



European Schools
Office of the Secretary-General

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Annex 8_Opinion of the Court of Auditors on Report of the Working Group on the Revision of the Financial Regulation

Board of Governors

Berlin, 4th-6th April 2017

1. Background information

After the finalization of the document 2017-02-D-13-en-2, corresponding to the “Report of the Working Group on the Revision of the Financial Regulation”, the opinion of the European Court of Auditors has been received (document of the Court “Opinion N° 2/2017 on a proposal for amending the Financial Regulation applicable to the budget of the European Schools”).

The opinion of the Court on the review is of capital importance for the review process, being this consultation foreseen in the Preamble to the Financial Regulation applicable to the Budget the European Schools.

The comments of the Court on the intended review should be, therefore, taken into account by the Board of Governors when taking a position on the review of the Financial Regulation.

2. Proposal

It is proposed that the Board of Governors considers the opinion of the Court of Auditors on the review of the Financial Regulation, together with the document containing the report of the Working Group on the review, and decides on the possible necessary changes to be made on the text of the proposed Financial Regulation before its final approval. For this purpose a room document will be eventually provided as a basis for the discussion in among the members of the Board.



EUROPEAN
COURT
OF AUDITORS

Opinion No 2/2017

on a proposal for amending the Financial Regulation applicable
to the budget of the European Schools

THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Council Decision of 17 June 1994¹ authorizing the European Community and the European Atomic Energy Community to sign and conclude the Convention defining the Statute of the European Schools;

Having regard to the Convention defining the Statute of the European Schools of 1994², and in particular Articles 6, 10, 13, 20, and 25 thereof (herein referred to as “the Convention”);

Having regard to the Financial Regulation of 24 October 2006 applicable to the budget of the European Schools³ (herein referred to as “the Financial Regulation 2006”) and the Rules for Implementing the Financial Regulation;

Having regard to the request for an opinion made by the Secretary-General of the European Schools on 2 December 2016, received at the Court on 2 December 2016 (herein referred to as “request of 2 December 2016”);

Having regard to the Preliminary Report of the Working Group on the Revision of the Financial Regulation⁴ (hereinafter referred to as “the Preliminary Report of the Working Group”) and to its Annex I: Proposed modifications in the text of the Financial Regulation applicable to the Budget of the European Schools prepared by the Working Group set up by the Secretary-General of the European Schools (herein referred to as “the Proposal”);

Whereas the Court has previously issued Opinions Nos 5/2006, 3/2011 and 4/2014 on a proposal for amending the Financial Regulation applicable to the budget of the European Schools;

¹ Council Decision 94/557/EC, Euratom of 17 June 1994 authorizing the European Community and the European Atomic Energy Community to sign and conclude the Convention defining the Statute of the European Schools (OJ L 212, 17.8.1994, p. 1).

² OJ L 212, 17.8.1994, p. 3.

³ As last amended by a decision of the Board of Governors of 2–4 December 2014, Ref: 2014-10-D-21-en-2.

⁴ Ref: 2016-10-D-34-en-2.

Whereas the Proposal deals primarily with a revision of financial governance, the clarification of budgetary principles, the introduction of new rules for procurement procedures and with a revision of arrangements regarding external audit and discharge,

HAS ADOPTED THE FOLLOWING OPINION

1. The European Schools have implemented most of our recommendations contained in Opinion No 4/2014, in particular those concerning the preparation of the accounts on the basis of accruals accounting principles, or included them in the Proposal, such as the strengthened powers of the authorising officer and the independence of the accounting officer. However, audit results over the last years identified numerous systematic weaknesses in financial management⁵ and showed that many shortcomings persist in the internal control architecture. The new Financial Regulation will only contribute to tackling these weaknesses if it results in an improvement of financial management at the level of individual Schools.
2. In principle, the European Schools should review the financial rules applicable to their budget every three years and, whenever the necessity arises, align them with the relevant rules⁶ of the Financial Regulation applicable to the general budget of the European Union⁷ (hereinafter referred to as “the General FR”).
3. The Commission adopted a proposal for the revision of the General FR (COM (2016) 605 final) on 14 September 2016⁸ and the Court of Auditors issued its opinion on that proposal on 30 January 2017. The calendar for the adoption of the revised General FR indicates that it will enter into force on 1 January 2018. The Proposal of the European Schools draws heavily on the currently applicable General FR and the revised financial rules of the European

⁵ Reports on the annual accounts of the European Schools for the financial years 2012, 2013, 2014 and 2015.

⁶ Article 113 of the Proposal.

⁷ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 298, 26.10.2012, p. 1).

⁸ Proposal for revision of the Financial Regulation COM(2016) 605 final, 2016/0282 (COD).

Schools should also enter into force on 1 January 2018. The latter will thus not reflect the latest update of the General FR.

4. We recommend that the European Schools should better schedule the revision of their financial rules to follow the modification of the General FR.

5. In our Opinion No 4/2014, we recommended that the European Schools should consolidate all the financial rules from three instruments⁹ into a single text in order to reduce unnecessary complexity. The Board of Governors agreed to consolidate the Financial Regulation and the Rules for Implementing the Financial Regulation. However, our recommendation had not been implemented by the date the Proposal was submitted to the Court for an opinion.

6. Since 2 December 2016, the Office of the Secretary-General of the European Schools has informally sent us two updated versions¹⁰ of the Proposal for further consideration. The latest version reflects, to a large extent, the outcome of informal discussions held between us and the representatives of the Office over the past three months. We recall that, for the purpose of this opinion, we must refer, in compliance with our Rules of Procedure¹¹, to the initial Proposal attached to the request for an opinion submitted on 2 December 2016.

7. We have comments on the following proposed amendments:

- (a) the modification of the financial governance of the Schools;
- (b) the alignment of the rules on procurement with those applicable to the European Institutions;
- (c) the modification of the provisions applicable to the production of the accounts;

⁹ The Financial Regulation, the Rules for Implementing the Financial Regulation and the Internal Rules of the Budgetary Committee.

¹⁰ Financial Regulation (preliminary draft as of 1 February 2017); Financial Regulation (preliminary draft as of 8 February 2017).

¹¹ OJ L 103, 23.4.2010.

- (d) the amendments of the provisions applicable to external audit and to the discharge procedure;
- (e) other issues.

Modification of the financial governance of the Schools

8. In order to strengthen financial governance, the Proposal includes a new centralised function of the authorising officer of the European Schools and a new centralised function of the accounting officer, both to be gradually implemented in respect of all Schools and the Office of the Secretary-General by 1 January 2020.

9. This model was inspired by the provisions of the General FR relating to financial actors¹². We recall that Article 6 of the Convention guarantees each School a certain level of financial autonomy¹³. The centralisation of the function of the authorising officer should not result in centralising the day-to-day financial management of the Schools. We are however of the opinion that the new model of financial governance may not be in line with the Convention and that any contradiction should be clarified.

10. Furthermore, we consider that the obligation to inform the Court of Auditors about the financial actors responsible and internal rules, similar to the obligation relating to the institutions in Article 65(8)¹⁴ of the General FR, should also be included in the Proposal.

Alignment of the rules on procurement with those applicable to the European Institutions

11. We welcome the initiative of the European Schools to align their procurement rules with those applicable to the European institutions and bodies.¹⁵

¹² Part 1, Title IV, Chapter 3 of the General FR.

¹³ Article 6 of the Convention provides: “Each School shall have the legal personality necessary for the attainment of its purpose, as defined in Article 1. It shall for that purpose be free to manage the appropriations in its own section of the budget under the conditions laid down in the Financial Regulation referred to in Article 13(1)”.

¹⁴ “Each institution shall inform the Court of Auditors [...] of the appointment and release of authorising officers by delegation, internal auditors and accounting officers, and of any internal rules it adopts in respect of financial matters”.

12. However, when a public administration or a Union institution selects tenderers to cover their specific requirements, Article 52(3) of the Proposal enables the European schools to conclude certain types of contracts with those same tenderers using a negotiated procedure. We consider that this practice breaches the principle of equal treatment and transparency, as mentioned in our Opinions No 5/2006¹⁶ and No 3/2011¹⁷.

13. Taking account of the new centralised function of the authorising officer and of the ongoing legislative procedure for the adoption of the General FR, we propose improving Article 52 by replacing paragraphs 1, 2, 4 and 5 of Article 52 of the Proposal with the following provisions:

“1. As regards procurement, the provisions applicable to the European institutions and adopted on the basis of Article 322 of the Treaty on the Functioning of the European Union shall apply to the European schools *mutatis mutandis*, including provisions related to inter-institutional procurement, joint procurement and administrative agreements with the Union institutions, their departments, Union bodies and European offices.

2. The European Schools, represented by the Office of the Secretary-General, shall be deemed to be a contracting authority. Each School shall act as a contracting authority in order to manage the appropriations in its own section of the budget, provided it receives a delegation for that purpose from the authorising officer.”

Modification of the provisions applicable to the production of the accounts

14. Title V of the Proposal includes provisions relating to the presentation of the accounts and to accounting. It also sets out the calendar for the transmission of the provisional and final accounts to the Court and for the production by the Court of its preliminary observations on the accounts. The Proposal suggests shortening this calendar while keeping

¹⁵ These are governed by Title V of the General FR and the Rules of Application.

¹⁶ Paragraph 7.

¹⁷ Paragraph 3.

the same date for the publication of our annual report on the accounts of the European Schools.

15. However, the closure of the 2015 financial year experienced severe delays due to the introduction of accruals accounting and a new accounting package. In addition, the European Schools will implement as from the 2016 closure a measure suggested in our Opinion No 4/2014 which provides that an independent external auditor, other than the Court, should verify the annual financial statements of each individual school prior to the consolidation of the accounts.

16. These circumstances lead us to recommend that the deadline of 1 June $n+1$ for our preliminary observations on the provisional accounts of the European Schools of year n (Article 87 ter(1)) should be postponed to 1 July $n+1$, in order to take into consideration any additional audit work which might still occur at that period of time. As a consequence, the final consolidated accounts for all the Schools should be drawn up by 15 July $n+1$ (instead of 1 July $n+1$) and transmitted to us by the same date (Article 87(2 and 3)).

Amendments of the provisions applicable to external audit and to the discharge procedure

17. Title VI of the Proposal sets out provisions relating to external audit and discharge, including the calendar for the production of our annual report on the accounts of the European Schools. Article 99 of the Proposal extends the time available for us to transmit any observations that should appear in the annual report to 30 September $n+1$.

18. We do not provide preliminary observations on the provisional accounts, referred to in Article 87 ter of the Proposal, separately from observations that should appear in the annual report, referred to in Article 99. A single deadline should therefore apply in both articles for the delivery of our preliminary observations. We recommend that the deadline in Article 99 be modified to 1 July $n+1$ as for Article 87 ter(1) (see paragraph 16).

19. We also recommend that the deadline for the replies of the authorising officer of the European Schools should be adjusted accordingly to 15 September $n+1$ instead of 31 October $n+1$.

20. Article 99(1), second sub-paragraph, of the Proposal requires a modification to clarify that we will receive one set of consolidated replies from the authorising officer of the European Schools and no additional replies from authorising officers by delegation.

21. Furthermore, we identified two errors which might have occurred when taking over the General FR as a model for drafting the Proposal. Article 99(3) of the Proposal, which specifies that: “the annual report [of the Court] shall contain an assessment of the soundness of financial management”, is not relevant, as the mandate of the Court is defined in Articles 99(1) and 99(2) of the Proposal. The same applies to Article 101(2) of the Proposal, according to which the Board of Governors should also examine the Court of Auditors’ statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions. The statement of assurance is a specific requirement of the Treaty which applies to the European Institutions. In order to avoid any misleading interpretation of these articles, we invite the European Schools to remove those two provisions from their Proposal.

22. Article 101(1) states that the Board of Governors will give discharge only to the authorising officer (Secretary-General), and not to the Administrative Boards of each individual School. The role of the Administrative Boards is explicitly defined in the Convention and the Proposal cannot substantially deviate from its contents. In order to ensure compatibility with Article 20(2)¹⁸ of the Convention, we recommend keeping the current practice consisting of a discharge to be given by the Board of Governors not only to the authorising officer but also to the Administrative Boards of the Schools for their respective responsibilities.

Other issues

23. Article 115 of the Proposal deals with the gradual entry into force of the revised financial rules. The provisions stipulating deadlines for the production of the accounts¹⁹ should not be

¹⁸ Article 20(2b) states: “the Administrative Board shall supervise the implementation of the School's section of the budget and draw up its annual revenue and expenditure account”.

¹⁹ For instance Article 87 ter of the Proposal.

included in this article, because they apply, by definition, to the whole of the European Schools system as from 1 January 2018. Similarly, provisions related to accounting and reporting²⁰ must apply to all Schools at the same moment. We recommend that the European Schools should undertake a thorough review of the transitional and final provisions.

24. We also consider it to be particularly important to give due attention to the coherent structure, consistent terminology and correct cross-references of the document in order to eliminate uncertainty as to the interpretation of the key terms related to our audit work. The Proposal needs reviewing in order to avoid misleading terminology²¹ and multiple provisions serving the same purpose²², and in order to clarify terms²³ used in an unclear context.

This Opinion was adopted by Chamber V, headed by Mr Lazaros S. LAZAROU, Member of the Court of Auditors, in Luxembourg at its meeting of 22 March 2017.

For the Court of Auditors

Klaus-Heiner LEHNE
President

²⁰ For instance Article 17 decies (3) of the Proposal.

²¹ Articles 86, 94 and 101 of the Proposal (accounts, financial statements, balance sheet).

²² Articles 9 and 87 (publication of the accounts) and Articles 88 and 89 (accruals accounting).

²³ Articles 6 and 49 (local usage of contracts, exceptions to the general rules of payments by electronic means).
