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Committee on Legal Affairs

2011/0389(COD)

4.9.2012

*****I**

DRAFT REPORT

on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts
(COM(2011)0778 – C7-0461/2011 – 2011/0389(COD))

Committee on Legal Affairs

Rapporteur: Sajjad Karim

Symbols for procedures

- * Consultation procedure
- *** Consent procedure
- ***I Ordinary legislative procedure (first reading)
- ***II Ordinary legislative procedure (second reading)
- ***III Ordinary legislative procedure (third reading)

(The type of procedure depends on the legal basis proposed by the draft act.)

Amendments to a draft act

In amendments by Parliament, amendments to draft acts are highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the draft act which may require correction when the final text is prepared – for instance, obvious errors or omissions in a language version. Suggested corrections of this kind are subject to the agreement of the departments concerned.

The heading for any amendment to an existing act that the draft act seeks to amend includes a third line identifying the existing act and a fourth line identifying the provision in that act that Parliament wishes to amend. Passages in an existing act that Parliament wishes to amend, but that the draft act has left unchanged, are highlighted in **bold**. Any deletions that Parliament wishes to make in such passages are indicated thus: [...].

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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the proposal for a directive of the European Parliament and of the Council amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts (COM(2011)0778 – C7-0461/2011 – 2011/0389(COD))

(Ordinary legislative procedure: first reading)

The European Parliament,

- having regard to the Commission proposal to Parliament and the Council (COM(2011)0778),
 - having regard to Article 294(2) and Article 50 of the Treaty on the Functioning of the European Union, pursuant to which the Commission submitted the proposal to Parliament (C7-0461/2011),
 - having regard to Article 294(3) of the Treaty on the Functioning of the European Union,
 - having regard to the reasoned opinions submitted, within the framework of Protocol No 2 on the application of the principles of subsidiarity and proportionality, by the Slovak Parliament and the Swedish Parliament, asserting that the draft legislative act does not comply with the principle of subsidiarity,
 - having regard to the opinion of the European Economic and Social Committee of 26 April 2012¹,
 - having regard to Rule 55 of its Rules of Procedure,
 - having regard to the report of the Committee on Legal Affairs and the opinions of the Committee on Economic and Monetary Affairs and the Committee on Industry, Research and Energy (A7-0000/2012),
1. Adopts its position at first reading hereinafter set out;
 1. Calls on the Commission to refer the matter to Parliament again if it intends to amend its proposal substantially or replace it with another text;
 2. Instructs its President to forward its position to the Council, the Commission and the national parliaments.

Amendment 1
Proposal for a directive
Recital 6

¹ Not yet published in the Official Journal.

Text proposed by the Commission

(6) In order to enhance the independence of statutory auditors and audit firms from the audited entity when carrying out statutory audits, any person or entity that holds rights in an audit firm should be independent of the audited entity **and should not be involved in the process of decision making of the audited entity.**

Amendment

(6) In order to enhance the independence of statutory auditors and audit firms from the audited entity when carrying out statutory audits, any person or entity that holds rights in an audit firm should be independent of the audited entity.

Or. en

Amendment 2
Proposal for a directive
Recital 7

Text proposed by the Commission

(7) It is important to ensure high quality statutory audits within the Union. All statutory audits should therefore be carried out on the basis of the international auditing standards **which are part of the Clarity Project** issued by the International Federation of Accountants (IFAC) in 2009 insofar as they are relevant to statutory audits. Member States should be allowed to impose additional national audit procedures or requirements only if they stem from specific national legal requirements relating to the scope of the statutory audit of annual or consolidated financial statements, meaning that those requirements have not been covered by the adopted international auditing standards, and only if they add to the credibility and quality of annual financial statements and consolidated financial statements **and are conducive to the Union public good.** The Commission should continue to be involved in the monitoring of the content and adoption process of the international auditing standards by the **IFAC.**

Amendment

(7) It is important to ensure high quality statutory audits within the Union. All statutory audits should therefore be carried out on the basis of the international auditing standards issued by the International **Auditing and Assurance Standards Board (IAASB)** insofar as they are relevant to statutory audits. Member States should be allowed to impose additional national audit procedures or requirements only if they stem from specific national legal **or regulatory** requirements relating to the scope of the statutory audit of annual or consolidated financial statements, meaning that those requirements have not been covered by the adopted international auditing standards, and only if they add to the credibility and quality of annual financial statements and consolidated financial statements. The Commission should continue to be involved in the monitoring of the content and adoption process of the international auditing standards by the **IAASB.**

Amendment 3
Proposal for a directive
Recital 9

Text proposed by the Commission

(9) The public oversight of statutory auditors and audit firms encompasses the approval, registration of statutory auditors and audit firms, the adoption of standards on professional ethics and internal quality control of audit firms, the continuing education, as well as the systems of quality assurance, investigation, and penalties for statutory auditors and audit firms. In order to enhance the transparency of the auditor supervision and to allow for more accountability, each Member State should designate a single authority in charge of the public oversight of statutory auditors and audit firms. The independence of such public oversight authorities from the audit profession is a core prerequisite for integrity, efficiency and orderly functioning of the public oversight of statutory auditors and audit firms. Therefore, the public oversight authorities should be governed by non-practitioners and Member States should establish independent and transparent procedures for the selection of non-practitioners.

Amendment

(9) The public oversight of statutory auditors and audit firms encompasses the approval, registration of statutory auditors and audit firms, the adoption of standards on professional ethics and internal quality control of audit firms, the continuing education, as well as the systems of quality assurance, investigation, and penalties for statutory auditors and audit firms. In order to enhance the transparency of the auditor supervision and to allow for more accountability, each Member State should designate a single authority in charge of the public oversight of statutory auditors and audit firms. The independence of such public oversight authorities from the audit profession is a core prerequisite for integrity, efficiency and orderly functioning of the public oversight of statutory auditors and audit firms. Therefore, the public oversight authorities should be governed **by a wide range of stakeholders, including** non-practitioners, and Member States should establish independent and transparent procedures for the selection of non-practitioners **and for the identification, assessment and use of relevant and up to date expertise and experience from practitioners.**

Amendment 4
Proposal for a directive
Recital 11

Text proposed by the Commission

(11) Adequate supervision of statutory auditors and audit firms that have cross-border activities or are part of networks requires the public oversight authorities of the Member States to exchange information. In order to protect the confidentiality of the information that may be thus exchanged, Member States should subject to the obligation of professional secrecy not only the employees of the public oversight authorities, but also all persons to whom the public oversight authorities have delegated tasks. The competent authority should have the possibility to delegate tasks to other authorities or bodies **only** with regard to the approval and registration of the statutory auditors. Such delegation should be subject to several conditions and the competent authority should bear the ultimate responsibility for it.

Amendment

(11) Adequate supervision of statutory auditors and audit firms that have cross-border activities or are part of networks requires the public oversight authorities of the Member States to exchange information. In order to protect the confidentiality of the information that may be thus exchanged, Member States should subject to the obligation of professional secrecy not only the employees of the public oversight authorities, but also all persons to whom the public oversight authorities have delegated tasks. The competent authority should have the possibility to delegate tasks to other authorities or bodies with regard to the approval and registration of the statutory auditors **and audit firms, including the education and qualifications of statutory auditors and the organisation of the register of statutory auditors and audit firms**. Such delegation should be subject to several conditions and the competent authority should bear the ultimate responsibility for it.

Or. en

Amendment 5

Proposal for a directive

Article 1 – point 2 – point a a (new)

Directive 2006/43/EC

Article 2 – point 5

Text proposed by the Commission

Amendment

(aa) Point 5 is replaced by the following:
'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 except where that person is a statutory auditor or audit firm and the

third country audit engagement is subject to oversight by a Member State;';

Or. en

Amendment 6
Proposal for a directive
Article 1 – point 2 – point b
Directive 2006/43/EC
Article 2 – point 10

Text proposed by the Commission

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

Amendment

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

Or. en

Amendment 7
Proposal for a directive
Article 1 – point 2 – point d
Directive 2006/43/EC
Article 2 – point 13 – point g

Text proposed by the Commission

(g) EU alternative investment funds as defined in Article 4(1)(k) of Directive 2011/61/EC of the European Parliament and of the Council;

Amendment

deleted

Or. en

Amendment 8
Proposal for a directive
Article 1 – point 2 – point d
Directive 2006/43/EC
Article 2 – point 13 – point h

Text proposed by the Commission

Amendment

(h) undertakings for collective investment in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC of the European Parliament and of the Council;

deleted

Or. en

Amendment 9
Proposal for a directive
Article 1 – point 2 – point d
Directive 2006/43/EC
Article 2 – point 13 – subparagraph 1a (new)

Text proposed by the Commission

Amendment

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.

Or. en

Amendment 10
Proposal for a directive
Article 1 – point 5
Directive 2006/43/EC
Article 6 – paragraph 1 – subparagraph 1a

Text proposed by the Commission

Amendment

‘The competent authorities referred to in Article 32 shall cooperate ***in view of*** achieving a convergence of the

‘The competent authorities referred to in Article 32 shall cooperate ***with a view to*** achieving a ***minimum*** convergence of the

requirements set out in this Article. *They shall cooperate with the European Securities and Markets Authority (ESMA) and the competent authorities referred to in Article X of Regulation [XXX] of [XXX] in so far as such convergence relates to the statutory audit of public-interest entities.*'

requirements set out in this Article.'

Or. en

Amendment 11
Proposal for a directive
Article 1 – point 7
Directive 2006/43/EC
Article 14 – paragraph 3

Text proposed by the Commission

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

Amendment

3. The competent authorities referred to in Article 32 shall cooperate in view of achieving a convergence of the requirements of the adaptation period and the aptitude test. They shall enhance the transparency and predictability of the requirements.'

Or. en

Amendment 12
Proposal for a directive
Article 1 – point 9
Directive 2006/43/EC
Article 17 – paragraph 1 – point j

Text proposed by the Commission

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

Amendment

'if applicable, whether the audit firm is registered pursuant to **Article 3b**'.

Or. en

Amendment 13
Proposal for a directive
Article 1 – point 11 – point a
Directive 2006/43/EC
Article 22 – paragraph 1

Text proposed by the Commission

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.

Amendment

1. Member States shall ensure that when carrying out a statutory audit, **a** statutory auditor or **an** audit firm **and any natural person in a position to directly or indirectly influence the outcome of the statutory audit** is independent of the audited entity.

Independence shall be required during both the period covered by the financial statements to be audited and the period during which the statutory audit is carried out.

The statutory auditor or audit firm shall not carry out a statutory audit if there is any threat of self-review, self-interest, advocacy, familiarity or intimidation created by financial, personal, business, employment or other relationships between:

– the statutory auditor, the audit firm, its network, and any natural person in a position to influence the outcome of the statutory audit, and

– the audited entity;

of which an objective, reasonable and informed third party, taking into account the safeguards applied, would conclude

that the statutory auditor's or audit firm's independence is compromised.

Or. en

Amendment 14
Proposal for a directive
Article 1 – point 11 – point b
Directive 2006/43/EC
Article 22 – paragraph 2

Text proposed by the Commission

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

Amendment

(b) paragraph 2 is deleted;

Or. en

Amendment 15
Proposal for a directive
Article 1 – point 12
Directive 2006/43/EC
Article 26 – paragraph 1– subparagraph 1

Text proposed by the Commission

1. Member States shall ensure that statutory auditors and audit firms comply with international auditing standards *when carrying out statutory audits as long as those standards are in conformity with the requirements of this Directive and of Regulation XX/XX.*

Amendment

1. Member States shall ensure that statutory auditors and audit firms comply with international auditing standards.

Or. en

Amendment 16
Proposal for a directive
Article 1 – point 12
Directive 2006/43/EC
Article 26 – paragraph 2

Text proposed by the Commission

2. For the purposes of paragraph 1, 'international auditing standards' means International Standards on Auditing (ISAs) and related Statement and Standards which are part of the Clarity Project issued by the International **Federation of Accountants (IFAC)** in 2009 insofar as they are relevant to the statutory audit.

Amendment

2. For the purposes of paragraph 1, 'international auditing standards' means International Standards on Auditing (ISAs) and related Statement and Standards which are part of the Clarity Project issued by the International **Auditing and Assurance Standards Board (IAASB)** in 2009 insofar as they are relevant to the statutory audit.

Or. en

Amendment 17
Proposal for a directive
Article 1 – point 12
Directive 2006/43/EC
Article 26 – paragraph 3

Text proposed by the Commission

3. The Commission shall be empowered to adopt **delegated** acts in accordance with **Article 48a** for the purpose of amending the definition of international auditing standards in paragraph 2 of this Article. When using such powers, the Commission shall take into account any amendments brought to the ISAs by the **IFAC**, the opinion of the Public Interest Oversight Board on such amendments as well as any other developments in auditing and the audit profession.

Amendment

3. The Commission shall be empowered to adopt **implementing** acts in accordance with **Article 48(1) and (2)**, for the purpose of amending the definition of international auditing standards in paragraph 2 of this Article. When using such powers, the Commission shall take into account any amendments brought to the ISAs by the **IAASB**, the opinion of the Public Interest Oversight Board on such amendments as well as any other developments in auditing and the audit profession.

Or. en

Amendment 18
Proposal for a directive
Article 1 – point 14 – point a – point iii
Directive 2006/43/EC
Article 29 – paragraph 1 – subparagraph 1a (new)

Text proposed by the Commission

The competent authority referred to in

Amendment

The competent authority referred to in

Article 32 shall ***make available to interested parties, upon their request,*** the report referred to in point (g) of the first subparagraph. The competent authority shall make sure that the report disclosed does not undermine the commercial interests of ***the*** audited entity under review, including its industrial and intellectual property.’;

Article 32 shall ***publish*** the report referred to in point (g) of the first subparagraph. The competent authority shall make sure that the report ***published or*** disclosed does not undermine the commercial interests of ***any*** audited entity under review, including its industrial and intellectual property.’;

Or. en

Amendment 19
Proposal for a directive
Article 1 – point 14 a (new)
Directive 2006/43/EC
Article 31

Text proposed by the Commission

Amendment

14a. Article 31 is deleted.

Or. en

Amendment 20
Proposal for a directive
Article 1 – point 15 – point b
Directive 2006/43/EC
Article 32 – paragraph 3

Text proposed by the Commission

Amendment

3. The competent authority may allow non-practitioners who are knowledgeable in the areas relevant to statutory audit to be involved in the governance of the public oversight system, provided that they are selected in accordance with an independent and transparent nomination procedure.
Practitioners shall not be allowed to be involved in the governance of the public oversight system.’;

3. The competent authority shall be governed by a wide range of stakeholders.
The competent authority may allow non-practitioners who are knowledgeable in the areas relevant to statutory audit to be involved in the governance of the public oversight system, provided that they are selected in accordance with an independent and transparent nomination procedure.
Member States shall put in place an appropriate mechanism for the identification, assessment and use of

relevant and up-to-date expertise and experience from practitioners in the governance of the public oversight system.’;

Or. en

Amendment 21
Proposal for a directive
Article 1 – point 16
Directive 2006/43/EC
Article 32 a – paragraph 1

Text proposed by the Commission

1. Member States may allow the competent authority referred to in Article 32 to delegate tasks to other authorities or bodies designated by law **only** as regards the approval and registration of statutory auditors and audit firms. Any execution of tasks by other authorities or bodies shall be expressly delegated by the competent authority. The delegation shall specify the delegated tasks and the conditions under which they are to be carried out. The authorities or bodies shall be organized in such a manner that there are no conflicts of interest. The ultimate responsibility for supervising compliance with this Directive and the implementing measures adopted pursuant thereto shall lie with the delegating competent authority.

Amendment

1. Member States may allow the competent authority referred to in Article 32 to delegate tasks to other authorities or bodies designated by law, **regulation or other means** as regards:

- (a)** the approval and registration of statutory auditors and audit firms,
- (b)** *the education and qualification of statutory auditors,*
- (c)** *the organisation of the public register of statutory auditors and audit firms and*
- (d)** *quality assurance reviews for non-public-interest entities engagements.*

Any execution of tasks by other authorities or bodies shall be expressly delegated by the competent authority. The delegation

shall specify the delegated tasks and the conditions under which they are to be carried out. The authorities or bodies shall be organised in such a manner that there are no conflicts of interest. ***The authorities or bodies shall be accountable to the competent authority, which retains the right to issue recommendations or instructions of any form to the body to which the tasks have been delegated.*** The ultimate responsibility for supervising compliance with this Directive and the implementing measures adopted pursuant thereto shall lie with the delegating competent authority.

Or. en

Amendment 22
Proposal for a directive
Article 1 – point 18
Directive 2006/43/EC
Article 37 – paragraph 3

Text proposed by the Commission

‘3. Any contractual clause entered into between the audited entity and a third party restricting the choice by the general meeting of shareholders or members of that entity pursuant to paragraph 1 to certain categories or lists of statutory auditors or audit firms regarding the appointment of or restricting the choice of a particular statutory auditor or audit firm to carry out the statutory audit of that entity shall be null and void.’

Amendment

‘3. Any contractual clause entered into between the audited entity and a third party restricting the choice by the general meeting of shareholders or members of that entity pursuant to paragraph 1 to certain categories or lists of statutory auditors or audit firms regarding the appointment of or restricting the choice of a particular statutory auditor or audit firm to carry out the statutory audit of that entity ***shall be prohibited. Any such existing clauses*** shall be null and void.’

Or. en

Amendment 23
Proposal for a directive
Article 1 – point 20
Directive 2006/43/EC
Article 43 a – paragraph 1

Text proposed by the Commission

Member States shall ensure that the application of the auditing standards to the statutory audit of annual or consolidated financial statements of medium-sized undertakings is proportionate to the scale and complexity of the business of those undertakings.

Amendment

Member State shall ensure that the application of the auditing standards **in accordance with Article 26** to the statutory audit of annual or consolidated financial statements of medium-sized undertakings is proportionate to the scale and complexity of the business of those undertakings.

Or. en

Amendment 24
Proposal for a directive
Article 1 – point 20
Directive 2006/43/EC
Article 43 b – paragraph 2

Text proposed by the Commission

Where a Member State has established rules on the carrying out of a limited review of the accounts of small undertakings as an alternative to statutory audit, such Member State shall not be obliged to adapt the audit standards to the statutory audit of those undertakings.

Amendment

Member States shall be allowed to establish rules on the carrying out of a limited assurance engagement of the accounts of small undertakings as an alternative to statutory audit.

Or. en

Amendment 25
Proposal for a directive
Article 1 – point 20
Directive 2006/43/EC
Article 43 b – paragraph 3

Text proposed by the Commission

For the purposes of this Article, a 'limited **review**' means a procedure undertaken by a **statutory auditor** or **audit** firm **with a view to detecting misstatements due to error or fraud in the financial statements of an entity and which provides** a lower level of assurance than statutory audit.'

Amendment

For the purposes of this Article, a 'limited **assurance engagement**' means a procedure undertaken by a **practitioner** or firm **providing** a lower level of assurance than statutory audit.'

Or. en