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COVER NOTE

from:	Mr Vítor CALDEIRA, President of the Court of Auditors
date of receipt:	26 July 2012
to:	Mr Herman Van Rompuy, President of the European Council
Subject:	The Commision proposals in the field of Home Affairs (period 2014-2020) - Letter from the Court of Auditors

Delegations will find annexed a copy of the above letter.

Vítor Caldeira
PRESIDENT
EUROPEAN COURT OF AUDITORS

Luxembourg,
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Mr Herman Van Rompuy
President
European Council
175, rue de la Loi
B-1048 Brussels

Subject: The Commission proposals in the field of Home affairs (period 2014-2020)

Dear President,

The Court has been undertaking an audit assessing the contribution of the EIF and ERF of the SOLID Framework Programme to the integration of third-party nationals.

I attach in annex a document highlighting a number of issues arising from the audit which the Court considers may be relevant to the consideration of the proposals for the future of the SOLID funds, COM (2011) 752 final and COM (2011) 751 final, during the legislative process.

The Court looks forward to further opportunities to contribute through its work to improving the governance, financial management and operational efficiency in the area of home affairs.

Yours sincerely,

Vítor Caldeira

Encl.: Annex
Cc: Commissioner Cecilia Malmström

12, RUE ALCIDE DE GASPERI
L-1615 LUXEMBOURG
E-mail: vitor.caldeira@eca.europa.eu
TELEPHONE (352) 4398-45586
TELECOPIE (352) 4398-46813

ЕВРОПЕЙСКА СМЕТНА ПАЛАТА
TRIBUNAL DE CUENTAS EUROPEO
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EUROOPAN TILINTARKASTUSTUOMIOISTUIN
EUROPEISKA REVISIONSRÄTTEN

ANNEX

of the President's letter

on the Commission proposals in the field of Home Affairs (period 2014-2020) with specific regard to the area of integration

12, RUE ALCIDE DE GASPERI
L - 1615 LUXEMBOURG

TELEPHONE (+352) 43 98 – 1
TELEFAX (+352) 43 93 42

E-MAIL: eca-info@eca.europa.eu
INTERNET: http://eca.europa.eu

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INTRODUCTION

1. In the context of the next Multi-Annual Financial framework for the period 2014-2020, the Commission has proposed to simplify and adapt the SOLID programme (formerly the General Programme on Solidarity and Management of Migration Flows), which previously consisted of four funds (External Borders Fund (EBF), European Refugee Fund (ERF), the European Fund for the Integration of third-country nationals (EIF) and the European Return Fund (RF)). The proposal sets up a two pillar structure: an Asylum and Migration Fund (AMF) and an Internal Security Fund. The two pillars will be based on four regulations and cover the main Home Affairs spending: the SOLID programme and two Specific Programmes of the General Programme "Security and Safeguarding Liberties", ISEC (Prevention of and the fight against Crime) and CIPS (Prevention, Preparedness, and consequence management of Terrorism and other Security-related Risks).

2. As part of the Court's 2011 Work Programme, there is an on-going audit examining whether the EIF and ERF of the SOLID Framework Programme contribute effectively to the integration of third-country nationals. Several issues arising during this audit also concern the proposals[1] for the future of the SOLID funds and the Court would like to raise them in time for consideration during the development of the new legislation.

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1 COM (2011) 752 final - Proposal for a Regulation of the European Parliament and of the Council laying down general provisions on the Asylum and Migration Fund and on the instrument for financial support for police cooperation, preventing and combating crime, and crisis management; COM (2011) 751 final - Proposal for a Regulation of the European Parliament and of the Council establishing the Asylum and Migration Fund

3. The Court notes that several aspects of the regulatory requirements, of which some relate to key aspects[2], are deferred to a later stage, through delegated and implementing acts under Article 290 and Article 291 TFEU. Hence, the Court cannot assess the respective provisions. As noted in the Court's opinion 7/2011 on the Common Strategic Framework "adequate consultation with all stakeholders concerned will therefore be key in ensuring that those acts comply fully with the objectives laid down" by the regulations on the general provision and by the regulation for the Asylum and Migration Fund[3].

4. The following analysis first deals with the proposal for a regulation laying down general provisions for the two new funds (COM (2011) 752 final) and then with the proposal for a regulation establishing the Asylum and Migration Fund (COM (2011) 751 final). The structure follows the articles of the proposals.

PROPOSAL FOR THE REGULATION LAYING DOWN GENERAL PROVISIONS COM (2011) 752

Definitions (Article 2)

5. The proposal provides a definition of the terms "action" and "project". An "action" is defined as "a project or a group of projects [...]"[4] and a "project" "means the specific, practical means deployed to implement all or part of an

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2 For example, the accreditation criteria of Responsible Authorities (Article 24 (5), COM (2011) 752) or status of the Audit Authorities and conditions to be fulfilled by their audits (Article 27 (1) COM (2011) 752).

3 Opinion on the proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Regulation (EC) No 1083/2006 (Opinion 7/2011)

4 Article 2 (c) COM (2011) 752

action by a beneficiary [...]"[5]. This definition is circular and should therefore be reconsidered.

Partnership in implementing the funds (Article 12)

6. Under the SOLID framework, Member States are required to establish a partnership with the authorities and bodies involved in the implementation of the multi-annual programme[6]. The Member States can choose which authorities or bodies to include[7]. Only the partnership with the Managing Authority of the European Social Fund (ESF) and the Responsible Authority of the ERF are obligatory for the EIF.

7. In the proposal for 2014-2020, partnership "shall" include "competent regional, local, urban and other public authorities and, where appropriate, international organisations and bodies representing civil society, such as non-governmental organisations or social partners"[8]. The proposal also specifies that the partners "shall be involved in the preparation, implementation, monitoring and evaluation of national programmes"[9].

8. The Court's audit of the 2007-2013 programmes found a lack of consultation with partners in certain Member States. In the Court's opinion, partnership is an important ingredient in efficient policy-making and it therefore welcomes the fortified provisions. However, given the importance of non-governmental organisations or social partners in the field of integration, the

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5 Article 2 (e) COM (2011) 752

6 See, for example, EIF Decision, Article 10 (1).

7 Article 10: "[...] Such authorities and bodies may include the competent regional, local, urban and other public authorities, international organisations and bodies representing civil society such as nongovernmental organisations, including migrant organisations, or social partners.[..]".

8 Article 12 (1) COM (2011) 752

9 Article 12 (3) COM (2011) 752

involvement of such groups should be strengthened and we suggest the removal of the words "where appropriate" in Article 12 (1)[10].

9. The lack of effective partnership was particularly acute with regard to the ESF authorities and contributed to overlaps between EIF and ESF, lost opportunities for synergy and additional costs. The Court therefore supports further strengthening the requirement for such a partnership and a consideration to include it explicitly in Article 12.

10. The proposal includes the setting up of monitoring committees "to support" the implementation of national programmes"[11]. Such monitoring committees, can, in the Court's view, provide a valuable forum for the partnership to take place. The Court notes that the provisions in the proposal do not mention a specific role for the monitoring committee nor give any other indication of its functioning, unlike the CSF proposal[12]. The long-standing experience of the Structural Funds with monitoring committees should be used by both the Commission and Member State in setting up and implementing such bodies.

National programmes (Article 14)

11. For the SOLID funds 2007-2013, Member States have to prepare annual programmes which implement their multiannual programme. The proposal

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10 See, for example, the results of the CEPS study, "Integration as a two-way process in the EU?", 2011.

11 Article 12 (4) COM (2011) 752

12 See Article 45 of the Commission's Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006.

would abolish annual programmes in favour of national programmes covering the period from 1 January 2014 to 31 December 2020[13].

12. In its audit, the Court found that the system of annual programming places an excessive administrative burden on both the Member States and the Commission. Consequently, the Court welcomes the respective provisions proposed by the Commission.

13. Under the latest proposal, the Commission still has to approve the Member States' national programmes. However, two new provisions require further consideration.

14. Article 14 (2) i states that national programmes should contain "the implementing provisions for the national programme containing the identification of the designated authorities"[14]. In its audit, the Court found that for the approval of programmes and the description of Management and Control Systems, detailed and clear implementing provisions did not always exist and/or the description of Management and Control System was superficial. This led to a lack of clarity on the authorities' tasks, misunderstandings and delays. It is therefore important to ensure that these "implementing provisions" are not just mentioned in the national programme but are actually already in place.

15. According to Article 5 c, the Commission shall examine "the relevance of the implementation provisions [referred to above] in the light of the actions envisaged". It is not clear to the Court how the "relevance" would be defined and what such a check would encompass. In addition, the Court recommends that the principles of sound financial management be included in such a check. Implementing structures can be financed by the Asylum and Migration Fund via

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[13] Article 14 (2) COM (2011) 752

[14] COM (2011) 752

Technical Assistance and, hence, their correct functioning has an impact on Union resources.

Complementarity with other EU funds (Article 14)

16. In its audit, the Court found a lack of coherence and complementarity with other EU funds, in particular the ESF. It revealed overlaps between the EIF and ESF and an absence of synergy. Although the impact assessment for 2014-2020 highlights the role of the ESF and the legislative proposal deals with coherence in several instances, the new Asylum and Migration Fund will overlap with the ESF policy priorities with regard to integration of Third-Country nationals. It is therefore important that both the Member States and the Commission ensure coherence and complementarity. In its assessment on "the complementarity with support provided by other Union Funds including the European Social Fund"[15] of the national programme, the Commission should seek detailed information on this complementarity. The issue should also be considered adequately in the assessment of ESF programmes.

17. The Court welcomes the Commission's plans "to consider the complementarity between the actions implemented under the Specific Regulations and those pursued under other relevant Union policies, instruments and initiatives" in its evaluations[16]. A similar provision should be inserted in the corresponding article for the Member States.

Financing structure (Article 16)

18. The proposal introduces a possibility of increasing the financing contribution from the Union budget to 90 % "in duly justified circumstances, in particular if projects could otherwise not have been implemented and the objectives of the national programme would not have been achieved"[17].

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[15] Article 14 (5) (e) COM (2011) 752

[16] Article 50 (6) COM (2011) 752

[17] Article 16 (5) COM (2011) 752

Evaluating when a project "could otherwise not have been implemented" is methodologically difficult. This provision is not linked specifically to the economic or budgetary situation of a Member State and could, therefore, be also used for other circumstances. The Court refers to the more specific application in the CSF proposal where the co-financing for interim payments can be temporarily increased up to a maximum of 100 % in "MS with temporary budget difficulties" under specific circumstances, by prior request to the Commission and while keeping the overall level of EU financing the same[18].

Eligibility rules (Article 17)

19. Whereas for the period 2007-2013, eligibility rules for the SOLID funds are contained in the respective funds' implementing rules, the proposal provides for general principles of eligibility but states that "the eligibility of expenditure shall be determined on the basis of national rules [...]"[19]. According to the explanatory memorandum accompanying the proposal, this change should "constitute an important simplification in project management at the level of the beneficiaries". While the Court recognises that the determination of eligibility rules at national level can, in principle, lead to simplification, such simplification is not automatic and, to reap full benefits, needs to be properly executed.

20. The Court found that some final beneficiaries complained about varying eligibility rules for different EU funds. These beneficiaries are required to follow various national and EU rules, requiring different presentation of expenditure etc. Furthermore, the Court found that Member States interpreted the current

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[18] Article 22 of the Commission's Proposal for a Regulation of the European Parliament and of the Council laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006.

[19] Article 17 COM (2011) 752

eligibility rules for EIF and ERF differently, particularly with regard to documentation requirements. This led to an additional administrative burden for final beneficiaries and an uneven playing field between beneficiaries in different Member States.

21. To exploit the opportunity for simplification by establishing specific eligibility rules at national level, the Commission and Member States should ensure that such rules are, as far as possible, in line with other national eligibility rules for EU programmes (in particular the ESF, since it funds similar actions). The Commission has recognised the need with regard to the funds under the Common Strategic Framework although the eligibility rules remain to be specified at national level. Establishing eligibility rules at national level may lead to a conflict with the principle of streamlining. Furthermore, the Court notes that the burden arising from eligibility rules should be proportional to the amount of funding, an objective which may conflict with that of streamlining eligibility rules across funds.

22. The Court welcomes the simplification, which started with a change in the implementing rules for the period 2007-2013 in 2011, through the use of standard scale of unit costs, lump sums and flat-rate financing[20].

Certifying Authority (Article 23)

23. The SOLID funds were based on a three-tier structure of Responsible Authority, Audit Authority and Certifying Authority. In the Commission's proposal, the Responsible Authority and Audit Authority are retained and the Certifying Authority is abolished. The exact controls to be performed by the Responsible Authority will be set out in the implementing acts but it is understood that some of the former functions of the Certifying Authority will be

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20 See also the Court's opinion 7/2011 on the Common Strategic Framework.

transferred to the Responsible Authority[21]. The process of certification is no longer foreseen in the proposal.

24. In its audit, the Court found that the checks performed by the three authorities duplicated rather than complemented each other. While the Court fully recognises the need for checks and balances in every funding system, the involvement of three authorities was found to be disproportionate to the amount of funds involved. Furthermore, the Court found that in all of the Member States audited, there was at least some degree of misunderstanding on the tasks of the Audit and Certifying Authorities and the relationship between them.

25. The Court therefore welcomes the simplified two-tier structure. In its Opinion No 7/2011, the Court considered the possibility of merging the (Structural Funds') Managing and Certifying Authorities "useful". It found that "this may strengthen accountability by assigning responsibility for financial management and control to one authority and reduce the national administrative burden and the control burden of beneficiaries. Retaining the audit authority and its main functions as an independent audit body guarantees in principle the required segregation of responsibilities"[22].

Accrediting authorities (Article 23)

26. In accordance with the planned Financial Regulation, the proposal introduces a requirement that each Responsible Authority shall be accredited by an accrediting authority at ministerial level. Contrary to the SOLID funds, a description of the Member State's Management and Control System no longer has to be submitted to the Commission for review.

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21 See the legislative financial statement accompanying the proposal COM (2011) 752

22 Opinion No 7/2011 on the Common Strategic Framework

27. With regard to the accreditation process, and as stated in its Opinion No 7/2011, the Court "is of the opinion that the Commission, as holder of the ultimate responsibility in the budget implementation, should have a supervisory role in this process to mitigate the risk of leaving the detection of any failure to subsequent checks, which may lead to more frequent checks, action plans requirements and financial corrections"[23]. Such a role would include the assessment of documentary evidence provided by the Member States and reviewing evidence, possibly with a risk-based approach.

Payment arrangements (Article 33)

28. Under the proposal, payments take the form of initial pre-financing, payments of the annual balance and the payment of the final balance. The pre-financing "shall represent 4% of the contribution from the Union budget to the national programme concerned. It may be split into two instalments depending on budget availability"[24]. This contrasts with the 50% pre-financing on the annual programmes in 2007-2013. With regard to the system of annual programmes, the Court observed that the payment arrangements, in particular the second pre-financing, were burdensome and, in some Member States, led to payment difficulties and cash-flow problems at the level of the final beneficiary. With the introduction of one (multiannual) national programme and the above-mentioned payment arrangements, the difficulties with regard to the second pre-financing should be avoided. However, the lower amount of pre-financing could lead to the worsening of cash-flow problems already seen, especially if the payment is broken down into instalments.

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[23] On the accreditation process as well as the Management Declaration of Assurance see Opinion No 7/2011 on the Common Strategic Framework

[24] Article 33 (1) COM (2011) 752

29. The formulation that these pre-financings "shall be used only for making payments to beneficiaries implementing the national programme" could be read to exclude Technical Assistance and should be re-considered[25].

30. The annual balance "shall be paid not later than six months after the information and documents mentioned in Article 39(1) and Article 49 are considered admissible by the Commission and the latest annual accounts have been cleared". The Commission has the possibility to interrupt this deadline according to Article 37[26]. Taking this into consideration, a six month deadline to pay the balance could be detrimental to the needs of the Responsible Authorities and final beneficiaries. A shorter deadline should be envisaged.

Clearance procedures of the accounts (Article 40)

31. Article 40 of the proposal contains provisions on an annual clearance of accounts procedure similar to the proposal on the Common Strategic Framework. The Commission's clearance decision "shall cover the completeness, accuracy and veracity of the annual accounts submitted and be without prejudice to any subsequent financial corrections"[27]. The Court refers to its Opinion No 7/2011 and points out that the clearance procedure would not cover the legality and regularity of the underlying transactions and as such is not in line with the provisions of the Financial Regulation[28].

Conformity clearance (Article 42)

32. The proposal introduces the concept of a "conformity clearance". According to the Commission this should reduce the cost of control because the "limitation of the period for conformity clearance to 36 months will reduce the period of

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25 Article 33 (3) COM (2011) 752

26 COM (2011) 752

27 Article 40 (1) COM (2011) 752

28 See also the Court's Special Report No 7/2010 on the clearance of accounts procedure

retention of documents for control purposes for public administrations and beneficiaries"[29]. There is no definition of the concept of conformity clearance but the proposal lists three cases where financing to the Responsible Authority cannot be refused after a period of 36 months[30].

33. The modalities of the conformity clearance procedure will be laid down in implementing acts. As a result, the Court cannot assess the impact of such the provisions. However, as the proposal stands, it raises several questions. The Court notes that the CSF proposal introduces the concept of "rolling closures" with aims similar to the "conformity clearance". It is not clear why another (new) approach was chosen in the proposal.

34. At the same time, the Court would like to point to its considerations with regard to the "rolling closure" in Opinion No 7/2011, in particular whether "closed" operations can be considered "closed" as further audit activity might still arise. It is not clear whether the expenditure mentioned in Article 42 (5)[31] could still be subject to a financial correction (for example, if a system weakness is discovered after the 36 months period). A further question arises from the link with the retention of documents by final beneficiaries and clarification is needed with regard to the period for the retention of documents. While the financial legislative statement argues the conformity clearance will shorten the document retention period, no such provision is included in the proposal.

Monitoring and Evaluation Framework (Article 50 – Article 53)

35. In its audit, the Court found a lack of SMART objectives, indicators or quantified targets in the programming documents of the Member States which

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29 See the financial legislative statement in COM (2011) 752.

30 Article 42 (5) COM (2011) 752

31 COM (2011) 752

led to the inability to measure results. Furthermore, the absence of a set of common indicators hampered the assessment of the effectiveness of the ERF and EIF. In addition, the Court found that monitoring systems were inadequate, mainly due to the lack of appropriate data collection systems for indicators and targets, or insufficient project monitoring visits.

36. The Commission's proposal states that "common output and results indicators" will be developed by the Commission and the Member States for the period 2014-2020[32]. Member States will have to ensure that procedures and computerised systems are in place to collect these indicators[33].

37. The Court welcomes the introduction of common indicators and the explicit reference to computerised systems for storage and transmission of data on indicators. However, it is concerned that the Commission has indicated that a number of analyses planned for the EIF and ERF ex post evaluation reports will no longer be possible in the period 2014-2020. The Commission explains that this is because the planned obligatory common indicators are very limited in number and Member States are unlikely to provide data beyond the legal requirements. For example, the typology of actions which was provided for the previous programme will not be available. The Court notes that this would reduce the usefulness of any programme evaluation.

38. Furthermore, the Court considers that, in defining common indicators and what data to collect (such as participants data or amounts of funding in particular areas), due regard should be given to the experiences with the SOLID funds and the past and current developments in the Structural Funds, in

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32 See, for example, Point 5.4. of the Explanatory Memorandum accompanying the proposal and Article 50 COM (2011) 752.

33 Article 51 (2) and Article 21 (c) COM (2011) 752

particular the ESF. This should include the related findings of the Court e.g. the issues of reliability of the collected data and their completeness[34].

[34] See, for example, the Court's Special Report 17/2009 "Vocational training actions for women co-financed by the European Social Funds", paragraphs 39-40.

PROPOSAL FOR AN ASYLUM AND MIGRATION FUND REGULATION COM (2011) 751

General remarks

39. Whereas the ERF and EIF are separate funds under the SOLID programme 2007-2013, the proposal on the Asylum and Migration fund merges them. In its audit, the Court observed practical difficulties mainly because the separation prevented common actions for both target groups where they could have been beneficial and synergies were lost.

Integration measures at local and regional level/target groups (Article 9)

40. The Court also found that the separate financing of third-country nationals and EU citizens under different funds caused difficulties.

41. The Commission's proposal only widens the target group in respect of "integration measures at local and regional level". Such measures "may include, where appropriate, citizens of a Member State with a migration background, meaning having at least one parent (i.e. mother or father) who is a third country national"[35]. No similar provision is included in the article on the target groups (Article 4).

42. Such a widening of the target group is welcomed but it does not resolve the issue of targeting integration needs regardless of nationality. The inherent design problems of having the same integration measures funded by the Asylum and Migration Fund and the ESF will continue.

43. These inherent problems, which the Court found in its audit, should be addressed by carrying out a comprehensive assessment of needs for integration regardless of whether migrants have EU or third-country nationality.

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[35] Article 9 (3) COM (2011) 751

Based on this assessment, an appropriate fund(s) structure which ends the separation of the target population on the basis of nationality and which is oriented towards the needs of the final beneficiaries should be designed. Within such a structure, the setting of an obligatory priority to fund third-country nationals would ensure that they receive the necessary specific attention.