

# AOBA and FMA Circular

Specific issues in relation to  
Regulation (EU)

No 537/2014 regarding the  
appointment of statutory  
auditors at public-interest  
entities (PIEs)

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# 1. INTRODUCTORY REMARKS

1. This Circular was drawn up jointly by the Audit Oversight Body of Austria (AOBA) and the Austrian Financial Market Authority (FMA), and reflects the legal view of the AOBA and the FMA, but does not constitute a Regulation and applies for public-interest entities (PIEs) and their statutory auditors<sup>[1]</sup> as a guide for the application of Regulation (EU) No 537/2014 on specific requirements regarding the statutory audit of public-interest entities of 16 April 2014, (hereinafter: SA-R). No rights and obligations extending over and above the provisions of the SA-R and legal provisions can be derived from this circular.
2. Competences arise from the SA-R for both the AOBA and the FMA. Against this background, both authorities have decided to draw up a joint catalogue of questions in relation to various issues regarding the appointment of the statutory auditor at public-interest entities. The legal basis consists of the SA-R and the corresponding legal provisions under national law, where the options prescribed in the SA-R are made use of under national law by the national legislator. Future additional interpretations about other topics arising from the SA-R and its transposition under national law, remain unaffected and are therefore not excluded.
3. The SA-R is generally<sup>1</sup> applicable to the statutory auditing of public-interest entities (PIEs). Public-interest entities are defined in Article 2 (13) of Directive 2014/56/EU of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts and transposed into national law in Article 189a no. 1 points a to d of the Company Code (UGB; Unternehmensgesetzbuch).

Article 189a. UGB: the following definitions shall apply for the 3rd Book.

1. public-interest entities:

- a. entities whose transferable securities are admitted to trading on a regulated market of an EU Member State or a signatory country to the Agreement on the European Economic Area as defined in Article 4 (1) (21) of Directive 2014/65/EU on Markets in Financial instruments and amending Directives 2002/92/EC and 2011/61/EU, OJ L 173, 12.06.2014, p. 349;

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[1] This formulation should be understood as being gender-neutral, and addresses both genders in the interests of better readability.

<sup>1</sup> Cf the Member State discretion pursuant to Article 2 (3) SA-R. In accordance with this discretion the statutory audits of certain entities (in particular credit cooperatives and savings banks) may be excluded from the scope of application of the SA-R. Austria has exercised this discretion among other places in Article 60a of Austrian Banking Act (BWG; Bankwesengesetz) and has declared that certain parts of the SA-R are not applicable for the auditing associations of credit cooperatives and the Sparkassenprüfungsverband.

- b. joint stock companies, that are credit institutions as defined in Article 4 (1) (1) of Regulation (EU) No 575/2013 on prudential supervision of credit institutions and investment firms and amending Regulation (EU) No 646/2012, OJ L 176 of 27.06.2013 p. 1 – with the exception of the credit institutions listed in Article 2(5) of Directive 2013/36/EU on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms, amending Directive 2002/87/EC and repealing Directives 2006/48/EC and 2006/49/EC, OJ L 176, of 27.06.2013, p. 338;
- c. joint stock companies, that are insurance undertakings as defined in Article 2(1) of Directive 91/674/EEC on the annual accounts and consolidated accounts of insurance undertakings, OJ L 374 of 31.12.1991 p. 7; or
- d. entities, irrespective of their legal form that have been designated as such in a Federal Act with reference to this provision;

4. In addition to shares, transferable securities also include debt securities and other securities that are admitted to trading on a regulated market in the EU/EEA<sup>2</sup>.

According to the wording of Article 189a no. 1 point b UGB, credit institutions in the legal form of joint stock companies are captured, that are considered "CRR-credit institutions" i.e. entities whose activity consists of taking deposits or other repayable funds and granting credits on their own account.

Article 43 para. 1a BWG clarifies that "BWG credit institutions" i.e. entities that perform one of the banking transactions listed in Article 1 para. 1 BWG, shall be considered as public-interest entities irrespective of their legal form.

In accordance with the wording of Article 189 no. 1 point c UGB in conjunction with Article 136 para. 1 nos. 1 to 3 of the Insurance Supervision Act of 2016 (VAG 2016; Versicherungsaufsichtsgesetz 2016) insurance and reinsurance undertakings as well as small insurance undertakings regardless of their legal form are captured.

Pursuant to Article 189a para. 1 point d UGB in conjunction with Article 27 para. 4 BörseG 2018 exchange operating companies - i.e. Wiener Börse AG – are declared as being public-interest entities.

5. The following entities among others shall not be considered to be public-interest entities pursuant to Article 189a para. 1 point d UGB:
  - real estate investment funds (Article 3 para. 4a BWG),
  - management companies (Article 3 para. 4 BWG in conjunction with Article 10 para. 6 InvFG),
  - corporate provision funds (Article 3 para. 7 point c BWG),
  - payment institutions pursuant to Article 7 ZaDiG (Article 25 para. 1 ZaDiG),
  - electronic money institutions pursuant to the E-GeldG,

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<sup>2</sup> Article 4 (1) (21) of Directive 2014/65/EU.

- deposit guarantee facilities as defined in the ESAEG,
- AIFMs as defined in the AIFMG,
- central counterparties (CCPs),
- central securities depositories (CSDs).

Furthermore small mutual associations (Article 5 no. 4 VAG 2016), mutual associations, the purpose of which is restricted to asset management (Article 63 para. 3 VAG 2016) and private foundations as defined in Article 66 para. 1 VAG 2016 are also excluded, since they are not considered to be PIEs (Article 136 para. 1 nos. 3 to 5 VAG 2016).

Pension funds (*Pensionskassen*) in accordance with the Pensionskassen Act (PKG; Pensionskassengesetz) are not addressed by the scope of application of Article 189a no. 1 UGB.

6. For the purpose of this circular, the designation "CI- and (R)IU-PIEs" will hereafter be used for credit institutions and (re-)insurance undertakings that are public-interest entities.

## 2. Q & A

7. A summary of interpretations, that have been jointly developed by the AOBA and the FMA about various provisions of the SA-R, have been collected below and are intended to contribute towards the consistent application of specific provisions.

### 2.1. EXTERNAL ROTATION - TRANSITIONAL RULES

8. Based on the fact that at credit institutions and (re-)insurance undertakings, that are PIEs (abbreviation: CI- and (R)IU-PIEs), the appointment of the statutory auditor pursuant to Article 63 para. 1 BWG or Article 260 para. 1 VAG 2016 which is required to take place before the start of the financial year that is the subject of the audit, point b) Supplementary remarks contains information for such undertakings for clarification purposes. These clarifications only relate to, unless indicated otherwise, appointments that were made before 17 June of the preceding year.

#### a) PIEs other than CI- and (R)IU-PIEs.

<p>Art. 41 (1) SA-R - "long-term"</p>	<p>This provision addresses those engagements where the statutory auditor has performed auditing services on a continuous basis for a PIE for 20 years or longer as of 16 June 2014 (i.e. for financial years beginning on or before 16.06.1994).</p>
	<p>From 17 June 2020 a PIE no longer grants or renews the audit engagement, i.e. the continuing auditing of PIEs with a standard financial year shall be possible for the last time for the 2020 financial year.</p>
<p>Art. 41 (2) SA-R - "medium-term"</p>	<p>This provision captures those engagements where the statutory auditor had already provided auditing services on a continuous basis for a PIE for more than 10 years, but for less than 20 years as of 16 June 2014, i.e. for financial years that began on 17 June 1994 until 16 June 2003.</p>
	<p>From 17 June 2023 the PIE no longer grants or renews the audit engagement, i.e. the continuing auditing of PIEs with a standard financial year shall be possible for the last time for the 2023 financial year.</p>
<p>Article 41 (3) SA-R in conjunction with Article 270a UGB - "short-term"</p>	<p>This provision addresses audit engagements, that are not "long-term" or "medium-term", that were granted for financial years beginning prior to 16 June 2014 and that still exist as of 17 June 2016.</p>
	<p>Such engagements may be continued until the maximum term of 10 years expires. Appointments that were made prior to the Regulation entering into force (17 June 2016), are in any case permissible, even in cases where the maximum duration was exceeded.</p>

Possibility of extension for "short-term" cases Article 270a UGB	For audit engagements, which were granted prior to 16 June 2014, that are not considered as long-term or middle-term and still exist as of 17 June 2016, there is the possibility of a one-off extension.
	The possibility to extend to 20 years ( <u>public tender</u> ) or 24 years (joint audit) may only be exercised, if <b>effective for the year of the initial exceeding of the maximum term of the audit engagement or as soon as the appointment process falls within the scope of application of the EU-SA-R for the first time</b> , the public tender has been conducted or changed to a joint audit.
"New engagements"	Where a statutory auditor was initially appointed for a financial year that started on or after 16 June 2014, then the maximum term of ten years for audit engagements must be observed (external rotation, no option to extend).

### b) CI- and (R)IU-PIEs.

Art. 41 (1) SA-R - "long-term"	For CI- and (R)IU-PIEs with a standard financial year, those continuing engagements are addressed, that included the auditing of the 1994 financial year (and the preceding years).
	For CI- and (R)IU-PIEs with a standard financial year, the audit is possible for the last time for the 2021 financial year.
Art. 41 (2) SA-R - "medium-term"	For CI- and (R)IU-PIEs with a standard financial year, those continuing engagements are addressed, for which the first audit conducted was for financial years between 1995 and 2003.
	For CI- and (R)IU-PIEs with a standard financial year, the audit is possible for the last time for the 2024 financial year.
Possibility of extension for "short-term" Article 270a UGB	For CI and (R)IU – PIEs with a standard financial year, engagements may be extended once for where the first audit was for financial years between 2004 and 2014.
"New engagements"	The ten year limit with a possibility of an extension applies regardless of the date of appointment for CI- and (R)IU-PIEs with a standard financial year where the first audit performed was for the 2015 financial year or later.

## 2.2. PUBLIC TENDER IN ACCORDANCE WITH ARTICLE 270A NO. 1 UGB

### a) Date of conducting the tender

9. In order to be able to make use of the option to extend set out in Article 270a UGB, a public tender must be conducted or a joint audit must be intended. The condition for the former option to extend is a public tender for audits after the 10th auditing year (or in the case of "short-termers" once the appointment procedure falls within the scope of the EU-SA-R); the tender being conducted opens up the option to appoint the statutory auditor for a further 10 years (however, up to a maximum 20th auditing year). Where PIEs conduct the tender for more than one year, this is irrelevant for the further appointment of the previous statutory auditor, since the first public tender automatically opens up the option for a ten year extension (as a maximum up to the 20th full audit year). Irrespective of this, the appointment shall be made for one year each time.

### b) Arrangements for the public tender

10. The "public" criterion is in any case satisfied, where the conducting of the tender procedure pursuant to Article 16 (2) to (5) SA-R is announced<sup>3</sup>

- a) on the AOBA's service platform; or
- b) in the Official Gazette of the Wiener Zeitung.

Another form of public tender with the same effect in terms of publicity is also permissible (to be checked on a case-by-case basis by AOBA or the FMA). However, only publishing the tender on the entity's own website does not fulfil the required publicity effect.

11. The timeframe for the statutory auditor to submit offers shall not allowed to be shorter than 30 days, calculated from the time of publication of the tender.

## 2.3. JOINT AUDIT

12. Years where joint audits are conducted shall be counted for both statutory auditors for the calculation of the maximum term of the audit engagement. Where two statutory auditors conduct a joint audit invoking Article 270a no. 2 UGB, but the statutory audit is then however subsequently once again performed by one of the statutory auditors on their own, then the years of the joint audit are to be taken into account for the maximum term of the audit engagement.

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<sup>3</sup> In the case of PIEs as per the definition of Directive 2003/71/EC, pursuant to Article 16 (4) SA-R the selection procedure in accordance with the criteria set out in Article 16 (3) SA-R is omitted. Such selection procedures must still meet the criteria in accordance with Article 16 (2) and (5) SA-R as well as the "public" criterion as defined in this Circular.



## 2.4. INTERNAL ROTATION

13. With regard to internal rotation pursuant to Article 17 (7) SA-R the maximum duration of activity shall be determined in terms of financial years in accordance with the rules set out in Article 271a para. 1 no. 4 UGB; in basic terms: the same key auditor(s) is/are allowed to sign a maximum of seven consecutive audit opinions for a PIE. No exception is made for short financial years, and such years are therefore counted as full financial years. The same applies for the cooling-off period, which must also cover three financial years, or put more simply, consecutive audit opinions.

## 2.5. GRADUAL ROTATION

14. Those staff members, who are significantly involved in the conducting of the statutory audit in a leading role are affected by the gradual rotation. The gradual rotation is checked by the AOBA as part of the file reviews performed during the course of the inspections it conducts.

## 2.6. SELECTION PROCEDURE

### a) Article 16 (3) (a) SA-R

15. PIEs shall, except in the case of renewing an audit engagement, conduct a selection procedure pursuant to Article 16 (3) SA-R when appointing the statutory auditor<sup>4</sup> (not to be confused with the public tender pursuant to Article 270a no. 1 UGB). If, however, the same statutory auditor is appointed for a further financial year within the maximum term of the audit engagement (renewal of the audit engagement), such a selection procedure shall not be necessary.
16. Pursuant to Article 16 (3) (a) SA-R, firms (i.e. statutory auditors) that received less than 15 % of the total audit fees paid from PIEs in the preceding calendar year shall not be allowed to be excluded in any way from taking part in the selection procedure. Pursuant to Article 16 (3) last subparagraph SA-R, the APAB shall for such purposes publish a list of the statutory auditors to be kept updated on an annual basis that can be consulted at <http://www.apab.gv.at/register>.
17. This does not affect any statutory auditors that hold a valid certificate from the AOBA and that are authorised to conduct audits at PIEs and who therefore may be appointed subject to the observance of Article 16 SA-R. The initial acceptance of an instruction to conduct an audit at a PIE must be notified to the AOBA without delay pursuant to Article 45 para. 1 of the Austrian Auditor Oversight Act (APAG; Abschlussprüfer-Aufsichtsgesetz).

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<sup>4</sup> This does not apply pursuant to Article 16 (4) SA-R for PIEs as per the definition in Directive 2003/71/EC (the Prospectus Directive).

## b) Quality standards pursuant to Article 16 (3) (d) SA-R

18. The quality standards in this instance that are audited during the external quality assurance of a statutory auditor, during inspections conducted by AOBA.
19. Additional provisions from special laws (e.g. Article 62 BWG) must in any case be complied with.

## c) Checking of selection procedures

20. The orderly conducting of the selection procedure is to be confirmed using the FMA's forms for notifying about the statutory auditors of CIs and (R)IUs. The AOBA will review the orderly appointment of the statutory auditors during the file reviews during their inspections; where indications exist of the provisions of Article 16 SA-R having been breached, the review shall be performed by initiating an investigation at the affected PIE or affected statutory auditors.

## 2.7. PERIOD FOR PROHIBITED NON-AUDIT SERVICES

21. Pursuant to Article 5 SA-R the provision of non-audit services during the period of the start of the financial year that is the subject of the audit and the delivery of the audit opinion shall not in any case be permitted. Article 271 UGB also defines the relevant period of time in relation to the partiality and exclusion of the statutory auditor as: "during the financial year being audited or until the audit opinion has been submitted".
22. Furthermore the one-year cooling-in phase must also be observed for services in accordance with Article 5 (1) (e) SA-R (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)<sup>5</sup>.

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<sup>5</sup> Correction of Regulation (EU) No 537/2014 of 16 April 2014 on specific requirements regarding statutory audit of public-interest entities and repealing Commission Decision 2005/909/EC, OJ L 170, 11.06.2014, p. 66.

# ANNEX 1: EXTERNAL ROTATION FOR CI- AND (R)IU-PIES

The remarks marked with an asterisk (\*) apply if the audit engagement was granted before 17th June of the preceding year.

Long-term	Last financial year (FY) <sup>6</sup>
<p>This provision addresses those engagements where the statutory auditor has performed auditing services on a continuous basis for a PIE for 20 years or longer as of 16 June 2014 (i.e. for financial years beginning on or before 16.06.1994).</p> <p>For CI- and (R)IU-PIEs with a standard financial year, those continuing engagements are addressed, that included the auditing of the 1994 financial year (and the preceding years)*.</p>	<p>From 17 June 2020 a PIE no longer grants or renews the audit engagement.</p> <p>For CI- and (R)IU-PIEs with a standard financial year, the audit is possible for the last time for the 2021 financial year*.</p>

Auditor since FY	Status as of 16.06.2014	Last FY allowed to be audited
1994 and before	20	2021*

Medium-term	Last financial year <sup>7</sup>
<p>This provision captures those engagements where the statutory auditor had already provided auditing services on a continuous basis for a PIE for more than 10 years, but for less than 20 years as of 16 June 2014, i.e. for financial years that began on 17 June 1994 until 16 June 2003.</p> <p>For CI- and (R)IU-PIEs with a standard financial year, those continuing engagements are addressed, for which the first audit conducted was for financial years between 1995 and 2003.</p>	<p>From 17 June 2023 the PIE no longer grants or renews the audit engagement, i.e. the continuing auditing of PIEs with a standard financial year shall be possible for the last time for the 2023 financial year.</p> <p>For CI- and (R)IU-PIEs with a standard financial year, the audit is possible for the last time for the 2024 financial year*.</p>

Auditor since FY	Status as of 16.06.2014	Last FY allowed to be audited
1995	19	2024*
1996	18	2024*
1997	17	2024*
1998	16	2024*
1999	15	2024*
2000	14	2024*
2001	13	2024*
2002	12	2024*
2003	11	2024*

<sup>6</sup> Legal Basis: Article 41 (1) SA-R.

<sup>7</sup> Legal Basis: Article 41 (2) SA-R.

Short-term	Last financial year <sup>8</sup>
<p>This provision addresses audit engagements, that are not "long-term" or "medium-term", that were granted for financial years beginning prior to 16 June 2014 and that still exist as of 17 June 2016.</p> <p>The provisions therefore apply to CI- and (R)IU-PIEs with a standard financial year to statutory audit services for the 2004 FY und 2017 FY*.</p>	<p>Such engagements may be continued until the maximum term of 10 years expires. Appointments that were made prior to the Regulation becoming effective (17 June 2016), remain permissible, even in cases where the maximum duration was exceeded*. In the case of audits from FY 2004, 2005, 2006, 2007 and 2008 appointments for CI- and (R)IU-PIEs with a standard financial year are in any case possible until 2017* (initial application of the Regulation for CI- and (R)IU-PIEs from FY 2018*.</p>
<p><i>Short-term with possibilities for extension:</i></p> <p>For audit engagements, which were granted prior to 16 June 2014, that are not considered as long-term or medium-term and still exist as of 17 June 2016, there is the possibility of a one-off extension.</p> <p>For CI- and (R)IU-PIEs with a standard financial year, engagements may be extended once in cases where the first audit was for financial years between 2004 and 2014.</p>	<p>These short-term engagements with a possibility of extension have a one-off option for extension to 20 (public tender) or 24 years (joint audit). The possibility to extend to 20 years (public tender) or 24 years (joint audit) may only be exercised, if effective for the year of the initial exceeding of the maximum term of the audit engagement or as soon as the appointment process falls within the scope of application of the EU-SA-R for the first time, the public tender has been conducted or changed to a joint audit.</p>

SA since FY	Status as of 16.06.2014	10 years reached in FY	public tender in FY	public tender or joint audit from FY	Extension in case of public tender possible until	Extension in case of continuous joint audit possible until
2004	10	2013	2017*	2018	2023	2027
2005	9	2014	2017*	2018	2024	2028
2006	8	2015	2017*	2018	2025	2029
2007	7	2016	2017*	2018	2026	2030
2008	6	2017	2017*	2018	2027	2031
2009	5	2018	2018	2019	2028	2032
2010	4	2019	2019	2020	2029	2033
2011	3	2020	2020	2021	2030	2034
2012	2	2021	2021	2022	2031	2035
2013	1	2022	2022	2023	2032	2036
2014	0	2023	2023	2024	2033	2037

Where a statutory auditor was initially appointed for a financial year that started on or after 16 June 2014, then the maximum term of ten years for audit engagements must be observed (external rotation, no option to extend). The ten year limit with a possibility of an extension applies regardless of the date of appointment for CI- and (R)IU-PIEs with a standard financial year where the first audit performed was for the 2015 financial year or later.

SA since FY	10 years reached in FY	Compulsory rotation from FY
2015	2024	2025
2016	2025	2026
2017	2026	2027

<sup>8</sup> Legal basis: Article 41 (3) SA-R as well as Article 270a UGB.