OPINION No 4/2010

(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, as regards the European External Action Service

(2010/C 145/02)

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') as regards the European external action service,

Having regard to the Council's request for an opinion on the abovementioned draft received at the Court on 8 April 2010,

HAS ADOPTED THE FOLLOWING OPINION:

Structure of the European External Action Service

1. The draft Regulation of the European Parliament and of the Council on which the Court of Auditors' opinion is requested aims to amend the current Financial Regulation in order to adapt its rules to the specific nature of the European External Action Service (hereinafter 'EEAS') whose existence is foreseen in Article 27(3) of the Treaty on the European Union, as modified by the Lisbon Treaty which entered into force on 1 December 2009. The EEAS will be an autonomous body of the Union under the authority of the High Representative (hereinafter 'HR') that will support her in fulfilling her mandates. The organisation and functioning of the EEAS will be established by a Council decision. The proposal for such a decision is dated 25 March 2010.

2. To ensure the operational continuity of the current Delegations, operational expenditure executed by the Heads of Delegations will be deemed as corresponding to the implementation of the budget by the Commission on a centralised direct management, although the EEAS is a separate institution.

3. The EEAS will be made up of a central administration and Union Delegations to third countries and to international organisations. Each Union Delegation will be led by a Head of Delegation who will have authority over all staff in the Delegation.

4. The EEAS staff will comprise officials from the Secretariat-General of the Council, officials of the Commission and personnel seconded from the diplomatic services of the Member States. They will be appointed as temporary agents under the Staff Regulations. For staff matters the EEAS will be treated as an institution within the meaning of Staff Regulations.

General comments

Nature of EEAS for the purpose of the Financial Regulation

5. The Court takes note that, as requested in the report from the Presidency to the European Council on the European External Action Service of 23 October 2009 [3], the EEAS will be a service of a *sui generis* nature, which will be treated as an institution for the purposes of the Financial Regulation, benefiting from its own section of the budget, and submitted as such to the European Parliament discharge, while, at the same time, the EEAS, namely at Delegation level, will remain the relevant service to the Commission for the implementation of a wide range of operational appropriations depending from the 'Commission' section of the budget.

Management of new structure

6. The staff in Delegations will comprise EEAS staff and Commission staff. The Head of Delegation will receive a delegation from the Commission, the institution executing the budget and managing programmes in accordance with Article 17 of the TEU and Article 317 of the TFEU, in order to implement operational appropriations on its behalf. The new structure of the EEAS and the duties of the Head of Union Delegation will mean that he will report to two different bodies. A solution seems to be sought in the new proposed Article 60a(2) and (3). The Court notes that care will need to be taken in managing the new structure, inter alia, to avoid conflicts of priorities.

[1] COM(2010) 85 final of 24 March 2010.
[2] OJ L 248, 16.9.2002, p. 1.
[3] Presidency report to the European Council on the European External Action Service, Council document 14930/09.

Delivery mechanisms

7. In the Court's Special Report No 10/2004, the Court observed the significant progress made in the management of external aid in the framework of the 'devolution' process, including a strengthening of the operational and financial units of the Delegations, more robust and sound financial procedures, which brought about improvements in the regularity, timeliness and quality of the services provided. The Court considers of utmost importance to preserve and enhance accountability, responsibility, and quality of financial management at Delegation level. The future organisational structures of the Union Delegations should not put at risk the effectiveness of their operational and financial functions and their segregation of duties.

8. In this context, the proposal may be seen as an attempt to safeguard, as much as possible, the internal Commission procedures and standards for the implementation of its appropriations, in a new and more complex institutional framework.

9. However, the Court is concerned by the fact that this objective is sought through (a) significant derogations to the Financial Regulation, since subdelegations of the Commission powers of budget implementation will be granted to authorising officers (Heads of Delegations) who will no longer belong to Commission departments; (b) increased complexity in the financial management and reporting missions and operations of the Delegations; and (c) considerable uncertainty regarding the budgetary allocation and management of administrative and support expenditure of Union Delegations, an issue which is not clarified in the proposal.

Specific comments

10. The Court has specific concerns about four of the amended provisions and proposes modifications to the text which can be found in the table annexed to this opinion.

The amendments proposed will have implications for all 'indirect centralised' budget implementation, and not only for the EEAS

11. *Article 30*. The Commission proposes the replacement of Article 30(3), first subparagraph by a new text to the effect that the Commission shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from the budget held by it when the budget is implemented on a centralised basis pursuant to Article 53a. The new Article 53a provides that the implementation of the budget by the Commission on a centralised basis can be direct — either by its departments or by Union Delegations — or indirect in accordance with Articles 54 to 57.

12. As a result of a combined reading of the new Articles 30(3), first subparagraph, and 53a, the Commission's obligation to hold information on the beneficiaries of funds deriving from the budget becomes applicable to situations where the budget is implemented on a centralised basis directly and indirectly. But, in the current version of Article 30(3), first subparagraph, the Commission's obligation to hold information on the beneficiaries of funds deriving from the budget is limited to cases where the budget is implemented on a centralised basis and directly, only.

13. The extension of the obligation to hold information on the beneficiaries of funds deriving from the budget to situations of indirect centralised management is not related to the specific situation of the EEAS. Therefore, such extension goes beyond the subject matter of the proposal and would apply to all indirect centralised management. To remain consistent with existing practice the new Article 30(3), first subparagraph, should be amended as follows:

'The Commission shall make available, in appropriate manner, information on the beneficiaries of funds deriving from the budget held by it when the budget is implemented on a centralised basis and directly by its departments or by Union Delegations in accordance with the second paragraph of Article 51, and information on the beneficiaries of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management.'

Accountability of Heads of Union Delegations reinforced but amendment on conflict of interest may not be consistent with FR

14. *Article 60a*. The purpose of Article 60a seems to be to reinforce the principle that the Heads of Union Delegations, acting under subdelegation, are subject to the same accountability rules as any other authorising officers by subdelegation (pursuant to Article 60 of the Financial Regulation). The Court considers it important to insist on the duties of the Heads of Union Delegations in that regard.

15. However, the second subparagraph makes Heads of Union Delegations, inter alia, responsible for solving the potential conflicts of interest. The reference to the notion of 'conflict of interest' in this context should be avoided since it seems to cover another type of 'conflict of interest' for which Article 52 of the Financial Regulation gives a definition. For the sake of consistency, a notion should keep the same definition through all the provisions of the Financial Regulation. The Court proposes to amend Article 60a(1) along those lines.

Clarification of powers of the Internal Auditor needed

16. *Article 85*. For reasons of consistency, efficiency and effectiveness, the Court approves the choice of the Commission's Internal Auditor as the internal auditor for the EEAS. However, the drafting of the proposed addendum to Article 85 of the Financial Regulation gives the impression that the Internal Auditor of the Commission does not exercise

the same powers over the EEAS as he/she exercises over the Commission departments and that these powers might vary following which relevant sections — EEAS or Commission — of the budget are implemented. In order to avoid any ambiguity on the Internal Auditor's powers, the Court suggests replacing the proposed addendum by the following text:

'The Commission's Internal Auditor shall have the same responsibilities in respect of the European External Action Service referred to in Article 1, as he/she has in respect of Commission departments.'

There seems to be little or no purpose to some amendments proposed

17. *Article 165*. The sense of the proposed amendment to Article 165 is unclear. The Court does not see the necessity to amend Article 165 following the amendment of Article 53a.

18. *Article 185*. The proposed amendment to Article 185 is devoid of purpose. The analogy regarding the scope of powers of the Commission's Internal Auditor must operate only by reference to the Commission departments. The Court therefore proposes not to amend Article 185.

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

For the Court of Auditors

Vítor Manuel da SILVA CALDEIRA

President

ANNEX

Commission proposal	Court recommendation
Article 1	*Article 1*
(3) In Article 30(3), the first subparagraph is replaced by the following: 'The Commission shall make available, in appropriate manner, information on the beneficiaries of funds deriving from the budget held by it when the budget is implemented on a centralised basis pursuant to Article 53a, and information on the beneficiaries of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management.'	(3) In Article 30(3), the first subparagraph is replaced by the following: 'The Commission shall make available, in appropriate manner, information on the beneficiaries of funds deriving from the budget held by it when the budget is implemented on a centralised basis ~~pursuant to Article 53a,~~ and directly by its departments or by Union Delegations in accordance with the second paragraph of Article 51, and information on the beneficiaries of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management.'
(9) In section 2, the following Article 60a is added: *'Article 60a* 1. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with the second paragraph of Article 51, they shall cooperate closely with the Commission for the proper implementation of the funds, in order to ensure in particular the legality and regularity of financial transactions, the respect of the principle of sound financial management in the management of the funds and the effective protection of the financial interests of the Union. To this effect, they shall take the measures necessary to prevent any situation susceptible to put at stake the responsibility of the Commission for the implementation of the budget subdelegated to them as well as any conflict of interest or priorities having impact on the implementation of the financial management tasks subdelegated to them. Where a situation or conflict referred to in the second subparagraph arise, the Heads of Union Delegations shall inform the responsible Commission department and the High Representative of the Union for Foreign Affairs and Security Policy thereof without delay.'	(9) In section 2, the following Article 60a is added: *'Article 60a* 1. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with the second paragraph of Article 51, they shall cooperate closely with the Commission for the proper implementation of the funds, in order to ensure in particular the legality and regularity of financial transactions, the respect of the principle of sound financial management in the management of the funds and the effective protection of the financial interests of the Union. To this effect, they shall take the measures necessary to prevent any situation susceptible to put at stake the responsibility of the Commission for the implementation of the budget subdelegated to them as well as any conflict of ~~interest or~~ priorities having impact on the implementation of the financial management tasks subdelegated to them. Where a situation or conflict referred to in the second subparagraph arise, the Heads of Union Delegations shall inform the responsible Commission department and the High Representative of the Union for Foreign Affairs and Security Policy thereof without delay.'
(12) In Article 85, the following paragraphs are added: 'For the purposes of the internal auditing of the EEAS, Heads of Union Delegations, acting as authorising officers by subdelegation in accordance with the second paragraph of Article 51 shall be subject to the verifying powers of the Internal Auditor of the Commission for the financial management subdelegated to them. For reasons of coherence, efficiency and cost-effectiveness, the Internal Auditor of the Commission shall also act as the internal auditor of the EEAS in respect of the budget implementation of the EEAS section of the budget.'	(12) In Article 85, the following paragraph is added: 'The Commission's Internal Auditor shall have the same responsibilities in respect of the European External Action Service referred to in Article 1, as he/she has in respect of Commission departments.'
(14) Article 165, the first sentence is replaced by the following: 'The implementation of actions by beneficiary third countries or international organisations is subject to scrutiny by the Commission pursuant to Article 53a.'	(14) Article 165, the first sentence is replaced by the following: 'The implementation of actions by beneficiary third countries or international organisations is subject to scrutiny by the Commission ~~pursuant to Article 53a~~.'
(15) In Article 185, paragraph 3 is replaced by the following: '3. The Commission's Internal Auditor shall exercise the same powers over the bodies referred to in paragraph 1 as he/she does in respect of Commission departments or Union Delegations.'	~~(15) In Article 185, paragraph 3 is replaced by the following:~~ '~~3. The Commission's Internal Auditor shall exercise the same powers over the bodies referred to in paragraph 1 as he/she does in respect of Commission departments or Union Delegations.~~'