

DIRECTIVE 2008/30/EC OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 11 March 2008

**amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts,
as regards the implementing powers conferred on the Commission**

(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) Directive 2006/43/EC of the European Parliament and of the Council ⁽³⁾ provides that certain measures are to 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 ⁽⁴⁾.

(2) Decision 1999/468/EC has been amended by Decision 2006/512/EC, which introduced the regulatory procedure with scrutiny for the adoption of measures of general scope and designed to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia* by deleting some of those elements or by supplementing the instrument with new non-essential elements.

(3) In accordance with the statement by the European Parliament, the Council and the Commission ⁽⁵⁾ concerning Decision 2006/512/EC, for the regulatory procedure with scrutiny to be applicable to instruments adopted in accordance with the procedure referred to in Article 251 of the Treaty which are already in force, those instruments must be adjusted in accordance with the applicable procedures.

(4) The Commission should be empowered to adopt measures necessary for the implementation of Directive 2006/43/EC, in particular to ensure confidence in the audit function and the uniform application of requirements regarding professional ethics, quality-assurance systems, independence and objectivity, to adapt the list of subjects to be included in the test of theoretical knowledge for auditors, to adopt international auditing standards and common standards for audit reports for annual or consolidated accounts, and to define exceptional cases of direct transfer of documents to third countries. Since those measures are of general scope and are designed to amend non-essential elements of Directive 2006/43/EC, *inter alia* by supplementing it with new non-essential elements, they must be adopted in accordance with the regulatory procedure with scrutiny provided for in Article 5a of Decision 1999/468/EC.

(5) Directive 2006/43/EC provides for a time restriction concerning the implementing powers conferred on the Commission. In their statement concerning Decision 2006/512/EC, the European Parliament, the Council and the Commission stated that Decision 2006/512/EC provides a horizontal and satisfactory solution to the European Parliament's wish to scrutinise the implementation of instruments adopted under the codecision procedure and that, accordingly, implementing powers should be conferred on the Commission without time limit. The European Parliament and the Council also declared that they would ensure that the proposals aimed at repealing the provisions in the instruments that prescribe a time limit for the delegation of implementing powers to the Commission are adopted as rapidly as possible. Following the introduction of the regulatory procedure with scrutiny, the provision establishing that time restriction in Directive 2006/43/EC should be deleted.

⁽¹⁾ OJ C 161, 13.7.2007, p. 45.

⁽²⁾ Opinion of the European Parliament of 14 November 2007 (not yet published in the Official Journal) and Council Decision of 3 March 2008.

⁽³⁾ OJ L 157, 9.6.2006, p. 87.

⁽⁴⁾ OJ L 184, 17.7.1999, p. 23. Decision as amended by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11).

⁽⁵⁾ OJ C 255, 21.10.2006, p. 1.

- (6) The Commission should, at regular intervals, evaluate the functioning of the provisions concerning the implementing powers conferred on it in order to allow the European Parliament and the Council to determine whether the extent of those powers and the procedural requirements imposed on the Commission are appropriate and ensure both efficiency and democratic accountability.
- (7) Directive 2006/43/EC should therefore be amended accordingly.
- (8) Since the amendments made to Directive 2006/43/EC by this Directive are technical in nature and concern committee procedure only, they do not need to be transposed by the Member States. It is therefore not necessary to lay down provisions to that effect,

HAVE ADOPTED THIS DIRECTIVE:

Article 1

Amendments

Directive 2006/43/EC is hereby amended as follows:

1. Article 8(3) shall be amended as follows:

- (a) the words ‘, in accordance with the procedure referred to in Article 48(2),’ shall be deleted;
- (b) the following sentence shall be added:

‘Those measures, designed to amend non-essential elements of this Directive, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).’;

2. Article 21(2) shall be amended as follows:

- (a) the words ‘, in accordance with the procedure referred to in Article 48(2),’ shall be deleted;
- (b) the following sentence shall be added:

‘Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).’;

3. Article 22(4) shall be amended as follows:

- (a) the words ‘, in accordance with the procedure referred to in Article 48(2),’ shall be deleted;

(b) the following subparagraph shall be added:

‘The measures referred to in the first subparagraph, designed to amend non essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).’;

4. Article 26 shall be amended as follows:

- (a) in paragraph 1 the words ‘in accordance with the procedure referred to in Article 48(2)’ shall be replaced by the words ‘in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).’;
- (b) paragraph 2 shall be amended as follows:

(i) the words ‘, in accordance with the procedure referred to in Article 48(2),’ shall be deleted;

(ii) the following subparagraph shall be added:

‘The measures referred to in the first subparagraph, designed to amend non essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).’;

5. Article 28(2) shall be amended as follows:

- (a) the words ‘, in accordance with the procedure referred to in Article 48(2) of this Directive,’ shall be deleted;
- (b) the following sentence shall be added:

‘Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).’;

6. Article 29(2) shall be amended as follows:

- (a) the words ‘, in accordance with the procedure referred to in Article 48(2),’ shall be deleted;
- (b) the following sentence shall be added:

‘Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).’;

7. Article 36(7) shall be amended as follows:

- (a) the words 'In accordance with the procedure referred to in Article 48(2)' shall be deleted;
- (b) the following sentence shall be added:

'Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).';

8. Article 45(6) shall be replaced by the following:

'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 regulatory procedure referred to in Article 48(2). Member States may assess the equivalence referred to in paragraph 5(d) of this Article as long as the Commission has not taken such a decision.

In this context, the Commission may adopt measures aimed at establishing general equivalence criteria in accordance with the requirements laid down in Articles 22, 24, 25 and 26 which are applicable to all third countries and which shall be used by Member States when assessing equivalence at national level. The criteria may not exceed the requirements laid down in Articles 22, 24, 25 and 26. Those measures, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).';

9. Article 46(2) shall be replaced by the following:

'2. In order to ensure uniform application of paragraph 1, 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 regulatory 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 such a 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 requirements of the relevant Member State during an appropriate transitional period.

In this context, the Commission may adopt measures aimed at establishing general equivalence criteria in accordance with the requirements laid down in Articles 29, 30 and 32 which are applicable to all third countries and which shall be used by Member States when assessing equivalence at national level. The criteria may not exceed the requirements laid down in Articles 29, 30 and 32. Those measures, designed to amend non essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).';

10. Article 47 shall be amended as follows:

- (a) paragraph 3 shall be replaced by the following:

'3. In order to ensure uniform application of paragraph 1(c), the adequacy 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 regulatory procedure referred to in Article 48(2). Member States shall take the measures necessary to comply with the Commission's Decision.

Such assessment of adequacy shall be based on the requirements of Article 36 or essentially equivalent functional results. Any measures taken in this context, designed to amend non essential elements of this Directive by supplementing it and aiming at facilitating cooperation between competent authorities, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).';

- (b) paragraph 5 shall be amended as follows:

- (i) the words 'in accordance with the procedure referred to in Article 48(2),' shall be deleted;

- (ii) the following sentence shall be added:

'That measure, designed to amend non-essential elements of this Directive by supplementing it, shall be adopted in accordance with the regulatory procedure with scrutiny referred to in Article 48(2a).';

11. Article 48 shall be amended as follows:

- (a) the following paragraph shall be inserted:

'2a. Where reference is made to this paragraph, Article 5a(1) to (4) and Article 7 of Decision 1999/468/EC shall apply, having regard to the provisions of Article 8 thereof.';

(b) paragraphs 3 and 4 shall be replaced by the following:

'3. By 31 December 2010 and, thereafter, at least every three years, the Commission shall review the provisions concerning its implementing powers and present a report to the European Parliament and to the Council on the functioning of those powers. The report shall examine, in particular, the need for the Commission to propose amendments to this Directive in order to ensure the appropriate scope of the implementing powers conferred on the Commission. The conclusion as to whether or not an amendment is necessary shall be accompanied by a detailed statement of reasons. If necessary, the report shall be accompanied by a legislative proposal to amend the provisions conferring implementing powers on the Commission.'

Article 2

Entry into force

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

Article 3

Addressees

This Directive is addressed to the Member States.

Done at Strasbourg, 11 March 2008.

For the European Parliament

The President

H.-G. PÖTTERING

For the Council

The President

J. LENARČIČ