

Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC (Text with EEA relevance)

CHAPTER 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**

[<sup>F1</sup>1 The competent authorities of a Member State shall, in accordance with Articles 15, 16 and 17, register every third-country auditor and audit entity, where that third-country auditor or audit entity provides an audit report concerning the annual or consolidated financial statements of an undertaking incorporated outside the Union whose transferable securities are admitted to trading on a regulated market of that Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC, except when the undertaking in question is an issuer exclusively of outstanding debt securities for which one of the following applies:

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

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

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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:

- [<sup>F2</sup>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;
- [<sup>F1</sup>d] the audits of the annual or consolidated financial statements 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, 22b and 25, or with equivalent standards and requirements;]
- [<sup>F1</sup>e] it publishes on its website an annual transparency report which includes the information referred to in Article 13 of Regulation (EU) No 537/2014 or it complies with equivalent disclosure requirements.]

[<sup>F3</sup>5a] A Member State may register a third-country auditor only if he or she meets the requirements set out in points (c), (d) and (e) of paragraph 5 of this Article.]

[<sup>F1</sup>6] In order to ensure uniform conditions of application of point (d) of paragraph 5 of this Article, the Commission shall be empowered to decide upon the equivalence referred to therein by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Member States may assess the equivalence referred to in point (d) of paragraph 5 of this Article as long as the Commission has not taken any such decision.

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

#### Textual Amendments

- F1** Substituted by [Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts \(Text with EEA relevance\).](#)
- F2** Deleted by [Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts \(Text with EEA relevance\).](#)
- F3** Inserted by [Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts \(Text with EEA relevance\).](#)

## 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.

[<sup>F12</sup> In order to ensure uniform conditions for the application of paragraph 1 of this Article, the Commission shall be empowered to decide upon the equivalence referred to therein by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Once the Commission has recognised the equivalence referred to in paragraph 1 of this Article, Member States may decide to rely on such equivalence partially or entirely and thus to disapply or modify the requirements in Article 45(1) and (3) partially or entirely. Member States may assess the equivalence referred to in paragraph 1 of this Article or rely on the assessments carried out by other Member States as long as the Commission has not taken any such 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 third-country auditors and third-country audit entities concerned to continue their audit activities in accordance with the requirements of the relevant Member State during an appropriate transitional period.

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

- 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.

#### Textual Amendments

- F1** Substituted by [Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts](#) (Text with EEA relevance).

## Article 47

### Cooperation with competent authorities from third countries

[<sup>F11</sup> 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, and of inspection or investigation reports relating to the audits in question, provided that:]

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- [<sup>F1</sup>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 financial statements 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;
  - [<sup>F3</sup>ba the protection of the commercial interests of the audited entity, including its industrial and intellectual property, is not undermined;]
  - 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, [<sup>F2</sup> or]
    - [<sup>F1</sup>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, or
    - where 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.]

[<sup>F13</sup> In order to facilitate cooperation, the Commission shall be empowered to decide upon the adequacy referred to in point (c) of paragraph 1 of this Article by means of implementing acts. Those implementing acts shall be adopted in accordance with the examination procedure referred to in Article 48(2). Member States shall take the measures necessary to comply with the Commission's decision.

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

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.

F25 .....

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

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**Textual Amendments**

- F1** Substituted by [Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts \(Text with EEA relevance\).](#)
- F2** Deleted by [Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts \(Text with EEA relevance\).](#)
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- (1) [<sup>F1</sup>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 and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).]

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- F1** Substituted by [Directive 2014/56/EU of the European Parliament and of the Council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts \(Text with EEA relevance\).](#)