**Consultation by the Department of Jobs, Enterprise and Innovation on**

**Member State Options under the Audit Directive 2014/56/EU**

**Article 2** - **Definitions**

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| **Directive 2006/43/EC, Article 2.13 – see SI 220/2010, Reg. 3** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(f)** | **Questions** |
| “Public-interest entities” means entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC *[Directive on markets and financial instruments]*, credit institutions as defined in point 1 of Article 1of Directive 2000/12/EC of the European Parliament and of the Council of 20 March 2000 relating to the taking up and pursuit of the business of credit institutions (1) and insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC *[Directive on annual accounts and consolidated accounts of insurance undertakings]*.  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; | “Public-interest entities” means:   1. entities governed by the law of a Member State whose transferable securities are admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC ( Which defines the term “regulated market” in the *Directive on markets in financial instruments)*; 2. credit institutions as defined in point 1 of Article 3(1) of Directive 2013/36/EU of the European Parliament and of the Council, other than those referred to in Article 2 of that Directive (*Directive on access to the activity of credit institutions and prudential supervision of credit institutions and investment firms)*; 3. insurance undertakings within the meaning of Article 2(1) of Directive 91/674/EEC (*Directive on annual accounts and consolidated accounts of insurance undertakings)* ;or; 4. entities **designated** by Member States as public-interest entities, for instance undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees; | The Public Interest Entities (PIEs) coverage at (a) – (c) is unchanged in substance from that provided for in Directive 2006/43/EC except that it is worded/laid out slightly differently and certain references have been updated.  The option at (d) for Member States to extend the content of EU-designated list of PIEs is a repetition of the option at Article 2(13) of Directive 2006/43/EC. Ireland did **not** take up the option in transposing the precursor Directive, which was transposed by SI 220/2010.  This option allows Member States to designate as PIEs entities, other than those which currently come within the definition of PIEs, i.e., those at (a), (b) and (c). The provision at (d) sets out certain examples of grounds for designation such as undertakings that are of significant public relevance because of the nature of their business, their size or the number of their employees.  The implications of a Member State exercising the right to designate entities under (d) as Public Interest Entities is that the gamut of requirements set out in the Audit Regulation will then apply to the audit of such entities, as well as, for example, the audit committee requirements set out at Article 39 of the Directive. This has very significant regulatory and cost implications for the auditor and the audited entity and the system of public oversight.  At a time where the policy objective of administrative burden reduction on enterprise is being systematically pursued at both national and EU level there is a need to justify the imposition of additional regulatory requirements where this is proposed.  Accordingly, significant justification would require to be adduced as a basis for designation including absence of alternative means of achieving the same or a comparable outcome.  Significant analysis, sector profiling, costs, ability to bear these additional costs are likely to be entailed as regards designation of PIEs under (d).  Any other observations? |

**Article 3 -** **Approval of statutory auditors and audit firms**

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| **Directive 2006/43/EC – Article 3.4(b) – see SI 220/2010, Reg. 27** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(3)(b)** | **Questions** |
| A majority of the voting rights in an entity must be held by audit firms which are approved in any Member State or by natural persons who satisfy at least the conditions imposed by Articles 4 and 6 to 12 *[Good repute, educational qualification, professional competence, theoretical knowledge, practical training, and long-term practical experience]*.  Member States **may provide** that such natural persons must also have been approved in another Member State.  For the purpose of the statutory audit of cooperatives and similar entities as referred to in Article 45 of Directive 86/635/EEC [*Directive on the annual accounts and consolidated accounts of banks and other financial institutions*], Member States **may establish** other specific provisions in relation to voting rights. | A majority of the voting rights in an entity must be held by audit firms which are approved in any Member State or by natural persons who satisfy at least the conditions imposed by Articles 4 and 6 to 12 (*Good repute, educational qualification, professional competence, theoretical knowledge, practical training, and long-term practical experience)*.  Member States **may provide** that such natural persons must also have been approved in another Member State.  For the purpose of the statutory audit of cooperatives, savings banks and similar entities as referred to in Article 45 of Directive 86/635/EEC (*Directive on the annual accounts and consolidated accounts of banks and other financial institutions*) a subsidiary or legal successor of a cooperative, savings bank or similar entity as referred to in Article 45 of Directive 86/635/EEC, Member States **may lay down** other specific provisions in relation to voting rights. | The options in the present Directive, while slightly differently worded are effectively the same.  Para. 1 of Article 3.4(b) of the 2006 Directive (identical to para. 1 of Article 1(3)(b)) was **transposed by Regulation 27 of SI 220/2010.**  Neither of **t**he two MS options in that paragraph was availed of.  The first option allows Member States to require that such natural persons who satisfy the conditions set out in the earlier subparagraph must, in addition, also have been approved in another MS. This “matches” the condition applicable to the audit firm.  Respondents are invited to consider whether there are reasons (prudential etc.) for having such a requirement and to set out what these are. If you are of the view that no such considerations apply and there is no reason for invoking the option please say so.  The second option permits MS, in the case of the audit of the categories of entity instanced in that subparagraph, i.e. those referred to at Article 45 of Directive 86/635/EEC, to lay down other specific provisions regarding voting rights.  Do you consider that it is appropriate/necessary to have specific voting rights provisions to cater for any or all of the audits in question?  If so, please set out why in each case you consider this appropriate and what the appropriate voting rights provisions might be for each/all of the audit categories in question?  Any other observations? |

**Article 3a - Recognition of audit firms**

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(4)(3)** | **Questions** |
| N/A | The competent authority in the host Member State shall register the audit firm if it is satisfied that the audit firm is registered with the competent authority in the home Member State. Where the host Member State intends to rely on a certificate attesting to the registration of the audit firm in the home Member State, the competent authority in the host Member State **may require** that the certificate issued by the competent authority in the home Member State be not more than three months old. The competent authority in the host Member State shall inform the competent authority in the home Member State of the registration of the audit firm. | The circumstances here are those where the registration of an audit firm in a **host Member State** is in question. In cases where a **host Member State** intends to rely on a certificate of registration in a home Member State, the option allows the former to require that the certificate in question should not have been issued more than three months previously.  As a prudentially-grounded option, do you see a reason why it should not be taken, or do you consider that it simply imposes additional and unnecessary bureaucracy? Please justify the position taken.  Ireland has raised with the EU Commission the use of home v host Member State vis-à-vis Ireland and the UK.  Any other observations? |

**Article 5 - Withdrawal of approval**

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| **Directive 2006/43/EC, Article 5.1 - see SI 220/2010, Regs. 33(5) and 34(5)** | **UNMODIFIED MS Option – Directive 2014/56/EU** | **Questions** |
| Same option in Directive 2014/56/EU. | Approval of a statutory auditor or an audit firm shall be withdrawn if the good repute of that person or firm has been seriously compromised. Member States **may**, however, **provide** for a reasonable period of time for the purpose of meeting the requirements of good repute. | This option was taken in the 2006 Directive at **Regulations 33(5) and 34(5) of SI 220/2010**. It sets out that efforts at restoration of good repute must take place “within a specified period (which shall not be less than a month)”.  Do you consider that this MS option should be taken again or not?  If so, do you consider that the provision above giving it effect is still appropriate and should be continued with?  If you consider that the option should be taken again but a different mechanism put in place, please set out what you would propose instead.  If you consider that the option should not be taken this time, please specify the reasons for this.  Any other observations? |

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| **Directive 2006/43/EC, Article 5.2 - see SI 220/2010, Regs. 33(5) and 34(5)** | **UNMODIFIED MS Option – Directive 2014/56/EU** | **Questions** |
| Same option in Directive 2014/56/EU***.*** | Approval of an audit firm shall be withdrawn if any of the conditions imposed in Article 3(4), points (b) and (c) is no longer fulfilled (*a majority of the voting rights and a majority of the administrative or management body – up to 75% – to be held by approved audit firms or natural persons that satisfy conditions imposed by this directive on good repute, educational qualifications and continuous training)*.  Member States **may**, however, **provide** for a reasonable period of time for the purpose of fulfilling those conditions. | This option of addressing the circumstances in question here was **not** taken under the 2006 Directive.  Do you consider that this MS option should be taken and if so why and what period of time should be permitted to enable the applicable conditions to be fulfilled?  If you consider that the option should not be taken, please specify why not. |

**Article 9 – Exemptions**

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| **Directive 2006/43/EC, Article 9.1** | **UNMODIFIED MS Option – Directive 2014/56/EU** | **Questions** |
| Same option in Directive 2014/56/EU. | By way of derogation from Articles 7 (*“Examination of professional competence”)* and 8 (*“Test of theoretical knowledge”)*, a Member State **may provide** that a person who has passed a university or equivalent examination or holds a university degree or equivalent qualification in one or more of the subjects referred to in Article 8 may be exempted from the test of theoretical knowledge in the subjects covered by that examination or degree. | This option was **not** taken under the 2006 Directive.  This option allows the setting aside of the requirements of Articles 7 and 8 to rely instead on the passing of other specified exams/holding certain qualifications/ equivalent qualification in one or more of the subjects listed at Article 8 so as to avail of the exemption from the theoretical knowledge test in those same subjects.  Do you consider that this MS option should now be taken or not?  Please substantiate your preferred option. |

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| **Directive 2006/43/EC, Article 9.2** | **UNMODIFIED MS Option – Directive 2014/56/EU** | **Questions** |
| Same option in Directive 2014/56/EU. | By way of derogation from Article 7 (*“Examination of professional competence”)*, a Member State **may provide** that a holder of a university degree or equivalent qualification in one or more of the subjects referred to in Article 8 (*“Test of theoretical knowledge”)* may be exempted from the test of the ability to apply in practice his or her theoretical knowledge of such subjects if he or she has received practical training in those subjects attested by an examination or diploma recognised by the State. | This option was **not** taken under the 2006 Directive.  This option allows the setting aside of the requirements of Article 7 as regards one or more subjects listed at Article 8 in the case of a holder of a degree or its equivalent where there has been practical training in that subject which is confirmed by a recognized State qualification.  Do you consider that this MS option should now be taken or not?  Please substantiate your preferred option.  Any other observations? |

**Article 11 – Qualification through long-term practical experience**

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| **Directive 2006/43/EC, Article 11** | **UNMODIFIED MS Option – Directive 2014/56/EU** | **Questions** |
| Same option in Directive 2014/56/EU. | A Member State **may approve** a person who does not satisfy the conditions laid down in Article 6 (*“Educational qualification”)* as a statutory auditor, if he or she can show either:   1. that he or she has, for 15 years, engaged in professional activities which have enabled him or her to acquire sufficient experience in the fields of finance, law and accountancy, and has passed the examination of professional competence referred to in Article 7, or 2. that he or she has, for seven years, engaged in professional activities in those fields and has, in addition, undergone the practical training referred to in Article 10 (*“…a trainee shall complete a minimum of three years’ practical training…”)* and passed the examination of professional competence referred to in Article 7. | This option was **not** taken under the 2006 Directive.  The option provides for approval of a person who does not satisfy the conditions of Article 6 – educational qualifications – where that person can demonstrate that he/she meets the criteria either at (a) or (b).  Do you consider that this MS option should now be taken or not?  Please substantiate you’re your preferred position. |

**Article 12 - Combination of practical training and theoretical instruction**

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| **Directive 2006/43/EC, Article 12.1** | **UNMODIFIED MS Option – Directive 2014/56/EU** | **Questions** |
| Same option in Directive 2014/56/EU***.*** | Member States **may provide** that periods of theoretical instruction in the fields referred to in Article 8 (*“Test of theoretical knowledge”)* shall count towards the periods of professional activity referred to in Article 11 (*seven years supported by practical training or fifteen years alone)*, provided that such instruction is attested by an examination recognised by the State. Such instruction shall not last less than one year, nor may it reduce the period of professional activity by more than four years. | This option was **not** taken under the 2006 Directive.  This option allows for periods of theoretical instruction subject to a recognized state exam in the areas covered by Article 8 to count towards the period specified in Article 11. The instruction in question cannot be of less than one year’s duration, nor can it count for more than 4 years in terms of being set against the professional activity period at Article 11.  Do you consider that this MS option should now be taken or not?  Please substantiate your any preference expressed.  Any other observations? |

**Article 14 – Approval of statutory auditors from other Member States**

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| **Directive 2006/43/EC, Article 14** | **NEW MS Option – Directive 2014/56/EU, Article 1(10)(2)** | **Questions** |
| N/A | The host Member State **shall decide** whether the applicant seeking approval is to be subject to an adaptation period as defined in point (g) of Article 3(1) of Directive 2005/36/EC (*Directive on the recognition of professional qualification: …”period of supervised practice possibly being accompanied by further training”)* or an aptitude test as defined in point (h) of that provision (*“test of professional knowledge (…) not covered by the diploma or other evidence of formal qualification possessed”)*. | This option relates to the procedures to be established by a MS competent authority in respect of **its** approval of an auditor who has been approved in another MS. A choice of procedures is provided for as between a defined adaptation period as per Article 3(1)(g) of the Recognition of Professional Qualifications Directive or an aptitude test as provided for at 1(h) of that Article.  Which of these options do you consider should be taken? To assist in framing a response to this, you may wish to examine the provisions of Directive 2005/36/EC, Article 3(1)(g) and (h).  Please substantiate your favoured option. |

**Article 15 – Public Register**

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| **Directive 2006/43/EC, Article 15.1** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(11)** | **Questions** |
| Each Member State shall ensure that statutory auditors and audit firms are entered in a public register in accordance with Articles 16 and 17 *[Registration of statutory auditors and audit firms]*. In exceptional circumstances, Member States **may disapply** the requirements laid down in this Article and Article 16 *[“Registration of statutory auditors”]* regarding disclosure only to the extent necessary to mitigate an imminent and significant threat to the personal security of any person. | Each Member State shall ensure that statutory auditors and audit firms are entered in a public register in accordance with Articles 16 and 17 (*Registration of statutory auditors and audit firms)*. In exceptional circumstances, Member States **may derogate from** the requirements laid down in this Article and Article 16 *[“Registration of statutory auditors”]* regarding disclosure only to the extent necessary to mitigate an imminent and significant threat to the personal security of any person. | This non-registration option was **not** taken under the 2006 Directive.  A slightly revised version of the option is now presented: “may derogate from” instead of “may disapply”. The basis for the departure from the registration provisions remain the same – the mitigation of “an imminent and significant threat to the personal security of any person”.  Are there compelling reasons why this option should now be taken in a situation where the decision not to do so has not been raised as an issue to date?  If you consider that this MS option should now be taken please give your reasons for this. |

**Article 20 - Language**

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| **Directive 2006/43/EC, Article 20.2 - see SI 220/2010, Reg. 69** | **UNMODIFIED MS Option – Directive 2014/56/EU** | **Questions** |
| Same option in Directive 2014/56/EU | Member States **may** additionally **allow** the information to be entered in the public register in any other official language(s) of the Community. Member **States may require** the translation of the information to be certified. | This option was taken in the 2006 Directive at **Regulation 69 of SI 220/2010**. The pragmatic approach taken was to permit the use of either English or Irish. The option to require translation was not considered necessary then.  Do you see any reason why this option should not be taken again as is?  If not, please set out your alternative and the reasons for it. |

**Article 22b - Assessment of threats to independence**

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(16)** | **Questions** |
| N/A | Member States shall ensure that, before accepting or continuing an engagement for a statutory audit, a statutory auditor or an audit firm assesses and documents the following:   * whether he, she or it complies with the requirements of Article 22   *(“Independence and objectivity”)* of this Directive;   * whether there are threats to his, her or its independence and the safeguards applied to mitigate those threats; * whether he, she or it has the competent employees, time and resources needed in order to carry out the statutory audit in an appropriate manner; * whether, in the case of an audit firm, the key audit partner is approved as statutory auditor in the Member State requiring the statutory audit;   Member States **may provide** simplified requirements for the audits referred in points (b) and (c) of point 1 of Article 2 (*Statutory audits of small undertakings).* | This new MS option allows MS to provide for less onerous requirements than those stipulated in this Article to audits which are not required by EU legislation, but rather are either a requirement of national law as regards small undertakings, **or** are requested by small undertakings which meet the national audit requirements for this category of entity where national legislation defines these as statutory audits.  At present the national thresholds for requirement of audit are less than the maximum thresholds which define a “small company“ in the Accounting Directive – Directive 2013/34/EU due to take effect on 20 July 2015, so the option at (b) of Article 2 is likely to be relevant as regards small companies **above** the audit exemption thresholds of €8.8m. turnover and €4.4m. balance sheet balance sheet and **under** €12m. and €6m. respectively which define small companies in Directive 2013/34/EU.  Do you consider that this MS option should be taken in relation to the statutory audits of these relevant small undertakings or not?  If so, please set out your reasons why in either case.  Which requirements do you consider should be simplified, and in what way, and are there some which should not be simplified and for what reasons?    Any other observations? |

**Article 24a - Internal organisation of statutory auditors and audit firms**

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(18)(1)** | **Questions** |
| N/A | Member States **may provide** simplified requirements for the audits referred in points (b) and (c) of point 1 of Article 2 (*Statutory audits of small undertakings)*. | This new MS option allows for less onerous requirements than those set out at (a) to (k) of paragraph 1 of this Article to apply to the audits of small undertakings. The general considerations set out in the option directly ante also apply in this case.  Do you consider that this MS option should be taken in relation to the statutory audits of these relevant small undertakings? If so, please set out your reasons why.  Which requirements do you consider should be simplified, and in what way, and are there some which should not be simplified and for what reasons?  Any other observations? |

**Article 24b - Organisation of the work**

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(19)(3)** | **Questions** |
| N/A | Member States shall ensure that the statutory auditor or the audit firm keeps records of any breaches of the provisions of this Directive and, where applicable, of Regulation (EU) No 537/2014 (*on Statutory Audits of Public Interest Entities)*. Member States **may exempt** statutory auditors and audit firms from this obligation with regard to minor breaches. Statutory auditors and audit firms shall also keep records of any consequence of any breach, including the measures taken to address such breach and to modify their internal quality control system. They shall prepare an annual report containing an overview of any such measures taken and shall communicate that report internally.  When a statutory auditor or an audit firm asks external experts for advice, he, she or it shall document the request made and the advice received. | This new MS option allows statutory auditors/audit firms to be exempted from record keeping of “minor breaches” of the provisions of the Directive and, where applicable, of the Regulation.  Do you consider that this MS option should be taken, of exempting “minor breaches” as provided for or not? Please support the position you take.  Any other observations? |

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(19)(7)** | **Questions** |
| N/A | Member States **may lay down** simplified requirements with regard to paragraph 3 and 6 (*keeping records of any breaches of this Directive and the related Regulation and any consequence thereof including measures taken to address them and keeping records of any complaints made in writing about the performance of the statutory audits carried out)* for the audits referred to in points (b) and (c) of point 1 of Article 2 (*Statutory audits of small undertakings).* | This new MS option allows for simplified requirements to be prescribed in respect of paragraphs 3 and 6 as regards the audits of small undertakings. The general considerations set out in the options Article 22b/1(16) and 24a/1(180)(1) apply in this case.  Do you consider that this MS option to prescribe simplified requirements in the cases in question should be taken or not in relation to the statutory audits of small undertakings? If so, do you have any suggestions as to the nature of the “simplified requirements” that might appropriately be prescribed?  If you oppose this option being taken, please set out your reasons for this.    Any other observations? |

**Article 26 – Auditing standards**

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| **Directive 2006/43/EC, Article 26 – see SI 220/2010, Reg. 54** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(21)(1)** | **Questions** |
| Member States shall require statutory auditors and audit firms to carry out statutory audits in compliance with international auditing standards adopted by the Commission in accordance with the procedure referred to in Article 48(2).  Member States **may apply** a national auditing standard as long as the Commission has not adopted an international auditing standard covering the same subject-matter. Adopted international auditing standards shall be published in full in each of the official languages of the Community in the *Official Journal of the European Union.* | Member States shall require statutory auditors and audit firms to carry out statutory audits in compliance with international auditing standards adopted by the Commission in accordance with paragraph 3 (*the Commission is empowered to adopt international auditing standards in the area of audit practice, independence and internal quality controls of statutory auditors and audit firms).*  Member States **may apply** national auditing standards, procedures or requirements as long as the Commission has not adopted an international auditing standard covering the same subject-matter. | This option was **not** expressly taken under the 2006 Directive, although APB-derived audit standards were, and continue to be, in application.  This is permissive as regards MS applying national standards pending the adoption by the Commission of international auditing standards***.***  Do respondents have views on this? |

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| **Directive 2006/43/EC, Article 26.3 – see SI 220/2010, Reg. 54** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(21)(4)** | **Questions** |
| Member States **may impose** audit procedures or requirements in addition to — or, in exceptional cases, by carving out parts of — the international auditing standards only if these stem from specific national legal requirements relating to the scope of statutory audits. | Notwithstanding the second subparagraph of paragraph 1 (*see the option available in Article 26.1 above)*, Member States **may impose** audit procedures or requirements in addition to the international auditing standards adopted by the Commission, only:   1. if those audit procedures or requirements are necessary in order to give effect to national legal requirements relating to the scope of statutory audits; or 2. to the extent necessary to add to the credibility and quality of financial statements. | A similar option was **not** taken under the 2006 Directive, which is moot because the Commission did not adopt international auditing standards under Article 26 of the 2006 Directive.  The present option allows MS to impose **additional** audit procedures or requirements to international auditing standards only in the specific instances specified at (a) and (b).  It would appear prudent to take this option to cover the possible circumstances prescribed. Do you agree?  If you do not agree, please set out the reasons for this.  If you consider that one only of the two sets of circumstances should be provided for, please indicate which one and explain your reasons for this, i.e. why one and not the other. |

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(21)(5)** | **Questions** |
| N/A | Where a Member State requires the statutory audit of small undertakings, it **may provide** that application of the auditing standards referred to in paragraph 1is to be proportionate to the scale and complexity of the activities of such undertakings. Member States **may take measures** in order to ensure the proportionate application of the auditing standards to the statutory audits of small undertakings. | These new interlinked MS option allow MS to provide, in the case of the audit of small undertakings, that the application of Commission-adopted international auditing standards is to be proportionate both to their size and complexity of activities and to take measures to ensure that these auditing standards are proportionately applied in the case of these audits.  Do you consider that these MS options should be taken, or not? Please give your reasons.  If you are of the view that these options should be taken, how do you see this objective being achieved in Ireland’s case?  Please substantiate your chosen option. |

**Article 28 – Audit reporting**

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(23)(2)** | **Questions** |
| N/A | Member States **may lay down** additional requirements in relation to the content of the audit report. | This option provides for MS to specify other requirements for inclusion in the audit report.  Do you consider that this MS option should be taken or not? Please substantiate your chosen option.  If you favour the option being taken, what additional “requirements” would you propose for inclusion in the audit report?  Do you consider that there is a case for taking the option purely as a means of future-proofing the contents of this Article?  Any other observations? |

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| **Directive 2006/43/EC, Article 28.1 – see SI 220/2010** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(23)(4)** | **Questions** |
| Member States **may provide** that this signature need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person. In any case the name(s) of the person(s) involved shall be known to the relevant competent authorities. | The audit report shall be signed and dated by the statutory auditor. Where an audit firm carries out the statutory audit, the audit report shall bear the signature of at least the statutory auditor(s) carrying out the statutory audit on behalf of the audit firm. Where more than one statutory auditor or audit firm have been simultaneously engaged the audit report shall be signed by all statutory auditors or at least by the statutory auditors carrying out the statutory audit on behalf of every audit firm. In exceptional circumstances Member States **may provide** that such signature(s) need not be disclosed to the public if such disclosure could lead to an imminent and significant threat to the personal security of any person.  In any event, the name(s) of the person(s) involved shall be known to the relevant competent authorities. | A similar option was **not** taken under the 2006 Directive.  This option allows MS, ***in exceptional circumstances,*** for the non-disclosure of the signature of the statutory auditor(s) carrying out the audit if it could lead to “an imminent and significant threat to the personal security of any person”.  Do you consider that this MS option should now be taken or not? A consideration in this may be that the name(s) of the person(s) involved will require to be known to the relevant competent authorities in any case.  Please substantiate your chosen option. |

**Article 30 - Systems of investigation and penalties**

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(25) (inserting new Article 30(2))** | **Questions** |
| N/A | Without prejudice to Member States' civil liability regimes, Member States shall provide for effective, proportionate and dissuasive sanctions in respect of statutory auditors and audit firms, where statutory audits are not carried out in conformity with the provisions adopted in the implementation of this Directive, and, where applicable, Regulation (EU) No 537/2014.  Member States **may decide** not to lay down rules for administrative sanctions for infringements which are already subject to national criminal law. In that event, they shall communicate to the Commission the relevant criminal law provisions. | This new MS option allows MS not to provide for the application of administrative sanctions regimes for the non-execution of statutory audits in conformity with the Directive, and, as applicable, the Audit Regulation where national criminal law already applies to the infringements in question.  Do you consider that this MS option should be taken or not?  Please set out reasons in support of your selected option. |

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| **Directive 2006/43/EC – Article 30.3** | **NEW MS Option – Directive 2014/56/EU, Article 1(25) (inserting new Article 30(3))** | **Questions** |
| Member States shall provide that measures taken and penalties imposed on statutory auditors and audit firms are appropriately disclosed to the public. Penalties shall include the possibility of the withdrawal of approval. | Member States shall provide that measures taken and sanctions imposed on statutory auditors and audit firms are to be appropriately disclosed to the public. Sanctions shall include the possibility of withdrawal of approval. Member States **may decide** that such disclosure shall not contain personal data within the meaning of point (a) of Article 2 of Directive 95/46/EC. (*Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data: “…'personal data' shall mean any information relating to an identified or identifiable natural person…”).* | This new option provides that MS may decide, in disclosure to the public of measures/sanctions imposed on statutory auditors/audit firms, that personal data as defined in the EU Directive cited in the provision may be withheld.  Do you consider that this MS option should be taken or not?  Please substantiate your chosen option. |

**Article 30a – Sanctioning powers**

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(25) (inserting new Article 30a(1))** | **Questions** |
|  | 1.Member States shall provide for competent authorities to have the power to take and/or impose **at least** the following administrative measures and sanctions for breaches of the provisions of this Directive and, where applicable, of Regulation (EU) No 537/2014:  (a) a notice requiring the natural or legal person responsible for the breach to cease the conduct and to abstain from any repetition of that conduct;  (b) a public statement which indicates the person responsible and the nature of the breach, published on the website of competent authorities;  (c) a temporary prohibition, of up to three years' duration, banning the statutory auditor, the audit firm or the key audit partner from carrying out statutory audits and/or signing audit reports;  (d) a declaration that the audit report does not meet the requirements of Article 28 of this Directive or, where applicable, Article 10 of Regulation (EU) No 537/2014;  (e) a temporary prohibition, of up to three years' duration, banning a member of an audit firm or a member of an administrative or management body of a public-interest entity from exercising functions in audit firms or public-interest entities;  (f) the imposition of administrative pecuniary sanctions on natural and legal persons. | The provisions of this paragraph combines a direction to MS to provide the competent authorities with powers to take and/or impose at least the administrative measures/sanctions for breaches of the Directive and, as applicable, the Regulation. While this is a direction to the MS, it contains three options.  The first is for the relevant competent to have the powers only to take the administrative measures/sanctions from (a) to (f) at least, the second is for the competent authority to impose only these, and the third is to do both. A possible hypothesis here, in an Irish context, would be for IAASA to assume both functions in question, or just one e.g. to decide on breaches of functions for which they have responsibility and to have another competent authority if so obligated to impose the sanctions. Under another scenario, the RABs, if designated as Competent Authority might do both.  Respondents are invited to comment on the scenarios outlined above and to express any preferences which they have regarding the various scenarios depicted, giving their reasons.  A further option embodied here arises from the inclusion of the word “at least” with respect to the list measures/sanctions at (a) to (f) which leaves it open to MS to go beyond these in conferring the power in question on the competent authorities.  Please indicate whether you consider the list measures/sanctions at (a) to (f) above as adequate or whether it should be added to, and, if so your suggestions for additional powers and the reasons for this. |

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(25) (inserting new Article 30a(3))** | **Questions** |
| N/A | Member States **may confer on** competent authorities other sanctioning powers in addition to those referred to in paragraph 1. *((…) CA shall have the power to take and/or impose at least the following measures and sanctions: a notice requiring the person responsible for the breach to cease the conduct and to abstain from a repetition of that conduct; a public statement indicating the nature of breach and the person responsible; a temporary prohibition on carrying out statutory audits and/or signing audit reports; a declaration that the audit report does not meet the necessary requirements; a temporary ban on the exercise functions in audit firms or public-interest entities; administrative pecuniary sanctions).* | This option provides for MS to give competent authorities sanctioning powers for breaches of the Directive other than those set out at Article 30a.1 is effectively a repetition of the option set out above and dealt with there. |

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(25) (inserting new Article 30a(4))** | **Questions** |
| N/A | By way of derogation from paragraph 1, Member States **may confer on** authorities supervising public-interest entities, when they are not designated as the competent authority pursuant to Article 20(2) of Regulation No 537/2014 *[on Statutory Audits of Public Interest Entities],* powers to impose sanctions for breaches of reporting duties provided for by that Regulation. | This option provides for MS to derogate from the provisions of paragraph 1 to give authorities supervising Public Interest Entities **not** designated under Article 20(2) of the Regulation sanctioning powers for breaches of reporting duties under the Regulation. From Article 20 of the Audit Regulation you will see that paragraph 2 is a derogation from paragraph 1. Paragraph 1 provides for MS to designate the competent authorities for carrying out the tasks required under the Regulation from amongst the authorities listed at (a) to (c) there.  Article 20(2) allows MS to assign responsibility for compliance with all or part of the provisions of Title III of the Regulation (Articles 16 – Appointment of statutory auditor/firm, 17 Duration of the audit engagement, Article 18 – hand-over file and Article 19 Dismissal/Resignation of statutory auditor/firm) to the competent authorities referred to at (a) to (f) of paragraph 2.  The Directives in question, respectively, are:  Markets in Financial Instruments (the first two), Transparency, Payments Services in the Internal market, Solvency II and Credit Institutions/Investment firms.  Do you consider that the MS option should be taken to empower such an entity or not?  Please substantiate your chosen option.  Any other observations? |

**Article 30c – Publication of sanctions and measures**

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(25) (inserting new Article 30c(1))** | **Questions** |
| N/A | Competent authorities shall publish on their official website **at least** any administrative sanction imposed for breach of the provisions of this Directive or of Regulation (EU) No 537/2014 in respect of which all rights of appeal have been exhausted or have expired, as soon as reasonably practicable immediately after the person sanctioned has been informed of that decision, including information concerning the type and nature of the breach and the identity of the natural or legal person on whom the sanction has been imposed.  Where Member States **permit** publication of sanctions which are subject to appeal, competent authorities shall, as soon as reasonably practicable, also publish on their official website information concerning the status and outcome of any appeal. | The inclusion of “at least” makes this an option for competent authorities. The intention here is that at least the information on the administrative sanction imposed should be published in the circumstances set out.  Do you consider it appropriate or not that further information should be published in such a case?  Please substantiate your view and as appropriate and indicate what additional information should be published.  Do you consider that publication of sanctions subject to appeal should be permitted? If publication before the appeal process has been exhausted/expired is to be permitted (might be desirable if appeal processes were very lengthy or if the lack of publication encouraged frivolous appeals), do you consider that there should be any restrictions on information to be published? |

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(25) (inserting new Article 30c(3))** | **Questions** |
| N/A | The publication of sanctions and measures and of any public statement shall respect fundamental rights as laid down in the Charter of Fundamental Rights of the European Union, in particular the right to respect for private and family life and the right to the protection of personal data. Member States **may decide** that such publication or any public statement is not to contain personal data within the meaning of point (a) of Article 2 of Directive 95/46/EC (*Directive on the protection of individuals with regard to the processing of personal data and on the free movement of such data: “'personal data' shall mean any information relating to an identified or identifiable natural person”).* | This new option allows MS to withhold from publication personal data as defined in the provision in relation to sanctions/measures or in public statements.  Do you consider that this MS option should be taken or not?  Please substantiate your chosen option. |

**Article 32 – Principles of public oversight**

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(26)(d)** | **Questions** |
| N/A | Member States shall designate one or more competent authorities to carry out the tasks provided for in this Directive. Member States shall designate only one competent authority bearing the ultimate responsibility for the tasks referred in this Article except for the purpose of the statutory audit of cooperatives, savings banks or similar entities as referred to in Article 45 of Directive 86/635/EEC, or a subsidiary or legal successor of a cooperative, savings bank or similar entity as referred to in Article 45 of Directive 86/635/EEC.  Member States shall inform the Commission of their designation.  The competent authorities shall be organised in such a manner that conflicts of interests are avoided.  Member States **may delegate or allow** the competent authority to delegate any of its tasks to other authorities or bodies designated or otherwise authorised by law to carry out such tasks. 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 conflicts of interest are avoided.  Where the competent authority delegates tasks to other authorities or bodies, it shall be able to reclaim the delegated competences on a case-by-case basis. (*According to Article 32.4, “The competent authority shall have the ultimate responsibility for the oversight”).* | In **requiring** each of the tasks provided for in the Directive to be executed by a competent authority, the Directive here at 4a allows MS the flexibility to designate more than one competent authority for this purpose. However, only one competent authority is permitted to be designated as bearing ultimate responsibility for these tasks (save for the exceptions set out in this provision).  4b permits Member States to delegate its tasks to other authorities or designated bodies authorised to carry out those tasks. Member States can also allow the competent authority to delegate any of its tasks to other authorities or designated bodies authorised to carry out those tasks.  Which competent authority(ies) do you consider should be designated to carry out the tasks provided for in this Directive?  For which tasks do you consider each of your suggested competent authority(ies) should be responsible?  Do you consider that the competent authority should be allowed to delegate any of its tasks? If so:   * Which other authorities or bodies should be designated or otherwise authorised by law to carry out such tasks? * Which tasks could/should be delegated? Are there any tasks that you consider should not be allowed to be delegated?   Please substantiate your chosen option.  Any other observations? |

**Article 36 - Professional secrecy and regulatory cooperation between Member States**

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(29)(d)** | **Questions** |
| N/A | Member States **may allow** competent authorities to transmit to the competent authorities responsible for supervising public-interest entities, to central banks, to the European System of Central Banks and to the European Central Bank, in their capacity as monetary authorities, and to the European Systemic Risk Board, confidential information intended for the performance of their tasks. Such authorities or bodies shall not be prevented from communicating to the competent authorities information that the competent authorities may need in order to carry out their duties under Regulation (EU) No 537/2014 (*on Statutory Audits of Public Interest Entities)*. | This new option allows for the transmission of confidential information from competent authorities to the other authorities/bodies designated here with functions in the PIE prudential supervision area which relates to the performance of their tasks.  Examples of the transferor “competent authorities” in question here could be IAASA or possibly Recognised Accountancy Bodies if they were so designated.  It would seem reasonable and judicious to provide for this kind of transfer of confidential information. Do you agree or not, and if so why not?  Any other observations? |

**Article 37 - Appointment of statutory auditors or audit firms**

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| **Directive 2006/43/EC, Article 37.2** | **UNMODIFIED MS Option – Directive 2014/56/EU** | **Questions** |
| Same option in Directive 2014/56/EU. | The statutory auditor or audit firm shall be appointed by the general meeting of shareholders or members of the audited entity.  Member States **may allow** alternative systems or modalities for the appointment of the statutory auditor or audit firm, provided that those systems or modalities are designed to ensure the independence of the statutory auditor or audit firm from the executive members of the administrative body or from the managerial body of the audited entity. | This option was **not** taken under the 2006 Directive.  This option allows for alternative systems/modalities for appointment of the statutory auditor/audit firm, provided they aid independence, to that under the general meeting of shareholders/members of the audited entity.  Do you consider that this MS option should now be taken or not?  Please substantiate your chosen option.  Any other observations? |

**Article 39 – Audit Committee**

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| **Directive 2006/43/EC, Article 41.1** | **NEW MS Option – Directive 2014/56/EU, Article 1(32)(1)** | **Questions** |
| N/A | Member States shall ensure that each public-interest entity has an audit committee. The audit committee shall be either a stand-alone committee or a committee of the administrative body or supervisory body of the audited entity. It shall be composed of non-executive members of the administrative body and/or members of the supervisory body of the audited entity and/or members appointed by the general meeting of shareholders of the audited entity or, for entities without shareholders, by an equivalent body.  **At least one member of the audit committee shall have competence in accounting and/or auditing.**  The committee members as a whole shall have competence relevant to the sector in which the audited entity is operating.  A majority of the members of the audit committee shall be independent of the audited entity. The chairman of the audit committee shall be appointed by its members or by the supervisory body of the audited entity and shall be independent of the audited entity. Member States **may require** the chairman of the audit committee to be elected annually by the general meeting of shareholders of the audited entity. | This Article requires the establishment of an audit committee for each Public Interest Entity and sets out requirements in this regard.  The option in question here is for MS to require the chairman of the audit committee to be elected annually by the shareholders.  What, in your view are the pros and cons of taking this option?  Whether you are for or against the option being taken, please explain your reason for this. |

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| **Directive 2006/43/EC, Article 41.1** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(32)(2)** | **Questions** |
| In public-interest entities which meet the criteria of Article 2(1), point (f) *[small and medium-sized enterprises are companies, which are meeting at least two of the following criteria: average number of employees under 250; total balance sheet below EUR 43mi; and annual turnover under EUR 50 mil.]* of Directive 2003/71/EC *[Prospectus Directive]*, Member States **may permit** the functions assigned to the audit committee to be performed by the administrative or supervisory body as a whole, provided at least that when the chairman of such a body is an executive member, he or she is not the chairman of the audit committee. | By way of derogation from paragraph 1 (*“…each public-interest entity shall have an audit committee…”]*, Member States **may decide** that in the case of public-interest entities which meet the criteria set out in points (f) *[small and medium-sized enterprises are companies, which are meeting at least two of the following criteria: average number of employees under 250; total balance sheet below EUR 43mil; and annual turnover under EUR 50 mil.)* and (t) (*company with reduced market capitalisation is a listed company with average market capitalisation of less than EUR 100 mil]* of Article 2(1) of Directive 2003/71/EC *[Directive on prospectus to be published when securities are offered) o*f the European Parliament and of the Council, the functions assigned to the audit committee may be performed by the administrative or supervisory body as a whole, provided that where the chairman of such a body is an executive member, he or she shall not act as chairman whilst such body is performing the functions of the audit committee.  Where an audit committee forms part of the administrative body or of the supervisory body of the audited entity in accordance with paragraph 1 (*“The audit committee shall be either a stand-alone committee of a committee of the administrative body or supervisory body of the audited entity”’),* Member States **may permit** or **require** the administrative body or the supervisory body, as appropriate, to perform the functions of the audit committee for the purpose of the obligations set out in this Directive and in the Regulation. | This option in Directive 2006/43/EC that  ***“the functions assigned to the audit committee may be performed by the administrative or supervisory body as a whole, provided that where the chairman of such a body is an executive member, he or she shall not act as chairman whilst such body is performing the functions of the audit committee.”***  was **not** taken under the 2006.  In essence, it and the related option to  **“permit** or **require the administrative body or the supervisory body, as appropriate, to perform the functions of the audit committee for the purpose of the obligations set out in this Directive and in the Regulation.”**  are intended to facilitate certain MS with different corporate structures than apply either in Ireland or the UK. |

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| **Directive 2006/43/EC, Article 41.6 – see SI 220 of 2010, Reg. 91(9)** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(32)(3)** | **Questions** |
| Member States **may exempt** from the obligation to have an audit committee:   1. any public-interest entity which is a subsidiary undertaking within the meaning of Article 1 of Directive 83/349/EEC if the entity complies with the requirements in paragraphs 1 to 4 of this Article at group level; 2. any public-interest entity which is a collective investment undertaking as defined in Article 1(2) of Directive 85/611/EEC (UCITs). Member States may also exempt public-interest entities the sole object of which is the collective investment of capital provided by the public, which operate on the principle of risk spreading and which do not seek to take legal or management control over any of the issuers of its underlying investments, provided that those collective investment undertakings are authorised and subject to supervision by competent authorities and that they have a depositary exercising functions equivalent to those under Directive 85/611/EEC; 3. any public-interest entity the sole business of which is to act as issuer of asset-backed securities as defined in Article 2(5) of Commission Regulation (EC) No 809/ 2004 (2). In such instances, the Member State shall require the entity to explain to the public the reasons for which it considers it not appropriate to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee; 4. any credit institution within the meaning of Article 1(1) of Directive 2000/12/EC whose shares are not admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC and which has, in a continuous or repeated manner, issued only debt securities, provided that the total nominal amount of all such debt securities remains below EUR 100 000 000 and that it has not published a prospectus under Directive 2003/71/EC. | By way of derogation from paragraph 1 (*“…each public-interest entity shall have an audit committee…”)*, Member States **may decide** that the following public-interest entities are not required to have an audit committee:   1. any public-interest entity which is a subsidiary undertaking within the meaning of ***point 10 of Article 2 of Directive 2013/34/EU*** ((*The Accounting Directive) ‘subsidiary undertaking’ means an undertaking controlled by a parent undertaking, including any subsidiary undertaking o an ultimate parent undertaking)* if that entity ***fulfils*** the requirements set out in ***paragraphs 1, 2 and 5 of this Article*** (*composition, competence and independence of audit committee)*, ***Article 11 (1), Article 11(2)*** (*“Additional report to the audit committee”)* ***and Article 16(5)*** (*“Appointment of statutory auditors or audit firms”)* ***of Regulation (EU) No 537/2014*** (*on Statutory Audits of Public Interest Entities)* at group level; 2. any public-interest entity which is an undertaking for collective investment ***in transferable securities (UCITS) as defined in Article 1(2) of Directive 2009/65/EC of the Parliament and of the Council (UCITS Directive)*** *(For the purposes of this Directive, and subject to Article 3, UCITS means an undertaking: (a) with the sole object of collective investment in transferable securities or in other liquid financial assets referred to in Article 50(1) of capital raised from the public and which operate on the principle of risk-spreading; and (b) with units which are, at the request of holders, repurchased or redeemed, directly or indirectly, out of those undertakings’ assets. Action taken by a UCITS to ensure that the stock exchange value of its units does not significantly vary from their net asset value shall be regarded as equivalent to such repurchase or redemption.)* ***or an alternative investment fund (AIF) as defined in Article 4(1)(a) of Directive 2011/61/EU of the Parliament and of the Council (AIF Managers Directive)*** *(‘AIFs’ means collective investment undertakings, including investment compartments thereof, which: (i) raise capital from a number of investors, with a view to investing it in accordance with a defined investment policy for the benefit of those investors; and (ii) do not require authorization pursuant to Article 5 of Directive 2009/65/EC)* ***;*** 3. any public-interest entity the sole business of which is to act as an issuer of asset backed securities as defined in point 5 of Article 2 of Commission Regulation (EC) No 809/2004 (‘*Asset backed securities’ means securities which: (a) represent an interest in assets, including any rights intended to assure servicing, or the receipt or timeliness of receipts by holders of assets or amounts payable there under; or (b) are secured by assets and the terms of which provide for payments which relate to payments or reasonable projections of payments calculated by reference to identified or identifiable assets)*; 4. any credit institution within the meaning of ***point 1 of Article 3(1) of Directive 2013/36/EU*** ((*Credit Institutions Directive) ’credit institution’ means credit institution as defined in point (1) of Article 4(1) of Regulation (EU) No 575/2013)* whose shares are not admitted to trading on a regulated market of any Member State within the meaning of point 14 of Article 4(1) of Directive 2004/39/EC (*Markets in Financial Instruments Directive) ’Regulated market’ means a multilateral system operated and/or managed by a market operator, which brings together or facilitates the bringing together of multiple third-party buying and selling interests in financial instruments – in the system and in accordance with its non-discretionary rules – in a way that results in a contract, in respect of the financial instruments admitted to trading under its rules and/or systems, and which is authorised and functions regularly and in accordance with the provisions of Title III)* and which has, in a continuous or repeated manner, issued only debt securities ***admitted to trading in a regulated market,*** provided that the total nominal amount of all such debt securities remains below EUR 100 000 000 and that it has not published a prospectus under Directive 2003/71/EC.   ***The public-interest entities referred to in point (c) shall explain to the public the reasons why they consider that it is not appropriate for them to have either an audit committee or an administrative or supervisory body entrusted to carry out the functions of an audit committee.*** | ***Note: Differences between the possible exemption list in the current and former Directive are bolded in the middle panel.***  ***Some of the difference related to updating of legislation.***  This option was taken in the 2006 Directive at **Regulation 91(9) of SI 220/2010**.  This option allows MS to set aside the requirement for specific PIEs to have an audit committee in the cases in question.  Do you consider that this MS option should now be taken or not in the case of any/all of the permitted instances?  Please substantiate your views whether you are in favour of taking the derogation option or not in each specific instance.  Any other observations? |

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| **Directive 2006/43/EC, Article 41.5** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(32)(4)** | **Questions** |
| Member States **may allow** or decide that the provisions laid down in paragraphs 1 to 4 *[requirements place upon the audit committee]* shall not apply to any public-interest entity that has a body performing equivalent functions to an audit committee, established and functioning according to provisions in place in the Member State in which the entity to be audited is registered. In such a case the entity shall disclose which body carries out these functions and how it is composed. | By way of derogation from paragraph 1 (*“…each public-interest entity shall have an audit committee…”]*, Member States **may require or allow** a public-interest entity not to have an audit committee provided that it has a body or bodies performing equivalent functions to an audit committee, established and functioning in accordance with provisions in place in the Member State in which the entity to be audited is registered. In such a case the entity shall disclose which body carries out those functions and how that body is composed. | A similar option was **not** taken under the 2006 Directive.  This option permits MS to either require or allow PIEs not to have an audit committee provided it has a body(ies) carrying out equivalent functions to an audit committee, in accordance with provisions in the MS in which the audited entity is registered.  Do you consider that this MS option should now be taken?    Please substantiate your chosen option.    Any other observations? |

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| **Directive 2006/43/EC** | **NEW MS Option – Directive 2014/56/EU, Article 1(32)(5)** | **Questions** |
| N/A | Where all members of the audit committee are members of the administrative or supervisory body of the audited entity, the Member State **may provide** that the audit committee is to be exempt from the independence requirements laid down in the fourth subparagraph of paragraph 1 *[…a majority of the members and the Chairman shall be independent of the audited entity, the Chairman shall be appointed by the members of the committee or a supervisory body].* | This new option allows MS to set aside the independence requirements when all the members of the audit committee are members of the administrative/supervisory body of the audited entity.  Do you consider that this MS option should be taken in the case in question or not?  Please substantiate your chosen option. |

**Article 45 – Registration and oversight of third-country auditors and audit entities**

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| **Directive 2006/43/EC, Article 45.6 – see SI 220/2010, Reg. 117** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(33)(d)** | **Questions** |
| In order to ensure uniform application of paragraph 5(d) *[…the audits are carried out in accordance with international auditing standards or with equivalent standards and requirements]*, 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) *[Examination Procedures based on Regulation 182/2011 on control of the Commission’s exercise of implementing powers by MS]*. Member States **may assess** the equivalence referred to in paragraph 5(d) *[see above]* of this Article as long as the Commission has not taken such a decision. | In order to ensure the uniform conditions of application of point (d) of paragraph 5 *[…audits carried out in accordance with international auditing standards or with equivalent standards and requirements]* 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) *[Examination Procedures based on Regulation 182/2011 on control of the Commission’s exercise of implementing powers by MS]*. Member States **may assess** the equivalence referred to in point (d) of paragraph 5 *[see above]* of this Article as long as the Commission has not taken any such decision. | This option was taken in the 2006 Directive at **Regulation 117 of SI 220/2010**.  This allows MS to assess equivalence in a situation where the Commission has not taken an equivalence decision.  Do you consider that this MS option should remain in place or not?  Please substantiate your chosen option.    Any other observations? |

**Article 46 - Derogation in the case of equivalence**

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| **Directive 2006/43/EC, Article 46.1 – see SI 220/2010, Reg. 119** | **UNMODIFIED MS Option – Directive 2014/56/EU** | **Questions** |
| Same option in Directive 2014/56/EU. | Member States **may disapply or modify** the requirements in Article 45(1) and (3) *[Registration of third-country auditors of undertakings outside the Union whose transferable securities are admitted for trading on a regulated market of the Union and inclusion in system of oversight, quality assurance system and system of investigation and penalties]* 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 *[Quality assurance system, system of investigations and penalties and principles of public oversight]*. | This option was taken under the 2006 Directive at **Regulation 119 of SI 220/2010**. The requirements of Article 45(1) and (3) of the 2006 Directive were disapplied on the basis of the conditions of the Article being met.  This option allows MS to set aside all or any of the requirements of registration, public oversight, quality assurance and investigation/penalties systems on the basis of reciprocity where the third country auditors/audit entities are subject to similar systems in the third country and provided that the Commission has deemed the systems equivalent.  Do you consider that this MS option should remain in place or not? Please explain your reasons, in particular, if you are proposing that the option not be continued with. |

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| **Directive 2006/43/EC, Article 46.1 – see SI 220/2010, Reg. 119** | **NEW MS Option – Directive 2014/56/EU, Article 1(34)** | **Questions** |
| In order to ensure uniform application of paragraph 1 of this Article, 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 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 any 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 relevant Member State's requirements during an appropriate transitional period. | In order to ensure uniform conditions for the application of paragraph 1 of this Article *[see option available in Article 46.1 above]*, 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) *[Examination Procedures based on Regulation 182/2011 on control of the Commission’s exercise of implementing powers by MS]*. Once the Commission has recognised the equivalence referred to in paragraph 1 of this Article *[see above]*, 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) *[Registration of third-country auditors of undertakings outside the Union whose transferable securities are admitted for trading on a regulated market of the Union and inclusion in system of oversight, quality assurance system and system of investigation and penalties]* partially or entirely. Member States **may assess** the equivalence referred to in paragraph 1 of this Article *[see above]* 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 *[see above]* 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. | A similar option was taken under the 2006 Directive at **Regulation 119 of SI 220/2010**.  The first new option allows MS to rely on the equivalence as adjudicated on by the Commission to fully or partially set aside the requirements of registration, public oversight, quality assurance and investigation/penalties systems.  The second new option permits MS to themselves assess, or rely on assessments by other MS authorities on third countries systems to set aside the above requirements where the Commission has not taken any equivalence decision.  Do you consider that these MS options should be taken?  Should MS rely, fully or partially, on the equivalence recognized by the Commission?  Should MS rely or not on its or other MS third countries assessments where the Commission has not taken a decision?  Please substantiate your chosen options. |

**Article 47 - Cooperation with competent authorities from third countries**

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| **Directive 2006/43/EC, Article 47.1 – see SI 220/2010, Reg. 109** | **AMENDED MS Option – Directive 2014/56/EU, Article 1(35)(a)(i)** | **Questions** |
| 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, provided that:   1. 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 accounts in that third country; 2. the transfer takes place via the home competent authorities to the competent authorities of that third country and at their request; 3. the competent authorities of the third country concerned meet requirements which have been declared adequate in accordance with paragraph 3; 4. there are working arrangements on the basis of reciprocity agreed between the competent authorities concerned; 5. the transfer of personal data to the third country is in accordance with Chapter IV of Directive 95/46/EC *[Data Protection Directive – Transfer of personal data to third countries].* | 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:   1. 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; 2. the transfer takes place via the home competent authorities to the competent authorities of that third country and at their request; 3. the competent authorities of the third country concerned meet requirements which have been declared adequate in accordance with paragraph 3; 4. there are working arrangements on the basis of reciprocity agreed between the competent authorities concerned; 5. the transfer of personal data to the third country is in accordance with Chapter IV of Directive 95/46/EC *[Data Protection Directive – Transfer of personal data to third countries].* | This option was taken under the 2006 Directive at **Regulation 109 of SI 220/2010**.  It now includes “inspection or investigation reports relating to the audits in question”.  This option allows for MS to transfer audit working papers/inspection or investigation reports to the competent authority of a third country held by approved statutory auditors/audit firms provided they meet certain conditions as at (a) to (e) of Article 47.1.  Do you consider that this MS option should be renewed or not with the inclusion referred to above?  Please substantiate your chosen option.  Any other observations? |

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| **Directive 2006/43/EC, Article 47.4(e) - see SI 220/2010, Reg. 110** | **AMENDED MS Option –Directive 2014/56/EU, Article 1(35)(b) and (c)** | **Questions** |
| In exceptional cases and by way of derogation from paragraph 1 *[see option available in Article 47.1 above]*, 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:   1. investigations have been initiated by the competent authorities in that third country; 2. 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; 3. 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; 4. 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; 5. the conditions referred to in paragraph 2 are respected *[there are reciprocal working arrangements to ensure justification of the request for audit working papers (WP), professional secrecy, limitations of use of audit WP by third-country CA, conditions of refusal of the request].* | In exceptional cases and by way of derogation from paragraph 1 *[see above in Article 47.1]*, 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:   1. investigations have been initiated by the competent authorities in that third country; 2. 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; 3. 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; 4. 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; 5. the conditions referred to in paragraph 2 are respected *[there are reciprocal working arrangements to ensure justification of the request for audit working papers (WP), professional secrecy, protection of commercial interests of the audited entity, limitations of use of audit WP by third-country CA, conditions of refusal of the request].*   **Amendments to Paragraph 2**  (b) in paragraph 2, the following point is inserted:  ‘(ba) the protection of the commercial interests of the audited entity, including its industrial and intellectual property, is not undermined;’;  (c) in paragraph 2, the second indent of point (d) shall be replaced by the following: ‘  — 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.’; | This option was taken under the 2006 Directive at **Regulation 110 of SI 220/2010**.  This option permits MS to allow approved statutory auditors/audit firms to transfer audit working papers/other documents directly to the competent authorities of a third country provided they meet certain conditions as at (a) to (e) of Article 47.4.    **The content of para 2, as referred to in (e) across has changed.**  Do you consider that this MS option should remain in place with the indicated change or not?  Please substantiate your chosen option.  Any other observations? |

**Article 52 - Minimum harmonisation**

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| **Directive 2006/43/EC, Article 52** | **UNMODIFIED MS Option – Directive 2014/56/EU** | **Questions** |
| Same option in Directive 2014/56/EU. | Member States requiring statutory audit **may impose** more stringent requirements, unless otherwise provided for by this Directive. | This option was **not** taken under the 2006 Directive.  This option permits MS to apply more stringent requirements than those set out in the Directive.  Do you consider that this MS option should now be taken or not?  If so, what areas do you consider should be subject to more stringent requirements and why? |