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THE EUROPEAN PARLIAMENT

THE COUNCIL

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Subject: 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

**REGULATION (EU, Euratom) No .../2010
OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL**

of

**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**

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 procedure²,

¹ OJ C 145, 3.6.2010, p. 4.

² Position of the European Parliament of 20 October 2010 (not yet published in the Official Journal) and decision of the Council of [17 November 2010].

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 Communities¹ (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 and of the establishment of the European External Action Service, pursuant to Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service².
- (2) The Treaty of Lisbon establishes a European External Action Service (hereinafter the "EEAS"). Decision 2010/427/EU provides that the EEAS is a service of a *sui generis* nature and should be treated as an institution for the purposes of the Financial Regulation.

¹ OJ L 248, 16.9.2002, p. 1.

² OJ L 201, 3.8.2010, p. 30.

- (3) In the context of the discharge, given that the EEAS should be treated as an institution for the purposes of the Financial Regulation, the EEAS should be fully subject to the procedures provided for in Article 319 of the Treaty on the Functioning of the European Union and in Articles 145 to 147 of the Financial Regulation. The EEAS should fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies. The Commission should remain responsible, in accordance with Article 319 of the Treaty on the Functioning of the European Union, for the implementation of the budget, including operational appropriations implemented by Heads of Delegations who are sub-delegated authorising officers of the Commission. 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 (hereinafter the "High Representative") should be informed at the same time and should facilitate the cooperation between Union Delegations and Commission departments. Given the novelty of this structure, high-standard provisions on transparency and budgetary and financial accountability need to be applied.

- (4) Within the EEAS, a Director-General for budget and administration should be responsible to the High Representative for the administrative and internal budgetary management of the EEAS. The Director-General should work within the existing format and follow the same administrative rules which are applicable to the part of Section III of the Union budget that falls under heading 5 of the multiannual financial framework.
- (5) The setting up of the EEAS should be guided by the principles enunciated by the European Council of 29 and 30 October 2009, in particular by the principle of cost-efficiency aiming towards budget neutrality.
- (6) The Treaty on the Functioning of the European Union provides that Commission Delegations will 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 provide the possibility for detailed arrangements, to be agreed with the Commission, in order to facilitate the implementation of the Union Delegations' administrative appropriations.

- (7) It is necessary to ensure the continuity of the functioning of Union Delegations and, in particular, continuity and efficiency in the management of external aid by the Delegations. Therefore, the Commission should be authorised to sub-delegate its powers of budget implementation of operational expenditure to Heads of Union Delegations belonging to the 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 setting up and functioning of internal management and control systems and for the management of the funds and the operations carried out within their Delegations. They should report twice a year to that effect. Such delegation may be withdrawn in accordance with the rules applicable to the Commission.
- (8) 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.

- (9) 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 concern only the EEAS section of the budget, to avoid any overlapping of responsibilities. The Accounting Officer of the Commission should also act as the Accounting Officer of the EEAS in respect of the implementation of the EEAS section of the budget, subject to review.
- (10) In order to ensure coherence and equality of treatment between sub-delegated authorising officers who are EEAS staff and those who are Commission staff, and to ensure that the Commission is properly informed, 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. Nevertheless, in order to maintain the link between financial management responsibility and disciplinary action, the Commission should be entitled to request the High Representative to initiate proceedings if the panel finds irregularities concerning those competences of the Commission sub-delegated to the Heads of Union Delegations. In such a case the High Representative should take the appropriate action in accordance with the Staff Regulations¹.

¹ Staff Regulations of Officials and Conditions of Employment of Other Servants of the European Communities laid down in Regulation (EEC, Euratom, ECSC) No 259/68 (OJ L 56, 4.3.1968, p. 1.)

- (11) The internal auditor of the Commission should act as the internal auditor of the EEAS in respect of the implementation of both the Commission and the EEAS sections of the budget, subject to review.
- (12) In order to ensure democratic scrutiny of the implementation of the Union's budget, Heads of Union Delegations should provide an assurance, together with a report including information on the efficiency and effectiveness of internal management and control systems in their Delegation, as well as on the management of operations sub-delegated to them. The Heads of Union Delegations' reports should be annexed to the annual activity report of the responsible authorising officer by delegation and made available to the budgetary authority.
- (13) The term "High Representative of the Union for Foreign Affairs and Security Policy" should, for the purposes of the Financial Regulation, be interpreted in accordance with the various functions of the High Representative under Article 18 of the Treaty on European Union.
- (14) Regulation (EC, Euratom) No 1605/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

Article 1

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

(1) Article 1 is replaced by the following:

"Article 1

1. This Regulation lays down the rules for the establishment and the implementation of the general budget of the European Union, (the "budget") and the presentation and auditing of the accounts.
2. For the purposes of this Regulation:
 - the term "institution" refers to the European Parliament, the European Council and the Council, the European Commission, the Court of Justice of the European Union and the European Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the European Ombudsman, the European Data Protection Supervisor and the European External Action Service (hereinafter the "EEAS").
 - the European Central Bank shall not be considered an institution of the Union.

3. Any reference to "the Communities" or to "the Union" shall be understood as a reference to the European Union and / or the European Atomic Energy Community as the context may require."
- (2) In the second paragraph of Article 16, the words "the Commission's External Service" are replaced by "the Commission and the EEAS ".
- (3) In Article 28(1), the first subparagraph is replaced by the following:
 - "1. Any proposal or initiative submitted to the legislative authority by the Commission, the High Representative of the Union for Foreign Affairs and Security Policy (hereinafter the "High Representative") or by 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 by the evaluation provided for in Article 27(4)."
- (4) In Article 30(3), the first subparagraph is replaced by the following:
 - "3. 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 and directly by its departments or by Union Delegations in accordance with the second paragraph of Article 51, and information on the beneficiaries of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management."

(5) In the first paragraph of Article 31, the words "the European Council and" are inserted in front of the words "the Council" and the words "and the European External Action Service" are inserted in front of the words "shall draw up".

(6) In Article 31, the following paragraph is inserted after the first paragraph:

"The EEAS shall draw up an estimate of its revenue and expenditure, which it shall send to the Commission before 1 July each year. The High Representative will hold consultations with the Members of the Commission responsible for development policy, neighbourhood policy and international cooperation, humanitarian aid and crisis response, regarding their respective responsibilities."

(7) In Article 33, the following paragraph is added:

"3. In accordance with Article 8(5) of Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service* and in order to ensure the budgetary transparency in the area of external action of the Union, the Commission shall transmit to the budgetary authority, together with the draft budget, a working document presenting, in a comprehensive way,

- all administrative and operational expenditure related to the external actions of the Union, including Common Foreign and Security Policy / Common Security and Defence Policy (CFSP / CSDP) tasks, and financed from the Union's budget;
- the EEAS' overall administrative expenditure for the previous year, broken down into expenditure by delegation and expenditure for the EEAS' central administration; together with the operational expenditure, broken down by geographic area (regions, countries), thematic areas, Union Delegation and mission.

The working document shall also:

- show the number of posts for each grade in each category and the number of permanent and temporary posts, including contractual and local staff authorised within the limits of the budget appropriations in each Union Delegation, as well as in the central administration of the EEAS;
- show any increase or reduction of posts by grade and category in the central administration of the EEAS, and in all Union Delegations based on the preceding year;
- show the number of posts authorised for the financial year, the number of posts authorised for the preceding year, as well as the number of posts occupied by diplomats seconded from the Member States, Council and Commission staff; provide a detailed picture of all staff in place in the Union Delegations at the time of presenting the draft budget, including a breakdown by geographic area, individual country and mission, distinguishing establishment plan posts, contract agents, local agents and seconded national experts and appropriations requested in the draft budget for such other types of personnel with corresponding estimates of the equivalent full-time staff that may be employed within the limits of the appropriations requested.

* OJ L 201, 3.8.2010, p. 30."

(8) In Article 46(1), the following point is added:

"(6) the total amount of Common Foreign and Security Policy (CFSP) expenditure shall be entered into one budget chapter, entitled CFSP, with specific budgetary articles. Those articles shall cover CFSP expenditure and shall contain specific budget lines identifying at least the single major missions".

(9) In the first paragraph of Article 50, the following sentences are added:

"However, detailed arrangements may be agreed with the Commission in order to facilitate the implementation of the Union Delegations' administrative appropriations. Those arrangements shall not contain any derogation from the provisions of the Financial Regulation or its implementing rules."

(10) In Article 51, the following paragraphs are added:

"However, the Commission may delegate its powers of budget implementation concerning the operational appropriations of its own section to the Heads of Union Delegations. It shall, at the same time, inform the High Representative thereof. 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.

The Commission may withdraw that delegation in accordance with its own rules.

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

(11) 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."

(12) In Article 59, the following paragraph 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 be subject to the Commission as the institution responsible for the definition, exercise, control and appraisal of their duties and responsibilities as authorising officers by sub-delegation. The Commission shall, at the same time, inform the High Representative thereof."

(13) At the end of the second subparagraph of Article 60(7), the following sentence is added:

"The annual activity reports of the authorising officers by delegation shall also be made available to the budgetary authority."

(14) In section 2, the following Article is added:

"Article 60a

1. Where Heads of Union Delegations act as authorising officers by sub-delegation 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 of 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 priorities which is likely to have an impact on the implementation of the financial management tasks sub-delegated to them.

Where a situation or conflict of the type referred to in the second subparagraph arises, the Heads of Union Delegations shall inform the responsible Directors-General of the Commission and of the EEAS thereof without delay. Those Directors-General shall take appropriate steps to remedy the situation.

2. If Heads of Union Delegations find themselves in a situation referred to in Article 60(6), they shall refer the matter 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, they shall inform the authorities and bodies designated by the applicable legislation.
3. Heads of Union Delegations acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 51 shall report 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). The reports of the Heads of Union Delegations shall include information on the efficiency and effectiveness of internal management and control systems put in place in their Delegation, as well as on the management of operations sub-delegated to them, and provide the assurance pursuant to Article 66(3a). These reports shall be annexed to the annual activity report of the authorising officer by delegation, and shall be made available to the budgetary authority taking into account, where appropriate, their confidentiality.

The Heads of Union Delegations shall fully cooperate with institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information. In this context, they may be requested to attend meetings of the relevant bodies and assist the responsible authorising officer by delegation.

4. Heads of Union Delegations acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 51 shall reply to any request by the authorising officer by delegation of Commission at its own request or, in the context of discharge, at the request of the European Parliament.
5. The Commission shall ensure that sub-delegating powers are not detrimental to the discharge procedure, in accordance with Article 319 of the Treaty on the Functioning of the European Union."

(15) In Article 61(1), the following subparagraphs are added after point (f):

"The responsibilities of the accounting officer of EEAS shall concern only the EEAS section of the budget as implemented by the EEAS. The accounting officer of the Commission shall remain responsible for the entire Commission section of the budget, including accounting operations relating to appropriations sub-delegated to Heads of Union Delegations.

The accounting officer of the Commission shall also act as the accounting officer of the EEAS in respect of the implementation of the EEAS section of the budget, subject to Article 186a."

(16) Article 66 is amended as follows:

(a) the following paragraph is inserted:

"3a. In the event of sub-delegation 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 setting 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 out within the Union Delegation under their responsibility. Before taking up their duties, they must complete specific training courses on the tasks and responsibilities of authorising officers and the implementation of the budget, in accordance with Article 50 of the Implementing Rules.

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 shall provide to the authorising officer by delegation of the Commission the assurance on the internal management and control systems put in place in their Delegation, as well as on the management of operations sub-delegated to them and the results thereof, in order to allow the authorising officer to establish his statement of assurance, as provided for in Article 60(7)."

(b) the following paragraph is added:

"5. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of 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 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 to initiate, in the High Representative's capacity as appointing authority, proceedings entailing liability to disciplinary action or to payment of compensation against authorising officers by sub-delegation if irregularities concern the competencies of the Commission sub-delegated to them. In such a case, the High Representative will take appropriate action in accordance with the Staff Regulations in order to enforce decisions on disciplinary action and/or the payment of compensation, as recommended by the Commission.

The Member States shall fully support the Union in the enforcement of any liability under Article 22 of the Staff Regulations of temporary staff to whom Article 2, point (e) of the Conditions of Employment of Other Servants of the European Communities applies."

(17) 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 sub-delegation 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.

The internal auditor of the Commission shall also act as the internal auditor of the EEAS in respect of the implementation of the EEAS section of the budget, subject to Article 186a."

(18) The following Article is inserted:

"Article 147a

The EEAS shall be fully subject to the procedures provided for in Article 319 of the Treaty on the Functioning of the European Union and in Articles 145 to 147 of this Regulation. The EEAS shall fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies."

(19) 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."

(20) In 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 and by Union Delegations in accordance with the second paragraph of Article 51."

(21) The following Article is inserted:

"Article 186a

The third subparagraph of Article 61(1) and the third paragraph of Article 85 will be reviewed in 2013 taking due account of the specificity of the EEAS and in particular that of the Union Delegations, and, where appropriate, an adequate financial management capacity of the EEAS."

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 Strasbourg,

For the European Parliament
The President

For the Council
The President
