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I

(Resolutions, recommendations and opinions)

OPINIONS

COURT OF AUDITORS

OPINION No 4/2007

on a draft Commission Regulation (EC) amending Regulation (EC) No 1653/2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes [SEC(2007) 492 Final]

(2007/C 216/01)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Communities,

Having regard to Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes ⁽¹⁾, and in particular Article 15 thereof,

Having regard to Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾,

Having regard to Commission Regulation (EC) No 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes ⁽³⁾,

Having regard to the proposal for a draft Commission Regulation (EC) amending Commission Regulation (EC) No 1653/2004 on a standard financial regulation for the executive agencies pursuant

to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes ⁽⁴⁾,

Having regard to the request for an opinion submitted to the Court of Auditors by the Commission on 25 April 2007,

HAS ADOPTED THE FOLLOWING OPINION:

1. The objective of the draft regulation is to amend the standard financial regulation of the executive agencies ⁽⁵⁾ (hereinafter referred to as 'standard financial regulation'), following the amendments made in Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 to Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, and in the light of the acquired experience of the existing executive agencies.

2. Article 20 of the draft regulation provides that, in addition to transmitting budgets and amending budgets for information to the budgetary authority, the Court of Auditors and the Commission, and publishing them on the websites of the agencies

⁽¹⁾ OJ L 11, 16.1.2003, p. 1.

⁽²⁾ OJ L 390, 30.12.2006, p. 1.

⁽³⁾ OJ L 297, 22.9.2004, p. 6.

⁽⁴⁾ SEC(2007) 492 final of 25.4.2007.

⁽⁵⁾ Commission Regulation (EC) No 1653/2004 (OJ L 297, 22.9.2004, p. 6).

concerned, a 'summary of the budgets and amending budgets shall be published in the *Official Journal of the European Union* within three months of their adoption'. Having regard to the principle of budgetary transparency, however, it would be appropriate to specify the scope and content of the summary to be published by the executive agencies.

3. The first paragraph of Article 27 stipulates that '*all financial actors (...) and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any measures of budget implementation which may bring their own interests into conflict with those of the agency or of the Communities*'. The term 'of budget implementation' (as in Article 52 of the Financial Regulation) should be deleted or this Article redrafted, as persons

involved in auditing and control work should not take budget implementation measures.

4. The French version of the new Article 42(a) of the draft standard financial regulation lays down that the Agency should draw up a list of *créances communautaires* (entitlements of the agency) stating the names of the debtors and the amount of the debt, where the debtor has been ordered to pay by a Court decision having the force of *res judicata* and where no, or no significant, payment has been made for one year following its pronouncement ⁽¹⁾. The expression '*créances communautaires*' (entitlements of the agency) is excessively general; it should be specified that the entitlements concerned are only those included in the executive agencies' operating budget.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 12 July 2007.

For the Court of Auditors
Hubert WEBER
President

⁽¹⁾ There is a similar provision in the Implementing rules of the general Financial Regulation (see Article 81(4) of the Implementing Rules).

OPINION No 6/2007**on the annual summaries of Member States; 'national declarations' of Member States; and audit work on EU funds of national audit bodies***(submitted pursuant to Article 248(4), second paragraph, EC Treaty)**(2007/C 216/02)*

THE EUROPEAN COURT OF AUDITORS,

Having regard to the Treaty establishing the European Community, and in particular Articles 248(4) and 279 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, notably Article 160 C, paragraph 4, and Article 183 thereof,

Having regard to the Court's Opinion No 2/2004 on the 'single audit model' (and a proposal for a Community internal control framework) ⁽¹⁾,

Having regard to the Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾,

Having regard to the Commission's action plan towards an integrated internal control framework ⁽³⁾, in particular Actions 5, 6 and 8 thereof,

Having regard to the European Parliament's decision on discharge for 2005 — Section III — Commission ⁽⁴⁾, in particular points 19 to 30 thereof,

Having regard to the resolution of 11 December 2006 of the Contact Committee of the Supreme Audit Institutions of the European Union on strengthening and facilitating cooperation between the EU SAIs to contribute to the improvement of accountability for Community funds ⁽⁵⁾, in particular point 9 thereof,

HAS ADOPTED THE FOLLOWING OPINION:

I. The opinion covers three different but related issues. The first is the new requirement introduced by the revised Financial Regulation for annual summaries of audits and opinions required by sectoral regulations (such as on paying agencies within

agriculture, and issued by audit authorities in the case of Structural Funds). The second is the national declarations by some Member State authorities, launched as voluntary initiatives within the context of accountability to national parliaments, and audited by the respective national audit bodies. The third is the voluntary reports and certificates of national audit bodies on management of EU funds within their Member States.

Annual summaries

II. The annual summaries of sectoral audits and statements of assurance (opinions) introduced by the revised Financial Regulation represent an additional link between the Commission and Member States in a chain-based model. The first annual summaries are due by 15 February 2008, in relation to 2007.

III. The Commission should undertake adequate supervision of the annual summaries — the quality of which will depend on the quality of the underlying declarations — to ensure they are consistent, comparable and useful. Whereas the legislation restricts the annual summaries to simple sector-specific summaries, the Commission should be encouraged to promote value added to the process, such as identification of common problems, possible solutions and best practices.

IV. Annual summaries are an additional element of internal control. If they highlight strengths and weaknesses they could stimulate improved control of the EU funds in shared management areas.

National declarations

V. National declarations are voluntary initiatives of certain Member States provided from the highest level and addressed to national parliaments. Whether national declarations provide useful additional information will depend on the scope and quality of the work that underlies them.

⁽¹⁾ OJ C 107, 30.4.2004.

⁽²⁾ OJ L 390, 30.12.2006.

⁽³⁾ COM(2006) 9 final.

⁽⁴⁾ P6_TA(2007)0132.

⁽⁵⁾ Resolution CC-R-2006-01.

VI. By focusing and demonstrating national accountability for the use of shared management EU funds, they are intended to lead to improved management. The national declarations can be considered as a new element of internal control, and the Commission and the Court should consider them in this respect.

National audit work

VII. Some national audit bodies audit EU funds on their own initiative and for national reporting purposes. In one case the national audit body issues an opinion on compliance of systems with regulation and the legality and regularity of transactions.

Conditions and constraints for using the potential assurance

VIII. The Court recognises that it may be possible to make use of the potential assurance provided by the audited national declarations and national audit work, while respecting the requirements of international auditing standards. As a precondition to using the potential assurance, the national declarations or national audit work would need to be of appropriate scope, approach and timing, and be carried out according to international standards.

IX. In respect of complying with international auditing standards, a single overriding requirement emerges: **the external auditor wishing to rely on, or use, the opinion or work of others must obtain direct evidence of the sound basis of that work**. The time taken by the Court for obtaining such evidence should be compared with the time saved through reduced direct testing (or other procedures) of the audit area.

X. The 'national' nature of the national declarations and national audit work contrasts with the current horizontal nature of the Court's work where conclusions are generally provided by budgetary area rather than by individual Member State. To have a potential impact on the Court's work the national declarations or national audit work would need to be of adequate and comparable scope, approach and timing. However, regardless of the Court's use of this work, it recognises the potential effect of national declarations and national audit work on raising awareness within Member States of the importance of internal control of EU funds.

XI. Both the sectoral opinions (underpinning the annual summaries) and the various national declaration and audit initiatives have a common characteristic: they examine and conclude on systems. National declarations may also provide specific opinions on the legality and regularity of the underlying

transactions. Experience suggests that the major risk for the latter occurs in the reliability of the information supplied by beneficiaries when claiming EU funds, not in the way that information is processed by Member States or the Commission. A declaration that systems are functioning as required by EU regulations may not in itself provide assurance about the legality and regularity of the transactions concerned.

An audit approach

XII. Being an integral part of the internal control system means that annual summaries will be integrated into the Court standard audit procedures. This could include assessing the contribution annual summaries make to overall internal control and how the Commission manages the process and uses the information they provide for its supervisory role.

XIII. One focus for the Court's approach to national declarations or national audit work should be their impact on, and use by, its principal auditee — the Commission. This could include assessing how the Commission provides guidance, how it takes the findings into consideration, how it assures itself of their reliability, and how it adapts its own control activities in response.

XIV. So far as the Court's statement of assurance is concerned, a distinction should be made between national declarations per se, and national declarations audited by the national audit bodies. National declarations share some of the characteristics of management representations: they may contain valuable information about the implementation of the EU budget, but do not themselves constitute conclusive audit evidence. Nor is it the Court's responsibility to audit their reliability, unless the Court wishes to use them.

XV. Opinions produced by national audit bodies on systems and/or the legality and regularity of income and expenditure, whether freestanding or as opinions on national declarations, may constitute audit evidence on which the Court can place reliance, subject to international auditing standards. The Court will take them into account when planning and undertaking its work.

XVI. In practice, the assurance provided on systems could be used in planning financial/compliance audits both in assessing control risk and the application of the audit assurance model. If tested and found to be reliable the work of the national audit bodies could be used by the Court in the context of its own system testing — including tests of controls — potentially reducing the amount of direct substantive testing required.

XVII. As explained above, if the Court is to rely on the work of the national audit bodies it will need to satisfy itself about the suitability and quality of the work done. In practice, this will require cooperation between the Court and the national audit bodies bilaterally.

Moving forward

XVIII. In order to contribute to improved management the Commission should consider using the annual summaries to identify, and promote, best practices within (and between) Member States. The Commission should examine the relationship

between compliance of systems with regulation and the criteria used for judging the acceptable level of legality and regularity of underlying transactions through the sectoral opinions underlying the annual summaries and the national declarations.

XIX. The approach to the audit of EU funds by the national audit bodies is being addressed within the mandate of the Contact Committee Working Group responsible for 'developing common auditing standards and comparable audit criteria tailored for the EU area' ⁽¹⁾. Common standards of approach and methods may increase the potential for the Court to rely on the work of the national audit bodies, subject to the need to obtain direct evidence of the quality of that work.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 19 July 2007.

For the Court of Auditors
Hubert WEBER
President

⁽¹⁾ Resolution CC-R-2006-01 of the Contact Committee of the Supreme Audit Institutions of the European Union, 11.12.2006.