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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

amending Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities, as regards the European external action service

{SEC(2010) 257}

EXPLANATORY MEMORANDUM

The present Commission proposal aims at amending the Financial Regulation in line with the creation of the European External Action Service (hereinafter EEAS) as foreseen in the Lisbon Treaty. The Financial Regulation (FR) governs all the rules and procedures applicable to the use of EU funds and must be respected by all institutions. It is completed by Implementing Rules (IR) which should also be amended, in a separate proposal, to accommodate for the creation of the EEAS. Specificities for the management of the EEAS Staff are put forward in a separate Commission proposal to amend the Staff Regulation.

The changes proposed build on the guidelines endorsed by the European Council of October 29-30, 2009 for the creation of the future EEAS as a *sui generis* service.

The Commission will present, as foreseen in Article 184 of the Financial Regulation, its proposal for the triennial review of the Financial Regulation at the end of the first semester 2010. However, the Commission considers that an ad-hoc revision of the FR is inevitable before and separately from the triennial review if the EEAS is to be put in place rapidly. Other aspects relating to the implementation of the Lisbon Treaty have been covered by a separate proposal adopted by the Commission on 3 March 2010 (COM(2010) 71).

(1) Main changes relating to the creation of the EEAS

Article 27(3) of the Treaty on the European Union (TEU) foresees that the EEAS assist the High Representative (HR) to fulfil his mandate and that the organisation and functioning of the service shall be established by a decision of the Council, on a proposal from the HR after consulting the European Parliament and after obtaining the consent of the Commission.

In its conclusions, the European Council of October 29-30, 2009 has endorsed some guidelines for the creation of the future EEAS as a *sui generis* service and invited the High Representative to put the EEAS in place '*by the end of April 2010*'.

In budgetary terms, the EEAS will be treated as an institution in the sense of Article 1 of the Financial Regulation so that it will have budgetary autonomy, i.e. its own section in the EU budget. It will implement its own administrative expenditure (like all other institutions) and will therefore receive discharge from the European Parliament for it. The European Parliament will therefore exercise its full budgetary and control powers towards the EEAS.

Moreover, current Delegations of the Commission around the world become Union Delegations and will be part of the EEAS. Because these Delegations will continue implementing external aid, which is currently for most of them their main task, ways should be found to allow them to implement operational expenditure while they are not anymore part of the Commission, taking into account that the concerned part of their staff, i.e. operational and financial staff, will remain Commission staff. The Commission has been particularly attentive that the present proposal allow to EEAS to fulfil this task of a unified external action, without leading to a weakening of sound financial management, accountability and the protection of the financial interests of the Union. Naturally, the European Parliament will continue to grant discharge to the Commission for the implementation of the Commission section of the Budget, including operational appropriations implemented by Heads of Union Delegations who will act as sub-delegated authorising officers of the Commission.

To achieve this purpose, the modifications introduced in the Financial Regulation aim at integrating the EEAS within the financial governance framework of the Commission whenever it participates in the implementation of its operational budget. In this context, it is essential that the EEAS builds on the experience, guidance, support and training for financial management and internal control in the external relations field which have been developed by the Commission over many years.

The proposed approach is that Heads of Union Delegations be given sub-delegated implementation powers by the responsible Commission Directors General (DG). They would become authorising officers by sub-delegation (AOSDs) of the Commission and would be responsible before the DG which has sub-delegated budget implementation tasks to them. Specific rules are therefore proposed so that Heads of Union Delegations, when they implement part of the Commission section of the budget apply the Commission rules for the implementation of the budget and are submitted to the same duties and obligations as any other sub-delegated authorising officer of the Commission. To this effect the Commission may give them instructions where necessary and appropriate.

Current rules on OLAF will also apply to Heads of Union Delegations in cases of financial irregularities relating to the management of appropriations from the EEAS section of the Budget and appropriations sub-delegated to them from the Commission section of the Budget. No specific provision concerning OLAF is required in the Financial Regulation. However, the present Commission proposal includes a new provision so that the panel of irregularities of the Commission is also the panel of irregularities for the EEAS in cases where the Commission sub-delegates implementation powers to Heads of Union Delegations.

New provisions are also proposed to ensure that the HR plays a central role for the proper coordination and exchange of information between the EEAS and the Commission.

Finally, in order to ensure an efficient management of Union Delegations, it is proposed that administrative and support expenditure which finance common costs in Delegations should be executed by a single support service, whatever the section of the Budget in which the respective appropriations are entered. To that effect, the possibility for detailed rules should be foreseen in Article 50 FR, to be convened with the Commission.

(2) Commission Staff Working document concerning the Implementing Rules

To complement the present Commission proposal to amend the Financial Regulation, a Commission Staff working document presents the changes required in the Implementing Rules. These changes will be adopted by the Commission once the amended FR is adopted and will concern the specific provisions which should apply to Heads of Delegation when they act as sub-delegated authorising officers of the Commission, in particular:

- the fact that they have to sign the Charter for sub-delegated authorising officers, which stipulates in detail their duties and obligations, before starting to implement the EU Budget;
- the Internal Rules of the Commission for the execution of the Budget;
- the code of professional standards adopted by the Commission;
- the panel of irregularities of the Commission (complementary provisions to the ones already set out in the FR are enshrined in the Implementing Rules).

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THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the functioning of the European Union, and in particular Article 322 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the opinion of the Court of Auditors¹,

Acting in accordance with the ordinary legislative procedure,

Whereas:

- (1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities² (hereinafter the Financial Regulation), lays down the budgetary principles and financial rules which should be respected in all legislative acts. It is necessary to amend certain provisions of the Financial Regulation in order to take account of the amendments introduced by the Treaty of Lisbon.
- (2) The Treaty of Lisbon establishes a European External Action Service (hereinafter “EEAS”). According to the conclusions of the European Council of 29 and 30 October 2009, the EEAS is a service of a sui generis nature and should be treated as an institution for the purposes of the Financial Regulation.
- (3) Given that the EEAS should be treated as an institution for the purposes of the Financial Regulation, the European Parliament is to grant discharge to the EEAS for the implementation of the appropriations voted in the EEAS section of the Budget. The European Parliament should also continue to grant discharge to the Commission for the implementation of Commission's section of the Budget, including operational appropriations implemented by Heads of Delegations who are sub-delegated authorising officers of the Commission.

¹ OJ C , , p. .

² OJ L 248, 16.9.2002, p. 1.

- (4) The Lisbon Treaty foresees that Commission Delegations become part of the EEAS as Union Delegations. In order to ensure their efficient management, all administrative and support expenditure of Union Delegations which finance common costs should be executed by a single support service. To that effect, the Financial Regulation should foresee the possibility for detailed rules, to be agreed with the Commission, in order to facilitate the implementation of the Union Delegations' operating appropriations entered in the EEAS and the Council sections of the Budget.
- (5) It is necessary to ensure the continuity of the functioning of Union Delegations and in particular the continuity and efficiency in the management of external aid by the Delegations. Therefore the Commission should be authorised to subdelegate its powers of budget implementation of operational expenditure to Heads of Union Delegations belonging to EEAS as a separate institution. Furthermore, where the Commission implements the budget under direct centralised management, it should be allowed to do so also through sub-delegation to Heads of Union Delegations. The authorising officers by delegation of the Commission should continue to be responsible for the definition of internal management and control systems, while the Heads of Union Delegations should be responsible for the adequate set up and functioning of internal management and control systems and for the management of the funds and the operations carried out within their Delegations and they should report twice a year to that effect.
- (6) In order to comply with the principle of sound financial management, Heads of Union Delegations, when acting as sub-delegated authorising officers of the Commission, should apply the Commission rules and should be subject to the same duties, obligations and accountability as any other sub-delegated authorising officer of the Commission. For those purposes, they should also refer to the Commission as their institution where required.
- (7) The Commission retains full responsibility for the discharge procedure as concerns the Commission section of the budget implemented by EEAS. In order to allow the Commission to fulfil its responsibilities, the Heads of Union Delegations should provide the necessary information. The High Representative of the Union for Foreign Affairs and Security Policy should facilitate the cooperation between Union Delegations and Commission departments.
- (8) The accounting officer of the Commission remains responsible for the entire Commission section of the Budget, including accounting operations relating to appropriations sub-delegated to Heads of Union Delegations. Therefore, it is necessary to clarify that the responsibilities of the accounting officer of the EEAS should only concern the EEAS section of the budget to avoid any overlapping of responsibilities.
- (9) In order to ensure coherence and equality of treatment between sub-delegated authorising officers who are EEAS staff and those who are Commission staff, as well as proper information of the Commission, the special financial irregularities panel of the Commission should also be responsible for handling irregularities within the EEAS where the Commission sub-delegated implementation powers to Heads of Union Delegations. Nonetheless, in order to maintain the link between financial management responsibility and disciplinary action, the Commission should be entitled to request the High Representative of the Union for Foreign Affairs and Security Policy to initiate proceedings if irregularities concerning the competencies of the

Commission sub-delegated to the Heads of Union Delegations were found by the panel. In such a case the High Representative should take the appropriate action in accordance with the Staff Regulation.

- (10) In order to ensure coherence, efficiency and cost-effectiveness of financial control, the internal auditor of the Commission should act as the internal auditor of the EEAS in respect of the budget implementation of both the Commission and the EEAS sections of the Budget.
- (11) Council Regulation (EC, Euratom) No 1605/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

Regulation (EC, Euratom) No 1605/2002 is amended as follows:

- (1) In the first subparagraph of Article 1(2), the words 'the European External Action Service' are inserted in front of 'the Economic and Social Committee'.
- (2) In Article 28(1), the first subparagraph is replaced by the following:

"Any proposal or initiative submitted to the legislative authority by the Commission, the High Representative of the Union for Foreign Affairs and Security Policy or a Member State, which may have an impact on the budget, including changes in the number of posts, must be accompanied by a financial statement and the evaluation provided for in Article 27(4) of this Regulation."
- (3) In Article 30(3), the first subparagraph is replaced by the following:

"The Commission shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from the budget held by it when the budget is implemented on a centralised basis pursuant to Article 53a, and information on the beneficiaries of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management."
- (4) In the first paragraph of Article 31, to the words 'the European External Action Service' are inserted in front of 'the Economic and Social Committee'.
- (5) In the first paragraph of Article 50, the following sentence is added:

"However, detailed rules may be agreed with the Commission in order to facilitate the implementation of the Union Delegations' operating appropriations entered in the EEAS and the Council sections of the Budget."
- (6) In Article 51, the following paragraphs are added:

"However, the Commission may delegate its powers of budget implementation concerning the appropriations of its own section to the Heads of Union Delegations. When Heads of Union Delegations act as sub-delegated authorising officers of the Commission, they shall apply the Commission rules for the implementation of the

budget and shall be submitted to the same duties, obligations and accountability as any other sub-delegated authorising officer of the Commission.

For the purposes of the second paragraph, the High Representative of the Union for Foreign Affairs and Security Policy shall take the measures necessary to facilitate the cooperation between Union Delegations and Commission departments."

- (7) Article 53a is replaced by the following:

"Article 53a

Where the Commission implements the budget on a centralised basis, implementation tasks shall be performed, either directly, by its departments or by Union Delegations in accordance with the second paragraph of Article 51, or indirectly, in accordance with Articles 54 to 57."

- (8) In Article 59, the following paragraph 5 is added:

"5. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 51, they shall refer, where their duties as authorising officer so require, to the Commission as their institution."

- (9) In section 2, the following Article 60a is added:

"Article 60a

1. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with the second paragraph of Article 51, they shall cooperate closely with the Commission for the proper implementation of the funds, in order to ensure in particular the legality and regularity of financial transactions, the respect of the principle of sound financial management in the management of the funds and the effective protection the financial interests of the Union.

To this effect, they shall take the measures necessary to prevent any situation susceptible to put at stake the responsibility of the Commission for the implementation of the budget sub-delegated to them as well as any conflict of interest or priorities having impact on the implementation of the financial management tasks sub-delegated to them.

Where a situation or conflict referred to in the second subparagraph arise, the Heads of Union Delegations shall inform the responsible Commission department and the High Representative of the Union for Foreign Affairs and Security Policy thereof without delay.

2. When a Head of a Union Delegation finds himself in a situation referred to in Article 60(6), he shall refer to the specialised financial irregularities panel set up pursuant to Article 66(4). In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, he shall inform the authorities and bodies designated by the applicable legislation.

3. Heads of Union Delegations acting as authorising officers by subdelegation in accordance with the second paragraph of Article 51 shall report twice a year to their authorising officer by delegation so that the latter can integrate their reports in his annual activity report referred to in Article 60(7). That biannual report submitted by the Heads of Union Delegation shall include information on the efficiency and effectiveness of internal management and control systems put in place in their delegation, as well as the management of operations subdelegated to them.
4. Heads of Union Delegations acting as authorising officers by subdelegation in accordance with the second paragraph of Article 51 shall reply to any request by the authorising officer by delegation of Commission."

(10) In Article 61(1), the following subparagraph is added:

"The responsibilities of the accounting officer of EEAS shall only concern the EEAS section of the budget as implemented by the EEAS."

(11) Article 66 is amended as follows:

(a) the following paragraph 3a is inserted:

"3a. In the event of subdelegation to the Heads of Union Delegations, the authorising officer by delegation shall be responsible for the definition of the internal management and control systems put in place, their efficiency and effectiveness. The Heads of Union Delegations shall be responsible for the adequate set up and functioning of those systems, in accordance with the instructions of the authorising officer by delegation, and for the management of the funds and the operations they carry within the Union Delegation under their responsibility.

Heads of Union Delegations shall report on their responsibilities pursuant to the first subparagraph of this paragraph in accordance with Article 60a(3).

Each year, Heads of Union Delegations provide to the authorising officer by delegation of the Commission a statement of assurance on the internal management and control systems put in place in their Delegation in order to allow the authorising officer to establish his own statement of assurance."

(b) the following paragraph 5 is added:

"5. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with the second paragraph article 51, the specialised financial irregularities panel set up by the Commission pursuant to paragraph 4 of this Article shall be competent for cases referred to in that paragraph.

If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer, the High Representative of the Union for Foreign Affairs and Security Policy and to the authorising

officer by delegation of the Commission, provided the latter is not the person involved, as well as to the internal auditor.

On the basis of the opinion of the panel, the Commission may request the High Representative of the Union for Foreign Affairs and Security Policy to initiate, in his capacity as appointing authority, proceedings entailing liability to disciplinary action or to payment of compensation against authorising officers by subdelegation if irregularities concern the competencies of the Commission sub-delegated to them. In such a case the High Representative shall take appropriate action in accordance with the Staff Regulation."

- (12) In Article 85, the following paragraphs are added:

"For the purposes of the internal auditing of the EEAS, Heads of Union Delegations, acting as authorising officers by subdelegation in accordance with the second paragraph of Article 51 shall be subject to the verifying powers of the internal auditor of the Commission for the financial management sub-delegated to them.

For reasons of coherence, efficiency and cost-effectiveness, the internal auditor of the Commission shall also act as the internal auditor of the EEAS in respect of the budget implementation of the EEAS section of the budget."

- (13) In Article 163, the first sentence is replaced by the following:

"The actions referred to in this Title may be implemented on a centralised basis by the Commission pursuant to Article 53a, by shared management, on a decentralised basis by the beneficiary third country or countries, or jointly with international organisations in compliance with the relevant provisions of Articles 53 to 57."

- (14) Article 165, the first sentence is replaced by the following:

"The implementation of actions by beneficiary third countries or international organisations is subject to scrutiny by the Commission pursuant to Article 53a."

- (15) In Article 185, paragraph 3 is replaced by the following:

"3. The Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1 as he/she does in respect of Commission departments or Union Delegations."

Article 2

This Regulation shall enter into force on the third day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the European Parliament
The President

For the Council
The President