

ECG paper on potential impact of EC investigations on DSA audits

What are the potential implications to a DSA audit if, after the commencement of the audit, the European Commission opens formal proceedings to assess whether the audited provider has breached certain DSA obligations?

The existence of an active European Commission (EC) investigation into alleged noncompliance is potentially significant contrary evidence that the audited provider is in compliance with the obligations being investigated. Regardless of what stage of the audit process the auditing organization may be in, when the investigation is announced, the introduction / existence of an active EC investigation will cause the auditing organization to re-assess whether it has sufficient and appropriate understanding to both design and execute appropriate procedures over the individual obligation being investigated.

The announcement of an investigation may indicate, among other matters, that: 1) the regulator is in receipt of allegations or information that could indicate non-compliance that adversely impacts the practitioner's ability to assess risks of material misstatement on the engagement, and 2) there may be a lack of consistent understanding that limits the practitioner's ability to adequately assess whether it has designed/obtained sufficient procedures/evidence. In these circumstances, the practitioner needs to determine whether, without further information (potentially from both the audited provider and the EC), they would be able to assess risk, accurately interpret the Specified Requirements and obtain the evidence needed to support their conclusion. If not, the practitioner would have a situation in which they may not have material information pertinent to its audit at the level of individual obligation(s) and/or in the aggregate for all applicable obligations. This is known as a "scope limitation".

What are the consequences of a scope limitation in this situation?

The answer may depend on the standards which the practitioner is using. The auditing organization should follow the requirements of the DSA Delegated Act and applicable professional standards for the engagement in making their conclusions at both the individual obligation(s) level, and in the aggregate, for all applicable obligations. Where reports are issued by US accounting firms they also are required to follow the AICPA attestation standards, which closely correlate with ISAE 3000 (Revised) but they have more guidance related to scope limitations.

ISAE 3000 (Revised) states that a scope limitation exists if the practitioner is unable to obtain sufficient appropriate evidence¹, including when the circumstances are beyond the control of the responsible party, the measurer or evaluator, or the engaging Party² (e.g., understanding all pertinent matters which gave rise to a regulatory investigation). In such instances, the practitioner is required to express a qualified conclusion, disclaim a conclusion, or withdraw from the engagement³. In the AICPA standards, determining which of these three options to choose is affected by the nature and magnitude of the potential effects of the matters in question and by their significance to the subject matter⁴.

The practitioner expresses a qualified conclusion when a scope limitation exists, and the effect of the matter could be material, but not pervasive. The practitioner disclaims a conclusion when there is a material and pervasive limitation of scope. Pervasive effects on the subject matter information are those that, in the practitioner's professional judgment:

- (a) Are not confined to specific aspects of the subject matter information;
- (b) If so confined, represent or could represent a substantial proportion of the subject matter information; or

¹ ISAE 3000.66

² ISAE 3000.A155

³ ISAE 3000.66.

⁴ AT-C 205.A119

(c) In relation to disclosures, are fundamental to the intended users' understanding of the subject matter information⁵.

For a qualified reasonable assurance conclusion, the practitioner states that, in the practitioner's opinion, except for the possible effects of the matter or matters giving rise to the modification (discussed in a separate paragraph of the practitioner's report), the subject matter is in compliance with the Specified Requirements⁶. If the practitioner expresses a modified conclusion because of a scope limitation but is also aware of a matter(s) that causes the subject matter information to be materially misstated, the practitioner includes in the assurance report a clear description of both the scope limitation and the matter(s) that causes that the subject matter information to be materially misstated⁷ (this represents a "negative" conclusion). The practitioner does not need to make other modifications to its opinion and should include the detailed results of its procedures, and other required reporting elements, in accordance with Annex I of the Delegated Regulation.

In a disclaimer situation, the AICPA attestation standards require the practitioner to amend the practitioner's report to state that the practitioner was engaged to examine the subject matter or assertion. The practitioner also amends the description of the practitioner's responsibility and the description of an assertion-based examination to state **only** the practitioner's responsibility is to express an opinion based on conducting the examination and that because of the limitation on the scope of its examination (discussed in a separate paragraph), the scope of its work was not sufficient to enable the practitioner to express, and the practitioner did not express, an opinion.⁸ Such approach is consistent with the DSA auditor's obligation to include the circumstances and the reasons why an opinion could not be expressed⁹. Including detailed results of procedures goes beyond the limited information the professional standards state to be included in the report and could be misleading, as it may imply some level of assurance when the practitioner is explicitly stating they cannot provide an opinion. For example, the AICPA attestation Standards prohibit the inclusion of procedures and findings when the service auditor of a SOC report disclaims an opinion.¹⁰ Therefore the presumption is that detailed procedures and findings would not be included for the specific obligations for which an opinion is disclaimed.

⁵ ISAE 3000.A188

⁶ AT-C 205.73

⁷ ISAE 3000.76

⁸ AT-C 205.80

⁹ Article 8(8) of the DSA delegated regulation

¹⁰ AT-C 320.44