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## Information and Notices

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| <u>Notice No</u> | <u>Contents</u>   | <u>Page</u> |
|------------------|---|-------------|
|                  | I <i>Information</i>  |             |
|                  | <b>Court of Auditors</b>  |             |
| 2002/C 285/01    | Opinion No 9/2002 concerning the financing of the common agricultural policy . . . . .  | 1           |
| 2002/C 285/02    | Opinion No 10/2002 on a Commission proposal for amendment of the constituent acts of Community Bodies following the adoption of the New Financial Regulation. . . . . | 4           |

## I

*(Information)*

## COURT OF AUDITORS

**OPINION No 9/2002****concerning the financing of the common agricultural policy***(pursuant to the second subparagraph of Article 248(4) of the EC Treaty)*

(2002/C 285/01)

## EXPLANATORY MEMORANDUM

Under the procedure for clearing the accounts of the European Agricultural Guidance and Guarantee Fund, the Commission decides whether expenditure by the Member States' paying agencies to carry out the common agricultural policy is in conformity with the relevant regulations and can be definitively charged to the Community budget or should be disallowed.

At the moment disallowance is only permitted in respect of expenditure taking place in the 24 months before the Commission notifies a Member State that expenditure appears to have been irregularly incurred. The Court has criticised the two-year time limit as unrealistically short (for example the Commission's clearance of accounts unit examines all expenditure on a three-year cycle).

The Commission proposes to extend the retrospective time limit from two to three years. The attached Opinion supports this proposal and suggests no amendments.

## THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

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

Having regard to the Financial Regulation applicable to the general budget of the European Communities<sup>(1)</sup>, as amended by Council Regulation (EC, ECSC, Euratom) No 2673/1999 of 13 December 1999<sup>(2)</sup>, and in particular Articles 4, 19(6) and 102(3) thereof,

Having regard to the proposal for a Council Regulation amending Council Regulation (EC) No 1258/1999 on the financing of the common agricultural policy<sup>(3)</sup>,

Having regard to the Commission's request, dated 11 June 2002 for the Court of Auditors' opinion on this proposal,

## HAS ADOPTED THE FOLLOWING OPINION:

The Court of Auditors welcomes the Commission's proposal to amend the Council Regulation on the financing of the common agricultural policy in order to extend the maximum period to which a correction to expenditure may be applied from 24 months to 36 months preceding the Commission's written notification of the results of its checks to the Member State concerned.

In its Special Report No 22/2000 on evaluation of the reformed clearance of accounts procedure<sup>(4)</sup> (see paragraph 89), the Court has pointed out the negative effect of the 24 month rule on the total amount of corrections made.

This modification will reduce the risk that weaknesses detected in Member States' systems may not be penalised simply because the Commission has not been able to cover all areas of expenditure within a two-year cycle. Indeed, the 36-month limit is more closely in line with the Commission's current capacity to check all expenditure on a cyclical basis.

<sup>(1)</sup> OJ L 356, 31.12.1977, p. 1.

<sup>(2)</sup> OJ L 326, 18.12.1999, p. 1.

<sup>(3)</sup> Commission Document reference 2002/0125 (CNS) — COM(2002) 293 final.

<sup>(4)</sup> OJ C 69, 2.3.2001, p. 23.

It remains important for the Commission to ensure that it communicates its findings to the Member States in a timely manner, unfortunately this has not always been the case (see Annual Report concerning the financial year 2000, paragraph 2.58 <sup>(1)</sup>).

The Court has no proposals to amend the Commission's text. The annexed table shows the change proposed by the Commission and the reason for the Court's endorsement.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 25 and 26 September 2002.

*For the Court of Auditors*

Juan Manuel FABRA VALLÉS

*President*

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<sup>(1)</sup> OJ C 359, 15.12.2001, p. 77.

## ANNEX

| Extant legislation   | Commission's proposal  | Court's comment   |
|--|--|---|
| Council Regulation (EC) No 1258/1999 of 17 May 1999 on the financing of the common agricultural policy   |  |   |
| <p><b>Point b of the fifth subparagraph of Article 7(4)</b></p> <p>'expenditure for a measure or action referred to in Article 3 in respect of which the final payment was effected prior to 24 months preceding the Commission's written communication of the results of those checks to the Member State concerned.'</p> | <p><b>Article 1</b></p> <p><b>Point b of the fifth subparagraph of Article 7(4) to read:</b></p> <p>'expenditure for a measure or action referred to in Article 3 in respect of which the final payment was effected prior to 36 months preceding the Commission's written communication of the results of those checks to the Member State concerned.'</p>  | <p>By extending the period from 24 to 36 months the Community's financial interests will be better protected. The risk of loss to the Fund due to the cut-off of 24 months will be greatly reduced since the Commission's checks on the main expenditure areas are more likely to be completed within such a three-year time frame.</p> |
|  | <p><b>Article 2</b></p> <p>This Regulation shall enter into force on the seventh day following its publication in the <i>Official Journal of the European Communities</i>.</p> <p>It shall apply to expenditure in respect of which the Commission's written communication of the result of the checks to the Member State dates after the entry into force of this Regulation, excluding expenditure effected more than 24 months before the date of entry into force of this Regulation.</p> <p>This Regulation shall be binding in its entirety and directly applicable in all Member States.</p> | <p>This is an appropriate rider since it ensures that there is no retrospective effect on corrections for which procedures are under way.</p>   |

**OPINION No 10/2002**

**on a Commission proposal for amendment of the constituent acts of Community Bodies following the adoption of the New Financial Regulation**

*(pursuant to the second subparagraph of Article 248(4) of the EC Treaty)*

(2002/C 285/02)

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES

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

Having regard to a request by the European Commission, of 18 July 2002, for an opinion of the Court on a proposal for amendment of the constituent acts of Community Bodies (document COM(2002)406 final),

HAS ADOPTED THE FOLLOWING OPINION:

1. The proposal covers the following areas with regard to the bodies referred to in Article 185(1) of the new Financial Regulation applicable to the general budget of the European Communities <sup>(1)</sup> (hereinafter called The EC Financial Regulation):

- appointment and renewal of the mandate of the Director of the body,
- internal audit,
- procedure for adopting the financial rules of the body,
- preparation and adoption of the budget and of the establishment plan,
- submission of the annual accounts and the discharge procedure,
- adoption of annual report on the activities of the body,
- application of Regulation No 1049/2001 to documents of the bodies.

2. The provisions for the nomination of a director of the body allow in particular the possibility of renewing his mandate in a procedure not open to other candidates. It is provided that such a prolongation of mandate can only be proposed by the Commission and that it is the administrative board of the body which will take the final decision. In the Court's opinion, such a procedure would lead to increased dependency of the director of the body on those in the Commission responsible for proposing the prolongation of his mandate.

3. As far as internal audit is concerned the relevant provision repeats literally the provision laid down in Article 185(3) of the EC Financial Regulation. The Court sees no reason to repeat a provision which is already laid down in a legislative text having the same legal value.

4. The proposal does not provide for consultation of the Court of Auditors before adopting or modifying the financial regulation of the bodies. In the future only the Commission will be consulted. In the explanatory memorandum the following justification is given by the Commission: 'Competence for the adoption of each Agency's individual Financial Regulation will rest with the respective body's management board or equivalent (after the Commission has been consulted). This will harmonise the individual procedures considerably. Currently, responsibility for adopting each body's Financial Regulation rests either with the Council or with the management board or equivalent, with or without the involvement of the Commission and the Court of Auditors in the process. These disparities are simply historical accidents in the development of the agencies, and are not objectively justified'. This explanation is incorrect as far as the role of the Court is concerned. Currently all the founding acts of the Community bodies require the Court's opinion before the adoption of their financial regulation <sup>(2)</sup>.

<sup>(2)</sup> Article 12(1) of Regulation (EEC) No. 337/75 of 10 February 1975 (The European Centre for the Development of Vocational Training, Thessaloniki).

Article 16 of Regulation (EEC) No 1365/75 of 26 May 1975 (The European Foundation for the Improvement of Living and Working Conditions, Dublin).

Article 14 of Regulation (EEC) No 1210/90 of 7 May 1990 (The European Environment Agency, Copenhagen).

Article 12 of Regulation (EEC) No 1360/90 of 7 May 1990 (The European Training Foundation, Turin).

Article 11(12) of Regulation (EEC) No 302/93 of 8 February 1993 (The European Monitoring Centre for Drugs and Drug Addiction, Lisbon).

Article 57(11) of Regulation (EEC) No 2309/93 of 22 July 1993 (The European Agency for the Evaluation of Medicinal Products, London).

Article 15 of Regulation (EC) No 2062/94 of 18 July 1994 (The European Agency for Safety and Health at Work, Bilbao).

Article 15 of Regulation (EC) No 2965/94 of 28 November 1994 (The Translation Centre for the Bodies of the EU, Luxembourg).

Article 12(12) of Regulation (EC) No 1035/97 of 2 June 1997 (The European Monitoring Centre on Racism and Xenophobia, Vienna).

Article 9 of Regulation (EC) No 2667/2000 of 5 December 2000 (The European Agency for Reconstruction, Thessaloniki).

Article 25(9) of Regulation 178/2002 of 28 January 2002 (The European Food Safety Authority).

Article 52 of Regulation (EC) No 1592/2002 of 15 July 2002 (The European Aviation Safety Authority).

Article 21 of Regulation (EC) No 1406/2002 of 27 June 2002 (The European Maritime Safety Agency).

Article 37 of Council Decision (2002/187/JHA) of 28 February 2002 (Eurojust).

Article 138 of Regulation (EC) No 40/94 of 20 December 1993 (The Office for Harmonization in the Internal Market, Alicante).

Article 112 of Regulation (EC) No 2100/94 of 27 July 1994 (The Community Plant Variety Office, Angers).

<sup>(1)</sup> OJ L 248, 16.9.2002, p. 1.

The Court regrets that the proposal gives little importance to the financial regulation of Community bodies by depriving them of the consultative service of the Court. In the opinion of the Court, the Commission given the nature of its function does not have the role of being the financial conscience of the Communities and of ensuring the respect of the principles of budgetary law and public accounting as far as the financial rules of the Community bodies are concerned.

5. As far as the preparation of the budget is concerned it is foreseen that:

- the Administrative Board shall, by 15 February, prepare an estimate of revenue and expenditure on a proposal of a draft drawn by the Director,
- the Administrative Board shall by 31 March, transmit this estimate together with a draft establishment plan to the European Commission,
- these statements shall be transmitted by the Commission to the European Parliament and to the Council and the budget authority decides on the subsidy and the establishment plan,
- the Administrative Board shall adopt the definitive budget of the body before the beginning of the budget year.

The Court has no comment on this matter.

6. With regard to the submission of the accounts and the discharge procedure the proposal provides as follows:

- by 1 March, following each financial year, the accounting officer of the body sends the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management of the year,
- by 31 March the Commission's accounting officer transmits the body's provisional accounts together with the report on budgetary and financial management to the Court of Auditors. The report on budgetary and financial management is also sent to the Council and to the Parliament,
- the Director draws up the final accounts after having received the Court of Auditors' observations on the provisional accounts pursuant to Article 129 of the EC Financial Regulation,
- the Administrative Board of the body delivers an opinion on these final accounts,
- by 1 July the Director transmits the final accounts to the European Parliament, to the Council, to the Commission and to the Court of Auditors together with the opinion of the Administrative Board,

- by 30 September the Director sends the Court of Auditors a reply to the observations of the Court. He also sends this reply to the Administrative Board,
- the European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director in respect of the implementation of the budget for year N.

As far as the provisional accounts are concerned, these provisions make explicit what is already provided for in the EC Financial Regulation. Nevertheless, the Court takes the opportunity to recall its doctrine on the subject as pointed out in its Opinion No 2/2001 <sup>(1)</sup>:

'The provisional financial statements are exhaustive and consistent documents, and are duly drafted by the stipulated deadlines. They are provisional only in that the Commission has not yet formally adopted them and that they may, where appropriate, be subject to corrections proposed by the Court. However, the Court's task cannot under any circumstances involve helping the Commission to draft the final consolidated financial statements. This responsibility, of an administrative and accounting nature, lies solely with the Commission and is incompatible with the Court's external control responsibility.'

7. As far as the annual activity reports of the Community bodies are concerned, the Court finds it astonishing that the deadline for delivering these reports is set on 15 June of the year N + 1. Such a delay of almost six months following the end of the year in question is too long. As a consequence, the Court will not be able to take into account these annual activity reports as the Court is required to transmit its observations concerning the accounts and the management of Community bodies by 15 June at the latest.

8. The Court recalls that the Commission, in its proposal for a Commission Regulation on the Framework Financial Regulation for the bodies referred to in Article 185 of the EC Financial Regulation, has proposed a provision <sup>(2)</sup> for suspending the Director from his duties as authorising officer. The Court agrees that such a procedure should be established as a safeguard mechanism. However, it is difficult to imagine a situation where the Director is suspended from his duties as authorising officer while continuing to assume his other tasks as Director of the Community body.

The Court suggests therefore that a provision concerning a possible suspension of the Director be inserted in the constituent acts

<sup>(1)</sup> OJ C 162, 5.6.2001, p. 1, comments on Article 118.

<sup>(2)</sup> Article 46 of SEC (2002) 836 final of 17 July 2002.

of Community Bodies rather than in the Framework Financial Regulation. Such a provision could read as follows: 'In order to avoid serious consequences for the interests of the Community

body, the management board may decide to suspend the Director from his duties. It shall appoint a provisional Director who shall remain in office until the board has taken a final decision.'

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 25 and 26 September 2002.

*For the Court of Auditors*

Juan Manuel FABRA VALLÉS

*President*

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