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REPORT

on the proposal for a Council regulation on a Financial Regulation applicable to the 9th European Development Fund
(COM(2002) 290 – C5-0361/2002 – 2002/0183(CNS))

Committee on Budgetary Control

Rapporteur: Michiel van Hulten

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PROCEDURAL PAGE

By letter of 23 July 2002 the Council consulted Parliament on the proposal for a Council regulation on a Financial Regulation applicable to the 9th European Development Fund (COM(2002) 290 - 2002/0183 (CNS)).

At the sitting of 2 September 2002 the President of Parliament announced that he had referred this proposal to the Committee on Budgetary Control as the committee responsible and the Committee on Budgets and the Committee on Development and Cooperation for their opinions (C5-0361/2002).

The Committee on Budgetary Control appointed Michiel van Hulten rapporteur at its meeting of 4 November 2002.

The committee considered the Commission proposal and draft report at its meeting of 27 November 2002.

At that meeting it adopted the motion for a resolution unanimously.

The following were present for the vote: Herbert Bösch, acting chairman and first vice-chairman; Paulo Casaca, second vice-chairman; Michiel van Hulten, rapporteur; María Antonia Avilés Perea, Juan José Bayona de Perogordo, Brigitte Langenhagen, John Joseph McCartin (for Generoso Andria), Heide Rühle (for Bart Staes), Ole Sørensen, Gabriele Stauner and Ursula Stenzel (for Christopher Heaton-Harris).

The Committee on Budgets and the Committee on Development and Cooperation decided on 18 and 12 November 2002 respectively not to deliver an opinion.

The report was tabled on 28 November 2002.

MOTION FOR A RESOLUTION

European Parliament resolution on the proposal for a Council regulation on a Financial Regulation applicable to the 9th European Development Fund (COM(2002) 290 – C5-0361/2002 – 2002/0183(CNS))

The European Parliament,

- having regard to the Commission proposal to the Council (COM(2002) 290¹),
 - having been consulted by the Council (C5-0361/2002),
 - having regard to its resolution of 20 February 1998² on the draft Financial Regulation applicable to the 8th EDF,
 - having regard to the Treaty signed in Nice on 26 February 2001, and in particular Declaration No 23 on the future of the Union,
 - having regard to its resolution of 31 May 2001³ on the Treaty of Nice and the future of the European Union,
 - having regard to its resolution of 29 November 2001⁴ on the constitutional process and the future of the European Union,
 - having regard to the declaration by the Laeken European Council on 15 December 2001 on the future of the European Union⁵,
 - having regard to the report of the Committee on Budgetary Control (A5-0409/2002),
- A. whereas according to the Court of Justice judgment in Case C-316/91, handed down on 2 March 1994⁶, EDF expenditure does not constitute European Community expenditure and cannot therefore be made subject to the legal and institutional framework of the EC Treaty,
- B. whereas, according to the terms of that judgment, the Council consulted Parliament on an optional basis,
- C. whereas no progress has been made as regards budgetising the European Development Funds, as Parliament has consistently demanded, and whereas Parliament, by way of preparation for the proceedings of the Convention, again expressly called for the EDF to be incorporated into the Union budget in its resolution on the constitutional process and the future of the Union (paragraph 4d),
- D. whereas Parliament is not legally obliged to legitimise EDF-related budget provisions by

¹ OJ C 262, 29.10.2002, p. 533.

² OJ C 80, 16.3.1998, p. 298.

³ OJ C47E, 21.2.2002, p. 108.

⁴ Texts Adopted, Item 19.

⁵ Presidency Conclusions - Annex I.

⁶ OJ C 103, 11.4.1994, p. 1.

adopting an opinion on the draft Financial Regulation for the 9th EDF, and whereas, within the present framework governing the EDF, delivering an opinion would mean taking on political responsibility for a host of aspects beyond its control,

1. Refuses to deliver an opinion on the proposal, submitted by the Commission, for a Financial Regulation for the 9th European Development Fund;
2. Points out that the position adopted in this resolution need have no adverse consequences for implementation of the European Development Funds; stresses that the objective of this resolution is to improve the legal, institutional and budgetary framework relating to the EDF;
3. Invites the Commission to submit before mid-2003, as it undertook to do when the resources for the 9th EDF were set, a communication on the implications of budgetising the EDF;
4. Invites the Council to be guided, in the absence of a Parliament opinion, by the observations made by the Court of Auditors in its Opinion No 12/2002 on the Financial Regulation for the 9th EDF;
5. Calls on the Convention and the prospective IGC tasked with reform of the Treaties to examine the question of incorporating the EDF into the Union budget;
6. Instructs its President to forward its position to the Council, the Commission, the Convention and the Court of Auditors.

EXPLANATORY STATEMENT

The framework

The proposal for a Financial Regulation applicable to the 9th EDF was drawn up by the Commission in the context of the recasting of the general Financial Regulation applicable to the Communities' budget. In June 2002, with Parliament's active support, the recasting process culminated in adoption of the new general Financial Regulation, the process being linked to the administrative reform of the Commission. The proposal for a Financial Regulation applicable to the 9th EDF provides an opportunity to take account - *to an extent compatible with the constraints imposed by the legal framework* (the Cotonou Agreement and the Internal Agreement between the Member States on the financing and administration of Community aid to the ACP countries and OCTs) - of a number of the improvements introduced into the general Financial Regulation (e.g. as regards internal auditing).

However, as the Commission itself points out, the system of financial cooperation between the Union and its Member States, on the one hand, and the ACP countries and OCTs, on the other, is unique. This area has evolved independently of how the Community budget has evolved, and continues to exist outside the own resources system and the general budget. EDF resources are not entered in the general budget, and resource implementation is subject neither to the procedure for establishing the general budget nor to the various mechanisms for implementing it.

The budgetisation issue

For years and years, Parliament has championed the notion that the European Development Funds ought to be included in the budget. The Council, for its part, has systematically rejected EDF budgetisation.

When the Financial Regulation for the 7th EDF was adopted, Parliament brought this dispute before the Court of Justice (Case C-316/91). The Council having adopted the Financial Regulation without waiting for Parliament's opinion, Parliament brought an action before the Court on the ground that, in adopting the wrong legal basis, the Council had infringed Parliament's prerogatives, i.e. to be consulted on Financial Regulations. The fundamental question was whether the EDFs constituted Community expenditure. In its judgment of 2 March 1994, the Court ruled against Parliament, finding that expenditure effected under the EDFs 'is not Community expenditure' (paragraph 39 of the judgment) and that consultation of Parliament by the Council was optional.

Discharge in the absence of budgetisation: an abnormal institutional situation

Parliament had an opportunity to go back to the issue of EDF budgetisation in connection with the discharge procedure for the 6th and 7th EDFs for 1994: it refused to give discharge to the Commission for EDF implementation for that year, on the ground that the Court of Auditors had been unable to issue a positive statement of assurance, and reiterated its view that the situation whereby the European Parliament is called upon to reach an annual discharge decision for the EDFs without at the same time possessing either the corresponding

budgetary or legislative powers is an anomalous one, again calling for EDF monies to be incorporated into the Communities' general budget.

Since then, Parliament has repeatedly declared its opposition to this institutional state of affairs: to be the authority responsible for giving discharge without being the budgetary authority within whose remit the EDFs fall is equivalent to having responsibility without power. In its resolutions on discharge for the Commission for the EDFs for the financial years 1999 and 2000 - to name but the most recent texts - it adopted an identical paragraph condemning the situation and again calling for the EDF to be incorporated into the Communities' general budget.

Parliament, however, faced each year with the difficult choice as to whether or not to refrain from taking part in the discharge procedure for the EDFs until such time as they come within its budgetary remit, has to date opted to exercise what remains of democratic and political oversight over them. On each occasion, it has very much relied on the statement of assurance (DAS) issued by the Court of Auditors; it has often acknowledged that the Commission, in its defence, has had to take on the ungrateful task of managing the EDFs in difficult circumstances directly linked to the fact that the legal framework is inappropriate, as the Court of Auditors has pointed out, coupling its resolutions with observations aimed at improving EDF management and efficiency while restating its fundamental position, whenever it deems it appropriate to do so, that the EDF should be incorporated into the budget.

The Financial Regulation for the 8th EDF: an identical precedent

In February 1998, by 91 votes to 5 with no abstentions, Parliament adopted Mr Wynn's report in which it refused to give an opinion on the draft Financial Regulation, submitted by the Committee, for the 8th EDF. The resolution emphasised Parliament's 'full commitment to the development and cooperation policies' of the European Union, stating that the purpose of refusing to give an opinion was to 'improve' the legal, institutional and budgetary framework' within which they operate. The rapporteur noted that 'towards budgetisation' and that 'what, in effect, is being asked of Parliament to do is not so much participate in the EDF budgetary process as to end it a spurious legitimacy by allowing the Council to state that Parliament was consulted.

Four years on, in the light of the proposal for a Financial Regulation for the 9th EDF, we are bound to conclude that the improvement, demanded by Parliament, in the 'legal, institutional and budgetary framework' has not taken place in such a way as to warrant a change in the fundamental position it adopted at the time. The fact that, following the adoption of the new general Financial Regulation, some features from it have apparently been incorporated into the proposal for a Financial Regulation for the 9th EDF does not constitute sufficient reason, in your rapporteur's view, for Parliament to depart from its fundamental position and consider the proposal in an effort to propose amendments. That would mean Parliament engaging in an exercise that, four years ago, it refused to have anything do with, vis-à-vis the Council.

For that reason, your rapporteur proposes that the Council be invited to be guided, in the absence of Parliament's opinion, by Opinion No 12/2002 of the Court of Auditors, which points out inter alia that some of changes proposed following recasting of the general

Financial Regulation are meaningful only in the context of a budgetary based system and are difficult to transpose to a fund system ...' (Court's preliminary observations, paragraph 2).

The Convention - a fresh opportunity to settle the matter

In December 1999, when the funding allocation for the 9th EDF was set, the Commission undertook to submit to the Council, by 2003, a communication evaluating the advantages and disadvantages of budgetising the EDF' (EU ministerial coordination, minutes of 14 December 1999, Annex II). The communication should also be sent to Parliament. That is the purpose of paragraph 3 of the motion for a resolution.

Furthermore, Declaration No 23 annexed to the Treaty of Nice provides for reform of the Treaties in 2004 preceded by a new open and public preparatory process. This new method of reforming the Treaties takes the form of a Convention to prepare the IGC. The Laeken European Council decided to convene a Convention tasked with considering the 'key issues arising for the Union's future development and trying to identify the various possible responses. In its resolution of 29 November 2001, Parliament inter alia reiterated its call for the EDF to be incorporated into the Union budget.

In the preliminary draft Constitutional Treaty (doc. CONV 369/02) submitted on 28 October 2002 by the Chairman of the Convention, the EU budgetary procedure ought to be addressed by Title VII (Union finances), in particular Article 40 thereof. Within this framework, the Convention could examine Parliament's call for the EDF to be incorporated into the budget. That is what paragraph 5 of the motion for a resolution calls for.

In conclusion, the solution put to you by your rapporteur seeks to highlight the fundamental position adopted by Parliament, and restated on many occasions, on incorporating the EDF into the budget. The fact that Parliament is not delivering an opinion on the EDF Financial Regulation means, given the present framework governing the EDF, that it has adopted a stance which is clear in institutional and political terms, i.e. that, given the host of factors beyond its control, it assumes no political responsibility. The second objective is to point up what is a realistic prospect: the solution to be worked out as part of the proceedings of the Convention. The 'Convention method' and Parliament's involvement in the proceedings are creating a dynamic for a solution along the lines wanted by Parliament. For all the above reasons, your rapporteur proposes that the motion for a resolution be adopted.