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Commission de Surveillance
du Secteur Financier

Frequently Asked Questions concerning the EU Regulation No 537/2014 (the "Regulation") relating to the appointment of statutory auditor or audit firms by public-interest entities

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1. Preliminary remarks

According to Article 31 of the Luxembourg law of 23 July 2016 relating to the audit profession (hereinafter "Lux Law") the statutory auditor or audit firm (hereinafter auditor) shall be appointed by the general meeting or shareholders or members of the audited entity. Article 16 (2)-(5) of the Regulation (EU) No. 537/2014 (hereinafter "Regulation") contains provisions regarding the appointment procedure of auditors by public-interest entities (hereinafter PIEs).

This document is intended for auditors, audit committees, oversight bodies, professional bodies, PIEs, and other stakeholders and includes the guidelines adopted by the CEAOB (https://ec.europa.eu/info/ceaob) on the matter of the appointment of auditors by PIEs.

The FAQs provide for a minimum standard in order to give orientation. When applying the guidelines, it is important to give due consideration to the underlying intention and spirit of Art. 16 AR.

The present FAQs are to be read in conjunction with the questions and answers published by the European Commission. These questions and answers are available on the following website: https://ec.europa.eu/info/law/audit-directive-2006-43-ec/implementation/guidance-implementation-and-interpretation-law_en.

For the purpose of the Audit Directive and Audit Regulation, entities are defined as PIEs from the moment they fulfil the criteria of a listed company, a credit institution or an insurance undertaking as set out in Lux Law.

2. Definitions

Article 16 of the 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

"1. For the purposes of the application of Article 37(1) of Directive 2006/43/EC, for the appointment of statutory auditors or audit firms by public-interest entities, the conditions set out in paragraphs 2 to 5 of this Article shall apply, but may be subject to paragraph 7.

Where Article 37(2) of Directive 2006/43/EC applies, the public-interest entity shall inform the competent authority of the use of the alternative systems or modalities referred to in that Article. In that event, paragraphs 2 to 5 of this Article shall not apply.

2. The audit committee shall submit a recommendation to the administrative or supervisory body of the audited entity for the appointment of statutory auditors or audit firms.

Unless it concerns the renewal of an audit engagement in accordance with Article 17(1) and 17(2), the recommendation shall be justified and contain at least two choices for the audit engagement and the audit committee shall express a duly justified preference for one of them.

In its recommendation, the audit committee shall state that its recommendation is free from influence by a third party and that no clause of the kind referred to in paragraph 6 has been imposed upon it.

3. Unless it concerns the renewal of an audit engagement in accordance with Article 17(1) and 17(2), the recommendation of the audit committee referred to in paragraph 2 of this Article shall be prepared following a selection procedure organised by the audited entity respecting the following criteria:

(a) the audited entity shall be free to invite any statutory auditors or audit firms to submit proposals for the provision of the statutory audit service on the condition that Article 17(3) is respected and that the organisation of the tender process does not in any way preclude the participation in the selection procedure of firms which received less than 15 % of the total audit fees from public-interest entities in the Member State concerned in the previous calendar year;

b) the audited entity shall prepare tender documents for the attention of the invited statutory auditors or audit firms. Those tender documents shall allow them to understand the business of the audited entity and the type of statutory audit that is to be carried out. The tender documents shall contain transparent and non-discriminatory selection criteria that shall be used by the audited entity to evaluate the proposals made by statutory auditors or audit firms;

(c) the audited entity shall be free to determine the selection procedure and may conduct direct negotiations with interested tenderers in the course of the procedure;

(d) where, in accordance with Union or national law, the competent authorities referred to in Article 20 require statutory auditors and audit firms to comply with certain quality standards, those standards shall be included in the tender documents.

(e) the audited entity shall evaluate the proposals made by the statutory auditors or the audit firms in accordance with the selection criteria predefined in the tender documents. The audited entity shall prepare a report on the conclusions of the selection procedure, which shall be validated by the audit committee. The audited entity and the audit committee shall take into consideration any findings or conclusions of any inspection report on the applicant statutory auditor or audit firm referred to in Article 26(8) and published by the competent authority pursuant to point (d) of Article 28.

(f) the audited entity shall be able to demonstrate, upon request, to the competent authority referred to in Article 20 that the selection procedure was conducted in a fair manner.

The audit committee shall be responsible for the selection procedure referred to in the first subparagraph.

For the purposes of point (a) of the first subparagraph, the competent authority referred to in Article 20(1) shall make public a list of the statutory auditors and the audit firms concerned which shall be updated on an annual basis. The competent authority shall use the information provided by statutory auditors and audit firms pursuant to Article 14 to make the relevant calculations.

4. Public-interest entities which meet the criteria set out in points (f) and (t) of Article 2(1) of Directive 2003/71/EC shall not be required to apply the selection procedure referred to in paragraph 3.

5. The proposal to the general meeting of shareholders or members of the audited entity for the appointment of statutory auditors or audit firms shall include the recommendation and preference referred to in paragraph 2 made by the audit committee or the body performing equivalent functions

If the proposal departs from the preference of the audit committee, the proposal shall justify the reasons for not following the recommendation of the audit committee. However, the statutory auditor or audit firm recommended by the administrative or supervisory body must have participated in the selection procedure described in paragraph 3. This subparagraph shall not apply where the audit committee's functions are performed by the administrative or supervisory body.

6. Any clause of a contract entered into between a public-interest entity and a third party restricting the choice by the general meeting of shareholders or members of that entity, as referred to in Article 37 of Directive 2006/43/EC to certain categories or lists of statutory auditors or audit firms, as regards the appointment of a particular statutory auditor or audit firm to carry out the statutory audit of that entity shall be null and void.

The public-interest entity shall inform the competent authorities referred to in Article 20 directly and without delay of any attempt by a third party to impose such a contractual clause or to otherwise improperly influence the decision of the general meeting of shareholders or members on the selection of a statutory auditor or an audit firm.

7. Member States may decide that a minimum number of statutory auditors or audit firms are to be appointed by public-interest entities in certain circumstances and establish the conditions governing the relations between the statutory auditors or audit firms appointed.

If a Member State establishes any such requirement, it shall inform the Commission and the relevant European Supervisory Authority thereof.

8. Where the audited entity has a nomination committee in which shareholders or members have a considerable influence and which has the task of making recommendations on the selecting of auditors, Member States may allow that nomination committee to perform the functions of the audit committee that are laid down in this Article and require it to submit the recommendation referred to in paragraph 2 to the general meeting of shareholders or members.

Article 17 of the 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

"1. A public-interest entity shall appoint a statutory auditor or an audit firm for an initial engagement of at least one year. The engagement may be renewed.

Neither the initial engagement of a particular statutory auditor or audit firm, nor this in combination with any renewed engagements therewith shall exceed a maximum duration of 10 years.

2. By way of derogation from paragraph 1, Member States may

(a) require that the initial engagement referred to in paragraph 1 be for a period of more than one year;

(b) set a maximum duration of less than 10 years for the engagements referred to in the second subparagraph of paragraph 1.

3. After the expiry of the maximum durations of engagements referred to in the second subparagraph of paragraph 1, or in point (b) of paragraph 2, or after the expiry of the durations of engagements extended in accordance with paragraphs 4 or 6, neither the statutory auditor or the audit firm nor, where applicable, any members of their networks within the Union shall undertake the statutory audit of the same public-interest entity within the following four-year period.

4. By way of derogation from paragraph 1 and point (b) of paragraph (2), Member States may provide that the maximum durations referred to in the second subparagraph of paragraph 1 and in point (b) of paragraph 2 may be extended to the maximum duration of:

> *(a) 20 years, where a public tendering process for the statutory audit is conducted in accordance with paragraphs 2 to 5 of Article 16 and takes effect upon the expiry of the maximum durations referred to in the second subparagraph of paragraph 1 and in point (b) of paragraph 2; or*
>
> *(b) twenty-four years, where, after the expiry of the maximum durations referred to in the second subparagraph of paragraph 1 and in point (b) of paragraph 2, more than one statutory auditor or audit firm is simultaneously engaged, provided that the statutory audit results in the presentation of the joint audit report as referred to in Article 28 of Directive 2006/43/EC.*

5. The maximum durations referred to in the second subparagraph of paragraph 1 and in point (b) of paragraph 2 shall be extended only if, upon a recommendation of the audit committee, the administrative or supervisory body, proposes to the general meeting of shareholders or members, in accordance with national law, that the engagement be renewed and that proposal is approved.

6. After the expiry of the maximum durations referred to in the second subparagraph of paragraph 1, in point (b) of paragraph 2, or in paragraph 4, as appropriate, the public-interest entity may, on an exceptional basis, request that the competent authority referred to in Article 20(1) grant an extension to re-appoint the statutory auditor or the audit firm for a further engagement where the conditions in points (a) or (b) of paragraph 4 are met. Such an additional engagement shall not exceed two years.

7. The key audit partners responsible for carrying out a statutory audit shall cease their participation in the statutory audit of the audited entity not later than seven years from the date of their appointment. They shall not participate again in the statutory audit of the audited entity before three years have elapsed following that cessation.

By way of derogation, Member States may require that key audit partners responsible for carrying out a statutory audit cease their participation in the statutory audit of the audited entity earlier than seven years from the date of their respective appointment.

The statutory auditor or the audit firm shall establish an appropriate gradual rotation mechanism with regard to the most senior personnel involved in the statutory audit, including at least the persons who are registered as statutory auditors. The gradual rotation mechanism shall be applied in phases on the basis of individuals rather than of the entire engagement team. It shall be proportionate in view of the scale and the complexity of the activity of the statutory auditor or the audit firm.

The statutory auditor or the audit firm shall be able to demonstrate to the competent authority that such mechanism is effectively applied and adapted to the scale and the complexity of the activity of the statutory auditor or the audit firm.

8. For the purposes of this Article, the duration of the audit engagement shall be calculated as from the first financial year covered in the audit engagement letter in which the statutory auditor or the audit firm has been appointed for the first time for the carrying-out of consecutive statutory audits for the same public-interest entity.

For the purposes of this Article, the audit firm shall include other firms that the audit firm has acquired or that have merged with it.

If there is uncertainty as to the date on which the statutory auditor or the audit firm began carrying out consecutive statutory audits for the public-interest entity, for example due to firm mergers, acquisitions, or changes in ownership structure, the statutory auditor or the audit firm shall immediately report such uncertainties to the competent authority, which shall ultimately determine the relevant date for the purposes of the first subparagraph."

Question 1: When do PIEs have to perform a formal selection procedure according to Article 16 (3) of the Regulation?

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According to Article 16 (3) of the Regulation, a selection procedure is mandatory for the initial appointment of auditors by PIEs. This procedure is not required in case of renewal (Article 17 (1) and (2) of the Regulation) of the audit engagement before the end of the initial maximum duration period of 10 years.

When appointing a new auditor, such a selection procedure has to be conducted regardless of whether the maximum duration of the engagement with the previous auditor has been reached or not.

Furthermore, a selection procedure in accordance with Article 16 (3) of the Regulation has to be conducted when the maximum duration of an existing auditor's engagement in accordance with Article 17 (4) (a) of the Regulation is extended, in accordance with Article 51 of Lux Law.

A selection procedure is also required when the competent authority grants the PIE a further extension to re-appoint the single auditor in place for a maximum of two years, after the expiry of the maximum duration periods, in accordance with Article 17 (6) of the Regulation.

By exception, no selection procedure is required when the entity falls under Article 16 (4) of the Regulation (for further information, please see question 2).

<u>Renewal of an audit in cases of (de-)mergers of PIEs</u>

The issue of the applicability of the selection procedure occurs also in (de-)mergers of PIEs.

In the case of a merger of two PIEs, if the absorbing PIE decides to renew the audit engagement of its auditor in accordance with Article 17 (1) and 17 (2) of the Regulation, the absorbing PIE would not be required to perform a selection procedure according to Article 16.

The situation is different if the absorbing PIE decides to appoint the auditor of the absorbed PIE. In this case, a selection procedure is mandatory, because the engagement of this auditor cannot be considered as renewal as this auditor has never been appointed auditor by the absorbing PIE prior to the operation.

If a demerger took place in a PIE and the new entity is a PIE, a selection procedure according to Article 16 (3) of the Regulation would be necessary to appoint the new auditor, even if it was the former auditor of the entity, from which the new PIE has demerged, as the new entity had no legal existence prior to the operation.

Question 2: Is there an exception to the obligation to perform a formal selection procedure according to Article 16 of the Regulation?

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Article 16 (4) of the Regulation exempts certain categories of PIEs from the obligation to organize a selection procedure.

PIEs which fall into one of the following categories are entitled to appoint an auditor without a selection procedure[1]:

(i) companies, which, according to their last annual or consolidated accounts, meet at least two of the following three criteria:

- an average number of employees during the financial year of less than 250,
- a total balance sheet not exceeding EUR 43 000 000, and
- an annual net turnover not exceeding EUR 50 000 000.

[1] *REGULATION (EU) 2017/1129 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL of 14 June 2017 on the prospectus to be published when securities are offered to the public or admitted to trading on a regulated market, and repealing Directive 2003/71/EC Article 2, point f)*

For the calculation of the annual net turnover threshold, Member States may require the inclusion of income from other sources for undertakings for which "net turnover" is not relevant according to Article 3 (12) of the Directive 2013/34/EU of 26 June 2013 on the annual financial statements, consolidated financial statements and related reports of certain types of undertakings.

(ii) companies that had an average market capitalization of less than EUR 200.000.000 on the basis of end-year quotes for the previous three calendar years.

This exception applies in all cases, whenever the selection procedure is required (see question 1).

Voluntary selection

When a PIE entitled to the exemption set out in Article 16 (4) of the Regulation decides to organize a selection procedure on a voluntary basis, it is free to decide how to organize the selection procedure as it is not bound to the selection procedure referred to in Article 16 (3) of the Regulation.

Question 3: What are the differences between Article 16 procedures and "public" tender procedures according to Article 17 (4) (a) of the Regulation?

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The inclusion of the term "public" in the expression "public tendering process" used in Article 17 (4) (a) of the Regulation adds a requirement to the selection procedure as provided for in Article 16 (2) to (5) of the Regulation.

When the option for extension of the maximum duration of the audit engagement following a tender in accordance with Article 17 (4) (a) is used, the Regulation requires that a public announcement of the tendering process shall be conducted in order to allow auditors to bid for the tender.

The PIE is free to determine the way the public tendering process conducted in accordance with Article 17 (4) (a) of the Regulation should be announced or disclosed so that all the auditors who might be interested in participating in the tender can have access to the information. The PIE could, for example, publish information on an appropriate website or in an official gazette. In any case, the PIE should comply with all national requirements.

In addition, in order to contribute to the overall transparency and to demonstrate the fairness of the selection procedure, the PIE may choose to announce or disclose the organization of a tendering process in any other case. This would be a good practice supported by the CSSF.

Question 4: What could be considered as an adequate and fair timeline when carrying out the selection process?

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When carrying out a selection process, different steps within a certain period are to be followed by the audited entity as well as auditors interested in (or rather, applying for) performing the statutory audit of the entity.

Usually, the selection process is organized in two parts:

a) The first part refers to the period between the call for tender by the audited entity and the deadline for auditors to indicate their intention to participate in the tender.

b) The second part refers to the deadline for auditors to submit their applications after having received the tender documents prepared by the audited entity.

According to Article 16 (3) (c) of the Regulation, the PIE is free to determine its selection procedure. Article 16 (3) (b) only refers to transparent and non-discriminatory criteria (please refer to question 8 b) when conducting the selection procedure. They do not refer to any specific timeframe. Considering that the whole selection process should take place in a fair and non-discriminatory way, auditors should be granted sufficient time for preparation and participation. This would include sufficient time for auditors to indicate their interest to participate in the tender as well as to submit their applications. It enables the audit committee to provide the supervisory or administrative body of an audited entity with a fair and proper justification for its choice.

Furthermore, considering the objective and the purpose of the Regulation, the requirements set out in Article 16 are aimed at protecting auditor's independence and contributing to a more dynamic and open market in the EU. In this respect, providing sufficient time to auditors to participate in selection processes might also contribute to a larger number of competitors to choose from. Finally, but importantly, an appropriate timeframe is to be determined taking into account the structure and organization of each PIE and the fact that the selection process should take place in a fair and non-discriminatory way. In any case, the PIE should ensure that no discrimination is happening due to an unduly short timeframe.

Question 5: Are there specific requirements for entities that are subject to EU rules on public procurement have to take into account in applying Article 16 of the Regulation?

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PIEs that meet the definition of 'contracting authorities' under Directive 2014/24/EU of the European parliament and of the council of 26 February 2014 on public procurement must comply, with the requirements of the Regulation, but also with the requirements included in the Law of 8 April 2018 on Public Procurement.

Question 6: Are there additional requirements or specificities that multi-PIE groups have to take into account?

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With regard to multi-PIE groups (groups that include more than one PIE), Article 16 of the Regulation does not provide specific rules when the parent company and other subsidiaries in the group are PIEs and the selection procedure at the level of the parent company is aimed at identifying an auditor of the consolidated financial statement. In these circumstances complex issues may arise given, on the one hand, the responsibilities of each PIE's audit committee, and, on the other hand, the wish of the parent company to appoint the same audit firm for the parent company and its subsidiaries, including PIEs.

In these circumstances it is possible that close coordination takes place within the group through a common tender procedure with the involvement of all audit committees in order to achieve a coordinated decision on the appointment of the auditor of the parent company and of each subsidiary including PIEs. Even if the tender has a common framework, each PIE has to take its responsibilities for its audit engagement and the relevant part of the documentation.

When facilitating such coordination, it is important to ensure that in addition, each PIE of the group can demonstrate that it has fulfilled the requirements set out by Article 16 of the Regulation at its level also in terms of documentation. Indeed, each audit committee remains responsible for the selection procedure and for the preference to be expressed in its recommendation, pursuant to Article 16 (3) and (5) of the Regulation. The obligation for each PIE to comply with the provisions regarding the mandatory rotation of the audit firm (Article 17 of the Regulation) remains as well.

In the case a PIE is exempted from establishing an audit committee according to Article 52 (5) of the Lux Law, neither the audit committee of the parent undertaking of the PIE, nor any other audit committee are required to perform the functions of the audit committee stated in Article 16 of the Regulation. However, even PIEs which are exempted from the requirement to establish an audit committee shall comply with the other provisions related to the selection procedure referred to in Article 16 of the Regulation.

Question 7: Does the Regulation allow a preselection for the tender process and which criteria might be adequate?

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In accordance with Article 16 (3) (a) of the Regulation, the audited entity is free to invite any auditor to submit proposals for the provision of the audit and it should not preclude the participation of auditors which have received less than 15% of the total audit fees from PIEs in Luxembourg in the previous calendar year. Therefore, the criteria should not refer to the audit firms' turnover or other elements that could be in contrast with this rule.

The choice made by the entity regarding the auditors invited to tender shall comply with Article 16 (3) of the Regulation. As such, the process shall be conducted in a fair manner, and shall also be based on transparent and non-discriminatory criteria.

In this respect, the PIEs should invite the auditors that to their knowledge, best meet the preselection criteria previously defined for this purpose. The following factors may be considered by the audited entity when it defines the criteria to be used to identify the auditors to be invited: skills, expertise, technical competence, legal and regulatory requirements, industry knowledge and resource capacity, as well as the capacity of the auditor and its network to provide sufficient geographical coverage for the audit work where relevant to the engagement.

Question 8: Which requirements apply to the tender documents of the audited entity?

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The following provisions build upon the requirement of Article 16 (3) (b) of the Regulation according to which the tender document should allow the invited auditors to understand the business of the audited entity and the type of statutory audit that is to be carried out, but are neither binding, nor mandatory.

a. the description of "the business of the audited entity" and the "type of statutory audit that is to be carried out"

The audited entity shall ensure that tender documents are prepared in order to allow the invited auditors to understand the business of the audited entity, the type of audit that is to be carried out and the period of appointment.
Considering that each invited auditor may have different previous professional experiences and existing relationships with the audited entity, the level of information provided in the tender documents should be sufficient to ensure that the selection procedure is conducted in a fair manner.

In this respect, information provided shall be proportionate to the characteristics of the audited entity, such as its dimensional structure (e.g. size of the business – turnover, number of employees, organization structure) and financial situation, and give the invited auditors an appropriate understanding of the business and its complexity.

b. transparent and non-discriminatory selection criteria

Selection procedure shall be considered transparent. All invited auditors should be previously and duly informed on the selection criteria defined by the audited entity and have access to clear and complete information on the procedure and its progress. Selection procedure shall be considered non-discriminatory if it allows the participation of any auditor, regardless its size, according to objective selection criteria defined by the audited entity.

The selection criteria *(i)* shall be set by the audited entity at the start of the selection procedure and included in the tender documents; (*ii*) shall be objective and clearly defined to enable invited auditors to make valuable proposals and to permit the PIE to assess these proposals against them (*iii*) may be adapted to the audited entity *(iv)* shall not artificially restrict the selection procedure to a few auditors; *(v)* shall be relating to both audit quality and fees (with fees not being given undue weight in selecting the auditor); *(vi)* shall not be amended once the selection procedure had started; and *(vii)* shall be applied and assessed equally to all invited auditors.

During the selection process, the audited entity should consider how to best give more significant weight to factors like reputation, academic and professional experience of the auditor as technical knowledge, industry knowledge and resources, compared to purely quantitative factors like fees, in order to ensure the primacy of the audit quality when selecting the auditor. Therefore, to guarantee the transparency of the selection procedure and of its evaluation, appropriate weighting of each criteria should be duly considered.

The following list is neither exhaustive nor binding and it is intended to give some guidance on factors which may be considered when determining the transparent and non-discriminatory selection criteria:

i. Quality of the service provided by the auditor
ii. Objective indicators regarding the reputation

iii. Academic and professional experience, as well as technical knowledge and competence of the auditor and the audit team, availability of specialists where relevant
iv. Ease of communication and interaction with the audited entity during the selection process
v. Independence, objectivity and professional skepticism
vi. Industry specific knowledge / experience
vii. Technological support tools
viii. Proposed fees

Question 9: Which requirements apply to the recommendation of the audit committee to the administrative or supervisory body?

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In accordance with Article 16 (2) of the Regulation, the audit committee **submits a recommendation to the administrative or supervisory board** of the audited entity for the appointment of auditor. Unless it concerns the renewal of an audit engagement in accordance with Article 17 (1) and (2) of the Regulation, there are formal requirements to the recommendation of the audit committee:

- The recommendation shall be justified
- The recommendation includes at least two choices for the audit engagement, including a duly justified preference for one of the choices
- The recommendation includes a statement, that the audit committee is free from influence by a third party and that no clause of the kind referred to in Article 16 (6) of the Regulation has been imposed upon it.

The justification of the recommendation of the audit committee to the administrative or supervisory board as well as the preference shall be based on the outcome of the selection procedure in accordance with Article 16 (3) of the Regulation. The recommendation of the audit committee aims to provide a “real choice” for the audit engagement (see recital 18 of the Regulation). This obligation indicates a written form of the recommendation.

Moreover, the CSSF considers that the justification of the recommendation of the audit committee shall include a summary of the main characteristics of the tender offers of the auditors chosen by the audit committee proposals given to the administrative or supervisory board as well as the reasoning for this decision.

The two choices (at least) for the audit engagement shall include the names of the proposed auditors/audit firms. However, in the event of uncertainties in the context of such restructurings, auditor shall immediately report such uncertainties to the CSSF, which shall discuss and ultimately determine the relevant date of the beginning of an audit engagement for the maximum duration of a given audit engagement on a case-by-case basis and by considering the approach of substance over form.

This applies both to auditors and audit clients.

Question 10: What format should the report take on the conclusions of the selection procedure?

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The audited entity shall prepare a report on the conclusions of the selection procedure, which shall be validated by the audit committee (Article 16 (3) (e) of the Regulation). This obligation indicates a written form of the report.

This is a distinct obligation from the recommendation of the audit committee to the administrative or supervisory body for the appointment of the auditors (Article 16 (2) of the Regulation (see question 9).

The validation of the report of the audited entity by the audit committee reflects their specific role as the audit committee is responsible for the selection procedure.

The report, made by the audited entity, should also be set up by taking into account that the obligation of the audited entity to demonstrate to the national competent authority upon request, that the selection procedure was conducted in a fair manner (Article 16 (3) (f) of the Regulation, see question 11).

Question 11: How can the audited entity be able to demonstrate to the competent authority that the selection procedure was conducted in a fair manner?

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The audited entity shall be able to demonstrate to the competent authority, if requested, that the selection procedure for the appointment of the auditor was conducted in a fair manner. This can be demonstrated through the tender documentation prepared by the audited entity and the report on the conclusions of the selection procedure prepared by the audited entity and validated by the audit committee.

The selection procedure shall be organised by the audited entity in compliance with the criteria established by Article 16 (3) (a) to (e) of the Regulation. The relevant documentation should be maintained by the entity in a written form and in a way that the competent authority is able to understand the development of the entire selection process, through its different steps, together with its results and assess whether it has been conducted in a fair manner.

Finally, providing feedback to the participating audit firms which were not selected on the results of the evaluation made and the reasons for the choice expressed, could represent a best practice for audit committees.

Question 12: How to design and what to include in the proposal to the general meeting of shareholders or members of the audited entity for the appointment of the auditor?

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The proposal to the general meeting of the shareholders or members of the audited entity for the appointment of the auditor should include the following:

- A recommendation from the audit committee that contains at least two choices for the audit engagement. The audit committee shall express a duly justified preference for one of these (Article 16 (2) of the Regulation)
- If the proposal provided to the general meeting of shareholders or members of the audited entity differs from the preference of the audit committee, there should be a justification for those reasons too. (Article 16 (5) of the Regulation)

The CSSF also recommends to include in the proposal to the general meeting of the shareholders or members of the audited entity for the appointment of the auditor a summary of the selection procedure described in Article 16 (3) of the Regulation.

Question 13: What are the legal consequences of non-compliance with Article 16 of the Regulation for the PIE and the auditor?

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Neither Article 16 nor any other article of the Regulation defines legal consequences in case a public interest entity or an auditor fails to meet the requirements of the procedure under Article 16 of the Regulation.

Article 43 (3) and (4) of the Lux Law provides however a list of administrative measures and sanctions for breaches of the provisions of the Lux Law and the Regulation to the attention of audit committees.

Commission de Surveillance du Secteur Financier
283, route d'Arlon
L-2991 Luxembourg (+352) 26 25 1-1
direction@cssf.lu
www.cssf.lu