

Summary Report

MEETING OF THE AUDIT REGULATORY COMMITTEE

8 September 2008

Mr. Jürgen Tiedje, Head of Unit F4-Auditing, chaired the meeting.

The following items were discussed:

I. Adoption of the draft agenda and approval of draft minutes of the meeting of 8 July 2008

The agenda was adopted. The minutes of the meeting of 8 July were approved after including the received remarks.

II a). Update on the US, Canada and Japan

Commission services informed Member States about the responses received from the PCAOB and SEC (US), CPAB (Canada), FSA and CPAAB (Japan) to the questionnaire sent to them. The Commission services invited Member States to comment. As Member States asked for more time to analyze the responses received, they were invited to submit comments in writing by 19 September 2008.

II b). Audit working papers – next steps towards a possible proposal on Article 47

The Chairman explained to Member States that it is up to them to consider for the time being whether to accept PCAOB inspections in 2008 under their national law. National solutions may be built for instance on the consent given by the audit firm and the client company concerned.

The Commission services also gave an overview on the comments received from the stakeholders on a discussion paper regarding the next steps towards a possible proposal under Article 47 and informed that the next meeting with the stakeholders would take place on 15 September 2008.

Comments by Member States:

- One Member State requested that the meaning of 'consent solution' should be clarified.
- One Member State informed that under its legislation, an audit firm cannot use the consent solution as a basis for delivering audit working papers, as the papers may comprise information on a third party or personal data which should be protected. Another Member State underlined that it is important to protect the information contained in audit working papers.
- Another Member State expressed that in exceptional cases a Member State may authorize a direct transfer of audit working papers to a third country competent authority.
- Another Member State commented that a direct transfer should be allowed if both the audit firm and the audited entity agree with that.

The Commission services presented a second discussion paper regarding possible criteria for an adequacy assessment under Article 47 and invited Member States to comment it.

Preliminary comments by Member States on the second discussion paper on Article 47:

- One Member State welcomed the initiative of the Commission services to produce the document. It expressed that a distinction should be made between the purposes for which audit working papers may be transferred to third country competent authorities and the safeguards put in place to protect the confidentiality of such papers. It also asked for clarification regarding the options presented in section 3.3. of the discussion paper. Four other Member States supported this request.
- Another Member State welcomed the document presented by the Commission. On section 3.1., it expressed, as a preliminary comment, its preference for option 1. Three other Member States supported this option.
- On section 3.1., one Member State commented that the existence of criminal sanctions for the staff members of third country competent authorities who breach the professional secrecy and confidentiality rules is not essential. The key element is that there are effective sanctions and that the existing sanctions are enforced in practice. Another Member State agreed on this point. Another Member State expressed that auditors and audit entities should be adequately protected against third country competent authorities that would request transfers of audit working papers and use such papers for other purposes than auditor oversight.
- On section 3.2. of the document, one Member State expressed that mutuality is a key element and therefore a comitology decision wouldn't be the appropriate instrument to deal with this concept. On the same section, two Member States expressed that exceptional cases should be clarified and, respectively, identified. Another Member State expressed that it would be difficult to define the term 'exceptional cases' in a comitology decision.
- On section 3.3., one Member State preferred option 1. It expressed that 'essentially equivalent functional results' might be interpreted as meaning that the result to be achieved is co-operation.
- Two Member States restated their support for a revocation clause.

III. Relationship of Directive 2006/43/EC with the Services Directive 2006/123/EC and Directive 2006/36/EC on professional qualifications.

Commission services summarized the discussions during the previous meeting on 8 July 2008 on the legal interpretation of the interrelationships between the Statutory Audit Directive, the Services Directive and the Directive on Professional Qualifications presented by the Commission services.

Commission services invited Member States to clarify the possible need for co-operation amongst public oversight systems once the establishment and residence requirements are dropped under national law, and to indicate which audits under national legislation (outside the scope of the Statutory Audit Directive) are concerned by the Directive 2005/36/EC and to which extent related audit work has been part of aptitude tests carried out in the past.

Comments by Member States:

- Establishment and residence requirements:
One Member State informed that these issues are still under discussion, but that the establishment requirement is important.
One Member State restated its disagreement with the Commission's view that the establishment requirement was contrary to EU law.
One Member State enquired if it was possible for Spain to designate a permanent representative for co-operation purposes with EU public oversight bodies.
Another Member State informed that under its new law the establishment is not required any more, but that this might create some practical problems related to the recognition of auditors established in other countries.
Another Member State required clarification on the concept of 'temporary services'.
One Member State required clarification on the concept of 'free provision of services' in the field of auditing. In its opinion, considering the characteristics of the auditing services, such services are not within the scope of the free provision of services, therefore registration is necessary for providers of such services.

- The need for an aptitude test:
One Member State informed that commercial funds are audited in its jurisdiction as some of them have a very important turnover.
Five Member States informed that audits are required for different categories of entities even if some of the audits required under national law audits are not within the scope of the Statutory Audit Directive. One of these Member States expressed that under its domestic law, the same procedures and standards apply to all audits, without distinction whether they are statutory audits or not.
Another Member State commented that an important number of audits will fall out the scope of its national law if the aptitude test will be removed.

Member States were invited to submit their comments in writing by end of September 2008.

IV. a) Transposition of the Directive 2006/43/EC – Scoreboard

The Commission services briefly outlined the results of the Scoreboard on the Transposition of the Directive on Statutory Audit reflecting the transposition as of 31 July. They informed that the next updated Scoreboard reflect the transposition status as of end October 2008.

Member States were invited to update the status of the transposition:

- One Member State informed that the public oversight authority was established and the staff was in the process of being recruited.
- One Member State expected the publication of the law in September 2008.
- One Member State expected the law fully transposing the Directive is expected to be published in November.
- Another Member State informed that the public oversight body was to be established by the Parliament.
- One Member State informed that it was in the last stages of the transposition.
- Six Member States informed that they expect the full transposition to be completed by the end of 2008.
- One Member State informed that the new draft law takes account of the Commission Recommendation on external quality assurance systems.

- Another Member State informed that the Directive is expected to be fully transposed only in March 2009.
- One Member State gave as an indicative date for the full transposition 30 June 2009.
- One Member State could not provide a date for the full transposition of the Directive.

The Chairman reminded that the Member States have to officially notify the Commission of the transposition of the Directive and informed that the letters of the formal notice have already been sent to those Member States, who failed to do so.

IV. b) List of questions raised by the audit firms

Article 23 (3) of the Directive: *(1) Has the incoming statutory auditor only the right to consult the working papers or has he also the right to retain copies of such papers? (2) In which cases of replacement, is the former auditor obliged to give access to all relevant information concerning the audited entity? Only if he is replaced during his performance (case of extraordinary dismissal of auditor) or as well when a contract expires and a new auditor is appointed after a call for tender?*

Two Member States expressed that Article 23 (3) does not require that the incoming auditor receives audit working papers. Under their law, the concept of 'relevant information' refers to the information about the results of the auditor's work to be reported by the previous auditor as far as requested by the new auditor, respectively to the information requested by the new auditor.

On question (1), another Member State hoped that sensible arrangements will be found regarding copies of audit working papers.

On question (2), three Member States expressed that they agreed with the Commission's interpretation. Member States seemed all to agree with the Commission's interpretation on this point.

One Member State informed that the requirement of access to all relevant information already existed under its law.

Article 24 of the Directive: *What kind of safeguards have been adopted by Member States in order to ensure that owners or shareholders of an audit firm as well as the members of the administrative, management and supervisory bodies do not intervene in the execution of a statutory audit in any way which jeopardises the independence of the statutory auditor?*

Four Member States expressed that they have similar regulations: an auditor must be designated for each file. If an audit firm is appointed as an auditor, it must designate an auditor for each specific file. Only authorized auditors may be appointed.

Another Member State informed that the independence of auditors is a condition for registration as an auditor or audit firm. The law is designed in such a way that it guarantees the independence of auditors and audit firms.

One Member State expressed that an auditor's independence is guaranteed under sanctions.

Another Member State informed that it had copied the provisions of the Directive.

One Member State expressed that for large scale audits, not only the auditor is responsible, but also the audit firms that he/she works with.

Article 25 of the Directive: *How is "contingency" understood by the Member States and how was Article 25(b) implemented in practice at national level?*

One Member State expressed that audit fees should be proportional to the work carried out. The audit fees can't depend on the provision of other services.

Article 32 of the Directive: *Can a minister in his/her capacity and according to his nomination procedure as a minister be considered as a person governing a public oversight system in line with Directive 2006/43/EC?*

One Member State expressed that the ministry is not involved in the public oversight system, with 1 exception: the adoption of standards. The authorization of the ministry is necessary for the adoption of standards. Another Member State informed that it has a similar exception regarding the validation of standards.

Another Member State expressed that if a ministry has sufficient knowledge in the auditing field, such a person may be considered as a person governing a public oversight system in line with Directive 2006/43/EC.

Another Member State expressed that the decisions of the oversight system may be appealed before a special body, they can't be appealed before the minister.

One Member State informed that 1 member out of 7 of the Board of the public oversight system has to be employee of the Ministry of Finance. All of the members of the Board have to be confirmed by the minister of Finance.

V. International Standards on Auditing

The Commission services suggested to convene a meeting of the experts appointed by the EU audit regulators before the end of 2008 (no participation of members of the AuRC would be requested).

The Commission services underlined the importance of the involvement of the Member States in the translation processes taking place at national level.

The Commission services presented a draft letter for the attention of John Kellas, the chairman of the IAASB on key issues regarding ISAs to be adopted by the IAASB before end of 2008.

Comments by Member States:

- On the translation of ISAs:
 - One Member State expressed that the primary responsibility for the translation of ISAs is for the Commission, in the context of a possible adoption.
 - One Member State informed that the translation of the clarified ISAs was ongoing at home, but that the outcome is the property of the professional body who is a member of the IFAC. As a result, the public oversight body from that Member State is not in a position to deliver a translation to the EC, nor commit on a timetable.
 - Another Member State key question enquired whether it should seek the endorsement of the translation procedures that are currently put in place by the IFAC. Should IFAC not engage each EU national regulator in this respect?
 - Another Member State informed that its professional bodies hold the copyright on translations.
 - Another Member State expressed that the participation of the authorities in the translation process might be positive. However it believes it is too early to do so, given the uncertainties on the forthcoming IFAC policy on translations, and the extent to which such participation is needed.

- On the message to be delivered to John Kellas on key issues in ISAs:
 - One Member State largely supported the draft, but thought that the letter should stress even more the sensitivity of the issue of management's responsibilities in the ISAs, as well as a stronger push against further developing ISA 265 as it stands.
 - Another Member State took the view that the IAASB should better take account of certain previous comments of DG MARKT in the area of experts/ISA 620 (recognise regulatory treatment of experts and consistency with IESBA's approach), of quality control/ISA 220 (use of reasonable assurance). The letter should also underline further that the latest position of the IAASB on external confirmation / ISA 505 is the minimum acceptable.

VI. Simplification

Commission services informed Member States that this matter might be discussed at the next meeting.

VII. Other Business

The Chairman informed that the next meeting of the Audit Regulatory Committee is planned for 10 November 2008.