

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2016/1155

of 14 July 2016

on the equivalence of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and the Council

(notified under document C(2016) 4363)

(Text with EEA relevance)

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/EEC ⁽¹⁾, and in particular the first subparagraph of Article 46(2) thereof,

Whereas:

- (1) Pursuant to Article 45(1) of Directive 2006/43/EC, the competent authorities of a Member State are required to register all third-country auditors and audit entities that provide audit reports concerning the annual or consolidated financial statements of companies incorporated outside the Union whose transferable securities are admitted to trading on a regulated market of that Member State. Article 45(3) of Directive 2006/43/EC requires Member States to subject such auditors and audit entities to their systems of public oversight, quality assurance, investigations and penalties.
- (2) Member States may disapply or modify on the basis of reciprocity the requirements of Article 45(1) and (3) of Directive 2006/43/EC in relation to the auditors and audit entities of a third country provided that the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of that third country are deemed to be equivalent to the requirements under the Directive. The conditions under which the requirements of Article 45(1) and (3) of Directive 2006/43/EC may be disappplied or modified as a consequence of the determination of equivalence are, as a general rule, set out in a cooperative arrangement as referred to in Article 46(3) of Directive 2006/43/EC between the Member State and the relevant third country system of public oversight, quality assurance and investigations and penalties, and communicated to the Commission.
- (3) By Implementing Decision 2013/281/EU ⁽²⁾, the Commission considered that the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the competent authorities of the United States, namely the Securities and Exchange Commission of the United States of America and the Public Company Accounting Oversight Board of the United States of America, were equivalent to the public oversight, quality assurance, investigation and penalty systems for auditors and audit firms of the Member States. That Implementing Decision ceases to apply on 31 July 2016. Therefore, the equivalence of those systems should be reassessed.
- (4) The limitation in time of the application of Implementing Decision 2013/281/EU was due to the lack of mutual reliance on each other's oversight systems. Therefore, the mechanism of cooperation between the competent authorities of the Member States and the competent authorities of the United States has been reviewed in order

⁽¹⁾ OJ L 157, 9.6.2006, p. 87.

⁽²⁾ Commission Implementing Decision 2013/281/EU of 11 June 2013 on the equivalence of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the United States of America pursuant to Directive 2006/43/EC of the European Parliament and the Council (OJ L 161, 13.6.2013, p. 8).

to assess the progress made towards reaching mutual reliance. Since the adoption of Implementing Decision 2013/281/EU, certain forms of reliance have been established, including a commitment to avoid unnecessary duplication of work and to define approaches to cooperation leading to a higher degree of reliance in the future.

- (5) In the case of a company incorporated in the United States whose transferable securities are admitted to trading on a regulated market of a Member State, but which are not admitted to trading in the United States, Member States should ensure that all the audit engagements related to the financial statements of such a company are covered by the cooperative arrangements concluded with the competent authorities of the United States to determine which public oversight, quality assurance, investigation and penalty system will apply to the auditors of such companies. Where such audit engagements are undertaken by an auditor or audit entity of another Member State, the Member States concerned should cooperate to ensure that the audit engagement is included in the scope of one of their public oversight, quality assurance, investigation and penalty systems. Those arrangements do not prevent Member States from establishing cooperative arrangements on individual quality assurance reviews between their competent authorities and the competent authorities of the United States.
- (6) Any conclusion on the equivalence of the systems of public oversight, quality assurance and investigations and penalties of a third country pursuant to Article 46(2) of Directive 2006/43/EC does not pre-empt any decision that the Commission may adopt on the adequacy of the requirements met by the competent authorities of that third country pursuant to the first subparagraph of Article 47(3) of that Directive.
- (7) The ultimate objective of cooperation between the competent authorities of the Member States and those of the United States in the field of public oversight, quality assurance, investigations and penalties systems for auditors and audit firms is to reach mutual reliance on each other's oversight systems based on their equivalence.
- (8) The Commission has carried out an equivalence assessment of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the Securities and Exchange Commission of the United States of America and the Public Company Accounting Oversight Board of the United States of America, with the assistance of the European Group of Auditors' Oversight Bodies. The assessment was carried out in the light of the requirements set out in Articles 29, 30 and 32 of Directive 2006/43/EC which govern the public oversight, quality assurance, investigation and penalty systems for auditors and audit firms of the Member States. The public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the Securities and Exchange Commission of the United States of America and the Public Company Accounting Oversight Board of the United States of America meet requirements that are equivalent to those set out in Articles 29, 30 and 32 of that Directive.
- (9) The Public Company Accounting Oversight Board of the United States of America has competence in the public oversight, quality assurance and investigation of auditors and audit firms. The Securities and Exchange Commission of the United States of America has competence to oversee the Public Company Accounting Oversight Board's operations.
- (10) The competent authorities of the United States intend to further evaluate the systems of public oversight, quality assurance and investigations and penalties in the Member States before deciding to fully rely on the oversight performed by their competent authorities. Therefore, considering that the derogation provided for in Article 46 of Directive 2006/43/EC is based on the principle of reciprocity, the mechanism of cooperation between the competent authorities of the Member States and the competent authorities of the United States should be reviewed to assess the progress made towards reaching mutual reliance on each other's oversight systems. That review should also take account of the fact whether the Member States encountered difficulties in obtaining recognition of equivalence in respect of their public oversight, quality assurance, investigation and penalty systems for auditors and audit firms by the competent authorities of the United States. For that reason, this Decision should be applicable for a limited period of time.
- (11) Notwithstanding the time limitation, the Commission will monitor developments in the supervisory and regulatory cooperation on a regular basis. This Decision will be reviewed as appropriate in light of the supervisory and regulatory changes in the Union and in the United States, taking into account available sources of relevant information. That review may lead to the withdrawal of the declaration of equivalence.
- (12) The measures provided for in this Decision are in accordance with the opinion of the Committee established by Article 48(1) of Directive 2006/43/EC,

HAS ADOPTED THIS DECISION:

Article 1

For the purposes of Article 46(1) of Directive 2006/43/EC, the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of the Securities and Exchange Commission of the United States of America and the Public Company Accounting Oversight Board of the United States of America shall be considered to meet requirements that are equivalent to those of Articles 29, 30 and 32 of that Directive.

Article 2

Article 1 shall be without prejudice to cooperative arrangements on individual quality assurance reviews between the competent authorities of a Member State and the competent authorities of the United States.

Article 3

This Decision shall apply from 1 August 2016 to 31 July 2022.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 14 July 2016.

For the Commission
Jonathan HILL
Member of the Commission
