Algemene Rekenkamer

Report of the Working Group on Public Audit Deficits

Access of Supreme Audit Institutions to the main financial supervisors in EU Member States

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Executive summary

The Working Group on Public Audit Deficits was established by Contact Committee resolution CC-R-2011-05. The Working Group carried out in a pilot project a parallel assessment of prudential supervision on banks in the EU Member States. The assessment mainly concerned the scope of the mandate of Supreme Audit Institutions (SAIs) and its proper functioning with respect to the main financial supervisor (FSA) for prudential oversight on banks. This report provides results from thirteen SAIs from EU Member States and the European Court of Auditors.

The results show that of these fourteen SAIs, seven lack the mandate to conduct an audit on the performance of the FSA in their country. Of the other seven SAIs that do have the mandate to audit the FSA in their country, five have full access to the requested documents. In their reporting confidential information such as trade secrets and names of financial institutions have to be excluded. The remaining two SAIs that do have the mandate in practice only either get partial access or no access to the requested documents.

The Working Group proposes to the EU Contact Committee to publish the results of this pilot project on its website, on the websites of national SAIs, and to bring the results to the attention of national stakeholders with regard to financial supervision, i.e. the national parliament, the ministry of Finance and the main financial supervisor for prudential oversight. Furthermore it is proposed to bring the results to the attention of European stakeholders, i.e. the European Parliament, the Council and the European Commission.
Finally, it is proposed that SAIs closely monitor the developments regarding the new Capital Requirements Directive IV and the possible establishment of a Banking Union, and examine the implications – including new opportunities – for SAIs regarding their mandate to audit the functioning of the supervisory activities of the FSA, the access to all information of FSAs and for reporting possibilities of SAIs.

1 Introduction

1.1 Mandate

The Supreme Audit Institutions (SAIs) of the EU decided in their annual meeting on 14 October 2011 (Resolution CC-R-2011-05) to undertake a limited parallel assessment of prudential supervision on banks in the EU Member States.[1] To this end, the working group on public audit deficits was founded.

1.2 Goals

The working group met in The Hague on 18 January 2012. The participants in the working group agreed to perform a pilot study, for which the Contact Committee gave the mandate. The Working Group also agreed on the goals of the project.

The internal goal for the participating SAIs of the pilot study was threefold:

- Testing scope of mandate of SAIs and its proper functioning with respect to the main financial supervisor for prudential oversight on banks
- Identifying possible complications regarding access rights of SAIs that are the result of national regulations or interpretations of EU- or Euro-specific legislation.
- Drafting a country comparative report to the Contact Committee in 2012 in which the results of the pilot study are presented.

The external goal of the pilot study was twofold:

- Assessing completeness of files kept by supervisor for purpose of prudential oversight by means of a sample check on the index of the files.
- Using results to increase potential for parliamentary scrutiny of financial supervisors for prudential oversight on banks.

[1] The Contact Committee resolution is included in this report in Appendix 1.

1.3 Participating SAIs

Twelve SAIs participated actively in the Working Group. These are the SAIs of Denmark, Estonia, Finland, France, Germany, Italy, Latvia, Lithuania, Netherlands (Chair), Poland, Portugal and the European Court of Auditors.
The Swedish SAI did not participate in the pilot study. However, based on a presentation about the Swedish experiences with auditing their financial supervisor during the first meeting of the Working Group, and after approval of the Swedish SAI, the results for Sweden have been retrieved from their presentation. The SAI of Slovakia sent the results for Slovakia in reaction to our draft report. These results have also been included in the final report. Hence, this report contains the results from thirteen EU Members States as reported by their national SAIs and of the European Court of Auditors.

1.4 Activities of the Working Group and this report

The Working Group on Public Audit Deficits met on 18 January 2012 in The Hague. On proposal of the Chair, a simple and efficient approach to carry out the pilot study was agreed upon by the members of the Working Group.
Between March and June 2012 each member of the Working Group carried out the pilot study in its own country. In June and July 2012 each participating SAI sent a country report to the Chair, based on a reporting format developed by the Chair. The Chair compiled a draft report for the Working Group as a whole. The draft report was sent to all participating SAIs, whose comments and remarks are incorporated in the final report.

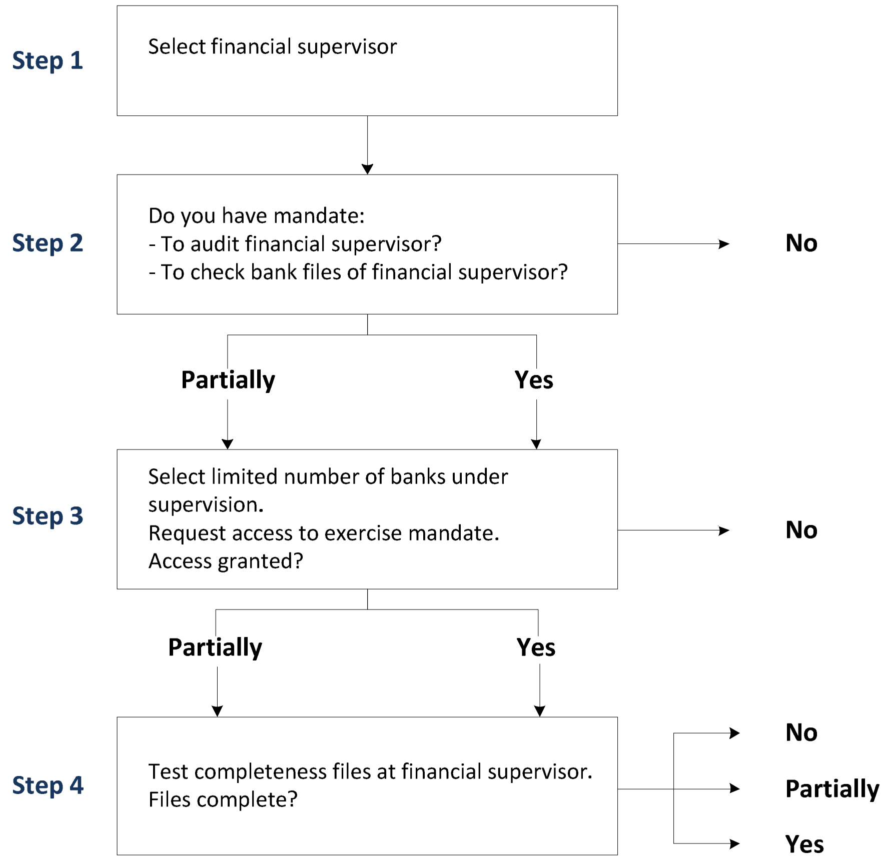
Paragraph 2 of this report gives an overview of the pilot project as carried out by the members of the Working Group on Public Audit Deficits. Paragraph 3 describes the main results: first for all countries combined, and secondly – briefly – for each country separately. Paragraph 4 discusses the results in a broader context, and Paragraph 5 concludes this report with a proposal to the Contact Committee.

2 Overview pilot project

The pilot study was conducted in four steps. Each participating SAI started with the selection of the main financial supervisor for prudential oversight in their own country. ECA selected the European Banking Authority (EBA).[2] After the selection, each SAI checked whether they have a mandate to audit the main financial supervisor in their country, including the bank files they keep. In case the SAI has a (partial) mandate, a limited number of banks was selected to test the mandate by auditing the completeness of the supervisory files on these banks. The graph below gives a global outline of the four steps of the pilot study.

[2] EBA does not conduct direct supervision of banks but participates in supervisory colleges of the largest cross border banks in the EU.

Four steps in pilot study WG PAD



3 Main results of the pilot study

3.1 Country comparative overview

The diversity of mandates within the Supreme Audit Institutions of the working group is large. Table 1 below illustrates this and what this means for the possibility of SAIs to audit the main financial supervisor of their country.

Table 1 – Main results pilot study

SAI	**Main financial supervisor (Step 1)**	**Mandate SAI to audit supervisory role of main financial supervisor (Step 2)**	**Actual access SAI to audit bank files of supervisor (Step 3)**	**Test SAI on completeness of files (Step 4)**
Denmark	Danish Financial Supervisory Authority	Yes.	Yes, with condition of confidentiality.	Full access based on previous audits.
Estonia	Financial Supervision Authority	No.	No.	-
Finland	Financial Supervisory Authority	No.	No.	-
France	Financial Markets Authority & Prudential control Authority	Yes.	Yes, with condition of confidentiality.	All files had an index and were complete.
Germany	Federal Financial Supervisory Authority	Yes.	Yes, with condition of confidentiality.	Index equals actual number of documents in files.
Italy	Bank of Italy	No.	No.	-
Latvia	Financial and Capital Market Commission	No.	No answer, so no request at banks.	-
Lithuania	Bank of Lithuania	No.	No.	-
Netherlands	Bank of the Netherlands	Yes.	No.	-
Poland	Polish Financial Supervision Authority	Yes.	Partially. No data concerning bank secrecy.	Question not applicable according to Polish SAI.
Portugal	Bank of Portugal	No.	No.	-
Slovakia	National Bank of Slovakia	No	No	-
Sweden	Financial Supervisory Authority	Yes	Yes, with condition of confidentiality	Full access based on previous audits
ECA	European Banking Authority	Yes	Yes, agreed to confidentiality	No index. Only digital files.

The results show that seven SAIs have the mandate to audit the main financial supervisor in their country. Of the 14 SAIs, seven do not have the mandate to conduct audits at the main financial supervisor.

Of the seven SAIs that have a mandate, the Polish SAI has only partial access to documents because it does not get access to data concerning the bank secrecy. The Netherlands SAI does not get actual access to audit bank files, despite of its mandate. The other five SAIs do get actual access to the requested documents. However, all of these five SAIs are bound by some level of confidentiality. The Danish, French and Swedish SAI can publish their results without confidential information such as trade secrets and names of financial institutions. The European Court of Auditors can publish all results under certain conditions. The German SAI does not publish, but reports to the auditee, the Ministry of Finance and in some cases to the Budget Committee of their parliament.
Two of the SAIs with the mandate to audit the main financial supervisor were able to successfully test the completeness of the bank files that are kept by the supervisor.

In four countries where the SAI has no mandate to audit the main financial supervisor, the national central bank is this supervisor. In two other countries (Estonia and Finland), the financial supervisor is operationally or administratively connected to the central bank. Only in Latvia, the seventh country where the SAI has no mandate, the main financial supervisor is a separate institution. Also in The Netherlands, where the SAI has the mandate but no actual access, the central bank operates as the main financial supervisor.
In comparison, of the countries where the SAI gets access to audit the main financial supervisor, the financial supervisor is always a separate institution unrelated to the national central bank.

3.2 Main result by country

The results of the pilot study differ per country and are briefly summarized below.

 *Denmark (Rigsrevisionen)*
The Danish Financial Supervisory Authority (FSA) performs supervision of financial institutions and the securities market. In addition, they contribute to the preparation of financial legislation and the collection and dissemination of statistics about the financial market. The Danish SAI has

the mandate to audit the FSA, including the bank files kept by the FSA. In previous audits on specific banks, the Danish SAI had full access to the files containing information about the supervision of the FSA before the bankruptcy of both banks. However, confidential files must remain confidential.

Estonia (Riigikontroll)

The Estonian Financial Supervisory Authority (FSA) is independent in its supervision activities, which includes banks, insurance companies, pension funds as well as other financial institutions. It operates at the Bank of Estonia. The Estonian National Audit Office analysed the National Audit Office Act and discussed this with the FSA. The FSA is not in the list of entities the National Audit Office can audit. However, the Bank of Estonia is in the list. In the Financial Supervision Authority Act, the National Audit Office is not in the list of entities to whom the FSA has to disclose information. Based on this, the National Audit Office concluded they have an insufficient mandate and hence, they have no access to the information required.

Finland (Valtiontalouden tarkastusvirasto)

In Finland the Financial Supervisory Authority is administratively connected to the Bank of Finland. The Finnish National Audit Office has no mandate to audit the Bank of Finland. Hence, the Audit Office also lacks the mandate to audit the Financial Supervisory Authority.

France (Cour des Comptes)

The Financial Markets Authority (FMA) controls information given on securities, regulates market infrastructures and ensures that no undisclosed information is used on the market. In addition, the Prudential Control Authority (PCA) controls the capital requirements of French banks and insurance companies and determines the solvency and liquidity ratios for the financial institutions. The Cour des Comptes indicates that they have the mandate to audit the main financial supervisor. In a previous audit, they got access to every required document, including minutes from meetings of the Board of Directors in the period 2009-2010. The Cour des Comptes has to comply with terms of confidentiality, which means that they do not report confidential data in their report. These subjects were reported to the auditee and the Ministry of Finance. There was also a hearing by the French parliament, so parliamentarians could ask complementary questions. All audited banks received public money and the audited files had an index and were complete.

Germany (Bundesrechnungshof)

The Federal Financial Supervisory Authority (FSA) is the main financial supervisor in Germany. Its primary objective is to ensure the proper functioning, stability and integrity of the German financial system including banking, insurance and securities supervision. The German National Audit Office has the mandate to audit the Federal FSA. This includes the mandate to audit bank files kept by the Federal FSA. The German Audit Office has actual access to the files requested, but they have to be kept confidential in accordance with German law. Therefore, the German National Audit Office reports only to the auditee and in some cases the Budget Committee of the German Parliament. The result of the test on the completeness of files showed a clear index with complete files.

Italy (Corte dei Conti)

In Italy the Financial Supervisory Authority is the Bank of Italy, the Italian Central Bank. The Corte dei Conti has no mandate to audit the Bank of Italy. Hence, the Corte also lacks the mandate to audit the Financial Supervisory Authority.

Latvia (Valsts kontrole)

The main financial supervisor in Latvia, the Financial and Capital Market Commission (FCMC), is responsible for the supervision of Latvian banks, insurance companies, private pension funds, etc. The FCMC ensures stability, competitiveness and the development of the financial and capital market, including the protection of interests of investors, depositors and insured persons. According to the Latvian National Audit Office, they cannot audit the FCMC, because the FCMC is not financed by the state budget or local government budget resources. The FCMC is financed by payments from participants of the financial and capital market. However, the Audit Office has the mandate to directly request bank files at banks.

Lithuania (Valstybės kontrole)

The main financial supervisor in Lithuania is the Bank of Lithuania. Price stability is its main objective. According to the law on the Bank of Lithuania, the National Audit Office of Lithuania may perform an audit of the activities carried out by the Bank of Lithuania including activities related to financial market supervision, as long as this is not in contradiction with European law and the objectives and tasks of the European System of Central Banks. In 2009 the European Central Bank gave the opinion that "the audit of the National Audit Office of Lithuania shall be limited to the management, usage and disposal of real estate, equipment and capital of the Bank of Lithuania". As such, the Law on the

Bank of Lithuania, the National Audit Office indicates that they have no mandate to audit the Bank of Lithuania.

Netherlands (Algemene Rekenkamer)

A primary task of The Bank of the Netherlands (DNB), is the supervision of financial institutions (e.g. banks) in order to maintain financial stability. The Netherlands Court of Audit (NCA) has a mandate to audit this supervisory task of DNB according to the Dutch Audit Bill. The Dutch Minister of Finance and DNB have the opinion that this mandate is limited by European legislation. In their interpretation NCA has no access to information about individual financial institutions in files (or otherwise) of DNB. Therefore, the NCA does not get access to the documents required. Subsequently, it was not able to test the completeness of the files.

Poland (Najwyzsza Izba Kontroli)

The Polish Financial Supervision Authority (FSA) is the main financial supervisor, aiming for the proper functioning of the financial market, including its stability, safety and transparency. The Supreme Audit Office of Poland indicates that they have the mandate to audit the Polish FSA, including files on bank sector entities.[3] However, data concerning the bank secrecy and professional secrecy of the staff of the Polish FSA is not made available, unless the data is made available with the banks consent or data is made anonymous. On the contrary, the Supreme Audit Office of Poland has access to the bank secrecy during the course of performing its audits at the bank as far as this is necessary to conduct the audit. The Supreme Audit Office of Poland is of the opinion that the test on the completeness of files is not pertinent, because it is their experience that files received during the inspection of the FSA are largely returned to the bank after using them in the examination.

Portugal (Tribunal de Contas)

One of the main tasks of the Bank of Portugal is prudential and market conduct supervision. It carries out the prudential supervision of credit institutions and financial companies. According to Portuguese law, the Bank of Portugal is not subject to control by the Portuguese Court of Audit. Hence, the Court of Audit has no mandate and was not able to conduct the pilot study.

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[3] Article 29 (2) of the Act on the NIK, that entered into force in June 2012, stipulates that the NIK's access to the files and materials needed to establish the factual state of audited activity, containing information being statutory protected secrecy, can be excluded or limited only on basis of other laws. It means that the exclusion of the NIK's access to the statutory secrecy must explicitly result from the laws.

Slovakia (Najvyšší kontrolný úrad Slovenskej republiky)

The National Bank of Slovakia (NBS) acts as the Financial Supervision Authority (FSA). In cooperation with the European Central Bank and central banks of the euro area countries, it maintains price stability. It carries out a whole range of various tasks like monetary policy, foreign exchange operations and reserves and the collection and dissemination of statistics about the financial market. Every six months, it prepares a prognosis related to the economic development in the country. In addition, it contributes to the preparation of legislation related to the financial framework and gives an opinion to that. Next to that, it issues a range of regulations, permits, licenses, guidelines and directives and supervises the financial institutions and financial market to attain financial stability of the Slovak banking system and activities contributing to sustain price stability. The Supreme Audit Office of the Slovak Republic (SAO SR) has no access to information on financial institutions on NBS files and according to relevant laws governing the NBS and SAO SR, the SAO SR is not an entity to which NBS is obliged to reveal any information related to the pilot study topic.

Sweden (Riksrevisionsverket)

The Financial Supervisory Authority (FSA) is the main financial supervisor in Sweden. They are concerned with supervision and analyses, regulations and guidelines, permits, licenses and notifications and sanctions. The Swedish National Audit Office has the mandate to audit the FSA and performed several recent audits. In these audits they had actual access to all relevant data necessary to perform the audit. The Swedish SAI can publish its findings, but is bound by the same level of confidentiality that applies to the auditees.

European Court of Auditors

The European Banking Authority (EBA) has the task to safeguard the stability of the financial system, the transparency of markets and financial products and to protect depositors and investors. In particular the EBA participates in the supervisory colleges of the largest cross-border banks in the EU as well as coordinates the EU-wide stress tests. As the EBA is financed in part from the EU Commission’s budget, the ECA has the right to audit the efficiency and effectiveness of the activities of the EBA based on its general competence to audit the value-for-money of activities financed by the EU budget (so-called performance audit). In addition, the ECA carries out an annual financial audit of the EBA’s accounts. The ECA can publish all the results under certain conditions[4], but the auditors agreed to treat all information received confidentially for a recently conducted audit visit related to an on-going performance audit. ECA does not intend to publish names of any individual financial institutions for this audit. Paper files were not available and there was no index in the digital files. The ECA counted the number of documents in the files for ten selected banks and considered the files to be complete.

[4] The conditions are specified in the so called "Ismeri Case" (Case C-315S/99 P. Judgement of 10 July 2001). ECA is allowed to mention by name in its reports 3rd persons if it is necessary and proportionate to the objective pursued. Persons concerned must be enabled to make observations before the report is definitively drawn up.

4 Discussion

The Financial Supervision Authorities (FSAs) are the central institutions to control and supervise banks and other financial institutions in the EU Member States. The FSAs are crucial for prudential oversight and to maintain macroeconomic stability. The financial crisis showed that not all FSAs have been able to successfully conduct their tasks. With this in mind, it is remarkable that out of fourteen SAIs that participated in this pilot project, only six have actual access to FSA documents (including bank files). More than 50% of the SAIs that participated in this pilot project are not able to determine how the FSA in their country functions in practice when fulfilling its supervisory tasks.

Of the SAIs that do have access to the FSA, in all cases this is only possible under certain confidentiality clauses. Most of these SAIs are able to publish results, but without confidential information such as names of financial institutions and bank secrecies. The results that cannot be published are usually reported to the auditee, the Ministry of Finance and in some cases to parliament.

Because of the important position of banks in the financial crisis, the European Commission recently proposed a new Capital Requirements Directive (CRD IV) on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms.[5] It requires banks, among other things, to hold more and better capital and includes a new governance framework giving supervisors new powers to monitor banks more closely and take action through possible sanctions when they spot risks.[6]

The CRD IV also proposes that Member States may authorise the disclosure of certain information related to the prudential supervision of institutions to the SAI in their country. However this can only be done under the condition that these SAIs have a specific mandate defined by

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[5] Proposal of the European Commission on a directive on the access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms (COM(2011) 453 final).

[6] The negotiations on CRD IV between the Council and the European Parliament are currently still on-going.

national law to investigate or scrutinize the actions of authorities responsible for the supervision of banks and other financial institutions (COM(2011) 453 final, article 60 2(a)).
In most cases where SAIs have no mandate to audit the FSA at this moment, the specific mandate in national law is lacking. Hence, the CRD IV will most likely provide no solution for these SAIs. In the cases where SAIs are able to audit the FSAs but cannot publish confidential results, it is the question whether CRD IV will lead to a change. Hence, most likely CRD IV wilt not affect access of SAIs nor enhance transparency.

Another development that might play a role in the near future are the proposals by the European Commission to establish a Banking Union.[7] It is proposed that the European Central Bank should be the institution in charge of supervising the euro area banking system. If that becomes the case, then this could create new complications for the possibility of SAIs to audit and report about financial supervisors. The impact on the European Court of Auditors' audit rights is also unclear. Currently the European Court of Auditors has the mandate to audit the operational efficiency of the management of the ECB.

[7] On 12 September 2012 the European Commission published its proposals for a single supervisory mechanism. The proposal can be viewed at http://ec.europa.eu/internal_market/finances/committees/index_en.htm

5 Proposals to the Contact Committee

This pilot project shows that there are differences in mandate and access of SAIs with regard to the possibility to audit the performance of financial supervisors in the EU Member States. The importance of being able to carry out such audits is evident, especially in times of financial crisis in which not all FSAs have successfully conducted their supervisory activities on banks.

The Working Group proposes to the Contact Committee to accept the following recommendations:

- To publish the results of this pilot project on the Contact Committee website and on the websites of SAIs of EU member States;
- To invite SAIs to bring the results of this pilot project to the attention of the national stakeholders with regard to financial supervision in each of the EU member States, i.e. national parliament, ministry of Finance and the main financial supervisor for prudential oversight;
- To mandate the chair of the Working Group to bring the results of the pilot project to the attention of European stakeholders, i.e. the European Parliament, the Council and the European Commission;
- To call upon SAIs to closely monitor – in accordance with their national audit remit – the developments regarding the Capital Requirements Directive IV and a possible Banking Union, and to examine the implications, including new opportunities, for SAIs regarding their mandate to audit the functioning of the supervisory activities of FSAs, the access of SAIs to all information of FSAs, and for reporting possibilities of SAIs.

The Working Group on Public Audit Deficits has fulfilled the tasks laid down in Contact Committee resolution CC-R-2011-05. The Working Group also proposes to the Contact Committee to accept the following recommendations:

- To end the mandate of the Working Group on 31 December 2012 considering that its task has been fulfilled, and continue exchange of experiences on audits of financial supervisors in the Fiscal Policy Audit Network of the Contact Committee;

- To invite SAIs to indicate whether they would be interested in sharing knowledge and experience in the future, and to explore the possibilities of a parallel audit in this area.

Appendix 1 Contact Committee Resolution 2011

RESOLUTION
on setting up a working group to undertake a pilot study to identify possible public audit deficits
CC-R-2011-05

The Contact Committee,
in view of the Statement of the Contact Committee on the Impact of the European Semester (the 'Statement') and other recent developments in EU economic governance on the Supreme Audit Institutions of the Member States of the European Union and the European Court of Auditors, adopted at its meeting in Luxembourg on 14 October 2011;

considering:
a) the reference in the Statement to an increased risk of gaps in accountability and public audit in respect of the new arrangements and instruments set up at national, EU and intergovernmental level;
b) the intention set out in the Statement to further develop cooperation between EU SAIs and the ECA in this area through activities established for this purpose;

decides to establish a working group on public audit deficits in the area of new arrangements, measures and instruments set up at national, EU and intergovernmental level in response to the financial and economic crisis;

mandates the Liaison Officers of the Supreme Audit Institutions of the Member States of the European Union and the European Court of Auditors to take the necessary steps to establish this new working group and to undertake a pilot study consisting of an information request to financial supervisors in order to identify possible public audit deficits related to SAI mandate coverage and information access rights;

requests the working group to report back to the Contact Committee on the results of the pilot study at its next meeting in 2012.
Luxembourg, 14 October 2011
SAI Rapporteur: SAI of the Netherlands