



EUROPEAN
COURT
OF AUDITORS

Opinion No 3/2015

on a proposal for the Financial Regulation of the Single Resolution Board laying
down the financial provisions applicable to the Board

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THE COURT OF AUDITORS OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union (the Treaty), and in particular Article 287(1) thereof;

Having regard to Regulation (EU) No 806/2014 of the European Parliament and of the Council of 15 July 2014 establishing uniform rules and a uniform procedure for the resolution of credit institutions and certain investment firms in the framework of a Single Resolution Mechanism and a Single Resolution Fund and amending Regulation (EU) No 1093/2010 (the SRM regulation)¹;

Having regard to Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council² (“Framework Financial Regulation”);

Having regard to the request of the Interim Chair of the Single Resolution Board (the Board) for an opinion on a proposal for a Financial Regulation for the SRM that was submitted to the Court of Auditors on 16 December 2014;

HAS ADOPTED THE FOLLOWING OPINION:

INTRODUCTION

1. The Single Resolution Board (the Board) is the central decision-making body of the Single Resolution Mechanism (SRM). Its mission is to ensure that credit institutions and other entities under its remit, which face serious difficulties, are resolved effectively with minimal costs to taxpayers and the real economy. The Board will also be responsible for managing the Single Resolution Fund (SRF) which is established by the SRM. The Board is a self-financed agency of the European Union. It became operational on 1 January 2015.

¹ OJ L 225, 30.7.2014, p. 1.

² OJ L 328, 7.12.2013, p. 42.

2. The Board, SRM and SRF pursue complementary policy objectives. The contribution of the Board in meeting the Banking Union objectives depends therefore to a large extent on effective banking supervision which prevents to the furthest extent possible the need for banks to resort to the resolution mechanism and fund. This will also impact on the credibility and legitimacy of the EU action.

3. Under Article 287(1) of the Treaty, the Court of Auditors shall be the auditor of all agencies set up by the Union in so far as the relevant constituent instrument does not preclude such examination. Since the SRM regulation does not preclude it, the Court shall therefore be the auditor for the accounts of the Board and the transactions underlying them. Article 287(4), second subparagraph, of the TFEU, in providing for the Court to submit observations and deliver opinions to the European Parliament and Council, enables the Court to carry out performance audits of the Board.

4. Article 64 of the SRM Regulation states that the Board, after consulting the Court of Auditors and the Commission, shall adopt internal financial provisions specifying the detailed procedure for establishing and implementing its budget, which will be based on the Framework Financial Regulation, as far as it is compatible with the particular nature of the Board.

5. The Court notes that the proposed Financial Regulation is largely based on the Framework Financial Regulation and that most deviations are related to clarifications or precisions of terminology and the specific nature of the SRM. However, in the Court's opinion some deviations are not justified.

6. Furthermore, in the last part of this opinion, the Court expresses its concern with regard to the budgetary and discharge procedure applicable to the Board.

SPECIFIC OBSERVATIONS

Benchmarking exercise

7. As laid down in Article 29(3) of the Framework Financial Regulation, any union body "... shall carry out a benchmarking exerciseThe benchmarking exercise shall include:

- a review of the efficiency of the Union body's horizontal services,
- a cost-benefit analysis of sharing services or transferring them entirely to other Union body or the Commission.”.

8. Article 27(3) of the proposed Financial Regulation stipulates that “The scope, the modalities and regularity of the benchmarking exercise will be decided by the Management Board. The aim of the benchmarking exercise will be to facilitate efficient management of the human resources, including by assessing the overhead rate and exploring ways of reducing it wherever needed”.

9. The Board considers that the review of the efficiency of the horizontal services will be part of the review of the overhead rate. In the Court's opinion, the wording suggested for the proposed Financial Regulation is unclear and there is no justification not to use the terminology of “horizontal services”. Furthermore, the reference to a cost-benefit analysis of sharing or transferring of services to other Union bodies or the Commission should be retained since this might increase efficiency.

SPECIAL CONCERN

Budgetary and discharge procedure

10. The Court draws attention to the fact that there is no objective justification for the Director of the Board to be subject to discharge by its Management Board rather than the European Parliament.

11. According to Article 165 of the general Financial Regulation the discharge decision shall cover the accounts of all the Union's revenue and expenditure. Although the Board is financed from contributions of the banking sector and its budget does not form part of the general budget of the Union, its revenue stems from the exercise of a public authority on the basis of EU law. The Court of Auditors therefore considers that the Board should be subject to the general budgetary and discharge procedure before the European Parliament.

12. The provision for discharge by the SRB is made in the constituent act, an instrument of higher order, for which no opinion from the Court was formally requested. The Court recognises that any changes would need to be reflected at that level.

This Opinion was adopted by Chamber IV, headed by Mr Milan Martin CVIKL, Member of the Court of Auditors, in Luxembourg at its meeting of 27 January 2015.

For the Court of Auditors

U.E.
Vítor Manuel da SILVA CALDEIRA
President
Rechnungshof
Court of Auditors
Cour des comptes

