COMMISSION IMPLEMENTING DECISION (EU) 2022/1298

of 22 July 2022

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

(notified under document C(2022) 5118)

(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 Article 46(2), first subparagraph, thereof,

Whereas:

(1) By Commission Implementing Decision (EU) 2016/1155 ([2]), the Commission decided that 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 competent authorities of the United States of America, namely the Securities and Exchange Commission and the Public Company Accounting Oversight Board, are to be considered to meet requirements that are equivalent to those laid down in Articles 29, 30 and 32 of that Directive. Implementing Decision (EU) 2016/1155 ceases to apply on 31 July 2022. Therefore, the equivalence of those systems should be re-assessed.

(2) 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 companies are subject to their systems of public oversight, quality assurance, investigation and penalties. Where such companies are listed in more than one Member State, the Member States concerned should cooperate to ensure that the audit engagement is included in the scope of one of their systems of public oversight, quality assurance, investigation and penalties. Those arrangements should not prevent Member States from establishing cooperative arrangements on quality assurance reviews between their competent authorities and the competent authorities of the United States.

(3) 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 Article 47(3), first subparagraph, of that Directive.

(4) 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.

([1]) OJ L 157, 9.6.2006, p. 87.

([2]) 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 (OJ L 190, 15.7.2016, p. 80).

(5) Pursuant to the Sarbanes-Oxley Act of 2002 ([3]), in the United States of America, the Public Company Accounting Oversight Board approves the registration of external auditors and audit firms and inspects registered firms' audits and quality control systems. The Securities and Exchange Commission has competence to oversee the Public Company Accounting Oversight Board's operations. The Securities and Exchange Commission and the Public Accounting Oversight Board are responsible for the adoption of audit standards and the investigation and sanctioning of registered public accounting firms and their associated persons for violations of specified rules or professional standards.

(6) The Committee of European Auditing Oversight Bodies has reassessed, in accordance with Article 30(7), point (c), of Regulation (EU) No 537/2014 of the European Parliament and the Council ([4]), the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities in the United States, based on the Sarbanes-Oxley Act of 2002, which has not fundamentally changed since the adoption of Implementing Decision (EU) 2016/1155. Taking into account that technical assessment, the systems of the public oversight, quality assurance, investigation and penalties for auditors and audit entities of the Securities and Exchange Commission and the Public Company Accounting Oversight Board continue to meet requirements that are equivalent to those laid down in Articles 29, 30 and 32 of Directive 2006/43/EC.

(7) Following Implementing Decision (EU) 2016/1155, several Member States' competent authorities and the competent authorities of the United States have organised joint inspections. Some competent authorities of the Member States have implemented partial reliance, including by performing quality control inspections, on which the Public Company Accounting Oversight Board has placed some reliance, and by dividing some focus areas of file inspections between them. For the functioning of capital markets, it is important that the competent authorities of the Member States and the competent authorities of the United States are able to continue the good cooperation after 31 July 2022 with the objective of reaching mutual reliance on each other's oversight systems. However, in absence of full reliance, considering that the derogation provided for in Article 46 of Directive 2006/43/EC is based on the principle of reciprocity, this Decision should be applicable for a limited period of time.

(8) Notwithstanding the time limitation, the Commission, assisted by the Committee of European Audit Oversight Bodies, will monitor on a regular basis the market developments, evolution of the supervisory and regulatory frameworks and the effectiveness and experience of supervisory cooperation, including the progress towards reaching mutual reliance of each other's oversight systems. In particular, the Commission may undertake a specific review of this Decision at any time before the end of its period of application where relevant developments make it necessary to re-assess the equivalence granted by this Decision. Such re-assessment may lead to the repeal of this Decision.

(9) 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 systems of public oversight, quality assurance, investigation and penalties 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 laid down in Articles 29, 30 and 32 of that Directive.

([3]) Public Law 107–204, 30 July 2002, 116 Stat 745.

([4]) Regulation (EU) No 537/2014 of the European Parliament and of the Council of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC (OJ L 158, 27.5.2014, p. 77).

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 of America.

Article 3

This Decision shall apply from 1 August 2022 to 31 July 2028.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 22 July 2022.

For the Commission
Mairead MCGUINNESS
Member of the Commission