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## III

*(Preparatory acts)*

## COURT OF AUDITORS

## OPINION No 5/2017

**concerning the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 1141/2014 of the European Parliament and the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations**

(2018/C 018/01)

THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Articles 287(4) and 322 thereof,

Having regard to the Commission's proposal <sup>(1)</sup>,

Having regard to the European Parliament's request for an opinion, received on 6 October 2017,

Having regard to the Council's request for an opinion, received on 11 October 2017,

Whereas:

- (1) European political parties (EUPPs) and European political foundations (EUPFs) are not bodies set up by the Union within the meaning of Article 287(1) TFEU and are not, as such, subject to our audit. However, to the extent they receive funding from the EU budget, we are competent to carry out audits based on the examination of records and on-the-spot visits to their premises, under the conditions laid down in Article 287 TFEU.
- (2) Funds which European political parties and foundations receive from sources other than the EU budget are not automatically subject to our audit. However, because of the interaction between EU funding and funding from other sources, we may also need to examine the latter in the course of our audit work.
- (3) In the context of our audit of the annual accounts of the EU we have checked a limited number of transactions linked to EUPPs or EUPFs. In 2014 we have examined a transaction concerning a grant paid to a EUPP. In two transactions examined in 2015 and 2016 we have checked the spending of expenditure claimed by political groups <sup>(2)</sup>. These checks revealed weaknesses in procurement procedures and also ineligible expenditure claims <sup>(3)</sup>.

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<sup>(1)</sup> The proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 1141/2014 of the European Parliament and the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations (COM(2017) 481 final of 13 September 2017).

<sup>(2)</sup> Political groups in the European Parliament are not covered by this proposal. Audit arrangements (appointment of an independent external auditor) and the discharge procedure applicable to them are similar to those of EUPPs and EUPFs.

<sup>(3)</sup> See 2016 annual report, paragraph 10.15, 2015 annual report, paragraph 9.11, and 2014 annual report, paragraph 9.11 and box 9.1.

- (4) Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council of 22 October 2014 on the statute and funding of European political parties and European political foundations aimed at increasing the visibility, recognition, effectiveness, transparency and accountability of European political parties and their affiliated political foundations. We welcomed the improvements contained in the draft of this Regulation and raised several points in our Opinion No 1/2013 <sup>(1)</sup>.
- (5) On 15 June 2017, the Parliament adopted a resolution <sup>(2)</sup> calling upon the Commission to propose a revision of the current legal framework in order to address some loopholes in Regulation (EU, Euratom) No 1141/2014.
- (6) We note that Regulation (EU, Euratom) No 1141/2014 applied from 1 January 2017 and that a report on its application was not foreseen until mid-2018,

HAS ADOPTED THE FOLLOWING OPINION:

#### GENERAL REMARKS

1. On 22 October 2014 the European Parliament (EP) and the Council adopted Regulation (EU, Euratom) No 1141/2014 repealing Regulation (EC) No 2004/2003 and laying down new rules for, inter alia, the funding of EUPPs and EUPFs. These concern, in particular, the funding conditions, the award and distribution of funding, donations and contributions, financing of campaigns for elections to the European Parliament, reimbursable expenditure, the prohibition of the use of EU funding, accounts, reporting and audit, implementation and control, penalties, cooperation between the Authority for European political parties and foundations (the Authority), the Authorising Officer of the European Parliament and the Member States, and transparency. The regulation started to apply from 1 January 2017.
2. We have issued an opinion <sup>(3)</sup> on the Commission's 2012 proposals <sup>(4)</sup>. We suggested improvements concerning donations, loans and contributions, as well as eligibility conditions and accounts and reporting obligations. Most of the points included have been taken into account and included in the final regulation.
3. Following a resolution <sup>(5)</sup> of the EP and input received from EP services and a number of EUPPs, on 13 September 2017 the Commission presented the current proposal <sup>(6)</sup>. It includes a limited number of targeted amendments, which, according to the Commission, aim 'to close loopholes, improve transparency, to ensure the appropriate allocation and expenditure of limited resources from the EU budget' <sup>(7)</sup>.
4. The proposal addresses the following issues:
  - (a) The 'multiparty membership',
  - (b) Amending the distribution key for financing EUPPs and EUPFs,
  - (c) The lowering of the co-financing rate,
  - (d) Recovery of amounts unduly paid,

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<sup>(1)</sup> OJ C 67, 7.3.2013, p. 1, Opinion No 1/2013 concerning the proposal for a regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations and concerning the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 966/2012 as regards the financing of European political parties.

<sup>(2)</sup> European Parliament resolution of 15 June 2017 on the funding of political parties and political foundations at European level (2017/2733(RSP)).

<sup>(3)</sup> Opinion No 1/2013 concerning the proposal for a regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations and concerning the proposal for a regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 966/2012 as regards the financing of European political parties.

<sup>(4)</sup> The proposal for a Regulation of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations (COM(2012) 499 final of 12 September 2012); and the proposal for a Regulation of the European Parliament and of the Council amending Regulation (EU, Euratom) No 966/2012 as regards the financing of European political parties (COM(2012) 712 final of 29 November 2012).

<sup>(5)</sup> European Parliament resolution of 15 June 2017 on the funding of political parties and political foundations at European level (2017/2733(RSP)).

<sup>(6)</sup> COM(2017) 481.

<sup>(7)</sup> See explanatory memorandum, p. 4.

- (e) Enforcing compliance with registration criteria,
- (f) Clarifying the link between national parties and EUPPs.

5. We welcome the provisions that have the potential to improve the sound financial management, accountability, transparency of the funds allocated to EUPPs and EUPFs. We also provide comments on the changes related to the reporting timeline and suggest a 'single rule book'. We consider that the provisions relating to the 'multiparty membership' and the distribution key for EU funding are matters for political decision and we do not comment upon them.

#### **FOLLOW UP OF PREVIOUS OPINION**

6. In our Opinion No 1/2013 we have raised concerns regarding gaps in the legal framework regulating donations, loans, contributions and sanctions and also highlighted the need for stronger accountability. Most of the issues raised were addressed by Regulation (EU, Euratom) No 1141/2014. We reiterate below some of points not taken into account at that moment that we still consider relevant.

7. The current proposal does not follow our recommendation to specifically regulate donations from natural or legal persons who provide goods and services for EU institutions or for other public authorities involved in the management of EU funds<sup>(1)</sup>. Likewise, it does not include any rules on donations to entities related directly or indirectly to EUPPs or EUPFs<sup>(2)</sup>.

8. Furthermore, the draft regulation does not include rules concerning loans, their terms and conditions<sup>(3)</sup>.

9. The existing Regulation (EU, Euratom) No 1141/2014 introduces a proportionate approach as regards the amount of fines<sup>(4)</sup> and the application of penalties when the EP or the Court are prevented from exercising their audit powers<sup>(5)</sup>. Nevertheless, the draft proposal does not follow our recommendation<sup>(6)</sup> to remove the maximum ceiling of 10 % of the annual budget of the EUPP or EUPF applicable to fines in case of quantifiable infringements.

#### **CURRENT PROPOSAL — SPECIFIC REMARKS**

##### **Co-financing**

10. The contribution from the EU budget to the EUPPs and EUPFs takes the form of a reimbursement of a percentage of reimbursable<sup>(7)</sup> costs actually incurred. Under the current rules the maximum amount paid may not exceed 85 % of these costs.

11. According to the proposal's explanatory memorandum and the explanations received by us from the EP services, some EUPPs and EUPFs encounter difficulties to find the contributions needed to meet the co-financing threshold. This creates incentives for using questionable practices such as: taking out loans to finance operational activities with the effect that external auditors raise going concern issues; providing contributions in kind with a value that may prove difficult to assess. Furthermore, the use of loans by EUPPs and EUPFs may entail the risk of rules on donations and contributions being circumvented by receiving loans at particularly advantageous conditions. In order to address these issues the Commission is proposing to reduce the co-financing threshold to 10 % for EUPPs and 5 % for EUPFs.

<sup>(1)</sup> See Opinion No 1/2013 paragraph 5.

<sup>(2)</sup> See Opinion No 1/2013 paragraph 6.

<sup>(3)</sup> See Opinion No 1/2013 paragraph 10.

<sup>(4)</sup> See Regulation (EU, Euratom) No 1141/2014 Article 27 (4).

<sup>(5)</sup> See Regulation (EU, Euratom) No 1141/2014 Article 27 (2) a) iv).

<sup>(6)</sup> See Opinion No 1/2013 paragraph 11.

<sup>(7)</sup> In order to be considered to be eligible for reimbursement from Union funding costs must meet the conditions defined under Article II.18 of the Decision of the Bureau of the European Parliament of 12 June 2017 laying down the procedures for implementing Regulation (EU, Euratom) No 1141/2014 of the European Parliament and of the Council on the statute and funding of European political parties and European political foundations (OJ C 205, 29.6.2017, p. 2).

12. We agree with the Commission's proposal to mitigate the risk of using questionable practices generated by the difficulties in meeting the co-financing threshold. However, in order to further discourage such practices the rules on donations and loans should be strengthened (see paragraphs 7 and 8).

#### **Recovery of unduly paid amounts and enforcing compliance with registration criteria**

13. The proposal clarifies that the authorising officer of the EP can recover amounts unduly paid also from individuals having committed illegal activities detrimental to the financial interests of the EU. It also empowers the Authority to de-register any EUPP or EUPF if they cease to comply with any of the registration criteria or where registration was based on incorrect or misleading information.

14. We agree with the Commission's proposal as it has the potential of contributing to the protection of the EU budget. In order to strengthen this objective, we reiterate our recommendation issued in our Opinion No 1/2013 suggesting the removal of the maximum ceiling for fines (see paragraph 9).

#### **Clarifying the link between the national and European parties**

15. In order to enhance clarity and transparency the Commission proposes to clarify the link between the national and European political parties. The proposal states that 'a European political party shall include in its application evidence that its member parties have continuously published on their websites, during 12 months preceding the moment at which the application is made, the political programme and logo of the European political party as well as information ...'. While we welcome the Commission's intention to improve the transparency of the link between EUPPs and national parties, we deem it will prove difficult in practice to monitor this requirement, and obtain relevant supporting evidence in order to prove the 'continuous publication'.

#### **Timing of the proposal**

16. The current rules have started to be applicable from 1 January 2017. Therefore, the current call for financial contributions <sup>(1)</sup> is the first one under the new legislation. According to the Commission, the proposal intends to address loopholes identified under the previous rules, which have not been considered when preparing Regulation (EU, Euratom) No 1141/2014. However, a more detailed revision will still be required as the issues addressed are not the only ones raised by the various stakeholders.

17. We welcome the correction of any potential shortcoming of the legislation in force, but we suggest that the practice of revising legislation early after entering into force and only to address a limited number of issues should, in general, be avoided.

#### **Single rule book**

18. Currently the Financial Regulation of the general budget of the EU includes rules on the contributions to EUPPs <sup>(2)</sup>. Some of the articles address issues that are also dealt with under Regulation (EU, Euratom) No 1141/2014 <sup>(3)</sup>. In order to avoid overlaps and simplify the legislative framework we consider that all provisions concerning EUPPs and EUPFs could be grouped under a single rule book.

This Opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 14 December 2017.

*For the Court of Auditors*

Klaus-Heiner LEHNE

*President*

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<sup>(1)</sup> Call for contributions IX-2018/01 — 'Contributions to European political parties' (2017/C 206/13).

<sup>(2)</sup> Part two — Title VIII — Contributions to European Political Parties.

<sup>(3)</sup> Such as issues concerning co-financing, reporting and audit.



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