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## III

*(Preparatory acts)*

## COURT OF AUDITORS

**OPINION No 2/2013***(pursuant to Article 287(4) TFEU)*

**on the amended proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006**

*(2013/C 267/01)*

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on European Union (TEU), in particular Articles 4, 5, and 17 and the Treaty on the Functioning of the European Union (TFEU), in particular Articles 174 to 178, 287(4), second subparagraph, 317, 318 and 322 thereof,

Having regard to the Commission's amended proposal of 22 April 2013 <sup>(1)</sup>,

Having regard to the European Parliament's request for an opinion, received by the Court on 3 June 2013,

Having regard to Opinion No 7/2011 of the Court on the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006 <sup>(2)</sup>,

Having regard to Opinion No 9/2012 of the Court on a previous amended proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006 <sup>(3)</sup>,

Whereas:

- (1) The Commission's amended proposal of 22 April 2013 for a regulation laying down common provisions on the European Regional Development Fund (ERDF), the European Social Fund (ESF), the Cohesion Fund (CF), the European Agricultural Fund for Rural Development (EAFRD) and the European Maritime and Fisheries Fund (EMFF) aims to apply the management and control systems set up under cohesion policy to the EMFF, instead of applying the systems for the EAFRD, as set out in the Commission's original proposal <sup>(4)</sup>.
- (2) The Commission's amended proposal of 22 April 2013 does not introduce significant changes to the

management and control systems outlined in the original proposal, but rather proposes to align the EMFF governance structure with that of cohesion policy, instead of with the EAFRD.

- (3) The Court's Opinion No 7/2011 already gave a detailed opinion on the proposals, including those relating to management and control systems, and Opinion No 9/2012 gave an opinion on the previous amended proposal.

HAS ADOPTED THE FOLLOWING OPINION:

### **General observations**

1. The Court wishes to maintain the general observations made in Part 1 of its Opinion No 7/2011, which are not currently reflected in the Commission's amended proposal of 22 April 2013, and draws particular attention to paragraphs 22 to 37 of that opinion. These relate to the common management and control arrangements for the regulation, which, after the amended proposal, would now also apply to the EMFF.

2. The Court also notes that the detailed recommendations it made in Part II of Opinion No 7/2011 and the general observations made in Opinion No 9/2012, are not currently reflected in the Commission's amended proposal of 22 April 2013 but ought to be considered.

### **Detailed comments**

3. Paragraph 7 of the Court's Opinion No 7/2011 noted that the proposal created a distinction between 'common' provisions (applicable to all five Common Strategic Framework (CSF) Funds) and 'general' provisions (applicable only to some of them: ERDF, ESF and CF). This led to an incoherent legislative framework and raised the question of whether it would be preferable to limit the general Regulation to those provisions which are applicable to all five Funds (the 'common provisions') and to include other provisions ('general provisions') in Fund-specific regulations.

4. The amended proposal however creates another category of general provisions, applicable to all funds except the EAFRD: Part II of the proposal is applicable to all CSF funds; Part III is applicable to the ERDF, the ESF and the CF; most of Part IV is applicable to the ERDF, the ESF, the CF and the EMFF, but not the EAFRD; and some of Part IV is only applicable to the ERDF, the ESF and the CF.

<sup>(1)</sup> COM(2013) 246 final of 22 April 2013.

<sup>(2)</sup> OJ C 47, 17.2.2012, p. 1.

<sup>(3)</sup> OJ C 13, 16.1.2013, p. 1.

<sup>(4)</sup> COM(2011) 615 final of 6 October 2011.

5. Article 117(4) of the amended proposal introduces a provision that in cases where the total amount of support from the EMFF to an operational programme exceeds 100 000 000 euros, the Commission may request the report and the opinion of the independent audit body and the description of the management and control system. As already noted in Part II of the Court's Opinion No 7/2011, the Commission should be empowered to request this information for all operational programmes, independently from the amount of EU support.

6. Article 140(1) of the amended proposal introduces a provision that EMFF operations for which the total eligible expenditure does not exceed 50 000 euros shall not be subject to more than one audit by the audit authority or the Commission prior to closure of all expenditure concerned under Article 131. As already noted in Part II of the Court's Opinion No 7/2011, there is no evidence that operations whose eligible expenditure is below 50 000 euros are less error-prone than other operations, and the Regulation should clarify how proportional controls will affect the sampling to be done by the audit authorities.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 18 July 2013.

*For the Court of Auditors*  
Vitor Manuel da SILVA CALDEIRA  
*President*

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