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I

(Resolutions, recommendations, guidelines and opinions)

OPINIONS

COURT OF AUDITORS

OPINION No 2/2007**on the draft Council Regulation amending the Financial Regulation applicable to the ninth European Development Fund**

(pursuant to Article 248(4) second subparagraph, EC Treaty)

(2007/C 101/01)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community, and in particular Article 248(4) thereof,

Having regard to the Partnership Agreement between the ACP States and the European Community and its Member States signed in Cotonou (Benin) on 23 June 2000 ⁽¹⁾, hereinafter referred to as the 'ACP-EC Partnership Agreement', as revised by the Agreement signed in Luxembourg on 25 June 2005 ⁽²⁾,

Having regard to Decision No 5/2005 of the ACP-EC Council of Ministers of 25 June 2005 on transitional measures applicable from the date of signing to the date of entry into force of the revised ACP-EC Partnership Agreement ⁽³⁾,

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community ⁽⁴⁾,

Having regard to the Internal Agreement between Representatives of the Governments of the Member States, meeting within the Council, on the Financing and Administration of Community Aid under the Financial Protocol to the ACP-EC Partnership Agreement and the allocation of financial assistance for the overseas countries and territories to which part IV of the EC Treaty applies ⁽⁵⁾,

Having regard to the Financial Regulation of 27 March 2003 applicable to the ninth European Development Fund (EDF) ⁽⁶⁾,

Having regard to the Court's Opinion No 12/2002 on the proposal for a Council regulation on a Financial Regulation applicable to the ninth European Development Fund under the ACP-EC Partnership Agreement signed at Cotonou on 23 June 2000 ⁽⁷⁾,

Having regard to Decision No 2/2002 of the ACP-EC Council of Ministers of 7 October 2002 regarding the implementation of Articles 28, 29 and 30 of Annex IV to the Cotonou Agreement ⁽⁸⁾,

⁽¹⁾ OJ L 317, 15.12.2000, p. 3.

⁽²⁾ OJ L 287, 28.10.2005, p. 4.

⁽³⁾ OJ L 287, 28.10.2005.

⁽⁴⁾ OJ L 314, 30.11.2001, p. 1 and OJ L 324, 7.12.2001.

⁽⁵⁾ OJ L 317, 15.12.2000, p. 355.

⁽⁶⁾ OJ L 83, 1.4.2003, p. 1.

⁽⁷⁾ OJ C 12, 17.1.2003, p. 19.

⁽⁸⁾ OJ L 320, 23.11.2002.

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾, hereinafter referred to as the 'General Financial Regulation', as amended by Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 ⁽²⁾,

Having regard to the Court's Opinion No 4/2006 on the draft Council Regulation amending Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽³⁾,

Having regard to the Commission's proposal for a Council Regulation amending the Financial Regulation applicable to the ninth EDF of 27 November 2006 ⁽⁴⁾,

Having regard to the Council's request for an opinion on that proposal sent to the Court on 15 January 2007,

HAS ADOPTED THE FOLLOWING OPINION:

1. As the explanatory memorandum indicates, the proposal for a Regulation amending the Financial Regulation applicable to the ninth EDF aims at transposing a limited number of amendments made to the recently revised General Financial Regulation.

2. The proposed amendments are mainly intended to:

(a) make it possible to entrust implementation tasks to national public-sector bodies in the Member States where management has been decentralised:

- they allow indirect implementation in cases of decentralised management (proposed amendment to Article 14),
- they allow the delegation of tasks to bodies in the Member States in cases of decentralised management (proposed amendment to Article 13),
- they confer to the relevant Authorising Officer at the Commission the responsibility for endorsing contracts and estimates in cases of decentralised management (proposed amendment to Articles 54(3), 80(4) and 80(5)),

(b) anticipate the envisaged amendments to Annex IV of the revised Cotonou Agreement, by deleting references to specific articles of Annex IV (amendments to Articles 74, 76 to 78).

⁽¹⁾ OJ L 248, 16.9.2002.

⁽²⁾ OJ L 390, 30.12.2006.

⁽³⁾ OJ C 273, 9.11.2006, p. 2.

⁽⁴⁾ COM(2006) 721 final.

3. The proposal fails to justify why the proposed changes are 'considered necessary and urgent in order to facilitate the implementation of the ninth EDF'. In particular, the recitals of the proposal do not make any reference to the reasons why it is considered necessary to allow implementation tasks to be entrusted to national public-sector bodies in the Member States at this stage of implementation of the ninth EDF.

4. As the proposal indicates, in its second recital the Financial Regulation applicable to the ninth EDF 'takes into account as a cornerstone' the General Financial Regulation. For this reason, it is unclear why the proposal does not propose to transpose the relevant amendments that have recently been made to the General Financial Regulation by Regulation (EC, Euratom) No 1995/2006 with a view to strengthening the protection of the financial interests of the Community and reinforcing the principle of accountability, such as:

- Article 28a regarding the need for effective and efficient internal control as appropriate in each management mode,
- Article 29(2) regarding the publication in the Official Journal of the report on financial management,
- Article 60(7) regarding the content of the Authorising Officer's annual activity report clearly setting out the Authorising Officer's responsibility for specifying any reservation he may have on the trueness and fairness of any view formed on the basis of the information presented in the report,
- Article 61(1)(e) regarding the Accounting Officer's power to verify compliance with the criteria for the validation of the accounting systems,
- Article 61(2a) to (2c) regarding the Accounting Officer's obligation to sign off the accounts,
- Article 166(2) regarding the starting date for the implementation period of the financing agreements, the starting date being the date of the corresponding financing agreement and no longer the date of the corresponding financial commitment.

5. In addition, the amendments to Article 143(2) and (5) of the General Financial Regulation regarding the timetable for the transmission of the Court's Statement of Assurance and Annual Report have not been transposed in the presented proposal, leaving the problem of an unrealistic timetable already mentioned in paragraph 3 of the Court's Opinion No 12/2002 unresolved and re-introducing differences between the provisions of the General Budget and the EDF respectively.

6. The Court wishes to draw attention to its Opinion No 12/2002, in which it suggested that the legislator should be innovative and adopt a single Financial Regulation applicable to all present and future EDFs which, like the General Financial Regulation, would be amended whenever there was felt to be a need. A measure of this type would ensure continuity of

approach, without the risk of interrupting implementation of the EDFs, and would greatly simplify management. The Court also invited the legislator to produce clear, straightforward legislation concentrating on the provisions that are essential and necessary for the implementation of the EDFs.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 8 March 2007.

For the Court of Auditors

Hubert WEBER

President

OPINION No 3/2007**on a proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters***(pursuant to Article 280(4), EC)**(2007/C 101/02)***TABLE OF CONTENTS**

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THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities, and in particular Article 280(4) thereof;

Having regard to the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters ⁽¹⁾;

Having regard to the request for an opinion submitted to the Court of Auditors by the Council on 23 February 2007,

HAS ADOPTED THE FOLLOWING OPINION:

INTRODUCTION

1. The objective pursued by the draft regulation is the sound application of Community customs and agricultural legislation, providing the Commission and the Member States' customs and other authorities with more effective mechanisms to assist them in preventing, investigating and prosecuting operations that are in breach of customs and agricultural legislation. To that end the proposal:

- (a) supplements the current case-by-case exchange mechanism for spontaneous assistance without prior request of the receiving Member State with an automatic and/or structured information exchange mechanism;
- (b) sets up an European central data directory to help the competent authorities of the Member States detect consignments of goods, including containers and/or means of transport, that may be in breach of customs and/or agricultural legislation;
- (c) makes it possible that the CIS (Customs Information System) be used for purposes of operational and/or strategic analysis and to include therein information about seized goods and cash controls;
- (d) allows the interoperability between the CIS and the national risk analysis systems;
- (e) creates a central database, FIDE (Customs Files Identification System), allowing to identify the investigation files opened in respect of individual persons or traders in any Member State along with the responsible case officers; and
- (f) aligns Council Regulation (EC) No 515/97 ⁽²⁾ with data protection rules.

⁽¹⁾ COM(2006) 866 final of 22 December 2006.

⁽²⁾ OJ L 82, 22.3.1997, p. 1.

2. The Court has examined the Commission proposal in the light of the results of its audit work.

GENERAL REMARKS

3. The Court considers that the proposal will contribute to achieving the objective pursued by the regulation provided that the Commission takes proper action in order to implement without further delay the IT infrastructure, databases and software applications needed for its practical operation. However, the proposed regulation does not address important issues already highlighted by the Court which still remain valid and which are referred to in paragraphs 4, 5 and 6.

4. The Court identified a potential overlap between the RIF (Risk Information Form) and MA (mutual assistance) communications and recommended that OLAF and DG TAXUD should streamline both reporting and monitoring and work towards a more integrated approach ⁽³⁾.

5. The Court found that in the special case of the mutual assistance procedure in the customs and agriculture sectors there is no systematic follow-up by OLAF ⁽⁴⁾. As at February 2007 the situation remained unchanged.

6. The Court draws attention to its recommendation in its Special Report No 11/2006 on the Community Transit System ⁽⁵⁾ that the Commission should take measures to improve the reliability of sources of information on fraud, and should make better use of them by developing risk management strategies. As such, the Commission should strive to improve the completeness and reliability of MA communications and the CIS.

SPECIFIC REMARKS

7. The first indent of Article 2(1) of the draft regulation defines customs legislation including a reference to the body of Community provisions governing value added tax as regards imports and exports. The Court welcomes this approach but considers that, for reasons of consistency with the definition of customs legislation contained in the Naples II Convention ⁽⁶⁾, this article should also refer to the body of provisions adopted at Community level for harmonised excise duties on importation together with the associated implementing provisions.

⁽³⁾ See paragraphs 4.12 and 4.27(a) of the Annual Report 2005 (OJ C 263, 31.10.2006, p. 1).

⁽⁴⁾ See paragraphs 32 and 85 of Special Report No 1/2005 (OJ C 202, 18.8.2005).

⁽⁵⁾ See paragraph 74 of Special Report No 11/2006 (OJ C 44, 27.2.2007).

⁽⁶⁾ Convention drawn up on the basis of Article K.3 of the Treaty on European Union, on mutual assistance and cooperation between customs administrations (OJ C 24, 23.1.1998).

8. The new paragraph 2 added to Article 15 would require the inclusion in Article 2(1) of definitions of 'progressive communication', 'communication at regular intervals', 'structured format' and 'unstructured format'. Moreover, the option of communicating at regular intervals is in contradiction with the current obligation existing in Article 15 to immediately notify to the other Member States concerned information relating to operations which constitute, or appear to them to constitute, breaches of customs and agricultural legislation.

9. The Court considers that the possibility provided for MA communications to be used for the purpose of strategic analysis pursuant to the new paragraph 7 of Article 18 can help reinforce the effectiveness of OLAF. Nevertheless, the Court considers that the proposal should have gone further in Article 18a by giving the Commission full access to the information available in systems already implemented or foreseen ⁽¹⁾ for all kinds of goods (not only for sensitive goods) for the purpose of operational and strategic analysis and risk management while ensuring adequate protection of personal data.

10. Article 18b does not clearly provide the legal basis for a permanent infrastructure in order to ensure the coordination of joint customs operations open to the participation of representatives or liaison officers of competent international or regional organizations, European Union bodies or agencies and third countries, as announced in the explanatory memorandum.

11. The Court considers that Article 23(2) of the draft regulation does not essentially differ from the current article and that the aim of the CIS should be better explained specifying that the effectiveness of the cooperation and control procedures of the competent authorities can now also be increased through operational and strategic analysis.

12. The Court invites the Commission to include in Articles 41b(2)(b) and 41c(2)(b) the excise duties identification number (SEED identification number) foreseen in the Regulation on administrative cooperation in the field of excise duties ⁽²⁾ and in the Directive 92/12/EEC ⁽³⁾ in order to facilitate investigations by either the Commission or the competent authorities of a Member State.

13. Although the Commission indicated that the proposal has no financial impact on revenue, the Court considers that the proposal should have a positive impact on traditional and VAT resources through the reduction of fraud, and this impact should have been estimated in the legislative financial statement of the proposal in order to allow a more accurate assessment of the value for money of the project.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 21 March 2007.

For the Court of Auditors
Hubert WEBER
President

⁽¹⁾ Such as NCTS (New Computerised Transit System), ECS (Export Control System), AIS (Automated Import System), and EMCS (Excise Movement and Control System).

⁽²⁾ Article 22(2)(a) of Council Regulation (EC) No 2073/2004 (OJ L 359, 4.12.2004, p. 1).

⁽³⁾ Article 15a(2)(a) of Council Directive 92/12/EEC of 25 February 1992 on the general arrangements for products subject to excise duty and on the holding, movement and monitoring of such products (OJ L 76, 23.3.1992, p. 1), as amended by Council Directive 92/108/EEC of 14 December 1992 (OJ L 390, 31.12.1992, p. 124).