



EUROPEAN PARLIAMENT

2009 - 2014

---

*Committee on Budgetary Control*

---

27.5.2010

# **WORKING DOCUMENT**

on the proposed amendments to the Financial Regulation

Committee on Budgetary Control

Rapporteur: Crescenzo Rivellini

DT\Fin RegEN.doc

PExxxxxxvxx

**EN**

*United in diversity*

**EN**

## **1. Introduction**

The current Financial Regulation began to apply from 1st January 2003. It is the result of an in-depth revision of the Financial Regulation of 1977, the need for which was identified as a major point among the 84 actions set up by the White Paper on Reforming the Commission<sup>1</sup>, adopted in January 2000. Following the dismissal of the Santer Commission, it was essential to ensure proper management of EU funding.

At that time it was the Council that was responsible for making Financial Regulations, Parliament having only consultative role (Article 279 of the EC Treaty then in force). However the Parliament's position was that the Financial Regulation, because of its far reaching budgetary implications, could not be adopted unilaterally by only one arm of the budgetary authority and it insisted on an ad-hoc procedure, based on the 1975 joint declaration and similar to a co-decision procedure, to be applied. After lengthy consultations the European Parliament and the Council agreed on key points of the revision.

## **2. General overview of the proposals of amendments**

Two proposals of amendments to the Financial Regulation were presented by the Commission in 2010. The first one concerns modifications to the Financial Regulation necessary after entry into force of the Treaty of Lisbon (COM(2010)71) and the second one aims at amending the Financial Regulation in line with the creation of the European External Action Service (COM(2010)85). They are separate from the triennial review proposal, which is expected to be presented by the Commission end of May 2010.

## **3. Procedural aspects**

After entry into force of the Treaty of Lisbon, the Parliament is involved in consideration of these proposals in accordance with ordinary legislative procedure (Article 322 TFUE), where, for the first time, it is on an equal footing with the Council right from the outset of the proceedings.

Article 322 TFUE provides for consultation with the Court of Auditors. The Court adopted its opinions on both proposals on 29 April 2010 (Opinions 3/2010 and 4/2010).

Committee on Budgets and Committee on Budgetary Control are to consider the proposals in close co-operation. According to Annex VII of the Rules of Procedure, the Committee on Budgets is responsible for the Financial Regulation, excluding matters relating to the implementation, management and control of the budget, which matters fall within the scope of competence of Committee on Budgetary Control. The application of Rule 51 of Parliament's Rules of Procedure (procedure with joint committee meetings and a single vote) has been requested.

## **4. Proposal COM(2010)71 (Lisbon Treaty adjustments)**

Most of the changes in the proposal concern budgetary procedure. What needs to be addressed in terms of CONT competence is the fact that, in its proposal, the Commission did not make

---

<sup>1</sup> COM(2000)0010 of 18.1.2000

any suggestions as to the future provisions on the control and audit obligations of the Member States in the implementation of the budget, the introduction of which is envisaged in Article 317 TFUE. The Commission limited itself to stating, in the explanatory memorandum to the proposal, that such provisions, together with point 44 of the Interinstitutional Agreement on budgetary discipline and sound financial management "require an in-depth analysis and will therefore be proposed together with the triennial revision of the Financial Regulation". Those provisions are of utmost importance to the European Parliament, who has advocated for clear rules on responsibility of the Member States for the management of funds.

## **5. Proposal COM(2010)85 (amendments resulting from the creation of the European External Action Service)**

### **a) General**

The proposal was drafted with a view to amending the Financial Regulation in line with the creation of the European External Action Service. It was presented on 24 March 2010, together with a Commission staff working document on the changes to the Implementing Rules. This proposal needs to be analysed in the light of the proposal for a Council Decision establishing the organisation and functioning of the European External Action Service as of 25 March 2010.

In budgetary terms the EEAS is treated as an institution in the sense of Article 1 of the Financial Regulation, which means that a separate section in the EU budget is envisaged. According to the explanatory memorandum to the proposal, EEAS is meant to implement its own administrative expenditure and receive discharge from the European Parliament, although the proposal itself contains no amendments to article 145 of the Financial Regulation laying down rules on discharge. Only recital 3 mentions that European Parliament is to grant discharge to the EEAS for the implementation of the appropriations in the EEAS section of the budget. In accordance with Article 319 TFEU it is the Commission that is given discharge by the Parliament. It could be argued that any other discharge does not mean a discharge in the Treaty sense. That means that EP's control powers over EEAS would be weaker if it were put outside the Commission.

As far as operational expenditure is concerned, Heads of Union Delegations are to implement operational appropriations as sub-delegated authorising officers of the Commission and the European Parliament would continue to grant discharge to the Commission. However it should be noted that certain language versions (e.g. IT, EN, DE) of the proposed amendment to Article 50 (conferral of requisite powers on other institutions by the Commission) mention the implementation of the Union's Delegations operating appropriations entered in the EEAS and the Council sections of the budget. Such formulation adds to the terminological confusion already present in many language versions of the Financial Regulation.

### **b) Implementation of the operational budget**

The proposed amendments are a direct consequence of the structure of the EEAS outlined in the proposal for a Council decision. The amendments aim at integrating the EEAS within the financial governance framework of the Commission when it participates in the

implementation of the operational budget.

Since current Commission delegations are to become Union Delegations, it is proposed that Heads of Delegations be given sub-delegated implementation powers by the responsible Directors General. When acting as sub-delegated authorising officers of the Commission, Heads of Delegations would be subject to the Commission rules for the implementation of the budget (amendment to Article 51 on internal conferral of powers). When acting as authorising officers by sub-delegation in accordance with the proposed Article 51, Heads of Delegation would refer to the Commission as their institution (amendment to Article 59). The proposed amendment to Article 53a states that the implementation of tasks performed by Union Delegations on the basis of delegations of powers proposed in Article 51 should constitute implementation of the budget on a centralised basis. In accordance with further proposed amendments, Heads of Delegations acting as authorising officers by sub-delegation would be subject to the verifying powers of the internal auditor of the Commission for the financial management sub-delegated to them.

What can be observed is a very complex situation in terms of responsibilities of the financial actors. Heads of Delegations would be receiving instructions from the High Representative, the EEAS and, where the Commission exercises powers conferred to it by the Treaties, also from the Commission. Moreover, the picture of responsibilities of the EEAS staff will not be complete until a proposal for amending the staff regulation has been presented.

It should be noted that, according to Article 7 par. 1 of the proposal for a Council Decision, the High Representative would act as authorising officer for the EEAS section of the General Budget. That means that he/she would have more power than any other Commissioner, which goes in the direction opposite to the reforms undertaken after the fall of the Santer Commission.

## **6. Conclusions**

CONT's rapporteur is of the opinion that all proposals for the amendment of Financial Regulation should be considered jointly, i.e. when all of them (including the triennial revision) have been presented by the Commission. In addition, in order to have a complete view of the legal situation, it is essential to wait for the proposals for amending the staff regulation and for the amending budget. Such approach would ensure respect of the highest standards of legislation, to which Parliament, Council and Commission are committed. Having three different proposals considered separately entails the risk of inconsistency, which, in turn, may cause legal uncertainty. Such situation may not be allowed. Considering the proposals jointly would also allow for more efficient use of the resources of Parliament.

The rapporteur is of the opinion that Rule 51 of Parliament's Rules of Procedure should be applied. According to that rule if the matter is of major importance, a joint vote is to be applied and the rapporteurs concerned shall draw up a single draft report, which shall be examined and voted on by the committees involved at joint meetings. Apart from the previously mentioned reasons raised with regard to the need for a comprehensive review of proposals, the rapporteur also considers that the application of Rule 51 strengthens the negotiating position of the European Parliament towards the Council and the Commission as well as it protects citizens' interest and ensures financial transparency.

The rapporteur is of the opinion that EP's legal service should receive, as soon as possible, the

legal interpretation questions which have been proposed by the rapporteur to the attention of CONT's coordinators.

On the specific issue of the EEAS architecture, CONT's rapporteur supports the view that EEAS should be a fully independent Service within the European Commission, which is the position that Parliament adopted in its resolution of 22 October 2009<sup>1</sup>. In CONT's rapporteur's view only such a construction would allow for full democratic scrutiny by the European Parliament over the implementation of the budget by EEAS.

---

<sup>1</sup> European Parliament Resolution of 22 October 2009 on the institutional aspects of setting up the European External Action Service (2009/2133(INI)).