

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 (Text with EEA relevance)

CHAPTER VIII

PUBLIC OVERSIGHT AND REGULATORY ARRANGEMENTS BETWEEN MEMBER STATES

Article 32

Principles of public oversight

- 1 Member States shall organise an effective system of public oversight for statutory auditors and audit firms based on the principles set out in paragraphs 2 to 7.
- 2 All statutory auditors and audit firms shall be subject to public oversight.
- 3 The system of public oversight shall be governed by non-practitioners who are knowledgeable in the areas relevant to statutory audit. Member States may, however, allow a minority of practitioners to be involved in the governance of the public oversight system. Persons involved in the governance of the public oversight system shall be selected in accordance with an independent and transparent nomination procedure.
- 4 The system of public oversight shall have the ultimate responsibility for the oversight of:
 - a the approval and registration of statutory auditors and audit firms;
 - b the adoption of standards on professional ethics, internal quality control of audit firms and auditing, and
 - c continuing education, quality assurance and investigative and disciplinary systems.
- 5 The system of public oversight shall have the right, where necessary, to conduct investigations in relation to statutory auditors and audit firms and the right to take appropriate action.
- 6 The system of public oversight shall be transparent. This shall include the publication of annual work programmes and activity reports.
- 7 The system of public oversight shall be adequately funded. The funding for the public oversight system shall be secure and free from any undue influence by statutory auditors or audit firms.

Article 33

Cooperation between public oversight systems at Community level

Member States shall ensure that regulatory arrangements for public oversight systems permit effective cooperation at Community level in respect of Member States' oversight activities. To that end, each Member State shall make one entity specifically responsible for ensuring that cooperation.

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Article 34

Mutual recognition of regulatory arrangements between Member States

1 Regulatory arrangements of Member States shall 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.

2 In the case of a statutory audit of consolidated accounts, the Member State requiring the statutory audit of the consolidated accounts may not impose additional requirements in relation to the statutory audit concerning registration, quality assurance review, auditing standards, professional ethics and independence on a statutory auditor or audit firm carrying out a statutory audit of a subsidiary established in another Member State.

3 In the case of a company whose securities are traded on a regulated market in a Member State other than that in which that company has its registered office, the Member State in which the securities are traded may not impose any additional requirements in relation to the statutory audit concerning registration, quality assurance review, auditing standards, professional ethics and independence on a statutory auditor or audit firm carrying out the statutory audit of the annual or consolidated accounts of that company.

Article 35

Designation of competent authorities

1 Member States shall designate one or more competent authorities for the purposes of the tasks provided for in this Directive. Member States shall inform the Commission of their designation.

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

Article 36

Professional secrecy and regulatory cooperation between Member States

1 The competent authorities of Member States responsible for approval, registration, quality assurance, inspection and discipline shall cooperate with each other whenever necessary for the purpose of carrying out their respective responsibilities under this Directive. The competent authorities in a Member State responsible for approval, registration, quality assurance, inspection and discipline shall render assistance to competent authorities in other Member States. In particular, competent authorities shall exchange information and cooperate in investigations related to the carrying-out of statutory audits.

2 The obligation of professional secrecy shall apply to all persons who are employed or who have been employed by competent authorities. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the laws, regulations or administrative procedures of a Member State.

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.

4 Competent authorities shall, on request, and without undue delay, supply any information required for the purpose referred to in paragraph 1. Where necessary, the competent authorities receiving any such request shall, without undue delay, take the necessary measures to gather the required information. Information thus supplied shall be covered by the obligation of professional secrecy to which the persons employed or formerly employed by the competent authorities that received the information are subject.

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 therefor.

The competent authorities may refuse to act on a request for information where:

- a supplying information might adversely affect the sovereignty, security or public order of the requested Member State or breach national security rules; or
- b judicial proceedings have already been initiated in respect of the same actions and against the same statutory auditors or audit firms before the authorities of the requested Member State; or
- c final judgment has already been passed in respect of the same actions and on the same statutory auditors or audit firms by the competent authorities of the requested Member State.

Without prejudice to the obligations to which they are subject in judicial proceedings, competent authorities which receive information pursuant to paragraph 1 may use it only for the exercise of their functions within the scope of this Directive and in the context of administrative or judicial proceedings specifically related to the exercise of those functions.

5 Where a competent authority concludes that activities contrary to the provisions of this Directive are being or have been carried out on the territory of another Member State, it shall notify the competent authority of the other Member State of that conclusion in as specific a manner as possible. The competent authority of the other Member State shall take appropriate action. It shall inform the notifying competent authority of the outcome and, to the extent possible, of significant interim developments.

6 A competent authority of one Member State may also request that an investigation be carried out by the competent authority of another Member State on the latter's territory.

It may further request that some of its own personnel be allowed to accompany the personnel of the competent authority of that other Member State in the course of the investigation.

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

The competent authorities may refuse to act on a request for an investigation to be carried out as provided for in the first subparagraph, or on a request for its personnel to be accompanied by personnel of a competent authority of another Member State as provided for in the second subparagraph, where:

- a such an investigation might adversely affect the sovereignty, security or public order of the requested Member State; or
- b judicial proceedings have already been initiated in respect of the same actions and against the same persons before the authorities of the requested Member State; or
- c final judgment has already been passed in respect of the same actions on such persons by the competent authorities of the requested Member State.

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7 In accordance with the procedure referred to in Article 48(2) the Commission may adopt implementing measures in order to facilitate cooperation between competent authorities on the procedures for the exchange of information and modalities for cross-border investigations provided for in paragraphs 2 to 4 of this Article.