Reports of Cases

OPINION OF ADVOCATE GENERAL
CAMPOS SÁNCHEZ-BORDONA
delivered on 10 December 2020[1]

Case C-950/19

A
intervener:
Patentti- ja rekisterihallituksen tilintarkastuslautakunta

(Request for a preliminary ruling
from the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland))

(Reference for a preliminary ruling – Auditors – Directive 2006/43/EC – Article 22a – Cooling-off period for the engagement of former auditors by the audited company – Infringement of the prohibition on taking up a key management position in the audited entity – Independence of auditors)

1. Directive 2006/43/EC[2] provides that auditors must be independent of the audited entity and must not be involved in the decision-taking of that entity.

2. One of the statutory requirements laid down in order to ensure such independence was adopted in 2014, in Directive 2014/56/EU,[3] which incorporated into Directive 2006/43 a new provision, Article 22a, under which persons having the status of 'key audit partner'[4] are not allowed to take up a key management position in the audited entity for a given period.[5]

3. Since 2014, that prohibition, which had previously applied, as one would expect, to the period of the key audit partner's role as the person primarily responsible for the statutory audit of the audited undertaking's accounts, has also applied to the period (of one or two years, depending on whether or not the undertaking in question is a public-interest entity)[6] subsequent to that person's departure from the role of key audit partner.

4. In this case, a 'key audit partner' in an audit firm was recruited, prior to leaving his role as such, to a senior management position in the audited company.

1 Original language: Spanish.

2 Directive 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 (OJ 2006 L 157, p. 87).

3 Directive 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 (OJ 2014 L 158, p. 196).

4 Article 22a provides for two categories of person: (a) auditors and key audit partners of an audit firm; and (b) other partners and employees of audit firms. The person penalised here fell into the first of those categories.

5 A provision to that effect had already been included in the initial wording of Directive 2006/43 (Article 42(3)), but applied only to public-interest entities. It became applicable to other entities whose accounts are audited from 2014.

6 According to the order for reference, the prohibition applied for two years in this case, indicating that the audited undertaking was a public-interest entity.

5. That conduct having been penalised by the competent body (the Audit Committee),[7] the auditor challenged the fine which had been imposed on him before the referring court. That court has made a reference to the Court of Justice for a preliminary ruling on the interpretation of Article 22a(1)(a) of Directive 2006/43.

6. The Court's answer will determine whether the position in the audited undertaking is taken up when the key audit partner signs an employment contract with that undertaking or not until that person actually starts to perform his managerial duties.

I. Legal framework

A. EU law. Directive 2006/43

7. Article 2 ('Definitions') provides:

'For the purposes of this Directive, the following definitions shall apply:

…

(2) "statutory auditor" means a natural person who is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits;

(3) "audit firm" means a legal person or any other entity, regardless of its legal form, that is approved in accordance with this Directive by the competent authorities of a Member State to carry out statutory audits

…

(16) "key audit partner":

(a) the statutory auditor(s) designated by an audit firm for a particular audit engagement as being primarily responsible for carrying out the statutory audit on behalf of the audit firm; or

(b) in the case of a group audit, at least the statutory auditor(s) designated by an audit firm as being primarily responsible for carrying out the statutory audit at the level of the group and the statutory auditor(s) designated as being primarily responsible at the level of material subsidiaries; or

(c) the statutory auditor(s) who sign(s) the audit report.'

8. Article 22 ('Independence and objectivity') provides:

'1. Member States shall ensure that, when carrying out a statutory audit, a statutory auditor or an audit firm, and any legal person in a position to directly or indirectly influence the outcome of the statutory audit, is independent of the audited entity and is not involved in the decision-taking of the audited entity.

Independence shall be required at least during both the period covered by the financial statements to be audited and the period during which the statutory audit is carried out.

7 The Audit Committee is an official body of the Patentti- ja rekisterihallituksen tilintarkastuslautakunta (Intellectual Property Office, Finland).

Member States shall ensure that a statutory auditor or an audit firm takes all reasonable steps to ensure that, when carrying out a statutory audit, his, her or its independence is not affected by any existing or potential conflict of interest or business or other direct or indirect relationship involving the statutory auditor or the audit firm carrying out the statutory audit and, where appropriate, its network managers, auditors, employees, any other natural persons whose services are placed at the disposal or under the control of the statutory auditor or the audit firm, or any person directly or indirectly linked to the statutory auditor or the audit firm by control.

The statutory auditor or the audit firm shall not carry out a statutory audit if there is any threat of self-review, self-interest, advocacy, familiarity or intimidation created by financial, personal, business, employment or other relationships between:

– the statutory auditor, the audit firm, its network, and any natural person in a position to influence the outcome of the statutory audit, and

– the audited entity,

as a result of which an objective, reasonable and informed third party, taking into account the safeguards applied, would conclude that the statutory auditor's or the audit firm's independence is compromised.

2. Member States shall ensure that a statutory auditor, an audit firm, their key audit partners, their employees, and any other natural person whose services are placed at the disposal or under the control of such statutory auditor or audit firm and who is directly involved in statutory audit activities, and persons closely associated with them within the meaning of Article 1(2) of Commission Directive 2004/72/EC […], do not hold or have a material and direct beneficial interest in, or engage in any transaction in any financial instrument issued, guaranteed, or otherwise supported by, any audited entity within their area of statutory audit activities, other than interests owned indirectly through diversified collective investment schemes, including managed funds such as pension funds or life insurance.

3. Member States shall ensure that a statutory auditor or audit firm documents in the audit working papers all significant threats to his, her or its independence as well as the safeguards applied to mitigate those threats.

4. Member States shall ensure that persons or firms referred to in paragraph 2 do not participate in or otherwise influence the outcome of a statutory audit of any particular audited entity if they:

(a) own financial instruments of the audited entity, other than interests owned indirectly through diversified collective investment schemes;

(b) own financial instruments of any entity related to an audited entity, the ownership of which may cause, or be generally perceived as causing, a conflict of interest, other than interests owned indirectly through diversified collective investment schemes;

(c) have had an employment, or a business or other relationship with that audited entity within the period referred [to] in paragraph 1 that may cause, or may be generally perceived as causing, a conflict of interest.

5. Persons or firms referred to in paragraph 2 shall not solicit or accept pecuniary or non-pecuniary gifts or favours from the audited entity or any entity related to an audited entity unless an objective, reasonable and informed third party would consider the value thereof as trivial or inconsequential.

6. If, during the period covered by the financial statements, an audited entity is acquired by, merges with, or acquires another entity, the statutory auditor or the audit firm shall identify and evaluate any current or recent interests or relationships, including any non-audit services provided to that entity, which, taking into account available safeguards, could compromise the auditor's independence and ability to continue with the statutory audit after the effective date of the merger or acquisition.

As soon as possible, and in any event within three months, the statutory auditor or the audit firm shall take all such steps as may be necessary to terminate any current interests or relationships that would compromise its independence and shall, where possible, adopt safeguards to minimise any threat to its independence arising from prior and current interests and relationships.'

9. Article 22a ('Employment by audited entities of former statutory auditors or of employees of statutory auditors or audit firms) reads:

'1. Member States shall ensure that a statutory auditor or a key audit partner who carries out a statutory audit on behalf of an audit firm does not, before a period of at least one year, or in the case of statutory audit of public-interest entities a period of at least two years, has elapsed since he or she ceased to act as a statutory auditor or key audit partner in connection with the audit engagement:

(a) take up a key management position in the audited entity;

(b) where applicable, become a member of the audit committee of the audited entity or, where such committee does not exist, of the body performing equivalent functions to an audit committee;

(c) become a non-executive member of the administrative body or a member of the supervisory body of the audited entity.

2. Member States shall ensure that employees and partners other than key audit partners of a statutory auditor or of an audit firm carrying out a statutory audit, as well as any other natural person whose services are placed at the disposal or under the control of such statutory auditor or audit firm, do not, when such employees, partners or other natural persons are personally approved as statutory auditors, take up any of the duties referred to in points (a), (b) and (c) of paragraph 1 before a period of at least one year has elapsed since he or she was directly involved in the statutory audit.'

10. Article 22b ('Preparation for the statutory audit and assessment of threats to independence') provides:

'Member States shall ensure that, before accepting or continuing an engagement for a statutory audit, a statutory auditor or an audit firm assesses and documents the following:

– whether he, she or it complies with the requirements of Article 22 of this Directive;

…'

B. Finnish law. Tilintarkastuslaki 1141/2015, of 18 September 2015[8]

11. In accordance with Paragraph 11(1) of Chapter 4, a statutory auditor or a key audit partner who carries out an audit on behalf of an audit firm may not take up the positions listed below before at least one year has elapsed since the aforementioned audit:

(1) a key management position in the audited entity;

8 Law on Auditing 1141/2015 of 18 September 2015; 'the Law on Auditing'.

(2) membership of the audit committee of the audited entity or of the body performing the functions of an audit committee;

(3) non-executive membership of the administrative or supervisory body of the audited entity.

12. Paragraph 11(2) of Chapter 4 extends that period to two years where the audited entity is a public-interest undertaking.

13. In accordance with Paragraph 5(1) of Chapter 10, the Audit Committee may impose a fine if an auditor fails to comply with the period referred to in Article 11 in connection with his engagement by an audited undertaking. Pursuant to Article 5(2), the amount of the fine may be up to EUR 50 000.

14. Paragraph 7(1) of Chapter 10 provides that, when it comes to adopting a decision imposing a penalty, account is to be taken of all relevant circumstances, such as:

(1) the gravity and the duration of the infringement;

(2) the auditor's level of responsibility;

(3) the auditor's willingness to cooperate with the competent authorities;

(4) previous fines imposed on the auditor;

(5) the extent of the damage or effects caused by the conduct or the negligence observed.

15. Paragraph 7(2) of Chapter 10 provides that, when it comes to adopting a decision imposing a penalty, account must be taken not only of the circumstances provided for in paragraph 1, but also of the following:

(1) the auditor's financial circumstances;

(2) the advantages obtained by the auditor.

II. Facts and reference for a preliminary ruling

16. KHT A ('the key audit partner') had been working as a key audit partner for the audit firm Y Oy ('the audit firm') since 2014.

17. On 5 February 2018, the key audit partner, in the course of services provided by the audit firm to the company X Oyj ('the audited firm') in connection with the 2017 financial year (FY), signed the audit report on the latter company's annual accounts for that year.

18. On 12 July 2018, the key audit partner signed with the audited company a contract of employment as finance manager and a member of the management team.

19. One of the clauses of that contract provided that the key audit partner would not actually start working in those management positions until February 2019. Signature of the contract was published via an announcement on the stock exchange.

20. On 31 August 2018, the key audit partner terminated his employment at the audit firm, that termination having been communicated in a note sent to the Audit Committee on the same date.

21. The audited company confirmed in writing that the key audit partner would not be working for it in any key management role or any position of financial or accounting responsibility prior to the publication of the audit report for FY 2018.

22. By decision of 13 November 2018, the Audit Committee imposed on the key audit partner a fine of EUR 50 000 for failure to observe the prohibition period laid down in Paragraph 11, Chapter 4, of the Law on Auditing.

23. In February 2019, once the audited company's annual accounts for FY 2018 had been signed, the key audit partner commenced his employment as a manager in that company, as agreed in the contract.

24. The key audit partner challenged the decision imposing the penalty before the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland).

25. It is clear from the order for reference that the action is concerned not with the failure to observe the prohibition but with the gravity of the infringement and the amount of the penalty imposed. In the view of the key audit partner, that penalty should be reduced by at least half.

26. The arguments put forward by the applicant in support of his claim were as follows: [9]

– He cooperated with the administrative authorities and was transparent about the circumstances in which the penalty was imposed.

– He took up the position when he started working for the audited company (in February 2019), not when he signed the contract. Consequently, it was only from February 2019 that he failed to observe the prohibition period.

– He lost his ability to influence the audit of the audited company's annual accounts when the audit report for FY 2017 was signed (in February 2018). That is the point, therefore, at which the prohibition period must be regarded as having started.

– The fact not only that there was a change of auditor for FY 2019, as the entry in the Commercial Register shows, but also that the key audit partner did not perform the role of head of the finance department in the audited company until the latter's annual accounts for 2018 were signed, shows that his appointment as head of the finance department in that company did not pose any threat to the independence of the audit.

27. The Audit Committee opposed the action, on the grounds that: [10]

– The prohibition period started not when the annual accounts for 2017 were signed but on 12 July 2018, when the contract was signed.

– The key audit partner took up his position when he signed the contract with the audited undertaking. The prohibition in question is intended, in particular, to ensure the auditor's independence, which must also be assessed from an external point of view.

– The signature of the contract is a visible factor which has a direct bearing on the conduct and outlook of the person signing it, his employer and shareholders.

9 Paragraphs 4, 5 and 6 of the order for reference.

10 Paragraphs 7, 8 and 9 of the order for reference.

– In imposing the penalty, the Audit Committee took into account all of the circumstances provided for in the Law on Auditing.

28. It was on this basis that the Helsingin hallinto-oikeus (Administrative Court, Helsinki) referred the following questions to the Court for a preliminary ruling:

‘(1) Is Article 22a(1) (inserted by Directive 2014/56/EU) of Directive 2006/43/EC to be interpreted as meaning that a key audit partner takes up a position of the kind referred to in this provision upon conclusion of the employment contract?

(2) If the answer to the first question is in the negative: Is Article 22a(1) to be interpreted as meaning that a key audit partner takes up a position of the kind referred to in this provision upon commencing employment in the position concerned?’

III. Procedure before the Court

29. The request for a preliminary ruling was received at the Court on 17 December 2019.

30. Written observations have been lodged only by the Commission. It was not considered necessary to hold a hearing.

IV. Assessment

A. Preliminary clarification

31. The referring court is uncertain how to interpret the expression used in Article 22a(1)(a) of Directive 2006/43 to define one of the prohibitions imposed on auditors.

32. As has already been made clear, that provision prohibits a key audit partner, after having left his role as such, from ‘tak[ing] up a key management position’ in the audited undertaking for a given period. [11]

33. The question referred (which, although split into two, actually expresses just one point of uncertainty) is very precise and seeks only to determine which date is relevant for the purposes of regarding a position as having been *taken up*: the date on which the key audit partner’s contract with the audited company was signed (July 2018) or the date on which the key audit partner commenced his employment in that company (February 2019).

34. According to the account given in the order for reference, the choice of one or other of those dates has no bearing on the recognition of the fact that there has been a punishable infringement. The key audit partner is asking for the fine imposed to be reduced, not cancelled, and thus implicitly accepts that the infringement would have occurred in any event.

35. It seems, therefore, that the assessment of the relevant date matters only as a factor in calibrating the amount of the fine in accordance with Paragraph 7(1), Chapter 10, of the Law on Auditing.

11 The parties to the dispute debated whether the point at which the person concerned ‘ceased to act as statutory auditor or key audit partner’ should be regarded as the *dies a quo* for the purposes of calculating the prohibition period, but the referring court does not appear to be concerned about this issue, to which it does not refer in the request for a preliminary ruling.

B. General context of Directive 2006/43

36. The harmonised rules on auditing trace their origin back to the Treaty of the European Economic Community, in which it was established that the Council and the Commission would perform their functions in such a way as to coordinate to the necessary extent the safeguards which, for the protection of the interests of members and others, are required by Member States of companies or firms. [12]

37. This formed the legal basis for the enactment of the Fourth, [13] Seventh [14] and Eighth [15] Council Directives, which respectively establish the harmonised minimum content that must be present in annual accounts and consolidated accounts and the conditions governing the authorisation within the internal market of persons professionally engaged in the auditing of accounts.

38. The Eighth Directive introduced the first rules on the independence of auditors: persons authorised to carry out the statutory auditing of accounting documents were to be 'independent and of good repute'. [16]

39. In the years that followed, the Commission used a number of communications, initiatives and non-binding instruments [17] to promote the independence of auditors, thus creating an environment conducive to the enactment of Directive 2006/43. [18]

40. Even in its initial version, Directive 2006/43 offered detailed rules on the independence of auditors, to which some of Chapter IV of that directive ('Professional ethics, independence, confidentiality and professional secrecy') was devoted. [19]

41. In that same initial version, Directive 2006/43 provided for the prohibition period that forms the subject of this dispute, although in Chapter X ('Special provisions for the statutory audits of public-interest entities'). [20]

12 Article 54(3)(g).

13 Fourth Council Directive 78/660/EEC of 25 July 1978 based on Article 54(3)(g) of the Treaty on the annual accounts of certain types of companies (OJ 1978 L 222, p. 11).

14 Seventh Council Directive 83/349/EEC of 13 June 1983 based on Article 54(3)(g) of the Treaty on consolidated accounts (OJ 1983 L 193, p. 1).

15 Eighth Council Directive 84/253/EEC of 10 April 1984 based on Article 54(3)(g) of the Treaty on the approval of persons responsible for carrying out the statutory audits of accounting documents (OJ 1984 L 126, p. 20).

16 This phrase from the third recital is reflected in Article 3 (in relation to good repute) and Articles 24 and 27 (in relation to independence) of the Eighth Directive.

17 See, for example, the Commission Green Paper of 24 July 1996 on the role, position and the liability of the statutory auditor within the European Union (OJ 1996 C 321, p. 1); Communication from the Commission on the statutory audit in the European Union: the way forward (OJ 1998 C 143, p. 12); Commission Recommendation of 16 May 2002 – Statutory Auditors' Independence in the EU: A Set of Fundamental Principles (OJ 2002 L 191, p. 22; 'the Commission Recommendation'); or Communication of 21 May 2003 on reinforcing the statutory audit in the EU (OJ 2003 C 236, p. 2).

18 This was the justification provided by the Commission in the proposal for Directive 2006/43 [Proposal for a Directive of the European Parliament and of the Council on statutory audit of annual accounts and consolidated accounts and amending Council Directives 78/660/EEC and 83/349/EEC (COM/2004/0177)].

19 The new legislation refocused auditing policy in response to 'the recent spate of scandals in the US and the EU [which] have emphasised that statutory audit is an important element in ensuring the credibility and reliability of companies' financial statements'. These scandals had led, in the United States of America, to the adoption of the Sarbanes-Oxley Act of 2002, which brings greater regulatory and supervisory content to the provision of auditing services. Its measures include the introduction of a cooling-off period similar to the one at issue here.

20 According to Article 42(3), 'the statutory auditor or the key audit partner who carries out a statutory audit on behalf of an audit firm shall not be allowed to take up a key management position in the audited entity before a period of at least two years has elapsed since he or she resigned as a statutory auditor or key audit partner from the audit engagement'.

42. The current version of Directive 2006/43 is the product of the reform carried out by Directive 2014/56, which amends Article 22 and adds a new Article 22a, the interpretation of which has been requested by the referring court.[21] What is more, it contains not only provisions that endeavour to ensure the good repute of auditors but also ones specifically aimed at safeguarding their independence.

C. Article 22a of Directive 2006/43

43. Article 22a gives effect to the provision contained in recital 8 of Directive 2014/56 to the effect that 'the statutory auditor […] should be prevented from taking up duties in the audited entity at managerial or board level until an appropriate period has elapsed since the end of the audit engagement'.

44. The list of prohibitions contained in Article 22a(1) includes that barring the auditor from 'tak[ing] up a key management position in the audited entity' [(a)]. The question referred for a preliminary ruling seeks to dispel the uncertainty as to the point at which the management position is *taken up*.

1. Literal interpretation

45. A literal interpretation of the provision in question, the various linguistic versions of which differ quite significantly in the terminology they use, does not yield any conclusive results.

46. The language used in some of those versions would support an interpretation which lays emphasis on the *actual performance* of duties in the management position rather than on the point at which the auditor agrees to work for the audited company by signing a contract with it.[22]

47. Other versions, on the other hand, militate in favour of the opposite proposition, inasmuch as they do not appear to call for the actual performance of duties in the management position, mere acceptance of that position by contract being sufficient.[23]

48. The disparity between the language versions thus makes it impossible to use the literal wording of any single one of them in order to determine the true meaning of the provision.[24]

49. Recourse must therefore be had to the other interpretative criteria usually employed by the Court,[25] that is to say, the purpose of the provision and the context in which it is located.

21 The reformed version of Article 22 requires the auditor to be independent 'during both the period covered by the financial statements to be audited and the period during which the statutory audit is carried out' and provides a greater level of detail on the duties of auditors in the event of possible threats to their independence.

22 Thus, for example, the French version ('occuper un poste').

23 In particular, the Italian version ('accettare una funzione dirigenziale di rilievo nell'ente sottoposto a revisione') emphasises that *acceptance* of the position would be sufficient, the actual performance of duties in that position not necessarily being required. The term 'asuma' in the Spanish version and the equivalent in the Portuguese version ('assume posições de gestão fundamentais na entidade auditada') might also be interpreted as mere acceptance of the position. The verb used in the Finnish version 'vastaanottaa' would also be open to being interpreted as meaning accept in a sense closer to the German ('übernehmen') and English ('take up a key management position') versions.

24 It is the Court's settled case-law that a purely literal interpretation of one or more language versions of a plurilingual text of EU law cannot simply prevail, without further consideration, over the others, since the uniform application of provisions of EU law requires that they be interpreted in the light of all the language versions. See to that effect, inter alia, the judgment of 26 September 2013, *Commission* v *Spain* (C-189/11, EU:C:2013:587, paragraph 56).

25 'In accordance with settled case-law, for the purpose of interpreting a provision of EU law, it is necessary to consider not only its wording but also the context in which it occurs and the objectives pursued by the rules of which it is part' [judgment of 3 September 2020, *Niki Luftfahrt* (C-530/19, EU:C:2020:635, paragraph 23)].

2. Teleological interpretation

50. Both the Commission [26] and the Audit Committee [27] agree on the importance of the external perspective of the independence of auditors and propose a – fundamentally – teleological interpretation of Article 22a of Directive 2006/43.

51. They emphasise that the prohibition period is aimed at ensuring such independence, which is relevant both internally (in the relationship between the auditor and the audited company) and externally, inasmuch as the public has confidence in the auditor's independence, which it wouldn't if the latter, during the auditing engagement or after leaving his role as key audit partner, could immediately (or in the near future) take up a management position in the audited undertaking.

52. In my view, the prohibition in question is intended to ensure that the auditor (or the audit firm at which he is a key partner) does not give in to the temptation of issuing a report favourable to the audited company which the latter will in the near future *reward* by recruiting him to a management position.

53. Understood in this way, the rule at issue pre-empts the risk that the auditor may, either now or in the near future, have self-interests in the companies subject to his accounting scrutiny which might influence his professional work.

54. The conflict of interest between the auditor's obligations and his (future) prospects of working for the audited undertaking may arise where the contractual relationship between the two is managed or prepared during the performance of the auditing engagement. In that event, the work of the key audit partner is likely to be dictated by his duties of loyalty to his future employer.

55. The aforementioned rule therefore seeks to remove, in so far as is possible, any incentive there may be for the auditor to plan or conclude a contractual relationship with the audited entity while still having the status of key audit partner. [28]

56. What is more, as the Commission and the Audit Committee state, the prohibition preventing a key audit partner, while still acting as such and for a certain period thereafter, from taking up a management position in the audited company protects the confidence of third parties that the audit function will be discharged in a reliable manner. By the same token, that prohibition contributes to the orderly functioning of markets, as is noted in recital 9 of Directive 2006/43. [29]

57. Public confidence that annual accounts paint a true picture of a company is a key factor for any persons that may have dealings with that company, be they investors, creditors, employees or third parties.

58. From another point of view, confidence in the reliability of audits of financial statements is a mechanism for protecting the value of the participation of partners or shareholders and an effective instrument in ensuring appropriate corporate management. A lack of such confidence is instrumental in causing the value of that participation to be lost, as a result of both the market's mistrust of the company's position and the inability of directors to manage the company without reliable information.

26 Paragraph 13 of the Commission's written observations.

27 Paragraph 9 of the order for reference.

28 As regards the other auditors involved, the rule refers to the point at which they intervene directly in the drafting of the audit report.

29 'The public-interest function of statutory auditors means that a broader community of people and institutions rely on the quality of a statutory auditor's work. Good audit contributes to the orderly functioning of markets by enhancing the integrity and efficiency of financial statements'.

59. Paragraph 1(1) of the Commission Recommendation emphasises that 'the main way in which the Statutory Auditor can demonstrate to the public that a Statutory Audit is performed in accordance with these principles is by acting, and being seen to act, independently'. [30]

60. Those considerations still hold good even if it is accepted that the key audit partner at the audit firm may, in particular cases, not have any *actual* power to influence the outcome of the analysis of the audited company's financial statements.

61. The reason for this is that the need to safeguard the independence and impartiality of his professional work requires, in any circumstances, that the key audit partner should not be able to take up a management position in the audited company before or during the prohibition period.

3. Schematic interpretation

62. The good repute of auditors [31] and the public's confidence in the integrity (and quality) of their work [32] are elements which the successive provisions of EU law in this field have endeavoured to protect.

63. Article 22(2) of Directive 2006/43 averts the risk of conflicts of interest between the auditor (or the audit firm) and the audited company. Such risks may be created by '… financial, personal, business, employment or other relationships' between the two as a result of which 'an objective, reasonable and informed third party, taking into account the safeguards applied, would conclude that the statutory auditor's or the audit firm's independence is compromised'.

64. Paragraph 4 of the same article precludes an auditor or an audit firm from performing his or its professional duties for an audited company with which it has 'had an employment, or a business or other relationship […] within the period referred to in paragraph 1 that may cause, or may be generally perceived as causing, a conflict of interest'.

65. Those precautions highlight the fact that, from a schematic point of view, the interpretation of Directive 2006/43 must preserve one of the essential components of the good repute or reputation of auditors without which the public's confidence would disappear: the absence of any actual or reasonably foreseeable conflicts of interest that affect or are capable of affecting their professional work.

66. For the EU legislature, the auditor's independence at an external level is as important as it is at an internal level and any suspicion that there is too much proximity between the auditor and the audited must be removed from public perception. [33]

30 Recitals 1 and 2 of that recommendation read: 'the independence of statutory auditors is fundamental to the public confidence in the reliability of statutory auditors' reports. It adds credibility to published financial information and value to investors, creditors, employees and other stakeholders in EU companies. This is particularly the case in companies which are public interest entities (e.g., listed companies, credit institutions, insurance companies, UCITS and investment firms). […] Independence is also the profession's main means of demonstrating to the public and regulators that statutory auditors and audit firms are performing their task at a level that meets established ethical principles, in particular those of integrity and objectivity'.

31 According to Article 4 of Directive 2006/43, 'the competent authorities of a Member State may grant approval only to natural persons or firms of good repute'. Similar language, in the form of the reference to 'persons of good repute', is used in Article 3 of the Eighth Directive.

32 Recital 9 of Directive 2006/43: 'the public-interest function of statutory auditors means that a broader community of people and institutions rely on the quality of a statutory auditor's work. Good audit contributes to the orderly functioning of markets by enhancing the integrity and efficiency of financial statements'.

33 The North American approximation is similar. According to the United States Supreme Court, 'the SEC requires the filing of audited financial statements to obviate the fear of loss from reliance on inaccurate information, thereby encouraging public investment in the Nation's industries. It is therefore not enough that financial statements *be* accurate; the public must also *perceive* them as being accurate. Public faith in the reliability of a corporation's financial statements depends on the public perception of the outside auditor as an independent professional …. If investors were to view the auditor as an advocate for the corporate client, the value of the audit function itself might well be lost' (emphasis in the original). United States v. Arthur Young and Co., 465 US 805, 819 n. 15 (1984).

67. Those precautions are logical in the light of the purpose of, and justification for, audits, and in the light of the very function which the disclosure of companies' financial statements perform in a market economy.

68. Third-party perception in this context is also referred to in Article 22(1), *in fine*, of Directive 2006/43: the relationship between the auditor (or the audit firm) and the audited undertaking must not have as its result that 'an objective, reasonable and informed third party, taking into account the safeguards applied, would conclude that the statutory auditor's or the audit firm's independence is compromised'.

69. In short, a relationship which may give rise to a conflict of interests is as undesirable as one which is reasonably perceived as being a potential cause of a conflict of interests.

4. Application of those criteria to the case at issue

70. The premiss from which we must start in this case is that the key audit partner could not take up a key management position in the audited undertaking either while still in his role as auditor or for a subsequent period of two years following his departure from that role.

71. As has already been explained, that prohibition was infringed, a fact acknowledged, at least implicitly, by the person concerned himself, who is seeking only to have the fine imposed on him reduced (not cancelled).

72. The fact that a key audit partner in an audit firm signs a contract of employment (in a key management position) with an audited company while still in his role at the audit firm is evidence of a potential conflict of interests sufficient to affect his independence.

73. That assessment is not precluded by the fact that the entry into force of that contractual relationship, which was agreed upon at a point in time when the person concerned had not yet left his role as key audit partner (from which he resigned on 31 August 2018), was postponed by several months until the publication of the audit report for FY 2018.

74. What matters (and what an 'objective, reasonable and informed' third party would be able to infer) is that, even at the point when the contract was signed on 12 July 2018, after the audit report had been signed, the professional relationship between the key audit partner (or the audit firm) responsible for the engagement and the audited company remained in being.

75. It is also logical to infer from the foregoing that the process of negotiating the terms of employment with the audited undertaking was conducted not only by someone who was a key audit partner at the audit firm but also at a time when that person was responsible for the audit work being undertaken for the company subject to his scrutiny. An 'objective, reasonable and informed' third party would be able to draw this inference too.

76. The decisive factor in this assessment, therefore, is not when the key audit partner *actually* commences employment in his management position in the audited company, but the date on which he agrees to take on that role.

77. That contract itself creates a number of reciprocal obligations which are incompatible with the key audit partner's ongoing role as responsible auditor at the firm commissioned to audit the accounts of the audited company.

78. That agreement, moreover, casts its shadow backwards, inasmuch as it will logically be perceived, externally, as expressing a real or potential conflict, at odds with the independence and impartiality of the key audit partner himself and the audit firm, which might have impacted on the reliability of the audit of the audited firm's accounts.

V. Conclusion

79. In the light of the foregoing, I suggest that the Court's answer to the Helsingin hallinto-oikeus (Administrative Court, Helsinki, Finland) should be as follows:

Article 22a(1)(a) of Directive 2006/43/EC of the European Parliament and of the Council of 17 May 2006 on the statutory audits of annual accounts and consolidated accounts, amending Council Directives 78/660/EEC and 83/349/EEC and repealing Council Directive 84/253/CEE, as amended by Directive 2014/56/EU, must be interpreted as meaning that the key audit partner in an audit firm takes up a key management position in the audited company when he signs the contract of employment in that position, even if he does not actually join the audited company until a number of months after that contract has been signed.