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## HARMONISING SANCTIONS AGAINST EXTERNAL AUDITORS

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### ABSTRACT

*The European Parliament adopted the Directive 2014/56/EU amending the Directive 2006/43/EC on every statutory audit in the EU and the Regulation (EU) No. 537/2014 containing requirements that relate specifically to statutory audit of public interest entities. One of the main issues imposed by the new audit Directive and Regulation is introducing and harmonizing measures against statutory auditors and audit firms. This new audit legislative impose harmonized administrative pecuniary sanction on statutory auditors, audit firms and public interest entities for identified infringements of the rules. Member States should apply identical criteria when determining the sanction to be imposed with the possibility of withdrawing the approval of the statutory auditor or audit firm concerned. In that sense, the aim of this paper is to investigate the auditor's liability according to the existing regulatory framework in the Republic of Croatia, as well as the legal consequences for infringements of the rules. In addition, this paper presents comparative overview of the solutions for audit infringements adopted by the selected European Union Member States that have already transposed the new audit regulation into national legislation.*

**KEYWORDS:** *harmonization, statutory audit, administrative pecuniary sanctions, infringements, audit Directive, audit Regulation*

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## **1. INTRODUCTION**

The audit reform in the EU had, among others, the consequence of adopting new regulatory framework. The European Parliament adopted the Directive 2014/56/EU (hereafter Directive) amending the Directive 2006/43/EC on every statutory audit in the EU and the Regulation (EU) No. 537/2014 (hereafter Regulation) containing requirements that relate specifically to statutory audit of public interest entities. Both the Directive and the Regulation were published in the Official Journal of the European Union on 27 May 2014 and came into the force on 16 June 2014. Each Member State has had two years to adopt the Directive into their national legislation, and the provisions of the Regulation came applicable as of 17 June 2016 onwards. From that time, all the provisions in national legislation that are in contradiction with the Directive and Regulation are null and void. The Republic of Croatia is in the process of transposition of new Audit Act into the national legislation. Because of the overdue in the transposition the audit Directive and the Regulation into the national law, the Republic of Croatia is in the infringement procedure at the moment. It is expected that the Croatian Parliament will adopt the new Audit Act harmonized with the EU requirements by the end of 2017.

One of the main issues imposed by the new audit Directive and Regulation is introducing and harmonizing measures against statutory auditors and audit firms. This new audit legislative impose harmonized administrative pecuniary sanction on statutory auditors, audit firms and public interest entities for identified infringements of the rules. Namely, competent authorities should be able to impose administrative pecuniary sanctions that have a real deterrent effect. Member States should apply identical criteria when determining the sanction to be imposed with the possibility of withdrawing the approval of the statutory auditor or audit firm concerned. In that sense, the aim of this paper is to investigate the auditor's liability according to the existing regulatory framework in the Republic of Croatia, as well as the legal consequences for infringements of the rules. In addition, this paper presents comparative overview of the solution adopted by those European Union Member States that have already transposed the new audit regulation into national legislation.

## **2. SYSTEMS OF INVESTIGATION AND SANCTIONS AGAINST AUDITORS ACCORDING TO THE EU DIRECTIVE**

In order to ensure the application of legal provisions, it is important to have quality systems of investigations and sanctions. New audit rules in the European Union require Member States to establish adequate measures and sanctions against those who violate the provisions of audit legislative. Bearing in

mind the fact that there were no precise provisions relating the systems of investigations and sanctions, the 2014 European Union audit Directive requires Member States to comply with at least the minimum standards applicable to: 1) sanctioning powers, 2) effective application of sanctions and 3) publication of sanctions and measures.

In that sense, the Directive points out that the competent authorities should be able to impose administrative sanctions that have a real deterrent effect. Such goal can be achieved if the financial sanction depends on the financial position of the person who committed the violation (for instance, in an amount of up to one million EUR or higher in the case of natural persons and up to a percentage of total annual turnover in the preceding financial year in the case of legal persons or other entities). With the possibility of withdrawing the approval of the statutory auditors or audit firm concerned, Member States may also provide for other forms of sanctions that have a deterring effect. In any case, Member States should apply the same criteria when determining the sanction to be imposed.

Member States shall provide for competent authorities to have the power to take and/or impose at least the following administrative measures and sanctions for breaches of the provisions of Directive and, where applicable, of Regulation: (a) a notice requiring the natural or legal person responsible for the breach to cease the conduct and to abstain from any repetition of that conduct; (b) a public statement which indicates the person responsible and the nature of the breach, published on the website of competent authorities; (c) a temporary prohibition, of up to three years' duration, banning the statutory auditor, the audit firm or the key audit partner from carrying out statutory audits and/or signing audit reports; (d) a declaration that the audit report does not meet the requirements of Directive and Regulation; (e) a temporary prohibition, of up to three years' duration, banning a member of an audit firm or a member of an administrative or management body of a public-interest entity from exercising functions in audit firms or public-interest entities; (f) the imposition of administrative pecuniary sanctions on natural and legal persons.<sup>1</sup>

Member States shall require that, when determining the type and level of administrative sanctions and measures, competent authorities are to take into account all relevant circumstances, including, where appropriate: (a) the gravity and the duration of the breach; (b) the degree of responsibility of the responsible person; (c) the financial strength of the responsible person, for example

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<sup>1</sup> Directive 2014/56/EU of the European Parliament and of the council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, Para. 30a.

as indicated by the total turnover of the responsible undertaking or the annual income of the responsible person, if that person is a natural person; (d) the amounts of the profits gained or losses avoided by the responsible person, in so far as they can be determined; (e) the level of cooperation of the responsible person with the competent authority; (f) previous breaches by the responsible legal or natural person. Additional factors may be taken into account by competent authorities, where such factors are specified in national law<sup>2</sup>.

In addition, Member States should ensure that the sanctions and measures imposed on statutory auditors and audit firms are published in an appropriate manner. Member States may decide that such disclosure does not contain personal data. If Member States permit publication of sanctions which are subject to appeal, competent authorities, as soon as reasonably practicable, also publish information concerning the status and outcome of any appeal on their website.<sup>3</sup>

### **3. LEGAL ASPECTS OF EXTERNAL AUDITORS RESPONSIBILITY IN THE REPUBLIC OF CROATIA**

The organization and activity of statutory auditors in the Republic of Croatia was regulated by several laws. It should be emphasized that the Republic of Croatia has assumed the obligation of continuous alignment with the *acquis communautaire* of the European Union. Accordingly, it is obliged to harmonize Croatian legislation with the normative framework of the European Union in accordance with the constant amendments of relevant Directives, Regulations and other regulatory solutions. In this respect, the following is an outline of existing legislation outside of the Audit Act, which obliges statutory auditor as well a description of the sanctions that arise in case of identified infringements of the rules.

#### *3.1. COMPANIES ACT*

The Article 628 of the Companies Act states „who as an auditor or assistant auditor gives an incorrect audit report (establishment, merger, acquisitions de-

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<sup>2</sup> Directive 2014/56/EU of the European Parliament and of the council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, para 30b.

<sup>3</sup> Directive 2014/56/EU of the European Parliament and of the council of 16 April 2014 amending Directive 2006/43/EC on statutory audits of annual accounts and consolidated accounts, Para. 30c.

merger as well as special audits – increase and decrease of share capital), shall be punished by a fine or by imprisonment not exceeding two years.”<sup>4</sup> “Whoever commits such action to obtain unlawful material gain for himself or to others or to harm others shall be punished by a fine or imprisonment up to five years.”<sup>5</sup>

The auditor’s liability is also determined by the Article 300c of the Companies Act where the auditor’s liability is present if he/she did not attend the Supervisory Board’s meeting on which the financial statements were adopted, as this may be the reason for voidance of decision of the financial statements approval, which may cause somebody to charge compensation from the auditor. “The Supervisory Board or Board of Directors must examine the annual financial statements, statement on financial position, if the company is obliged to do so and the proposal for the use of the profit. In a Group, the Supervisory Board or Management Board of the mother company is also required to examine the financial statements at the consolidated level and the report about the condition of the Group. If the annual financial statements are audited by the auditors, he/she must take part in the meetings of the Supervisory Board or Board of Directors and its committees, to report on their audit and to provide the explanations required from he/she”<sup>6</sup>.

### *3.2. CREDIT INSTITUTION ACT<sup>7</sup>*

The Credit Institution Act contains provisions relating to the audit firm appointment, the limitation when performing audit engagement, independence rules, the audit firm obligations, the rejection of the audit report, as well as the provisions relating to the audit performance for the needs of the Croatian National Bank.

Infringement fines related to the financial statements audit are prescribed in the Article 33 of the Credit Institution Act. For an infringement, the audit firm can be imposed a fine from 75,000 to 500,000 HRK if the company does not

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<sup>4</sup> Zakon o trgovačkim društvima [Companies Act], Narodne novine [Official Gazette] 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 152/11, 111/12, 144/12, 68/13), Art. 628.

<sup>5</sup> Zakon o trgovačkim društvima [Companies Act], Narodne novine [Official Gazette] 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 152/11, 111/12, 144/12, 68/13), Art. 628.

<sup>6</sup> Zakon o trgovačkim društvima [Companies Act], Narodne novine [Official Gazette] 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 152/11, 111/12, 144/12, 68/13), Art. 300 c.

<sup>7</sup> Zakon o kreditnim institucijama [Credit Institution Act ], Narodne novine[Official Gazette] 159/2013, 19/2015.

compile the audit report in accordance with this Law stating that “the audit is carried out in accordance with the laws which regulate accounting and auditing unless otherwise provided by this Act and by the regulations adopted pursuant to this Act”<sup>8</sup>. According to the Credit Institution Act “annual financial statements of the credit institution, consolidated annual financial statements of a group of credit institutions in the Republic of Croatia and consolidated annual financial statements of the whole group if group members and non-financial institutions are required to be audited for each business year”<sup>9</sup>.

For an infringement, the audit firm shall be imposed a pecuniary penalty ranging from 75,000 to HRK 500,000 HRK if it does not submit to the Croatian National Bank an audit plan within the time lited and in the manner prescribed by this Law. Namely, “the audit firm is obliged to submit to the Croatian national bank an audit plan for that business year for each credit institution which has entrusted it with the audit by 31 October of the current year, from which it will be seen the areas of business to be audited, a description of the planned audit by individual areas and the estimated duration of the audit”<sup>10</sup>.

The same pecuniary penalty is provided in the case of non-compliance with the following provisions: “in the case of audit contract termination, the credit institution and the audit firm should in written explain to the Croatian National Bank termination reasons.”<sup>11</sup> In the Article 172 of the Credit Institution Act, there are prescribed the following audit firm obligations: “1) after the audit has been carried out the audit firm shall prepare a letter of recommendation to the management and submit it to the credit institution’s management and to the Croatian National Bank; 2) the audit firm is obliged to notify the Croatian National bank in writing and without any delay of: 1) established irregularities or facts and circumstances that may in any way jeopardize the continued operation of the credit institution, 2) circumstances that are the reasons for license withdrawal; 3) material difference in risk assessments present in the credit institution’s business and valuation of balance sheet and off-balance sheet items and items of income statement; 4) more severe violations of internal rules; 5) significant weaknesses in the organization of internal control systems or omissions in the internal control implementation and 6) facts that could lead to the

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<sup>8</sup> Zakon o kreditnim institucijama [Credit Institution Act ], Narodne novine [Official Gazette] 159/2013, 19/2015, Art. 168.

<sup>9</sup> Zakon o kreditnim institucijama [Credit Institution Act ], Narodne novine [Official Gazette] 159/2013, 19/2015, Art. 168.

<sup>10</sup> Zakon o kreditnim institucijama [Credit Institution Act], Narodne novine [Official Gazette] 159/2013, 19/2015, Art. 169, Para 4.

<sup>11</sup> Zakon o kreditnim institucijama [Credit Institution Act], Narodne novine [Official Gazette] 159/2013, 19/2015, Art. 171, Para 1.

qualified opinion, adverse opinion or disclaimer of opinion about the financial statements. The audit firm shall inform the Croatian National Bank in writing of any fact referred to the Para. 2 of this article obtained during the financial statements audit of a company controlled by a credit institution”<sup>12</sup>.

For a misdemeanor, the audit firm shall be imposed a pecuniary penalty ranging from 75,000 to 500,000 HRK if it does not perform the audit in accordance with the provisions of this Act for the purposes of the Croatian National Bank. Penalties are not foreseen for audit firms, but also for responsible person and statutory auditors. A person in charge of a legal person shall be imposed a pecuniary penalty ranging from 37,500 to HRK 100,000 HRK<sup>13</sup>. The fines for statutory auditors are from 7,500 to 50,000 HRK<sup>14</sup>.

### *3.3. ANTI-MONEY LAUNDERING AND TERRORIST FINANCING LAW*

“At establishing a business relationship with a customer subject to the mandatory audit of annual accounting statements as prescribed by a law providing for the customer’s business activity, an auditing firm and an statutory auditor may conduct a simplified customer due diligence, save for instances where reasons for suspicion of money laundering or terrorist financing shall exist associated with a customer or circumstances of an audit.”<sup>15</sup> A pecuniary penalty ranging from 60,000 to 400,000 HRK shall be imposed on an audit firm and an statutory auditor, should they conduct a simplified customer due diligence in spite of the fact that there shall exist reasons for suspicion of money laundering or terrorist financing in relation to a customer or circumstances of an audit (Art. 53, Para. 8)<sup>16</sup>. A pecuniary penalty ranging from 6,000 to 30,000 HRK shall be imposed on members of management board of or other responsible person in the auditing firm or a firm rendering accounting services or tax advisory services for the infringements referred to in paragraph 1 of this Article (previous paragraph)<sup>17</sup>.

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<sup>12</sup> Zakon o kreditnim institucijama [Credit Institution Act], Narodne novine [Official Gazette] 159/2013, 19/2015, Art. 172, Para 2.

<sup>13</sup> Zakon o kreditnim institucijama [Credit Institution Act], Narodne novine [Official Gazette] 159/2013, 19/2015, Art. 366, Para. 2.

<sup>14</sup> Zakon o kreditnim institucijama [Credit Institution Act], Narodne novine [Official Gazette] 159/2013, 19/2015, Art. 366. Para. 3.

<sup>15</sup> Zakon o suzbijanju pranja novca i financiranja terorizma [Anty-money laundering and terrorist financing Law], Narodne novine [Official Gazette] 87/08, 25/12, Art. 53, Para. 8.

<sup>16</sup> Zakon o suzbijanju pranja novca i financiranja terorizma [Anty-money laundering and terrorist financing Law], Narodne novine [Official Gazette] 87/08, 25/12, Art. 96.

<sup>17</sup> Zakon o suzbijanju pranja novca i financiranja terorizma [Anty-money laundering and terrorist financing Law], Narodne novine [Official Gazette] 87/08, 25/12, Art. 53, Para. 8.

### *3.4. INSURANCE ACT<sup>18</sup>*

The audit firm is obliged to provide to the Agency<sup>19</sup> an auditing plan for that business year for each insurance company entrusted with the audit by October 31 of the current year, from which it can be seen the audited areas of business, a description of the content of the planned audit by individual areas and the estimated duration of the audit<sup>20</sup>. The same auditing firm may not audit financial statements if, in the year for which the financial statements are prepared, provided to the insurance companies services in the area of finance, accounting, internal auditing, the valuation of the insurance company, its assets and liabilities, tax and other consulting or carried out the court expert jobs<sup>21</sup>.

Article 198 prescribes the obligations of the audit firm. After the audit has been carried out, the audit firm must prepare a letter of recommendation to the management and submit it to the insurance company's management and to the Agency. The audit firm shall be obliged to notify the Agency of all the facts and/or decisions without delay, which may result in: 1) a severe violation of the laws, regulations, provisions on the basis of which the license has been issued for operating in insurance business; 2) jeopardizing further operating of the insurance company 3) issuance of qualified opinion, adverse opinion or disclaimer of opinion about the financial statements, 4) non-compliance with the required equity, 5) non-compliance with the minimum required equity.<sup>22</sup> The audit firm is obliged to inform the agency in writing of any facts referred to the preceding paragraph for which it is aware of the conduct of auditing controlled by the insurance company. Article 450 of the Insurance Act lists offenses of the auditing company. The fines are from 30,000 to 100,000 EUR for audit firms and fines of 15,000 to 50,000 EUR for authorized persons of the auditing company.

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<sup>18</sup> Zakon o osiguranju [Insurance Act], Narodne novine [Official Gazette] 30/15.

<sup>19</sup> Croatian Financial Services Supervisory Agency.

<sup>20</sup> Zakon o osiguranju [Insurance Act], Narodne novine [Official Gazette] 30/15, Art. 195, Para. 3.

<sup>21</sup> Zakon o osiguranju [Insurance Act], Narodne novine [Official Gazette] 30/15, Art. 197, Para 2.

<sup>22</sup> Zakon o osiguranju [Insurance Act], Narodne novine [Official Gazette] 30/15, Art. 198. Para 2.



#### **4. PENALTIES AGAINST AUDITORS ACCORDING TO THE AUDIT ACT**

The most important regulation governing the scope of financial statements audit is Audit Act where Article 2 states that „audit shall mean a procedure of examination and assessment of financial statements and consolidated financial statements of the entities subject to audit and of data and methods applied in preparing financial statements (hereinafter: financial statements), on the basis of which an expert and independent opinion on accuracy and objectivity of the financial position, business performance and cash flows is given. Audit shall also encompass other activities, as provided for by the Companies Act and other special regulation.<sup>23</sup> Audit shall be carried out in an autonomous, independent and objective manner, in accordance with this Act, International Accounting Standards, translated and published by the Chamber, rules of the auditing profession and other rules and regulations (hereinafter: audit rules), observing the Code of Professional Ethics for auditing profession.<sup>24</sup>

Accordingly, the auditor's responsibility may be professional, meaning that the auditor is required to apply the International Auditing Standards, the Code of Professional Ethics and other rules, or the auditor's liability may be legal, meaning that the auditor is required to apply the laws passed by the legislative bodies. In this regard, the auditor's obligation is not only to comply with the Audit Act than a whole range of other regulation that directly or indirectly affect and determine the professional performance of statutory auditors and audit firms. Infringements of the Audit Act provisions impose administrative pecuniary sanction on audit firm, statutory auditor, audited entity and Croatian Chamber of Auditors.

The Ministry of Finance has prepared the Proposal of the Audit Act and sent it in the Croatian Parliament for its adoption in September 2017. It is expected that the Croatian Parliament will adopt the new Audit Act by the end of 2017. The Proposal on Audit was on public hearing and one of the criticisms is linked to the appropriateness of set fines and sanctions for auditors. Namely, the pecuniary penalties are up to ten times higher than the existing Audit Act and higher than the other laws (table 1).

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<sup>23</sup> Zakon o reviziji [Audit Act], Narodne novine [Official Gazette] 146/05, 139/08, 144/12, Art. 2

<sup>24</sup> Zakon o reviziji [Audit Act], Narodne novine [Official Gazette] 146/05, 139/08, 144/12 Art. 5

**Table 1** Comparative view of pecuniary penalties according to the Proposal on Audit Act and the existing Auditing Law

	<b>Proposal on Audit Act<sup>25</sup></b>	<b>Audit Act (NN 146/05, 139/08, 144/12)<sup>26</sup></b>
<b>Audit Firm</b>	<ul style="list-style-type: none"> <li>• a pecuniary penalty ranging from 200,000 to 1,000,000 HRK</li> </ul>	<ul style="list-style-type: none"> <li>• a pecuniary penalty ranging from 20,000 to 100,000 HRK</li> <li>• a pecuniary penalty ranging from 5,000 to 50,000 HRK</li> </ul>
<b>Statutory Auditor</b>	<ul style="list-style-type: none"> <li>• a pecuniary penalty ranging from 10,000 to 100,000 HRK</li> </ul>	<ul style="list-style-type: none"> <li>• a pecuniary penalty ranging from 2,000 to 10,000 HRK for responsible person in audit firms</li> <li>• a pecuniary penalty ranging from 5,000 to 10,000 HRK for statutory auditor</li> </ul>
<b>Subject of Statutory Audit</b>	/	<ul style="list-style-type: none"> <li>• a pecuniary penalty ranging from 20,000 to 100,000 HRK</li> <li>• responsible person - a pecuniary penalty not exceeding 10,000 HRK</li> </ul>
<b>Audited Entity</b>	<ul style="list-style-type: none"> <li>• a pecuniary penalty ranging from 200,000 to 1,000,000 HRK</li> </ul>	/
<b>Croatian Chamber of Auditors</b>	<ul style="list-style-type: none"> <li>• a pecuniary penalty ranging from 200,000 to 1,000,000 HRK</li> </ul>	<ul style="list-style-type: none"> <li>• a pecuniary penalty ranging from 20,000 to 100,000 HRK</li> </ul>

**Table 2** Comparative overview of pecuniary penalties against auditors in the Republic of Croatia

<b>Companies Act (NN. 68/13)</b>	<b>Credit Institution Act (NN 159/2013, 19/2015)</b>	<b>Insurance Act (NN 30/15)</b>	<b>Anti-money Laundering and terrorist financing Law (NN 87/08, 25/12)</b>
<ul style="list-style-type: none"> <li>• pecuniary penalty or imprisonment not exceeding two years</li> <li>• pecuniary penalty or imprisonment not exceeding five years</li> </ul>	<ul style="list-style-type: none"> <li>• pecuniary penalty ranging from 75,000 to 500,000 HRK for audit firm</li> <li>• pecuniary penalty ranging from 7,500 to 50,000 HRK for statutory auditor</li> </ul>	<ul style="list-style-type: none"> <li>• pecuniary penalty ranging from 30,000 to 100,000 HRK</li> <li>• pecuniary penalty ranging from 15,000 to 50,000 HRK for responsible person in the audit firm</li> </ul>	<ul style="list-style-type: none"> <li>• pecuniary penalty ranging from 60,000 to 400,000 HRK shall be imposed on an auditing firm and an statutory auditor</li> </ul>

<sup>25</sup> Nacrt prijedloga zakona o reviziji s konačnim prijedlogom zakona [Proposal on the Audit Act], available at: <https://esavjetovanja.gov.hr/ECon/MainScreen?entityId=3913>.

<sup>26</sup> Zakon o reviziji [Audit Act], Narodne novine [Official Gazette] 146/05, 139/08, 144/12.

A comparative analysis of the auditor' responsibility in analysed laws shows that Companies Act introduces a pecuniary penalty and the possibility of imprisonment for the most severe offense related to issuance of an incorrect audit report. Higher pecuniary penalties compared to the existing Audit Act are foreseen in the legal provisions relating to the auditor performance in the area of credit institutions which is normally expected due to the fact that they are public interest entities (table 2).

## **5. SANCTIONS ADOPTED BY THE MEMBER STATES<sup>27</sup>**

As noted in the introductory section, although the deadline for the transposition of the audit legislation was on 17 June 2016, not all Member States have yet transposed the new audit Directive and Regulation. One of the reasons why the process of transposing is so slow is the fact that it really is a thorough reform of the audit market in the European Union. Moreover, it should be emphasized that this is only the phase of transposition of certain legal solutions, while the implementation of these solutions will help achieve the effects that have been set by the legislators. In order for the implementation of legal solutions to be effective, it is necessary to provide a well-regulated system, where the violation of certain provisions of the law results in appropriate sanctions. The following are the legal solutions that were adopted by Slovakia, Slovenia, Czech Republic, Ireland and Spain (table 3), regarding the sanctions that supervisory bodies are able to impose in case of violation of audit legislation. The aim is to show the level of harmonization related to the criteria that are to be met by the competent public oversight authorities when applying the sanctions, as well as to present the sanctions that are available in case the law is violated.

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<sup>27</sup> Available at: <http://eur-lex.europa.eu/legalcontent/EN/NIM/?uri=CELEX:32014L0056&qid=1467878874988>

**Table 3** Possible sanctions for violating legislation in selected EU countries

Slovakia <sup>28</sup>	
Sanctions for statutory auditors and audit firms	Criteria for determining sanctions
<ul style="list-style-type: none"> <li>• a written warning for the failure to meet the obligations</li> <li>• a written warning to be published on the website of the Authority, stating the natural person responsible for the breach and the nature of the breach</li> <li>• a penalty of up to EUR 30,000 in the case of a statutory auditor, and of up to EUR 1,000,000 in the case of an audit firm for the failure to meet the obligations</li> <li>• a penalty of up to EUR 10,000 in the case of a natural person for the failure to meet the obligations</li> <li>• a temporary prohibition of up to three years' duration banning               <ol style="list-style-type: none"> <li>1. a member of an audit firm or a member of an administrative or management body of a public-interest entity from exercising administrative and management functions in the audit firm or public-interest entity which shall be given to a natural person who was provably intervening in the carry-out of the statutory audit or influencing the outcome of the statutory audit;</li> <li>2. a statutory auditor, an audit firm or a key audit partner from carrying out statutory audits or signing audit reports if he, she or it repeatedly breached Article 27 and a special regulation;</li> </ol> </li> <li>• a suspension of license of a statutory auditor and an audit firm</li> <li>• deletion of a statutory auditor and an audit firm from the relevant list for the failure to meet the obligations if the imposition of sanctions according to Article 64(1)(f) does not lead to remedy and the irregular situation continues.</li> </ul>	<p>When imposing a sanction, the Committee for Investigation and Sanctions shall take into account the gravity, the duration of the unlawful actions, the extent of consequences of the unlawful actions, the degree of responsibility of the person responsible for the breach, the financial strength of the responsible person, and the amounts of the profits gained or losses avoided by the responsible person, the level of cooperation of the responsible person with the Authority, and the potential repeated breach of obligations or the breach of several obligations.</p>

<sup>28</sup> National Council of the Slovak Republic, 423 Act of 11 November 2015 on Statutory Audit and on Amendments and Supplements to Act No. 431/2002 Coll. on Accounting. Available at: [http://www.finance.gov.sk/en/Components/CategoryDocuments/s\\_LoadDocument.aspx?categoryId=438&documentId=721](http://www.finance.gov.sk/en/Components/CategoryDocuments/s_LoadDocument.aspx?categoryId=438&documentId=721) (10 June.2016), Art. 64.

<b>Slovenia<sup>29</sup></b>	
<b>Sanctions for statutory auditors and audit firms</b>	
<b><i>Violations and especially severe violations</i></b>	<b><i>Less severe violations</i></b>
<ul style="list-style-type: none"> <li>• a penalty of 4,500 to 250,000 EUR for the audit firm</li> <li>• a penalty of 5,000 to 10,000 EUR for the responsible person in the audit firm</li> <li>• penalties of 30,000 to 750,000 EUR in case of a particular serious violation that relates to the amount of damage or the amount of illegally acquired assets, committed with purpose and greed</li> <li>• in case of “big” audit firms – a fine of 30,000 to 1,500,000 EUR for the audit firm, and 5,000 to 30,000 EUR for the responsible person in the audit firm</li> </ul>	<ul style="list-style-type: none"> <li>• a penalty of 5,000 to 25,000 EUR for the audit firm</li> <li>• a penalty of 2,500 to 10,000 EUR for the responsible person in the audit firm</li> <li>• a penalty of 2,500 to 10,000 EUR for the certified auditor</li> </ul>
<b>Sanctions for legal entities and entities under statutory audit according to the Audit Act</b>	
<ul style="list-style-type: none"> <li>• a penalty of 4,200 to 21,000 EUR for the legal entity</li> <li>• a penalty of 2,100 to 6,300 EUR for the responsible person in the legal entity</li> <li>• a penalty of 2,100 to 6,300 EUR for the physical person</li> </ul> <p><b>EXAMPLES OF VIOLATIONS:</b></p> <ul style="list-style-type: none"> <li>• if the audited entity does not give the audit firm an overview of all relevant data and access to the documentation as agreed in accordance with the terms of the audit engagement</li> <li>• making false claims about the recording of all transactions disclosed in the financial statements</li> <li>• cancellation of the contract with the audit firm or failure to notify the supervisory authority (agency) of the dismissal</li> </ul>	

<sup>29</sup> Predlog zakona o revidiranju in cenjivanju vrednosti [Proposal on the Act on auditing and valuation of value](EVA: 2016-1611-0002). Available at: [http://www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Finan%C4%8Dni\\_sistem/2016-04-26\\_predlog\\_javna\\_obravnavna.pdf](http://www.mf.gov.si/fileadmin/mf.gov.si/pageuploads/Finan%C4%8Dni_sistem/2016-04-26_predlog_javna_obravnavna.pdf) (01 July 2016).

<b>Czech Republic<sup>30</sup></b>	
Administrative violations for the Chamber	Violations for the public interest entities
<p><b>EXAMPLES:</b></p> <ul style="list-style-type: none"> <li>• keeping the register</li> <li>• organization and quality control management</li> <li>• not submitting a quality control plan proposal</li> <li>• non-compliance with internal regulations, ethical codes and audit standards</li> <li>• not informing the competent body and providing information</li> <li>• preventing the work of competent body</li> </ul> <p>A penalty for the administrative violation is up to 300,000 CZK (cca 11,000 EUR).</p>	<p><b>EXAMPLES:</b></p> <ul style="list-style-type: none"> <li>• appointment of auditors</li> <li>• not reporting about the auditor's appointment</li> <li>• failure to establish the audit committee within the set deadline</li> <li>• not publishing a list of audit committee members on its web page</li> <li>• the audit committee does not perform its tasks</li> </ul> <p>A penalty for the violation is up to:</p> <ul style="list-style-type: none"> <li>• 1 million CZK (approx. 37,000 EUR)</li> <li>• 10 million CZK (approx. 370,000 EUR)</li> </ul>
<b>Administrative violations – violations of legal entities and individuals – foreseen penalties</b>	
<ul style="list-style-type: none"> <li>• 1 million CZK, (less severe violations) (approx. 37,000 EUR)</li> <li>• 5 million CZK (severe violations) (approx. 185,000 EUR)</li> <li>• 10 million CZK (especially severe violations) ( approx. 370,000 EUR)</li> </ul>	
<b>Ireland<sup>31</sup></b>	
<b>Sanctions that a supervisory body can impose</b>	
<ul style="list-style-type: none"> <li>• refraining from repeating such violation</li> <li>• prohibition of carrying out audit activity or signing auditor's report or both for a period of up to three years</li> <li>• prohibition of carrying out audit activity or signing auditor's report or both for a period of up to three years for auditing a public interest entity</li> <li>• a penalty up to 100,000 EUR for a certified or independent auditor</li> <li>• a penalty up to 500,000 EUR for audit firms</li> </ul>	

<sup>30</sup> ZÁKON ze dne 24. srpna 2016, kterým se mění zákon č. 93/2009 Sb., o auditorech a o změně některých zákonů (zákon o auditorech), ve znění pozdějších předpisů, a další související zákony [Act of 24 August 2016 amending Act No. 93/2009 Coll., On Auditors and Amendments to Certain Laws (Act on Auditors), as amended, and other related acts]. Available at: <http://www.sbirka.cz/POSLATYD/NOVE/16-299.htm> (30 October 2016).

<sup>31</sup> S.I. No. 312/2016 - European Union (Statutory Audits) (Directive 2006/43/EC, as amended by Directive 2014/56/EU, and Regulation (EU) No 537/2014) Regulations 2016. Available at: <http://www.irishstatutebook.ie/eli/2016/si/312/made/en/print> (30. October 2016).

<b>Spain<sup>32</sup></b>	
<b>Sanctions for the statutory auditors</b>	<b>Sanctions for responsible persons and audit firms</b>
<p><b>Especially severe violations:</b></p> <ul style="list-style-type: none"> <li>• revocation of license for two to five years</li> <li>• a penalty that is six to nine times higher than the charged audit fine, but not less than 18,000 EUR and not higher than 36,000 EUR</li> </ul> <p><b>Severe violations:</b></p> <ul style="list-style-type: none"> <li>• revocation of the authorization and temporary prohibition of carrying out audit activities up to two years</li> <li>• a penalty that is two to five times higher than the charged audit fine, but not less than 6,000 EUR and not higher than 18,000 EUR (except in the case of auditing public interest entities)</li> </ul> <p><b>Violations:</b></p> <ul style="list-style-type: none"> <li>• a penalty of 6,000 EUR</li> <li>• warning</li> </ul>	<p><b>Especially severe violations:</b></p> <ul style="list-style-type: none"> <li>• revocation of the authorization and removal from the registry</li> <li>• a penalty of between 3% and 6% of the charged audit fee (not less than 24,000 EUR)</li> <li>• for the responsible person in the audit firm – a fine of 12,000 to 24,000 EUR, revocation of the license</li> </ul> <p><b>Severe violations:</b></p> <ul style="list-style-type: none"> <li>• a penalty of up to 3% of the audit fine (not less than 12,000 EUR)</li> <li>• revocation of the authorization</li> </ul> <p><b>Violations:</b></p> <ul style="list-style-type: none"> <li>• a penalty of 3,000 to 12,000 EUR</li> <li>• a penalty up to 6,000 EUR</li> <li>• warning</li> </ul>
<b>Sanctions in case of public interest entities' audit</b>	
<ul style="list-style-type: none"> <li>• penalties that are up to 20% higher than fines for auditors who do not perform audits of public interest entities</li> <li>• revocation of license to responsible persons for a period of two to five years</li> </ul>	

Examples of presented countries lead to the conclusion that the violations generally have gradation and that they can be divided into less severe, severe (serious) and especially severe (very serious) violations. Especially severe violations usually relate to issuing an incorrect auditor's opinion that is not based on appropriate audit evidence, disrespect of the independence provisions, lack of co-operation with supervisory bodies, etc. In this regard, it should be pointed

<sup>32</sup> Ley 22/2015, de 20 de julio, de Auditoría de Cuentas [Law 22/2015, of July 20, Audit of Accounts], Official publication: Boletín Oficial del Estado ( B.O.E ); Number: 173/2015; Publication date: 2015-07-21; Page: 60273-60366. Available at: [https://www.boe.es/diario\\_boe/txt.php?id=BOE-A-2015-8147](https://www.boe.es/diario_boe/txt.php?id=BOE-A-2015-8147) (06 October 2016).

out that, according to the Companies Act in the Republic of Croatia, issuing an inaccurate auditor's report results in a criminal liability of the auditor, which includes a two year imprisonment. When the issuance of the inaccurate auditor's report is deliberate with the purpose of obtaining economic benefits or damages to the others, the prison sentence is up to five years.<sup>33</sup>

It should also be noted that the fines are generally expressed in absolute and not relative amounts (with the exception of Spain, where the fines are provided in relative amounts, but with the limits set out in the absolute amounts). In Germany, sanctions include fines up to 500,000 EUR, exclusion from performing certain activities, as well as exclusion from the audit profession in the period of one to five years. However, the exclusion from the audit profession is extremely rare and can be applied in the case of serious violations such as fraud, embezzlement, forgery of documents, arrest warrants, etc. (68 and 84 WPO)<sup>34</sup>. In Italy, the supervisory body may also impose sanctions ranging from 10,000 to 500,000 EUR.<sup>35</sup>

It is important to stress out that, in addition to transposing the Directive into national legislation, did not generally change the amount of fines, or violation gradation. However, new violation provisions related to the audits of public interest entities have been added, which is also logical with respect to a whole range of Regulation's requests that are placed under the public interest entities and their auditors.

## **6. CONCLUSION**

Legally enforced provisions will not experience their application if there are no sanctions in the case of non-compliance with the provisions of the Act. In addition, in order to establish an effective law enforcement system, it is necessary to harmonize the relevant provisions of the law and sanction resulting from non-compliance. In other words, when determining sanctions, it is necessary to take into the account the appropriateness of these sanctions in relation to the offense committed. Given that the new audit regulative largely changes

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<sup>33</sup> Zakon o trgovačkim društvima, Narodne novine [Official Gazette] 111/93, 34/99, 121/99, 52/00, 118/03, 107/07, 146/08, 137/09, 152/11, 111/12, 144/12, 68/13), Art. 628.

<sup>34</sup> Quick, R., Turley, S. and Willekens, M. (2008). Auditing, Trust and Governance- Developing regulation in Europe; Kohler, A. G., Marten, K-U. and Quick, R. (2008). Audit regulation in Germany: Improvements driven by interantionalization.

<sup>35</sup> Quick, R., Turley, S. and Willekens, M. (2008). Auditing, Trust and Governance- Developing regulation in Europe; Kohler, A. G., Marten, K-U. and Quick, R. (2008). Auditking in Italy, p. 163.



the way in which the organizations and performance of the audit profession so far, it was a necessity to harmonize the established sanctions with the provisions of the law. The EU auditing Directive sets the minimum criteria to be taken into the account when determining sanctions. However, member States are still able to tailor these provisions in the best possible way to meet the needs and specific aspects of the national audit market.

Comparative view of the solution among the selected EU countries has shown that these countries have implemented the provisions of the audit Directive into national legislative. It can be concluded that the imposed sanctions are connected with the gravity of the breaches. The competent authority has the possibility to withdraw the approval of the statutory auditor or audit firm in the case of several identified infringements. When it comes to the amount of fines that the competent authorities may impose on statutory auditors and audit firms, they are usually adjusted to the size of the audit market. It should be emphasized that it is not an accent on imposing penalties and sanction. The goal is to ensure the application of the provision of the Acts.

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