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## III

*(Preparatory Acts)*

## COURT OF AUDITORS

**OPINION No 3/2018***(pursuant to Article 287(4), TFEU)***concerning the proposal for a Council Regulation on the financial regulation applicable to the  
11th European Development Fund (COM(2018) 485 final)***(2018/C 396/01)***CONTENTS**

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

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

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States of the European Union, meeting within the Council, on the financing of European Union aid under the multiannual financial framework for the period 2014 to 2020, in accordance with the ACP-EU Partnership Agreement, and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the Treaty on the Functioning of the European Union applies <sup>(1)</sup>, and in particular Article 10(2) thereof,

Having regard to Regulation (EU, Euratom) 2018/1046 of the European Parliament and of the Council of 18 July 2018 on the financial rules applicable to the general budget of the Union <sup>(2)</sup>,

Having regard to the Court's Opinion No 3/2013 on the proposal for a Council Regulation on the Financial Regulation applicable to the 11th European Development Fund <sup>(3)</sup>,

Having regard to the Court's Opinion No 8/2015 on the proposal for a Council Regulation amending Regulation (EU) 2015/323 on the Financial Regulation applicable to the 11th European Development Fund <sup>(4)</sup>,

Having regard to the Court's Opinion No 1/2017 concerning the proposal for a Regulation of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union and amending Council Regulation (EC) No 2012/2002 <sup>(5)</sup>,

Having regard to the Court's annual reports on the activities funded by the 8th, 9th, 10th and 11th European Development Funds <sup>(6)</sup>,

Having regard to the Court's special reports Nos 9/2013 <sup>(7)</sup>, 4/2013 <sup>(8)</sup> and 11/2010 <sup>(9)</sup>,

Having regard to the Commission's proposal for a Council Regulation on the financial regulation applicable to the 11th European Development Fund <sup>(10)</sup>,

Having regard to the Council's request for an opinion on the abovementioned proposal received at the Court of Auditors on 16 July 2018,

HAS ADOPTED THE FOLLOWING OPINION:

## INTRODUCTION

1. The objective of this proposal is to align the financial rules of the EDF with those applicable to the Union budget. The current Council Regulation on the financial regulation applicable to the 11th European Development fund is structured as a set of references to the Financial Regulation applicable to the general budget of the Union (general financial regulation, GFR) excluding or supplementing provisions to cater for EDF specificities.

2. The Court made observations and recommendations on the GFR proposal in its Opinion No 1/2017.

3. Since the Financial Regulation applicable to the general budget of the Union (Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council <sup>(11)</sup>) has been recently revised it is necessary to adapt the 11th EDF Financial Regulation.

## GENERAL OBSERVATION

4. The proposed 11th EDF Financial Regulation contains several references to the GFR in its articles. This practice simplifies the EDF regulatory framework by reducing the number of legal texts to be modified in case of future updates of the GFR and secures consistency between the concerned legal texts. However, this means that the proposed regulation is not a stand-alone document and users would need to consult the GFR in order to apply the EDF's provisions.

<sup>(1)</sup> OJ L 210, 6.8.2013, p. 1.

<sup>(2)</sup> OJ L 193, 30.7.2018, p. 1.

<sup>(3)</sup> OJ C 370, 17.12.2013, p. 1.

<sup>(4)</sup> OJ C 5, 8.1.2016, p. 6.

<sup>(5)</sup> OJ C 91, 23.3.2017, p. 1.

<sup>(6)</sup> OJ C 322, 28.9.2017, p. 281; OJ C 375, 13.10.2016, p. 287; OJ C 373, 10.11.2015, p. 289.

<sup>(7)</sup> 'EU support for governance in the Democratic Republic of the Congo' (<http://eca.europa.eu>).

<sup>(8)</sup> 'EU Cooperation with Egypt in the Field of Governance' (<http://eca.europa.eu>).

<sup>(9)</sup> 'The Commission's management of General Budget Support in ACP, Latin American and Asian Countries' (<http://eca.europa.eu>).

<sup>(10)</sup> COM(2018) 485 final.

<sup>(11)</sup> OJ L 298, 26.10.2012, p. 1.

**SPECIFIC OBSERVATIONS****Budget support**

5. Article 236 of GFR establishes the terms and conditions for the use of budget support to be provided to third countries. We understand that the proposed 11th EDF Financial Regulation does not add any new features that are specific to the ACP States or OCTs. Therefore, we consider that the reference to the GFR included in the first paragraph of Article 36 of the proposal is still fully justified.

6. However, paragraphs 2 to 7 of Article 36 paraphrases existing terms and conditions laid down in Article 236 of GFR and also adds new ones. For example, Article 36 of the proposed 11th EDF Financial Regulation stipulates that budget support shall aim at strengthening contractual partnership between Union and ACP States or OCTs in order to support, inter alia, sustainable and inclusive economic growth, and to eradicate poverty. These objectives are not included in the GFR. We consider that these inconsistencies increase the possibility of confusion or misunderstandings in its interpretation and application.

7. Further, the scope of the discretionary power given to the Commission in the final paragraph of Article 36 as regards the provision of budget support to the OCTs is unclear.

8. In its Opinion No 3/2013 on the Commission's proposal of the previous 11th EDF Financial Regulation, the Court has already recommended that the Council examine the article dealing with budget support, which is similar to the one included in the current proposal.

**Review of individual paragraphs**

9. The results of the Court's detailed analysis and the corresponding suggestions for modifications are presented in **the Annex**.

This Opinion was adopted by Chamber III headed by Mrs Bettina JAKOBSEN, Member of the Court of Auditors, in Luxembourg at its meeting of 25 September 2018.

*For the Court of Auditors*

Klaus-Heiner LEHNE

*President*

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## Analysis of the Commission's proposal and the Court's suggestions

Ref.	Commission's proposal	Court's analysis	Court's suggestion
Recital 18	'The provisions concerning scrutiny by the Court of Auditors of the EDF resources managed by the EIB should comply with the Tripartite Agreement concluded between the Court of Auditors, the EIB and the Commission provided for in Article <b>248(4)</b> of the Treaty.'	Old reference, to be updated.	'The provisions concerning scrutiny by the Court of Auditors of the EDF resources managed by the EIB should comply with the Tripartite Agreement concluded between the Court of Auditors, the EIB and the Commission provided for in Article <u>287(3)</u> <del>248(4)</del> of the Treaty.'
Art 3(2) (e)	'references to "budget line" or "line in the budget" in Regulation (EU, Euratom) No [the new Financial Regulation] shall be construed as references to "allocation" in this Regulation;'	The term 'line in the budget' is not used in the 2018 GFR. It should therefore be deleted.	'references to "budget line" <del>or "line in the budget"</del> in Regulation (EU, Euratom) No [the new Financial Regulation] shall be construed as references to "allocation" in this Regulation;'
Art 7	'Article 20 of Regulation (EU, Euratom) No [the new Financial Regulation] shall apply. Without prejudice to Article 8 of this Regulation, total revenue shall cover total estimated payments.'	A sentence from Art 20 GFR ' <i>Without prejudice to Article 27, all revenue and expenditure shall be entered in full without any adjustment against each other</i> ' should be added to be consistent.  If not added, the internal reference to Art 27 made in Art 20 might not apply to 11th EDF (as per Art 2.2 of 11th EDF FR).	'Article 20 of Regulation (EU, Euratom) [the new Financial Regulation] shall apply. Without prejudice to Article 8 of this Regulation, total revenue shall cover total estimated payments. <u>Without prejudice to Article 27 of Regulation (EU, Euratom) No [the new Financial Regulation].</u> '
Art 8 (2) (d)	'repayments and revenues generated by financial instruments and budgetary guarantees pursuant to Article 209(3) of Regulation (EU, Euratom) No [the new Financial Regulation];'	The text should be aligned with Art 21(3)(f) of GFR which only refers to repayments.	'repayments <del>and revenues generated by</del> <u>to</u> financial instruments <del>and</del> <u>or</u> budgetary guarantees pursuant to the second subparagraph of Article 209(3) of Regulation (EU, Euratom) No [the new Financial Regulation];'
Art 8 (4)	'Articles 25 to 27 of Regulation (EU, Euratom) No [the new Financial Regulation] concerning donations shall apply. Acceptance of a donation shall be subject to the authorisation of the Council.'	The text should be corrected to 'Articles 25 and 26'. Art 27 concerns 'Rules on deductions and exchange rate adjustments'  The text should also refer to 'corporate sponsorship', which is the subject of Art 26.	'Articles 25 to <u>26</u> <del>7</del> of Regulation (EU, Euratom) [the new Financial Regulation] concerning donations <u>and corporate sponsorship</u> shall apply. Acceptance of a <u>donation or corporate sponsorship</u> shall be subject to the authorisation of the Council.'

Ref.	Commission's proposal	Court's analysis	Court's suggestion
Art 20 (ex-22)	Original version of ex-Art 22 as per Council Regulation (EC) No 2015/323.	The proposal is not in line with the amended version of Art 22 as per Council Regulation (EC) No 2016/888.	Art 22 as per Council Regulation (EC) No 2016/888.
Art 30 (3) (a)	<p>'Where the 11th EDF is applied in indirect management with ACP States, OCTs or their regional organisations, without prejudice to the responsibilities of the contracting authorities, the Commission:</p> <p>(a) shall, where necessary, recover amounts due from the contracting authorities' recipients according to Articles 101 to 104 of Regulation (EU, Euratom) No [the new Financial Regulation], including by means of a decision which shall be enforceable under the same conditions as those laid down in Article 299 TFEU;'</p>	<p>To be consistent with Art 23.1, the text should read: according to Article 101, except for 101.7 to 101.9.</p> <p>Article 105 and 106 should also be included, for clarity reasons and to be consistent with Art 23.1.</p>	<p>'Where the 11th EDF is applied in indirect management with ACP States, OCTs or their regional organisations, without prejudice to the responsibilities of the contracting authorities, the Commission:</p> <p>(a) shall, where necessary, recover amounts due from the contracting authorities' recipients according to Article 101, <u>with the exception of Article 101(7) to 101(9), to Article 106</u>4 of Regulation (EU, Euratom) [the new Financial Regulation], including by means of a decision which shall be enforceable under the same conditions as those laid down in Article 299 TFEU;'</p>
Art 39 title	'Financial statements and the report on the financial implementation'	The title should be corrected as it does not concern financial statements, but only the report on the financial implementation.	<del>'Financial statements and</del> the report on the financial implementation'











