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II

(Acts whose publication is not obligatory)

COURT OF AUDITORS

RULES OF PROCEDURE OF THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES ⁽¹⁾

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⁽¹⁾ As adopted by the Court at its 668th meeting held on 31 January 2002.

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THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty on European Union, and in particular Article 5 thereof,

Having regard to the Treaty establishing the European Community, and in particular Articles 246 to 248 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Articles 45a to 45c thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Articles 160a to 160c thereof,

HAS ADOPTED THESE RULES:

TITLE I

SECTION 1

THE ORGANISATION OF THE COURT

THE MEMBERS

CHAPTER I

THE COURT

Article 2

Article 1

Commencement of term of office

Corporate nature

Pursuant to the provisions of the Treaties and of the Financial Regulation, the Court shall be organised and shall act as a corporate body, in accordance with these Rules of Procedure.

The term of office of the Members of the Court shall commence as from the date fixed for that purpose in the instrument of appointment, or, where there is no date fixed, from the date of that instrument.

*Article 3***Taking of oath**

Before taking up his/her duties or as soon as possible thereafter, every Member appointed shall give the solemn undertaking provided for in the Treaties.

*Article 4***Members obligations**

1. When carrying out their duties, the Members shall act in a completely independent manner, in the general interest of the Communities.
2. In the performance of these duties, they shall neither seek nor take instructions from any government or from any other body. They shall refrain from any act that is incompatible with their duties.
3. During their term of office and after it has come to an end, they shall undertake to respect the obligations arising therefrom, and in particular their duty to behave with integrity and discretion as regards the acceptance, after they have ceased to hold office, of certain appointments or benefits.
4. During their term of office they shall not engage in any other professional activity, whether remunerated or not.

*Article 5***Outside activities of the Members**

The Court shall lay down the rules for examining the outside activities of the Members in respect of Articles 247(4) and (5) of the EC Treaty, 45b(4) and (5) of the ECSC Treaty and 160b(4) and (5) of the EAEC Treaty.

*Article 6***Compulsory retirement**

1. A Member may be deprived of his/her office or of his/her right to a pension or of other benefits in its stead only under the conditions laid down in Articles 247(7) of the EC Treaty, 45b(7) of the ECSC Treaty and 160b(7) of the EAEC Treaty.
2. Where the Court of Auditors, acting by a unanimous decision of its Members, considers that a Member should be deprived of his/her office or of his/her right to a pension, or of other benefits in its stead, the Member concerned shall be requested to submit, where appropriate, any comments he/she may have to the Court, meeting in closed session.

3. Once the Member concerned has been given a hearing in accordance with the previous paragraph, the decision to refer the matter to the Court of Justice shall be taken, by secret ballot, on the basis of a written report by the President of the Court, together, if need be, with the written observations of the Member concerned.

*Article 7***Order of precedence**

1. Members shall rank after the President by date of appointment; where a Member has been re-appointed, his/her earlier term of office shall be taken into consideration, whether or not it immediately preceded the present term.
2. Members appointed on the same day shall rank according to age.

*Article 8***Temporary replacement of Members**

The Court shall lay down rules for temporarily replacing a Member if his/her office falls vacant or if he/she is absent or indisposed.

SECTION 2

THE PRESIDENT

*Article 9***Election of the President**

1. In accordance with Articles 247(3) of the EC Treaty, 45b(3) of the ECSC Treaty and 160b(3) of the EAEC Treaty, the Members of the Court shall appoint the President of the Court from amongst themselves for a term of three years. The President may be re-elected.
2. The Court shall elect a new President shortly before the expiry of the term of office of the incumbent President. However, if the expiry of the President's term of office coincides with the renewal of a part of the body of Members in accordance with Articles 247(3) of the EC Treaty, 45b(3) of the ECSC Treaty and 160b(3) of the EAEC Treaty, the election shall take place immediately, or at the latest 15 working days, after the Court in its new composition has taken up its duties.
3. If the office of President of the Court should fall vacant before the expiry of the incumbent's term, he/she shall be replaced. The length of the interim President's term of office shall be limited to the remainder of that term.

4. The President of the Court shall be elected by secret ballot in accordance with the procedure laid down by the Court.

Article 10

Duties of the President

1. The President of the Court shall:
 - (a) call and chair meetings of the Court and be responsible for the proper conduct of the sessions;
 - (b) ensure that the Court's decisions are implemented;
 - (c) ensure that the departments of the Court operate properly and that its various activities are soundly managed;
 - (d) appoint an agent to represent the Court in all litigation in which the Court is involved;
 - (e) represent the Court of Auditors in all its external relations, in particular in its relations with the discharge authority, the other Community institutions and the Member States' audit institutions.
2. The President may delegate all or part of his/her duties to one or more Members.

Article 11

Temporary replacement of the President

The Court shall lay down the rules for temporarily replacing the President if the office of President falls vacant or if the President is absent or indisposed.

SECTION 3

THE AUDIT GROUPS

Article 12

Creation of the audit groups and sharing-out of their responsibilities

1. Creation of the audit groups:

Audit groups with vertical and horizontal responsibilities and with solely preparatory responsibilities shall be created by a special implementing Decision of the Court, which shall also define their respective responsibilities. Each Member shall be assigned by the Court to an audit group, at the proposal of the President.

The Members shall be accountable to the group and to the Court for the performance of the duties entrusted to them.

2. The vertical audit groups:

The vertical audit groups shall divide the tasks for which they are responsible among the Members assigned to them. In so doing, they shall ensure that the overall workload is shared out as evenly as possible. Decisions on the allocation of responsibilities to Members shall be taken by majority vote of the Members assigned to each group. If there is no majority, the matter shall be referred to the Court for a decision.

3. The horizontal audit group:

The horizontal audit group shall be made up of the Members to whom the Court has entrusted the responsibility of a given horizontal audit task, a representative of each vertical audit group and, where relevant, such other Members as the Court may have allocated to it.

SECTION 4

THE SECRETARY-GENERAL

Article 13

The Secretary-General of the Court

1. The Secretary-General of the Court shall be appointed by the Court following an election by secret ballot, in accordance with the procedure which it has laid down.
2. The Secretary-General shall be accountable to the Court, to which he/she shall make periodic reports on the discharge of his/her duties.
3. Under the authority of the Court, the Secretary-General shall be responsible for the Court's Secretariat.
4. The Secretary-General shall exercise the powers vested in the Appointing Authority within the meaning of Article 2 of the Staff Regulations of officials of the European Communities, unless the Court decides otherwise.
5. The Secretary-General shall be responsible for the management of the Court's staff and for the administration of the Court, as well as for any other task assigned to him/her by the Court.
6. The Court shall lay down the rules for temporarily replacing the Secretary-General if he/she is absent or indisposed.

CHAPTER II

THE PERFORMANCE OF THE COURT'S DUTIES

Article 14

Delegations

1. The Court may, provided the principle of collective responsibility is respected, empower one or more of its

Members to take clearly defined management or administrative measures on its behalf and under its supervision, and in particular to take action in preparation for a decision to be taken at a later date by the Members of the Court. The Members thus delegated shall report back to the Court on the measures they have taken.

2. The Court shall lay down the conditions on which Members may authorise one or more officials or members of staff to sign documents concerning matters within that Member's responsibility.

Article 15

Authorising officer powers

Authorising officer powers shall be allocated to the Members of the Court and to the Secretary-General and exercised by them as specified in the internal rules for the implementation of the budget.

Article 16

Organisation of Court departments

1. The Court shall determine the structure of its departments.

2. On the Secretary-General's proposal, the Court shall distribute the posts set out in the establishment plan among the administrative departments and the audit groups.

3. Without prejudice to Article 13(4) of these Rules of Procedure, the Court shall lay down the conditions under which the powers conferred by the Staff Regulations applicable to officials on the Appointing Authority and those conferred by the conditions of employment applicable to other servants on the authority empowered to conclude contracts of employment shall be exercised.

TITLE II

THE COURT'S OPERATIONAL PROCEDURES

Article 17

Decision-taking procedure

Without prejudice to the written procedure laid down in Article 22(5) of these Rules of Procedure, the Court shall make its decisions in formal session.

Article 18

Scheduling of meetings

The Court shall set provisional dates for its meetings once a year, before the end of the preceding year.

Additional meetings may be organised on the initiative of the President or at the request of at least two Members.

Article 19

Agenda

1. The agenda for each meeting shall be drawn up by the President.

2. Except for urgent business, duly justified and approved by the President on a case-by-case basis, the draft agenda and relevant documents shall be sent to the Members of the Court at least five working days before the meeting. In order that this time limit may be respected, Members of the Court shall ensure that documents are handed in to the General Secretariat of the Court for inclusion on the agenda within the time limit specified for this purpose.

3. If, before a meeting, documents have not been distributed within the period of five working days mentioned in the preceding paragraph, each Member of the Court has the right to ask for an item on the agenda to be adjourned or that no decision be taken after the item has been discussed.

4. The draft agenda and any requests for amendment thereto shall be placed before the Court, which shall adopt the agenda at the beginning of each meeting. The Court may, by a unanimous decision, discuss a question that is not on the draft agenda. Any other problem relating to the agenda shall be decided by a majority of the Members present. When the agenda is being adopted, Members shall indicate any matters arising from the minutes of previous meetings submitted for their approval that they wish to raise during the meeting, together with their intention to speak on other matters under 'Any other business'.

Article 20

Chairing of meetings

The meetings of the Court shall be chaired by the President. If the President is absent or indisposed, they shall be chaired by the Member of the Court who is temporarily acting as President, within the meaning of Article 11 of these Rules of Procedure.

Article 21

Quorum

Ten Members shall be a quorum.

Article 22

Adoption of decisions

1. Without prejudice to Articles 248(4), third subparagraph, of the EC Treaty, 45c(4), third subparagraph, of the ECSC Treaty and 160c(4), third subparagraph, of the EAEC Treaty, the Court shall determine which decisions are to be taken by a majority of the Members of the Court.

2. All other decisions — with the exception of the decisions provided for in Article 6 and Article 19(4) of these Rules of

Procedure — shall be taken by a majority of the Members present at the meeting of the Court.

3. Without prejudice to paragraph 2, the Court may, on a proposal from one of its Members, declare, by a majority of the Members present at the meeting, that a specific question referred to the Court shall be decided by a majority of the Members of the Court.

4. Where a majority vote by the Members present is required to take a decision, in the event that the number of votes for and against should be equal the President shall have the casting vote.

5. The Court shall determine, on a case-by-case basis, which decisions are to be adopted by the written procedure and shall lay down the rules for this procedure.

Article 23

Non-public nature of meetings

The Court's meetings shall not be public.

Article 24

Closed sessions

1. Where the confidential nature of the subjects for discussion so justifies, the Court may hold a closed session.

2. The President of the Court shall decide whether the subjects for discussion are confidential in nature and are to be discussed at a closed session.

3. Closed sessions shall be conducted without interpreters except where a decision to the contrary has been adopted at a previous Court meeting.

Article 25

Minutes of meetings

1. Draft minutes shall be drawn up for each meeting of the Court.

2. The draft minutes shall be circulated as soon as possible to the Members of the Court and shall be approved by the Court at a later meeting.

3. Once approved, the Minutes shall be certified by the Secretary-General's signature.

TITLE III

THE PROCEDURES

CHAPTER I

THE CONDUCT OF AUDITS

Article 26

Audit methods

1. The Court shall lay down detailed rules for the performance of the audits with which it is charged by the Treaties, and in particular those deriving from Articles 248 of the EC Treaty, 45c of the ECSC Treaty and 160c of the EAEC Treaty.

2. The Court shall perform its audits in accordance with the aims laid down in its work programme, which also includes the tasks of each audit sector as well as tasks grouped around the horizontal audit topics.

CHAPTER II

ANNUAL REPORTS, SPECIAL REPORTS, OPINIONS, OBSERVATIONS AND STATEMENTS OF ASSURANCE

Article 27

Rapporteurs

1. For every audit carried out, the Member acting as rapporteur shall, if need be, refer the matter to the Court.

2. As soon as it has been asked for an opinion within the meaning either of Articles 279 and 280 of the EC Treaty, 78h of the ECSC Treaty and 183 of the EAEC Treaty, or of Articles 248 of the EC Treaty, 45c of the ECSC Treaty and 160c of the EAEC Treaty, the Court shall appoint, from amongst its Members, the rapporteur(s) with responsibility for appraising the matter and preparing the draft.

3. With regard to the observations submitted under Articles 248 of the EC Treaty, 45c of the ECSC Treaty and 160c of the EAEC Treaty, the rapporteur Member shall be the Member responsible for the audit area concerned or, in the case of horizontal audit topics specifically provided for in the work programme, the Member expressly appointed for this purpose.

Article 28

Examination by audit groups

Before being submitted to the Court, the draft observations and opinions, drawn up by the rapporteur Member, shall be examined by an audit group.

*Article 29***Decision of the Court**

1. After examination by the audit group, the Court shall examine the draft observations and opinions and shall decide what follow-up action is to be taken on them.

2. The Court shall adopt the final text of its reports, opinions, observations and of the Statement of assurance which it must deliver in accordance with Articles 248 of the EC Treaty, 45c of the ECSC Treaty and 160c of the EAEC Treaty.

*Article 30***Languages and authentication**

1. The reports, opinions, observations and statements of assurance shall be drafted in the 11 official languages.

2. The documents referred to in paragraph 1 shall be authenticated by the apposition of the President's signature on the 11 language versions.

*Article 31***Forwarding and publication**

Without prejudice to Articles 248(4) of the EC Treaty, 45c(4) of the ECSC Treaty and 160c(4) of the EAEC Treaty or to the applicable provisions of the Financial Regulation, the Court

shall lay down the rules on the forwarding and publication of its reports, opinions, observations and statements of assurance.

FINAL PROVISIONS*Article 32***Implementing rules**

The Court shall determine the rules for implementing these Rules of Procedure.

*Article 33***Entry into force**

These Rules of Procedure shall cancel and replace those adopted by the Court at its meeting of 21 and 22 March 2001.

They shall enter into force on 31 January 2002.

Done at Luxembourg, 31 January 2002.

For the Court of Auditors

President

Juan Manuel FABRA VALLÉS
