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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

(Text with EEA relevance)

{SEC(2011) 1384}

{SEC(2011) 1385}

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The measures adopted both in Europe and elsewhere in the direct aftermath of the financial crisis have mainly focused on the urgent need to stabilise the financial system. While the role played by banks, hedge funds, rating agencies, supervisors or central banks has been questioned and analysed in depth in many instances, little or no attention had been given to the role auditors played in the crisis – or indeed the role they should have played. Given that many banks revealed huge losses from 2007 to 2009 on the positions they had held both on and off balance sheet, it is difficult for many citizens and investors to understand how auditors could give clean audit reports to their clients (in particular banks) for those periods.

It is important to note that in a crisis where € 588.9 billion of taxpayer money was committed to support banks between October 2008 and October 2009 and where such aid accounted for 39% of EU 27 GDP in 2009¹, all components of the financial system need to be improved.

Robust audit is key to re-establishing trust and market confidence. It contributes to investor protection by providing easily accessible, cost-effective and trustworthy information about the financial statements of companies. It also potentially reduces the cost of capital for audited companies by ensuring more transparency and reliability of financial statements.

It is also important to stress that auditors are entrusted by law to conduct statutory audits. This entrustment responds to the fulfilment of a societal role in offering an opinion on the truth and fairness of the financial statements of the audited entity; the latter in turn are able to enjoy limited liability and/or the possibility of providing services in the financial sector.

Since 1984, EU rules have partially regulated statutory audit when a directive (Directive 1984/253/EEC) harmonized the procedures for the approval of auditors. Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (hereinafter Directive 2006/43/EC) was adopted in 2006 and considerably broadened the scope of the former Directive. The high degree of concentration in audit market and the multitude of approval procedures necessary to provide cross-border statutory audits prevent small and medium-sized audit firms from benefiting from the internal market. In line with Europe 2020 Strategy² that calls for an improvement of the business environment, the proposal aims at enhancing the internal market for statutory audits to allow small and medium-sized firms to grow and encourage the entry of new players.

¹ The large amounts of support approved under schemes can be explained by the fact that some Member States adopted blanket guarantee schemes which covered all their banks' debt. Member States relied mainly on guarantee measures. €546.08 billion (4.5% of GDP) was approved as recapitalisation measures, of which Member States actually used about €41.5 billion in 2009. In the period between October 2008 and October 2010 the Commission authorized financial crisis measures in the field of State aid in 22 Member States: i.e. all Member States except Bulgaria, the Czech Republic, Estonia, Malta and Romania.

² Communication from the Commission Europe 2020- A Strategy for smart, sustainable and inclusive growth, COM(2010)2020 final, 3.3.2010.

The current Commission proposal on the amendments to the Statutory Audit Directive will coexist with a Proposal of a Regulation on the specific requirements on the statutory audit of public-interest entities.³ The two proposals are part of the ongoing regulatory reform in various domains of the financial sector. As audit provides comfort on the veracity of financial statements, it remains one of the primary building blocks of financial stability. Other general initiatives that are being worked upon such as corporate governance, accounting and credit ratings are complementary to this proposal. Neither do they duplicate nor overlap with each other.

The proposal contains amendments to the provisions on the approval and registration of auditors and audit firms, on the existing principles in the Statutory Audit Directive regarding professional ethics, professional secrecy, independence and reporting as well as the associated supervision rules that remain applicable for the audit of non-public-interest entities (non-PIEs).

2. CONSULTATION OF THE INTERESTED PARTIES

The Commission conducted a consultation from 13 October to 8 December 2010⁴.

In all, almost 700 responses from various stakeholders; these included members of the profession, supervisors, investors, academics, companies, government authorities, professional bodies and individuals were received.

The consultation has shown both an appetite for as well as resistance to change; stakeholders who are currently well established are particularly opposed to changes. On the other hand, especially small and medium sized practitioners as well as investors concluded that the recent financial crisis highlighted serious shortcomings. A summary of public submissions received can be found on:

http://ec.europa.eu/internal_market/consultations/docs/2010/audit/summary_responses_en.pdf

In addition, a high level conference on audit held by the Commission on 10 February 2011⁵ allowed for a further exchange of views.

The European Parliament adopted an own-initiative report on 13 September 2011 on this matter in reaction to the Commission's Green Paper and urges the Commission to ensure more transparency and competition in the audit market⁶. The European Economic and Social Committee (EESC) adopted a similar report on 16 June 2011.⁷

The issues were also brought to the attention of the Member States at the Financial Services Committee meeting of 16 May 2011 and at the Audit Regulatory Committee meeting of 24 June 2011.

³ *Commission Proposal for a Regulation on statutory audits of annual accounts and consolidated accounts of public-interest entities.* COM(2011)X, X.X.2011.

⁴ European Commission, *Green Paper on Audit Policy: Lessons from the Crisis*, COM (2010)561, 13.10.2010. Available at:

http://ec.europa.eu/internal_market/consultations/docs/2010/audit/green_paper_audit_en.pdf

⁵ http://ec.europa.eu/internal_market/accounting/conferenc_20110209_en.htm

⁶ <http://www.europarl.europa.eu/oeil/FindByProcnum.do?lang=en&procnum=INI/2011/2037>

⁷ COM(2010)561 final, OJ C 248, 25.8.2011, p. 92.

3. IMPACT ASSESSMENT

In line with its "Better Regulation" policy, the Commission services conducted an impact assessment of the different policy options. Among the different issues that were examined, some concerned only the statutory audit of public-interest entities (PIEs) while others related to statutory audit in general. The conclusion was that there was a need for more detailed rules concerning the audit of PIEs and a separate legal instrument would be required for this. The Statutory Audit Directive would maintain its general scope.

Regarding the issues within the scope of the latter, the following problems were examined:

- High level of administrative burden resulting from fragmented national regulation;
- Provision of cross-border statutory audits allowed only if an auditor passes an aptitude test and gets approved and registered in every Member State;
- Lack of common standards across the EU on audit practice, independence, internal control of audit firms;
- Auditing standards do not take into account the size of the audited companies, in particular of SMEs;
- Associated problems regarding supervision of non-PIEs.

Further to the additional compliance cost, this results in the absence of a level playing field for audit firms and statutory auditors across the Union and low business potential for small and medium-sized practitioners (SMPs).

The impact assessment concluded that the best options to improve the existing situation would be:

- Facilitation of the cross-border recognition of audit providers' competence: principle of mutual recognition of audit firms and statutory auditors across the Union;
- Streamlining of the standards on audit practice, independence and internal control of audit firms across the Union through the introduction of international auditing standards in order to ensure that auditing standards are the same across the Union; national additions would be acceptable, where necessary;
- Adaptation of audit standards to the size of the audited entity by requesting Member States to ensure that a proportionate and simplified audit for SMEs is possible.

These issues concerned all statutory auditors and audit firms which perform statutory audits of entities which are not public-interest entities. In addition to those matters, the impact assessment covered other areas that related to the statutory audit of PIEs only.

The different policy options and their impact on stakeholders are discussed at length in the impact assessment which is available at the following website:

http://ec.europa.eu/internal_market/auditing/index_en.htm.

4. LEGAL ELEMENTS OF THE PROPOSAL

4.1. Legal basis

The amending Directive has the same legal basis as the Statutory Audit Directive. The proposal is based on Article 50 of the Treaty on the functioning of the EU, which requires the adoption of a Directive for establishment-related matters (e.g. those dealing with professional qualifications). The amended Directive is EEA relevant.

The new amended Directive will coexist with a Regulation on specific requirements concerning statutory audit of public-interest entities.

4.2. Subsidiarity and proportionality principle

In accordance with the principles of subsidiarity and proportionality as set out in Article 5 of the TEU, the objectives of the proposal cannot be sufficiently achieved by Member States and can therefore be better achieved at the Union level. In particular, the facilitation of cross-border mobility of statutory auditors and audit firms across the Union could not be achieved without intervention at the Union level. Thus, the Commission proposal respects the subsidiarity principle, as it aims at overcoming the obstacles to the development of a single market for statutory audit services and those identified during the open stakeholder consultation. In addition, the amended Directive leaves discretion to Member States on how to adapt the audit standards to the size of the audited entity that should result in better audit services to the SMEs concerned. Moreover, the proposal respects the principle of proportionality because all solutions have been drafted keeping cost-efficiency in mind. The proposal does not go beyond what is necessary to achieve the objectives pursued.

4.3. Detailed explanation of the proposal

The main modifications to the Statutory Audit Directive are:

1) Articulation between the Statutory Audit Directive and an additional legal instrument on specific requirements for the statutory audit of PIEs (Article 1)

The Commission proposes that the amended Statutory Audit Directive coexists with the Regulation on specific requirements on the statutory audit of annual financial statements and consolidated financial statements of public-interest entities. Thus, a clear articulation between the two legal texts is needed. The current provisions in the Statutory Audit Directive that only relate to the performance of a statutory audit on the annual and consolidated financial statements of the public-interest entities would be integrated and, as appropriate, amended in the Proposal of a Regulation on specific requirements on the statutory audits of annual financial statements and consolidated financial statements of PIEs. As a consequence, Articles 39 to 44 and Article 22(2) *in fine* should be deleted.

Moreover, Article 1 deals with the applicability of the amended Directive to the statutory audit of PIEs. Articles 3 to 20 (on the access to the market of auditors) apply to statutory auditors and audit firms, irrespective of the type of audited entity. However, for the rest of the Articles of the Directive, the situation is different: Article 22 on independence and objectivity, Article 25 on audit fees, Article 27 and Article 28 on audit reporting, as well as Articles 29 to 31 on quality assurance, investigations and penalties would not apply to the statutory audit of PIEs. On these issues specific more detailed rules would be enacted in the Regulation. Articles 32 to 36 regarding supervision would only apply to the statutory audit of PIEs as

regards supervision of compliance with Articles 3 to 20. Finally, other Articles apply to audits of PIEs and are completed by the Regulation on specific requirements (Articles 21, 23, 24, 26, 37 and 38).

2) Definition of "statutory audit" in order to take account of the new accountancy directive (Article 2)

The Commission also proposes a change in the definition of "statutory audit". Firstly, the statutory audit will continue to cover the instances where different Union legal texts impose an obligation on some undertakings to have their financial statements audited, depending on their legal form or on their activity. In order to guarantee the unicity of audit, the definition of "statutory audit" should also cover situations where Member States decide to impose an obligation on small undertakings to have their financial statements audited.⁸ Lastly, where a small undertaking decides voluntarily to have its financial statements audited, such audit should also be considered a statutory audit.

3) Modification of the ownership rules (Article 3 and Article 22 (2))

Another change to the Statutory Audit Directive concerns the liberalization of the ownership rules of audit firms. Currently, the Statutory Audit Directive requires that a majority of the voting rights in an audit firm is held by licensed accountant practitioners. This requirement is no longer stipulated in the proposed amendment and Member States are forbidden to require that a minimum of capital or of voting rights in an audit firm is held by statutory auditors or audit firms. However, the new Article 3(4) maintains the existing requirement that a majority of the members of the administrative or management body of the audit firm are audit firms or statutory auditors.

Permitting broader ownership should facilitate audit firms' access to capital which may result in increasing the number of providers of audit and might encourage new entrants into the market, including through expanded capital-raising in public markets.

4) Passport for audit firms (Articles 3b, Article 15 and 17)

The proposal for an amended Directive would allow audit firms to provide statutory audits in Member States other than the Member State in which they have been approved, provided that the key audit partner leading the audit is approved as an auditor in the concerned Member State. As a consequence, the burden that a multitude of approval procedures entails would be reduced and at the same time this would allow for the emergence of real pan-European audit firms. This automatic recognition of firms would not result in a reduction of supervisory quality as supervisors will continue to be required to oversee audit work carried out in their respective Member State.

However, once approval is obtained in the home Member State, the host Member State may require some form of registration of audit firms from other Member States. This registration should be carried out in accordance with Articles 15 and 17, which also concern the registration of any local audit firm.

⁸ Following the Commission proposal recasting the 4th Company Law Directive 78/660/EEC and the 7th Council Directive 83/349/EEC, the audit of accounts of small companies will no longer be required in EU law.

5) Passport for statutory auditors (Article 3a) and "softening" the conditions for a statutory auditor to be approved in a different Member State (Article 14)

The proposed modifications regarding the approval of statutory auditors from other Member States are aligned with the provisions of the Directive 2005/36 on the recognition of professional qualifications (Professional Qualifications Directive)⁹.

Article 3a would allow statutory auditors to provide cross-border statutory audit services on a temporary or occasional basis. The conditions of Articles 5 to 9 of the Professional Qualifications Directive would apply, notably the obligation to communicate the intention to provide the services in question to the relevant competent authority.

The amended Article 14 provides a Member State with the possibility to offer the statutory auditor who is approved in another Member State the choice between an adaptation period and an aptitude test, if such auditor wants to set up a permanent establishment in that Member State.

Regarding the requirements of the aptitude test, there are no substantial modifications from the previous drafting of Article 14. The test should be aimed at assessing the statutory auditor's knowledge of the laws and regulations of that Member State that are relevant for the carrying out of the statutory audit.

During the adaptation period, which should be offered to the applicant as an alternative to the aptitude test, the statutory auditor would be allowed to conduct statutory audit in the Member State, other than the one in which he or she is approved, under the supervision of a local auditor. The length of the adaptation period is three years.

Concerning supervision of statutory auditors from other Member States, the public authority that would be responsible for the status of the statutory auditor and for the assessment of the training acquired during the adaptation period is the competent authority of the host Member State, as it is the most suitable one.

6) Requirements to competent authorities to cooperate regarding educational requirements and aptitude test (Article 6 and Article 14)

In order to ensure more convergence of the educational qualifications of auditors at Union level, the competent national authorities in charge of the public oversight for statutory auditors must cooperate. Cooperation at Union level is also necessary to harmonise the requirements of the aptitude test for statutory auditors to render it more predictable and transparent.

7) Auditing standards and audit reporting (Article 26)

In order to enhance the quality of statutory audits performed in the Union, the proposal requires Member States to ensure that statutory auditors and audit firms carry out audits in accordance with the international auditing standards.

As the Proposal for a Regulation on the specific requirements on the statutory audit of public-interest entities comprises detailed provisions on the audit report, Article 28(2) is deleted.

⁹ OJ L 255, 30.9.2005, p. 22.

8) New rules regarding competent authorities (Articles 32 and 32a)

Presently, the Statutory Audit Directive requires Member States to organise a system of public oversight for statutory auditors and audit firms. In practice, this allows professional bodies to be responsible, among others, for the approval and registration of statutory auditors and audit firms and their external quality assurance, investigations and disciplinary measures. The new amendment states that the competent authority responsible for public oversight will be a public authority that will be also responsible for approval (Article 3 and Article 32), registration (Article 15) and quality assurance (Article 29).

In order to ensure that the public authorities for auditors' oversight exercise their functions in an independent and effective manner, they must also have appropriate powers and resources for carrying out investigations and access to relevant documents held by statutory auditors or audit firms (Article 32(5)). While it should not be possible any longer that a professional body is responsible for the tasks enumerated in Article 32, the competent authority responsible for the public oversight may delegate some of its tasks to other authorities or bodies with regard to the approval and registration of the statutory auditors and audit firms (Article 32a). Such delegation must be subject to several conditions and the body which bears the ultimate responsibility is the competent authority as referred to in the first paragraph of Article 32. Member States shall inform each other of the delegations granted.

9) Prohibition of contractual clauses influencing the appointment of statutory auditors or audit firms (Article 37(3))

In the context of the appointment of statutory auditors and audit firms, Article 37 prohibits clauses according to which a third party suggests, recommends or requires the audited entity to appoint a specific statutory auditor or audit firm.

10) Special rules for the statutory audit of small and medium-sized undertakings (Articles 43a and 43b)

Following the recent Commission proposal, small undertakings would no longer be required by EU law to have their financial statements audited¹⁰, although Member States may still require it. However, the requirement will continue to apply to medium-sized undertakings.

When medium-sized undertakings are audited pursuant to EU law, the amended Directive requires Member States to ensure that the way in which the auditing standards are applied are adapted to the dimension and scale of those undertakings. Moreover, small undertakings having their accounts audited either because required by national law or voluntarily, should also benefit from this proportionate application of the standards. This calibration of the audit to the size of the audited entity should result in better audit services to the small and medium-sized undertakings concerned and possibly lower cost. The proposed measure does not define in detail how proportionate application of the standards must be done; applying the subsidiarity principle, this is left to the discretion of Member States.

¹⁰ Commission Proposal for a Directive of the European Parliament and the Council on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings, COM(2011)684 final, 25.10.2011.

It is important to underline, that where a small or medium-sized undertaking is a PIE, it is the provisions contained in the draft Regulation on specific requirements on statutory audit of public-interest entities that would apply.

11) Special rules regarding delegated and implementing powers, following the entry into force of the Treaty of Lisbon (Article 48a; 48b; 48c)

Articles 8(3), 22(4), 29(2), 36(7), 45(6), 46(2), 47(3) and 47(5) (delegated and implementing acts) align the committee procedures to Articles 290 and 291 TFEU which set out the new framework for the implementing powers of the Commission. In respect of powers of the Commission to adopt implementing acts under Article 291 TFEU, such powers are governed by Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers.¹¹

The alignment is done on a case by case basis in order to allow for a review of the powers conferred by the legislators to the Commission. The implementing powers of the Commission are thus reviewed to allow certain elements of the Directive to be specified, updated and to allow the Commission to take measures to facilitate cooperation, on one hand between the auditor and the competent authorities of Member States, and, on the other hand, between the latter and those of third countries in several areas covered by the Directive.

The new Articles 48a, 48b and 48c specify the way in which the Commission shall exercise the delegated powers, the cases in which the delegation may be revoked by the legislators and the cases in which the European Parliament or the Council may object to a delegated act.

5. BUDGETARY IMPLICATION

The Commission's proposal has no direct or indirect impact on the European Union budget.

¹¹ OJ L 55, 28.2.2011, p. 13.

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

(Text with EEA relevance)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 50 thereof,

Having regard to the proposal from the European Commission,

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

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

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC lays down the conditions for the approval and registration of persons that carry out statutory audits, the rules on independence, objectivity and professional ethics applying to them, as well as the framework for their public supervision. However, it is necessary to further harmonize those rules at Union level in order to allow for more transparency and predictability of the requirements applying to such persons and to enhance their independence and objectivity in the performance of their tasks. Moreover, in order to reinforce investor protection it is important to strengthen the public oversight of statutory auditors and audit firms by enhancing the independence of Union public oversight authorities and entrusting them with adequate powers.
- (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

¹ OJ C , p. .

(EU) No [XXX] 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].

- (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.
- (4) In accordance with the Treaty, the internal market comprises an area without internal frontiers in which the free movement of goods and services and the freedom of establishment are ensured. It is necessary to enable statutory auditors and audit firms to develop their statutory audit service activities within the Union by offering them the possibility to provide such services in a Member State other than that in which they were approved. Enabling statutory auditors and audit firms to provide statutory audits under their home-country professional titles in a host Member State addresses, in particular, the needs of groups of undertakings which, owing to the increasing trade flows resulting from the internal market, establish financial statements in several Member States and must have them audited under Union law. The elimination of barriers to the development of statutory audit services between Member States would contribute to the integration of the Union audit market.
- (5) Statutory audit requires adequate knowledge of matters such as company law, fiscal law and social law which may vary from one Member State to another. Therefore, to ensure the quality of the statutory audit services provided on its territory it should be possible for a Member State to impose a compensation measure where a statutory auditor approved in another Member State wishes to be approved also on the territory of that Member State in order to set up a permanent establishment. Such measure should take account of the statutory auditor's professional experience. It should not lead to a disproportionate burden on the statutory auditor concerned nor hinder or render less attractive the provision of statutory audit services. The statutory auditor concerned should be allowed to choose between an aptitude test and an adaptation period such as defined in Directive 2005/36/EC of the European Parliament and of the Council of 7 September 2005 on the recognition of professional qualifications². At the end of the adaptation period, the statutory auditor should be able to integrate into the profession in the host Member State after the assessment that he possesses professional experience in that Member State.
- (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.
- (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

² OJ L 255, 30.9.2005, p. 22.

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.

- (8) In order to enhance the credibility and transparency of the quality assurance reviews performed in the Union, Member States' quality assurance systems should be governed by the competent authorities designated by the Member States to ensure the public oversight of statutory auditors and audit firms. Quality assurance reviews aim at preventing or addressing potential deficiencies in the manner in which statutory audits are carried out. In order to ensure that the quality assurance reviews attain their scope, when performing the reviews, the competent authorities should take into account the scale and dimension of the activity of the statutory auditors and audit firms.
- (9) The public oversight of statutory auditors and audit firms encompasses the approval, registration of statutory auditors 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.
- (10) In order to ensure that the public oversight authorities fulfil their tasks in an effective manner, they should have sufficient powers to do so. In particular, Member States should ensure that the public oversight authorities have the power to initiate and carry out investigations, and that they have access to any documents held by statutory auditors or audit firms relevant to the performance of their tasks. In addition, the public oversight authorities should have enough human and financial resources to perform their tasks.
- (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 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.

- (12) The "Small Business Act"³ adopted in June 2008 and revised in February 2011⁴ recognises the central role played by small and medium-sized enterprises in the Union's economy and aims at improving the overall approach to entrepreneurship and to anchor the "Think Small First" principle in policy making. The Europe 2020 Strategy⁵ adopted in March 2010 also calls for an improvement of the business environment, especially for small and medium-sized enterprises, including through reducing the transaction costs of doing business in the Union. Article [34] of Directive [XXX] of the European Parliament and of the Council of [XXX] on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings does not require small undertakings to have their financial statements audited.
- (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.
- (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.
- (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.
- (16) The threshold of EUR 50 000 in Article 45(1) of Directive 2006/43/EC was aligned on Article 3(2)(c) and (d) of Directive 2003/71/EC of the European Parliament and of the Council of 4 November 2003 on the prospectus to be published when securities are offered to the public or admitted to trading and amending Directive 2001/34/EC⁶. The thresholds set out in Directive 2003/71/EC have been increased to EUR 100 000 by Article 1(3) of Directive 2010/73/EU of the European Parliament and of the Council⁷. For that reason, corresponding adjustments should be made to the threshold set out in Article 45(1) of Directive 2006/43/EC.

³ Communication from the Commission to the Council, the European Parliament, the European Economic and Social Committee and the Committee of the Regions – A "Small Business Act" for Europe {SEC(2008)2102}.

⁴ Communication from the Commission to the European Parliament, the Council, the European Economic and Social Committee and the Committee of the Regions – Review of the "Small Business Act" for Europe COM(2011)78 final.

⁵ Communication from the Commission Europe 2020- A Strategy for smart, sustainable and inclusive growth, COM(2010)2020 final.

⁶ OJ L 345, 31.12.2003, p. 64.

⁷ OJ L 327, 11.12.2010, p. 1.

- (17) In order to give full effect to the new framework provided for in the Treaty on the Functioning of the European Union, it is necessary to adapt and replace the implementing powers designed under Article 202 of the Treaty establishing the European Community with the appropriate provisions in accordance with Articles 290 and 291 of the Treaty on the Functioning of the European Union.
- (18) The alignment of the procedures for the adoption of delegated and implementing acts by the Commission to the Treaty on the Functioning of the European Union and, in particular, to Articles 290 and 291 thereof, should be effected on a case-by-case basis. The power to adopt acts in accordance with Article 290 of the Treaty on the Functioning of the European Union should be delegated to the Commission in order to take into account the developments in auditing and the audit profession and to facilitate the supervision of statutory auditors and audit firms. In particular, the use of delegated acts is necessary to specify the requirements regarding the approval of natural persons as statutory auditors and the principles of independence and objectivity that statutory auditors and audit firms have to comply with, and to amend the definition of international auditing standards. In the field of auditor supervision the use of delegated acts is necessary to develop the procedures for the exchange of information between the competent authorities of Member States, the modalities in which cross-border investigations should take place and the modalities of cooperation between the competent authorities of Member States and those of third countries. 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.

- (19) In order to ensure uniform conditions for the implementation of the declarations on the equivalence of third country auditor oversight regimes or the adequacy of third country competent authorities, in so far as they concern individual third countries or individual competent authorities of third countries, implementing powers should be conferred on the Commission. Those powers should be exercised in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by the Member States of the Commission's exercise of implementing powers⁸.
- (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.
- (21) Directive 2006/43/EC should therefore be amended accordingly,

⁸ OJ L 55, 28.2.2011, p. 13.

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

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

1. Article 1 is amended as follows:

(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].

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.’

2. Article 2 is amended as follows:

(a) Point 1 is replaced by the following:

'1. ‘statutory audit’ means an audit of annual accounts or consolidated accounts insofar as:

(a) required by Union law;

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

(c) voluntarily conducted by small undertakings;’;

(b) Point 10 is replaced by the following:

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

(c) point 11 is deleted;

(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 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.

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

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

(*****) OJ L'

- (e) The following points 17 to 20 are added:

'17. 'medium-sized undertakings' means the undertakings referred to in Article 3(2) of Directive XX/XX [the directive replacing the 4th and 7th company law directives];

18. 'small undertakings' means the undertakings referred to in Article 3(1) of Directive XX/XX [the directive replacing the 4th and 7th company law directives];

19. 'home Member State' means a Member State in which a statutory auditor or audit firm is approved in accordance with Article 3(1);

20. 'host Member State' means a Member State in which a statutory auditor approved by his or her Member State seeks to be also approved in accordance with Article 14, or a Member State in which a statutory auditor or audit firm approved by his, her or its Member State provides statutory audits on a temporary or occasional basis, or a Member State in which an audit firm approved by its home Member State seeks recognition of such approval in accordance with Article 3b.'

3. Article 3 is amended as follows:

(a) paragraph 2 is amended as follows:

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

'Each Member State shall designate the competent authority referred to in Article 32 as authority responsible for approving statutory auditors and audit firms.';

(ii) the second paragraph is deleted;

(b) paragraph 4 is amended as follows:

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

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

'(c) a majority of the members of the administrative or management body of the entity must be audit firms which are approved in any Member State or natural persons who satisfy at least the conditions imposed by Article 4 and Articles 6 to 12. Where such a body has no more than two members, one of these members must satisfy at least the conditions in this point.';

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

'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.'.

4. The following Articles 3a and 3b are inserted:

'Article 3a

Cross-border provision of services by statutory auditors

By derogation from Article 3(1) of this Directive, a statutory auditor who is approved in a Member State shall be entitled to perform statutory audits in another Member State on a temporary or occasional basis. Articles 5 to 9 of Directive 2005/36/EC of the European Parliament and of the Council* shall apply.

Article 3b

Recognition of audit firms

1. By derogation from Article 3(1), an audit firm which is approved in a Member State shall be entitled to perform statutory audits in another Member State on a temporary, occasional or permanent basis, provided that Article 3(4)(a) is complied with.

2. An audit firm that wishes to carry out statutory audits in a Member State other than the one in which it has been approved shall register with the competent authority in the host Member State in accordance with Articles 15 and 17.

3. The competent authority in the host Member State shall register the audit firm upon presentation of a certificate attesting to its registration with the competent authority in the home Member State. The competent authority in the host Member State may require that the certificate issued by the competent authority in the home Member State be not more than three months old. It shall inform the competent authority in the home Member State of its registration.

* OJ L 255, 30.9.2005, p. 22.'

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

'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.'

6. Article 8 is amended as follows:

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

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

(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.'

7. Article 14 is replaced by the following:

'Article 14

Approval of statutory auditors from another Member State

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.

2. Member States shall offer the applicant the choice between an adaptation period as defined in point (g) of Article 3(1) of Directive 2005/36/EC and an aptitude test as defined in point (h) of that Article. For the purposes of this Article, Article 14(3) of Directive 2005/36/EC shall not apply.

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

The aptitude test shall be conducted in one of the languages permitted by the language rules applicable in the Member State concerned. 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 audits.

3. The competent authorities referred to in Article 32 shall cooperate in view of achieving a convergence of the requirements of the adaptation period and the aptitude test. They shall enhance the transparency and predictability of the requirements. They shall cooperate with ESMA and the competent authorities referred to in Article [XXX] Regulation [XXX] of [XXX] in so far as such convergence relates to the statutory audits of public-interest entities.'

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

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

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

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

10. In Article 21, paragraph 2 is deleted.

11. Article 22 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. Member States shall ensure that when carrying out a statutory audit, 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.'

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

(c) paragraph 4 is replaced by the following:

'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.'

12. Article 26 is replaced by the following:

Article 26

Auditing standards

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 Regulation XX/XX.

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:

(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;

(b) are conducive to the Union public good.

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

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.

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.’.

13. In Article 28, paragraph 2 is deleted.

14. Article 29 is amended as follows:

(a) paragraph 1 is amended as follows:

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

‘(a) the quality assurance system shall be 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.’;

(ii) the following point (k) is added:

‘(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.’;

(iii) the following subparagraph is inserted after point (k):

‘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.’;

(b) paragraph 2 is replaced by the following:

‘2. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of further specifying the requirements concerning points (a), (b) and (e) to (j) of the first subparagraph of paragraph 1.’.

15. Article 32 is amended as follows:

(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 following:

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

In order to carry out its tasks under this Directive, the competent authority shall have access to any document in any form held by statutory auditors or audit firms and to receive and retain a copy thereof. It shall also have the right to demand information from any person and if necessary to summon and question a person with a view to obtaining information.’;

- (e) paragraph 6 is replaced by the following:

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

16. The following Article 32a is inserted:

‘Article 32a

Delegation of tasks

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.

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’.

17. Article 36 is amended as follows:

(a) paragraph 3 is replaced by the following:

‘3. Paragraph 2 shall not prevent competent authorities from exchanging confidential information. Information thus exchanged shall be covered by the obligation of professional secrecy, to which persons employed or formerly employed by competent authorities are subject. The obligation of professional secrecy shall also apply to any other person to whom the competent authorities have delegated tasks in relation to the purposes set out in this Directive.’;

(b) paragraph 7 is replaced by the following:

‘7. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of specifying the procedures for the exchange of information and the modalities for cross-border investigations provided for in paragraphs 2 and 4 of this Article.’.

18. In Article 37, the following paragraph 3 is added:

‘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.’

19. Chapter X is deleted.

20. The following Chapter Xa, including Articles 43a and 43b, is inserted:

‘CHAPTER Xa

SPECIAL PROVISIONS FOR THE STATUTORY AUDIT OF SMALL AND MEDIUM-SIZED UNDERTAKINGS

Article 43a

Simplified audit for medium-sized undertakings

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.

When undertaking quality assurance reviews, the competent authorities shall take account of the proportionate application of the auditing standards.

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

Article 43b

Small undertakings

Where a Member State requires the statutory audit of the annual or consolidated accounts of small undertakings, Article 43a shall apply *mutatis mutandis*.

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.

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

21. Article 45 is amended as follows:

(a) paragraph 1 is replaced by the following:

'1. The competent authorities of a Member State shall, in accordance with Article 15, 16 and 17, register every third-country auditor and audit entity that provides an audit report concerning the annual or consolidated accounts of an undertaking incorporated outside the Union whose transferable securities are admitted to trading on a regulated market of that Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC, except when the undertaking is an issuer exclusively of outstanding debt securities for which one of the following applies:

- (a) they are admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(b) of Directive 2004/109/EC of the European Parliament and of the Council(*) prior to 31 December 2010 the denomination per unit of which is at least EUR 50 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least 50 000;
- (b) they are admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(b) of Directive 2004/109/EC from 31 December 2010 the denomination per unit of which is at least EUR 100 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 100 000.

(*) OJ L 390, 31.12.2004, p.38.';

(b) paragraph 5 is amended as follows:

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

‘(e) it publishes on its website an annual transparency report which includes the information referred to in Article X of Regulation [XXX] of [XXX] or it complies with equivalent disclosure requirements.’;

(ii) the following subparagraph is added:

‘A Member State may register a third-country auditor only if he or she meets the requirements set out in points (a), (d) and (e) of the first subparagraph.’;

(d) paragraph 6 is replaced by the following:

‘6. In order to ensure the uniform conditions of application of paragraph 5(d) of this Article, the Commission shall be empowered to decide upon the equivalence referred to therein by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Member States may assess the equivalence referred to in paragraph 5(d) of this Article as long as the Commission has not taken any such decision.

The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of establishing the general equivalence criteria to be used when assessing whether the audits of the financial statements referred to in paragraph 1 of this Article are carried out in accordance with international auditing standards as referred to in Article 26 and the requirements laid down in Articles 22, 24 and 25. Such criteria which are applicable to all third countries shall be used by Member States when assessing equivalence at national level.’.

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

‘2. In order to ensure uniform conditions of application of paragraph 1 of this Article, the Commission shall be empowered to decide upon the equivalence referred to therein by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Once the Commission has recognized the equivalence referred to in paragraph 1 of this Article, Member States may decide to rely on such equivalence partially or entirely and thus to disapply or modify the requirements in Article 45(1) and (3) partially or entirely. Member States may assess the equivalence referred to in paragraph 1 of this Article or rely on the assessments carried out by other Member States as long as the Commission has not taken such a decision. If the Commission decides that the requirement of equivalence referred to in paragraph 1 of this Article is not complied with, it may allow the auditors and audit entities concerned to continue their audit activities in accordance with the requirements of the relevant Member State during an appropriate transitional period.

The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of establishing the general equivalence criteria, based on the requirements laid down in Articles 29, 30 and 32, which shall be used when assessing whether the public oversight, quality assurance, investigation and penalties systems of a third country are equivalent to those of the Union. Such general criteria

shall be used by Member States when assessing equivalence at national level in the absence of a Commission decision in respect of the third country concerned.’.

23. Article 47 is amended as follows:

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

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

(b) paragraph 3 is replaced by the following:

‘3. In order to facilitate cooperation, the Commission shall be empowered to decide upon the adequacy referred to in paragraph 1(c) of this Article by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Member States shall take the measures necessary to comply with the Commission's Decision.

The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of establishing the general adequacy criteria in accordance with which the Commission shall assess whether the competent authorities of third countries may be recognized as adequate to cooperate with the competent authorities of Member States on the exchange of audit working papers or other documents held by statutory auditors and audit firms. The general adequacy criteria shall be based on the requirements of Article 36 or essentially equivalent functional results to a direct exchange of audit working papers or other documents held by statutory auditors or audit firms.’;

(c) paragraph 5 is replaced by the following:

‘5. The Commission shall be empowered to adopt delegated acts in accordance with Article 48a for the purpose of defining the exceptional cases referred to in paragraph 4 of this Article in order to facilitate cooperation between competent authorities.’.

24. In Article 48, paragraph 1 and 2 are replaced by the following:

‘1. The Commission shall be assisted by a committee (hereinafter referred to as the Committee). That Committee shall be a Committee within the meaning of Regulation (EU) No 182/2011 of the European Parliament and of the Council(*).

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

(*) OJ L55, 28.2.2011, p.13.’;

25. The following Article 48a is inserted:

'Article 48a

Exercise of the delegation

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The power to adopt delegated acts referred to in Articles 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*].
3. The delegation of power referred to in Articles 8(3), 22(4), 26(3), 29(2), 36(7), 45(6), 46(2), 47(3) and 47(5) may be revoked at any time by the European Parliament or by the Council. A decision to revoke shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to 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.'

Article 2

Transposition

1. Member States shall bring into force the laws, regulations and administrative provisions necessary to comply with this Directive by [xxx] at the latest. They shall forthwith communicate to the Commission the text of those provisions and a correlation table between those provisions and this Directive.

When Member States adopt those provisions, they shall contain a reference to this Directive or be accompanied by such a reference on the occasion of their official publication. Member States shall determine how such reference is to be made.
2. Member States shall communicate to the Commission the text of the main provisions of national law which they adopt in the field covered by this Directive.

Article 3

Entry into force

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

Article 4

Addressees

This Directive is addressed to the Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President