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<u>Notice No</u>	<u>Contents</u>	<u>Page</u>
	III <i>Preparatory acts</i>	
	COURT OF AUDITORS	
2014/C 94/01	Opinion No 1/2014 ( <i>pursuant to Article 325(4) TFEU</i> ) on the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters	1
2014/C 94/02	Opinion No 2/2014 ( <i>pursuant to Article 336 TFEU</i> ) concerning a proposal for a regulation of the European Parliament and of the Council adjusting with the effect from 1 July 2011 the remuneration and pension of the officials and other servants of the European Union and the correction coefficients applied thereto and concerning a proposal for a regulation of the European Parliament and of the Council adjusting with the effect from 1 July 2012 the remuneration and pensions of the officials and other servants of the European Union and the correction coefficients applied thereto .....	3

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## III

*(Preparatory acts)*

## COURT OF AUDITORS

## OPINION No 1/2014

*(pursuant to Article 325(4) TFEU)*

**on the proposal for a Regulation of the European Parliament and of the Council amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters**

*(2014/C 94/01)*

THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 325(4) thereof,

Having regard to the proposal for a regulation of the European Parliament and of the Council amending Council Regulation (EC) No 515/97 on mutual assistance between the administrative authorities of the Member States and cooperation between the latter and the Commission to ensure the correct application of the law on customs and agricultural matters <sup>(1)</sup>,

Having regard to the request for an opinion addressed to the Court of Auditors by the European Parliament on 19 December 2013,

HAS ADOPTED THE FOLLOWING OPINION:

#### INTRODUCTION

1. The objective pursued by the draft regulation is the sound application of Union legislation in the fields of customs and agriculture, providing in particular the Commission but also the Member States' customs and other authorities with more effective mechanisms to assist it in preventing, investigating and prosecuting operations that are in breach of customs and agricultural legislation. To that end the proposal:

(a) seeks to improve the fight against customs-related fraud and, in particular, cases of misdeclaration of origin, misdescription of goods and misuse of the transit system <sup>(2)</sup>, by:

- (i) establishing a central database of container movements <sup>(3)</sup>, imports, exports and transit-related data;
- (ii) clarifying the legal basis for sharing customs-related data between the Commission and the Member States;
- (b) empowers the Commission to obtain directly from private sector companies the documents supporting import and export declarations, with a view to accelerating customs-related investigation procedures and thus reducing the number that are time-barred after three years <sup>(4)</sup>;
- (c) clarifies three other issues in the existing Regulation <sup>(5)</sup>, in that it:
  - (i) opens up the possibility of restricting visibility in databases to selected users;
  - (ii) streamlines data protection supervision;
  - (iii) removes legal uncertainty as to the admissibility of information obtained through mutual assistance as evidence in national criminal proceedings.

2. The Court has examined the Commission proposal in the light of the results of its audit work.

#### GENERAL REMARKS

3. The Court considers that the proposal will contribute to achieving the objectives pursued by the regulation, subject to some specific remarks which are referred to in paragraphs 5 to 8. Furthermore, the proposal to amend Article 18b and the directory provided for in Articles 18a and 18g of the draft Regulation addresses concerns expressed in paragraphs 9 and

<sup>(1)</sup> COM(2013) 796 final of 25 November 2013.

<sup>(2)</sup> See paragraph 3.3.1 of the impact assessment that accompanied the Commission's legislative proposal (Commission Staff Working Document SWD(2013) 483 final of 25 November 2013).

<sup>(3)</sup> Known in the shipping industry as Container Status Messages (CSMs).

<sup>(4)</sup> See paragraph 3.3.2.1 of the impact assessment that accompanied the Commission's legislative proposal (Commission Staff Working Document SWD(2013) 483 final of 25 November 2013).

<sup>(5)</sup> *Ibid.*, paragraph 3.3.2.2.

10 of the Court's opinion No 3/2007<sup>(6)</sup>, issued on the last occasion that this Regulation was amended. The Court also considers useful the clarification in Article 12 that information obtained through mutual cooperation may constitute admissible evidence in criminal proceedings in Member States. For these reasons, the Court welcomes the Commission's proposal.

4. As the European Data Protection Supervisor is the competent authority for questions relating to data protection supervision and will have to be consulted accordingly by the Commission, the Court does not address that matter in the present opinion.

#### SPECIFIC REMARKS

5. Articles 18a and 18g of the proposal set out the arrangements by which the Commission will establish and analyse a directory of data received from public or private service providers active in the international supply chain and share this data with the Member States' authorities. Articles 18a(6) and 18g(3) limit access to this directory to certain Commission departments and national authorities and make the transfer of data to other institutions subject to specific conditions. However, these provisions of secondary law cannot restrict the Court's audit powers established through primary law, namely Article 287(3) TFEU. Whilst, strictly speaking, it is not necessary to make reference to the audit powers of the Court in the amended Regulation (EC) No 515/97, it would nonetheless be useful to point out in the relevant Articles that those provisions are 'without prejudice to the Court of Auditor's right of access to documents and information under Article 287(3) TFEU'. This would ensure that all parties involved in the implementation of the Regulation are aware of the audit powers of the Court and that these cannot be made subject to restrictive conditions. For the same reason, a reference to the Court of Auditors in Article 29, concerning access to the Customs Information System, would be useful.

6. Articles 18c to 18f set out the arrangements by which the Commission will obtain and process information about

container movements into, inside and out of the customs territory of the Union. This information will be provided by public and private service providers, in effect the shipping companies. The World Shipping Council (WSC), which represents approximately 90 % of the global liner vessel capacity<sup>(7)</sup>, was consulted as part of preparing the legislative proposal. This procedure gives a degree of assurance that the proposal is practicable and will not result in unreasonable costs for shipping companies<sup>(8)</sup>.

7. The Court notes that there is no provision in the draft legislation for any verification of the completeness, reliability and timeliness of the data provided by the shipping companies. Furthermore, no resources are set aside in the legislative financial statement for such a procedure. Completeness, reliability and timeliness of the data are risks that need to be addressed, having due regard to the cost of any controls put in place.

8. Article 18h of the proposed Regulation empowers the Commission (OLAF) to obtain directly from economic operators documents supporting import and export declarations when these are required for investigations. The aim is to speed up OLAF investigations and thus to reduce the risk of time-barring. The Court considers that this measure is appropriate. However, in the interest of sincere and effective cooperation between the Commission and the Member States, it would be appropriate to provide in this Article:

- (a) that the Commission should inform the national authorities of the Member States concerned about any requests made to economic operators; and
- (b) that the Commission may request assistance from the competent national authorities to obtain documents, particularly where economic operators do not comply immediately with its request.

This opinion was adopted by Chamber CEAD, headed by Mr Igors LUDBORŽS, Member of the Court of Auditors, in Luxembourg at its meeting of 25 February 2014.

*For the Court of Auditors*

Vitor Manuel da SILVA CALDEIRA

*President*

<sup>(6)</sup> OJ C 101, 4.5.2007, p. 4.

<sup>(7)</sup> See paragraph 2.4.2 of the impact assessment that accompanied the Commission's legislative proposal (Commission Staff Working Document SWD(2013) 483 final of 25 November 2013).

<sup>(8)</sup> *Ibid*, page 27. This approach is based on the experience of the WSC in implementing similar requirements of the authorities of the United States of America.

**OPINION No 2/2014***(pursuant to Article 336 TFEU)*

**concerning a proposal for a regulation of the European Parliament and of the Council adjusting with the effect from 1 July 2011 the remuneration and pension of the officials and other servants of the European Union and the correction coefficients applied thereto**

**and**

**concerning a proposal for a regulation of the European Parliament and of the Council adjusting with the effect from 1 July 2012 the remuneration and pensions of the officials and other servants of the European Union and the correction coefficients applied thereto**

(2014/C 94/02)

THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 336 thereof,

Having regard to the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (hereinafter 'the Staff Regulations') <sup>(1)</sup>,

Having regard to the Judgment of the Court of Justice in Case C-63/12, issued on 19 November 2013,

Having regard to the Commission proposals of 10 December 2013 <sup>(2)</sup>,

Having regard to the request of the Council for an opinion on the abovementioned proposals by 5 March 2014 at the latest, received at the Court on 26 February 2014,

Having regard to the request of the European Parliament for an opinion on the abovementioned proposals received at the Court on 3 March 2014,

Whereas pursuant to Article 65 of the Staff Regulations the remuneration of the officials and other servants of the European Union shall be updated every year, taking into account the economic and social policy of the European Union;

Whereas the 2011 and 2012 adjustments are still pending;

Whereas in its Judgment in Case C-63/12 relating to the 2011 adjustment the Court of Justice emphasised <sup>(3)</sup> that where the Council determines, on the basis of objective data supplied by the Commission, that there is a serious and sudden deterioration in the economic and financial situation within the

Union within the meaning of Article 10 of Annex XI to the Staff Regulations, the Commission is obliged to submit to the European Parliament and to the Council appropriate proposals on the basis of that Article. In that situation, the Commission has, however, a margin of discretion of its own as regards the content of those proposals, namely which measures it deems to be appropriate, taking into account the given economic and social situation and, where necessary, other factors to be taken into consideration, such as those relating to management of human resources, and in particular the needs of recruitment;

Whereas Case C-86/13 relating to the 2012 adjustment is still pending;

Whereas the Commission considers as appropriate to propose an adjustment to remuneration and pensions in Belgium and Luxembourg of 0,9 % with effect from 1 July 2011 and of another 0,9 % with effect from 1 July 2012;

Whereas the Commission refers, as a basis for its proposals, to the provisions of the 'exception clause' (former Article 10 of Annex XI to the Staff Regulations) and to its margin of appraisal under this clause;

Whereas amendments to the Staff Regulations concerning the procedure for annual remuneration updates have been adopted and entered into force <sup>(4)</sup> six weeks before the Commission submitted the proposals which are the subject of this opinion;

Whereas the former 'exception clause' has been replaced by 'moderation and exception clauses' (Articles 10 and 11 of Annex XI to the Staff Regulations),

HAS ADOPTED THE FOLLOWING OPINION:

1. The Court notes that the Commission refers to its margin of appraisal as regards the content of appropriate proposals for adjusting remunerations and pensions.

<sup>(1)</sup> 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).

<sup>(2)</sup> COM(2013) 895 final and COM(2013) 896 final.

<sup>(3)</sup> See paragraph 74 of the judgment.

<sup>(4)</sup> See point 44 of Article 1 of Regulation (EU, Euratom) No 1023/2013 of the European Parliament and of the Council of 22 October 2013 amending the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (OJ L 287, 29.10.2013, p. 15).

2. The Court notes that the wording of the recital 3 in both proposals might give rise to misunderstandings as it does not clearly distinguish between a loss of purchasing power and a nominal adjustment to remuneration and pensions. Furthermore, there is insufficient clarity as to the basis for the computation of the proposed adjustments of 0,9 %.

3. The Court draws attention to the fact that the 'exception clause' as a basis for the Commission's proposals is no longer in force.

4. The Court suggests considering whether the current rules set out in Annex XI to the Staff Regulations, and, if necessary, the rules of the moderation and exception clauses therein, could be used to deal with the outstanding annual updates for 2011 and 2012. These rules provide a procedure which is based on verified and objective data.

5. The Court notes that the proposed adjustments will require budgetary appropriations to be made available.

This opinion was adopted by Chamber IV, headed by Mr Louis GALEA, Member of the Court of Auditors, in Luxembourg on 3 March 2014.

*For the Court of Auditors*

Vitor Manuel da SILVA CALDEIRA

*President*

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