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Directorate-General for Financial Stability, Financial Services and Capital Markets Union

INVESTMENT AND COMPANY REPORTING

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Additional Q&A - Implementation of the New Statutory Audit Framework

This document includes answers to new questions on the EU rules on statutory audit. These are in addition to the ones published on this website in [September 2014](#). This Q&A is a work in progress. Additional questions can be submitted to fisma-b4@ec.europa.eu.

DISCLAIMER:

This Q&A is not a legal document. This is an unofficial opinion of Directorate-General for Financial Stability, Financial Services and Capital Markets Union (DG FISMA). The answers provided therein are not binding on the European Commission as an institution.

1. Market monitoring

Q: *What is the purpose of the provisions related to the monitoring of market quality and competition? What criteria will be assessed?*

A: The requirement to monitor the developments in the market for providing statutory services to public-interest entities (PIEs) is an innovation in the new legal framework. This will help ensure a better understanding of the audit market at EU level and will provide another tool to measure the impact of the EU audit reform. The Regulation sets out a number of criteria which national audit authorities and the European Competition Network – as appropriate – will monitor regularly. The national authorities will draw up reports on developments in the audit market for PIEs, with the first reports expected by 17 June 2016, the day of application of the Regulation. Following the delivery of these reports, the Commission will consult with the CEAOB and the European Supervisory Authorities to prepare a joint report.

For the time being, there is no model or template for these reports. The Commission is committed to facilitating exchanges of views with Member States and national authorities to ensure an effective assessment of the criteria listed under the Regulation.

2. Selection procedure

Q: *Are PIEs obliged to make the tender documents publicly available?*

A: As long as the audit contract to be concluded by the hiring company falls outside the scope of EU rules on public procurement, it is the Audit Regulation that lists the criteria to be followed by the company when organising the selection procedure. According to the Audit Regulation:

- the invitation to statutory auditors and audit firms to submit proposals, as well as the tender documents, do not need to be published;

- the organisation of the selection procedure is the responsibility of the audit committee.

Additionally, in the more limited cases where the audit contract to be concluded by the hiring company falls within the scope of application of the EU rules on public procurement, then those rules are also applicable in addition to the Audit Regulation.

3. Exemption of certain PIEs from the requirements of the Regulation

Q: *The definition of PIEs encompasses listed companies, credit institutions and insurance undertakings. However, in some Member States, until the reform, banks had been exempted from the specific requirements on audits of PIEs that already existed under the Audit Directive. Can banks now remain outside the scope of the Regulation?*

A: Before the audit reform, under the Audit Directive and with regard to specific requirements governing audits of PIEs, Member States had the possibility of exempting audits of PIEs other than listed companies from those requirements. In such cases, if for instance a bank were not listed, a Member State could exempt its statutory auditor or audit firm from the existing specific requirements for PIEs. However, following the audit reform, the provision conferring that possibility on Member States was deleted. This means that a bank is now covered by the specific requirements on PIEs, irrespective of its being listed or not.

Nevertheless, Member States still have the possibility of excluding cooperatives and savings banks from the scope of the Regulation or from certain provisions. In such cases, the Member State should inform the Commission of the exceptional situations of non-application of the Regulation or certain provisions of the Regulation, alongside a justification for such non-application.

4. Application of provisions of the Regulation to entities that are not PIEs

Q: *Would it be possible to have a company that is not a PIE subject to some of the requirements of the Regulation – for instance, those governing the audit report or the additional report to the audit committee?*

A: It is possible for Member States to impose on non-PIEs a regime that is only partly coincident with the one set out in the Regulation, as long as those entities are not designated as PIEs at national level. However, should a Member State decide to designate a certain entity as a PIE, it cannot cherry-pick from the regime of PIEs – the whole regime would then have to apply.

5. Cross-border effects of different rotation periods

Q: *How will the possible different periods for mandatory rotation across 28 Member States impact a group spread throughout the EU?*

A: The maximum duration periods for audit engagements, either as defined under the Regulation or under the national framework, apply to each PIE separately, and not to the group as a whole. Thus, if a group has several PIEs in the EU, this does not necessarily mean that the statutory auditor or audit firm that audits the consolidated accounts of the group will have to rotate. Under the Regulation, if the audited entity is not a PIE, it does not have to change its statutory auditor or audit firm, irrespective of

what happens with its subsidiaries. If it is a PIE, it will be subject to the rules governing rotation on the Member State where it is located.

Having different statutory auditors/audit firms/networks auditing companies of the same group on a more frequent basis is one of the possible outcomes of the audit reform.

6. Transparency report

Q: *When does the first transparency report complying with the rules in the 2014 Directive and Regulation apply?*

A: The first transparency report complying with the new rules will have to be published for financial years starting on or after 17 June 2016. Transparency reports corresponding to financial years having already started prior to this date can be published in accordance to the requirements of the 2006 Audit Directive.

7. Publication of sanctions

Q: *If the competent authority applies to a legal or a natural person the sanction/measure of a "public statement which indicates the person responsible" for the breach, what would be the practical effect if the Member State has decided at national level that no personal data can be disclosed?*

A: Competent authorities must have the power to publish a public statement on their website indicating the person responsible, as well as the nature of the breach. The term "person responsible" covers both natural and legal persons.

However, Member States may decide that the disclosure to the public by the competent authority, of the measures taken and of the sanctions applied, shall not contain personal data. The Directive further clarifies that Member States have the possibility to decide that the publication of sanctions or any public statement is not to contain any personal data.

Consequently, such options may impact the contents of a "public statement which indicates the person responsible and the nature of the breach, published on the website of the competent authority". In the cases where a Member State has decided that no personal data is to be disclosed to the public, the public statement shall indicate the nature of the breach only – with no indication of personal data (for instance, the name) relating to the person responsible for the breach.

8. Supervision and delegation of tasks

Q: *Under the new rules, will professional bodies still play a role in audit supervision?*

A: The audit reform now requires that Member States designate a competent authority, to have ultimate responsibility for the oversight system. Nevertheless, Member States may delegate certain tasks to bodies or authorities other than the competent authority. In parallel, they may also allow the competent authority to delegate some of its tasks.

Therefore, Member States can delegate or authorise a competent authority to delegate several tasks to another institution or body - notably the professional body. The institution or body, however, shall be organised in such a manner so as to avoid conflicts of interest. Moreover, such a delegation should not distort the competent authority's ultimate responsibility for the oversight of the approval and registration of statutory auditors and audit firms, adoption of standards on professional ethics, internal control of audit firms and auditing, continuing education, quality assurance systems and investigative and administrative disciplinary systems.

However, regarding statutory audits or audit firms that audit PIEs, there are some tasks that cannot be delegated: the quality assurance system, any investigations related thereto, and any sanctions/measures imposed following inspections. These tasks should be directly carried out by the competent authority.

9. Scope of the reform

Q: *Will this reform cover the 28 EU Member States?*

A: Both the Directive and the Regulation are texts with European Economic Area (EEA) relevance. This means that the new rules will be applied by the 28 EU Member States, as well as Iceland, Liechtenstein and Norway, once the EEA Joint Committee has formally incorporated the package into the EEA Agreement.