Regulation (EU, Euratom) No 1081/2010 of the European Parliament and of the Council of 24 November 2010 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 1081/2010 OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

of 24 November 2010

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 Auditors[(1)],

Acting in accordance with the ordinary legislative procedure[(2)],

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 Communities[(3)] (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 Service[(4)].

(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.

(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

Changes to legislation: *There are currently no known outstanding effects for the Regulation (EU, Euratom) No 1081/2010 of the European Parliament and of the Council. (See end of Document for details)*

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 Regulations[(5)].

(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:

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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[6] 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.

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