

Member State Options Table for Regulation (EU) No 537/2014

Article	What are the options?	Did these options exist under Directive 2006/43/EU	If MS option pre-exists new Regulation, was this taken up by MS previously? If no, why now	If no, is there existing national law in line with the EU option despite the option not being previously available?	Who is likely to make decision on this option
Article 2(3) Scope of financial institutions to be audited	<p><i>Para 3</i> - Where a cooperative within the meaning of point (14) of Article 2 of Directive 2006/43/EC, a savings bank or a similar entity as referred to in Article 45 of Directive 86/635/EEC, or a subsidiary or a legal successor of a cooperative, a savings bank or a similar entity as referred to in Article 45 of Directive 86/635/EEC is required or permitted under national provisions to be a member of a non-profit-making auditing entity, the Member State may decide that this Regulation or certain provisions of it shall not apply to the statutory audit of such entity, provided that the principles of independence laid down in Directive 2006/43/EC are complied with by the statutory auditor when carrying out the statutory audit of one of its members and by persons who may be in a position to influence the statutory audit.</p>	<p>No. There was an exemption from Article 3(4)(b) (voting rights in audit firms) for certain cooperatives, which may be related.</p> <p>There was a MS option at Article 39 to exempt the whole of Chapter 10 for unlisted banks and insurers, which is much wider</p>	<p>The Article 3(4)(b) exemption was not taken up in paragraph 7(3)(a) of Schedule 10 to the Companies Act 2006, which applies to all statutory audits by firms.</p> <p>The UK did take advantage of the MS option at Article 39 and several Articles of Chapter 10 are only implemented for listed entities</p>	<p>There is no existing UK law in line with this specific option. We believe it was inserted specifically for certain types of cooperative bank and / or insurer in other northern European MSs.</p>	<p>HMG unlikely to implement this option as it does not seem to be relevant in UK.</p>
Article 4 Audit Fees	<p><i>Para 2 sub 3</i> - MS may provide that a competent authority may, upon a request by the statutory auditor or the audit firm, allow that statutory auditor or audit firm, on an exceptional basis be exempt from the NAS cap requirements for a period not exceeding two financial years.</p>	<p>No. The obligations on the cap on non-audit services and these options are new to this Regulation.</p>	<p>N/A</p>	<p>Only in so far as ethical standards on auditor independence are set by the FRC under UK law. The FRC could</p>	<p>Discussion document proposes to amend UK law where necessary to allow FRC to implement</p>

	<i>Para 4</i> - MS may also choose to apply more stringent requirements.			chose to apply a cap, or to prohibit certain non-audit services, with such requirements and exemptions as they considered appropriate using their existing powers.	the cap and the blacklist through ethical standards and to decide whether to take up the options on these, including on discretionary exemptions, to the extent it thinks appropriate.
Article 5 Prohibition of Non-Audit Services	<i>Para 2</i> - MS may prohibit additional services other than those listed where they consider that those services represent a threat to independence.	No. The obligations in respect of the blacklist of non-audit services and the option are new in this Regulation.			
	<i>Para 3</i> - Member States may allow a de minimis exemption in relation to <i>preparation of tax forms, identification of public subsidies and tax incentives, support regarding tax inspections by tax authorities, calculation of direct and indirect tax and deferred tax, provision of tax advice, and valuation services</i> by the statutory auditor.				
	<i>Para 4 sub 2</i> - MS may establish stricter rules for providing NAS not prohibited by Article 5.				
Article 10 Audit Report	<i>Para 2 sub 2</i> - Member States may lay down additional requirements in relation to the content of the audit report.	Yes - in that the Directive is minimum harmonisation (see Article 52)	Yes – FRC standards make provision on the content of the audit report which exceed those in the 2006 Directive	N/A	Discussion document propose to amend UK law where necessary to allow FRC to implement standards on the audit report and to decide whether to include additional reporting requirements as they consider appropriate.

Article 11 Additional Report to Audit Committee	<p><i>Para 1</i> – MS may:</p> <ul style="list-style-type: none"> require the audit committee to disclose that additional report to such third parties as are provided for in their national law; Require that this additional report be submitted to the board of directors 	No. Both the obligation to provide an additional report and these options are new in this Regulation. However auditing standards previously provided for an additional report.	Auditing standards currently provide it is for the audit committee to determine who the additional report may be sent to.		As the report is to the audit committee, it is matter for legislation to determine where it should be sent elsewhere. Discussion document proposes it should be sent to the board and seek views on other recipients.
	<p><i>Para 2 sub 2</i> - MS may:</p> <ul style="list-style-type: none"> Lay down additional requirements [as to the content of the additional report]; 		FRC Auditing standards previously provided for an additional report to the audit committee, in which the FRC, in its usual standard setting role , could include additional material.		Discussion document proposes changes to UK law as necessary to allow FRC to implement standards on the additional report and to decide whether additional material should be included.
Article 12 Report to Supervisors of PIEs	<p><i>Para 1 sub 1</i> – ...the statutory auditor or the audit firm carrying out the statutory audit shall have a duty to report promptly to the competent authorities supervising that public interest entity, or where specified by the MS concerned, to the competent authority responsible for oversight of the statutory auditor or audit firm, any information concerning that PIE</p>	No. Both the obligation for the auditor to report to supervisors of PIEs and these options are new in this Regulation.	N/A	For financial services providers, national law specifies that the PRA is the recipient and not the FRC.	Discussion document proposes that this information should be sent to PRA for banks and insurers, or FCA for other listed companies, and seek views on whether, in addition,

					it should also be sent to FRC.
	<p><i>Para 1 sub 3 - MS may require additional information from the statutory auditor provided it is necessary for effective financial market supervision as provided for in national law.</i></p>			<p>For banks and insurers, the provision is included in the Financial Services and Markets Act 2000 (Communications by Auditors) Regulations 2001. We are not aware of any comparable provision for listed companies.</p>	<p>HMG likely to consult only on application of EU mandatory additional requirements beyond what is in place already in UK domestic law.</p>
<p>Article 15 Record Keeping</p>	<p><i>Sub 2 - MS may require statutory auditors and audit firms to keep particular documents and information for a longer period than five years in accordance with their rules on personal data protection and administrative and judicial proceedings.</i></p> <p><i>(The documentation and information is referred to in Article 4(3), Article 6, Article 7, Article 8(4) to (7), Articles 10, and 11, Article 12(1) and (2), Article 14, Article 16(2), (3), and (5) of this Regulation, and Articles 22d, 24a, 24b, 27 and 28 of the Directive 2006/43/EU)</i></p>	<p>No. Both this obligation on record keeping and this option are new in this Regulation.</p>	<p>N/A</p>	<p>There are likely to be various provisions on data protection and personal information in UK and on retention of records in professional codes.</p>	<p>HMG likely to consult only on implementation of EU mandatory additional requirements beyond what is in place already in UK domestic law.</p> <p>Discussion document considers making changes to UK law as necessary to allow implementation of additional requirements in auditing standards or other rules applying to auditors.</p>

	<p><i>Para 7</i> - MS may decide that a minimum number of statutory auditors or audit firms are to be appointed by PIEs in certain circumstances and establish the conditions governing the relations between the statutory auditors or audit firms appointed.</p>	<p>Yes - in that the Directive is minimum harmonisation so MSs were permitted to require that a minimum number of auditors were appointed</p>	<p>No – UK does not currently require joint audit.</p>	<p>N/A</p>	<p>HMG likely to state that it is not consulting on implementing options in legislation that would impose further burdens required to be implemented as an EU minimum.</p>
<p>Article 16 Appointment of statutory auditors</p>	<p><i>Para 8</i> – MS may allow a nomination committee to perform the functions of the audit committee in Article 16 and require it to submit the recommendation for the appointment of statutory auditors to the general meeting of shareholders or members.</p>	<p>No – Both this obligation as to the role of the audit committee in the appointment of the auditor and this option are new in this Regulation.</p> <p>However, Article 41 of the Directive (pre-2014 version) does provide an option to allow other bodies to perform equivalent functions to those of the audit committee, if the company prefers.</p>	<p>N/A</p>	<p>Yes - in that the UK the directors could currently put in place whatever framework they choose to identify an auditor to put to members for appointment</p>	<p>Given that the new Article 38 on audit committees provides an option to allow other bodies to perform equivalent functions, this additional option seems unnecessary. It may also conflict with UK law on directors' duties as submitting a recommendation to members on the appointment of the auditor would seem to be a role for directors. HMG likely to consult on not implementing this option.</p>

	<p><i>Para 2(a)</i> - MS may require that the initial engagement (<i>of at least one year</i>) be for a period of more than one year.</p>	<p>Yes - in that the Directive is minimum harmonisation so MSs were permitted to require that the auditor's initial engagement was for a period of more than a year.</p>	<p>No – in the UK all appointments are for 1 year</p>	<p>N/A</p>	<p>HMG likely to state that it is not consulting on implementing options in legislation that would impose further burdens beyond those required to be implemented as an EU minimum.</p>
<p>Article 17 Duration of Audit Engagement</p>	<p>MS may:</p> <p><i>Para 2(b)</i> - set a maximum duration of less than 10 years for the engagements.</p> <p><i>Para 4(a)</i> - Provide that the maximum duration may be extended by conducting a public tendering process to up to 20 years.</p> <p><i>Para 4(b)</i> - Provide that the maximum may be extended where more than one statutory auditor or audit firm is simultaneously engaged to up to 24 years.</p>	<p>No. Both the obligation to have a maximum duration and the options as to its length and the conditions for its extension are new in this Regulation.</p>	<p>N/A</p>	<p>No but mandatory retendering of auditor appointments at least every 10 years has been implemented by CMA Order for the FTSE 350.</p>	<p>HMG likely to consult on implementing the 10 years maximum duration for all PIEs with an extension to up to 20 years subject to retendering at least once every 10 years. This may need to involve taking advantage of some of the flexibilities offered by the MS option under Article 4(a) so as to facilitate retendering before 10 years has expired.</p>
	<p><i>Para 7 sub 2</i> - MS may require that key audit partners responsible for carrying out a statutory audit cease their participation in the statutory audit</p>	<p>Yes in that the Directive is minimum harmonisation</p>	<p>Yes, in Financial Reporting Council's Ethical Standard 3 on Long</p>	<p>N/A</p>	<p>Discussion document proposes to amend UK law where</p>

	of the audited entity earlier than seven years from the date of their respective appointment.		Association with the Audit Engagement (October 2009)		necessary to allow FRC to implement the partner rotation period through ethical standards and to decide whether to take up this option to the extent it thinks appropriate.
Article 20 Designation of Competent Authorities	<i>Para 2</i> - MS may decide that the responsibility for ensuring that all or part of the provisions of Title III of the Regulation (<i>"Appointment of statutory auditors or audit firms"</i>) are entrusted as appropriate to the supervisory authorities responsible for overseeing the relevant sectors.	No. The obligation to appoint a single competent authority and this option to appoint a different authority for the supervision of appointment of auditors are new in the new Directive and Regulation.	Only comparable function has been that under Article 38(2) of the 2006 Directive where the competent authority for receipt of notices of auditors leaving office at PIEs was the FRC (the same authority as for general audit oversight).	As corporate governance regulator, FRC has more of a natural role in issues such as auditor appointment than might be the case for some competent authorities.	HMG likely to designate the same single competent authority for the purposes of Title III as for its other responsibilities under the Directive and Regulation.
Article 24 Delegation of Tasks	<i>Para 1</i> - MS may: <ul style="list-style-type: none"> • delegate; or, • allow the competent authority with responsibility for public oversight to delegate, ... tasks to other authorities or bodies authorised by law. This is with the exception of: <ul style="list-style-type: none"> • quality assurance; • investigations (arising from the quality assurance system or where the case has been passed to FRC by another authority); and, • sanctions (though see below). 	No. Both the obligation to appoint a single competent authority and this option to allow tasks to be delegated by that authority or the MS are new in this Regulation and the new Directive.	Current UK implementation of the Audit Directive recognises several competent authorities for different purposes. These are the FRC and the "recognised supervisory bodies", which are "authorised by law" by the FRC. UK delegates functions to these in legislation.	Arrangements in UK law at present provide the FRC determines: <ul style="list-style-type: none"> • which statutory audits are within the inspection remit of AQR; • which audit cases should be subject to FRC investigation and sanctions as matters of major public interest. 	For audits of PIEs, HMG likely to consult on FRC being allocated functions for quality assurance, investigations and sanctions. This is subject to ability to delegate functions in relation to investigations and sanctions, where permitted.

	<p><i>Para 4</i> – MS may decide to delegate the task of imposing <i>sanctions</i> (in relation to QA reviews and investigations of statutory auditors of PIEs) to other authorities or bodies designated or otherwise authorised by law to carry out such tasks, when the majority of the persons involved in the governance of the authority or body concerned are independent from the audit profession.</p>	<p>No. Directive does not provide for a single competent authority or reserve investigations and sanctions to that authority. However, where the “system of public oversight” initiates an investigation it would be expected to impose the penalty. However as administrative sanctions following an inspection are not considered, delegation of these sanctions is possible.</p>	<p>N/A</p>	<p>Until 2012 the FRC relied on the recognised supervisory bodies to determine and impose administrative sanctions in the light of inspection findings that called the auditor’s performance into question. Amendments to the Companies Act 2006 that year introduced a framework in which sanctions are determined by the FRC.</p>	<p>This option was included primarily for use in certain other MSs. However for audits of PIEs HMG is consulting on the possible delegation of sanctions functions in certain cases.</p>
<p>Article 28 Transparency of Competent Authorities</p>	<p><i>Point (d)</i> - MS may require the publication of the findings and conclusions on individual inspections.</p>	<p>Yes in that the Directive is minimum harmonisation.</p>	<p>Up to now, conclusions and findings of individual inspections have not been reported publicly. However this issue is being considered by FRC following publication of the findings of the CMA on audits of the FTSE 350.</p>	<p>UK law would generally not prevent publication of these findings.</p>	<p>Discussion document proposes to amend UK law where necessary to allow FRC to decide whether to take up option to publish findings and conclusions on individual inspections</p>