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*Committee on Economic and Monetary Affairs*

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2011/0359(COD)

25.9.2012

## **DRAFT OPINION**

of the Committee on Economic and Monetary Affairs

for the Committee on Legal Affairs

on the proposal for a regulation of the European Parliament and of the Council on specific requirements regarding statutory auditing of public-interest entities (COM(2011)0779 – C7-0470/2011 – 2011/0359(COD))

Rapporteur (\*): Kay Swinburne

(\*) Associated committee – Rule 50 of the Rules of Procedure

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## 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 regulation Recital 6

*Text proposed by the Commission*

(6) The financial sector is evolving and new categories of financial institutions **are created by Union law**. The importance of new entities and activities outside the **regular** banking system is growing and their impact on financial stability has become greater. Therefore, it is appropriate that the definition of public-interest entity also encompasses **other financial institutions and entities such as investment firms, payment institutions**, undertakings for collective investments in transferable securities (UCITS), electronic money institutions and alternative investment funds.

*Amendment*

(6) The financial sector is evolving and new categories of financial institutions **have developed in response to regulatory and technological developments**. The importance of new entities and activities outside the **traditional** banking system **that were previously unregulated at Union level** is growing and their impact on financial stability has become greater. Therefore, it is appropriate that the definition of public-interest entity also encompasses **investment firms and payment institutions, while certain aspects of the regulation also apply to** undertakings for collective investments in transferable securities (UCITS), electronic money institutions and alternative investment funds.

Or. en

### Amendment 2 Proposal for a regulation Recital 6 a (new)

*Text proposed by the Commission*

*Amendment*

**(6 a) A particular concern is the auditors' involvement in the structuring of off-balance sheet Special Purpose Vehicles**

*(SPVs) for financial institutions. These vehicles can make it more difficult for investors and regulators to hold management to account. If applied by financial institutions, moreover, SPVs can be abused to mask risks in the financial system and thus reduce supervisors' and shareholders' ability to recognise and act upon threats to financial stability in a timely and effective manner. It is therefore appropriate to clarify that any involvement in the structuring of SPVs by a firm's auditor constitutes a case of self-review and will most likely represent inappropriate accounting treatment. Such activity should therefore be prohibited.*

Or. en

**Amendment 3**  
**Proposal for a regulation**  
**Recital 7**

*Text proposed by the Commission*

(7) Audit of annual and consolidated financial statements is intended as a statutory safeguard for investors, lenders and business counterparties who have a stake or a business interest in public-interest entities. Hence, statutory auditors and audit firms should be completely independent when carrying out statutory audits of such entities and conflicts of interest should be avoided. In order to determine the independence of auditors and audit firms, the concept of network in which auditors and firms operate has to be taken into account.

*Amendment*

(7) Audit of annual and consolidated financial statements is intended as a statutory safeguard for investors, lenders and business counterparties who have a stake or a business interest in public-interest entities. Hence, statutory auditors and audit firms should be completely independent when carrying out statutory audits of such entities and conflicts of interest should be avoided. ***They may inform the audited entity of matters arising from the audit, but should abstain from the internal decision processes of the audited entity. If they find themselves in a situation where the significance of the threats to their independence, even after application of safeguards to mitigate those threats, is too high, they should resign or abstain from the audit engagement.*** In order to determine the independence of auditors and audit firms, the concept of

network in which auditors and firms operate has to be taken into account.

Or. en

**Amendment 4**  
**Proposal for a regulation**  
**Recital 13**

*Text proposed by the Commission*

*Amendment*

***(13) Directive 95/46 of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data govern the processing of personal data carried out in the Member States in the context of this Regulation and under the supervision of the Member States competent authorities, in particular the public independent authorities designated by the Member States. Regulation (EU) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the EU institutions and bodies and on the free movement of such data, governs the processing of personal data carried out by ESMA within the framework of this Regulation and under the supervision of the European Data Protection Supervisor. Any exchange or transmission of information by competent authorities should be in accordance with the rules on the transfer of personal data as laid down in Directive 95/46/EC and any exchange or transmission of information by ESMA should be in accordance with the rules on the transfer of personal data as laid down in Regulation (EC) No 45/2001.***

***deleted***

Or. en

**Amendment 5**  
**Proposal for a regulation**  
**Recital 21 a (new)**

*Text proposed by the Commission*

*Amendment*

***(21 a) The role of the ESRB is to monitor the build up of systemic risk in the Union. Given the information that audit firms of systemically important financial institutions have access to, their experience could help the ESRB in its work. Therefore an annual forum for dialogue between them on a sectoral, anonymised basis should be facilitated by this Regulation.***

Or. en

**Amendment 6**  
**Proposal for a regulation**  
**Recital 23**

*Text proposed by the Commission*

*Amendment*

(23) 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

(23) 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, may be performed by the administrative or supervisory body as a whole. ***Public-interest entities which are UCITS or alternative investment funds should also be exempted from the obligation to have an audit committee. This exemption takes into account the fact that where those funds function merely for the purpose of pooling assets, the employment of an audit committee is not appropriate. UCITS and alternative investments funds, as well as their management companies, operate in a strictly defined regulatory environment and are subject to specific governance mechanisms such as controls exercised by their depositary.***

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, may be performed by the administrative or supervisory body as a whole.

Or. en

**Amendment 7**  
**Proposal for a regulation**  
**Recital 24 a (new)**

*Text proposed by the Commission*

*Amendment*

***(24 a) Audit committees should consider whether shared audit may be of benefit when conducting their tendering process. Shared audit, where subsidiaries of a company are audited by one audit firm while the responsibility for the group audit, and ultimate liability, lies with one group auditor could provide a useful way of engaging with more audit firms and reduce costs via increased competition.***

Or. en

**Amendment 8**  
**Proposal for a regulation**  
**Recital 26**

*Text proposed by the Commission*

*Amendment*

*(26) The appointment of more than one statutory auditor or audit firm by the public-interest entities would reinforce the professional scepticism and contribute to increasing audit quality. Also, this measure combined with the presence of smaller audit firms would facilitate the development of the capacity of such firms, thus contributing to increasing the choice of statutory auditors and audit firms for public-interest entities. Therefore, the latter should be encouraged and incentivised to appoint more than one statutory auditor or audit firm to carry out the statutory audit.*

*deleted*

Or. en

**Amendment 9**  
**Proposal for a regulation**  
**Recital 27**

*Text proposed by the Commission*

*Amendment*

*(27) In order to address the familiarity threat and therefore reinforce the independence of auditors and audit firms, it is important to establish a maximum duration of the audit engagement of a statutory auditor or audit firm in a particular audited entity. An appropriate gradual rotation mechanism should also be established with regard to the most senior personnel involved in the statutory audit, including the key audit partners carrying out the statutory audit on behalf of the audit firm. It is also important to provide for an appropriate period within which such statutory auditor or audit firm may not carry out the statutory audit of*

*deleted*



*the same entity. In order to ensure a smooth transition, the former auditor should transfer a handover file with relevant information to the incoming auditor.*

Or. en

**Amendment 10**  
**Proposal for a regulation**  
**Recital 27 a (new)**

*Text proposed by the Commission*

*Amendment*

*(27 a) Regular and open mandatory tendering of both the audit and non-audit services provides small and medium-sized companies with an opportunity to present their services and skills in a transparent process and to increase their visibility as service providers for public-interest entities. Tendering strongly encourages audit committees to consider a broader range of prospective providers of audit and non-audit services. The purpose of the tendering provisions in Articles 10a and 33 is not, however, to force a rotation of non-audit services providers and auditors. Repeated re-appointment is thus explicitly allowed if the conditions set out in the abovementioned Articles are fully complied with.*

Or. en

**Amendment 11**  
**Proposal for a regulation**  
**Recital 29**

*Text proposed by the Commission*

*Amendment*

(29) In order to ensure a high level of investor and consumer confidence in the internal market by avoiding conflicts of

(29) In order to ensure a high level of investor and consumer confidence in the internal market by avoiding conflicts of

interests, statutory auditors and audit firms should be subject to appropriate supervision by competent authorities which are independent from the audit profession and which have adequate capacity, expertise and resources. The national competent authorities should have the necessary powers to undertake their supervisory tasks, including the capacity to access documents, demand information from any person and carry out inspections. They should specialize in the supervision of **financial markets**, of compliance with financial reporting obligations or in statutory audit oversight. However, it should be possible that the supervision of the compliance with the obligations set on public-interest entities is carried out by the competent authorities responsible for the supervision of those entities. The funding of the competent authorities should be free from any possible undue influence by statutory auditors or audit firms.

interests, statutory auditors and audit firms should be subject to appropriate supervision by competent authorities which are independent from the audit profession and which have adequate capacity, expertise and resources. The national competent authorities should have the necessary powers to undertake their supervisory tasks, including the capacity to access documents, demand information from any person and carry out inspections. They should specialize in the supervision of compliance with financial reporting obligations or in statutory audit oversight. However, it should be possible that the supervision of the compliance with the obligations set on public-interest entities is carried out by the competent authorities responsible for the supervision of those entities. The funding of the competent authorities should be free from any possible undue influence by statutory auditors or audit firms.

Or. en

**Amendment 12**  
**Proposal for a regulation**  
**Recital 33**

*Text proposed by the Commission*

(33) The market for the provision of statutory audit services to public-interest entities evolves over time. It is therefore necessary that **competent** authorities monitor the developments in the market, particularly as regards possible limited choice of auditor and the risks that arise from high market concentration.

*Amendment*

(33) The market for the provision of statutory audit services to public-interest entities evolves over time. It is therefore necessary that **competition** authorities **of the Union and the Member States** monitor the developments in the market, particularly as regards possible limited choice of auditor and the risks that arise from high market concentration.

Or. en

**Amendment 13**  
**Proposal for a regulation**  
**Recital 36**

*Text proposed by the Commission*

(36) The cooperation between the competent authorities of the Member States can make an important contribution to ensuring consistently high quality in the statutory audit in the Union. Therefore, the competent authorities of the Member States should cooperate with each other, where necessary, for the purpose of carrying out their supervisory duties regarding statutory audits. They should respect the principle of home-country regulation and oversight by the Member State in which the statutory auditor or audit firm is approved and the audited entity has its registered office. The cooperation between competent authorities would be particularly enhanced if organised within the framework of the *Joint Committee of European Supervisory Authorities (ESA), under the leadership of the European Securities and Markets Authority (ESMA) set up by Regulation (EU) No 1095/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Securities Market Authority). ESMA, with the assistance of the European Banking Authority (EBA) set up by Regulation (EU) No 1093/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Banking Authority) and the European Insurance and Occupational Pensions Authority (EIOPA) set up by Regulation (EU) No 1094/2010 of the European Parliament and of the Council of 24 November 2010 establishing a European Supervisory Authority (European Insurance and Occupational Pensions Authority)*, should contribute to that cooperation by providing advice *and*

*Amendment*

(36) The cooperation between the competent authorities of the Member States can make an important contribution to ensuring consistently high quality in the statutory audit in the Union. Therefore, the competent authorities of the Member States should cooperate with each other, where necessary, for the purpose of carrying out their supervisory duties regarding statutory audits. They should respect the principle of home-country regulation and oversight by the Member State in which the statutory auditor or audit firm is approved and the audited entity has its registered office. The cooperation between competent authorities would be particularly enhanced if organised within the framework of the *European Group of Audit Oversight Bodies (EGAOB) which* should contribute to that cooperation by providing advice *to the European Commission*.

*guidelines to national competent authorities.*

Or. en

**Amendment 14**  
**Proposal for a regulation**  
**Recital 37**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 15**  
**Proposal for a regulation**  
**Recital 38**

*Text proposed by the Commission*

*(38) Recognition of the aptitude of*

*Amendment*

*deleted*

*statutory auditors and audit firms to perform statutory audits of public-interest entities should facilitate the access of auditors and firms to other clients. Therefore, it is important to provide for a Quality Certificate of European dimension which should be developed by ESMA. National competent authorities should be involved in the examination of the applications for the certificate.*

Or. en

**Amendment 16**  
**Proposal for a regulation**  
**Recital 39**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 17**  
**Proposal for a regulation**  
**Recital 40**

*Text proposed by the Commission*

(40) Sustainable audit capacity and a competitive market for statutory audit services in which there is a sufficient

*Amendment*

(40) Sustainable audit capacity and a competitive market for statutory audit services in which there is a sufficient

choice of audit firms capable of carrying out statutory audits of public-interest entities are required in order to ensure a smooth functioning of capital markets. *ESMA* should report on the changes brought in the audit market structure by this Regulation. When carrying such analysis, *ESMA* should take into account the impact of the national civil liability rules for statutory auditors on the structure of the audit market. Based on such report and other appropriate evidence, the Commission should present a report on the impact of the national liability rules for statutory auditors on the audit market structure and should take the steps it considers appropriate as a result of its findings.

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

Or. en

**Amendment 18**  
**Proposal for a regulation**  
**Recital 43**

*Text proposed by the Commission*

*(43) In order to take account of developments in auditing and the audit market, the Commission should be empowered to specify technical requirements on the content of the handover file that the new statutory auditor or audit firm should receive and on the establishment of a European quality certificate for statutory auditors and audit firms carrying out statutory audits of public-interest entities.*

*Amendment*

*deleted*

Or. en

**Amendment 19**  
**Proposal for a regulation**  
**Recital 44**

*Text proposed by the Commission*

(44) In order to take account of the technical developments in the financial markets, in auditing and the audit profession and to specify the requirements laid down in this Regulation, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union. In particular, the use of delegated acts is necessary to adapt the list of related audit services and of non-audit services **as well as to set out the level of fees that ESMA could charge for delivering the European Quality Certificate to statutory auditors and audit firms**. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

*Amendment*

(44) In order to take account of the technical developments in the financial markets, in auditing and the audit profession and to specify the requirements laid down in this Regulation, the Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty on the Functioning of the European Union. In particular, the use of delegated acts is necessary to adapt the list of related audit services and of **prohibited** non-audit services. It is of particular importance that the Commission carries out appropriate consultations during its preparatory work, including at expert level **and with the EGAOB**. The Commission, when preparing and drawing up delegated acts, should ensure a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and to the Council.

Or. en

**Amendment 20**  
**Proposal for a regulation**  
**Recital 45**

*Text proposed by the Commission*

(45) In order to ensure legal certainty and the smooth transition to the regime introduced by this Regulation, it is important to introduce a transitional regime regarding the entry into force of the obligation **to rotate audit firms, the obligation to organise a selection procedure for the choice of audit firm and the conversion of audit firms into firms that only provide audit services**.

*Amendment*

(45) In order to ensure legal certainty and the smooth transition to the regime introduced by this Regulation, it is important to introduce a transitional regime regarding the entry into force of the obligation **for mandatory tendering**.

**Amendment 21**  
**Proposal for a regulation**  
**Article 3**

*Text proposed by the Commission*

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

*Amendment*

For the purposes of this Regulation, the definitions laid down in Article 2 of Directive 2006/43/EC shall apply, except for the definitions of 'audit report', 'competent authority' **and** '*public-interest entities*'.

***For the purpose of this Regulation 'public-interest entities' shall cover:***

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

*(h) 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];*

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*\* OJ L 177, 30.6.2006, p. 1*

*\*\* OJ L 335, 17.12.2009, p. 1*

*\*\*\* OJ L 187, 18.7.2009, p. 5*

*\*\*\*\* OJ L 267, 10.10.2009, p. 7*

*\*\*\*\*\**

Or. en

**Amendment 22**  
**Proposal for a regulation**  
**Article 4**

*Text proposed by the Commission*

*Amendment*

**Article 4**

***deleted***

***Large public interest entities***

***For the purposes of this Regulation, 'large public-interest entities' shall cover the following***

***(a) in relation to entities defined in point 13(a) of Article 2 of Directive 2006/43/EC, the largest 10 issuers of shares in each Member State measured by the market capitalisation on the basis of the end-year quotes and in any case all issuers of shares that had an average market capitalisation of more than EUR 1 000***

*000 000 on the basis of end-year quotes for the previous three calendar years;*

*(b) in relation to entities defined in points 13(b) to (f) of Article 2 of Directive 2006/43/EC, any entity which on their balance sheet date has a balance sheet total exceeding EUR 1 000 000 000;*

*(c) in relation to entities defined in points 13(g) and (h) of Article 2 of Directive 2006/43/EC, any entity which on their balance sheet date has total assets under management exceeding EUR 1 000 000 000.*

Or. en

**Amendment 23**  
**Proposal for a regulation**  
**Article 10 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

A statutory auditor or an audit firm carrying out statutory audit of public-interest entities may provide to the audited entity, to its parent undertaking and to its controlled undertakings statutory audit services and related financial audit services.

*Amendment*

A statutory auditor or an audit firm carrying out statutory audit of public-interest entities may provide to the audited entity, to its parent undertaking and to its controlled undertakings statutory audit services and related financial audit services ***only with the explicit approval of the audit committee.***

Or. en

**Amendment 24**  
**Proposal for a regulation**  
**Article 10 – paragraph 2 – point e**

*Text proposed by the Commission*

(e) providing certification on compliance with tax requirements ***where such attestation is required by national law;***

*Amendment*

(e) providing certification on compliance with tax requirements;

**Amendment 25**  
**Proposal for a regulation**  
**Article 10 – paragraph 2 – point f**

*Text proposed by the Commission*

(f) any other statutory duty *related to audit work* imposed by *Union legislation to the statutory auditor or audit firm*.

*Amendment*

(f) any other statutory duty imposed by *law or regulation*;

Or. en

**Amendment 26**  
**Proposal for a regulation**  
**Article 10 – paragraph 2 – point f a (new)**

*Text proposed by the Commission*

*(f a) reports or other services in relation to documents, including investment circulars or actions required to be taken by the audited entity by securities legislation or regulation;*

*Amendment*

Or. en

**Amendment 27**  
**Proposal for a regulation**  
**Article 10 – paragraph 2 – point f b (new)**

*Text proposed by the Commission*

*(f b) due diligence services to the vendor or the buy side on potential mergers and acquisitions and providing assurance on the audited entity to other parties in relation to a financial or corporate transaction.*

*Amendment*

Or. en

**Amendment 28**  
**Proposal for a regulation**  
**Article 10 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

A statutory auditor or an audit firm carrying out statutory audit of public-interest entities shall not directly or indirectly provide to the audited entity, to its parent undertaking **and** to its controlled undertakings non-audit services.

*Amendment*

A statutory auditor or an audit firm carrying out statutory audit of public-interest entities shall not directly or indirectly provide to the audited entity, to its parent undertaking **or** to its controlled undertakings **any prohibited** non-audit services.

Or. en

**Amendment 29**  
**Proposal for a regulation**  
**Article 10 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

Where the statutory auditor belongs to a network, no member of such network shall provide to the audited entity, to its parent undertaking and to its controlled undertakings within the Union any non-audit services.

*Amendment*

Where the statutory auditor belongs to a network, no member of such network shall provide to the audited entity, to its parent undertaking and to its controlled undertakings within the Union any **prohibited** non-audit services.

Or. en

**Amendment 30**  
**Proposal for a regulation**  
**Article 10 – paragraph 3 – subparagraph 3 – introductory part**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 31**  
**Proposal for a regulation**  
**Article 10 – paragraph 3 – subparagraph 3 – point a**

*Text proposed by the Commission*

*Amendment*

*(a) services entailing conflict of interest in all cases:* **deleted**

*(i) expert services unrelated to the audit, tax consultancy, general management and other advisory services;*

*(ii) bookkeeping and preparing accounting records and financial statements;*

*(iii) designing and implementing internal control or risk management procedure related to the preparation and/or control of financing information included in the financial statements and advice on risk;*

*(iv) valuation services, providing fairness opinions or contribution-in-kind reports;*

*(v) actuarial and legal services, including the resolution of litigation;*

*(vi) designing and implementing financial information technology systems for public-interest entities as referred to in Article 2(13)(b) to (j) of Directive 2006/43/EC;*

*(vii) participating in the audit client's internal audit and the provision of services related to the internal audit function;*

*(viii) broker or dealer, investment adviser, or investment banking services.*

Or. en

**Amendment 32**  
**Proposal for a regulation**  
**Article 10 – paragraph 3 – subparagraph 3 – point a a (new)**

***(a a) (a) bookkeeping services including the calculations of current and deferred taxes, and preparing accounting records and financial statements and related financial information;***

***(b) designing or implementing internal control, risk management or financial information technology systems related to the preparation or control of financial information included in the financial statements that:***

***(i) form a significant part of the internal control over financial reporting of the audited entity, or***

***(ii) generate information that is significant to the accounting records or financial statements that are subject to the statutory audit;***

***(c) providing valuation services, including valuations performed in connection with actuarial services or litigation support services, where the valuation would have a material effect separately or in the aggregate on the financial statements;***

***(d) actuarial services and legal services relating to provision of general counsel, negotiating on behalf of the audit client or acting in the resolution of litigation;***

***(e) payroll services;***

***(f) promoting, dealing in, or underwriting client shares;***

***(g) human resources services with respect to senior management in a position to exert significant influence over the preparation of the accounting records or the financial statements subject to the statutory audit, where such services involve:***

***(i) searching for or seeking out candidates for such positions; or***

*(ii) undertaking reference checks of prospective candidates for such positions.*

Or. en

**Amendment 33**  
**Proposal for a regulation**  
**Article 10 – paragraph 3 – subparagraph 4**

*Text proposed by the Commission*

*Amendment*

*By derogation from the first and second subparagraphs, the services mentioned in point (b)(iii) and (iv) may be provided by the statutory auditor or the audit firm, subject to prior approval by the competent authority referred to in Article 35(1).* *deleted*

Or. en

**Amendment 34**  
**Proposal for a regulation**  
**Article 10 – paragraph 3 – subparagraph 5**

*Text proposed by the Commission*

*Amendment*

*By derogation from the first and second subparagraphs, the services mentioned in point (b)(i) and (ii) may be provided by the statutory auditor or the audit firm, subject to prior approval by the audit committee as referred to in Article 31 of this Regulation.* *deleted*

Or. en

**Amendment 35**  
**Proposal for a regulation**  
**Article 10 – paragraph 4 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

***Being involved in the decision-taking of the audited entity and the provision of the services referred to in points (ii) and (iii) of paragraph 3(a) shall be considered as affecting such independence in all cases.***

***deleted***

Or. en

**Amendment 36**  
**Proposal for a regulation**  
**Article 10 – paragraph 4 – subparagraph 4**

*Text proposed by the Commission*

*Amendment*

***The provision of the services referred to in points (i) and (iv) to (viii) of paragraph 3(a) shall be presumed to affect such independence.***

***deleted***

Or. en

**Amendment 37**  
**Proposal for a regulation**  
**Article 10 – paragraph 5**

*Text proposed by the Commission*

*Amendment*

***5. Where an audit firm generates more than one third of its annual audit revenues from large public-interest entities and belongs to a network whose members have combined annual audit revenues which exceed EUR 1 500 million within the European Union, it shall comply with the following conditions:***

***deleted***

***(a) it shall not directly or indirectly provide to any public interest entity non-audit services;***

***(b) it shall not belong to a network which provides non-audit services within the***



*Union;*

*(c) any entity which provides the services listed in paragraph 3 shall not directly or indirectly hold more than 5 % of the capital or of the voting rights in the audit firm;*

*(d) the entities which provide the services listed in paragraph 3 shall not directly or indirectly hold together more than 10 % of the capital or of the voting rights in the audit firm;*

*(e) such audit firm shall not directly or indirectly hold more than 5 % of the capital or of the voting rights in any entity which provides the services listed in paragraph 3.*

Or. en

**Amendment 38**  
**Proposal for a regulation**  
**Article 10 a (new)**

*Text proposed by the Commission*

*Amendment*

*Article 10 a*

*Tender of non-audit services*

*1. Related financial audit services enumerated in Article 10(2) that would increase the ratio of non-audit to audit fees to more than 50% and non-audit services enumerated in 10(3) must be subject to an open and transparent tendering procedure if the respective fees exceed a value of EUR 100,000.*

*2. The tendering procedure referred to in Paragraph 1 shall be designed by the audit committee and approved by the competent authority. When designing their non-audit service policies, audit committees must*

*(a) aim for the greatest possible*

*transparency;*

*(b) give due consideration to small and medium-sized service providers;*

*(c) ensure adequate involvement by shareholders in the provision of non-audit services, most notably an annual approval of a firm's policy for non-audit services.*

**3. The selection procedure for those non-audit services referred to in paragraph 1 shall respect the following criteria:**

*(a) the commissioning entity shall be free to invite any statutory auditors or audit firms to submit proposals for the provision of the statutory audit service on the condition that Article 33(2) is respected and that at least one of the invited auditors or firms is not one who received more than 15% of the total audit fees from large public-interest entities in the Member State concerned in the previous calendar year;*

*(b) the audited entity shall be free to choose the method to contact the invited statutory auditor(s) or audit firm(s) and shall not be required to publish a call for tenders in the Official Journal of the European Union or in national gazettes or newspapers;*

*(c) the audited entity shall prepare tender documents to the intention of the invited statutory auditor(s) or audit firm(s). Those tender documents shall allow them to understand the business of the audited entity and the type of non-audit service that is to be carried out. The tender documents shall contain transparent and non-discriminatory selection criteria that shall be used by the audited entity to evaluate the proposals made by statutory auditors or audit firms;*

*(d) the audited entity shall be free to define the selection procedure and may conduct direct negotiations with interested tenderers in the course of the procedure;*

*(e) where, in accordance with national Union law, the competent authorities referred to in Article 35, require statutory auditors and audit firms to comply with certain quality standards, those standards shall be included in the tender documents;*

*(f) the audited entity shall evaluate the proposals made by the statutory auditors or audit firms in accordance with the selection criteria predefined in the tender documents;*

*(g) the audited entity shall be able to demonstrate to the competent authority referred to in Article 35 that the selection procedure was conducted in a fair manner.*

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

Or. en

**Amendment 39**  
**Proposal for a regulation**  
**Article 11 – paragraph 4 – subparagraph 1 – point c**

*Text proposed by the Commission*

(c) request permission from the audit committee to provide *the* non-audit services *referred to in Article 10(3)(b)(i) and (ii)* to the audited entity;

*Amendment*

(c) request permission from the audit committee to provide *any* non-audit services to the audited entity;

Or. en

**Amendment 40**  
**Proposal for a regulation**  
**Article 11 – paragraph 4 – subparagraph 1 – point d**

*Text proposed by the Commission*

*Amendment*

***(d) request permission from the competent authority referred to in Article 35(1) to provide the non-audit services referred to in Article 10(3)(b)(iii) and (iv) to the audited entity;***

***deleted***

Or. en

**Amendment 41**  
**Proposal for a regulation**  
**Article 22 – paragraph 2 – point r**

*Text proposed by the Commission*

*Amendment*

(r) indicate the non-audit services referred to in Article 10(3)(b)(i) **and (ii)** that the audit committee allowed the statutory auditor or the audit firm to provide to the audited entity;

(r) indicate the non-audit services referred to in Article 10 that the audit committee allowed the statutory auditor or the audit firm to provide to the audited entity;

Or. en

**Amendment 42**  
**Proposal for a regulation**  
**Article 22 – paragraph 2 – point s**

*Text proposed by the Commission*

*Amendment*

***(s) indicate the non-audit services referred to in Article 10(3)(b)(iii) and (iv) that the competent authority referred to in Article 35(1) allowed the statutory auditor or the audit firm to provide to the audited entity;***

***deleted***

Or. en

**Amendment 43**  
**Proposal for a regulation**  
**Article 25 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

Competent authorities supervising credit institutions and insurance undertakings shall establish regular a dialogue with the statutory auditors and audit firms carrying out the statutory audit of those institutions and undertakings.

*Amendment*

Competent authorities supervising credit ***investment firms***, institutions and insurance undertakings shall establish regular a dialogue with the statutory auditors and audit firms carrying out the statutory audit of those institutions and undertakings

***At least once a year, a trilateral meeting between competent authorities supervising credit institutions and insurance undertakings, the statutory auditors and audit firms carrying out the statutory audit and the institutions and undertakings themselves shall take place.***

Or. en

**Amendment 44**  
**Proposal for a regulation**  
**Article 25 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

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

*Amendment*

***deleted***

Or. en

**Amendment 45**  
**Proposal for a regulation**  
**Article 25 – paragraph 2 a (new)**

*Text proposed by the Commission*

*Amendment*

***2 a. At least once a year, the ESRB shall organise a meeting with the statutory auditors and audit firms carrying out the statutory audit of the 5 largest companies in each member state in order to inform the ESRB of any significant developments in systemically important financial institutions.***

Or. en

**Amendment 46**  
**Proposal for a regulation**  
**Article 27 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

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

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

Or. en

**Amendment 47**  
**Proposal for a regulation**  
**Article 31 – paragraph 3 – subparagraph 1 – point b**

*Text proposed by the Commission*

*Amendment*

***(b) any public-interest entity which is an undertaking for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC or an alternative investment fund (AIF) as defined in Article 4(1)(a) of Directive 2011/61/EU;***

***deleted***

Or. en

**Amendment 48**  
**Proposal for a regulation**  
**Article 31 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

The public-interest entities referred to in **points (b) and (c)** shall explain to the **public** the reasons for which it considers it not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee.

*Amendment*

The public-interest entities referred to in **point (c)** shall explain to the **national competent authority** the reasons for which it considers it not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee.

Or. en

**Amendment 49**  
**Proposal for a regulation**  
**Article 32 – paragraph 3 – subparagraph 1 – point a**

*Text proposed by the Commission*

(a) the audited entity shall be free to invite any statutory auditors or audit firms to submit proposals for the provision of the statutory audit service on the condition that Article 33(2) is respected **and that at least one of the invited auditors or firms is not one who received more than 15% of the total audit fees from large public-interest entities in the Member State concerned in the previous calendar year;**

*Amendment*

(a) the audited entity shall be free to invite any statutory auditors or audit firms to submit proposals for the provision of the statutory audit service on the condition that Article 33(2) is respected.

Or. en

**Amendment 50**  
**Proposal for a regulation**  
**Article 32 – paragraph 6**

*Text proposed by the Commission*

**6. In the case of a credit institution or**

*Amendment*

**deleted**

*insurance undertaking, the administrative or supervisory board shall submit its draft proposal to the competent authority referred to in Article 35(2). The competent authority referred to in Article 35(2) shall have the right to veto the choice proposed in the recommendation. Any such opposition shall be duly justified.*

*The absence of a reply by the competent authority within the prescribed time-limit following submission of the audit committee's recommendation shall be considered as constituting an implied consent to the recommendation.*

Or. en

**Amendment 51**  
**Proposal for a regulation**  
**Article 32 – paragraph 9**

*Text proposed by the Commission*

*Amendment*

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

*deleted*

*If a Member State establishes such requirement, it shall inform the Commission and ESMA thereof.*

Or. en

**Amendment 52**  
**Proposal for a regulation**  
**Article 32 – paragraph 10**

*Text proposed by the Commission*

*Amendment*

*10. In order to facilitate the exercise of*

*deleted*



*the task of the audited entity to organize a selection procedure for the appointment of a statutory auditor or audit firm, EBA, EIOPA and ESMA shall issue guidelines addressed to the public-interest entities on the criteria governing the selection procedure referred to in paragraph 3, in accordance with Article 16 of Regulation (EU) No 1093/2010, of Regulation (EU) No 1094/2010 and of Regulation (EU) No 1095/2010, respectively.*

Or. en

**Amendment 53**  
**Proposal for a regulation**  
**Article 33 – title**

*Text proposed by the Commission*

*Amendment*

Duration of the audit engagement

Duration of the audit engagement *and mandatory tendering*

Or. en

**Amendment 54**  
**Proposal for a regulation**  
**Article 33 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

The public-interest entity may renew this engagement *only once*.

The public-interest entity may renew this engagement.

Or. en

**Amendment 55**  
**Proposal for a regulation**  
**Article 33 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

***The maximum duration of the combined two engagements shall not exceed 6 years.***

***deleted***

Or. en

**Amendment 56**  
**Proposal for a regulation**  
**Article 33 – paragraph 1 – subparagraph 4**

*Text proposed by the Commission*

*Amendment*

***Where throughout a continuous engagement of 6 years two statutory auditors or audit firms have been appointed, the maximum duration of the engagement of each statutory auditor or audit firm shall not exceed 9 years.***

***deleted***

Or. en

**Amendment 57**  
**Proposal for a regulation**  
**Article 33 – paragraph 1 a (new)**

*Text proposed by the Commission*

*Amendment*

***1 a. Public-interest entities shall conduct a public tendering process for the statutory audit every seven years following the conditions set out in Article 32.***

Or. en

**Amendment 58**  
**Proposal for a regulation**  
**Article 33 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

**2. After the expiry of the maximum duration of the engagement referred to in paragraph 1, the statutory auditor or audit firm or any members of its network within the Union, where applicable, shall not undertake the statutory audit of the public-interest entity concerned until a period of at least four years has elapsed.**

*deleted*

Or. en

**Amendment 59**  
**Proposal for a regulation**  
**Article 33 – paragraph 3**

*Text proposed by the Commission*

*Amendment*

**3. By way of derogation from paragraphs 1 and 2, on an exceptional basis the public-interest entity may request the competent authority referred to in Article 35(1) to grant an extension to re-appoint the statutory auditor or audit firm for an additional engagement. In case of appointment of two statutory auditors or audit firms, this third engagement shall not exceed three years. In case of appointment of one statutory auditor or audit firm, this third engagement shall not exceed two years.**

*deleted*

Or. en

**Amendment 60**  
**Proposal for a regulation**  
**Article 33 – paragraph 6**

*Text proposed by the Commission*

*Amendment*

**6. ESMA shall develop draft regulatory technical standards to specify technical**

*deleted*

*requirements on the content of the handover file referred to in paragraph 6.*

*Power is delegated to the Commission to adopt the regulatory technical standards referred to in paragraph 6 in accordance with Article 10 of Regulation (EU) No 1095/2010.*

Or. en

**Amendment 61**  
**Proposal for a regulation**  
**Article 35 – paragraph 2 – point b**

*Text proposed by the Commission*

*Amendment*

*(b) Article 24(4)(h) of Directive 2004/109/EC;*

*deleted*

Or. en

**Amendment 62**  
**Proposal for a regulation**  
**Article 35 – paragraph 6 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

The Member States shall inform each other, *EBA, EIPA and ESMA in accordance with the relevant provisions of Regulations (EU) No 1093/2010, (EU) No 1094/2010 and (EU) No 1095/2010, and shall inform* the Commission of the appointment of competent authorities for the purposes of this Regulation.

The Member States shall inform each other *and* the Commission of the appointment of competent authorities for the purposes of this Regulation.

Or. en

**Amendment 63**  
**Proposal for a regulation**  
**Article 35 – paragraph 6 – subparagraph 2**

*Text proposed by the Commission*

*ESMA* shall consolidate this information and make it public.

*Amendment*

**The Commission** shall consolidate this information and make it public.

Or. en

**Amendment 64**  
**Proposal for a regulation**  
**Article 38 – paragraph 5 – subparagraph 2**

*Text proposed by the Commission*

The competent authority referred to in Article 35(1) shall inform *ESMA* of such exceptional situations of non-application of certain provisions of this Regulation. It shall communicate *ESMA* the list of provisions of this Regulation that have not been applied to the statutory audit of the entities referred to in paragraph 5 and the reasons that justified the exemption granted for such non-application.

*Amendment*

The competent authority referred to in Article 35(1) shall inform **the Commission** of such exceptional situations of non-application of certain provisions of this Regulation. It shall communicate **to the Commission** the list of provisions of this Regulation that have not been applied to the statutory audit of the entities referred to in paragraph 5 and the reasons that justified the exemption granted for such non-application.

Or. en

**Amendment 65**  
**Proposal for a regulation**  
**Article 42 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

The **competent authorities referred to in Article 35(1)** shall regularly monitor the developments in the market for providing statutory audit services to public-interest entities.

*Amendment*

The **European Competition Network (ECN)** shall regularly monitor the developments in the market for providing statutory audit services to public-interest entities.

Or. en

**Amendment 66**  
**Proposal for a regulation**  
**Article 42 – paragraph 1 – subparagraph 2 – introductory part**

*Text proposed by the Commission*

*Amendment*

The *competent* authorities shall in particular assess the following:

The authorities *referred to in the first subparagraph* shall in particular assess the following:

Or. en

**Amendment 67**  
**Proposal for a regulation**  
**Article 42 – paragraph 1 – subparagraph 2 – point a a (new)**

*Text proposed by the Commission*

*Amendment*

*(a a) the effects of the provision of non-audit services to public interest entity clients on the quality of audit work and the independence of auditors;*

Or. en

**Amendment 68**  
**Proposal for a regulation**  
**Article 42 – paragraph 1 – subparagraph 2 – point a b (new)**

*Text proposed by the Commission*

*Amendment*

*(a b) the performance of audit committees in monitoring the quality of audit work and safeguarding the independence of auditors;*

Or. en

**Amendment 69**  
**Proposal for a regulation**  
**Article 42 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

By X X 20XX [2 years after the entry into force of the Regulation], and at least on a **two-year** basis thereafter, each competent authority shall draw up a report on this issue and submit it to **ESMA, EBA and EIOPA**.

*Amendment*

By ...\*, and at least on a **four-year** basis thereafter, each competent authority shall draw up a report on this issue and submit it to **the Commission**.

\* OJ: Please insert date: Four years after the entry into force of the Regulation.

Or. en

**Amendment 70**  
**Proposal for a regulation**  
**Article 42 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

**ESMA, EBA and EIOPA** shall use those reports to draw up a joint report on the situation at Union level. The report shall be submitted to the **Commission**, the European Central Bank and the European Systemic Risk Board.

*Amendment*

**The Commission** shall use those reports to draw up a joint report on the situation at Union level. The report shall be submitted to the **European Parliament**, the European Central Bank and the European Systemic Risk Board.

Or. en

**Amendment 71**  
**Proposal for a regulation**  
**Article 46 – title**

*Text proposed by the Commission*

**ESMA**

*Amendment*

**EGAOB**

Or. en

**Amendment 72**  
**Proposal for a regulation**  
**Article 46 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

*Amendment*

The cooperation between competent authorities shall be organised within the framework of *ESMA*.

The cooperation between competent authorities shall be organised within the framework of *the EGAOB*.

Or. en

**Amendment 73**  
**Proposal for a regulation**  
**Article 46 – paragraph 1 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*ESMA shall create a permanent internal committee pursuant to Article 41 of Regulation (EU) No 1095/2010 for this purpose. Such internal committee shall be at least composed of the competent authorities referred to in Article 35(1) of this Regulation. The competent authorities referred to in Article 32 of Directive 2006/43/EC shall be invited to attend the meetings of such internal committee concerning matters related to approval and registration of statutory auditors and audit firms and relations with third countries in so far as relevant to the statutory audit of public-interest entities.*

*deleted*

Or. en

**Amendment 74**  
**Proposal for a regulation**  
**Article 46 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

*Amendment*

*ESMA shall cooperate with EBA and EIOPA within the framework of the Joint Committee of the European Supervisory Authorities established in Article 54 of*

*deleted*



**Amendment 75**  
**Proposal for a regulation**  
**Article 46 – paragraph 2**

*Text proposed by the Commission*

2. **ESMA** shall provide advice to the competent authorities in the cases provided for in this Regulation. The Competent authorities shall consider that advice before taking any final decision under this Regulation.

*Amendment*

2. **The EGAOB** shall provide advice to the competent authorities in the cases provided for in this Regulation. The Competent authorities shall consider that advice before taking any final decision under this Regulation.

**Amendment 76**  
**Proposal for a regulation**  
**Article 46 – paragraph 3 – subparagraph 1 – introductory part**

*Text proposed by the Commission*

In order to facilitate the exercise of the tasks provided for in this Regulation, **ESMA shall issue guidelines, in accordance with Article 16 of Regulation (EU) No 1095/2010, as appropriate, on:**

*Amendment*

In order to facilitate the exercise of the tasks provided for in this Regulation, **the Commission, following an opinion from the EGAOB shall issue recommendations concerning**

**Amendment 77**  
**Proposal for a regulation**  
**Article 46 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

**ESMA shall consult EBA and EIOPA before issuing the guidelines referred to in the first subparagraph.**

*Amendment*

**deleted**

**Amendment 78**  
**Proposal for a regulation**  
**Article 46 – paragraph 4 – subparagraph 1**

*Text proposed by the Commission*

By X X 20XX [four years after the entry into force of the Regulation], and at least at on a two-year basis thereafter, **ESMA** shall prepare a report on the application of this Regulation.

*Amendment*

By ...\*, and at least at on a two-year basis thereafter, **the Commission** shall prepare a report on the application of this Regulation.

\* OJ: Please insert date: Four years after the entry into force of the Regulation.

Or. en

**Amendment 79**  
**Proposal for a regulation**  
**Article 46 – paragraph 4 – subparagraph 2**

*Text proposed by the Commission*

**ESMA** shall consult **EBA and EIOPA** before making public its report.

*Amendment*

**The Commission** shall consult **the EGAOB** before making public its report.

Or. en

**Amendment 80**  
**Proposal for a regulation**  
**Article 46 – paragraph 4 – subparagraph 3**

*Text proposed by the Commission*

In a report to be prepared by X X 20XX [**two** years after the entry into force of the Regulation], **ESMA** shall undertake an evaluation of the structure of the audit market.

*Amendment*

In a report to be prepared by ...\*, **the Commission** shall undertake an evaluation of the structure of the audit market.

\* OJ: Please insert date: Four years after the entry into force of the Regulation.

Or. en

**Amendment 81**  
**Proposal for a regulation**  
**Article 46 – paragraph 4 – subparagraph 4**

*Text proposed by the Commission*

For the purpose of this report, *ESMA* shall examine the influence of Member States' civil liability systems for statutory auditors on the audit market structure.

*Amendment*

For the purpose of this report, *the Commission* shall examine the influence of Member States' civil liability systems for statutory auditors on the audit market structure.

Or. en

**Amendment 82**  
**Proposal for a regulation**  
**Article 46 – paragraph 4 – subparagraph 5**

*Text proposed by the Commission*

In a report to be prepared by *ESMA* by X X 20XX [four years after the entry into force of the Regulation], shall examine whether the competent authorities referred to in Article 35(1) are sufficiently empowered and have adequate resources to carry out their tasks.

*Amendment*

In a report to be prepared by *the Commission* by ...\*, shall examine whether the competent authorities referred to in Article 35(1) are sufficiently empowered and have adequate resources to carry out their tasks.

\* OJ: Please insert date: Four years after the entry into force of the Regulation.

Or. en

**Amendment 83**  
**Proposal for a regulation**  
**Article 46 – paragraph 4 – subparagraph 6 – introductory part**

*Text proposed by the Commission*

In a report to be prepared by *ESMA* by X X 20XX [six years after the end of the transitional period], shall examine the following issues:

*Amendment*

In a report to be prepared by *the Commission, following the advice of the European Competition Network and the EGAOB*, by ...\*, shall examine the

following issues:

\* OJ: Please insert date: Six years after the end of the transmission period.

Or. en

**Amendment 84**  
**Proposal for a regulation**  
**Article 46 – paragraph 4 – subparagraph 7**

*Text proposed by the Commission*

In a report, to be prepared by X X 20XX [twelve years after the entry into force of the Regulation], *ESMA* shall undertake an evaluation of the impact of this Regulation.

*Amendment*

In a report, to be prepared by ...\*, *the Commission* shall undertake an evaluation of the impact of this Regulation.

\* OJ: Please insert date: Twelve years after the entry into force of the Regulation.

Or. en

**Amendment 85**  
**Proposal for a regulation**  
**Article 46 – paragraph 5**

*Text proposed by the Commission*

*5. Before X X 20XX [three years after the entry into force of the Regulation] the Commission shall present a report, on the basis of the ESMA reports and other appropriate evidence, on the impact of the national liability rules for statutory auditors on the audit market structure. In the light of that report, the Commission shall take the steps it considers appropriate as a result of its findings.*

*Amendment*

*deleted*

Or. en

**Amendment 86**  
**Proposal for a regulation**  
**Article 48 – paragraph 1**

*Text proposed by the Commission*

1. The competent authorities referred to in Article 35 shall, without undue delay, supply each other **and the relevant European Supervisory Authorities** with the information required for the purposes of carrying out their tasks under this Regulation.

*Amendment*

1. The competent authorities referred to in Article 35 shall, without undue delay, supply each other with the information required for the purposes of carrying out their tasks under this Regulation.

Or. en

**Amendment 87**  
**Proposal for a regulation**  
**Article 48 – paragraph 2**

*Text proposed by the Commission*

2. When receiving a request for information from another competent authority **or a European Supervisory Authority**, the competent authority receiving such request shall, without undue delay, take the necessary measures to gather the required information. If the requested competent authority is not able to supply the required information without undue delay, it shall notify the requesting competent authority of the reasons thereof.

*Amendment*

2. When receiving a request for information from another competent authority, the competent authority receiving such request shall, without undue delay, take the necessary measures to gather the required information. If the requested competent authority is not able to supply the required information without undue delay, it shall notify the requesting competent authority of the reasons thereof.

Or. en

**Amendment 88**  
**Proposal for a regulation**  
**Article 48 – paragraph 3 – subparagraph 2**

*Text proposed by the Commission*

Without prejudice to the obligations to which they are subject in judicial

*Amendment*

Without prejudice to the obligations to which they are subject in judicial

proceedings, competent authorities *or the European Supervisory Authorities* which receive information pursuant to paragraph 1 may use that information only for the exercise of their tasks within the scope of this Regulation and in the context of administrative or judicial proceedings specifically related to the exercise of those tasks.

proceedings, competent authorities which receive information pursuant to paragraph 1 may use that information only for the exercise of their tasks within the scope of this Regulation and in the context of administrative or judicial proceedings specifically related to the exercise of those tasks.

Or. en

**Amendment 89**  
**Proposal for a regulation**  
**Article 49 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

*Amendment*

*The competent authority making any such request shall inform ESMA thereof. In the event of an investigation or inspection with cross-border effect, the competent authorities may request ESMA to coordinate the investigation or inspection.*

*deleted*

Or. en

**Amendment 90**  
**Proposal for a regulation**  
**Article 50**

*Text proposed by the Commission*

*Amendment*

*[...]*

*deleted*

Or. en

**Amendment 91**  
**Proposal for a regulation**  
**Article 51 – paragraph 2 – subparagraph 3**

*Text proposed by the Commission*

The competent authority making any such request shall inform **ESMA** of any request referred to in the first and second subparagraphs.

*Amendment*

The competent authority making any such request shall inform **the Commission** of any request referred to in the first and second subparagraphs.

Or. en

**Amendment 92**  
**Proposal for a regulation**  
**Article 51 – paragraph 2 – subparagraph 4**

*Text proposed by the Commission*

The investigation or inspection shall be subject throughout to the overall control of the Member State on whose territory it is conducted. **However, in the event of an investigation or inspection with cross-border effect, the competent authorities may request ESMA to coordinate the investigation or inspection.**

*Amendment*

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

Or. en

**Amendment 93**  
**Proposal for a regulation**  
**Article 52 – paragraph 1**

*Text proposed by the Commission*

Where the audit firms concerned by the requirement in Article 43 belong to networks of at least Union dimension, competent authorities shall cooperate within **ESMA** with a view to ensuring that the different national requirements take account of the network dimension.

*Amendment*

Where the audit firms concerned by the requirement in Article 43 belong to networks of at least Union dimension, competent authorities shall cooperate within **the EGAOB** with a view to ensuring that the different national requirements take account of the network dimension.

Or. en

**Amendment 94**  
**Proposal for a regulation**  
**Article 52 – paragraph 2**

*Text proposed by the Commission*

The competent authorities shall make available to **ESMA and** the other competent authorities the contingency plans received pursuant to Article 43(4).

*Amendment*

The competent authorities shall make available to the other competent authorities the contingency plans received pursuant to Article 43(4).

Or. en

**Amendment 95**  
**Proposal for a regulation**  
**Article 52 – paragraph 3**

*Text proposed by the Commission*

***ESMA shall not formally approve or endorse the contingency plans, but may provide an opinion on them.***

*Amendment*

***deleted***

Or. en

**Amendment 96**  
**Proposal for a regulation**  
**Article 53 – paragraph 3 – subparagraph 1**

*Text proposed by the Commission*

With regard to specific networks, colleges of competent authorities shall be established **by ESMA** upon request of one or more competent authorities.

*Amendment*

With regard to specific networks, colleges of competent authorities shall be established upon request of one or more competent authorities.

Or. en

**Amendment 97**  
**Proposal for a regulation**  
**Article 53 – paragraph 4 – subparagraph 1**



*Text proposed by the Commission*

Within 15 working days of the establishment of the college of competent authorities with regard to a specific network, its members shall select a facilitator. ***In the absence of agreement, ESMA shall appoint a facilitator.***

*Amendment*

Within 15 working days of the establishment of the college of competent authorities with regard to a specific network, its members shall select a facilitator.

Or. en

**Amendment 98**  
**Proposal for a regulation**  
**Article 53 – paragraph 7**

*Text proposed by the Commission*

***7. In the absence of agreement concerning the written coordination arrangements under paragraph 6, any member of the college may refer the matter to ESMA. The facilitator shall give due consideration to any advice provided by ESMA concerning the written coordination arrangements before agreeing their final text. The written coordination arrangements shall be set out in a single document containing full reasons for any significant deviation from the advice of ESMA. The facilitator shall transmit the written coordination arrangements to the members of the college and to ESMA.***

*Amendment*

***deleted***

Or. en

**Amendment 99**  
**Proposal for a regulation**  
**Article 55**

*Text proposed by the Commission*

***Article 55***

*Amendment*

***deleted***

***Confidentiality and professional secrecy  
in relation to ESMA***

***1. The obligation of professional secrecy shall apply to all persons who work or who have worked for ESMA, or for any other person to whom ESMA has delegated tasks, including experts contracted by ESMA. Information covered by professional secrecy shall not be disclosed to another person or authority except where such disclosure is necessary for legal proceedings.***

***2. Paragraph 1 of this Article and Article 37 shall not prevent ESMA and the competent authorities from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy, to which persons employed or formerly employed by competent authorities are subject.***

***3. All the information exchanged under this Regulation between ESMA, the competent authorities and other authorities and bodies shall be considered confidential, except where ESMA or the competent authority or other authority or body concerned states at the time of communication that such information may be disclosed or where such disclosure is necessary for legal proceedings.***

Or. en

**Amendment 100  
Proposal for a regulation  
Article 56 – paragraph 2**

*Text proposed by the Commission*

*Amendment*

***2. Regulation (EC) No 45/2001 shall apply to the processing of personal data carried out by ESMA, EBA and EIOPA in the context of this Regulation.***

*deleted*

**Amendment 101**  
**Proposal for a regulation**  
**Article 57 – paragraph 1 – subparagraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 102**  
**Proposal for a regulation**  
**Article 57 – paragraph 1 – subparagraph 3**

*Text proposed by the Commission*

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

*Amendment*

Where such exchange of information involves the transfer of personal data to a third country, Member States shall comply with Directive 95/46/EC.

Or. en

**Amendment 103**  
**Proposal for a regulation**  
**Article 57 – paragraph 2 – subparagraph 1**

*Text proposed by the Commission*

The competent authorities shall cooperate with the competent authorities or other

*Amendment*

The competent authorities shall cooperate with the competent authorities or other

relevant bodies of third countries regarding the quality assurance reviews and investigations of auditors and audit firms.  
***ESMA shall contribute to this cooperation.***

relevant bodies of third countries regarding the quality assurance reviews and investigations of auditors and audit firms..

Or. en

**Amendment 104**  
**Proposal for a regulation**  
**Article 57 – paragraph 2 – subparagraph 2**

*Text proposed by the Commission*

***ESMA shall contribute to the establishment of supervisory convergence with third countries.***

*Amendment*

***deleted***

Or. en

**Amendment 105**  
**Proposal for a regulation**  
**Article 59 – paragraph 1**

*Text proposed by the Commission*

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

*Amendment*

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

Or. en

**Amendment 106**  
**Proposal for a regulation**  
**Article 60 – paragraph 1**

*Text proposed by the Commission*

*ESMA* shall cooperate with the international organisations and bodies elaborating international auditing standards.

*Amendment*

**The Commission** shall cooperate with the international organisations and bodies elaborating international auditing standards.

Or. en

**Amendment 107**  
**Proposal for a regulation**  
**Article 61 – paragraph 2**

*Text proposed by the Commission*

2. By [24 months after the entry into force of this Regulation] the Member States shall notify the rules referred to in paragraph 1 to the Commission **and ESMA**. They shall notify the Commission **and ESMA** without delay of any subsequent amendment thereto.

*Amendment*

2. By ...\* the Member States shall notify the rules referred to in paragraph 1 to the Commission. They shall notify the Commission without delay of any subsequent amendment thereto.

\* OJ: Please insert date: 24 months after the entry into force of this Regulation.

Or. en

**Amendment 108**  
**Proposal for a regulation**  
**Article 64 – paragraph 2**

*Text proposed by the Commission*

**Competent authorities shall inform ESMA, without undue delay, of any sanction or measure adopted for breach of this Regulation.**

*Amendment*

**deleted**

Or. en

**Amendment 109**  
**Proposal for a regulation**  
**Article 67**

*Text proposed by the Commission*

*Amendment*

**Article 67**

*deleted*

***Exchange of information with ESMA***

***1. Competent and judicial authorities shall provide ESMA annually with aggregated information regarding all administrative measures, sanctions and fines imposed in accordance with Articles 61, 62, 63, 64, 65 and 66. ESMA shall publish this information in an annual report.***

***2. Where the competent authority has disclosed administrative measures, sanctions and fines to the public, it shall simultaneously report that fact to ESMA.***

Or. en

**Amendment 110**  
**Proposal for a regulation**  
**Article 69 – paragraph 1**

*Text proposed by the Commission*

*Amendment*

By X X 20XX [five years after the end of the transitional period] the Commission shall prepare a report on the application of this Regulation. ***The report shall take due account of the report prepared by ESMA referred to in the fourth subparagraph of Article 46(4).***

By ...\* the Commission shall prepare a report on the application of this Regulation.

\* OJ: Please insert date: Five years after the end of the transitional period.

Or. en

States.

## EXPLANATORY STATEMENT

In drafting this opinion, due consideration has been given to the issues of improving the quality of audit services, improving competition in the audit market and harmonising standards of practice across the EU. However, attention has also been paid to the cost to businesses and investors; the users of audit services, a balance between the costs and benefits of implementation to them are seen as paramount as companies struggle to deal with the current difficult economic situation.

Therefore, while the Commission points out some reasonable points with regards to competition some of the proposals would constitute an unreasonable burden upon businesses and introduce extra costs with uncertain benefit. Above all else the quality of audit must be at the forefront of any reform, shareholders and investors need to have confidence in the audit report in order to continue to invest in companies.

### **Tendering and Shared Audit**

The last reform of the audit profession took place via the 8th Company Law directive and required the mandatory rotation of partners on at least a 7 year basis, the results of this reform on the independence of audit and the quality of audit are yet to be seen in the EU as not enough time has passed to truly evaluate their effect. Therefore it would seem that the proposal of the Commission that this should be significantly escalated to a 7 year mandatory rotation of the entire audit firm is premature and may prove to be unnecessary.

A mandated 7 year tendering process would provide a framework for increased scrutiny of the audit services provided by the current auditor by the audit committee and would remove any speculation in the market when an audit mandate is tendered. A planned audit tender process will not provoke a negative market response. While a full tendering procedure may increase costs for companies it should help increase competition within the field of audit, giving more audit firms a predictable time scale to prepare for the tender and certainty that they will be considered.

Currently, some companies are choosing to undertake shared audit whereby certain subsidiaries are audited by a different firm to the group audit. This avoids the problem of joint liability and extra costs for the audited entity as the group auditor maintains liability for the over all audit, providing an oversight role for the terms of the audit of the subsidiary and then evaluating the results. The Rapporteur has chosen not to mandate this service as it would not be suitable for all companies, however it should be given due consideration by audit committees particularly when undertaking the proposed regular tendering process.

### **Non- audit services**

Revenues from non-audit services have become as significant to audit firms as the statutory audit function and while in some cases it is more efficient to have the statutory auditor conduct some non-audit services this is by n means universally true. As such, the Rapporteur

would like to encourage audit committees to take a more active role in decisions regarding the providers of non-audit services.

Firstly, the audit committee should be consulted on the provision of all non-audit services so they can properly reflect on who the best provider of the service is and whether it would affect the independence of the statutory auditor should they choose to use them.

Secondly, all non-audit services of a significant monetary value should be put out to tender. The value of such a threshold should be proposed by a company's audit committee and published annually. While small audit firms may not be in a position to audit large global entities they are in a position to build up specialised skill sets in specific areas of non-audit services if they have a reasonable expectation of being able to provide those services. This, coupled with consideration of shared audit, should provide audit committees with more experience of using smaller audit firms, and increase competition in the EU audit market over time.

### **Supervision at a European Level- the EGAOB**

While the Commission proposes ESMA as the correct body at an EU level to coordinate the actions of national bodies and to write regulatory technical standards and guidelines around the provision of audit, the Rapporteur is concerned that only 5 of the EU securities supervisors have any responsibility for supervision of audit firms and audit services and therefore do not collectively have the necessary experience in this area. In addition to this, ESMA has been given many tasks in its direct area of responsibility as a result of G20 commitments that will need to take precedent, therefore the Rapporteur is proposing that the European Group of Audit Oversight Bodies (EGAOB) is better equipped to manage these tasks. Due to its current legal formation this will necessarily need to be done via the provision of advice to the European Commission; however consideration should be given about whether it should become a full level 3 committee in order to properly coordinate the supervision of audit services across the single market and to actively and directly shape future delegated acts and guidelines.

### **Public Interest Entity definition**

Discussions in the Parliament suggest a concern when proposing differentiating between the audit of financial entities as opposed to non-financial entities. Clarity across all EU companies in such an important statutory function suggests rather that as all audits should be the same regardless of sector therefore, the Rapporteur has seen fit to delete the provisions regarding large public interest entities.

The inclusion of UCITS and AIF within the definition of a PIE is of great concern to the Rapporteur as many of the provisions of the regulation, and future uses of the definition would not be proportionate when related to the multitude of funds covered. Although the rapporteur supports the need to fully audit funds and the activities of fund managers following high profile cases of fraudulent activity, believes that this can best be achieved within the depository function inside the AIFM directive and in the upcoming revision to UCITs.



## **Dialogue with National Regulators and the ESRB**

Auditors of systemically important financial institutions have a privileged view inside these companies and in many instances a sectoral view that is of relevance to financial supervisory bodies. While there has always been an obligation for auditors to report areas of concern to national regulators in many member states, this has not been taken up in many. Therefore a forum for regular dialogue should be established so discussions can take place about ongoing developments in the market. While it is accepted that auditors are not supervisors they can be a useful partner for competent authorities going forwards.

The ESRB was established to look at the build up of systemic risk across the whole EU, therefore it would be helpful for the auditors of the largest entities in the EU to have a regular dialogue with the ESRB on an anonymised basis regarding sectoral developments in systemically important financial institutions. This should take the form of a two way dialogue that should aide both parties in carrying out their responsibilities.

The audit report and audit function are critical for investor confidence and the wider public therefore the Rapporteur is proposing more granular disclosure of audit committee decisions and resulting corporate policy with regards to audit and non-audit service providers, a formalised tendering process for services and an improved dialogue for those who audit financial institution who pose a systemic risk to the EU financial system with financial regulators and supervisors, as a proportionate response to improving audit quality throughout the EU.