



EUROPEAN  
COURT  
OF AUDITORS

## Opinion No 10/2020

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

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Council Decision of 17 June 1994<sup>1</sup> 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 1994 Convention defining the Statute of the European Schools of 1994<sup>2</sup>, and in particular Articles 6, 10, 13, 20, and 25 thereof;

Having regard to the Financial Regulation of 5 September 2017 applicable to the budget of the European Schools<sup>3</sup> ('the Schools' 2017 Financial Regulation');

Having regard to the request for an opinion made by the Secretary-General of the European Schools on 29 April 2020, received at the Court of Auditors ('the ECA') on the same day;

Having regard to the Preliminary Report of the Working Group on the Revision of the Financial Regulation<sup>4</sup> and to its Annex I: Proposed changes in the text of the Financial Regulation ('the Proposal');

Taking note of the ECA's previous opinions 5/2006, 3/2011 and 4/2014 and 2/2017 on proposals for amending the Financial Regulation applicable to the budget of the European Schools;

HAS ADOPTED THE FOLLOWING OPINION:

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<sup>1</sup> 94/557/EC, Euratom: Council Decision 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).

<sup>2</sup> OJ L 212, 17.8.1994, p. 3.

<sup>3</sup> Decision of the Board of Governors of 5 September 2017, 2017-12-D-21-en-1.

<sup>4</sup> Document from the Office of the Secretary General for the Board of Governors of the European Schools' meeting (15-17 April 2020), 2020-02-D-41-en-2.

# Introduction

**01** The Financial Regulation of 5 September 2017 applicable to the budget of the European Schools ('the Schools' 2017 Financial Regulation') requires the Office of the Secretary-General to review the Schools' Financial Regulation every three years and otherwise whenever necessary<sup>5</sup>. Such review may be necessary in particular to align the Schools' Financial Regulation with the relevant rules of the Financial Regulation applicable to the budget of the EU ('the EU Financial Regulation')<sup>6</sup>.

**02** The Schools' Board of Governors approved the Schools' 2017 Financial Regulation on 5 September 2017. At its meeting of 15 to 17 April 2020, it instructed the Secretary-General to consult the ECA on the proposed changes in the text of the Financial Regulation ('the Proposal').

**03** The proposed changes mainly aim to improve the alignment with the EU Financial Regulation, to reflect specific features of the European Schools ('the Schools') and address the need to change the process and timeline for preparing, and approving the Schools' accounts and sending them to the ECA.

**04** For the purpose of this non-mandatory opinion, we have also taken into consideration the results of our work on the Schools' annual accounts<sup>7</sup>.

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<sup>5</sup> Article 99 of the Schools' 2017 Financial Regulation.

<sup>6</sup> 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 (OJ L 193, 30.7.2018, p. 1).

<sup>7</sup> See paragraph 19 where we refer to weaknesses regarding the use of contracts concluded by different public bodies.

## General observations

**05** We note that the Schools have largely addressed the issues raised in our opinion 2/2017<sup>8</sup>, in particular as regards consolidating the Schools' Financial Regulation and their implementing rules in a single set of rules, generally aligning the rules on procurement with those applicable in the EU Financial Regulation, and modifying the provisions relating to the production of the Schools' accounts, external audit and the discharge procedure.

**06** As in our opinion 2/2017, we refer again in this opinion to issues related to the schedule for revising the Schools' financial rules following any modification of the EU Financial Regulation (paragraphs **07-08**), to exceptions from the obligation to issue invitations to tender (paragraphs **18-22**), and to provisions applicable to the submission of the final consolidated accounts and to the deadline for the replies of the authorising officer to the observations of the ECA (paragraphs **24-25**).

**07** The latest EU Financial Regulation entered into force on 2 August 2018, but the Schools' 2017 Financial Regulation still refers to and, to a certain extent, draws on the 2012 EU Financial Regulation<sup>9</sup>. Any changes to the Schools' Financial Regulation as a result of the Proposal will not enter into force before 2021.

**08** As a general rule, the Schools' Financial Regulation should be revised no later than two years after the entry into force of any revisions to the EU Financial Regulation. This would ensure it is promptly aligned, as applicable, with the EU financial rules. Timely alignment is particularly important in the event of major changes to the EU Financial Regulation.

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<sup>8</sup> Opinion No 2/2017 on a proposal for amending the Financial Regulation applicable to the budget of the European Schools.

<sup>9</sup> Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 (OJ L 298, 26.10.2012, p. 1).

## Specific observations

**09** Our specific observations on the Proposal concern:

- o extra-budgetary activities;
- o procurement;
- o submission of the individual accounts;
- o deadlines for submission to the ECA of the final consolidated accounts and the Schools' replies to the ECA's draft annual report on the Schools' accounts;
- o transitional and final provisions.

### Extra-budgetary activities

**10** Extra-budgetary activities are activities outside of the Schools' core activities, such as school trips and outings, and the selling of schoolbooks and diaries. They are organised for the Schools under the responsibility of their directors, but paid for by pupils, parents or third parties. They require a high level of transparency due to the inherent risks associated with them. These risks stem from the variety of activities undertaken, the different actors involved, including private ones and the various options for revenue collection for funding these activities. The objective of the rules for the management of extra-budgetary activities is to mitigate these risks and, where feasible, to ensure that these activities are not handled with money and that no teacher would need to use his/her private bank account for the management of a school activity.

**11** Revenue and expenditure relating to these activities should be recorded in extra-budgetary accounts. In the Schools' consolidated accounts for the 2019 financial year, extra-budgetary revenues came to around €9,4 million.

**12** Under the Proposal, extra-budgetary activities would have to be defined in a memorandum from the Schools' Secretary-General, considering the nature of those activities and the materiality of the amounts involved. Any 'new' extra-budgetary

activities not so defined would need the approval of the Secretary-General and the Administrative Board of the School concerned.

The Schools' 2017 Financial Regulation already provides for a separate memorandum with details of these activities. It is available only since July 2020, when the Secretary-General issued this memorandum on the management of extra-budgetary activities.

**13** We noted that the Proposal does not contain general principles, which would provide the basis for the rules to be defined in the memorandum regarding the recording and disclosure of extra-budgetary activities. In addition, the Proposal does not provide for the Board of Governors' approval for this memorandum. Addressing these issues would enhance the Schools' adherence to transparency and their accountability towards stakeholders.

**14** The detailed rules of the memorandum are not an integral part of the Proposal. However, Article 19 of the Proposal, which deals with the recording of such activities in the Schools' accounts, makes explicit reference to them. We therefore make the following comments on the memorandum.

**15** The differentiation between budgetary activities and extra-budgetary activities in practice is not always clear. For example, there are activities, such as certain school trips paid for by parents within the curriculum, which remain inside the Schools' budget. The memorandum is helpful in this regard, but it only lists a limited number of extra-budgetary activities.

**16** When defining and classifying extra-budgetary activities, the memorandum distinguishes between revenue from third parties (e.g. for class photos or from vending machines) and revenue from pupils and parents. The second type of revenue is subdivided into three groups according to the associated risk. Group 1 consists of 'high-risk' activities (defined as revenue above €100 per pupil), and groups 2 and 3 consist of 'low-risk' activities (defined as revenue below €100 per pupil). Group 2 requires the participation of an entire year group or language section, and all other

'low-risk' activities are classified in group 3. However, we note that only amounts per pupil are considered for the assignment to a group, not the total amount of an activity.

**17** The memorandum requires revenue and expenditure relating to group 1 and 2 activities and revenue from third parties to be recorded in the Schools' extra-budgetary accounts, but this does not apply to group 3 activities. In the absence of comprehensive rules in the memorandum, there is a risk that the same extra-budgetary activity will be accounted for differently by the Schools. This would affect, where material, the consolidation of the accounts. The Schools were unable to provide us with an indication of the financial volume of group 3 activities.

## Procurement

**18** The changes in Article 66 of the Proposal aim at aligning the Schools' procurement rules with the EU Financial Regulation and at the same time simplifying procurement procedures. To this end, Article 66(4) would allow the Schools to use inter-institutional contracts or European Patent Office contracts, and Article 66(7) would allow payment 'against invoice' for amounts below €5 000. While in general we support simplification, we would like to raise the following related issues and associated risks.

**19** Until the end of 2019, the Schools could use contracts concluded by different public bodies, similar in nature to inter-institutional contracts. While the proposal to use inter-institutional contracts would contribute to simplification, their use also implies risks, which the Schools would need to address. We found in our work on the Schools' accounts, that they had used these contracts in the past even though they no longer had been in force. In addition, the Schools' aggregate contracted amounts could be above the threshold of the procurement procedure used.

**20** Regarding the proposed use of European Patent Office's contracts by the Schools, we note that its procurement rules are themselves not fully aligned with the EU Financial Regulation. They differ, for instance, in the thresholds for determining the applicable procurement procedure.



**21** Article 66(7) proposes: “For contracts with a value below the threshold of €5 000, a simplified procedure of payment against invoice may be carried out”. This would amount to a derogation from the EU Financial Regulation, which sets the threshold at €1 000.

**22** We note that the Proposal provides for a list of all purchases below €5 000 to be reported to the Administrative Boards of the Schools, including the amounts of less than €1 000. The Schools had prepared a limited analysis of purchases up to €15 000 for two individual schools. However, we consider that the level of the proposed threshold of €5 000 should have been established using a prior comprehensive assessment. Such an assessment should provide information as to what impact the Proposal would have on the purchases of individual schools, depending on their size and needs. Without such a comprehensive assessment, the proposed derogation from the EU Financial Regulation is not sufficiently substantiated.

### **Submission of the individual accounts**

**23** Article 71 of the Proposal changes the deadline for individual Schools to submit their accounts to the Central Accounting Officer. It provides that “The accounting correspondents shall submit the provisional individual accounts to the accounting officer by 1 March of the following financial year at the latest.” However, the Proposal does not include a deadline for submitting the same accounts to the ECA. Based on this, we would suggest that 1 April is set as the deadline for provisional individual accounts to be delivered to the ECA. This will ensure that we receive a full set of accounting information to allow for timely completion of our review work.

### **Deadlines for submission to the ECA of the final consolidated accounts and the Schools’ replies to the ECA’s draft annual report on the Schools’ accounts**

**24** Article 73(3) of the Proposal extends the deadline for submission to the ECA of the final consolidated accounts by two months, to 30 September instead of 31 July. This departs from the EU Financial Regulation, which establishes 31 July as the deadline for

the consolidated EU accounts. We note that the proposed extension would allow the Administrative Boards to approve the final individual accounts. To this end, we would favour an extension of the submission deadline to 15 September, which would be closer to the original deadline provided for in the EU Financial Regulation.

**25** Article 86 extends by one month the final deadline for the Schools' Secretary-General to submit replies to ECA's draft annual report, to 31 October instead of 30 September. This departs from the EU Financial Regulation, which sets a deadline of 15 October for final replies. Considering that the proposed extension would allow the ECA only one month in which to complete all remaining tasks, including the adoption of the final report, we would prefer to maintain the current deadline of 30 September, or, if this proves not to be feasible, set the deadline of 15 October at the latest.

### **Transitional and final provisions**

**26** The 'implementing measures' referred to in Article 100 have been implemented, which makes this paragraph redundant.

**27** Article 101 on 'Repeal' refers to the 2006 EU Financial Regulation and should be updated.

**28** The first paragraph of Article 103 should be reintroduced to allow mention of the dates of the entry into force and applicability of the new Schools' Financial Regulation.

This Opinion was adopted by Chamber V headed by Tony Murphy, Member of the Court of Auditors, in Luxembourg on 14 October 2020.

*For the Court of Auditors*



Klaus-Heiner Lehne  
*President*