



# EU Audit Legislation in Austria

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From June 2016 onwards important changes driven by EU Audit legislation will start to come into effect impacting audit firms and public interest entities (PIEs). This document summarizes a number of key EU baseline measures and how these have been incorporated into Austrian law. Please note this does not cover all aspects of the EU [Directive](#) or the [Regulation](#).

Should you have any questions, please consult your usual KPMG contact.



#### A reminder of the key EU baseline provisions



The key changes introduced by the EU Audit legislation are:

- **Mandatory Audit Firm Rotation (MFR):** A requirement for auditors of a PIE to rotate every ten years with a Member State option to extend audit firm tenure for either a tender or joint audit arrangement.
- **Non-Audit Services Prohibitions (NAS):** A list of prohibitions that apply to services provided by the statutory auditor and its network, in respect of services provided to the audited entity, its parent undertaking or controlled entities, based in the EU. The NAS provisions do not apply to sister entities of the EU PIE unless they themselves are EU PIEs.
- **NAS Fee Caps:** The introduction of a 70% cap on NAS fees as a percentage of the average of the audit fees for the previous three years.
- **Auditor reporting:** Introduces additional reporting requirements for the statutory auditor of EU PIEs covering the statutory audit report, audit committee reporting and reporting to supervisory bodies of PIEs.



#### Austria – recent developments

- Requirements of EU Audit Reform legislation have been implemented into Austrian law by
  - a law reforming the auditor oversight system (“Abschlussprüfer-Aufsichtsgesetz”, voted in Austria Parliament in April 2016). The rules are effective from 1 October 2016.
  - a law transforming all other requirements into national law (“Abschlussprüfungsrechts-Änderungsgesetz 2016”, voted in Austrian parliament in May 2016). In general, these new rules are effective for financial years that commence on or after 17 June 2016.
  - The first law reforming the auditor oversight system will be published in the official gazette within the next weeks. The law transforming all other requirements was published on 14 June 2016.
- **MFR:** Maximum audit tenure period of 10 years applies. For audits commencing between 17 June 2003 and 15 June 2014 Austria implemented the option to extend the maximum period for MFR to 20/24 years (equivalent to Article 17/4 of the regulation).
- **NAS:** Austria implemented EU baseline list of prohibition and used the option to permit tax and valuation services according to Article 5 of the regulation.



 <b>EU Baseline</b>	 <b>Austria</b>	<b>What does this mean in practice?</b>
<p>The EU PIE definition is unchanged from the 2006 Statutory Audit Directive (the 8th Directive) however, the practical impact of being a PIE is broader than previously. The EU new directive defines a PIE as any <b>entity incorporated in an EU Member State</b> with:</p> <ol style="list-style-type: none"> <li>1. debt or shares admitted to trading on an <b>EU regulated market</b>; or</li> <li>2. <b>credit institutions</b> (e.g. non-listed and licenced under regulation to take deposits in the EU); or</li> <li>3. <b>insurance undertakings</b> (e.g. non-listed regulated insurance activities, irrespective of whether they are life, non-life or reinsurance undertakings); or</li> <li>4. <b>entities designated by local Member States</b> to be of public interest.</li> </ol>	<p>The Austrian legislation implements the EU baseline definition for PIEs additionally including as PIEs “designated by Austrian law”. These are:</p> <ul style="list-style-type: none"> <li>• entities listed on a regulated market in the <b>European Economic Area</b>;</li> <li>• the Austrian stock exchange (“Wiener Börse”); and</li> <li>• any credit institution as defined by national law (“Bankwesengesetz”) – irrespective of its legal form.</li> </ul> <p>With regards to cooperatives, Austria has exercised the member state option to exclude them from the Regulation. However, provisions regarding auditor reporting for the audit of PIEs or for the implementation of audit committees are applicable to cooperatives.</p>	<p>More entities are defined as PIEs in Austria.</p>
<p>Statutory auditors of a PIE are required to:</p> <ul style="list-style-type: none"> <li>➤ Rotate at least every 10 years (subject to a Member State option);</li> <li>➤ With a Member State option to extend audit firm tenure to: <ul style="list-style-type: none"> <li>– a maximum of 20 years (subject to a public tender process being held after 10 years); or</li> <li>– a maximum of 24 years (subject to a joint audit arrangement).</li> </ul> </li> </ul>	<p>The standard MFR period for all PIEs is 10 years.</p> <ul style="list-style-type: none"> <li>➤ Austria exercised the option to extend audit firm tenure for all entities (including credit institutions and insurance undertakings) that have entered into an audit engagement with the auditor for the financial year beginning between 17 June 2003 and 15 June 2014 (specific short runners) to: <ul style="list-style-type: none"> <li>– a maximum of 20 years in case of public tender or</li> <li>– a maximum of 24 years (in case of joint audit arrangements)</li> </ul> </li> </ul>	<p>We anticipate an increase in tendering activity.</p>
<p>When the start of the first financial year of the audit engagement is:</p> <ul style="list-style-type: none"> <li>➤ <b>On or before 16 June 1994</b>, a PIE cannot renew or enter into an audit engagement with the auditor for the financial year beginning on or after 17 June 2020.</li> <li>➤ <b>Between 17 June 1994 and 16 June 2003</b>, a PIE cannot renew or enter into an audit engagement for the financial year beginning on or after 17 June 2023.</li> <li>➤ <b>Between 17 June 2003 and 16 June 2006</b>: PIEs need to conduct a tender and reappoint the existing auditors or appoint new auditors so that the new audit engagement takes effect for the next financial year beginning after 16 June 2016. Member States will determine whether an audit straddling 17 June 2016 could be completed.</li> <li>➤ <b>For audits commencing 17 June 2006 onwards</b>, when an audit engagement reaches a maximum duration of 10 years since first appointed, the auditor can not be reappointed other than on the basis of a tender or joint audit.</li> </ul>	<p>The MFR transition periods correspond with EU Baseline where the start of the first financial year of the audit engagement is:</p> <ul style="list-style-type: none"> <li>➤ <b>on or before 16 June 1994</b></li> <li>➤ <b>between 17 June 1994 and 16 June 2003</b></li> </ul> <p>Member state <u>specific</u> rules apply to option to extend audit firm tenure:</p> <ul style="list-style-type: none"> <li>➤ Extension of audit firm tenure is possible for all PIEs (including credit firm institutions and insurance undertakings) where the start of the first financial year of the audit engagement is <b>between 17 June 2003 and 15 June 2014</b>.</li> <li>➤ For audits <b>commencing 16 June 2014 onwards</b>, there is no option for the auditor to be reappointed, the maximum duration of 10 years applies.</li> </ul>	<p>We understand that if the audit mandate straddles the 17 June 2016 application date then the auditor can complete that year end – but will need to rotate at the end of this period if the maximum duration has been reached. So for example, a 31 December 2016 audit would be the last for an audit firm with 10+ years tenure.</p>
<p>Requires KAPs to <b>rotate after a maximum of seven years</b>, followed by a three-year cooling-off period. Member States have the option to elect shorter KAP rotation periods.</p>	<p>Austria implemented EU baseline KAP rotation period for PIEs of <b>seven years</b>, followed by a <b>three-year cooling-off period</b>. In comparison to previous rules, the rotation period changed from 5 to 7 years, and cooling-off period from 2 to 3 years.</p>	<p>Slightly less rotation on individual mandates.</p>

To which entities do the new rules apply – PIE definition?

Audit Firm Rotation – what are the MFR rules?

What are the MFR transition rules – including the short runner issue?

Key audit partner rotation (KAP) – new rules?

 <b>EU Baseline</b>	 <b>Austria</b>	<b>What does this mean in practice?</b>
<p><b>Prohibited NAS</b></p> <p>The list of NAS which statutory auditors and members of their network are prohibited from providing to their PIE statutory audit clients is included in Appendix 1. Member States have the option to add to this list.</p> <p>The audit firm may NOT provide such NAS during the time between the beginning of the period audited and the issuing of the audit report. There is also a 'clean period' required from the financial year preceding the start of the year to be audited for; <i>'Designing and implementing internal control or risk management procedures related to the preparation and/or control of financial information or designing and implementing financial information technology systems'</i>.</p> <p>Valuation and certain tax services (with the exception of customs taxes and payroll tax) are subject to Member State derogation (Appendix 1) meaning they could be permitted. In the event of such a derogation the audit committee must conclude and document that the services in question have no direct or have an immaterial effect on the financial statements and do not compromise the auditor's independence.</p>	<ul style="list-style-type: none"> <li>➤ Austria follows the EU baseline. Austria exercised the member state option regarding tax and valuation services.</li> <li>➤ There have been no additions to EU baseline list of prohibited NAS.</li> <li>➤ However, in detail Austrian law specifies that restrictions on NAS existing prior to implementation of EU Baseline requirements continue to apply to PIEs in addition.</li> </ul>	<p>In comparison to prior restrictions, implementation of EU Baseline requirements result in a slightly less number of permissible NAS</p>
<p><b>Permissible services - what is the cap on fees?</b></p> <p>Fees earned by the auditor of the PIE for <b>permissible NAS are capped at 70%</b> - though Member States have the option to establish stricter rules on the NAS fee cap, including a lower %.</p> <p>Any NAS that is not explicitly prohibited to the audited PIE, its parent undertaking or its controlled undertakings is permissible.</p> <p><b>Approval by the Audit Committee is needed</b> following an assessment of the threats to independence and the safeguards.</p> <p>Member States may introduce a list of permitted services.</p>	<ul style="list-style-type: none"> <li>➤ Austria follows the EU baseline with no changes to the cap.</li> <li>➤ There is no list of permitted services in Austrian Law.</li> </ul>	<p>Introduction of pre-approval processes in 2016 is a priority item on audit committee's agenda. The Austrian profession will issue guidance on this topic.</p> <p>For further guidance on the role of the Audit Committee see the <a href="#">KPMG Audit Committee Institute handbook</a> and in particular, local guidance from the Austrian member firm.</p>
<p><b>Auditor reporting – what's new?</b></p> <p>The EU requirements largely align with the new ISA requirements, although there are still some additional unique EU disclosures such as an independence declaration and an indication of the length of the audit/client relationship. In addition:</p> <p><b>For PIEs</b>, the audit report will need to provide:</p> <ul style="list-style-type: none"> <li>➤ a description of the most significant assessed risks of material misstatement, including assessed risks of material misstatement due to fraud;</li> <li>➤ a summary of the auditor's response to those risks; and</li> <li>➤ where relevant, key observations arising with respect to those risks.</li> </ul> <p><b>For ALL statutory audits in the EU</b> the audit report will need to:</p> <ul style="list-style-type: none"> <li>• 'provide a statement on any material uncertainty relating to events or conditions that may cast significant doubt about the entity's ability to continue as a going concern'.</li> </ul>	<p>Regarding auditor's report, Austrian law follows the EU baseline.</p> <p>Regarding the additional report to the audit committee according to Article 11 of the directive,</p> <ul style="list-style-type: none"> <li>▪ not only for audits of PIEs,</li> <li>▪ but also for audits of very large companies (total assets exceeding EUR 100 million or revenues exceeding EUR 200 million)</li> </ul> <p>it is required to submit this report.</p> <p>Practical Guidance on the application of new reporting requirements in Austria will be issued by the Austrian profession.</p>	<p>Increased transparency and deeper insight.</p>

# Appendix 1

## Prohibited Non-Audit Services as per Art 5 (1) of the Regulation

1. A statutory auditor or an audit firm carrying out the statutory audit of a public-interest entity, or any member of the network to which the statutory auditor or the audit firm belongs, shall not directly or indirectly provide to the audited entity, to its parent undertaking or to its controlled undertakings within the Union any prohibited non-audit services in:
  - a. the period between the beginning of the period audited and the issuing of the audit report; and
  - b. the financial year immediately preceding the period referred to in point (a) in relation to the services listed in point (e) of the second subparagraph.

For the purposes of this Article, prohibited non-audit services shall mean:

- a. Tax Services relating to:
  - i. *preparation of tax forms\**;
  - ii. payroll tax;
  - iii. customs duties;
  - iv. *identification of public subsidies and tax incentives unless support from the statutory auditor or the audit firm in respect of such services is required by law\**;
  - v. *support regarding tax inspections by tax authorities unless support from the statutory auditor or the audit firm in respect of such inspection is required by law\**;
  - vi. *calculation of direct and indirect tax and deferred tax\**;
  - vii. *provision of tax advice\**;
- b. Services that involve playing any part in the management or decision-making of the audited entity;
- c. Bookkeeping and preparing accounting records and financial statements;
- d. Payroll services;
- e. Designing and implementing internal control or risk management procedures related to the preparation and/or control of financial information or designing and implementing financial information technology systems;
- f. *Valuation services, including valuations performed in connection with actuarial services or litigation support services\**;
- g. Legal services, with respect to:
  - i. the provision of general counsel;
  - ii. negotiating on behalf of the audited entity; and
  - iii. acting in an advocacy role in the resolution of litigation
- h. Services related to the audited entity's internal audit function;
- i. Services linked to the financing, capital structure and allocation, and investment strategy of the audited entity, except providing assurance services in relation to the financial statements, such as the issuing of comfort letters in connection with prospectuses issued by the audited entity;
- j. Promoting, dealing in, or underwriting shares in the audited entity;
- k. Human resources services, with respect to:
  - i. management in a position to exert significant influence over the preparation of the accounting records or financial statements which are the subject of the statutory audit, where such services involve:
    - searching for or seeking out candidates for such position; or
    - undertaking reference checks of candidates for such positions
  - ii. structuring the organisation design; and
  - iii. cost control.

*\* Services subject to the Member State derogation*