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)

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)

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 44(2)(g) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Economic and Social Committee[(1)],

Acting in accordance with the procedure laid down in Article 251 of the Treaty[(2)],

Whereas:

(1) Currently, the Fourth Council Directive 78/660/EEC of 25 July 1978 on the annual accounts of certain types of companies[(3)], the Seventh Council Directive 83/349/EEC of 13 June 1983 on consolidated accounts[(4)], Council Directive 86/635/EEC of 8 December 1986 on the annual accounts and consolidated accounts of banks and other financial institutions[(5)] and Council Directive 91/674/EEC of 19 December 1991 on the annual accounts and consolidated accounts of insurance undertakings[(6)] require that the annual accounts or consolidated accounts be audited by one or more persons entitled to carry out such audits.

(2) The conditions for the approval of persons responsible for carrying out the statutory audit were laid down in the Eighth Council Directive 84/253/EEC of 10 April 1984 on the approval of persons responsible for carrying out the statutory audits of accounting documents[(7)].

(3) The lack of a harmonised approach to statutory auditing in the Community was the reason why the Commission proposed, in its 1998 Communication on the statutory audit in the European Union: the way forward[(8)], the creation of a Committee on Auditing which could develop further action in close cooperation with the accounting profession and Member States.

(4) On the basis of the work of that Committee, on 15 November 2000 the Commission issued a Recommendation on quality assurance for the statutory audit in the

European Union: minimum requirements[9] and on 16 May 2002 a Recommendation on Statutory Auditors' Independence in the EU: A Set of Fundamental Principles[10].

(5) This Directive aims at high-level — though not full — harmonisation of statutory audit requirements. A Member State requiring statutory audit may impose more stringent requirements, unless otherwise provided for by this Directive.

(6) Audit qualifications obtained by statutory auditors on the basis of this Directive should be considered equivalent. It should therefore no longer be possible for Member States to insist that a majority of the voting rights in an audit firm must be held by locally approved auditors or that a majority of the members of the administrative or management body of an audit firm must be locally approved.

(7) The statutory audit requires adequate knowledge of matters such as company law, fiscal law and social law. Such knowledge should be tested before a statutory auditor from another Member State can be approved.

(8) In order to protect third parties, all approved auditors and audit firms should be entered in a register which is accessible to the public and which contains basic information concerning statutory auditors and audit firms.

(9) Statutory auditors should adhere to the highest ethical standards. They should therefore be subject to professional ethics, covering at least their public-interest function, their integrity and objectivity and their professional competence and due care. The public-interest function of statutory auditors means that a broader community of people and institutions rely on the quality of a statutory auditor's work. Good audit quality contributes to the orderly functioning of markets by enhancing the integrity and efficiency of financial statements. The Commission may adopt implementing measures on professional ethics as minimum standards. When doing so, it might consider the principles contained in the International Federation of Accountants (IFAC) Code of Ethics.

(10) It is important that statutory auditors and audit firms respect the privacy of their clients. They should therefore be bound by strict rules on confidentiality and professional secrecy which, however, should not impede proper enforcement of this Directive. Those confidentiality rules should also apply to any statutory auditor or audit firm which has ceased to be involved in a specific audit task.

(11) Statutory auditors and audit firms should be independent when carrying out statutory audits. 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. The conclusion that there is a relationship which compromises the auditor's independence may be different as regards the relationship between the auditor and the audited entity from that in respect of the relationship between the network and the audited entity. Where a cooperative within the meaning of Article 2(14), or a similar entity as referred to in Article 45 of Directive 86/635/EEC, is required or permitted under national provisions to be a member of a non-profit-making

auditing entity, an objective, reasonable and informed party would not conclude that the membership-based relationship compromises the statutory auditor's independence, provided that when such an auditing entity is conducting a statutory audit of one of its members, the principles of independence are applied to the auditors carrying out the audit and those persons who may be in a position to exert influence on the statutory audit. Examples of threats to the independence of a statutory auditor or audit firm are a direct or indirect financial interest in the audited entity and the provision of additional non-audit services. Also, the level of fees received from one audited entity and/or the structure of the fees can threaten the independence of a statutory auditor or audit firm. Types of safeguards to be applied to mitigate or eliminate those threats include prohibitions, restrictions, other policies and procedures, and disclosure. Statutory auditors and audit firms should refuse to undertake any additional non-audit service that compromises their independence. The Commission may adopt implementing measures on independence as minimum standards. In doing so, the Commission might take into consideration the principles contained in the abovementioned Recommendation of 16 May 2002. In order to determine the independence of auditors, the concept of a ‘network’ in which auditors operate needs to be clear. In this regard, various circumstances have to be taken into account, such as instances where a structure could be defined as a network because it is aimed at profit- or cost-sharing. The criteria for demonstrating that there is a network should be judged and weighed on the basis of all factual circumstances available, such as whether there are common usual clients.

(12) In cases of self-review or self-interest, where appropriate to safeguard the statutory auditor's or audit firm's independence, it should be for the Member State rather than the statutory auditor or the audit firm to decide whether the statutory auditor or audit firm should resign or abstain from an audit engagement with regard to its audit clients. However, this should not lead to a situation where Member States have a general duty to prevent statutory auditors or audit firms from providing non-audit services to their audit clients. For the purposes of determining whether it is appropriate, in cases of self-interest or self-review, that a statutory auditor or audit firm should not carry out statutory audits, so as to safeguard the statutory auditor's or audit firm's independence, the factors to be taken into account should include the question whether or not the audited public-interest entity has 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 of the European Parliament and of the Council of 21 April 2004 on markets in financial instruments[(11)].

(13) It is important to ensure consistently high quality in all statutory audits required by Community law. All statutory audits should therefore be carried out on the basis of international auditing standards. Measures implementing those standards in the Community should be adopted in accordance with Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission[(12)]. A technical committee or group on auditing should assist the Commission in the assessment of the technical soundness of all the international auditing standards, and should also involve the system of public oversight bodies of the Member States. In order to achieve a maximum degree of harmonisation,

Member States should be allowed to impose additional national audit procedures or requirements only if these stem from specific national legal requirements relating to the scope of the statutory audit of annual or consolidated accounts, meaning that those requirements have not been covered by the adopted international auditing standards. Member States could maintain those additional audit procedures until the audit procedures or requirements have been covered by subsequently adopted international auditing standards. If, however, the adopted international auditing standards contain audit procedures the performance of which would create a specific legal conflict with national law stemming from specific national requirements related to the scope of the statutory audit, Member States may carve out the conflicting part of the international auditing standard as long as those conflicts exist, provided the measures referred to in Article 26(3) are applied. Any addition or carving out by Member States should add a high level of credibility to the annual accounts of companies and be conducive to the public good. The above implies that Member States may, for example, require an additional auditor's report to the supervisory board or prescribe other reporting and audit requirements based on national corporate governance rules.

(14) For the Commission to adopt an international auditing standard for application in the Community, it must be generally accepted internationally and have been developed with full participation of all interested parties following an open and transparent procedure, add to the credibility and quality of annual accounts and consolidated accounts and be conducive to the European public good. The need for the adoption of an International Auditing Practice Statement as part of a standard should be assessed in accordance with Decision 1999/468/EC on a case-by-case basis. The Commission should ensure that before the start of the adoption process a review is conducted in order to verify whether those requirements have been met and report to members of the Committee set up under this Directive on the outcome of the review.

(15) In the case of consolidated accounts, it is important that there be a clear definition of responsibilities as between the statutory auditors who audit components of the group. For this purpose, the group auditor should bear full responsibility for the audit report.

(16) In order to increase comparability between companies applying the same accounting standards, and to enhance public confidence in the audit function, the Commission may adopt a common audit report for the audit of annual accounts or consolidated accounts prepared on the basis of approved international accounting standards, unless an appropriate standard for such a report has been adopted at Community level.

(17) Regular inspections are a good means of achieving a consistently high quality in statutory audits. Statutory auditors and audit firms should therefore be subject to a system of quality assurance that is organised in a manner which is independent from the reviewed statutory auditors and audit firms. For the application of Article 29 on quality assurance systems, Member States may decide that if individual auditors have a common quality assurance policy, only the requirements for audit firms need to be considered. Member States may organise the system of quality assurance in such a manner that each individual auditor is to be subject to a quality assurance review at least every six years. In this respect, the funding for the quality assurance system

should be free from undue influence. The Commission should have the competence to adopt implementing measures in matters relevant to the organisation of quality assurance systems, and in respect of its funding, in cases where public confidence in the quality assurance system is seriously compromised. The public oversight systems of Member States should be encouraged to find a coordinated approach to the carrying-out of quality assurance reviews with a view to avoiding the imposition of unnecessary burdens on the parties concerned.

(18) Investigations and appropriate penalties help to prevent and correct inadequate execution of a statutory audit.

(19) Statutory auditors and audit firms are responsible for carrying out their work with due care and thus should be liable for the financial damage caused by a lack of the care owed. However, the auditors' and audit firms' ability to obtain professional indemnity insurance cover may be affected by whether they are subject to unlimited financial liability. For its part, the Commission intends examining these issues, taking into account the fact that liability regimes of the Member States may vary considerably.

(20) Member States should organise an effective system of public oversight for statutory auditors and audit firms on the basis of home country control. The regulatory arrangements for public oversight should make possible effective cooperation at Community level in respect of the Member States' oversight activities. The public oversight system should be governed by non-practitioners who are knowledgeable in the areas relevant to statutory audit. These non-practitioners may be specialists who have never been linked with the audit profession or former practitioners who have left the profession. Member States may, however, allow a minority of practitioners to be involved in the governance of the public oversight system. Competent authorities of Member States should cooperate with each other whenever necessary for the purpose of carrying out their oversight duties on statutory auditors or audit firms approved by them. Such cooperation can make an important contribution to ensuring consistently high quality in the statutory audit in the Community. Since it is necessary to ensure effective cooperation and coordination at European level among competent authorities designated by Member States, the designation of one entity, responsible for ensuring cooperation, should be without prejudice to the ability of each single authority to cooperate directly with the other competent authorities of the Member States.

(21) In order to ensure compliance with Article 32(3) on principles of public oversight, a non-practitioner is deemed to be knowledgeable in the areas relevant to the statutory audit either because of his or her past professional skill or, alternatively, because he or she has knowledge of at least one of the subjects listed in Article 8.

(22) The statutory auditor or audit firm should be appointed by the general meeting of shareholders or members of the audited entity. In order to protect the independence of the auditor it is important that dismissal should be possible only where there are proper grounds and if those grounds are communicated to the authority or authorities responsible for public oversight.

(23) Since public-interest entities have a higher visibility and are economically more important, stricter requirements should apply in the case of a statutory audit of their annual or consolidated accounts.

(24) Audit committees and an effective internal control system help to minimise financial, operational and compliance risks, and enhance the quality of financial reporting. Member States might have regard to 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[(13)], which sets out how audit committees should be established and function. Member States may determine that the functions assigned to the audit committee or a body performing equivalent functions may be performed by the administrative or supervisory body as a whole. With regard to the duties of the audit committee under Article 41, the statutory auditor or audit firm should in no way be subordinated to the committee.

(25) Member States may also decide to exempt public-interest entities which are collective investment undertakings whose transferable securities are admitted to trading on a regulated market from the requirement to have an audit committee. This option takes into account the fact that where a collective investment undertaking functions merely for the purpose of pooling assets, the employment of an audit committee will not always be appropriate. The financial reporting and related risks are not comparable to those of other public-interest entities. In addition, undertakings for collective investment in transferable securities (UCITS) and their management companies operate in a strictly defined regulatory environment and are subject to specific governance mechanisms such as controls exercised by their depositary. For those collective investment undertakings which are not harmonised by Directive 85/611/EEC[(14)] but are subject to equivalent safeguards as provided for by that Directive, Member States should, in this particular case, be allowed to provide for equal treatment with Community-harmonised collective investment undertakings.

(26) In order to reinforce the independence of auditors of public-interest entities, the key audit partner(s) auditing such entities should rotate. To organise such rotation, Member States should require a change of key audit partner(s) dealing with an audited entity, while allowing the audit firm with which the key audit partner(s) is/are associated to continue being the statutory auditor of such entity. Where a Member State considers it appropriate in order to attain the objectives pursued, that Member State might, alternatively, require a change of audit firm, without prejudice to Article 42(2).

(27) The interrelation of capital markets underlines the need also to ensure high-quality work performed by auditors from third countries in relation to the Community capital market. The auditors concerned should therefore be registered so as to make them subject to quality assurance reviews and to the system of investigations and penalties. Derogations on the basis of reciprocity should be possible subject to an equivalence testing to be performed by the Commission in cooperation with Member States. In any case, an entity which has issued transferable securities on a regulated market within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC should always be audited by an auditor either registered in a Member State or overseen by competent authorities of the

third country from which the auditor comes from, provided that the said third country is acknowledged by the Commission or a Member State as meeting the requirements equivalent to Community requirements in the field of principles of oversight, quality assurance systems and systems of investigations and penalties, and that the basis of this arrangement is reciprocity. While one Member State may consider a third country's quality assurance system equivalent, other Member States should not be bound to accept that assessment, nor should the Commission's decision be pre-empted thereby.

(28) The complexity of international group audits requires good cooperation between the competent authorities of Member States and those of third countries. Member States should therefore ensure that competent authorities of third countries can have access to audit working papers and other documents through the national competent authorities. In order to protect the rights of the parties concerned and at the same time facilitate access to those papers and documents, Member States should be allowed to grant direct access to the competent authorities of third countries, subject to the agreement of the national competent authority. One of the relevant criteria for the granting of access is whether the competent authorities in third countries meet requirements which the Commission has declared adequate. Pending such a decision by the Commission, and without prejudice thereto, Member States may assess whether the requirements are adequate.

(29) Disclosure of information as referred to in Articles 36 and 47 should be in accordance with the rules on the transfer of personal data to third countries as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data[(15)].

(30) The measures necessary for the implementation of this Directive should be adopted in accordance with Decision 1999/468/EC and with due regard to the declaration made by the Commission in the European Parliament on 5 February 2002 concerning the implementation of financial services legislation.

(31) The European Parliament should be given a period of three months from the first transmission of draft amendments and implementing measures to allow it to examine them and to give its opinion. However, in urgent and duly justified cases, it should be possible to shorten that period. If, within that period, a resolution is adopted by the European Parliament, the Commission should re-examine the draft amendments or measures.

(32) Since the objectives of this Directive — namely requiring the application of a single set of international auditing standards, the updating of the educational requirements, the definition of professional ethics and the technical implementation of the cooperation between competent authorities of Member States and between those authorities and the authorities of third countries, in order further to enhance and harmonise the quality of statutory audit in the Community and to facilitate cooperation between Member States and with third countries so as to strengthen confidence in the statutory audit — cannot be sufficiently achieved by the Member States and can therefore, by reason of the scale and effects of this Directive, be better achieved at Community level, the Community may

adopt measures, in accordance with the principle of subsidiarity as set out in Article 5 of the Treaty. 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 those objectives.

(33) With a view to rendering the relationship between the statutory auditor or audit firm and the audited entity more transparent, Directives 78/660/EEC and 83/349/EEC should be amended so as to require disclosure of the audit fee and the fee paid for non-audit services in the notes to the annual accounts and the consolidated accounts.

(34) Directive 84/253/EEC should be repealed because it lacks a comprehensive set of rules to ensure an appropriate audit infrastructure, such as public oversight, disciplinary systems and systems of quality assurance, and because it does not provide specifically for regulatory cooperation between Member States and third countries. In order to ensure legal certainty, there is a clear need to indicate that statutory auditors and audit firms that have been approved under Directive 84/253/EEC are considered as approved under this Directive,

HAVE ADOPTED THIS DIRECTIVE:

CHAPTER I

SUBJECT MATTER AND DEFINITIONS

Article 1

Subject matter

This Directive establishes rules concerning the statutory audit of annual and consolidated accounts.

Article 2

Definitions

For the purpose of this Directive, the following definitions shall apply:

1. ‘statutory audit’ means an audit of annual accounts or consolidated accounts insofar as required by Community law;

2. ‘statutory auditor’ means a natural person who is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits;

3. ‘audit firm’ means a legal person or any other entity, regardless of its legal form, that is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits;

4. ‘third-country audit entity’ means an entity, regardless of its legal form, which carries out audits of the annual or consolidated accounts of a company incorporated in a third country;

5. ‘third-country auditor’ means a natural person who carries out audits of the annual or consolidated accounts of a company incorporated in a third country;

6. ‘group auditor’ means the statutory auditor(s) or audit firm(s) carrying out the statutory audit of consolidated accounts;

7. ‘network’ means the larger structure:
   — which is aimed at cooperation and to which a statutory auditor or an audit firm belongs, and
   — which is clearly aimed at profit- or cost-sharing or shares common ownership, control or management, common quality-control policies and procedures, a common business strategy, the use of a common brand-name or a significant part of professional resources;

8. ‘affiliate of an audit firm’ means any undertaking, regardless of its legal form, which is connected to an audit firm by means of common ownership, control or management;

9. ‘audit report’ means the report referred to in Article 51a of Directive 78/660/EEC and Article 37 of Directive 83/349/EEC issued by the statutory auditor or audit firm;

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

11. ‘international auditing standards’ means International Standards on Auditing (ISA) and related Statements and Standards, insofar as relevant to the statutory audit;

12. ‘international accounting standards’ means International Accounting Standards (IAS), International Financial Reporting Standards (IFRS) and related Interpretations (SIC-IFRIC interpretations), subsequent amendments to those standards and related interpretations, and future standards and related interpretations issued or adopted by the International Accounting Standards Board (IASB);

13. ‘public-interest entities’ means 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, credit institutions as defined in point 1 of Article 1of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions[16] and insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC. Member States may also designate other entities as public-interest entities, for instance entities that are of significant public relevance because of the nature of their business, their size or the number of their employees;

14. ‘cooperative’ means a European Cooperative Society as defined in Article 1 of Council Regulation (EC) No 1435/2003 of 22 July 2003 on the Statute for a European Cooperative Society (SCE)[17], or any other cooperative for which a statutory audit is required under Community law, such as credit institutions as defined in point 1 of Article 1 of Directive 2000/12/EC and insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC;

15. ‘non-practitioner’ means any natural person who, for at least three years before his or her involvement in the governance of the public oversight system, has not carried out statutory audits, has not held voting rights in an audit firm, has not been a member of

the administrative or management body of an audit firm and has not been employed by, or otherwise associated with, an audit firm;

16. 'key audit partner(s)' mean(s):

(a) the statutory auditor(s) designated by an audit firm for a particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm; or

(b) in the case of a group audit, at least the statutory auditor(s) designated by an audit firm as being primarily responsible for carrying out the statutory audit at the level of the group and the statutory auditor(s) designated as being primarily responsible at the level of material subsidiaries; or

(c) the statutory auditor(s) who sign(s) the audit report.

CHAPTER II

APPROVAL, CONTINUING EDUCATION AND MUTUAL RECOGNITION

Article 3

Approval of statutory auditors and audit firms

1 A statutory audit shall be carried out only by statutory auditors or audit firms which are approved by the Member State requiring the statutory audit.

2 Each Member State shall designate competent authorities which shall be responsible for approving statutory auditors and audit firms.

The competent authorities may be professional associations, provided that they are subject to a system of public oversight as provided for in Chapter VIII.

3 Without prejudice to Article 11, the competent authorities of the Member States may approve as statutory auditors only natural persons who satisfy at least the conditions laid down in Articles 4 and 6 to 10.

4 The competent authorities of the Member States may approve as audit firms only those entities which satisfy the following conditions:

a the natural persons who carry out statutory audits on behalf of an audit firm must satisfy at least the conditions imposed by Articles 4 and 6 to 12 and must be approved as statutory auditors in the Member State concerned;

b a majority of the voting rights in an entity must be held by audit firms which are approved in any Member State or by natural persons who satisfy at least the conditions imposed by Articles 4 and 6 to 12. Member States may provide that such natural persons must also have been approved in another Member State. For the purpose of the statutory audit of cooperatives and similar entities as referred to in Article 45 of Directive 86/635/EEC, Member States may establish other specific provisions in relation to voting rights;

c a majority — up to a maximum of 75 % — 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 Articles 4 and 6 to 12. Member States may provide that such natural persons must also

have been approved in another Member State. Where such a body has no more than two members, one of those members must satisfy at least the conditions in this point;

d the firm must satisfy the condition imposed by Article 4.

Member States may set additional conditions only in relation to point (c). Such conditions shall be proportionate to the objectives pursued and shall not go beyond what is strictly necessary.

Article 4

Good repute

The competent authorities of a Member State may grant approval only to natural persons or firms of good repute.

Article 5

Withdrawal of approval

1 Approval of a statutory auditor or an audit firm shall be withdrawn if the good repute of that person or firm has been seriously compromised. Member States may, however, provide for a reasonable period of time for the purpose of meeting the requirements of good repute.

2 Approval of an audit firm shall be withdrawn if any of the conditions imposed in Article 3(4), points (b) and (c) is no longer fulfilled. Member States may, however, provide for a reasonable period of time for the purpose of fulfilling those conditions.

3 Where the approval of a statutory auditor or of an audit firm is withdrawn for any reason, the competent authority of the Member State where the approval is withdrawn shall communicate that fact and the reasons for the withdrawal to the relevant competent authorities of Member States where the statutory auditor or audit firm is also approved which are entered in the first-named Member State's register in accordance with Article 16(1), point (c).

Article 6

Educational qualifications

Without prejudice to Article 11, a natural person may be approved to carry out a statutory audit only after having attained university entrance or equivalent level, then completed a course of theoretical instruction, undergone practical training and passed an examination of professional competence of university final or equivalent examination level, organised or recognised by the Member State concerned.

Article 7

Examination of professional competence

The examination of professional competence referred to in Article 6 shall guarantee the necessary level of theoretical knowledge of subjects relevant to statutory audit and the ability to apply such knowledge in practice. Part at least of that examination shall be written.

Article 8

Test of theoretical knowledge

1 The test of theoretical knowledge included in the examination shall cover the following subjects in particular:

a general accounting theory and principles;
b legal requirements and standards relating to the preparation of annual and consolidated accounts;
c international accounting standards;
d financial analysis;
e cost and management accounting;
f risk management and internal control;
g auditing and professional skills;
h legal requirements and professional standards relating to statutory audit and statutory auditors;
i international auditing standards;
j professional ethics and independence.

2 It shall also cover at least the following subjects insofar as they are relevant to auditing:

a company law and corporate governance;
b the law of insolvency and similar procedures;
c tax law;
d civil and commercial law;
e social security law and employment law;
f information technology and computer systems;
g business, general and financial economics;
h mathematics and statistics;
i basic principles of the financial management of undertakings.

3 The Commission may, in accordance with the procedure referred to in Article 48(2), adapt the list of subjects to be included in the test of theoretical knowledge referred to in paragraph 1. When adopting those implementing measures the Commission shall take into account developments in auditing and the audit profession.

Article 9

Exemptions

1 By way of derogation from Articles 7 and 8, a Member State may provide that a person who has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in Article 8 may be exempted from the test of theoretical knowledge in the subjects covered by that examination or degree.

2 By way of derogation from Article 7, a Member State may provide that a holder of a university degree or equivalent qualification in one or more of the subjects referred to in Article 8 may be exempted from the test of the ability to apply in practice his or her theoretical knowledge of such subjects if he or she has received practical training in those subjects attested by an examination or diploma recognised by the State.

Article 10

Practical training

1 In order to ensure the ability to apply theoretical knowledge in practice, a test of which is included in the examination, a trainee shall complete a minimum of three years' practical training in, *inter alia,* the auditing of annual accounts, consolidated accounts or similar financial statements. At least two thirds of such practical training shall be completed with a statutory auditor or audit firm approved in any Member State.

2 Member States shall ensure that all training is carried out with persons providing adequate guarantees regarding their ability to provide practical training.

Article 11

Qualification through long-term practical experience

A Member State may approve a person who does not satisfy the conditions laid down in Article 6 as a statutory auditor, if he or she can show either:

(a) that he or she has, for 15 years, engaged in professional activities which have enabled him or her to acquire sufficient experience in the fields of finance, law and accountancy, and has passed the examination of professional competence referred to in Article 7, or

(b) that he or she has, for seven years, engaged in professional activities in those fields and has, in addition, undergone the practical training referred to in Article 10 and passed the examination of professional competence referred to in Article 7.

Article 12

Combination of practical training and theoretical instruction

1 Member States may provide that periods of theoretical instruction in the fields referred to in Article 8 shall count towards the periods of professional activity referred to in Article 11, provided that such instruction is attested by an examination recognised by the State. Such instruction shall not last less than one year, nor may it reduce the period of professional activity by more than four years.

2 The period of professional activity and practical training shall not be shorter than the course of theoretical instruction together with the practical training required in Article 10.

Article 13

Continuing education

Member States shall ensure that statutory auditors are required to take part in appropriate programmes of continuing education in order to maintain their theoretical knowledge, professional skills and values at a sufficiently high level, and that failure to respect the continuing education requirements is subject to appropriate penalties as referred to in Article 30.

Article 14

Approval of statutory auditors from other Member States

The competent authorities of the Member States shall establish procedures for the approval of statutory auditors who have been approved in other Member States. Those procedures shall not go beyond a requirement to pass an aptitude test in accordance with Article 4 of Council Directive 89/48/EEC of 21 December 1988 on a general system for the recognition of higher-education diplomas awarded on completion of professional education and training of at least three years' duration[18]. The aptitude test, which shall be conducted in one of the languages permitted by the language rules applicable in the Member State concerned, shall cover only the statutory auditor's adequate knowledge of the laws and regulations of that Member State in so far as relevant to statutory audits.

CHAPTER III

REGISTRATION

Article 15

Public register

1 Each Member State shall ensure that statutory auditors and audit firms are entered in a public register in accordance with Articles 16 and 17. In exceptional circumstances, Member States may disapply the requirements laid down in this Article and Article 16 regarding disclosure only to the extent necessary to mitigate an imminent and significant threat to the personal security of any person.

2 Member States shall ensure that each statutory auditor and audit firm is identified in the public register by an individual number. Registration information shall be stored in the register in electronic form and shall be electronically accessible to the public.

3 The public register shall also contain the name and address of the competent authorities responsible for approval as referred to in Article 3, for quality assurance as referred to in Article 29, for investigations and penalties on statutory auditors and audit firms as referred to in Article 30, and for public oversight as referred to in Article 32.

4 Member States shall ensure that the public register is fully operational by 29 June 2009.

Article 16

Registration of statutory auditors

1 As regards statutory auditors, the public register shall contain at least the following information:

a name, address and registration number;

b if applicable, the name, address, website address and registration number of the audit firm(s) by which the statutory auditor is employed, or with whom he or she is associated as a partner or otherwise;

c all other registration(s) as statutory auditor with the competent authorities of other Member States and as auditor with third countries, including the name(s) of the registration authority(ies), and, if applicable, the registration number(s).

2 Third-country auditors registered in accordance with Article 45 shall be clearly indicated in the register as such and not as statutory auditors.

Article 17

Registration of audit firms

1 As regards audit firms, the public register shall contain at least the following information:

a name, address and registration number;

b legal form;

c contact information, the primary contact person and, where applicable, the website address;

d address of each office in the Member State;

e name and registration number of all statutory auditors employed by or associated as partners or otherwise with the audit firm;

f names and business addresses of all owners and shareholders;

g names and business addresses of all members of the administrative or management body;

h if applicable, the membership of a network and a list of the names and addresses of member firms and affiliates or an indication of the place where such information is publicly available;

i all other registration(s) as audit firm with the competent authorities of other Member States and as audit entity with third countries, including the name(s) of the registration authority(ies), and, if applicable, the registration number(s).

2 Third-country audit entities registered in accordance with Article 45 shall be clearly indicated in the register as such and not as audit firms.

Article 18

Updating of registration information

Member States shall ensure that statutory auditors and audit firms notify the competent authorities in charge of the public register without undue delay of any change of information contained in the public register. The register shall be updated without undue delay after notification.

Article 19

Responsibility for registration information

The information provided to the relevant competent authorities in accordance with Articles 16, 17 and 18 shall be signed by the statutory auditor or audit firm. Where the competent authority provides for the information to be made available electronically, that can, for example, be done by means of an electronic signature as defined in point 1

of Article 2 of Directive 1999/93/EC of the European Parliament and of the Council of 13 December 1999 on a Community framework for electronic signatures[19].

Article 20

Language

1 The information entered in the public register shall be drawn up in one of the languages permitted by the language rules applicable in the Member State concerned.

2 Member States may additionally allow the information to be entered in the public register in any other official language(s) of the Community. Member States may require the translation of the information to be certified.

In all cases, the Member State concerned shall ensure that the register indicates whether or not the translation is certified.

CHAPTER IV

PROFESSIONAL ETHICS, INDEPENDENCE, OBJECTIVITY, CONFIDENTIALITY AND PROFESSIONAL SECRECY

Article 21

Professional ethics

1 Member States shall ensure that all statutory auditors and audit firms are subject to principles of professional ethics, covering at least their public-interest function, their integrity and objectivity and their professional competence and due care.

2 In order to ensure confidence in the audit function and to ensure uniform application of paragraph 1 of this Article, the Commission may, in accordance with the procedure referred to in Article 48(2), adopt principle-based implementing measures governing professional ethics.

Article 22

Independence and objectivity

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

2 Member States shall ensure that a statutory auditor or an audit firm shall not carry out a statutory audit if there is any direct or indirect financial, business, employment or other relationship — including the provision of additional non-audit services — between the statutory auditor, audit firm or network and the audited entity from which an objective, reasonable and informed third party would conclude that the statutory auditor's or audit firm's independence is compromised. If the statutory auditor's or audit firm's independence is affected by threats, such as self-review, self-interest, advocacy, familiarity or trust or intimidation, the statutory auditor or audit firm must apply safeguards in order to mitigate those threats. If the significance of the threats compared to the safeguards applied is such that his, her or its independence is compromised, the statutory auditor or audit firm shall not carry out the statutory audit.

Member States shall in addition ensure that, where statutory audits of public-interest entities are concerned and where appropriate to safeguard the statutory auditor's or audit firm's independence, a statutory auditor or an audit firm shall not carry out a statutory audit in cases of self-review or self-interest.

3 Member States shall ensure that a statutory auditor or audit firm documents in the audit working papers all significant threats to his, her or its independence as well as the safeguards applied to mitigate those threats.

4 In order to ensure confidence in the audit function and to ensure uniform application of paragraphs 1 and 2 of this Article, the Commission may, in accordance with the procedure referred to in Article 48(2), adopt principle-based implementing measures concerning:

a the threats and safeguards referred to in paragraph 2;

b the situations in which the significance of the threats, as referred to in paragraph 2, is such that the independence of the statutory auditor or audit firm is compromised;

c the cases of self-review and self-interest referred to in the second subparagraph of paragraph 2, in which statutory audits may or may not be carried out.

Article 23

Confidentiality and professional secrecy

1 Member States shall ensure that all information and documents to which a statutory auditor or audit firm has access when carrying out a statutory audit are protected by adequate rules on confidentiality and professional secrecy.

2 Confidentiality and professional secrecy rules relating to statutory auditors or audit firms shall not impede enforcement of the provisions of this Directive.

3 Where a statutory auditor or audit firm is replaced by another statutory auditor or audit firm, the former statutory auditor or audit firm shall provide the incoming statutory auditor or audit firm with access to all relevant information concerning the audited entity.

4 A statutory auditor or audit firm who has ceased to be engaged in a particular audit assignment and a former statutory auditor or audit firm shall remain subject to the provisions of paragraphs 1 and 2 with respect to that audit assignment.

Article 24

Independence and objectivity of the statutory auditors carrying out the statutory audit on behalf of audit firms

Member States shall ensure that the owners or shareholders of an audit firm as well as the members of the administrative, management and supervisory bodies of such a firm, or of an affiliated firm, do not intervene in the execution of a statutory audit in any way which jeopardises the independence and objectivity of the statutory auditor who carries out the statutory audit on behalf of the audit firm.

Article 25

Audit fees

Member States shall ensure that adequate rules are in place which provide that fees for statutory audits:

(a) are not influenced or determined by the provision of additional services to the audited entity;

(b) cannot be based on any form of contingency.

CHAPTER V

AUDITING STANDARDS AND AUDIT REPORTING

Article 26

Auditing standards

1 Member States shall require statutory auditors and audit firms to carry out statutory audits in compliance with international auditing standards adopted by the Commission in accordance with the procedure referred to in Article 48(2). Member States may apply a national auditing standard as long as the Commission has not adopted an international auditing standard covering the same subject-matter. Adopted international auditing standards shall be published in full in each of the official languages of the Community in the *Official Journal of the European Union.*

2 The Commission may decide, in accordance with the procedure referred to in Article 48(2), on the applicability of international auditing standards within the Community. The Commission shall adopt international auditing standards for application in the Community only if they:

a have been developed with proper due process, public oversight and transparency, and are generally accepted internationally;

b contribute a high level of credibility and quality to the annual or consolidated accounts in conformity with the principles set out in Article 2(3) of Directive 78/660/EEC and in Article 16(3) of Directive 83/349/EEC; and

c are conducive to the European public good.

3 Member States may impose audit procedures or requirements in addition to — or, in exceptional cases, by carving out parts of — the international auditing standards only if these stem from specific national legal requirements relating to the scope of statutory audits. Member States shall ensure that these audit procedures or requirements comply with the provisions laid down in points (b) and (c) of paragraph 2 and shall communicate them to the Commission and Member States before their adoption. In the exceptional case of the carving out of parts of an international auditing standard, Member States shall communicate their specific national legal requirements, as well as the grounds for maintaining them, to the Commission and the other Member States at least six months before their national adoption or, in the case of requirements already existing at the time of adoption of an international auditing standard, at the latest within three months of the adoption of the relevant international auditing standard.

4 Member States may impose additional requirements relating to the statutory audits of annual and consolidated accounts for a period expiring on 29 June 2010.

Article 27

Statutory audits of consolidated accounts

Member States shall ensure that in the case of a statutory audit of the consolidated accounts of a group of undertakings:

(a) the group auditor bears the full responsibility for the audit report in relation with the consolidated accounts;

(b) the group auditor carries out a review and maintains documentation of his or her review of the audit work performed by third-country auditor(s), statutory auditor(s), third-country audit entity(ies) or audit firm(s) for the purpose of the group audit. The documentation retained by the group auditor shall be such as enables the relevant competent authority to review the work of the group auditor properly;

(c) when a component of a group of undertakings is audited by auditor(s) or audit entity(ies) from a third country that has no working arrangement as referred to in Article 47, the group auditor is responsible for ensuring proper delivery, when requested, to the public oversight authorities of the documentation of the audit work performed by the third-country auditor(s) or audit entity(ies), including the working papers relevant to the group audit. To ensure such delivery, the group auditor shall retain a copy of such documentation, or alternatively agree with the third-country auditor(s) or audit entity(ies) his proper and unrestricted access upon request, or take any other appropriate action. If legal or other impediments prevent audit working papers from being passed from a third country to the group auditor, the documentation retained by the group auditor shall include evidence that he or she has undertaken the appropriate procedures in order to gain access to the audit documentation, and in the case of impediments other than legal ones arising from country legislation, evidence supporting such an impediment.

Article 28

Audit reporting

1 Where an audit firm carries out the statutory audit, the audit report shall be signed by at least the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm. In exceptional circumstances Member States may provide that this signature need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person. In any case the name(s) of the person(s) involved shall be known to the relevant competent authorities.

2 Notwithstanding Article 51a(1) of Directive 78/660/EEC, if the Commission has not adopted a common standard for audit reports in accordance with Article 26(1) of this Directive, it may, in accordance with the procedure referred to in Article 48(2) of this Directive, adopt a common standard for audit reports for annual or consolidated accounts which have been prepared in accordance with approved international accounting standards, in order to enhance public confidence in the audit function.

CHAPTER VI

QUALITY ASSURANCE

Article 29

Quality assurance systems

1 Each Member State shall ensure that all statutory auditors and audit firms are subject to a system of quality assurance which meets at least the following criteria:

a the quality assurance system shall be organised in such a manner that it is independent of the reviewed statutory auditors and audit firms and subject to public oversight as provided for in Chapter VIII;

b the funding for the quality assurance system shall be secure and free from any possible undue influence by statutory auditors or audit firms;

c the quality assurance system shall have adequate resources;

d the persons who carry out quality assurance reviews shall have appropriate professional education and relevant experience in statutory audit and financial reporting combined with specific training on quality assurance reviews;

e the selection of reviewers for specific quality assurance review assignments shall be effected in accordance with an objective procedure designed to ensure that there are no conflicts of interest between the reviewers and the statutory auditor or audit firm under review;

f the scope of the quality assurance review, supported by adequate testing of selected audit files, shall include an assessment of compliance with applicable auditing standards and independence requirements, of the quantity and quality of resources spent, of the audit fees charged and of the internal quality control system of the audit firm;

g the quality assurance review shall be the subject of a report which shall contain the main conclusions of the quality assurance review;

h quality assurance reviews shall take place at least every six years;

i the overall results of the quality assurance system shall be published annually;

j recommendations of quality reviews shall be followed up by the statutory auditor or audit firm within a reasonable period.

If the recommendations referred to in point (j) are not followed up, the statutory auditor or audit firm shall, if applicable, be subject to the system of disciplinary actions or penalties referred to in Article 30.

2 The Commission may, in accordance with the procedure referred to in Article 48(2), adopt implementing measures in order to enhance public confidence in the audit function and to ensure uniform application of points (a), (b) and (e) to (j) of paragraph 1.

CHAPTER VII

INVESTIGATIONS AND PENALTIES

Article 30

Systems of investigations and penalties

1 Member States shall ensure that there are effective systems of investigations and penalties to detect, correct and prevent inadequate execution of the statutory audit.

2 Without prejudice to Member States' civil liability regimes, Member States shall provide for effective, proportionate and dissuasive penalties in respect of statutory auditors and audit firms, where statutory audits are not carried out in conformity with the provisions adopted in the implementation of this Directive.

3 Member States shall provide that measures taken and penalties imposed on statutory auditors and audit firms are appropriately disclosed to the public. Penalties shall include the possibility of the withdrawal of approval.

Article 31

Auditors' liability

Before 1 January 2007 the Commission shall present a report on the impact of the current national liability rules for the carrying out of statutory audits on European capital markets and on the insurance conditions for statutory auditors and audit firms, including an objective analysis of the limitations of financial liability. The Commission shall, where appropriate, carry out a public consultation. In the light of that report, the Commission shall, if it considers it appropriate, submit recommendations to the Member States.

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.

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.

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.

CHAPTER IX

APPOINTMENT AND DISMISSAL

Article 37

Appointment of statutory auditors or audit firms

1 The statutory auditor or audit firm shall be appointed by the general meeting of shareholders or members of the audited entity.

2 Member States may allow alternative systems or modalities for the appointment of the statutory auditor or audit firm, provided that those systems or modalities are designed to

ensure the independence of the statutory auditor or audit firm from the executive members of the administrative body or from the managerial body of the audited entity.

Article 38

Dismissal and resignation of statutory auditors or audit firms

1 Member States shall ensure that statutory auditors or audit firms may be dismissed only where there are proper grounds. Divergence of opinions on accounting treatments or audit procedures shall not be proper grounds for dismissal.

2 Member States shall ensure that the audited entity and the statutory auditor or audit firm inform the authority or authorities responsible for public oversight concerning the dismissal or resignation of the statutory auditor or audit firm during the term of appointment and give an adequate explanation of the reasons therefor.

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[20], 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[(21)]. 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.

CHAPTER XI

INTERNATIONAL ASPECTS

Article 44

Approval of auditors from third countries

1 Subject to reciprocity, the competent authorities of a Member State may approve a third-country auditor as statutory auditor if that person has furnished proof that he or she complies with requirements equivalent to those laid down in Articles 4 and 6 to 13.

2 The competent authorities of a Member State shall, before granting approval to a third-country auditor who meets the requirements of paragraph 1, apply the requirements laid down in Article 14.

Article 45

Registration and oversight of third-country auditors and audit entities

1 The competent authorities of a Member State shall, in accordance with Articles 15 to 17, register every third-country auditor and audit entity that provides an audit report concerning the annual or consolidated accounts of a company incorporated outwith the Community 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 company is an issuer exclusively of debt securities admitted to trading on a regulated market in a Member State within the meaning of Article 2(1)(b) of Directive 2004/109/EC[22], 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 EUR 50 000.

2 Articles 18 and 19 shall apply.

3 Member States shall subject registered third-country auditors and audit entities to their systems of oversight, their quality assurance systems and their systems of investigation and penalties. A Member State may exempt a registered third-country auditor or audit entity from being subject to its quality assurance system if another Member State's or third country's system of quality assurance that has been assessed as equivalent in accordance with Article 46 has carried out a quality review of the third-country auditor or audit entity concerned during the previous three years.

4 Without prejudice to Article 46, audit reports concerning annual accounts or consolidated accounts referred to in paragraph 1 of this Article issued by third-country auditors

or audit entities that are not registered in the Member State shall have no legal effect in that Member State.

5 A Member State may register a third-country audit entity only if:

a it meets requirements which are equivalent to those laid down in Article 3(3);

b the majority of the members of the administrative or management body of the third-country audit entity meet requirements which are equivalent to those laid down in Articles 4 to 10;

c the third-country auditor carrying out the audit on behalf of the third-country audit entity meets requirements which are equivalent to those laid down in Articles 4 to 10;

d the audits of the annual or consolidated accounts referred to in paragraph 1 are carried out in accordance with international auditing standards as referred to in Article 26, as well as the requirements laid down in Articles 22, 24 and 25, or with equivalent standards and requirements;

e it publishes on its website an annual transparency report which includes the information referred to in Article 40 or it complies with equivalent disclosure requirements.

6 In order to ensure uniform application of paragraph 5(d) the equivalence referred to therein shall be assessed by the Commission in cooperation with Member States and shall be decided upon by the Commission in accordance with the procedure referred to in Article 48(2). Pending such a decision by the Commission, Member States may assess the equivalence referred to in paragraph 5(d) as long as the Commission has not taken any decision.

Article 46

Derogation in the case of equivalence

1 Member States may disapply or modify the requirements in Article 45(1) and (3) on the basis of reciprocity only if the third-country auditors or audit entities are subject to systems of public oversight, quality assurance and investigations and penalties in the third country that meet requirements equivalent to those of Articles 29, 30 and 32.

2 In order to ensure uniform application of paragraph 1 of this Article, the equivalence referred to therein shall be assessed by the Commission in cooperation with Member States and shall be decided upon by the Commission in accordance with the procedure referred to in Article 48(2). 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 any 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 relevant Member State's requirements during an appropriate transitional period.

3 Member States shall communicate to the Commission:

a their assessments of the equivalence referred to in paragraph 2; and

b the main elements of their cooperative arrangements with third-country systems of public oversight, quality assurance and investigations and penalties, on the basis of paragraph 1.

Article 47

Cooperation with competent authorities from third countries

1 Member States may allow the transfer to the competent authorities of a third country of audit working papers or other documents held by statutory auditors or audit firms approved by them, provided that:

a those audit working papers or other documents relate to audits of companies which have issued securities in that third country or which form part of a group issuing statutory consolidated accounts in that third country;

b the transfer takes place via the home competent authorities to the competent authorities of that third country and at their request;

c the competent authorities of the third country concerned meet requirements which have been declared adequate in accordance with paragraph 3;

d there are working arrangements on the basis of reciprocity agreed between the competent authorities concerned;

e the transfer of personal data to the third country is in accordance with Chapter IV of Directive 95/46/EC.

2 The working arrangements referred to in paragraph 1(d) shall ensure that:

a justification as to the purpose of the request for audit working papers and other documents is provided by the competent authorities;

b the persons employed or formerly employed by the competent authorities of the third country that receive the information are subject to obligations of professional secrecy;

c the competent authorities of the third country may use audit working papers and other documents only for the exercise of their functions of public oversight, quality assurance and investigations that meet requirements equivalent to those of Articles 29, 30 and 32;

d the request from a competent authority of a third country for audit working papers or other documents held by a statutory auditor or audit firm can be refused:

— where the provision of those working papers or documents would adversely affect the sovereignty, security or public order of the Community or of the requested Member State, or

— where 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.

3 The adequacy referred to in paragraph 1(c) shall be decided upon by the Commission in accordance with the procedure referred to in Article 48(2) in order to facilitate cooperation between competent authorities. The assessment of adequacy shall be carried out in cooperation with Member States and be based on the requirements of Article 36 or essentially equivalent functional results. Member States shall take the measures necessary to comply with the Commission's decision.

4 In exceptional cases and by way of derogation from paragraph 1, Member States may allow statutory auditors and audit firms approved by them to transfer audit working papers and other documents directly to the competent authorities of a third country, provided that:

a investigations have been initiated by the competent authorities in that third country;

b the transfer does not conflict with the obligations with which statutory auditors and audit firms are required to comply in relation to the transfer of audit working papers and other documents to their home competent authority;

c there are working arrangements with the competent authorities of that third country that allow the competent authorities in the Member State reciprocal direct access to audit working papers and other documents of that third-country's audit entities;

d the requesting competent authority of the third country informs in advance the home competent authority of the statutory auditor or audit firm of each direct request for information, indicating the reasons therefor;

e the conditions referred to in paragraph 2 are respected.

5 The Commission may, in accordance with the procedure referred to in Article 48(2), specify the exceptional cases referred to in paragraph 4 of this Article in order to facilitate cooperation between competent authorities and to ensure the uniform application of paragraph 4 of this Article.

6 Member States shall communicate to the Commission the working arrangements referred to in paragraphs 1 and 4.

CHAPTER XII

TRANSITIONAL AND FINAL PROVISIONS

Article 48

Committee procedure

1 The Commission shall be assisted by a committee (hereinafter referred to as the Committee).

2 Where reference is made to this paragraph Articles 5 and 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.

The period laid down in Article 5(6) of Decision 1999/468/EC shall be set at three months.

3 The Committee shall adopt its Rules of Procedure.

4 Without prejudice to the implementing measures already adopted, and except for the provisions laid down in Article 26, upon expiry of a two-year period following the adoption of this Directive and on 1 April 2008 at the latest, the application of its provisions requiring the adoption of technical rules, amendments and decisions in accordance with paragraph 2 shall be suspended. Acting on a proposal from the Commission, the European Parliament and the Council may renew the provisions concerned in accordance with the procedure laid down in Article 251 of the Treaty and to that end they shall review them prior to the expiry of the period or date referred to above.

Article 49

Amendment of Directive 78/660/EEC and Directive 83/349/EEC

1 Directive 78/660/EEC is hereby amended as follows:

a in Article 43(1) the following point shall be added:

'separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of annual accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services.

Member States may provide that this requirement shall not apply where the company is included within the consolidated accounts required to be drawn up under Article 1 of Directive 83/349/EEC, provided that such information is given in the notes to the consolidated accounts.';

b paragraph 1 of Article 44 shall be replaced by the following:

1 'Member States may permit the companies referred to in Article 11 to draw up abridged notes on their accounts without the information required in Article 43(1)(5) to (12), (14)(a) and (15). However, the notes must disclose the information specified in Article 43(1)(6) in total for all the items concerned.';

c paragraph 2 of Article 45 shall be replaced by the following:

2 'Paragraph 1(b) shall also apply to the information specified in Article 43(1)(8).

The Member States may permit the companies referred to in Article 27 to omit disclosure of the information specified in Article 43(1)(8). The Member States may also permit the companies referred to in Article 27 to omit disclosure of the information specified in Article 43(1)(15), provided that such information is delivered to the public oversight system referred to in Article 32 of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audit of annual accounts and consolidated accounts[23] when requested by such a public oversight system.'

2 In Article 34 of Directive 83/349/EEC the following point shall be added:

'Separately, the total fees for the financial year charged by the statutory auditor or audit firm for the statutory audit of the consolidated accounts, the total fees charged for other assurance services, the total fees charged for tax advisory services and the total fees charged for other non-audit services.'

Article 50

Repeal of Directive 84/253/EEC

Directive 84/253/EEC shall be repealed with effect from 29 June 2006. References to the repealed Directive shall be construed as references to this Directive.

Article 51

Transitional provision

Statutory auditors or audit firms that are approved by the competent authorities of the Member States in accordance with Directive 84/253/EEC before the entry into force of the provisions referred to in Article 53(1) shall be considered as having been approved in accordance with this Directive.

Article 52

Minimum harmonisation

Member States requiring statutory audit may impose more stringent requirements, unless otherwise provided for by this Directive.

Article 53

Transposition

1 Before 29 June 2008 Member States shall adopt and publish the provisions necessary to comply with this Directive. They shall forthwith inform the Commission thereof.

2 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. The methods of making such reference shall be laid down by Member States.

3 Member States shall communicate to the Commission the texts of the main provisions of national law which they adopt in the field covered by this Directive.

Article 54

Entry into force

This Directive shall enter into force on the 20th day following its publication in the *Official Journal of the European Union.*

Article 55

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 17 May 2006.

For the European Parliament

The President

J. BORRELL FONTELLES

For the Council

The President

H. WINKLER

(**1**) OJ C 157, 28.6.2005, p. 115.

(**2**) Opinion of the European Parliament of 28 September 2005 (not yet published in the Official Journal) and Council Decision of 25 April 2006.

(**3**) OJ L 222, 14.8.1978, p. 11. Directive as last amended by Directive 2003/51/EC of the European Parliament and of the Council (OJ L 178, 17.7.2003, p. 16).

(**4**) OJ L 193, 18.7.1983, p. 1. Directive as last amended by Directive 2003/51/EC.

(**5**) OJ L 372, 31.12.1986, p. 1. Directive as last amended by Directive 2003/51/EC.

(**6**) OJ L 374, 31.12.1991, p. 7. Directive as amended by Directive 2003/51/EC.

(**7**) OJ L 126, 12.5.1984, p. 20.

(**8**) OJ C 143, 8.5.1998, p. 12.

(**9**) OJ L 91, 31.3.2001, p. 91.

(**10**) OJ L 191, 19.7.2002, p. 22.

(**11**) OJ L 145, 30.4.2004, p. 1.

(**12**) OJ L 184, 17.7.1999, p. 23.

(**13**) OJ L 52, 25.2.2005, p. 51.

(**14**) Council Directive 85/611/EEC of 20 December 1985 on the coordination of laws, regulations and administrative provisions relating to undertakings for collective investment in transferable securities (UCITS) (OJ L 375, 31.12.1985, p. 3). Directive as last amended by Directive 2005/1/EC of the European Parliament and of the Council (OJ L 79, 24.3.2005, p. 9).

(**15**) OJ L 281, 23.11.1995, p. 31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p. 1).

(**16**) OJ L 126, 26.5.2000, p. 1. Directive as last amended by Commission Directive 2006/29/EC (OJ L 70, 9.3.2006, p. 50).

(**17**) OJ L 207, 18.8.2003, p. 1.

(**18**) OJ L 19, 24.1.1989, p. 16. Directive as amended by Directive 2001/19/EC of the European Parliament and of the Council (OJ L 206, 31.7.2001, p. 1).

(**19**) OJ L 13, 19.1.2000, p. 12.

(**20**) 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).

(**21**) OJ L 149, 30.4.2004, p. 1.

(**22**) Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market (OJ L 390, 31.12.2004, p. 38).

(**23**) OJ L 157, 9.6.2006, p. 87.