conclusions of the quality assurance review.

█

Article 42

Monitoring market quality and competition

1. The competent authorities ***designated under Article 35(1) and the European Competition Network (ECN), as appropriate***, shall regularly monitor the developments in the market for providing statutory audit services to public-interest entities ***and*** shall in particular assess the following:
 - (a) the risks arising from high ***incidence of quality deficiencies of a statutory auditor or audit firm, including systematic deficiencies within an audit firm network, which may lead to*** the demise of ***any*** audit ***firm***, the disruption in the provision of statutory audit services whether in a specific sector or across sectors, the further accumulation of risk ***of audit deficiencies*** and the impact on the overall stability of the financial sector;
 - (aa) ***the market concentration levels, including at the level of specific sectors;***
 - (ab) ***the performance of audit committees;***
 - (b) the need to adopt measures to mitigate those risks.

2. By X X 20XX [2 years after the entry into force of the Regulation], and at least *every three years* thereafter, each competent authority **and the ECN**, shall draw up a report on this issue and submit it to **CEAOB**, ESMA, EBA **█**, EIOPA **and the Commission**.

█

The Commission, following consultation with CEAOB, ESMA, EBA, EIOPA shall use those reports to draw up a joint report on the situation at Union level. The report shall be submitted to the Council, European Central Bank and the European Systemic Risk Board, as well as the European Parliament, where appropriate.

Article 44

Transparency of Competent Authorities

Competent authorities shall be transparent and shall at least publish:

- (a) annual activity reports regarding the tasks *the competent authorities are required to carry out under* this Regulation;
- (b) annual work programmes regarding the tasks *the competent authorities are required to carry out under* this Regulation;

- (c) a report on the overall results of the quality assurance system on an annual basis. This report shall include information on recommendations issued, follow-up on the recommendations, supervisory measures taken and penalties imposed. It shall also include quantitative information and other key performance information on financial resources and staffing, and the efficiency and effectiveness of the quality assurance system;
- (d) ***the aggregated information on*** the inspections findings and conclusions referred to in Article 40(6). ***The Member States may require the publication of those findings and conclusions on the level of individual inspections.***

CHAPTER III

COOPERATION BETWEEN COMPETENT AUTHORITIES AND RELATIONS WITH THE EUROPEAN SUPERVISORY AUTHORITIES

Article 45

Obligation to cooperate

The competent authorities of the Member States shall cooperate with each other where it is necessary for the purposes of this Regulation, including in cases where the conduct under investigation does not constitute an infringement of any legislative or regulatory provision in force in the Member State concerned.

Article 46

Establishment of CEAOB

1. ***Without prejudice to the organisation of national auditing oversight, the cooperation between competent authorities shall be organised within the framework of a Committee of European Auditing Oversight Bodies, hereinafter referred to as 'CEAOB'.***
■
2. ***The CEAOB shall be composed of one Member from each Member State who shall be high level representatives from the competent authorities referred to in Article 32(1) of Directive 2006/43/EC, and one Member appointed by the European Securities and Market Authority, hereinafter referred to as 'Members'.***
 - 2aa. ***The European Banking Authority and European Insurance and Occupational Pensions Authority shall be invited to attend the meetings of CEAOB as observers.***
 - 2a. ***The CEAOB shall meet at regular intervals and, where necessary, at the request of the Commission or a Member State.***
3. ***Each member of the CEAOB shall have one vote, except a member appointed by ESMA, who shall not have voting rights. Unless otherwise stated, CEAOB decisions shall be taken by simple majority of its Members.***

4. *The Chair of the CEAOB shall be elected or removed by the 2/3 majority of Members from a list of applicants representing the competent authorities referred to in Article 32(1) of Directive 2006/43/EC. The Chair shall be elected for a four-year term. The Chair may not serve consecutive terms in the same position, but may be re-elected after a cooling-off period of four years.*

The Vice Chair shall be appointed or removed by the European Commission.

The Chair and the Vice Chair shall not have voting rights.

In case the Chair resigns or is removed before the end of the term , the Vice Chair shall act as a Chair until the next meeting of the CEAOB which shall elect a Chair for the remainder of the term.

5a. The CEAOB shall:

- (a) facilitate the exchange of information, expertise and best practices for the implementation of this Regulation and Directive 2006/43/EC.**
- (b) provide expert advice to the Commission as well as to the Competent authorities, at their request, on issues related to the implementation of this Regulation and Directive 2006/43/EC;**
- (c) contribute to the technical assessment of public oversight systems of third countries and to the international cooperation between Member States and third countries in this area referred to in Articles 46 (2) and 47 (3) of Directive 2006/43/EC;**
- (d) contribute to the technical examination of international auditing standards, including the processes for their elaboration, with a view to their adoption at the Union level;**
- (f) contribute to the improvement of the cooperation mechanisms regarding oversight of public interest entities' audit firms or the networks they belong to;**
- (g) carry out other coordinating tasks in cases provided for in this Regulation or Directive 2006/43/EC.;**

5b. For the purpose of carrying out tasks, referred in paragraph 5a (c), the CEAOB shall request the assistance from the ESMA, EBA or EIOPA insofar as this request is related to the international cooperation between Member States and third countries in the field of statutory audit of public interest entities supervised by these European Supervisory Authorities. In case such assistance is requested, the ESMA, EBA or EIOPA shall assist the CEAOB in this task.

6. For the purposes of carrying out its tasks, the CEAOB may adopt non-binding guidelines or opinions.

The Commission shall publish the guidelines and opinions adopted by the CEAOB.

7. The CEAOB shall assume all existing and on-going tasks, as appropriate, of the European Group of Audit Oversight Bodies (EGAOB) created by Commission Decision 2005/909/EC.

■

8. *The CEAOB may establish sub-groups on a permanent or ad hoc basis to examine specific issues under the terms of reference established by the CEAOB. Participation in the sub-group discussions may be extended to competent authorities from the countries of the European Economic Area (hereinafter referred to as EEA) in the field of audit oversight or by invitation, on a case-by-case basis, to competent authorities from non-EU/EEA countries, subject to the approval of the CEAOB members. The participation of the non-EU/EEA member may be subject to a limited time period.*
- 8a. *The CEAOB shall establish a sub-group for the purpose of carrying out the tasks referred to in paragraph 5a(c) and this sub-group shall be chaired by the Member appointed by the European Securities and Markets Authority under paragraph 2.*
9. *At the request of at least three Members, or on its own initiative, where this is considered useful and/or necessary, the Chair of the CEAOB may invite experts, including practitioners, with specific competence on a subject on the agenda to participate in the CEAOB's or its sub-group's deliberations as observers. The CEAOB may invite representatives of competent authorities from third countries which are competent in the field of audit oversight to participate in the CEAOB's or its sub-group's deliberations as observers.*

10. *The Secretariat of the CEAOB shall be provided by the Commission. The expenses of the CEAOB shall be included in the estimates of the Commission.*
11. *The Chair shall prepare the provisional agenda of each CEAOB meeting with due regard to Members written contributions.*
13. *The Chair or, in his or her absence, the Vice Chair shall communicate CEAOB views or positions only with the approval of the Members.*
14. *The CEAOB's discussions shall not be public.*
15. *The CEAOB shall adopt its rules of procedure.*

Article 49

Cooperation with regard to quality assurance reviews *and investigations or on-site inspections*

1. Competent authorities shall take measures to ensure effective cooperation at Union level in respect of quality assurance reviews.
2. The competent authority of one Member State may request the assistance of the competent authority of another Member State with regard to the quality assurance reviews of statutory auditors or audit firms belonging to a network *carrying out* significant activities in that Member State.

3. Where a competent authority receives a request from a competent authority of another Member State to *assist* in the quality assurance review of a statutory auditors or audit firm belonging to a network *carrying out* significant activities in that Member State, it shall allow the requesting competent authority to *assist* in such quality assurance review.

The requesting competent authority shall not have the right to access information which might adversely affect the sovereignty, security or public order of the requested Member State or breach national *security* rules.

4. Where a competent authority concludes that activities contrary to the provisions of this Regulation are being carried out or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State of that conclusion in as specific a manner as possible. The competent authority of the other Member State shall take appropriate action. It shall inform the notifying competent authority of the outcome and, to the extent possible, of significant interim developments.
5. A competent authority of one Member State may request that an investigation is carried out by the competent *authority* of another Member State on the latter's territory.

It may also request that some of its own personnel be allowed to accompany the personnel of the competent authority of that Member State in the course of the investigation, including with regard to on-site inspections.

■

The investigation or inspection shall be subject throughout to the overall control of the Member State on whose territory it is conducted. ■

6. The requested competent authority may refuse to act on a request for an investigation to be carried out as provided for in *paragraph 2 or in* the first subparagraph of paragraph 5, or on a request for its personnel to be accompanied by personnel of a competent authority of another Member State as provided for in the *first subparagraph of paragraph 3 or in the* second subparagraph of paragraph 5, in the following cases:
- (a) such an investigation or on-site inspection might *breach national security rules or* adversely affect the sovereignty, security or public order of the requested Member State;
 - (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;
 - (c) a final judgment has already been passed in respect of the same actions *and the same* persons by the competent authorities of the requested Member State.

■

7. *In the event of a quality assurance review, investigation or inspection with cross-border effects, the competent authorities of the Member States concerned may address a joint request to CEAOB to coordinate the investigation or inspection.*

Article 53

Colleges of competent authorities

1. ***In*** order to facilitate the exercise of the tasks referred to in Articles 40, ***49(4)-(6) and Article 30 of the Directive*** with regard to specific statutory auditors, audit firms or their networks ■, colleges ***may*** be established ***with*** the ***participation of*** the competent authority of the home Member State and any other competent authority ■, provided that:
 - (a) the statutory auditor or audit firm is providing statutory audit services to public ■ interest entities within its ***jurisdiction***; or
 - (b) a branch which is a part of the audit firm is established within its jurisdiction.
2. ***In the case of specific statutory auditors or audit firms, the*** competent authority of the home Member State shall act as facilitator.
3. With regard to specific networks, ■ competent authorities of the Member States where the network ***carries out*** significant activities ***may request CEAOB to establish a college with the participation of the requesting competent authorities.***
4. Within 15 working days of the establishment of the college of competent authorities with regard to a specific network, its members shall select a facilitator. In the absence of agreement, ***CEAOB*** shall appoint a facilitator ***among the members of the college.***

Members of the college shall review the selection of the facilitator at least every five years to ensure the selected facilitator remains the most appropriate.

5. The facilitator shall chair the meetings of the college, coordinate the actions of the college and ensure efficient exchange of information among members of the college.
6. The facilitator shall, within 10 working days of his or her selection, establish written coordination arrangements within the framework of the college regarding the following matters:
 - (a) information to be exchanged between competent authorities;
 - (b) cases in which the competent authorities must consult each other;
 - (c) cases in which the competent authorities may delegate supervisory tasks in accordance with Article 54.
7. In the absence of agreement concerning the written coordination arrangements under paragraph 6, any member of the college may refer the matter to **CEAOB**. The facilitator shall give due consideration to any advice provided by **CEAOB** concerning the written coordination arrangements before agreeing their final text. The written coordination arrangements shall be set out in a single document containing full reasons for any significant deviation from the advice of **CEAOB**. The facilitator shall transmit the written coordination arrangements to the members of the college and to **CEAOB**.

Article 54

Delegation of tasks

The competent authority of the home Member State may delegate any of its tasks to the competent authority of another Member State subject to the agreement of that authority. Delegation of tasks shall not affect the responsibility of the delegating competent authority.

Article 55

Confidentiality and professional secrecy in relation to cooperation among competent authorities

1. The obligation of professional secrecy shall apply to all persons who work or who have worked for ***bodies involved in cooperation framework between competent authorities, referred to in Articles 46***. Information covered by professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings ***[or required as a matter of law]***.
2. **■** Article 37 shall not prevent ***bodies involved in a cooperation framework between competent authorities, referred to in Articles 46*** and the 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.
3. All the information exchanged under this Regulation between ***bodies involved in a cooperation framework between competent authorities, referred to in Articles 46, and the competent authorities and other authorities and bodies*** shall be ***treated as confidential***, except where ***such disclosure is required as a matter of law***.

Article 56

Protection of personal data

1. Member States shall apply Directive 95/46/EC to the processing of personal data carried out in the Member States pursuant to this Regulation.
2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by **CEAOB**, ESMA, EBA and EIOPA in the context of this Regulation **and Directive 2006/43/EC**.

CHAPTER IV

COOPERATION WITH THIRD COUNTRY AUTHORITIES AND WITH INTERNATIONAL ORGANISATION AND BODIES

Article 57

Agreement on **exchange** of information

1. The competent authorities **■** may conclude cooperation agreements on exchange of information with the competent authorities of third countries only if the information disclosed is subject, in the third countries concerned, to guarantees of professional secrecy which are at least equivalent to those set out in Articles 37 and 55. **The competent authorities shall immediately communicate to CEAOB and notify the Commission of such agreements.**

Information shall only be exchanged under this Article where such exchange of information is necessary for the performance of the tasks of those competent authorities under this Regulation.

Where such exchange of information involves the transfer of personal data to a third country, Member States shall comply with Directive 95/46/EC and **CEAOB** shall comply with Regulation (EC) No 45/2001.

2. The competent authorities shall cooperate with the competent authorities or other relevant bodies of third countries regarding the quality assurance reviews and investigations of auditors and audit firms. ***Upon request by a competent authority, CEAOB shall contribute to this cooperation and to the establishment of supervisory convergence with third countries.***
3. Where the cooperation or exchange of information is related to audit working papers or other documents held by statutory auditors or audit firms, Article 47 of Directive 2006/43/EC shall apply.
4. ***The CEAOB shall prepare guidelines on the content of cooperation agreement and exchange of information referred to in this Article.***

Article 58

Disclosure of information received from third countries

The competent authority of a Member State ■ may disclose the **confidential** information received from competent authorities of third countries **where provided for in a co-operation agreement**, only if it has obtained the express agreement of the competent authority that has transmitted the information and, where applicable, the information is disclosed only for the purposes for which that competent authority gave its agreement, or where such disclosure is **required by national or EU legislation**.

Article 59

Disclosure of information transferred to third countries

The competent authority of a Member State ■ shall require that **confidential** information communicated by them to a competent authority of a third country may be disclosed by that competent authority to third parties or authorities only with the prior express agreement of the competent authority which has transmitted the information, in accordance with its national law and provided that the information is disclosed only for the purposes for which that competent authority of the Member State ■ has given its agreement, or where such disclosure is **required by law or where such disclosure is** necessary for legal proceedings **in that third country**.

■

Article 68

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 **20** shall be conferred on the Commission for *a* period of **5 years** from [date of entry into force of this *Directive*]. *The Commission shall draw up a report in respect of the delegation of power not later than nine months before the end of the 5 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 *Article 20* may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the Official Journal of the European Union or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to *Article 20* shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of [two months] of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by [two months] at the initiative of the European Parliament or of the Council.

Article 69

Review

1. *The Commission shall review and report on the operations and effectiveness of the system of cooperation between competent authorities within the framework of the CEAOB, referred in the Article 46, in particular as regards the performance of the CEAOB tasks defined in the paragraph 5a.*
2. *The review shall take into account international developments, in particular with regard to strengthening the cooperation in the field of international cooperation with the competent authorities of the third countries and contributing to the improvement of cooperation mechanisms for the oversight of statutory auditors of public interest entities belonging to the international audit networks. It shall be completed by XX XXX 201X [5 years after this regulation will come in force].*
3. *The report shall be submitted to the European Parliament and to the Council, together with a legislative proposal, if appropriate. That report shall consider the progress in the field of cooperation between competent authorities within the framework of the CEAOB from the beginning of operation of this framework and propose further steps to enhance the effectiveness of the cooperation between Member States' competent authorities.*
4. By X X 20XX [five years after the end of the transitional period] the Commission shall prepare a report on the application of this Regulation. ■

Article 70

Transitional provision

- █
1. *By [six years after the date of entry into force of this Regulation], a public-interest entity shall not enter into or renew an audit engagement with a given statutory auditor or audit firm if that statutory auditor or audit firm has been providing audit services to that public-interest entity for 20 and more consecutive years at the date of entry into force of this Regulation.*
 2. *By [nine years after the date of entry into force of this Regulation], a public-interest entity shall not enter into or renew an audit engagement with a given statutory auditor or audit firm if that statutory auditor or audit firm has been providing audit services to that public-interest entity for 11 and more but less than 20 consecutive years at the date of entry into force of this Regulation.*
 3. *Without prejudice of paragraphs 1 and 2, the audit engagements that were entered into before [the date of entry into force of this Regulation] but which are still in force by [two years after the date of entry into force of this Regulation], may remain applicable until the end of the maximum duration referred in the second subparagraph of Article 33(1). Article 33(3) shall apply.*
 4. █ Article 32(3) shall only apply to such *engagement after the expiry of the period referred to in Article 33(1) subparagraph 2.*

Article 71

National provisions

The Member States shall make such provision as is appropriate to ensure the effective application of this Regulation.

[Article 71a

Repeal of Commission Decision 2005/909/EC

Commission Decision 2005/909/EC is hereby repealed.]

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

It shall apply from [2 years after the entry into force].

However, Article 32(7) shall apply from █ [3 years after the entry into force of the Regulation].

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at [...],

For the European Parliament
The President

For the Council
The President

█