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(Information)

COURT OF AUDITORS

OPINION No 8/2001

on a proposal for a Council Regulation laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes

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

(2001/C 345/01)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

HAS ADOPTED THE FOLLOWING OPINION:

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

Having regard to the request for an opinion, drafted by the Council of the European Union on 15 March 2001 and received at the Court on 21 March 2001,

Having regard to the proposal for recasting the Financial Regulation, presented by the Commission ⁽¹⁾, and the Court's opinion on the proposal ⁽²⁾,

Whereas the proposal for a Council Regulation is part of the framework for outsourcing the management of Community programmes;

Whereas the proposal concerns the statute for executive agencies that are entrusted with certain tasks in the management of Community programmes,

Introduction

1. The commitment of the Commission, set out in December 1999 ⁽³⁾, to develop a coherent and manageable externalisation policy, in order to correct aberrations caused by poor control of various technical assistance offices (TAOs) meets a need highlighted by the Court over several years in its annual and special reports ⁽⁴⁾. In light of its past comments, the Court generally welcomes this proposed Regulation. Forming a central part of the Commission's externalisation policy, it sets out a legal framework for entrusting responsibility for the implementation and management of Community programmes to executive agencies.

2. There are, however, a number of provisions in the draft Regulation which the Court considers require clarification or more substantial amendment. These are set out in the following paragraphs, which follow the structure of the draft Regulation.

Article 3: Creation and winding-up of executive agencies

3. The Court notes that Article 3(1) and (2) of the draft Regulation reflect the temporary nature of an executive agency, by

⁽¹⁾ COM(2000) 461 final, 17.10.2000.

⁽²⁾ Opinion No 2/2001 of the Court of Auditors of the European Communities of 8 March 2001 (OJ C 162, 5.6.2001, p. 1).

⁽³⁾ 'Orientations for the externalisation policy', SEC(1999) 2051/7 of 14.12.1999.

⁽⁴⁾ See for example, Special Report No 1/96 MED-programmes.

providing that the Commission may fix the duration of its existence, and decide to wind it up if it no longer needs its services. The Court wishes to emphasise that the Commission will need to exercise effectively this discretion in respect of agencies which are no longer needed.

4. In paragraph 2 of Article 3, in so far as an executive agency performs tasks entrusted to it by the Commission, on its winding up the Commission should immediately take back into its accounts the total outstanding assets and liabilities of the agency without waiting for the completion of the winding-up process.

Article 5: Headquarters

5. Although it is clear that the links between an executive agency and the Commission services should be very close, it is not appropriate to specify that the headquarters of an executive agency can only be in one of the places where the Commission departments are located. It would be preferable to provide that such headquarters should be established where they can perform their tasks most efficiently.

Article 6: Tasks

6. Since, as delegating institution, the Commission remains responsible for the agencies' execution of its powers, it is considered advisable for the Regulation to lay down general rules concerning the controls which the Commission operates in relation to the activities of the agencies, so that it may intervene if an agency acts in a way that is contrary to the object of the Community programme in question or, on a more general level, acts unlawfully. The control procedures could be specified in the instrument of delegation (having regard to the individual aspects of each agency), but the general control framework should be established by the Regulation laying down the statute for executive agencies.

Article 9: Tasks of the steering committee

7. With regard to Article 9(2) which provides for the steering committee to adopt at the latest at the beginning of each year the work programme of the executive agency, it would be desirable to provide explicitly for the steering committee, when an agency is first established, to adopt clear objectives for the agency, together with indicators of performance to be used to assess how well the agency is carrying out its tasks. This would emphasise from the outset the importance to be attached to the agency's achievement of results, in line with the orientation of the Commission in the current process of reform.

8. Similarly, this framework Regulation should specify that the annual activity reports of an agency (Article 9(7)) should contain information on all financial resources received, whether from the Community or other sources, and on their utilisation. The reports should also contain sufficient information and analysis for an appreciation of the extent to which the objectives of the agency concerned have been met, and of the efficiency of the agency's management.

9. The Regulation should also provide for the evaluation at regular intervals of the efficiency and effectiveness of an agency. There is currently no such provision in the draft proposal. Such evaluations should be carried out under the responsibility of the Commission but in close cooperation with the agency and its steering committee, and the resulting reports should be sent to the Council, European Parliament and the Court of Auditors.

10. The steering committee should approve the detailed accounts of an executive agency which are submitted to it by the Director, before they are submitted to the European Parliament, the Court of Auditors and the Commission as provided for in Article 14(2).

Article 11: Tasks of the Director

11. It would be appropriate to provide explicitly that the Director of an executive agency must ensure that an effective system of internal control is established in the agency.

Articles 12 to 16: Operating budget of the agency and operating appropriations of the programme(s) which the agency is involved with managing ⁽¹⁾

12. The proposed Regulation provides that the operating budget of an executive agency will cover its running costs only for the year in question. This budget will be financed, firstly, by a grant from the Commission representing a specified percentage of the annual financial allocation to the Community programmes which the agency is involved in managing, and, secondly, by any revenue from other sources. The operating appropriations of the Community programmes themselves will be entered in the general budget of the European Union and not in the agency's operating budget. Expenditure on these programmes will be posted directly to the appropriate headings in the general budget.

⁽¹⁾ The English text of the draft Regulation refers to the 'operating budget' for the running costs and to the 'operating appropriations of the Community programmes' for the cost of the operations. This is rather confusing. It would be preferable for the Commission to find terminology which differentiates more clearly between the two types of expenditure. For example, for the second category 'operational appropriations' would be preferable.

13. Under the proposal, the accounts of an executive agency will, therefore, only include its administrative expenditure and other running costs, and the revenue to cover these costs. They will not contain the expenditure on the Community programmes managed by the agency.

14. Charging the expenditure on operations managed by the agency directly to the general budget is welcome. It avoids the risk that payments out of the general budget constitute no more than shifting of funds from the Commission to intermediate organisations⁽¹⁾. However, it implies that the financial statements of an agency may not include expenditure on the operations which it is responsible for managing. The production of financial statements only dealing with operating expenditure on running costs would not be in line with the steps being taken by the Commission to introduce activity based management/activity based budgeting (ABM/ABB) for its programmes. ABM/ABB involves bringing the financial resources to be spent on programmes together with those required to cover the costs of managing those programmes. It is important that an executive agency should have an obligation to account in global terms for the operating appropriations it manages.

15. The Commission might also consider including the budgets for the running costs of an executive agency in the general budget itself, together with the operating appropriations for the programmes it manages. In this case, the running cost expenditure would also be directly posted to the general budget.

16. Such a solution might facilitate the production of complete financial statements for an agency containing both running costs and operating expenditure for the programmes managed by it. It is, however, important that the potential advantages in terms of flexibility of taking the operating budget of an executive agency outside the scope of the Financial Regulation be retained. The very least the Regulation should require is that the annual accounts of an agency should contain a financial report detailing the utilisation of operating appropriations for Community programmes in terms of commitments and payments (see paragraph 8).

17. There are several points which require clarification in the proposed Articles 12 to 16:

⁽¹⁾ It may be noted that this is not the way that the European Agency for Reconstruction operates. The Agency receives large transfers of funds from the Commission to fund the operations it is managing and its running costs. Each transfer is recorded as a single payment out of the Commission accounts, while the Agency records this as income and draws up accounts showing what it has committed and paid for both operations and running costs.

- (a) in Articles 12 and 13 it would be preferable to refer to a 'contribution' rather than a 'grant' for the funds that the Commission will make available to an executive agency to cover its running costs. This is because the nature of 'grants' as currently defined in the Vademecum on grant management is rather different from what is envisaged in this proposal;
- (b) it is also not clear whether the 'contribution', calculated as a percentage of the annual financial allocation to the Community programme which the executive agency is involved in managing, is acquired revenue of the agency even if the programmed amounts are not committed or paid. The objective should be to finance the essential running costs of the agency, subject perhaps to a ceiling. The provisions of Article 13 need, therefore, to be clarified;
- (c) an executive agency will be able to receive revenue from sources other than the contribution of the Commission from the general budget (Article 12(3), Article 17). The draft Regulation implies that the detailed annual accounts provided for in Article 14(2) will contain running costs only associated with such other revenue, but it is not clear how expenditure on the programmes funded by this other revenue will be accounted for. In line with the arguments set out in paragraph 14, an executive agency should be required to account for its utilisation of all funds that it is called upon to manage.

Article 19: Supervision

18. Article 14 provides that the Director of an executive agency shall submit detailed annual accounts of revenue and operating expenditure (running costs) to the European Parliament, the Court of Auditors, the Commission and the steering committee (see paragraph 10 for the Court's proposals to modify this provision to require the steering committee to approve the accounts before they are submitted to the institutions). The European Parliament grants discharge to an executive agency.

19. Article 19 provides that the Court of Auditors shall scrutinise an executive agency's accounts in accordance with Article 248 of the Treaty.

20. If the policy of externalisation of the Commission leads to the creation of a significant number of executive agencies, the task of conducting annual audits of their accounts would be considerable, and would require an increase in the Court's resources. Under the terms of the proposed Regulation the accounts would cover the running costs of the agencies only. Annual audits of all of these accounts would not be the most cost-effective use of the Court's limited resources. In order to minimise this problem, and facilitate the most cost-effective use of the Court's resources, the

framework Regulation should provide for prior scrutiny of Agencies' expenditure, both operating expenditure on programmes and running costs, by independent auditors before it is incorporated into the consolidated accounts of the Commission. This would be without prejudice to the Court's prerogatives under Article 248 of the Treaty. The Court would audit the use of the operating appropriations of Community programmes managed by an agency, such audit including the efficiency and effectiveness of the agency's management. For the purposes of its audit certificate concerning the running costs, the Court should be able to obtain assurance on matters of legality and regularity from this prior scrutiny.

21. In this context, it may be questioned whether it is appropriate for the European Parliament to grant discharge to each executive agency in respect of their running costs only. In such circumstances, the external audit of an executive agency might be considered to be part of the Commission's internal control over the work of bodies to which it has entrusted or delegated certain tasks. As part of its general discharge of the Commission, the

European Parliament would examine the performance of the Commission and its executive agencies, rather than give separate discharge to each agency. Such an arrangement would better reflect the continuing ultimate accountability of the Commission under the discharge procedure for the operating expenditure delegated to executive agencies for the programmes.

Article 21: Legality of acts

22. Article 230 of the EC Treaty makes no provision for the possibility of reviewing the legality of the acts of the agencies as such. The Court of Justice's powers of review are laid down by the EC Treaty and thus cannot be amended or extended by a Council Regulation. In order to avoid giving the impression that this draft Regulation is proposing an amendment or widening of scope to that effect, it would therefore be preferable for this Article to provide that the Commission, as the delegating institution, is legally responsible for the acts of the executive agencies.

This opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 25 October 2001.

For the Court of Auditors

Jan O. KARLSSON

President
