



2024/1697

17.6.2024

COMMISSION IMPLEMENTING DECISION (EU) 2024/1697
of 12 June 2024
on the establishment of the Ukraine Facility Audit Board

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Regulation (EU) 2024/792 of the European Parliament and the Council of 29 February 2024 establishing the Ukraine Facility ⁽¹⁾, and in particular Article 36 thereof,

Whereas:

- (1) An Audit Board should be established under the Ukraine Facility to increase the effectiveness of Ukraine's management and control systems of Union funding and, in particular, to prevent fraud, corruption, conflicts of interests and irregularities, in accordance with Article 36 of Regulation (EU) 2024/792.
- (2) The Audit Board needs to be urgently established to allow Ukraine to submit its first payment request in accordance with Article 36 of Regulation (EU) 2024/792,

HAS ADOPTED THIS DECISION:

Article 1

Establishment

The Audit Board of the Ukraine Facility is hereby established for the period starting on the day of the adoption of this decision until 30 June 2028.

Article 2

Mission

The Audit Board shall assist the Commission in assessing the effectiveness of Ukraine's management and control systems regarding the funds provided under the Facility and in fighting mismanagement of Union funding under the Ukraine Facility and, in particular fraud, corruption, conflicts of interest and irregularities.

Article 3

Composition and operation of the Audit Board

1. The Audit Board shall consist of three members and shall be based in Brussels.
2. The Commission shall provide the Audit Board members with appropriate logistic support, in particular office space and IT support.

⁽¹⁾ OJ L, 2024/792, 29.2.2024, ELI: <http://data.europa.eu/eli/reg/2024/792/oj>.

3. The Audit Board shall be assisted by a Secretariat, based in Kyiv, led by a Head of the Secretariat. The Secretariat will get its instructions and guidance from the Audit Board Chair, who will be appointed in accordance with Article 6 of this Decision.

4. Article 2 of Commission Decision 1999/396/EC, ECSC, Euratom ⁽²⁾ concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests shall apply to the Members of the Audit Board and to their staff including the Secretariat staff.

Article 4

Appointment, termination of appointment and dismissal of the Audit Board members

1. The Audit Board members shall be appointed by the Commission, following a call for expressions of interest. The term of office of the Audit Board members shall begin on the date fixed for that purpose in the decision on the appointment of the Audit Board members.

2. The Audit Board members shall be citizens of the Union, with a proven track record in the areas of audit, monitoring and control, and/or fighting fraud, corruption, conflicts of interest and irregularities ideally acquired in a senior position in EU institutions or Member States public authority.

3. The Audit Board members shall be appointed as special advisers of the Commission within the meaning of Article 5 of the Conditions of Employment of Other Servants of the European Union ⁽³⁾, for a term of 2 years. Their contracts shall be renewable and ensure their full independence from any external influence in the exercise of their duties. The Audit Board members shall be security vetted, or if not already vetted, willing to undergo the security vetting by the Member State of their nationality.

4. The selection procedure shall be conducted by the Director-General of DG NEAR with the support of a panel, the members of which the Director-General shall select from the Commission's Directorates-General most concerned. The panel shall present a list of candidates to the Director-General, based on the results of the call for interests and subsequent interviews. The Director-General shall select the Audit Board members as well as three substitute members to replace an Audit Board member where the Board Member is no longer able or willing to perform his or her tasks.

5. If an Audit Board member no longer fulfils the conditions required for the performance of his or her duties, laid down in this Decision and their contracts, he or she may be dismissed by the Commission.

⁽²⁾ Commission Decision 1999/396/EC, ECSC, Euratom of 2 June 1999 concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any illegal activity detrimental to the Communities' interests (OJ L 149, 16.6.1999, p. 57, ELI: <http://data.europa.eu/eli/dec/1999/396/oj>).

⁽³⁾ Regulation No 31 (EEC), 11 (EAEC), laying down the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Economic Community and the European Atomic Energy Community (OJ 45, 14.6.1962, p. 1385/62) as last amended on 3 January 2024 (OJ C, C/2024/509, 3.1.2024, ELI: <http://data.europa.eu/eli/C/2024/509/oj>). <https://eur-lex.europa.eu/legal-content/EN/TXT/PDF/?uri=CELEX:01962R0031-20240101>

6. If an Audit Board member is unable to perform his or her duties for a limited amount of time, because of medical or other reasons, the Commission, in consultation with the Audit Board member concerned, may temporarily appoint a substitute member until the Audit Board member concerned is able to resume his or her for the period of his or her inability to perform his or her tasks.

7. The limited amount of time referred to in paragraph 6 shall not exceed 6 months.

Article 5

Appointment of the Chair and Deputy Chair

1. The Director-General of DG NEAR shall designate one of the members as the Chair of the Audit Board and one as the Deputy Chair. If the Chair is prevented from attending to his/her duties, they shall be carried out by the Deputy Chair.

2. Should the office of Chair fall vacant, the Deputy Chair shall carry out his or her duties until a new Chair is designated by the Director-General of DG NEAR.

Article 6

Responsibilities of the chair

1. The Chair shall represent the Board. He or she shall chair the Audit Board meetings and organise its work.

2. The Chair may delegate to each of the Audit Board members and the Head of the Secretariat the power to sign documents on behalf of the Audit Board.

3. The Chair shall set the schedule and agenda of the Audit Board meetings.

4. The Chair shall be responsible for drawing up, within 6 months after the Audit Board has become operational, the rules of procedure of the Audit Board.

Article 7

Independence and objectivity

The Audit Board members and the staff of the Secretariat shall exercise their functions in complete objectivity and full independence and operate in compliance with best applicable international practices, standards and guidelines, in particular concerning audit.

Article 8

Organisation of meetings

1. A minimum of six Audit Board meetings shall take place in Brussels every year, which in justified cases can also be held at other locations or online. The Audit Board shall also conduct, circumstances permitting, a minimum of six visits to Kyiv every year.

2. The Chair shall ensure that for every Audit Board meeting the required quorum of two Audit Board members is reached.

3. The Chair shall ensure that the Audit Board meetings serve the purpose of discussing the findings of the Secretariat, of providing guidance to the Secretariat's work and submitting reports to the Commission.
4. The Chair may call for additional meetings as necessary, which may also take place in a hybrid format. Meetings shall be arranged sufficiently in advance to enable all members and invitees to attend.

Article 9

Secretariat

1. The Audit Board Secretariat shall consist of a team of specialists in management and control, auditing and other relevant fields of expertise as well as of secretarial assistants, procured through a service contract, following a tender procedure, launched by DG NEAR.
2. The work of the Secretariat shall be led by a Head of the Secretariat, a Commission official who shall be appointed by DG NEAR.
3. The Secretariat shall assist the Audit Board in the performance of its tasks, in particular by collecting and providing, through the Head of the Secretariat, all relevant information.

Article 10

Observers

1. The Commission may invite representatives of Member States and other donors to participate in the activities of the Audit Board. The Commission may invite other donors contributing to the Facility to appoint observers to the Audit Board.
2. When invited by the Commission, the observers may participate in the meetings of the Audit Board in that capacity and have access to information. The Audit Board Chair, for duly justified reasons, such as confidentiality or data protection, and after consulting the other Audit Board members, may deny access to information for the observers.
3. The Audit Board Chair, after consulting the other Audit Board members, may invite observers to attend the Audit Board deliberations and call on the observers to provide oral and written comments.
4. Observers shall not take part in the process to adopt reports or recommendations.

Article 11

Prevention and management of conflicts of interests

1. Where any of the Audit Board members or any other person who participates in the Audit Board meetings, including as an observer, finds himself or herself in a situation of conflict of interests or in a situation that could be perceived as such by the public, he or she shall immediately inform the other Audit Board members and the Secretariat and shall refrain from participating in the corresponding deliberations and in the adoption of the corresponding reports and recommendations of the Audit Board.

2. In the situation described in paragraph 1, once properly informed the Audit Board Chair shall take all appropriate measures.
3. The Audit Board Chair shall inform the Director-General of DG NEAR of any situation described in paragraph 1 as soon as he or she has obtained knowledge about it.

Article 12

The tasks of the Audit Board

1. The Audit Board shall assist the Commission by continuously monitoring the management and control systems of Ukraine as regards the use of Union funding under the Facility and by signalling any systemic issues or potential weaknesses of those systems. The Audit Board shall assess, inter alia, the systems Ukraine has in place to avoid, remedy, report and effectively deal with, investigate and prosecute, possible cases of fraud, corruption, conflicts of interests and any other irregularities in relation to any expenditure financed under the Facility.
2. The Audit Board shall have the right to request information and to request to the competent authorities and perform, at any time, including through its Secretariat its own verifications and on-the-spot-checks of Ukraine's management and control system, as well as of procedures and expenditures for implementing the steps in the Council Implementing Decision on the approval of the assessment of the Ukraine Plan , that were already assessed by the Commission via the quarterly payment requests. The resulting reports shall, as relevant, contain recommendations to Ukraine to improve its management and control system and shall be shared with the Commission. The Audit Board shall act without prejudice to the powers of the Commission, OLAF, the European Court of Auditors and the EPPO.
3. The Audit Board shall submit reports to the Commission, including a copy of the recommendations set out in paragraph 2, with a frequency of at least one report every 3 months on the basis of a work programme submitted for information to the Commission within 3 months following the date the Board started to operate. These reports shall present the Board's opinion in relation to the performance and effectiveness of the Ukrainian management and control system. Information the Board has obtained or has been made aware of on any identified cases of, or serious concerns in relation to, mismanagement of expenditure financed under the Facility shall immediately be shared with the Commission.
4. The Audit Board shall adopt recommendations to Ukraine in all cases where, in its views, the competent Ukrainian authorities have not taken the necessary steps to prevent, detect, correct, investigate and prosecute fraud, corruption, conflicts of interest and irregularities that have affected or seriously risk affecting the sound financial management of the expenditure financed under the Facility and in all cases where it identifies weaknesses affecting the design and functioning of the control system put in place by Ukrainian authorities.
5. The reports of, and information from, the Audit Board shall, where appropriate and in all cases where steps are needed to prevent, detect, correct, investigate and prosecute fraud, corruption, conflicts of interests, irregularities or any other illegal activity affecting the financial interests of the Union, be sent without delay to the Commission, the European Anti-Fraud Office and the European Public Prosecutor's Office in line with their respective competences. The Audit Board may also share its reports and information, as appropriate, with the relevant Ukrainian authorities, especially in cases where such authorities need to take steps to prevent, detect, correct, investigate and prosecute fraud, corruption, conflicts of interests, irregularities or any other illegal activity affecting the financial interests of the Union.

6. The Audit Board shall request Ukraine's assistance to obtain information and documents including any electronic data, and may request Ukraine to take all necessary measures to facilitate the work of the persons instructed to carry out verifications and on-the-spot checks without prejudice to the applicable EU and Ukrainian data protection and data security provisions.

7. The Audit Board shall ensure regular dialogue and cooperation with the European Court of Auditors, as well as with the Accounting Chamber of Ukraine and other institutions, as relevant.

Article 13

Data protection and confidentiality

1. Each Audit Board member and staff working for the Audit Board Secretariat shall ensure strict confidentiality of information they received through or in the context of their work. In particular, they shall ensure the protection of personal, confidential and commercially sensitive information.

2. Personal data shall be processed in line with the rules of Regulation (EU) 2018/1725 of the European Parliament and of the Council ⁽⁴⁾ which apply *mutatis mutandis*.

3. The Audit Board shall adopt internal procedures and policies on data protection in line with Regulation (EU) 2018/1725.

4. The Audit Board shall adopt guidelines for the protection of confidential and commercially sensitive information.

Article 14

Adoption of reports and recommendations

1. The Chair and the other Audit Board members shall endeavour to reach a consensus on the content of the reports and recommendations. In the absence of a consensus, the content shall be decided by a majority of the Audit Board members. If votes are tied, the chair's vote will be decisive. The chair or any member of the Audit Board may request a vote to be taken.

2. The Audit Board shall send its reports, including recommendations to Ukraine, to the Commission. The Commission shall share the recommendations with Ukraine.

3. The implementation of the recommendations shall be monitored by the Audit Board on a continuous basis.

⁽⁴⁾ Regulation (EU) 2018/1725 of the European Parliament and of the Council of 23 October 2018 on the protection of natural persons with regard to the processing of personal data by the Union institutions, bodies, offices and agencies and on the free movement of such data, and repealing Regulation (EC) No 45/2001 and Decision No 1247/2002/EC (OJ L 295, 21.11.2018, p. 39, ELI: <http://data.europa.eu/eli/reg/2018/1725/oj>).

Article 15

Entry into force and application

This Decision shall enter into force on the day of its publication in the *Official Journal of the European Union*.

Done at Brussels, 12 June 2024.

For the Commission
The President
Ursula VON DER LEYEN