



FAQ

Frequently Asked Questions – Transitional Registration¹ Form A

Annex to Form A for Registration of Third-Country Audit Entities under the European Commission's Decisions on transitional provisions for the purposes of Article 46 (2) of the Directive 2006/43/EC of 17 May 2006 on Statutory Audits of Annual Accounts and Consolidated Accounts.

Registration

1. Why do third-country audit entities² have to register with authorities in Member States?

The EU Statutory Audit Directive ("Directive 2006/43/EC", as amended by Directive 2014/56/EU and Regulation (EU) No 537/2014, hereinafter referred to as "Directive") sets minimum regulatory requirements for statutory audits across the European Union/European Economic Area ("EU/EEA"). The interrelation of capital markets underlines the need to ensure that audit entities from third countries carry out high quality audit work in relation to capital markets within the EU/EEA.

Consequently, the Directive requires that the relevant statutory audit entities from third countries should be entered on a public register and are subject to a level of regulation equivalent to the minimum required for EU/EEA auditors. In addition the European Commission has made transitional measures to facilitate the introduction of these new requirements.

According to Article 45 of the Directive registration is required if a third-country audit entity provides an audit report concerning the annual or consolidated financial statements of a relevant audit client (see *FAQ No. 3*).

Article 2 No. 4 of the Directive stipulated that a "third-country audit entity" is an entity, regardless of its legal form, which carries out audits of the annual or consolidated financial statements of a company incorporated in a third country, other than an entity

¹ In the context of the transitional decisions 2008/672/EC of the European Commission of 29 July 2008, 2011/30/EU of 19 January 2011, 2013/288/EU of 13 June 2013 and 2016/1223/EU of 25 July 2016 the term "transitional registration" will be used in Germany. However, this does not mean a formal registration under Article 45 of the Directive 2006/43/EC and § 134 WPO (Public Accountant Act) respectively. The term "transitional registration" refers rather to a recordation of minimum information of auditors from third countries which were privileged by the transitional decisions mentioned above.

² The term „third-country audit entity“ refers to both single practitioners and firms.

which is registered as an audit firm in any Member State as a consequence of approval in accordance with Article 3.

The registration requirement of the Directive has been transferred into national law by § 134 WPO (Wirtschaftsprüferordnung, Public Accountant Act). According to § 134 para. 4 WPO (Public Accountant Act) exemptions from registrations and the legal consequences thereof can only be made where the public oversight in the entities' home country has officially been deemed equivalent by the European Commission or the German government and on the basis of reciprocity. That means that exemptions are only possible insofar as the competent authority in the relevant third country will refrain from registering German audit entities and/or imposing the legal consequences of a registration.

2. Who should use this form A (referring to No. 1.0)?

Form A can **only** be used by a third-country audit entity whose home country is one of the third countries to which the European Commission has granted a **transitional period** or a further transitional period under one of the following European Commission's decisions:

- [2008/627/EC of 29 July 2008](#)
- [2011/30/EU of 19 January 2011](#)
- [2013/288/EU of 13 June 2013](#)
- [2016/1223/EU of 25 July 2016](#)

in accordance with Article 46 (2) of the Directive.

The home country is commonly the country where the third-country audit entity and the audit client are incorporated or have their main office.

According to the Directive a third-country audit entity is *"an entity, regardless of its legal form, which carries out audits of the annual or consolidated accounts of a company incorporated in a third country"*.

3. What is a 'relevant audit client' (referring to No. 7.0)?

For purposes of registration in Germany, a relevant audit client is a company

- incorporated **outside** the EU/EEA
- whose transferable securities are admitted to trading on a **regulated market in Germany** within the meaning of point 14 of Article 4 (1) of the Directive 2004/39/EC

except when the company is an issuer exclusively of outstanding debt securities for which one of the following applies:

(a) they have been admitted to trading on a regulated market in a Member State within the meaning of point (c) of Article 2 (1) of Directive 2004/109/EC of the European Parliament and of the Council *prior* to 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 50 000 or, in the case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 50 000;

(b) they are admitted to trading on a regulated market in a Member State within the meaning of point (c) of Article 2 (1) of Directive 2004/109/EC *from* 31 December 2010 and the denomination per unit of which is, at the date of issue, at least EUR 100 000 or, in case of debt securities denominated in another currency, equivalent, at the date of issue, to at least EUR 100 000.

A corresponding definition can be found in § 134 para.1 WPO.

Please list all audit engagements where it is intended to issue an auditor's opinion including WKN or ISIN (International Securities Identification Number); (for the timeline please refer to FAQ No. 9).

Regulated markets in Germany are the regulated markets ("*regulierte Märkte*") as defined by § 32 Börsengesetz (before their merger of the two segments they were described as "*amtlicher Markt*" and "*geregelter Markt*"). For purposes of registration as third-country audit entity, a client company using only the non-regulated market in Germany ("*Freiverkehr*") as defined by § 48 Börsengesetz, is not relevant.

The applicant should submit applications in each Member State where the audit client's securities are admitted to trading on a regulated market.

4. Does registration entitle third-country audit entities to provide statutory audit services in the EU/EEA?

No. Registration as third-country audit entity neither gives approval to carry out statutory audits as required by Community law (see Article 2 (1) of the Directive) nor does it recognise the qualifications of third-country auditors/audit entities. In Germany, statutory audits can only be performed by individuals licensed as *Wirtschaftspruefer* or *vereidigter Buchpruefer* and firms licensed as *Wirtschaftspruefungsgesellschaften* or *Buchpruefungsgesellschaften* respectively.

5. What are the requirements for registration as a third-country audit entity under the Commission Decision on transitional provisions?

The Commission Decision states that Member States shall not apply Article 45 (in Germany implemented by § 134 WPO) in respect of the audit reports of the relevant issuers for financial years starting during certain periods listed in the respective decision, issued by auditors or audit entities from specified third countries where the third-country auditor or audit entity concerned provides:

(a) the name and address of the auditor or audit entity concerned and information about its legal structure;

- (b) where the auditor or the audit entity belongs to a network, a description of the network;
- (c) the auditing standards and independence requirements which have been applied to the audit concerned;
- (d) a description of the internal quality control system of the audit entity;
- (e) an indication of whether and when the last quality assurance review of the auditor or audit entity was carried out and necessary information about the outcome of the review.

6. Is the third-country audit entity subject to public oversight after registration under the transitional decision in Germany?

No. The registration under the provisional decision does only grant the right to audit financial statements of clients whose transferable securities are admitted to trading on a regulated market in Germany for the financial years defined in the transitional decisions 2008/627/EC, 2011/30/EU, 2013/288/EU and 2016/1223/EU without formal registration under § 134 WPO (Public Accountant Act). The third-country audit entity is not subject to public oversight by the Wirtschaftsprüferkammer (Chamber of Public Accountants) and the Auditor Oversight Body (AOB) at the Federal Office for Economic Affairs and Export Control³; i.e. neither external quality assurance inspections nor disciplinary investigations will be initiated or performed by these bodies. The public register in Germany will emphasize that the third-country audit entities listed are only subject to public oversight in their respective home country to the extent to which an oversight exists.

This is different from the formal registration under § 134 WPO (Form B). An entity registered under § 134 WPO (Public Accountant Act) in Germany is fully subject to public oversight by the Wirtschaftsprüferkammer (Chamber of Public Accountants) and the Auditor Oversight Body (AOB) at the Federal Office for Economic Affairs and Export Control including the external quality assurance inspections or disciplinary investigation as required; exemptions only exist where the public oversight in the home country of that entity has officially been approved as equivalent by the European Commission or the German Government.

7. What happens if an applicant does not meet the requirements of the Commission Decision on transitional provisions?

Member States would have to apply Article 45 of Directive 2006/43/EC, which means that full registration (by using the Form B) would be required.

³ The AOB is responsible for the public oversight of Wirtschaftsprüferkammer (Chamber of Public Accountants). The public oversight of the AOB comprises duties of Wirtschaftsprüferkammer (Chamber of Public Accountants) according to § 4 para. 1 sentence 1 WPO (Public Accountant Act) related to its members, who are authorised to carry out statutory audits or those who perform audits without authorization.

Application procedure

8. How does a third-country audit entity apply for registration in the EU/EEA?

The Directive does not provide for a uniform registration process across the EU/EEA, although Member States cooperate closely on the implementation of the registration requirements. Therefore each Member State is responsible for the registration process. Applications must be filed with the competent authority in each Member State where a registration is required.

In Germany, applications under § 134 WPO (Public Accountant Act) have to be submitted to Wirtschaftsprüferkammer (Chamber of Public Accountants) as the competent authority. The necessary information about the registered entity will be published on the public register by the Wirtschaftsprüferkammer (Chamber of Public Accountants).

9. When will third-country audit entities need to apply for registration?

According to § 134 para. 1 sentence 1 WPO (Public Accountant Act), a formal registration is necessary if the third-country auditor **intends** to issue an auditor's opinion for an entity which is listed in Germany. As provided for in Art. 45 (4) of the Directive, an auditor's opinion will lack legal validity in case of a non-registration of the third-country auditor.

10. Will the information submitted by the third-country audit entity be treated as confidential?

Yes. According to Article 36 (2) of the Directive the obligation of professional secrecy shall apply to all persons who are employed or who have been employed by competent authorities. In particular, this applies with regard to the outcome of an external quality assurance review in accordance with Article 1 (1) (e) of the Commission Decision 2008/672/EC. Information covered by professional secrecy may not be disclosed to any other person or authority except by virtue of the laws, regulations or administrative procedures of a Member State. Some information will be stored in the public register in electronic form and shall be electronically accessible to the public (see *FAQ No. 19*).

In Germany, representatives and the staff of the Wirtschaftsprüferkammer and the Auditor Oversight Body (AOB) at the Federal Office for Economic Affairs and Export Control are subject to strict secrecy provisions (§§ 64, 66b WPO). The AOB has the public oversight over the Wirtschaftsprüferkammer. In this capacity the AOB receives information regarding the registration process and can exchange that with other competent authorities in the EU/EEA for cooperation purposes.

11. Will the information submitted by the third-country audit entity be subject to data protection rules?

Yes. All authorities in the Member States are subject to European and national data protection provisions. However, some information will be publicly available in the register (see *FAQ No. 19*).

12. Which countries are members of the EU/EEA (referring to No. 4.0)?

Members of the EU: Austria, Belgium, Bulgaria, Croatia, Cyprus, Czech Republic, Denmark, Estonia, Finland, France, Germany, Greece, Hungary, Ireland, Italy, Latvia, Lithuania, Luxembourg, Malta, Netherlands, Poland, Portugal, Romania, Slovakia, Slovenia, Spain, Sweden, United Kingdom.

13. Members of the EEA which are not members of the EU: Iceland, Liechtenstein and Norway.

14. What language should be used for registration purposes?

Registration is the responsibility of each Member State. Therefore Member States may require the submission of information in their own official language. The applicant should check the situation with the competent authority in the relevant Member States.

In Germany, application forms as well as their attachments are **only available in English**.

However, the descriptive attachments, e.g. the description of the network (Form A No. 2.3), of the internal quality control system (Form A No. 5.1) or of the necessary information about the outcome of the last external quality assurance review (Form A (DE) No. 6.10) have to be submitted **in German** irrespective of the language version of the form used by the applicant. In principle it is possible to submit the attachments also in English (as original version or a translation from any other language) but only in combination with an additional German translation. However, a certified translation is not required. The forms indicate which attachments have to be submitted in German or English plus German translation respectively.

Other information required by Form A

15. What is a network (referring to No. 2.0)?

According to Article 2 No. 7 of the Directive a “network” is:

- (a) the larger structure which is aimed at cooperation and to which the applicant belongs, and
- (b) which is clearly aimed at profit- or cost-sharing or shares common ownership, control or management, or shares common quality-control policies and procedures, or shares a common business strategy, or shares the use of a common branch-name or shares a significant part of professional resources

16. What is the difference between a registration as a third-country audit entity and registration as an audit firm in a member state of the EU/EEA? (referring to No. 4.0)

An entity should apply as a ‘third-country audit entity’ with a member state of the EU/EEA when it meets the criteria of FAQ No. 1. However, it is possible that a third-country audit entity may also be registered as an ‘audit firm’ in a member state of the EU/EEA when it

wishes to carry out audits of annual accounts or consolidated accounts required by the law of that member state ('statutory audit according to Article 2 (1) of Directive 2006/43/EC'). Statutory audits may only be carried out by audit firms which are approved by the member state requiring the statutory audit (see Article 3 (1) of Directive 2006/43/EC)

17. What should be included in the description of the applicant's internal quality control system? (referring to No. 5.0)

A description of the applicant's internal quality control system should include at least a description of

- the policies designed to provide reasonable assurance that the firm and its personnel comply with professional standards and regulatory and legal requirements, and that reports issued by the firm or engagement partners are appropriate in the circumstances, *and*
- the procedures necessary to implement and monitor compliance with these policies.

18. What is an external quality assurance review (referring to No. 6.0)?

The external quality assurance review can be

- a peer review under the supervision of a professional body or an independent public oversight body,
- a review carried out by a professional body where given under the supervision of an independent public oversight body, or
- an inspection by an independent public oversight body

in any jurisdiction.

The external quality assurance review should comprise both an assessment of the firm-wide procedures (including compliance with applicable auditing standards and independence requirements, of the quantity and quality of resources spent, of the audit fees charged and of the internal quality control system of the audit firm) and adequate testing of selected audit files. It is important to note that this obligation only applies if an external quality assurance review has been carried out and a corresponding report exists.

19. What is the necessary information with respect to the result of the external quality assurance review (referring to No. 6.10)?

Applicants should provide information as to the outcome, the main findings, and the main measures the applicant has undertaken to address the findings and to prevent them from recurring. Where possible the applicant should provide a full copy of the last quality assurance review report, e.g. an inspection report issued by the competent body in the home country.

Register

20. What information provided in the form will be available on the public register?

The information provided under Form A No. 1.1 to 1.18, 2.2, 3.2, 3.6, 3.9 and 4.1 will be stored in the register in electric form and shall be electronically accessible to the public.

Registration costs

21. Is there a common system of registration fee across the EU/EAA?

Directive 2006/43/EC does not provide for a single registration fee across the EU/EEA. This is a matter for individual Member States.

22. What is the registration fee in Germany?

A fee of 525 Euro will be charged for each application for registration under a transitional decision.

The registration fee will be due at the time of submission of the application form and shall be transferred **after** receipt of the notification of fee.

Half of the fee will be refunded in case of a withdrawal of the application by the applicant or the rejection of the application by the Wirtschaftsprueferkammer (Chamber of Public Accountants).

Updating of registration information

23. What does the third-country audit entity need to do to update registration information?

Registered third-country audit entities have to notify the Wirtschaftsprueferkammer (Chamber of Public Accountants) without undue delay of any change of information contained in the public register. Furthermore, registered third-country audit entities have to notify the Wirtschaftsprueferkammer (Chamber of Public Accountants) quarterly of any change of information included in the application documentation but not contained in the public register. A change of information can be done by completing the annex and sending it to the Wirtschaftsprueferkammer (Chamber of Public Accountants) by mail.

Contact

Wirtschaftsprueferkammer
Ms. Manuela Schwoy
Head of Member Affairs
Rauchstraße 26
10787 Berlin
Germany

Phone: +49 30 726161 236
Fax: +49 30 726161 287
Email: third-country-auditor@wpk.de