

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 X

### **SPECIAL PROVISIONS FOR THE STATUTORY AUDITS OF PUBLIC-INTEREST ENTITIES**

#### *Article 39*

#### **Application to non-listed public-interest entities**

Member States may exempt public-interest entities which have not issued transferable securities admitted to trading on a regulated market within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC and their statutory auditor(s) or audit firm(s) from one or more of the requirements in this Chapter.

#### *Article 40*

#### **Transparency report**

1 Member States shall ensure that statutory auditors and audit firms that carry out statutory audit(s) of public-interest entities publish on their websites, within three months of the end of each financial year, annual transparency reports that include at least the following:

- a a description of the legal structure and ownership;
- b where the audit firm belongs to a network, a description of the network and the legal and structural arrangements in the network;
- c a description of the governance structure of the audit firm;
- d a description of the internal quality control system of the audit firm and a statement by the administrative or management body on the effectiveness of its functioning;
- e an indication of when the last quality assurance review referred to in Article 29 took place;
- f a list of public-interest entities for which the audit firm has carried out statutory audits during the preceding financial year;
- g a statement concerning the audit firm's independence practices which also confirms that an internal review of independence compliance has been conducted;
- h a statement on the policy followed by the audit firm concerning the continuing education of statutory auditors referred to in Article 13;
- i financial information showing the importance of the audit firm, such as the total turnover divided into fees from the statutory audit of annual and consolidated accounts, and fees charged for other assurance services, tax advisory services and other non-audit services;
- j information concerning the basis for the partners' remuneration.

Member States may in exceptional circumstances disapply the requirement in point (f) to the extent necessary to mitigate an imminent and significant threat to the personal security of any person.

2 The transparency report shall be signed by the statutory auditor or audit firm, as the case may be. This can be done, for example, by means of an electronic signature as defined in Article 2(1) of Directive 1999/93/EC.

#### Article 41

#### Audit committee

1 Each public-interest entity shall have an audit committee. The Member State shall determine whether audit committees are to be composed of non-executive members of the administrative body and/or members of the supervisory body of the audited entity and/or members appointed by the general meeting of shareholders of the audited entity. At least one member of the audit committee shall be independent and shall have competence in accounting and/or auditing.

In public-interest entities which meet the criteria of Article 2(1), point (f) of Directive 2003/71/EC<sup>(1)</sup>, Member States may permit the functions assigned to the audit committee to be performed by the administrative or supervisory body as a whole, provided at least that when the chairman of such a body is an executive member, he or she is not the chairman of the audit committee.

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

- a monitor the financial reporting process;
- b monitor the effectiveness of the company's internal control, internal audit where applicable, and risk management systems;
- c monitor the statutory audit of the annual and consolidated accounts;
- d review and monitor the independence of the statutory auditor or audit firm, and in particular the provision of additional services to the audited entity.

3 In a public-interest entity, the proposal of the administrative or supervisory body for the appointment of a statutory auditor or audit firm shall be based on a recommendation made by the audit committee.

4 The statutory auditor or audit firm shall report to the audit committee on key matters arising from the statutory audit, and in particular on material weaknesses in internal control in relation to the financial reporting process.

5 Member States may allow or decide that the provisions laid down in paragraphs 1 to 4 shall not apply to any public-interest entity that has a body performing equivalent functions to an audit committee, established and functioning according to provisions in place in the Member State in which the entity to be audited is registered. In such a case the entity shall disclose which body carries out these functions and how it is composed.

6 Member States may exempt from the obligation to have an audit committee:

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

- b any public-interest entity which is a collective investment undertaking as defined in Article 1(2) of Directive 85/611/EEC. Member States may also exempt public-interest entities the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of its underlying investments, provided that those collective investment undertakings are authorised and subject to supervision by competent authorities and that they have a depositary exercising functions equivalent to those under Directive 85/611/EEC;
- c any public-interest entity the sole business of which is to act as issuer of asset-backed securities as defined in Article 2(5) of Commission Regulation (EC) No 809/2004<sup>(2)</sup>. In such instances, the Member State shall require the entity to 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;
- d any credit institution within the meaning of Article 1(1) of Directive 2000/12/EC whose shares are not admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC and which has, in a continuous or repeated manner, issued only debt securities, provided that the total nominal amount of all such debt securities remains below EUR 100 000 000 and that it has not published a prospectus under Directive 2003/71/EC.

#### *Article 42*

### **Independence**

1 In addition to the provisions laid down in Articles 22 and 24, Member States shall ensure that statutory auditors or audit firms that carry out the statutory audit of a public-interest entity:

- a confirm annually in writing to the audit committee their independence from the audited public-interest entity;
- b disclose annually to the audit committee any additional services provided to the audited entity; and
- c discuss with the audit committee the threats to their independence and the safeguards applied to mitigate those threats as documented by them pursuant to Article 22(3).

2 Member States shall ensure that the key audit partner(s) responsible for carrying out a statutory audit rotate(s) from the audit engagement within a maximum period of seven years from the date of appointment and is/are allowed to participate in the audit of the audited entity again after a period of at least two years.

3 The statutory auditor or the key audit partner who carries out a statutory audit on behalf of an audit firm shall not be allowed to take up a key management position in the audited entity before a period of at least two years has elapsed since he or she resigned as a statutory auditor or key audit partner from the audit engagement.

#### *Article 43*

### **Quality assurance**

The quality assurance review referred to in Article 29 shall be carried out at least every three years for statutory auditors or audit firms that carry out statutory audits of public-interest entities.

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*Status: This is the original version (as it was originally adopted).*

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- (1) 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 ([OJ L 345, 31.12.2003, p. 64](#)).
- (2) [OJ L 149, 30.4.2004, p. 1](#).