LF020
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FESE Response to the Consultation on Implementation of Articles 45 – 47 of the Directive on Statutory Audit (2006/43/EC)

I. General Remarks

1. The Federation of European Securities Exchanges (FESE) represents operators of the European regulated markets and other market segments, comprising the markets for not only securities, but also financial, energy and commodity derivatives. Established in 1974 as a small forum of stock exchanges in Europe, FESE today has 24 full members representing close to 40 securities exchanges from all the countries of the European Union (EU) and Iceland, Norway, and Switzerland, as well as several corresponding members from other non-EU countries.

2. FESE welcomes the opportunity to provide comments on the implementation of the Directive on Statutory Audit (2006/43/EC) with regard to Articles 45-47 and generally supports the aims of the Directive including reinforcing and harmonising the statutory audit function throughout the EU, as well as providing a basis for co-operation between regulators in the EU and with regulators in 3rd countries, such as the US Public Company Accounting Oversight Board (PCAOB).

3. First of all, we recognise the need to work towards the **convergence of international standards and the equivalence of requirements for audit firms** in order to foster fair and orderly markets and we consider this a great opportunity for the EU to set a global trend in this specific subject. Nevertheless, this process should not lead to excessive and burdensome requirements that would make EU markets less attractive to 3rd country issuers. The European Commission must take into due account **the need to ensure a level playing field for EU companies and EU audit firms**, which should not be disadvantaged by a more stringent framework than 3rd country issuers and audit firms. Moreover, the Commission should always pursue **a balance between maintaining high standards of investor protection and avoiding the risk to add costs for issuers** making our capital markets less attractive and competitive.

4. As was the case during the discussions related to the **3rd country accounting standards**, there is a need for flexibility vis-à-vis auditors using 3rd country auditing standards, in order to facilitate the processes of convergence and equivalence and avoid creating additional barriers to international listings in Europe, as mentioned above.

5. One of the main advantages of the EU approach to auditors oversight is that is principle-based. In order to provide an incentive for 3rd countries to develop **a principle–based public oversight** similar to that of the EU, FESE believes that the Commission should consider transitional measures for such countries. The length of the transitional period would depend on the commitment to move to a principle-based public oversight showed by the 3rd country in question.

6. We welcome in Section 2.1 of the consultation paper that exempted audit firms include those auditing third country companies 'falling under the definition of collective investment undertakings other than the

closed-end type set out in Article 1(2) of Directive 2004/109/EC'. We fully support this exemption which is entirely consistent with the approach taken in relation to collective investment undertakings of the open-end type in other FSAP Directives, such as the Prospectus Directive (2003/71/EC) and Transparency Directive (2004/109/EC). However, we are concerned that **the exemption for audit firms of collective investment undertakings of the open-end type is not clearly set out in the Statutory Audit Directive** (2006/43/EC) and would therefore ask the Commission to include this important exemption in the future legislative instrument (no matter what form this will take) that will follow the present Consultation Paper.

7. In conclusion, to address the above issues, FESE is supportive of the proposal of introducing **comitology measures**. FESE would also strongly favour the evolution of the EGAOB into a CESR-type Level 3 Committee over time.

II. Answers to the questions raised in the Consultation paper

Question 1:
Do you have further comments, or concerns to share, on the equivalence?

8. We strongly believe in finding a principles-based approach, and agree with the Commission's view that equivalence does not mean identical. Equivalence should not be carried out on the basis of a line by line assessment of the two systems. Instead, a broader view should be taken, based on the totality of the rules applicable in each jurisdiction.

Question 2:
Do you have comments on the need for transitional measures?

9. We believe there is a definite need for transitional measures and we agree that the second proposed avenue is the best approach to take. Transitional measures will provide an incentive for third countries to develop their own, principle-based, systems of audit regulation. Therefore we support transitional arrangements, combined with cooperation and dialogue between the relevant EU and international authorities, which length would depend on the commitment to move to a principle-based public oversight showed by the 3rd country in question.

Question 3:
Do you have any comments or observations on the above list of third countries? Do you have specific information on those third countries which you would like to share with the European Commission services and if so, which?

10. We believe that the following countries should be included in the list: Chile, Columbia, Marshall Islands, Pakistan, Peru and Ukraine. FESE members are seeing increased interest from companies in these countries in listing in the EU. We should be prepared to co-operate with regulators in these countries, as issuers increasingly decide to list in Europe.

Question 4:
Do you have any comments or observations that you wish to bring to the European Commission's attention as regards the explanation in section 3.2?

11. It would be regrettable if Member States chose to modify (or apply additional) registration or oversight requirements, as set out in Case 2 and Case 3. FESE agrees with the assessment that it would

undermine the utility of the Directive and lead to higher costs and uncertainties. In our view this would complicate matters; the Commission and EGAOB should work together to try and avoid such a scenario.

12. The last paragraph of section 3.2 sets out a scenario which we agree could be problematic, and as such it is important to look for solutions to differing registration requirements across the EU. It would be unacceptably burdensome for an audit firm to have to comply with different requirements in two or more EU states, and would increase the work of the oversight bodies. We therefore support a system of cooperation amongst oversight bodies in registration procedures, as outlined under Question 5.

Question 5:
Do you have comments on a concept for co-operation in registration procedures that would aim at reducing administrative burdens and cost?

13. FESE agrees that it would be desirable if the oversight bodies could work together to achieve some form of mutual recognition – so that if, for example, two Argentinean companies (e.g.: one listed in the UK, one in Spain) both used the same Argentinean audit firm, and if the audit firm were registered with the Spanish oversight body, the UK oversight body should be able to rely on them to verify that the initial registration requirements are in place (or vice versa).

14. Further, we believe that this should extend beyond the initial registration requirements, so that the ongoing monitoring and oversight functions could be performed by one oversight body and relied upon by others. We note that Article 45(3) allows a Member State to exempt a registered third country audit or audit entity from being subject to its quality assurance system if another Member State has carried out a quality review in the previous three years. Obviously some kind of arrangement would have to be reached as to who would be the leading oversight body. We agree that the natural forum for such discussions would be within EGAOB.

Question 6:
Do you have comments on the use of International Standards on auditing and US auditing standards (US GAAS) by third country audit firm for registration purposes for a limited transitional period?

15. We agree that the Commission should allow for a transitional period the use of ISAs or US GAAS for 3rd country audits. US GAAS is widely used and respected. Failure to allow the use of US GAAS will cause unnecessary costs and difficulties for 3rd country auditors.

16. Unnecessary costs and difficulties would be also caused if 3rd countries' audit firms had to use the auditing standards of each Member State in which they will be registered. Deciding to use ISAs or US GAAS for 3rd country audits would minimise the above mentioned risks as both standards are widely accepted. In addition, the Commission could consider whether to allow for a transitional period the use of the GAAS of Canada and Japan given both countries' commitment to international convergence.

17. According to the Decision of 4 December 2006 on the use by 3rd country issuers of securities of information prepared under internationally accepted accounting standards, the Commission will decide on equivalence convergence between IFRS and the GAAPs of Canada, Japan, the United States at least six months before 1 January 2009. If the Commission decides that these countries standards, taken as a

whole, are equivalent to IFRS, then 3rd country audit firms should also be able to use the GAAS of Canada and Japan.

Question 7:
Do you have any comments on independence issues under Article 45?

18. We agree that the Commission should assess 3rd countries' independence rules and if equivalent, allow 3rd country auditors to use their home country independence requirements.

19. It seems that the IFAC Code of Ethics may provide a useful international standard in future; however, it may be too soon to fully back such an approach as it is still under development.

Question 8:
Do you have any concerns which you would like to make European Commission services aware of?

20. Although FESE is not opposed to allowing transfer of audit working papers or other documents held by audit firms to non-EU jurisdictions' competent authorities as a matter of principle, we wonder whether such conditions should be introduced at an EU level instead of being left to single Member States. In particular, the exemption of the audit profession from confidentiality and professional secrecy rules under the laws of EU Member States should be carefully defined.

21. In any event, the respective EU Company who mandated the auditor with the annual or consolidated accounts should agree to or at least be informed about exchanging auditors' working papers or other documents.

Question 9:
Do you have any comments on the conditions set up in the adequacy test?

22. Concerning the exchange of audit working papers, we strongly recommend that the non-EU jurisdictions' competent authorities should not be allowed to transfer such papers to other authorities (i.e. tax authorities, supervisory authorities or courts). For example, if the PCAOB received requested auditors working documents from a European competent authority, it should not be allowed to send them to the SEC. Therefore, in order to clarify the scope for co-operation, we would welcome a recommendation for close (bilateral) working agreements between the competent authorities concerned.

Question 10:
Which circumstances could, in your view, be considered as exceptional?

23. We have no comments to make in this regard.