

III

(Preparatory acts)

COURT OF AUDITORS

OPINION No 3/2010

(pursuant to Article 322, TFEU)

on a proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

(2010/C 145/01)

THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 322 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the draft Regulation⁽¹⁾ of the European Parliament and of the Council amending Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities⁽²⁾ (hereinafter 'the Financial Regulation'),

Having regard to the Parliament's request for an opinion on the abovementioned draft received at the Court on 29 March 2010 and to the Council's request for an opinion on the abovementioned draft received at the Court on 15 March 2010,

HAS ADOPTED THE FOLLOWING OPINION:

1. The draft Regulation of the European Parliament and of the Council on which the Court of Auditors' opinion is requested aims to update the current Financial Regulation to take into account the changes stemming from the Lisbon Treaty which entered into force on 1 December 2009.

2. The Court considers that in most cases the proposed amendments perfectly transpose the changes concerning

budgetary and financial issues introduced by the Lisbon Treaty into the Financial Regulation. However, the Court has concerns about one of the amended provisions and proposes to add one new provision. Proposed modifications to the text can be found in the table annexed to this opinion.

Transfers of appropriations

3. It is necessary to change Article 24 of the Financial Regulation due to the ending of the distinction between compulsory and non-compulsory expenditure. The Commission proposes the replacement of Article 24 with a new text. The Court has two observations in that regard.

4. Paragraphs 1, 3, 4 and 6 each refer specifically to the Commission. However, Article 22(2) and (3) of the Financial Regulation states that the procedure described in Article 24 also applies to the other institutions when one or other arm raises duly substantiated reasons for objecting to the transfer proposal or when the proposed transfer is from title to title and exceeds a specified limit. It is thus necessary to replace 'Commission' by 'institutions' in those four paragraphs.

5. The Commission proposes in paragraph 5(i) to allow the budgetary authority only three weeks to consider transfer proposals that are within certain limits (less than 10 % of the appropriations of the line from which the transfer is made, maximum amount of EUR 5 million). The Court points out that, at present, transfer proposals are considered within the European Parliament by the Committee on Budgets, whose meetings are approximately on a monthly cycle. Without taking a view as to the merits or otherwise of this proposal, the Court notes that its implementation would give rise to a problem of timing.

⁽¹⁾ COM(2010) 71 final of 3 March 2010.

⁽²⁾ OJ L 248, 16.9.2002, p. 1.

The budgetary procedure: the operation of the Conciliation Committee

6. The Conciliation Committee established by Article 314(5) of the TFEU is composed of members of the Council and of the European Parliament and has the task of reaching agreement on a joint text on the Union's annual budget. The Commission will take part in its proceedings and has the task of taking the initiatives necessary to reconcile the positions of the two arms of the budgetary authority. In carrying out this task, the Commission may find itself obliged to take initiatives in respect of the draft budgets of the institutions which are not represented in the Committee. For reasons of transparency, it is appropriate to reflect in the Financial Regulation the conclusions of the budgetary trilogue of 25 March 2010. The Court therefore proposes to add a new provision which would become Article 34a.

New Article 34a

Those institutions that are not represented in the Conciliation Committee may address their remarks on the impact of the Council's position and the European Parliament's amendments directly in writing to the Committee. The Commission shall take into account these remarks when formulating any proposal within the Conciliation Committee which may affect the draft budgets of those institutions.

7. Article 34a in the Commission's proposal becomes Article 34b.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 29 April 2010.

For the Court of Auditors
Vitor Manuel da SILVA CALDEIRA
President

ANNEX

Commission proposal	Court recommendation
<p style="text-align: center;"><i>Article 24</i></p> <p>1. The Commission shall submit its proposal simultaneously to the two arms of the budgetary authority.</p> <p>2. The budgetary authority shall take decisions on transfers of appropriations as provided for in paragraphs 3 to 6, save as otherwise provided in Title I of Part Two.</p> <p>3. Save in urgent circumstances, the Council, by qualified majority, and the European Parliament, shall deliberate upon the Commission proposal within six weeks of the date on which the two institutions received the proposal for each transfer submitted to them.</p> <p>4. The transfer proposal shall be approved, if within the six-week period:</p> <ul style="list-style-type: none"> — both arms approve it, — one of the two arms approves it and the other refrains from acting, — both arms refrain from acting or have not taken a decision contrary to the Commission proposal. <p>5. The six-week period referred to under paragraph 4 will be reduced to three weeks, unless one arm of the budgetary authority requests otherwise, when:</p> <ul style="list-style-type: none"> (i) the transfer represents less than 10 % of the appropriations of the line from which the transfer is made and does not exceed EUR 5 million; or (ii) the transfer concerns only payment appropriations and the overall amount of the transfer does not exceed EUR 100 million. <p>6. If one of the two arms of the budgetary authority has amended the transfer while the other approved it or refrains from acting, or if both arms have amended the transfer, the smaller amount approved either by the European Parliament or the Council shall be deemed approved, unless the Commission withdraws its proposal.</p>	<p style="text-align: center;"><i>Article 24</i></p> <p>1. The institutions shall submit their proposals simultaneously to the two arms of the budgetary authority.</p> <p>2. The budgetary authority shall take decisions on transfers of appropriations as provided for in paragraphs 3 to 6, save as otherwise provided in Title I of Part Two.</p> <p>3. Save in urgent circumstances, the Council, by qualified majority, and the European Parliament, shall deliberate upon an institution's proposal within six weeks of the date on which they received the proposal for each transfer submitted to them.</p> <p>4. The transfer proposal shall be approved, if within the six-week period:</p> <ul style="list-style-type: none"> — both arms approve it, — one of the two arms approves it and the other refrains from acting, — both arms refrain from acting or have not taken a decision contrary to the institution's proposal. <p>5. The six-week period referred to under paragraph 4 will be reduced to three weeks, unless one arm of the budgetary authority requests otherwise, when:</p> <ul style="list-style-type: none"> (i) the transfer represents less than 10 % of the appropriations of the line from which the transfer is made and does not exceed EUR 5 million; or (ii) the transfer concerns only payment appropriations and the overall amount of the transfer does not exceed EUR 100 million. <p>6. If one of the two arms of the budgetary authority has amended the transfer while the other approved it or refrains from acting, or if both arms have amended the transfer, the smaller amount approved either by the European Parliament or the Council shall be deemed approved, unless the institution withdraws its proposal.</p>
	<p style="text-align: center;"><i>Article 34a</i></p> <p>Those institutions that are not represented in the Conciliation Committee may address their remarks on the impact of the Council's position and the European Parliament's amendments directly in writing to the Committee. The Commission shall take into account these remarks when formulating any proposal within the Conciliation Committee which may affect the draft budgets of those institutions.</p>