

DECISIONS

COMMISSION IMPLEMENTING DECISION (EU) 2019/1874

of 6 November 2019

on the adequacy of the competent authorities of the People's Republic of China pursuant to Directive 2006/43/EC of the European Parliament and of the Council

(notified under document C(2019) 7854)

(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 47(3) thereof,

Whereas:

- (1) Under Article 47(1) of Directive 2006/43/EC, Member States may allow the transfer of audit working papers or other documents held by statutory auditors or audit firms approved by them, and of inspection or investigation reports relating to the audits in question, to the competent authorities of a third country only if those authorities meet requirements that have been declared adequate by the Commission and there are working arrangements on the basis of reciprocity between them and the competent authorities of the Member States concerned. Member States have a growing interest in further developing cooperation with the competent authorities of the People's Republic of China in the area of statutory audit. In light of that interest, it needs to be determined whether the competent authorities of the People's Republic of China meet requirements that are adequate for those purposes.
- (2) A decision on adequacy under Article 47(3) of Directive 2006/43/EC does not address other specific requirements for the transfer of audit working papers and other documents held by statutory auditors or audit firms and of inspection or investigation reports, such as the agreement on working arrangements on the basis of reciprocity between the competent authorities set out in Article 47(1)(d) of Directive 2006/43/EC, or the requirements for the transfer of personal data set out in Article 47(1)(e) of that Directive.
- (3) Cooperation over the transfer of audit working papers or other documents held by statutory auditors or audit firms and of inspection or investigation reports to the competent authority of a third country reflects the substantial public interest in carrying out independent public oversight. Accordingly, the competent authorities of Member States should, in the framework of the working arrangements referred to in Article 47(2) of Directive 2006/43/EC, ensure that the competent authorities of the People's Republic of China use any documents transferred to them in accordance with Article 47(1) of that Directive only to exercise their functions of public oversight, external quality assurance and investigations of auditors and audit firms.
- (4) When inspections or investigations are carried out, statutory auditors and audit firms are not allowed to grant access to or to transmit their audit working papers or other documents to the competent authorities of the People's Republic of China under any other conditions than those set out in Article 47 of Directive 2006/43/EC and in this Decision.

⁽¹⁾ OJ L 157, 9.6.2006, p. 87.

- (5) Without prejudice to Article 47(4) of Directive 2006/43/EC, Member States should ensure that, for the purposes of public oversight, quality assurance and investigations of statutory auditors and audit firms, contacts between the statutory auditors or audit firms approved by them and the competent authorities of the People's Republic of China take place via the competent authorities of the Member States concerned.
- (6) In accordance with Article 47(1)(d) of Directive 2006/43/EC, the possibility for Member States to allow the transfer to the competent authorities of the People's Republic of China of audit working papers or other documents held by statutory auditors or audit firms approved by them and of inspection or investigation reports is subject to the condition that working arrangements are agreed between the competent authorities concerned.
- (7) Member States should ensure that such working arrangements between their competent authorities and the competent authorities of the People's Republic of China are agreed on the basis of reciprocity and subject to the conditions of Article 47(1) and (2) of Directive 2006/43/EC, including the protection of any professional secrets and commercial interests, including industrial and intellectual property, contained in such papers relating to the entities audited or to the statutory auditors and audit firms that audited those entities.
- (8) Where a transfer of audit working papers or other documents held by statutory auditors or audit firms and of inspection or investigation reports to the competent authorities of the People's Republic of China involves the transfer of personal data, such a transfer is lawful only if it also complies with the requirements for international data transfers laid down in Regulation (EU) 2016/679 of the European Parliament and of the Council⁽²⁾. Article 47(1)(e) of Directive 2006/43/EC therefore requires Member States to ensure that the transfer of personal data between their competent authorities and the competent authorities of the People's Republic of China complies with any applicable data protection principles and rules and, in particular, with the provisions of Chapter V of Regulation (EU) 2016/679. Member States should ensure that appropriate safeguards for the transfer of personal data are provided for, in accordance with Article 46 of Regulation (EU) 2016/679. In addition, Member States should ensure that the competent authorities of the People's Republic of China will not further disclose personal data contained in the documents transferred without the prior agreement of the competent authorities of the Member States concerned.
- (9) The Ministry of Finance and the Securities Regulatory Commission (CSRC) of the People's Republic of China are the two public oversight bodies that have competence in investigating auditors and audit firms, under the Accounting Law, the Law of Certified Public accountants and the Securities law of the People's Republic of China. The Ministry of Finance is responsible for issuing practice licences to accounting firms, enforcing accounting rules, setting auditing standards, carrying out inspections and investigations of accounting firms and certified public accountants, and entering into regulatory cooperative agreements relating to oversight of the profession of certified public accountants. The CSRC, under the auspices of the State Council, is responsible for performing supervision of the securities market and for enforcing the Securities Law. It has powers to inspect companies listed on either the Shanghai Stock Exchange or the Shenzhen Stock Exchange and the accounting firms that perform audits of those listed companies. It is the authority responsible for the supervision and administration of securities issued in either one of those stock exchanges. Among its supervisory duties, the CSRC is competent to administer international cooperation affairs of the securities and futures sector. The CSRC has the power to establish an oversight cooperation mechanism with corresponding authorities of other jurisdictions for the purpose of cross-border oversight of the securities markets including, cooperation on audit matters.

⁽²⁾ Regulation (EU) 2016/679 of the European Parliament and of the Council of 27 April 2016 on the protection of natural persons with regard to the processing of personal data and on the free movement of such data, and repealing Directive 95/46/EC (General Data Protection Regulation) (OJ L 119, 4.5.2016, p. 1).

- (10) Both the Ministry of Finance and the CSRC will be involved in the signing of future bilateral agreements for the transfer of audit working papers. The Ministry of Finance takes the lead in concluding agreements with the Member States and determines the CSRC's participation in the negotiations and in the signing of the agreements depending on the scope and content of the agreements. Existing and former staff of the Ministry of Finance and the CSRC have the obligation to keep confidential the State, trade and work secrets acquired during supervisory activities and not to use such information for any unrelated matters.
- (11) Under the laws and regulations of the People's Republic of China, the Ministry of Finance and the CSRC may transfer to the competent authorities of the Member States documents equivalent to those referred to in Article 47(1) of Directive 2006/43/EC that relate to investigations it may perform on such auditors and audit firms.
- (12) On that basis, taking also into account the technical advice of the Committee of European Auditing Oversight Bodies referred to in Article 30(7)(c) of Regulation (EU) No 537/2014 of the European Parliament and of the Council ⁽³⁾, the Ministry of Finance and the CSRC meet requirements that should be declared adequate for the purposes of Article 47(1)(c) of Directive 2006/43/EC.
- (13) This Decision does not affect the cooperation arrangements referred to in Article 25(4) of Directive 2004/109/EC of the European Parliament and of the Council ⁽⁴⁾.
- (14) Any conclusion on the adequacy of the requirements met by the competent authorities of a third country pursuant to the first subparagraph of Article 47(3) of Directive 2006/43/EC does not pre-empt any decision that the Commission may adopt on the equivalence of the public oversight, quality assurance, investigation and penalty systems for auditors and audit entities of that third country pursuant to Article 46(2) of that Directive.
- (15) This Decision aims to facilitate effective cooperation between the competent authorities of the Member States and those of the People's Republic of China. Its purpose is to allow those authorities to exercise their functions of public oversight, external quality assurance and investigations and, at the same time, to protect the rights of the parties concerned. Where a competent authority decides to enter into working arrangements on the basis of reciprocity with the competent authorities of the People's Republic of China in order to enable the transfer of audit working papers and other documents held by statutory auditors or audit firms and of inspection or investigation reports, the Member State concerned is under the obligation to communicate to the Commission the reciprocal working arrangements concluded with those authorities to allow the Commission to assess whether cooperation is in accordance with Article 47 of Directive 2006/43/EC.
- (16) The ultimate objective of cooperation on audit oversight between Member States' competent authorities and the competent authorities of the People's Republic of China is to reach mutual reliance on each other's oversight systems and to enhance convergence in audit quality. Such a mutual reliance and enhanced convergence would be based on the equivalence of the audit oversight systems of the Union and of the People's Republic of China. As a consequence, transfers of audit working papers or other documents held by statutory auditors or audit firms and of inspection or investigation reports should ultimately become the exception.
- (17) This Decision reflects the growing interest of Member States in further developing cooperation with the competent authorities of the People's Republic of China in the area of statutory audit as a means to facilitate access of Union entities to the capital market of the People's Republic of China and to encourage capital market activities in the Member States of companies with a registered office in the People's Republic of China.
- (18) Given the present lack of practical experience in supervisory cooperation with the competent authorities of the People's Republic of China this Decision should be applicable for a limited period of time.

⁽³⁾ 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).

⁽⁴⁾ Directive 2004/109/EC of the European Parliament and of the Council of 15 December 2004 on the harmonisation of transparency requirements in relation to information about issuers whose securities are admitted to trading on a regulated market and amending Directive 2001/34/EC (OJ L 390, 31.12.2004, p. 38).

- (19) Notwithstanding the time limitation, the Commission will monitor on a regular basis the market developments, evolution of the supervisory and regulatory frameworks and the effectiveness of supervisory cooperation, taking into account experience gained during supervisory cooperation, also based on Member States' input. In particular, the Commission may undertake a specific review of this Decision at any time before the end of its expiration period where relevant developments make it necessary to re-assess the declaration of adequacy granted by this Decision. Such re-assessment could lead to the repeal of this Decision.
- (20) The European Data Protection Supervisor delivered an opinion on 20 May 2019.
- (21) The measures provided for in this Decision are in accordance with the opinion of the Committee established pursuant to Article 48(1) of Directive 2006/43/EC,

HAS ADOPTED THIS DECISION:

Article 1

The Ministry of Finance and the Securities Regulatory Commission of the People's Republic of China meet requirements which shall be considered adequate within the meaning of Article 47(1)(c) of Directive 2006/43/EC for the purposes of transfers of audit working papers or other documents and of inspection and investigation reports under Article 47(1) of Directive 2006/43/EC.

Article 2

Member States shall ensure that where audit working papers or other documents held by statutory auditors or audit firms are exclusively held by a statutory auditor or audit firm registered in a Member State other than the Member State where the group auditor is registered and whose competent authority has received a request from any of the authorities referred to in Article 1, such papers or documents shall be transferred to the requesting competent authority only if the competent authority of the first Member State has given its express agreement to the transfer.

Article 3

This Decision shall apply from 15 November 2019 until 14 November 2024.

Article 4

This Decision is addressed to the Member States.

Done at Brussels, 6 November 2019.

For the Commission
Valdis DOMBROVSKIS
Vice-President
