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*****I**
REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts
(COM(2011)0778 – C7-0461/2011 – 2011/0389(COD))

Committee on Legal Affairs

Rapporteur: Sajjad Karim

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (COM(2011)0778 – C7-0461/2011 – 2011/0389(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0778),
 - having regard to Article 294(2) and Article 50 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0461/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Slovak Parliament and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 26 April 2012¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Industry, Research and Energy (A7-0171/2013),
1. Adopts its position at first reading hereinafter set out;
 2. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 3. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

¹ OJ C 191, 29.6.2012, p. 61.

Amendment 1

Proposal for a directive Recital 3

Text proposed by the Commission

Amendment

(3) In order to allow audit firms to grow, Member States should allow them to have access to external capital. Therefore, Member States should no longer require that a minimum amount of capital or of voting rights in an audit firm is held by statutory auditors or audit firms, provided that a majority of the members of the administrative body are audit firms approved in any Member State or statutory auditors of good repute.

deleted

Justification

Follow-up to the deletion of unrestricted participation of commercial companies

Amendment 2

Proposal for a directive Recital 5 a (new)

Text proposed by the Commission

Amendment

(5a) Whilst the primary responsibility for delivering financial information should rest with the management of the audited entities, auditors play a role by actively challenging management from a user's perspective. In order to improve audit quality, it is therefore important that the professional scepticism exercised by auditors vis-à-vis the audited entity is reinforced. Auditors should recognise the possibility that a material misstatement due to fraud or error could exist, notwithstanding the auditor's past experience of the honesty and integrity of the audited entity's management.

Amendment 3

Proposal for a directive

Recital 6

Text proposed by the Commission

(6) In order to enhance the independence of statutory auditors and audit firms from the audited entity when carrying out statutory audits, any person or entity that holds rights in an audit firm should be independent of the audited entity and should not be involved in the process of decision making of the audited entity.

Amendment

(6) Auditors, audit firms and their employees should in particular refrain from carrying out the statutory audit of an entity if they have a business interest or financial interest in it and from engaging in trading in financial instruments issued, guaranteed or otherwise supported by an audited entity, other than holdings in diversified collective investment schemes. The statutory auditor or audit firm should abstain from the internal decision-making processes of the audited entity. Statutory auditors or their employees should be prevented from taking up duties in the audited entity at managerial or board level until an appropriate period has elapsed since the end of the audit engagement.

(Recital 9 from the Regulation COM(2011)0779)

Amendment 4

Proposal for a directive

Recital 6 a (new)

Text proposed by the Commission

Amendment

(6a) It is important that statutory auditors and audit firms respect the rights to private life and data protection of their clients. They should therefore be bound by strict rules on confidentiality and professional secrecy which, however, should not impede the proper enforcement of this Directive or the cooperation with the group auditor during the performance

of the audit of consolidated financial statements when the parent undertaking is in a third country, provided that Directive 95/46/EC of the European Parliament and of the Council 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 is complied with. However, such rules should not allow a statutory auditor or audit firm to cooperate with third country authorities outside the cooperation channels foreseen in Chapter XI of Directive 2006/43/EC. Those confidentiality rules should also apply to any statutory auditor or audit firm which has ceased to be involved in a specific audit task.

¹ OJ L 281, 23.11.1995, p. 31

(Recital 14 from the Regulation COM(2011)0779)

Amendment 5

Proposal for a directive Recital 6 b (new)

Text proposed by the Commission

Amendment

(6b) Adequate internal organisation of statutory auditors and audit firms should contribute to preventing any threats to their independence. Thus, the owners or shareholders of an audit firm, as well as those managing it, should not intervene in the carrying out of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries it out on behalf of the audit firm. Additionally, statutory auditors and audit firms should establish appropriate internal policies and procedures in relation to employees and other persons involved in the statutory audit activity within their organisations in

order to ensure that they comply with their statutory obligations. Those policies and procedures should in particular seek to prevent and address any threats to independence and ensure the quality, integrity and thoroughness of the statutory audit. Those policies and procedures should be proportionate in view of the scale and complexity of the business of the statutory auditor or audit firm.

(Recital 8 from the Regulation COM(2011)0779)

Amendment 6

Proposal for a directive Recital 6 c (new)

Text proposed by the Commission

Amendment

(6c) The statutory audit results in an opinion on the truth and fairness of the financial statements of the audited entities. Stakeholders, however, might be unaware of the limitations of an audit (materiality, sampling techniques, role of the auditor in the detection of fraud and the responsibility of managers), which can lead to an expectation gap. In order to reduce such gap, it is important to provide more clarity on what the scope of the statutory audit is.

(Recital 15 from the Regulation COM(2011)0779)

Amendment 7

Proposal for a directive Recital 6 d (new)

Text proposed by the Commission

Amendment

(6d) Securing audit quality should be the main criterion to apply when organising the audit work and allocating the

necessary resources to the tasks. The integrity of the statutory auditor, audit firm and their staff is essential to ensure the public confidence in statutory audits and financial markets. Therefore, any incident that may have serious consequences for the integrity of the statutory audit activities should be appropriately managed. The statutory auditor or the audit firm should appropriately document the audit work.

(Recital 16 part 2 from the Regulation COM(2011)0779)

Amendment 8

Proposal for a directive Recital 6 e (new)

Text proposed by the Commission

Amendment

(6e) A sound internal 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 internal quality control review has been completed.

(Recital 18 from the Regulation COM(2011)0779)

Amendment 9

Proposal for a directive Recital 7

Text proposed by the Commission

Amendment

(7) It is important to ensure high quality statutory audits within the Union. All statutory audits should therefore be carried out on the basis of the international auditing standards *which are part of the Clarity Project* issued by the International Federation of Accountants (IFAC) in

(7) It is important to ensure high quality statutory audits within the Union. All statutory audits should therefore be carried out on the basis of the international auditing standards issued by the International **Auditing and Assurance Standards Board (IAASB)** insofar as they

2009 insofar as they are relevant to statutory audits. Member States should be allowed to impose additional national audit procedures or requirements only if they stem from specific national legal requirements relating to the scope of the statutory audit of annual or consolidated financial statements, meaning that those requirements have not been covered by the adopted international auditing standards, and only if they add to the credibility and quality of annual financial statements and consolidated financial statements **and are conducive to the Union public good**. The Commission should continue to be involved in the monitoring of the content and adoption process of the international auditing standards by the **IFAC**.

are relevant to statutory audits. Member States should be allowed to impose additional national audit procedures or requirements only if they stem from specific national legal **or regulatory** requirements relating to the scope of the statutory audit of annual or consolidated financial statements, meaning that those requirements have not been covered by the adopted international auditing standards, and only if they add to the credibility and quality of annual financial statements and consolidated financial statements. The Commission should continue to be involved in the monitoring of the content and adoption process of the international auditing standards by the **IAASB**.

Amendment 10

Proposal for a directive Recital 7 a (new)

Text proposed by the Commission

Amendment

(7a) In the case of consolidated financial statements, it is important that there is a clear definition of responsibilities of the statutory auditors who audit different entities of the group. For this purpose, the group auditor should bear full responsibility for the audit report.

(Recital 17 from the Regulation COM(2011)0779)

Amendment 11

Proposal for a directive Recital 9

Text proposed by the Commission

Amendment

(9) The public oversight of statutory auditors and audit firms encompasses the approval, registration of statutory auditors

deleted

and audit firms, the adoption of standards on professional ethics and internal quality control of audit firms, the continuing education, as well as the systems of quality assurance, investigation, and penalties for statutory auditors and audit firms. In order to enhance the transparency of the auditor supervision and to allow for more accountability, each Member State should designate a single authority in charge of the public oversight of statutory auditors and audit firms. The independence of such public oversight authorities from the audit profession is a core prerequisite for integrity, efficiency and orderly functioning of the public oversight of statutory auditors and audit firms. Therefore, the public oversight authorities should be governed by non-practitioners and Member States should establish independent and transparent procedures for the selection of non-practitioners.

Amendment 12

Proposal for a directive

Recital 11

Text proposed by the Commission

(11) Adequate supervision of statutory auditors and audit firms that have cross-border activities or are part of networks requires the public oversight authorities of the Member States to exchange information. In order to protect the confidentiality of the information that may be thus exchanged, Member States should subject to the obligation of professional secrecy not only the employees of the public oversight authorities, but also all persons to whom the public oversight authorities have delegated tasks. ***The competent authority should have the possibility to delegate tasks to other authorities or bodies only with regard to***

Amendment

(11) Adequate supervision of statutory auditors and audit firms that have cross-border activities or are part of networks requires the public oversight authorities of the Member States to exchange information. In order to protect the confidentiality of the information that may be thus exchanged, Member States should subject to the obligation of professional secrecy not only the employees of the public oversight authorities, but also all persons to whom the public oversight authorities have delegated tasks.

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

Amendment 13

Proposal for a directive Recital 11 a (new)

Text proposed by the Commission

Amendment

(11a) Audit committees, or bodies performing an equivalent function within the audited entity, have a decisive role in contributing to high-quality statutory audit. It is particularly important to reinforce the independence and technical competence of the audit committee by requiring that a majority of its members is independent and that at least one member of the committee has competence in auditing and another one in auditing and/or accounting. The Commission Recommendation of 15 February 2005 on the role of non-executive or supervisory directors of listed companies and on the committees of the (supervisory) board sets out how audit committees should be established and function. Considering, however, the dimension of boards in companies with reduced market capitalisation and in small and medium-sized public-interest entities, it would be appropriate that the functions assigned to the audit committee for those entities, or to a body performing equivalent functions within the audited entity, be performed by the administrative or supervisory body as a whole.

(Part of Recital 23 from the Regulation COM(2011)0779)

Amendment 14

Proposal for a directive Recital 13

Text proposed by the Commission

(13) The burdens weighing on small and medium-sized undertakings within the Union in connection to the audit of their financial statements should be reviewed to the necessary minimum without compromising investor protection. Member States should ensure that the application of auditing standards according to which the statutory audit of the financial statements of those undertakings is performed is proportionate to the scale of small and medium-sized undertakings.

Amendment

(13) The burdens weighing on small and medium-sized undertakings within the Union in connection to the audit of their financial statements should be reviewed to the necessary minimum without compromising investor protection. Member States should ensure that the application of auditing standards according to which the statutory audit of the financial statements of those undertakings is performed is proportionate to the scale of small and medium-sized undertakings. ***The fact that both small and medium-sized undertakings exist in different sizes and that, moreover, their operations vary in complexity should also be taken into account.***

Amendment 15

Proposal for a directive Recital 15

Text proposed by the Commission

(15) In order to preserve the rights of the parties concerned when the competent authorities of Member States cooperate with the competent authorities of third countries on the exchange of audit working papers or other relevant documents for the assessment of the quality of the audit performed, Member States should ensure that the working arrangements entered into by their competent authorities based on which any exchange of such papers takes place comprise enough safeguards to protect the business secrecy, commercial interests, including the industrial and intellectual property rights of the audited

Amendment

(15) In order to preserve the rights of the parties concerned when the competent authorities of Member States cooperate with the competent authorities of third countries on the exchange of audit working papers or other relevant documents for the assessment of the quality of the audit performed, Member States should ensure that the working arrangements entered into by their competent authorities based on which any exchange of such papers takes place comprise enough safeguards to protect the business secrecy, commercial interests, including the industrial and intellectual property rights of the audited

entities.

entities. ***Member States shall ensure that those arrangements comply and are compatible with the provisions of Directive 95/46/EC.***

Amendment 16

Proposal for a directive Recital 20

Text proposed by the Commission

(20) Since the objective of this Directive, namely reinforcing investor ***protection in*** the financial statements published by undertakings by further enhancing the quality of statutory audits that are performed within the Union cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Amendment

(20) Since the objective of this Directive, namely reinforcing investor ***confidence in the truth and fairness of*** the financial statements published by undertakings by further enhancing the quality of statutory audits that are performed within the Union cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Amendment 17

Proposal for a directive Article 1 – point 1 – point a Directive 2006/43/EC Article 1 – paragraph 2

Text proposed by the Commission

(a) The following paragraphs are added:
'Articles 22, 25 ***and 27 to 30*** of this Directive shall not apply to the statutory audit of annual and consolidated accounts of public-interest entities unless specified in Regulation (EU) No [xxx].

Amendment

(a) The following paragraphs are added:
'Articles 25, ***28 and 29*** of this Directive shall not apply to the statutory audit of annual and consolidated accounts of public-interest entities unless specified in Regulation (EU) No [xxx].

Articles 32 to 36 of this Directive shall apply with regard to public-interest entities in so far as related to the supervision of the compliance with the rules on approval and registration of statutory auditors and audit firms set out in Articles 3 to 20.’.

Articles 32 to 36 of this Directive shall apply with regard to public-interest entities in so far as related to the supervision of the compliance with the rules on approval and registration of statutory auditors and audit firms set out in Articles 3 to 20.’.

Amendment 18

Proposal for a directive

Article 1 – point 2 – point a

Directive 2006/43/EC

Article 2 – point 1 – point c

Text proposed by the Commission

Amendment

(c) voluntarily conducted by small undertakings;

deleted

Justification

The voluntary audit of small companies needs not be regulated.

Amendment 19

Proposal for a directive

Article 1 – point 2 – point a a (new)

Directive 2006/43/EC

Article 2 – point 5

Text proposed by the Commission

Amendment

(aa) Point 5 is replaced by the following:

'5. "third-country auditor" means a natural person who carries out audits of the annual or consolidated accounts of a company incorporated in a third country except where that person is a statutory auditor or audit firm and the third country audit engagement is subject to oversight by a Member State;'

Amendment 20

Proposal for a directive

Article 1 – point 2 – point b

Directive 2006/43/EC

Article 2 – point 10

Text proposed by the Commission

'10. “competent authorities” means the authorities designated by law that are in charge of the regulation and/or oversight of statutory auditors and audit firms or of specific aspects thereof; the reference to “competent authority” in a specific Article means a reference to the authority responsible for the functions referred to in that Article;’;

Amendment

'10. “competent authorities” means the authorities designated by law that are in charge of the regulation and/or oversight of statutory auditors and audit firms or of specific aspects thereof; the reference to “competent authority” in a specific Article means a reference to the authority **or body/ies** responsible for the functions referred to in that Article;’;

Amendment 21

Proposal for a directive

Article 1 – point 2 – point d

Directive 2006/43/EC

Article 2 – point 13

Text proposed by the Commission

(d) Point 13 is replaced by the following:

‘13. ‘public-interest entities’ means:

(a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC;

(b) credit institutions as defined in point 1 of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council;

(c) insurance undertakings within the

Amendment

(d) Point 13 is replaced by the following:

‘13. ‘public-interest entities’ means **undertakings which are:**

(a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC;

(b) credit institutions as defined in point 1 of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council **of 14 June 2006 relating to the taking up and pursuit of the business of credit institutions other than those referred to in Article 2 of that Directive(*)**;

(c) insurance undertakings within the

meaning of Article 13 of Directive 2009/138/EC of the European Parliament and of the Council(**);

(d) entities *governed by the law of a Member State which are payment institutions as defined in point 4 of Article 4 of Directive 2007/64/EC of the European Parliament and of the Council(***)*, unless Article 15(2) of that Directive applies;

(e) entities *governed by the law of a Member State which are electronic money institutions as defined in point 1 of Article 2 of Directive 2009/110/EC of the European Parliament and of the Council(****)*, unless Article 15(2) of Directive 2007/64/EC applies;

(f) *investment firms as defined in point 1 of Article 4(1) of Directive 2004/39/EC;*

(g) *EU alternative investment funds as defined in Article 4(1)(k) of Directive 2011/61/EC of the European Parliament and of the Council(*****);*

(h) *undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council(*****);*

(i) *entities governed by the law of a Member State which are central securities depositories;*

(j) *central counterparties as defined in Article 2(1) of Regulation X/XXXX of the European Parliament and of the Council(*****)*[see proposal for a Regulation on OTC derivatives, central counterparties and trade repositories, COM(2010)484];

(*) OJ L 177, 30.6.2006, p.1.

(**) OJ L 335, 17.12.2009, p. 1.

(***) OJ L 319, 5.12.2007, p.1.

(****) OJ L 267, 10.10.2009, p. 7.

meaning of Article 2(1) of Council Directive 91/674/EEC of 19 December 1991 on the annual accounts of insurance undertakings, or;

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

(*) OJ L 177, 30.6.2006, p.1.

(*****) *OJ L 174, 1.7.2011, p.1.*

(*****) *OJ L 302, 17.11.2009, p. 32;*

(*****) *OJ L'*

Amendment 22

Proposal for a directive

Article 1 – point 3 – point b – point i

Directive 2006/43/EC

Article 3 – paragraph 4 – subparagraph 1 – point b

Text proposed by the Commission

Amendment

(i) in the first subparagraph, point (b) is deleted; **deleted**

Amendment 23

Proposal for a directive

Article 1 – point 3 – point b – point iii

Directive 2006/43/EC

Article 3 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

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

(iii) the second subparagraph is deleted

‘Member States may not set additional conditions in relation to these points. Member States shall not be allowed to require that a minimum amount of capital or of voting rights in an audit firm is held by statutory auditors or audit firms.’

Amendment 24

Proposal for a directive

Article 1 – point 5

Directive 2006/43/EC

Article 6 – paragraph 1 a (new)

Text proposed by the Commission

The competent authorities referred to in Article 32 shall cooperate *in view of* achieving a convergence of the requirements set out in this Article. *They shall cooperate with the European Securities and Markets Authority (ESMA) and the competent authorities referred to in Article X of Regulation [XXX] of [XXX] in so far as such convergence relates to the statutory audit of public-interest entities.*

Amendment

The competent authorities referred to in Article 32 shall cooperate *with a view to* achieving a *minimum* convergence of the requirements set out in this Article. *When engaging in such cooperation, those competent authorities shall take into account developments in auditing and the audit profession, and in particular, the convergence that has already been achieved by the profession.*

Amendment 25

Proposal for a directive
Article 1 – point 6 – point b
Directive 2006/43/EC
Article 8 – paragraph 3

Text proposed by the Commission

(b) paragraph 3 is *replaced by the following:*

‘The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of adapting the list of subjects to be included in the test of theoretical knowledge referred to in paragraph 1 of this Article. When using such powers, the Commission shall take into account developments in auditing and the audit profession.’

Amendment

(b) paragraph 3 is *deleted*

Amendment 26

Proposal for a directive
Article 1 – point 7
Directive 2006/43/EC
Article 14 – paragraph 2 – subparagraph 2

Text proposed by the Commission

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

Amendment

The adaptation period shall not exceed three years and shall be subject to an assessment *of the level of professional competence achieved through the application of national law relating to audits.*

Amendment 27

Proposal for a directive

Article 1 – point 8

Directive 2006/43/EC

Article 15 – paragraph 1

Text proposed by the Commission

In Article 15(1), the following subparagraph is added:

‘The public register shall be organized by the competent authority referred to in Article 32.’.

Amendment

deleted

Amendment 28

Proposal for a directive

Article 1 – point 9

Directive 2006/43/EC

Article 17 – paragraph 1 – point j

Text proposed by the Commission

*‘if applicable, whether the audit firm is registered pursuant to **Articles 3a and 3b**.’.*

Amendment

*‘if applicable, whether the audit firm is registered pursuant to **Article 3b**.’.*

Amendment 29

Proposal for a directive

Article 1 – point 10 a (new)

Directive 2006/43/EC

Article 21 – paragraph 2 a (new)

10a. In Article 21, the following paragraph is added:

2a. When carrying out the statutory audit, the statutory auditor or audit firm shall maintain professional scepticism throughout the audit, recognising the possibility of a material misstatement due to facts or behaviour indicating irregularities, including fraud or error, notwithstanding the auditor's or firm's past experience of the honesty and integrity of the audited entity's management and of the persons charged with its governance as required by the international standards referred to in Article 26.

For the purposes of this Article, 'professional scepticism' means an attitude that includes a questioning mind, being alert to conditions which may indicate possible misstatement due to error or fraud and a critical assessment of audit evidence.

(Article 15 from the Regulation COM(2011)0779)

Amendment 30

Proposal for a directive

Article 1 – point 11 – point a

Directive 2006/43/EC

Article 22 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that when carrying out a statutory audit, **the** statutory auditor **and/or the** audit firm **and any holder of voting rights in the audit firm** is independent of the audited entity **and is not**

Amendment

1. Member States shall ensure that when carrying out a statutory audit, **a** statutory auditor or **an** audit firm **and any natural person in a position to directly or indirectly influence the outcome of the**

involved in the decision-taking of the audited entity.

statutory audit is independent of the audited entity.

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

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

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

– the audited entity;

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

Amendment 31

Proposal for a directive
Article 1 – point 11 - point b
Directive 2006/43/EC
Article 22 – paragraph 2

Text proposed by the Commission

(b) in paragraph 2, the second subparagraph is deleted;

Amendment

(b) paragraph 2 is replaced by the following:

2. A statutory auditor, an audit firm, their key audit partners, their employees as well as any other natural person whose services are placed at the disposal or under the control of such auditor or firm and who is directly involved in statutory audit activities, and persons closely associated with them within the meaning

of Article 1(2) of Commission Directive 2004/72/EC shall not:

(a) own any financial instruments of the audited entity, the parent undertaking to which the audited entity is material, or any entity whose financial information is incorporated into the financial statements of the audited entity, other than interests owned indirectly through diversified collective investment schemes, including managed funds such as pension funds or life insurance;

(b) have or have had in the previous 12 months any personal, business, employment or other relationship with the audited entity, the parent undertaking to which the audited entity is material, or any entity whose financial information is incorporated into the financial statements of the audited entity that may compromise or may be generally perceived by an objective, reasonable and informed third party as compromising the independence of the statutory auditor or the audit firm.

(Article 7 from the Regulation COM(2011)0779)

Amendment 32

Proposal for a directive

Article 1 – point 11 – point b a (new)

Directive 2006/43/EC

Article 22 – paragraphs 2 a and 2 b (new)

Text proposed by the Commission

Amendment

(ba) In Article 22 the following paragraphs are added:

2a. Persons or firms referred to in paragraph 2 shall not solicit or accept gifts, hospitality or similar favours from the audited entity unless an objective, reasonable and informed third party would consider their value to be trivial or inconsequential.

2b. If, during the period covered by the financial statements, an audited entity is acquired by, merges with, or acquires an entity to which Articles 22 and 22a of this Directive and 9 to 11 of Regulation XX/XX apply, the statutory auditor or audit firm shall identify and evaluate any current or recent interests or relationships –including relationships involving the provision of services – with that entity that, taking into account available safeguards, could compromise its independence and its ability to continue with the statutory audit after the effective date of the merger or acquisition.

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

(Article 7 from the Regulation COM(2011)0779)

Amendment 33

Proposal for a directive

Article 1 – point 11

Directive 2006/43/EC

Article 22 – paragraph 4

Text proposed by the Commission

Amendment

(c) paragraph 4 is ***replaced by the following:***

(c) paragraph 4 is ***deleted***

‘4. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of specifying:

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

(b) the situations in which the

significance of the threats, as referred to in paragraph 2 of this Article, is such that the independence of the statutory auditor or audit firm is compromised.'

Amendment 34

Proposal for a directive

Article 1 – point 11 a (new)

Directive 2006/43/EC

Article 22 a (new)

Text proposed by the Commission

Amendment

11a. The following Article 22a is inserted:

Article 22a (new)

Employment of former statutory auditors or of employees of statutory auditors or audit firms

1. Member States shall ensure that a statutory auditor or a key audit partner who carries out a statutory audit on behalf of an audit firm shall not, before a period of at least two years has elapsed since he or she resigned as a statutory auditor or key audit partner from the audit engagement, take up any of the following duties:

(a) take up a key management position in the audited entity;

(b) become a member of the audit committee of the audited entity or, where such committee does not exist, of the body performing equivalent functions to an audit committee;

(c) become a non-executive member of the administrative body or a member of the supervisory body of the audited entity.

2. Employees and partners other than key audit partners of a statutory auditor or an audit firm carrying out a statutory audit as well as any other natural person whose services are placed at the disposal or under the control of such auditor or firm

shall not, when such employees, partners or other natural persons are personally approved as statutory auditors, before a period of at least one year has elapsed since he or she was directly involved in the statutory audit engagement, take up any of the duties referred to in points (a), (b) and (c) of paragraph 1.

(Article 8 from the Regulation COM(2011)0779)

Amendment 35

Proposal for a directive

Article 1 – point 11b (new)

Directive 2006/43/EC

Article 23 – paragraphs 4 a to 4 c (new)

Text proposed by the Commission

Amendment

11b. In Article 23 the following paragraphs are added:

4a. Where a statutory auditor or an audit firm carries out statutory audit of a public-interest entity which is part of a group of undertakings whose parent undertaking is situated in a third country, the confidentiality and professional secrecy rules referred to in paragraph 1 shall not impede the transfer by the statutory auditor or audit firm of relevant documentation of the audit work performed to the group auditor situated in a third country if such documentation is exclusively necessary for the preparation of the audit of consolidated financial statements of the parent undertaking.

4b. A statutory auditor or audit firm that carries out the statutory audit of a public-interest entity which has issued securities in a third country or which forms part of a group issuing statutory consolidated financial statements in a third country

may only transfer the audit working papers or other documents related to the audit of that entity that he, she or it holds to the competent authorities in the relevant third countries under the conditions set out in Article 47.

4c. The transfer of information to the group auditor situated in a third country shall comply with Chapter IV of Directive 95/46/EC and the applicable national rules on personal data protection.

(Article 13 from the Regulation COM (2011)0779)

Amendment 36

Proposal for a directive

Article 1 – point 11 c (new)

Directive 2006/43/EC

Article 24 a (new)

Text proposed by the Commission

Amendment

11c. The following Article 24a is inserted:

Article 24 a (new)

Internal organisation of Statutory Audit Firms

1. Member States shall ensure that a statutory auditor or audit firm shall comply with the following organisational requirements:

(a) an audit firm shall establish adequate policies and procedures to ensure that its owners or shareholders as well as the members of the administrative, management and supervisory bodies of the firm, or of an affiliate firm, do not intervene in the carrying out of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm;

(b) a statutory auditor or an audit firm shall have sound administrative and

accounting procedures, internal control mechanisms, effective procedures for risk assessment, and effective control and safeguard arrangements for information processing systems.

Those internal control mechanisms shall be designed to secure compliance with decisions and procedures at all levels of the audit firm or of the working structure of the statutory auditor.

A statutory auditor or an audit firm shall implement and maintain decision-making procedures and organisational structures which clearly, and in a documented manner, specify reporting lines and allocate functions and responsibilities;

(c) a statutory auditor or an audit firm shall establish adequate policies and procedures to ensure that his, her or its employees and any other natural persons whose services are placed at its disposal or under its control and who are directly involved in the statutory audit activities have appropriate knowledge and experience for the duties assigned;

(d) a statutory auditor or an audit firm shall establish adequate policies and procedures to ensure that outsourcing of important audit functions is not undertaken in such a way as to impair the quality of the statutory auditor's or audit firm's internal control and the ability of the competent authorities to supervise the statutory auditor's or audit firm's compliance with the obligations laid down in this Directive;

(e) a statutory auditor or an audit firm shall establish appropriate and effective organisational and administrative arrangements to prevent, identify, eliminate or manage and disclose any threats to their independence, other than in the normal course of business, referred to in Article 22(1);

(f) a statutory auditor or an audit firm

shall establish appropriate procedures and standards for carrying out statutory audits, coaching, supervising and reviewing employees activities and organising the structure of the audit file referred to in Article 25b(5);

(g) a statutory auditor or an audit firm shall establish an internal quality control system to ensure the quality of the statutory audit. The quality control system shall at least cover the procedures and standards described in point (f). In the case of an audit firm, the responsibility of the internal quality control system shall be with a person that qualifies as a statutory auditor;

(h) a statutory auditor or an audit firm shall use appropriate systems, resources and procedures to ensure continuity and regularity in the performance of its statutory audit activities;

(i) A statutory auditor or an audit firm shall also establish appropriate and effective organisational and administrative arrangements for dealing with and recording incidents which have, or may have, serious consequences for the integrity of his, her or its statutory audit activities;

(j) a statutory auditor or an audit firm shall have adequate remuneration or profit-sharing policies providing sufficient performance incentives to secure audit quality. In particular, the amount of revenue that the statutory auditor or the audit firm derives from selling non-assurance services to the audited entity shall not form part of the performance evaluation and compensation of any person involved in or able to influence the conduct of the audit;

(k) a statutory auditor or an audit firm shall monitor and evaluate the adequacy and effectiveness of his, her or its systems, internal control and internal quality control mechanisms and arrangements

established in accordance with this Directive and take appropriate measures to address any deficiencies. A statutory auditor or an audit firm shall in particular carry out an annual evaluation of the internal quality control system referred to in point (g). A statutory auditor or an audit firm shall keep records of the findings of that evaluation and any proposed measure to modify the internal quality control system.

The policies and procedures referred to in the first subparagraph shall be documented and communicated to the employees of the statutory auditor or audit firm.

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

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

The statutory auditor or audit firm shall be able to demonstrate to the relevant competent authority compliance with the requirements of paragraph 1, with due regard to the first subparagraph.

(Article 6 from the Regulation COM(2011)0779)

Amendment 37

Proposal for a directive

Article 1 - point 11 d (new)

Directive 2006/43/EC

Article 25 a (new)

Text proposed by the Commission

Amendment

*11d. The following article 25a is inserted:
Article 25a*

Scope of the statutory audit

1. When carrying out the statutory audit, the statutory auditor or audit firm shall perform the audit in accordance with the international auditing standards referred to in Article 26.

2. Where the audited entity is a public-interest entity, the statutory auditor or audit firm shall take the necessary steps with a view to forming an opinion as to whether the annual or consolidated financial statements of the public-interest entity give a true and fair view and have been prepared in accordance with the relevant financial reporting framework.

The report of the statutory auditor or audit firm shall be expressed in accordance with Articles 21 to 25 of Regulation (EU) No XX/XX.

Without prejudice to the reporting requirements as referred to in Articles 22 and 23 of Regulation (EU) No XX/XX, the scope of statutory audit shall not include an assurance as to the future viability of the audited entity nor as to the efficiency or effectiveness with which the management or administrative body has conducted or will conduct the affairs of the entity.

(Article 14 from the Regulation COM(2011)0779)

Amendment 38

Proposal for a directive
Article 1 – point 11 e (new)
Directive 2006/43/EC
Article 25 b (new)

Text proposed by the Commission

Amendment

11e. The following Article 25b is inserted:
Article 25b(new)
Organisation of the work

1. When the statutory audit is carried out by an audit firm, that audit firm shall designate at least one key audit partner with the appropriate competence, capabilities and authority to carry out his, her or their duties appropriately. The audit firm shall provide the designated audit partner(s) with sufficient resources and with personnel that have the necessary competence and capabilities to carry out his, her or its duties appropriately.

Securing audit quality, independence and competence shall be the main criteria for the audit firm to select the key audit partner(s) to be designated.

The designated audit partner(s) shall be actively involved in the carrying out of the statutory audit.

2. When the statutory audit is carried out by a statutory auditor, he or she shall devote sufficient time to the engagement and shall assign sufficient resources among his or her employees to carry out his or her duties appropriately.

3. The statutory auditor or the audit firm shall implement quality control procedures at the engagement level that is consistent with the international auditing standards referred to in Article 26.

4. A statutory auditor or an audit firm shall maintain a client account record. Such record shall include the following data for each audit client:

(a) the name, the address and the place of business;

(b) in the case of an audit firm, the key audit partner(s);

(c) the fees charged for the statutory audit and the fees charged for other services in any financial year.

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

shall contain at least the documentation for the statutory audit carried out as required by the international standards on auditing referred to in Article 26. The statutory auditor or audit firm shall also document the data recorded pursuant to Articles 25c and 25d(6) of this Directive and Article 11(3) of Regulation (EU) No XX/XX.

The statutory auditor or audit firm shall retain any other data and documents that are of importance in support of the reports referred to in Articles 22 and 23 of Regulation (EU) No XX/XX and for monitoring compliance with this Directive, Regulation (EU) No XX/XX and other applicable legal requirements.

The audit file shall be closed no later than sixty days after the date of signature of the audit report referred to in Article 22 of Regulation (EU) No XX/XX.

6. The statutory auditor or the audit firm shall keep records of any complaints about the performance of the statutory audits.

(Article 16 from the Regulation COM (2011)0779)

Amendment 39

Proposal for a directive

Article 1 – point 11 f (new)

Directive 2006/43/EC

Article 25 c (new)

Text proposed by the Commission

Amendment

11f. The following article 25c is inserted:

Article 25c

Integrity of financial reporting

1. Where the statutory auditor or an audit firm becomes aware of any development which is likely to have material consequences for the audit opinion, the

statutory auditor or the audit firm shall:

(a) keep a record of the development;

(b) take appropriate measures as required by the relevant international auditing standards, in response to the event or development;

(c) inform the relevant competent authority of the event or development forthwith if, having taken appropriate measures, the auditor continues to believe that the event or development is likely to have material consequences for the audit opinion.

The record referred in point (a) of the first subparagraph shall include the facts and circumstances of the incident, information about the person or persons involved and details of the measures that have been taken pursuant to point (b) of that subparagraph.

2. Without prejudice to Directive 2005/60/EC, when a statutory auditor or an audit firm carrying out a statutory audit suspects or has reasonable grounds to suspect that facts or behaviour indicating irregularities, including fraud with regard to the financial statements of the audited entity is being, or has been, committed or attempted, 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 or does not take any measures, or where the statutory auditor or audit firm believes that the measures taken by the audited entity are not adequate to deal with such irregularities, the statutory auditor or audit firm shall inform the competent authorities of such irregularities.

The disclosure in good faith to the competent authorities, by the statutory auditor or audit firm, of any fact or behaviour referred to in the first subparagraph shall not constitute a breach of any contractual or legal restriction on disclosure of information and shall not involve such persons in liability of any kind.

(Article 17 from the Regulation COM(2011)0779)

Amendment 40

Proposal for a directive

Article 1 – point 11 g (new)

Directive 2006/43/EC

Article 25 d (new)

Text proposed by the Commission

Amendment

11g. The following Article 25d is inserted:

Article 25d

Internal quality control review

1. Where the audited entity is a public-interest entity, before the reports referred to in Articles 22 and 23 of Regulation (EU) No XX/XX 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 those reports in accordance with the international auditing standards referred to in Article 26.

2. The internal quality control review shall be performed by an internal quality control reviewer. Such reviewer shall be a statutory auditor who is not involved in the performance of the statutory audit to which the internal quality review relates.

3. When performing the engagement quality control review, the reviewer shall review the audited financial statements,

and carry out an objective evaluation of at least of the following:

(a) the oral and written information provided by the statutory auditor or key audit partner to support the significant judgements and 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;

(b) the significant judgements and main findings of the audit procedures carried out and the conclusions drawn from those findings;

(c) the reports of the statutory auditor or key audit partner, as expressed in the draft of the reports referred to in Articles 22 and 23 of Regulation (EU) No XX/XX;

4. The internal quality control review shall at least assess the following elements:

(a) the independence of the statutory auditor or audit firm with from the audited entity;

(b) the significant risks that 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 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 satisfactorily reflect the positions taken by the employees involved in the audit, and whether such documents and information 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 of Regulation (EU) No XX/XX.

5. The internal quality control reviewer shall discuss the results of the internal quality control review with the statutory auditor or the key audit partner. The statutory auditor or the audit firm shall determine the procedure to be followed when the reviewer and the statutory auditor or the key audit partner do not agree on the results of the review.

6. The statutory auditor or the audit firm shall keep record of the results of the internal quality control review, together with the considerations underlying those results.

(Article 19 from the Regulation COM(2011)0779)

Amendment 41

Proposal for a directive

Article 1 – point 12

Directive 2006/43/EC

Article 26 – paragraph 1 – subparagraph 1

Text proposed by the Commission

1. Member States shall **ensure** that statutory auditors and audit firms comply with international auditing standards **when carrying out statutory audits as long as those standards are in conformity with the requirements of this Directive and of**

Amendment

1. Member States shall **require** that statutory auditors and audit firms comply with international auditing standards **adopted according to paragraph 3.**

Regulation XX/XX.

Amendment 42

Proposal for a directive

Article 1 – point 12

Directive 2006/43/EC

Article 26 – paragraph 1 – subparagraph 2 – introductory words

Text proposed by the Commission

Member States may impose audit procedures or requirements in addition to the international auditing standards only if those audit procedures or requirements stem from specific national legal requirements relating to the scope of statutory audits. ***Member States shall ensure that those audit procedures or requirements comply with the following conditions:***

Amendment

Member States may impose audit procedures or requirements in addition to the international auditing standards only if those audit procedures or requirements stem from specific national legal requirements relating to the scope of statutory audits.

Amendment 43

Proposal for a directive

Article 1 – point 12

Directive 2006/43/EC

Article 26 – paragraph 1 – subparagraph 2 – point a

Text proposed by the Commission

(a) they contribute a high level of credibility and quality to the annual or consolidated financial statements in conformity with the principles set out in Article 4(3) of Directive [xxxx] on the annual financial statements and the consolidated financial statements of certain types of undertakings;

Amendment

deleted

Amendment 44

Proposal for a directive

Article 1 – point 12

Directive 2006/43/EC
Article 26 – paragraph 1 – subparagraph 2 – point b

Text proposed by the Commission

Amendment

(b) are conducive to the Union public good. ***deleted***

Amendment 45

Proposal for a directive

Article 1 – point 12

Directive 2006/43/EC

Article 26 – paragraph 1 – subparagraph 3

Text proposed by the Commission

Amendment

Member States shall communicate those audit procedures or requirements to the Commission, ESMA and other Member States. ***deleted***

Amendment 46

Proposal for a directive

Article 1 – point 12

Directive 2006/43/EC

Article 26 – paragraph 2

Text proposed by the Commission

Amendment

2. For the purposes of paragraph 1, “international auditing standards” means International Standards on Auditing (ISAs) ***and related Statement and Standards which are part of the Clarity Project issued by the International Federation of Accountants (IFAC) in 2009*** insofar as they are relevant to the statutory audit.

2. For the purposes of paragraph 1, ‘international auditing standards’ means International Standards on Auditing (ISAs) issued by the ***International Auditing and Assurance Standards Board (IAASB), with an effective date stated therein of 2012,*** insofar as they are relevant to the statutory audit.

Amendment 47

Proposal for a directive

Article 1 – point 12

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a ***for the purpose of amending the definition of*** international auditing standards in paragraph 2 of this Article. When using such powers, the Commission shall ***take into account any amendments brought to the ISAs by the IFAC, the opinion of the Public Interest Oversight Board on such amendments as well as any other developments in auditing and the audit profession.***

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a, ***adopting or revoking*** international auditing standards in paragraph 2 of this Article. When using such powers, the Commission shall ***decide on the applicability of international auditing standards within the Union, bearing in mind their proportionality. The Commission shall adopt international auditing standards for application in the Union only if they:***

(a) have been developed with proper due care, in a transparent manner, under public oversight and are generally accepted internationally; and

(b) contribute a high level of credibility and quality to the annual or consolidated financial statements in conformity with the principles set out in Article 4(3) of Directive [xxxx] on the annual financial statements and the consolidated financial statements of certain types of undertakings.

Amendment 48

Proposal for a regulation

Article 1 – point 12 a (new)

Directive 2006/43/EC

Article 27 – paragraph 1 – point c

Text proposed by the Commission

Amendment

12a. In Article 27(1), point (c) is replaced by the following:

(c) the group auditor evaluates the audit work performed by third-country auditor(s) or statutory auditor(s) and third-country audit entity/ies or audit firm(s) for the purpose of the group audit

and document the nature, timing and extent of involvement in the work performed by those auditors, including where applicable the auditor's review of relevant parts of those auditors' audit documentation. The documentation retained by the group auditor shall enable the relevant competent authority to review the work of the group auditor.

Amendment 49

Proposal for a regulation

Article 1 – point 12 b (new)

Directive 2006/43/EC

Article 27 – paragraph 1 – subparagraph 2 (new)

Text proposed by the Commission

Amendment

12b. In Article 27(1) the following subparagraph is added:

For the purpose of point (c) of the first subparagraph, the group auditor shall secure the agreement of the third-country auditor(s), statutory auditor(s), third-country audit entity/ies or audit firm(s) to the transfer of relevant documentation during the conduct of the audit of consolidated financial statements, as a condition of the use by the group auditor of the work of that third-country auditor(s), statutory auditor(s), third-country audit entity/ies) or audit firm(s).

Amendment 50

Proposal for a directive

Article 1 – point 12 c (new)

Directive 2006/43/EC

Article 27 – paragraphs 2 and 3 (new)

Text proposed by the Commission

Amendment

12c. Two new paragraphs are added to Article 27:

2. Where the group auditor is not in a position to comply with point (c) of the first subparagraph of paragraph 1, he, she or it shall take appropriate measures and inform the competent authority referred to in Article 35(1) of Regulation (EU) No XX/XX accordingly.

Such measures may include carrying out additional statutory audit work, either directly or by outsourcing such tasks, in the relevant subsidiary.

3. Where the group auditor is subject to a quality assurance review or an investigation concerning the statutory audit of the consolidated financial statements of a group of undertakings where the parent undertaking is a public-interest entity, the group auditor shall, when requested, make available to the competent authority the relevant documentation he, she or it holds concerning the audit work performed by third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) for the purpose of the group audit, including the working papers relevant to the group audit.

The competent authority shall request additional documentation on the audit work performed by statutory auditor(s) or audit firm(s) for the purpose of the audit group to the relevant competent authorities pursuant to Chapter III of Title IV of Regulation (EU) No XX/XX.

When a component of a group of undertakings is audited by auditor(s) or audit entity/ies from a third country, the competent authority shall request additional documentation on the audit work performed by third-country auditor(s) or third-country audit entity/ies to the relevant competent authorities from third countries through the working arrangements referred to in Article 47.

By way of derogation from the third

subparagraph, when a component of a group of undertakings is audited by auditor(s) or audit entity/ies from a third country that has no working arrangement as referred to in Article 47, the group auditor shall, when requested, also be responsible for ensuring proper delivery of the additional documentation of the audit work performed by third-country auditor(s) or audit entity/ies, including the working papers relevant to the group audit. To ensure such delivery, the group auditor shall retain a copy of such documentation, or alternatively agree with the third-country auditor(s) or audit entity/ies his, her or its proper and unrestricted access upon request, or take any other appropriate action. Where audit working papers for legal or other reasons cannot be passed from a third country to the group auditor, the documentation retained by the group auditor shall include evidence that he or she has undertaken the appropriate procedures in order to gain access to the audit documentation, and in the case of impediments other than legal ones arising from the legislation of the third country, evidence supporting such an impediment.

(Article 18, paragraphs 2 and 3 from the Regulation COM (2011)0779)

Amendment 51

Proposal for a directive

Article 1 – point 13

Directive 2006/43/EC

Article 28

Text proposed by the Commission

13. In Article 28, paragraph 2 is deleted.

Amendment

13. Article 28 is replaced by the following:

Article 28

Audit reporting

1. The statutory auditor or the audit firm shall present the results of the statutory

audit in an audit report prepared in accordance with the requirements of the international auditing standards adopted by the Union, as referred to in Article 26.

2. The audit report shall include:

(a) an introduction, which shall, as a minimum, identify the financial statements that are the subject of the statutory audit, together with the financial reporting framework that has been applied in their preparation;

(b) a description of the scope of the statutory audit which shall, as a minimum, identify the auditing standards in accordance with which the statutory audit was conducted;

(c) an audit opinion, which shall be either unqualified, qualified or an adverse opinion and shall state clearly the opinion of the statutory auditor as to:

(i) whether the annual financial statements give a true and fair view in accordance with the relevant financial reporting framework, and,

(ii) where appropriate, whether the annual financial statements comply with statutory requirements,

If the statutory auditor is unable to express an audit opinion, the report shall contain a disclaimer of opinion;

(d) a reference to any matters to which the statutory auditor draws attention by way of emphasis without qualifying the audit opinion;

(e) the opinion and statement as referred to in Article 34 (1) subparagraph 2 of Directive XX/XX on the annual financial statements and the consolidated financial statements of certain types of undertakings.

The report shall be signed and dated by the statutory auditor. Where an audit firm carries out the statutory audit, the audit

report shall bear the signature of at least the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm.

In exceptional circumstances, Member States may provide that this signature need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person. This notwithstanding, the name(s) of the person(s) involved shall be made known to the relevant competent authorities.

Amendment 52

Proposal for a directive

Article 1 – point 14 – point a – point i

Directive 2006/43/EC

Article 29 – paragraph 1 – subparagraph 1 – point a

Text proposed by the Commission

‘(a) the quality assurance system shall be **governed by the competent authority referred to in Article 32 and** organized in such a manner that it is independent of statutory auditors and audit firms.’;

Amendment

‘(a) the quality assurance system shall be organised in such a manner that it is independent of statutory auditors and audit firms **and subject to public oversight, as provided for in Chapter VIII.**’;

Amendment 53

Proposal for a directive

Article 1 – point 14 – point a – point iii

Directive 2006/43/EC

Article 29 – paragraph 1 – subparagraph 1a (new)

Text proposed by the Commission

‘The competent authority referred to in Article 32 shall **make available to interested parties, upon their request,** the report referred to in point (g) of the first subparagraph. The competent authority shall make sure that the report disclosed does not undermine the commercial interests of the audited entity under review, including its industrial and intellectual

Amendment

‘The competent authority referred to in Article 32 shall **publish** the report referred to in point (g) of the first subparagraph. The competent authority shall make sure that the report **published or** disclosed does not undermine the commercial interests of the audited entity under review, including its industrial and intellectual property.’;

property.’;

Amendment 54

Proposal for a directive

Article 1 – point 14 a (new)

Directive 2006/43/EC

Article 30 – paragraph 3

Text proposed by the Commission

Amendment

14a. Article 30(3) is amended as follows:

‘Member States shall provide that measures taken in respect of, or penalties imposed on, statutory auditors or audit firms in cases of public relevance are disclosed appropriately to the public, with details of the nature of the offence and the identity of those responsible, provided it is concluded in an assessment of the individual case that the public interest in disclosure outweighs the need to protect the personal dignity of those affected by the measure or penalty. The assessment in each case shall have regard to the fundamental rights laid down in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life and the right to the protection of personal data. Individual details shall not be published where identification of the persons involved would cause them disproportionate damage or where the disclosure would seriously jeopardise the stability of the financial markets. This shall not affect the discretion of the competent authorities to publish details of the measures and penalties on the basis of anonymity. Penalties should include the possibility of the withdrawal of approval.’

Amendment 55

Proposal for a directive

Article 1 – point 14 a (new)

Directive 2006/43/EC

Article 31

Text proposed by the Commission

Amendment

14a. Article 31 is deleted.

Amendment 56

Proposal for a directive

Article 1 – point 15

Directive 2006/43/EC

Article 32

Text proposed by the Commission

Amendment

15. Article 32 is amended as follows:

deleted

(a) paragraph 1 is replaced by the following:

‘1. Member States shall designate a competent authority responsible for the public oversight of statutory auditors and audit firms based on the principles set out in paragraphs 2 to 7.’;

(b) paragraph 3 is replaced by the following:

‘3. The competent authority may allow non-practitioners who are knowledgeable in the areas relevant to statutory audit to be involved in the governance of the public oversight system, provided that they are selected in accordance with an independent and transparent nomination procedure. Practitioners shall not be allowed to be involved in the governance of the public oversight system.’;

(c) in paragraph 4, the introductory sentence is replaced by the following:

‘The competent authority shall have the ultimate responsibility for the oversight of:’;

(d) paragraph 5 is replaced by the

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

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

Amendment 58

Proposal for a directive

Article 1 – point 18

Directive 2006/43/EC

Article 37 – paragraph 3

Text proposed by the Commission

‘3. Any contractual clause entered into between the audited entity and a third party restricting the choice by the general meeting of shareholders or members of that entity pursuant to paragraph 1 to certain categories or lists of statutory auditors or audit firms regarding the appointment of or restricting the choice of a particular statutory auditor or audit firm to carry out the statutory audit of that entity shall be null and void.’

Amendment

‘3. Any contractual clause entered into between the audited entity and a third party restricting the choice by the general meeting of shareholders or members of that entity pursuant to paragraph 1 to certain categories or lists of statutory auditors or audit firms regarding the appointment of or restricting the choice of a particular statutory auditor or audit firm to carry out the statutory audit of that entity ***shall be prohibited. Any such existing clauses*** shall be null and void.’

Amendment 59

Proposal for a directive

Article 1 – point 19 a (new)

Directive 2006/43/EC

Chapter X (new)

19a. The following chapter is inserted:

CHAPTER X

AUDIT COMMITTEE

Article 38 a

Audit Committee

1. Each public-interest entity shall establish an audit committee either as a separate committee or a committee of the supervisory body. Member States shall determine whether audit committees are to be composed of non-executive members of the administrative body and/or members of the supervisory body of the audited entity and/or members appointed by the general meeting of shareholders of the audited entity or, for entities without shareholders, by an equivalent body.

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

The members of the audit committee shall be required to take part in appropriate programmes of continuing education in order to acquire and/or maintain their theoretical knowledge and their professional skills and values at a sufficiently high level.

At least one member of the audit committee shall be independent. In all cases the chairman of the audit committee shall be independent. Member States may require the chairman of the audit committee to be elected annually by the general meeting of shareholders of the audited entity.

2. By derogation from paragraph 1 of this Article, in public-interest entities which meet the criteria set out in points (f) and (t) of Article 2(1) of Directive 2003/71/EC of the European Parliament and of the Council, the functions assigned to the

audit committee may be performed by the administrative or supervisory body as a whole, provided at least that where the chairman of such a body is an executive member, he or she is not the chairman of the audit committee.

3. By derogation from paragraph 1, Member States may exempt the following public-interest entities from the obligation to have an audit committee:

(a) any public-interest entity which is a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC if the entity complies with the requirements in paragraphs 1 to 4 of that Article at group level;

(c) any public-interest entity the sole business of which is to act as issuer of asset backed securities as defined in Article 2(5) of Commission Regulation (EC) No 809/2004 ;

(d) any credit institution within the meaning of Article 1(1) of Directive 2006/48/EC whose shares are not admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC and which has, in a continuous or repeated manner, issued only debt securities admitted to trading in a regulated market, provided that the total nominal amount of all such debt securities remains below EUR 100 000 000 and that it has not published a prospectus under Directive 2003/71/EC.

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

4. By derogation from paragraph 1, a public-interest entity that has a body performing equivalent functions to an

audit committee, established and functioning according to provisions in place in the Member State in which the entity to be audited is registered, may decide not to have an audit committee. In such a case the entity shall disclose which body carries out those functions and how that body is composed.

Where an audit committee forms part of the supervisory board in accordance with paragraph 1 Member States may permit or require that the supervisory board performs the functions of the audit committee for the purpose of the obligations set out in this Directive and in Regulation (EU) No XX/XX.

5. Without prejudice to the responsibility of the members of the administrative, management or supervisory bodies, or of other members who are appointed by the general meeting of shareholders of the audited entity, the audit committee shall, inter alia:

(a) monitor the financial reporting process and submit recommendations or proposals to ensure its integrity;

(b) monitor the effectiveness of the undertaking's internal control systems, internal audit systems, where applicable, and risk management systems, without breaching its independence;

(c) monitor the statutory audit of the annual and consolidated financial statements and supervise points related to the audit development process in accordance with Articles 22 to 23 of Regulation (EU) No XX/XX, and in particular discuss with the statutory auditor or audit firm the reports prepared in accordance with Articles 22 and 33 of Regulation (EU) No XX/XX ;

(d) review and monitor the independence of the statutory auditors or audit firms in accordance with Articles 22, 22a and 24a of this Directive and Articles 9 to 11 of

Regulation (EU) No XX/XX, and in particular the provision of additional services to the audited entity in accordance with Article 10 of Regulation (EU) No XX/XX;

(da) monitor the quality of the statutory auditors or audit firms, taking into account any findings and conclusions by the competent authority pursuant to Article 40(6) of Regulation (EU) No XX/XX;

(db) review whether there is a complete separation between the internal audit and the statutory audit;

(e) be responsible for the procedure on the selection of statutory auditor(s) or audit firm(s);

(f) approve, on a case by case basis, the provision by the statutory auditor or audit firm of assurance services, tax advisory services and other non-audit services as referred to in Article 10 of Regulation (EU) No XX/XX to the audited entity and its controlled undertakings in the Union.

Amendment 60

Proposal for a directive

Article 1 – point 20

Directive 2006/43/EC

Article 43a – title

Text proposed by the Commission

Simplified audit for medium sized undertakings

Amendment

Audit for medium sized undertakings

Amendment 61

Proposal for a directive

Article 1 – point 20

Directive 2006/43/EC

Article 43 a – paragraph 1

Text proposed by the Commission

Member States shall **ensure that the application of** the auditing standards to the statutory audit of annual or consolidated financial statements **of medium-sized undertakings** is proportionate to the scale and complexity of the business of **those undertakings**.

Amendment

Member States shall **require that the competent authorities within their jurisdiction to recognise, when overseeing the profession and in particular in relation to inspections, ensure that** the auditing standards **adopted in accordance with Article 26 are applied** to the statutory audit of annual or consolidated financial statements **in a manner that** is proportionate to the scale and complexity of the business of **the entity**.

Amendment 62

Proposal for a directive

Article 1 – point 20

Directive 2006/43/EC

Article 43 b – paragraph 2

Text proposed by the Commission

Where a Member State has established rules on the carrying out of a limited **review** of the accounts of small undertakings **as an alternative to** statutory audit, **such Member State shall not be obliged to adapt the audit standards to the statutory audit of those undertakings**.

Amendment

Member States shall be allowed to establish rules on the carrying out of a limited **assurance engagement** of the accounts of small undertakings **instead of a** statutory audit.

Amendment 63

Proposal for a directive

Article 1 – point 20

Directive 2006/43/EC

Article 43 b – paragraph 3

Text proposed by the Commission

For the purposes of this Article, a “limited **review**” means **a procedure** undertaken by a statutory auditor or audit firm **with a view to detecting misstatements due to error or fraud in the financial statements of an**

Amendment

For the purposes of this Article, a “limited **assurance engagement**” means **an engagement** undertaken by a statutory auditor or audit firm **in** which a lower level of assurance **is obtained than in a** statutory

entity and which *provides* a lower level of assurance *than* statutory audit.

audit *engagement*.

Amendment 64

Proposal for a directive

Article 1 – point 25

Directive 2006/43/EC

Article 48 a – paragraph 5

Text proposed by the Commission

5. A delegated act adopted pursuant to Articles 8(3), 22(4), 26(3), 29(2), 36(7), 45(6), 46(2), 47(3) and 47(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of *[two months]* of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by *[two months]* at the initiative of the European Parliament or of the Council.'

Amendment 65

Proposal for a directive

Article 3

Text proposed by the Commission

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

Amendment

5. A delegated act adopted pursuant to Articles 8(3), 22(4), 26(3), 29(2), 36(7), 45(6), 46(2), 47(3) and 47(5) shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of *four months* of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or of the Council.

Amendment

This Directive shall enter into force on the twentieth day following that of its publication in the Official Journal of the European Union *and shall be consolidated, with the Directive amended by it, within three months of its entry into force.*

13.3.2013

OPINION OF THE COMMITTEE ON ECONOMIC AND MONETARY AFFAIRS

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (COM(2011)0778 – C7-0461/2011 – 2011/0389(COD))

Rapporteur: Kay Swinburne

AMENDMENTS

The Committee on Economic and Monetary Affairs calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1 **Proposal for a directive**

Recital 2

Text proposed by the Commission

Amendment

(2) Because of the significant public relevance of public-interest entities, which arises from the scale and dimension of their business or from the nature of their business, the credibility of the audited financial statements of public-interest entities needs to be reinforced. Therefore, the special provisions for the statutory audits of public-interest entities set out in Directive 2006/43/EC have been further developed in Regulation (EU) No [XXX]

deleted

of [XXX] on specific requirements for the audit of public interest entities. As a consequence, the provisions on the statutory audits of public-interest entities of Directive 2006/43/EC should be deleted from that Directive and statutory audits of public-interest entities should be regulated by Regulation (EU) No [XXX] of [XXX].

Justification

An EU Regulation is not a suitable format of regulation, in particular in view of the highly detailed and intervening nature of the Commission's proposal. It represents an "one-size-fits-all" approach that is not taken the nature of different corporate governance systems throughout the EU into account. It would lead to decreased corporate governance standards in some Member States.

Amendment 2 Proposal for a directive

Recital 6

Text proposed by the Commission

(6) In order to enhance the independence of statutory auditors and audit firms from the audited entity when carrying out statutory audits, any person or entity that holds rights in an audit firm should be independent of the audited entity and should not be involved in the process of decision making of the audited entity.

Amendment

(6) In order to enhance the independence of statutory auditors and audit firms from the audited entity when carrying out statutory audits, any person or entity that holds rights *or has ownership* in an audit firm should be independent of the audited entity and should not be involved in the process of decision making of the audited entity.

Amendment 3 Proposal for a directive

Recital 13

Text proposed by the Commission

(13) The burdens weighing on small and medium-sized undertakings within the Union in connection to the audit of their financial statements should be reviewed to the necessary minimum without

Amendment

(13) The burdens weighing on small and medium-sized undertakings within the Union in connection to the audit of their financial statements should be reviewed to the necessary minimum without

compromising investor protection. Member States should ensure that the application of auditing standards according to which the statutory audit of the financial statements of those undertakings is performed is proportionate to the scale of small and medium-sized undertakings.

compromising investor protection. Member States should ensure that the application of auditing standards according to which the statutory audit of the financial statements of those undertakings is performed is proportionate to the scale of small and medium-sized undertakings. ***It should also be taken into account that both small and medium-sized undertakings exist in different sizes and that, moreover, their operations vary in complexity.***

Amendment 4
Proposal for a directive
Recital 20

Text proposed by the Commission

(20) Since the objective of this Directive, namely reinforcing investor ***protection in*** the financial statements published by undertakings by further enhancing the quality of statutory audits that are performed within the Union cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Amendment

(20) Since the objective of this Directive, namely reinforcing investor ***confidence in the truthfulness and fairness of*** the financial statements published by undertakings by further enhancing the quality of statutory audits that are performed within the Union cannot be sufficiently achieved by Member States and can therefore, by reason of its scale and effects, be better achieved at Union level, the Union may adopt measures in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty on European Union. In accordance with the principle of proportionality, as set out in that Article, this Directive does not go beyond what is necessary in order to achieve that objective.

Amendment 5
Proposal for a directive
Article 1 – paragraph 1 – point 2 – point a
Directive 2006/43/EC
Article 2 – point 1 – point b

Text proposed by the Commission

Amendment

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

deleted

Amendment 6

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point b

Directive 2006/43/EC

Article 2 – point 10

Text proposed by the Commission

Amendment

10. “competent authorities” means the authorities designated by law that are in charge of the regulation and/or oversight of statutory auditors and audit firms or of specific aspects thereof; the reference to “competent authority” in a specific Article means a reference to the authority responsible for the functions referred to in that Article;

10. “competent authorities **or bodies designated by law**” means the authorities designated by law that are in charge of the regulation and/or oversight of statutory auditors and audit firms or of specific aspects thereof; the reference to “competent authority” in a specific Article means a reference to the authority responsible for the functions referred to in that Article;

Amendment 7

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point d

Directive 2006/43/EC

Article 2 – point 13 – point a

Text proposed by the Commission

Amendment

(a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC;

(a) entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC **excluding undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council(*****) and EU alternative investment funds as defined in Article 4(1)(k) of Directive 2011/61/EC of the**

Amendment 8

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point d

Directive 2006/43/EC

Article 2 – point 13 – point b

Text proposed by the Commission

(b) credit institutions as defined in point 1 of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council(*);

Amendment

(b) credit institutions as defined in point 1 of Article 4 of Directive 2006/48/EC of the European Parliament and of the Council(*) ***excluding those credit institutions which have not issued transferable securities admitted to trading on a regulated market within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC unless the total value of its assets exceeds EUR 30 billion;***

Amendment 9

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point d

Directive 2006/43/EC

Article 2 – point 13 – point g

Text proposed by the Commission

(g) EU alternative investment funds as defined in Article 4(1)(k) of Directive 2011/61/EC of the European Parliament and of the Council(**);***

Amendment

deleted

Amendment 10

Proposal for a directive

Article 1 – paragraph 1 – point 2 – point d

Directive 2006/43/EC

Article 2 – point 13 – point h

Text proposed by the Commission

(h) undertakings for collective investment

Amendment

deleted

*in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council(*****);*

Amendment 11

Proposal for a directive

Article 1 – paragraph 1 – point 3 – point a – point ii

Directive 2006/43/EC

Article 3 – paragraph 2

Text proposed by the Commission

Amendment

(ii) the second paragraph is deleted;

deleted

Amendment 12

Proposal for a directive

Article 1 – paragraph 1 – point 10

Directive 2006/43/EC

Article 21 – paragraph 2

Text proposed by the Commission

Amendment

10. In Article 21, paragraph 2 is deleted.

deleted

Amendment 13

Proposal for a directive

Article 1 – paragraph 1 – point 11 – point a

Directive 2006/43/EC

Article 22 – paragraph 1

Text proposed by the Commission

Amendment

1. Member States shall ensure that when carrying out a statutory audit, the statutory auditor and/or the audit firm *and any holder of voting rights in the audit firm is independent of the audited entity and is not involved in the decision-taking of the audited entity.*

1. Member States shall ensure that when carrying out a statutory audit, the statutory auditor and/or the audit firm *takes all necessary steps to ensure that the independence is not compromised by financial, personal, business, employment or other relationships involving the statutory auditor, the audit firm, its affiliate firms and network, and any natural person in a position to influence*

the outcome of the statutory audit.

Justification

Although requirements for statutory audits of public interest entities are more extensive, the basic standards for independence should be the same. The amendment therefore aligns the independence article in the Directive with the amended corresponding article in the PIE Regulation.

Amendment 14
Proposal for a directive

Article 1 – paragraph 1 – point 12
Directive 2006/43/EC
Article 26 – paragraph 1 – subparagraph 1

Text proposed by the Commission

Member States ***shall ensure*** that statutory auditors and audit firms comply with international auditing standards when carrying out statutory audits ***as long as those standards are in conformity with the requirements of this Directive and of Regulation XX/XX.***

Amendment

Member States ***may require*** that statutory auditors and audit firms comply with international auditing standards when carrying out statutory audits.

Justification

The content of ISAs is highly general, ambiguous and often contradictory with Member States' legislation. The Commission encountered problems when trying to implement them, and the Member States would have similar problems if ISAs were binding standards. To avoid this, Member States should be able to choose whether or not to implement the ISAs.

Amendment 15
Proposal for a directive

Article 1 – paragraph 1 – point 12
Directive 2006/43/EC
Article 26 – paragraph 1 – subparagraph 2

Text proposed by the Commission

Member States may ***impose audit procedures or requirements in addition to*** the international auditing standards ***only if those audit procedures or requirements***

Amendment

Member States may ***also stipulate in more detail about the application of*** the international auditing standards.

stem from specific national legal requirements relating to the scope of statutory audits. Member States shall ensure that those audit procedures or requirements comply with the following conditions:

Justification

The content of ISAs is highly general, ambiguous and often contradictory with Member States' legislation. The Commission encountered problems when trying to implement them, and the Member States would have similar problems if ISAs were binding standards. To avoid this, Member States should be able to choose whether or not to implement the ISAs or not.

Amendment 16
Proposal for a directive

Article 1 – paragraph 1 – point 12
Directive 2006/43/EC
Article 26 – paragraph 1 – point a

Text proposed by the Commission

Amendment

(a) they contribute a high level of credibility and quality to the annual or consolidated financial statements in conformity with the principles set out in Article 4(3) of Directive [xxxx] on the annual financial statements and the consolidated financial statements of certain types of undertakings; **deleted**

Amendment 17
Proposal for a directive

Article 1 – paragraph 1 – point 12
Directive 2006/43/EC
Article 26 – paragraph 1 – point b

Text proposed by the Commission

Amendment

(b) are conducive to the Union public good. **deleted**

Amendment 18
Proposal for a directive
Article 1 – paragraph 1 – point 12
Directive 2006/43/EC
Article 26 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of amending the definition of international auditing standards in paragraph 2 of this Article. When using such powers, the Commission shall take into account any amendments brought to the ISAs by the *IFAC*, the opinion of the Public Interest Oversight Board on such amendments as well as any other developments in auditing and the audit profession.

Amendment 19
Proposal for a directive
Article 1 – paragraph 1 – point 15 – point b
Directive 2006/43/EC
Article 32 – paragraph 3

Text proposed by the Commission

3. The competent authority may allow non-practitioners who are knowledgeable in the areas relevant to statutory audit to be involved in the governance of the public oversight system, provided that they are selected in accordance with an independent and transparent nomination procedure.
Practitioners shall not be allowed to be involved in the governance of the public oversight system.

Amendment 20
Proposal for a directive

Article 1 – paragraph 1 – point 16
Directive 2006/43/EC
Article 32a – paragraph 2

Amendment

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of amending the definition of international auditing standards in paragraph 2 of this Article. When using such powers, the Commission shall take into account any amendments brought to the ISAs by the *IASB*, the opinion of the Public Interest Oversight Board on such amendments as well as any other developments in auditing and the audit profession.

Text proposed by the Commission

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

Amendment

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

Amendment 21

Proposal for a directive

Article 1 – paragraph 1 – point 20

Directive 2006/43/EC

Article 43a – paragraph 3

Text proposed by the Commission

Member States **may** request professional bodies to provide guidance on the proportionate application of the auditing standards to medium-sized undertakings.

Amendment

Member States **shall** request professional bodies to provide guidance on the proportionate application of the auditing standards to medium-sized undertakings.

PROCEDURE

Title	Amendment of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts
References	COM(2011)0778 – C7-0461/2011 – 2011/0389(COD)
Committee responsible Date announced in plenary	JURI 13.12.2011
Opinion by Date announced in plenary	ECON 13.12.2011
Rapporteur Date appointed	Kay Swinburne 25.10.2011
Discussed in committee	15.10.2012 19.11.2012
Date adopted	11.3.2013
Result of final vote	+: 29 -: 18 0: 0
Members present for the final vote	Burkhard Balz, Elena Băsescu, Slavi Binev, Sharon Bowles, Udo Bullmann, Nikolaos Chountis, George Sabin Cutaş, Leonardo Domenici, Derk Jan Eppink, Diogo Feio, Markus Ferber, Elisa Ferreira, Ildikó Gáll-Pelcz, Jean-Paul Gauzès, Liem Hoang Ngoc, Gunnar Hökmark, Othmar Karas, Jürgen Klute, Rodi Kratsa-Tsagaropoulou, Philippe Lamberts, Werner Langen, Hans-Peter Martin, Ivari Padar, Antolín Sánchez Presedo, Olle Schmidt, Peter Skinner, Theodor Dumitru Stolojan, Ivo Strejček, Kay Swinburne, Sampo Terho, Marianne Thyssen, Ramon Tremosa i Balcells, Corien Wortmann-Kool
Substitute(s) present for the final vote	Jean-Pierre Audy, Pervenche Berès, Lajos Bokros, Philippe De Backer, Saïd El Khadraoui, Sari Essayah, Roberto Gualtieri, Sophia in 't Veld, Olle Ludvigsson, Thomas Mann, Emilie Turunen
Substitute(s) under Rule 187(2) present for the final vote	Klaus-Heiner Lehne, Sabine Verheyen, Tatjana Ždanoka

4.12.2012

OPINION OF THE COMMITTEE ON INDUSTRY, RESEARCH AND ENERGY

for the Committee on Legal Affairs

on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (COM(2011)0778 – C7-0461/2011 – 2011/0389(COD))

Rapporteur: Jürgen Creutzmann

SHORT JUSTIFICATION

The Commission seeks with the proposed Regulation on specific requirements regarding statutory audit of public-interest entities (PIE) to create a more detailed framework for PIE audits, which requires certain amendments to the Directive on statutory audits of annual accounts and consolidated accounts.

Along with these changes, certain provisions are amended mostly as to cross-border provision of audit services and public oversight in general, which the draftsman welcomes.

However, the draftsman recommends excluding voluntary audits from the application of the audit provisions, as is currently the case, since the Commission's proposal would result in higher costs and additional administrative burden especially for small and medium-sized entities. Also, while additional access to capital may help smaller audit firms to close the gap to the leading international networks, the draftsman is sceptical as to the removal of requirements on majority voting rights to be held by statutory auditors. Allowing for third parties to have majority voting rights in audit firms risks compromising the independence of the profession.

Finally, while the draftsman has not tabled any amendments in this regard, he urges to reconsider whether at least parts of the proposed Regulation should not be reintegrated into the existing Directive. Against the background of differing corporate governance frameworks a Regulation may not be the best instrument and the Directive would allow Member States to adapt the rules to their national legal framework. This is in particular the case for the provisions on the audit committee. Furthermore, although audit requirements should arguably be higher in the case of public interest entities, at least the general independence requirements in both instruments could be aligned.

AMENDMENTS

The Committee on Industry, Research and Energy calls on the Committee on Legal Affairs, as the committee responsible, to incorporate the following amendments in its report:

Amendment 1

Proposal for a directive Recital 7

Text proposed by the Commission

(7) It is important to ensure high quality statutory audits within the Union. All statutory audits should therefore be carried out on the basis of the international auditing standards which are part of the Clarity Project issued by the International Federation of Accountants (IFAC) in 2009 insofar as they are relevant to statutory audits. Member States should ***be allowed to impose*** additional national audit procedures or requirements only if they stem from specific national legal requirements relating to the scope of the statutory audit of annual or consolidated financial statements, meaning that those requirements have not been covered by the adopted international auditing standards, and only if they add to the credibility and quality of annual financial statements and consolidated financial statements and are conducive to the Union public good. The Commission should continue to be involved in the monitoring of the content and adoption process of the international auditing standards by the IFAC.

Amendment

(7) It is important to ensure high quality statutory audits within the Union. All statutory audits should therefore be carried out on the basis of the international auditing standards which are part of the Clarity Project issued by the International Federation of Accountants (IFAC) in 2009 insofar as they are relevant to statutory audits. Member States should ***avoid imposing*** additional national audit procedures or requirements, ***with the provision that this should be permissible*** only if they stem from specific national legal requirements relating to the scope of the statutory audit of annual or consolidated financial statements, meaning that those requirements have not been covered by the adopted international auditing standards, and only if they add to the credibility and quality of annual financial statements and consolidated financial statements and are conducive to the Union public good. The Commission should continue to be involved in the monitoring of the content and adoption process of the international auditing standards by the IFAC.

Amendment 2

Proposal for a directive Recital 14

Text proposed by the Commission

(14) Some Member States have replaced the statutory audit of small undertakings with a limited review of their financial statements. It is appropriate to allow those Member States to maintain this practice instead of providing for a proportionate application of auditing standards to small undertakings.

Amendment

(14) Some Member States have replaced the statutory audit of small undertakings with a limited review of their financial statements. It is appropriate to allow those Member States to maintain this practice instead of providing for a proportionate application of auditing standards to small undertakings. ***Member States within whose territory a statutory audit requirement still exists for small undertakings should assess possibilities of replacing it with a limited review of their financial statements.***

Amendment 3

Proposal for a directive

Article 1 – point 2 – point d

Directive 2006/43/EC

Article 2 – paragraph 13 – point g

Text proposed by the Commission

(g) EU alternative investment funds as defined in Article 4(1)(k) of Directive 2011/61/EC of the European Parliament and of the Council(**);***

Amendment

deleted

Justification

These entities are no ordinary companies but investment vehicles which are held by custodian banks (which should remain public-interest entities (PIEs) according to letter f) and i)) and should therefore not be classified as PIEs. Moreover the public interest in audits of these entities is rather limited, not least since there is strict national regulation of these, which is why the added value of PIE audits is limited and disproportionate with a view to the costs and administrative burden this would entail.

Amendment 4

Proposal for a directive

Article 1 – point 2 – point d

Directive 2006/43/EC

Article 2 – paragraph 13 – point h

Text proposed by the Commission

Amendment

(h) undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council(**);*** ***deleted***

Justification

These entities are no ordinary companies but investment vehicles which are held by custodian banks (which should remain PIEs according to letter f) and i)) and should therefore not be classified as PIEs. Moreover the public interest in audits of these entities is rather limited, not least since there is strict national regulation of these, which is why the added value of PIE audits is limited and disproportionate with a view to the costs and administrative burden this would entail.

Amendment 5

Proposal for a directive

Article 1 – point 3 – point b – point i

Directive 2006/43/EC

Article 3 – paragraph 4 – first subparagraph – point b

Text proposed by the Commission

Amendment

(i) in the first subparagraph, point (b) is deleted; ***deleted***

Justification

While the possibility of increased capital access has its virtues, audit firms, due to the nature of their tasks, should remain independent from stakeholders outside the profession. Therefore, the provision regarding the majority of voting rights should be reinstated.

Amendment 6

Proposal for a directive

Article 1 – point 3 – point b – point iii

Directive 2006/43/EC

Article 3 – paragraph 4 – subparagraph 2

Text proposed by the Commission

Amendment

(iii) the second subparagraph is replaced by the following: ***deleted***

Member States may not set additional conditions in relation to these points. Member States shall not be allowed to require that a minimum amount of capital or of voting rights in an audit firm is held by statutory auditors or audit firms.

Justification

Third party controlling voting rights and investment in audit firms could compromise their independence. Therefore, the existing rules in this regard should not be changed.

Amendment 7

Proposal for a directive

Article 1 – point 7

Directive 2006/43/EC

Article 14 – paragraph 1

Text proposed by the Commission

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

Amendment

1. The ***Member States*** shall establish procedures for the approval of statutory auditors who have been approved in other Member States. Those procedures shall comply with Articles 11 and 12 of Directive 2005/36/EC and shall not go beyond the requirements contained in Articles 13 and 14 of that Directive.

Amendment 8

Proposal for a directive

Article 1 – point 7

Directive 2006/43/EC

Article 14 – paragraph 2 – subparagraph 3

Text proposed by the Commission

The aptitude test shall be conducted in one of the languages ***permitted by the language rules applicable in*** the Member State ***concerned***. It shall cover only the statutory auditor's adequate knowledge of the laws and regulations of that Member

Amendment

The aptitude test shall be conducted in one of the ***official*** languages ***of the host*** Member State. It shall cover only the statutory auditor's adequate knowledge of the laws and regulations of that Member State in so far as it is relevant to statutory

State in so far as it is relevant to statutory audits. audits.

Amendment 9

Proposal for a directive

Article 1 – point 11 – point a

Directive 2006/43/EC

Article 22 – paragraph 1

Text proposed by the Commission

1. Member States shall ensure that when carrying out a statutory audit, the statutory auditor and/or the audit firm ***and any holder of voting rights in the audit firm is independent of the audited entity and is not involved in the decision-taking of the audited entity.***

Amendment

1. Member States shall ensure that when carrying out a statutory audit, the statutory auditor and/or the audit firm ***takes all necessary steps to ensure that the independence is not compromised by financial, personal, business, employment or other relationships involving the statutory auditor, the audit firm, its affiliate firms and network, and any natural person in a position to influence the outcome of the statutory audit.***

Justification

Although requirements for statutory audits of public interest entities are more extensive, the basic standards for independence should be the same. The amendment therefore aligns the independence article in the Directive with the amended corresponding article in the PIE Regulation.

Amendment 10

Proposal for a directive

Article 1 – point 11 – point a a (new)

Directive 2006/43/EC

Article 22 – paragraph 2 – first subparagraph

Text proposed by the Commission

Amendment

(aa) in paragraph 2, the first subparagraph is replaced by the following:

Member States shall ensure that a statutory auditor or an audit firm shall not carry out a statutory audit if an objective, reasonable and informed third

party would conclude that the statutory auditor's or audit firm's independence is compromised. If the statutory auditor's or audit firm's independence is affected by threats, such as self-review, self-interest, advocacy, familiarity or trust or intimidation, the statutory auditor or audit firm must apply safeguards in order to mitigate those threats. If the significance of the threats compared to the safeguards applied is such that his, her or its independence is compromised, the statutory auditor or audit firm shall not carry out the statutory audit.'

Justification

Change in accordance with the preceding amendment where the elements deleted from paragraph 2 are included.

Amendment 11

Proposal for a directive

Article 1 – point 12

Directive 2006/43/EC

Article 26 – paragraph 2

Text proposed by the Commission

2. For the purposes of paragraph 1, 'international auditing standards' means International Standards on Auditing (ISAs) and related *Statement* and Standards **which are part of the Clarity Project issued** by the International Federation of Accountants (IFAC) **in 2009** insofar as they are relevant to the statutory audit.

Amendment

2. For the purposes of paragraph 1, 'international auditing standards' means International Standards on Auditing (ISAs) and related *Statements* and Standards **adopted and published** by the International Federation of Accountants (IFAC) insofar as they are relevant to the statutory audit **and are available in the working languages of the European Union.**

Amendment 12

Proposal for a directive

Article 1 – point 14 – point a – point ii

Directive 2006/43/EC

Article 29 – paragraph 1 – point k

Text proposed by the Commission

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

Amendment

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

Justification

The original wording appears to suggest that larger audit firms would require more thorough quality reviews. However, it is not necessarily the size of the audit firm that should be decisive. On the contrary, it is the size and complexity of the audited entities that could warrant a more thorough quality assurance review as the audit is more challenging and the consequences of low quality audits can be more extensive.

Amendment 13

Proposal for a directive

Article 1 – point 14 – point a – point iii

Directive 2006/43/EC

Article 29 – paragraph 1 – subparagraph 1a

Text proposed by the Commission

The competent authority referred to in Article 32 shall make available to interested parties, upon their request, the report referred to in point (g) of the first subparagraph. The competent authority shall make sure that the report disclosed does not undermine the commercial interests of the audited entity under review, including its industrial and intellectual property.

Amendment

Member States may require that the competent authority referred to in Article 32 shall make available to interested parties, upon their request, the report referred to in point (g) of the first subparagraph. The competent authority shall make sure that the report disclosed does not undermine the commercial interests of the audited entity under review, including its industrial and intellectual property.

Justification

The content of inspection reports differs from Member State to Member State. Some reports may contain sensitive information not be disclosed to the public, in which case recourse is made to aggregated reporting on quality assurance reviews of the whole local audit profession as laid down under (i). Member States should therefore be able to adapt this provision according to their national context.

Amendment 14

Proposal for a directive
Article 1 – point 15 – point b
Directive 2006/43/EC
Article 32 – paragraph 3

Text proposed by the Commission

3. The competent authority may allow non-practitioners who are knowledgeable in the areas relevant to statutory audit to be involved in the governance of the public oversight system, provided that they are selected in accordance with an independent and transparent nomination procedure. ***Practitioners shall not be allowed*** to be involved in the governance of the public oversight system.

Amendment

3. The competent authority may allow non-practitioners who are knowledgeable in the areas relevant to statutory audit to be involved in the governance of the public oversight system, provided that they are selected in accordance with an independent and transparent nomination procedure. ***Member States may, however, allow a minority of practitioners*** to be involved in the governance of the public oversight system.

Amendment 15

Proposal for a directive
Article 1 – point 15 – point d
Directive 2006/43/EC
Article 32 – paragraph 5

Text proposed by the Commission

The competent authority shall have the right, where necessary, to initiate and conduct investigations in relation to statutory auditors and audit firms and the right to take appropriate action. It shall have adequate resources to initiate and conduct such investigations.

Amendment

The competent authority shall have the right, where necessary, to initiate and conduct investigations in relation to statutory auditors and audit firms and the right to take appropriate action. It shall have adequate resources to initiate and conduct such investigations, ***which may take the form of a compulsory contribution by statutory auditors and audit firms in proportion to their audit activity.***

Amendment 16

Proposal for a directive
Article 1 – point 15 – point e
Directive 2006/43/EC
Article 32 – paragraph 6

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Text proposed by the Commission

(6) The competent authority shall be transparent. This shall include the publication of annual work programmes and activity reports.

Amendment

(6) The **activities of the** competent authority shall be transparent. This shall include the publication of annual work programmes and activity reports.

Amendment 17

Proposal for a directive

Article 1 – point 16

Directive 2006/43/EC

Article 32 a (new) – paragraph 1

Text proposed by the Commission

Member States may allow the competent authority referred to in Article 32 to delegate tasks to other authorities or bodies designated by law ***only as regards the approval and registration of statutory auditors and audit firms***. 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. 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 Directive and the implementing measures adopted pursuant thereto shall lie with the delegating competent authority.

Amendment

Member States may allow the competent authority referred to in Article 32 to delegate ***certain*** tasks to other authorities or bodies designated by law. 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. 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 Directive and the implementing measures adopted pursuant thereto shall lie with the delegating competent authority.

Justification

To allow for decentralized oversight systems as currently exist in a number of Member States, the competent authority, while remaining the focal point and responsible, should be able to delegate tasks to other authorities and bodies.

Amendment 18

Proposal for a directive

Article 1 – point 17 a (new)

Directive 2006/43/EC
Article 37 – paragraph 1

Text proposed by the Commission

Amendment

17a. In Article 37, paragraph 1 is replaced by the following:

'1. The statutory auditor or audit firm shall be appointed by the general meeting of shareholders or members of the audited entity for an initial engagement that shall not be shorter than three years.'

Justification

A longer initial audit engagement period strengthens the auditor's independence.

Amendment 19

Proposal for a directive

Article 1 – point 25

Directive 2006/43/EC

Article 48 a (new) - paragraph 2

Text proposed by the Commission

Amendment

(2) The power to adopt delegated acts referred to in Articles 8(3), 22(4), 26(3), 29(2), 36(7), 45(6), 46(2), 47(3) and 47(5) shall be conferred on the Commission for ***an indeterminate period of time*** from [date of entry into force of this Directive].

(2) The power to adopt delegated acts referred to in Articles 8(3), 22(4), 26(3), 29(2), 36(7), 45(6), 46(2), 47(3) and 47(5) shall be conferred on the Commission for ***five 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 five- year period. The delegation of power shall be tacitly extended for periods of an identical duration, unless the European Parliament or the Council opposes such extension not later than three months before the end of each period.

Amendment 20

Proposal for a directive

Article 2 a (new)

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Text proposed by the Commission

Amendment

Article 2a

Codification of the Directive

This Directive shall be codified with the Directive which it amends within three months of its entry into force.

PROCEDURE

Title	Amendment of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts
References	COM(2011)0778 – C7-0461/2011 – 2011/0389(COD)
Committee responsible Date announced in plenary	JURI 13.12.2011
Opinion by Date announced in plenary	ITRE 13.12.2011
Rapporteur Date appointed	Jürgen Creutzmann 14.2.2012
Discussed in committee	8.10.2012
Date adopted	29.11.2012
Result of final vote	+: 42 –: 5 0: 2
Members present for the final vote	Josefa Andrés Barea, Jean-Pierre Audy, Zigmantas Balčytis, Ivo Belet, Bendt Bendtsen, Jan Březina, Reinhard Bütikofer, Maria Da Graça Carvalho, Giles Chichester, Jürgen Creutzmann, Dimitrios Droutsas, Vicky Ford, Gaston Franco, Adam Gierek, Norbert Glante, Fiona Hall, Edit Herczog, Kent Johansson, Romana Jordan, Krišjānis Kariņš, Lena Kolarska-Bobińska, Judith A. Merkies, Angelika Niebler, Jaroslav Paška, Vittorio Prodi, Miloslav Ransdorf, Herbert Reul, Jens Rohde, Paul Rübig, Amalia Sartori, Salvador Sedó i Alabart, Francisco Sosa Wagner, Patrizia Toia, Catherine Trautmann, Ioannis A. Tsoukalas, Claude Turmes, Marita Ulvskog, Vladimir Urutchev, Alejo Vidal-Quadras
Substitute(s) present for the final vote	Antonio Cancian, Ioan Enciu, Roger Helmer, Jolanta Emilia Hibner, Seán Kelly, Zofija Mazej Kukovič, Alajos Mészáros, Vladimír Remek, Silvia-Adriana Țicău, Henri Weber

PROCEDURE

Title	Amendment of Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts			
References	COM(2011)0778 – C7-0461/2011 – 2011/0389(COD)			
Date submitted to Parliament	30.11.2011			
Committee responsible Date announced in plenary	JURI 13.12.2011			
Committee(s) asked for opinion(s) Date announced in plenary	ECON 13.12.2011	ITRE 13.12.2011	IMCO 13.12.2011	
Not delivering opinions Date of decision	IMCO 29.2.2012			
Rapporteur(s) Date appointed	Sajjad Karim 21.11.2011			
Previous rapporteur(s)	Syed Kamall			
Discussed in committee	1.3.2012	10.7.2012	18.9.2012	27.11.2012
	22.1.2013			
Date adopted	25.4.2013			
Result of final vote	+: -: 0:	15 10 0		
Members present for the final vote	Luigi Berlinguer, Sebastian Valentin Bodu, Christian Engström, Marielle Gallo, Giuseppe Gargani, Sajjad Karim, Klaus-Heiner Lehne, Antonio Masip Hidalgo, Alajos Mészáros, Bernhard Rapkay, Evelyn Regner, Dimitar Stoyanov, Rebecca Taylor, Alexandra Thein, Cecilia Wikström, Tadeusz Zwiefka			
Substitute(s) present for the final vote	Piotr Borys, Eva Lichtenberger, Angelika Niebler, József Szájer			
Substitute(s) under Rule 187(2) present for the final vote	John Stuart Agnew, Sylvie Guillaume, Jürgen Klute, Jacek Olgierd Kurski, Andrés Perelló Rodríguez			
Date tabled	14.5.2013			