



Commissie voor de Rijksuitgaven

Den Haag, 1 December 2009

Interparliamentary Conference on Improving National Accountability of EU Funds
28-29 January 2010

Dear invitee,

Under reference to the appendix, I am pleased to hereby send you a preparatory discussion paper on the subject matter of the conference.

Best Regards,

*Jos van de Wiel
Deputy Secretary of the committee on Public Expenditure*



Improving National Accountability of EU funds

Discussion paper





PUBLIC EXPENDITURE COMMITTEE
HOUSE OF REPRESENTATIVES OF THE STATES GENERAL
THE NETHERLANDS

The Hague, 1 December 2009

Interparliamentary Conference on Improving National Accountability of EU Funds 28-29 January 2010
Preparatory discussion paper

Dear invitee,

The time has come to step up efforts to further improve national accountability of EU spending. Awaiting confirmation of your participation to the Interparliamentary Conference (to be held on 28 and 29 January 2010 in the Hague), we hereby provide additional background information on the subject matter of the conference. Aim and purpose of the attached discussion paper is to gather comments in advance of the conference, in order to structure discussions and prioritize issues.

We cordially invite you to respond to this paper by way of answering 7 'key questions' and to indicate your views on the 'way forward' (page 1). Your input will not be made public. It will be used to create a 'room document' during the conference which in turn will serve to draft the 'Conference Statement'. We invite you to send your written comments (before 15th of January) to the following e-mail address: cie.ru@tweedekamer.nl.

Please refer to the conference-website www.houseofrepresentatives.nl/conference for more information about the Conference and discussion paper. Formal confirmation of your participation is still possible for those who have not yet responded, please see the conference-website.

If you have any question, please do not hesitate to contact us.

Yours Sincerely,

Charlie B. Aptrout
Chair of the Public Expenditure Committee
of the House of Representatives

PREPARATORY DISCUSSION PAPER

KEY QUESTIONS

1. Do you agree that the role of Member States themselves is crucial in the process of improving the management and accountability of EU funds?
2. How would you characterize the political commitment to this issue in your country?
3. In light of the Lisbon Treaty, what in your view would be the first priority or first action to be taken (and by whom) in order to improve the accountability of EU funds in Member States? (see background information for details on changes in the Treaty).
4. Do you agree that political awareness of Member State responsibility for proper spending of EU funds, and recognition thereof in the new Treaty, must be followed by (national) political commitment to implement instruments that contribute to the improvement of national control on EU expenditure? Could you specify your views as to which type of instruments should be prioritized?
5. In view of the subsidiarity principle, should each Member State adopt its own 'model' in order to improve national responsibility for proper spending of EU funds, scrutinized by national parliaments? Or should the European Commission play a part by providing a "format" of some type? (how far should harmonization go?)
6. Following your answer to question 5, would you argue that the set up of such a model should be addressed quickly? What are your views on how to achieve this?
7. Would your parliament consider supporting an initiative/resolution by COSAC in 2010?

WAY FORWARD: PROPOSALS FOR DIRECTIONS IN THE FUTURE

Please indicate if you can be supportive of these formulations for a conference statement, or indicate to what extent you would like to see it altered.

The Interparliamentary Conference agrees that comprehensible, clear and transparent budget procedures and control procedures on a national level lead to greater legitimacy of the EU in general and EU spending in particular. It proposes the following way forward:

- Political awareness of member state responsibility for proper spending of EU funds, and recognition thereof in the new Treaty, must be accompanied by national political commitment to implement instruments that contribute to the improvement of control on EU expenditure in Member States.
- In view of the subsidiarity principle, each Member State should adopt an efficient and effective 'model' in order to improve national responsibility for proper spending of EU funds.
- The set up of a national model should be addressed quickly and in a structured way, but most importantly the output of the model must give evidence of a sound basis, scrutinized by national parliaments, on which the Commission and the European Court of Auditors can rely.
- Adapting the Financial Regulation i.e. laying down Member States obligations in regulations, is in line with the provisions in the new Lisbon Treaty. No delay should be accepted.
- As elected representatives of the citizens of European Member States, national parliaments play an important role in activating all actors to pursue the above mentioned goals.

BACKGROUND INFORMATION

1. RELEVANCE AND SENSE OF URGENCY

Financial means from the EU budget are an important source of funding in most EU Member States, comprising a wide range of projects, different types of expenditure under different policies, reaching millions of people in a direct or indirect way. However, problems in the accountability of EU expenditure seem persisting. Since 1994, the European Court of Auditors (ECA) has never been able to give a positive statement of assurance on the EU budget (DAS). Despite obvious shortcomings in the control and management of EU funds, only in 1999 did the European Parliament (as the EU's discharge authority) refuse discharge whereas the Council has never refused it. The (next) discharge decision on the annual budget 2008 is to be taken in April 2010, again after a negative DAS of the ECA – the 15th consecutive time. Not only experts are aware of the persisting problems in the accountability of EU expenditure. Reports on unaccountable spending of EU funds frequently reach the media. If we do not act, will we see any real changes in the next 15 years?

In general, EU-citizens perceive the above as severe criticism of the Commission's management of the EU budget, undermining the legitimacy of European policies and European solidarity. Although public perception seems to be directed mainly towards EU institutions, national authorities are just as well responsible for sound financial management of EU funds. Because around 80% of the EU budget is spent by the Member States themselves ("shared management") the role of Member States – and as a consequence national parliaments – is crucial in controlling EU expenditure. It is the true meaning of subsidiarity.

1. Do you agree that the role of Member States is crucial in the process of improving the management and accountability of EU funds?
2. How would you characterize the political commitment to this issue in your country? Which parties prioritize it and which don't? Does the opinion of your parliament deviate much from your government?

2. CONSEQUENCES OF THE LISBON TREATY

New elements in the Lisbon Treaty give national parliaments a stronger position to influence European policies in general and – more specifically – to exercise better control on spending of EU funding. The Treaties do not only stipulate a responsibility for the European Parliament and the Commission, but also a responsibility for Member States in improving control on EU spending. A stronger focus on Member State responsibility in the Lisbon Treaty means *ipso facto* more opportunities and a bigger responsibility of national parliaments to exercise democratic control on this topic vis-à-vis their respective governments and national audit institutions.

Treaty paragraphs on member state responsibilities

The Lisbon Treaty underlines, recognizes and formalizes the control and audit obligations of Member States as regards EU expenditure. In the new Treaty on the Functioning of the European Union (TFU) national responsibilities in EU budget control are laid down in the new Chapter on "Implementation of the budget and discharge". Details are and should be worked out and laid down in regulations as the Treaty stipulates (article 317 TFU paragraph 2): "[...] regulations shall lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities." Specific new features in a total of five Treaty articles¹ underline the role of Member States in ensuring sound financial management of EU funds and combating fraud. Art 317 TFU (ex art 274 TEC) explicitly states: "The Commission shall implement the budget in cooperation with [new] the Member States".

National parliaments in the Treaty

For national parliamentarians within the EU, The Lisbon Treaty provides new tools to work together and to influence the European policy process. The Lisbon Treaty contains an additional tool for national parliaments to influence law-making on a EU level: the existing protocol has been reinforced and a so-called 'yellow card' and 'orange card' now exist.² Although not specifically related to the topic of budget control, this new instrument emphasizes a new awareness amongst national parliamentarians to take an active stance towards EU policies, including EU finances, and to cooperate. This conference is testimony to that.

3. In light of the Lisbon Treaty, what in your view would be the first priority or first action to be taken (and by whom) in order to improve the accountability of EU funds in Member States?

4. Do you agree that political awareness of member state responsibility for proper spending of EU funds, and recognition thereof in the new Treaty, must be followed by (national) political commitment to implement instruments that contribute to the improvement of control on EU expenditure in Member States? Could you specify your views as to which type of instruments should be prioritized?

3. ROLE AND POSITION PER 'ACTOR'

A. European Parliament (EP)

Notwithstanding fifteen consecutive negative opinions from the European Court of Auditors, the European Parliament, as the EU's discharge authority, has only once refused discharge (1999). One of the principal reasons for granting discharge despite shortcomings in accountability, has been the fact that the highest error rates occur in EU funds spent in and by the Member States for which, in the opinion of the EP, the Commission can only be held accountable to a certain degree. To close this accountability gap the European Parliament proposed in its resolution of 12 April 2005 that each Member State should provide an ex-ante disclosure statement and an annual ex-post statement of assurance as regards its use of EU funding.³ The EP has supported this idea ever since, during the annual discharge procedures on the EU budget.

The EP is legislator (with the Council) and as such plays a crucial role in attempts to formalize instruments on a European level, to improve national control on EU spending. For example, even though the Ecofin Council rejected a Commission proposal on national audit statements, The European Parliament urged to include the national Annual Summary (as an instrument for national control of EU funding) in the Interinstitutional Agreement (IIA) on budgetary discipline and sound financial management, and in the Financial Regulation. Since then, the EP carried out a study on national Annual Summaries in practice (2009). The report of this study concludes that the instrument of Annual Summaries can be regarded as 'work in progress'; the question is whether or not it has enough potential for improvement under the current regulatory framework (see also under C below).

B. European Court of Auditors (ECA) and Supreme Audit Institutions of Member States

The ECA yearly publishes its annual report, the most recent being on the year 2008. Again, no positive DAS could be given, though improvements were also acknowledged. The ECA pinpoints improvements as well as bottlenecks and gives advice. The European Court of Auditors stated in its opinion 6/2007 that Annual Summaries of Member States, National Declarations of Member States and audit work on EU funds of national audit bodies, could stimulate improved management and control of EU funds in Member States, if properly implemented.⁴ The EU Contact Committee of presidents of the Supreme Audit Institutions (SAI's) has established in 2004 the Working Group on National SAI reports on EU financial management. In 2008, at least 10 SAI's have produced an overall EU report 2007/2008, in which they focus primarily on the financial management of EU funds. It is expected that this number will grow in the years to come. In 2007 the Contact Committee established - under the initiative of the European Court of Auditors - a Working Group responsible for "developing common auditing standards and comparable audit criteria tailored for the EU area". Furthermore, the Supreme Audit Institutions of the Netherlands, Sweden and the United Kingdom audit the national Member State declarations (see under C below) of their country and publish their independent opinion. The Supreme Audit Institution of Denmark issues the Danish member state declaration itself.

C. Member States/national governments

Due to a lack of improvement in national responsibility (for the legal and regular spending of EU funds) The Netherlands voted against discharge (Qualified Majority Voting) in the Council 3 times in the last 4 years, in part as a political signal to other Member States. Not all national governments are actively committed to this subject and the Ecofin Council has so far not been unanimously supportive of the European Parliament's and Commission's position in this field. Still, The Interinstitutional Agreement (article 44)⁵ and the Financial Regulation 2007-2013 (art. 53b)⁶ provide further legal basis to improve financial management in the EU and to extend the Member States' responsibility. Both Council and European Parliament are needed to use this legal basis and improve the situation.

Currently Member States are required to produce an 'Annual Summary' (AS) at the appropriate national level of the available audits and declarations. However, Annual Summaries lack an obligatory overall analysis and a (political) statement of assurance on the management and control of EU funds. Furthermore, the Annual Summaries have not been made public by the European Commission, nor by most of the Member States. The Council and European Parliament, on a proposal from the European Commission, could however – as legislator – decide to focus more on (improved) Annual Summaries or national declarations, as an instrument to improve accountability of Member States concerning the spending of EU Funds. The current process in which the IIA will be laid down in a Regulation (and adjustment of the Financial Regulation), might be a chance to improve the legal framework for national control on EU funds.

5. In view of the subsidiarity principle, should each Member State adopt its own 'model' in order to improve national responsibility for proper spending of EU funds, scrutinized by national parliaments? Or should the European Commission play a part by providing a "format" of some type? (how far should harmonization go?)

6. Would you argue that the set up of a national model should be addressed quickly? The output of the model must give evidence of a sound basis on which the Commission and the European Court of Auditors can rely, for it to be useful. What are your views on how to achieve this?

In Denmark, Sweden, the United Kingdom and the Netherlands, initiatives regarding the management and the control of EU funds have already been developed on a voluntary basis (i.e. issuing national Member State declarations).

D. National parliaments and COSAC

Under the Luxembourg Presidency in 2005 the Conference of Community and European Affairs Committees of Parliaments of the European Union (COSAC) drafted a resolution that called for the improvement of the management and control systems of EU-budget expenditures in order to enhance citizens' confidence in the EU and its finances. It also urged for a much closer inter-parliamentary cooperation within the EU in order to strengthen the democratic control of the EU expenditure. Despite attempts to get this resolution firmly on the agenda, it has not led to concrete action so far. An option for 2010 is to adopt a new COSAC resolution, based on previous drafts. The Interparliamentary Conference could decide to support such an initiative.

7. Would your parliament consider supporting an initiative/resolution in COSAC in 2010?

¹ Article 310 paragraph 5 and 6 TFU (ex Article 268 TEC) on the role of member states in sound financial management of EU funds; Article 317 TFU (ex Article 274 TEC) on implementation of the budget and discharge, Article 318 and 319 TFU (ex Article 275) on the evaluation and discharge of the EU budget, Article 325 TFU (ex Article 280 TEC) on combating fraud.

² See for more information: protocol No2, article 7, on the application of the principles of subsidiarity and proportionality, as attached to the Treaty on the Functioning of the EU(TFU). If a majority of national parliaments finds a draft EU proposal non-compliant with the principle of subsidiarity, the draft proposal needs to be reviewed. If the European Commission decides to maintain the proposal anyway, it will have to send a 'reasoned opinion' about this decision to the Council and to the European Parliament for their review. If subsequently the EU legislator agrees (majority of votes cast in the EP and a 55% majority of Member States in the Council) with the national parliaments, the legislative proposal shall not be given further consideration.

³ European Parliament, Resolution containing the comments which are an integral part of the decision on the discharge for implementing the general budget of the European Union for the financial year 2003, 12 April 2005, P6_TA(2005)0092.

⁴ European Court of Auditors, opinion 6/2007 regarding annual summaries of Member States, national declarations of Member States and audit work on EU funds of national audit bodies, 19 July 2007. See also opinion 2/2004 on the control framework, single audit and the importance of Member State commitment.

⁵ Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management (OJ C 139, 14.6.2006, p. 1).

⁶ Council Regulation No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (O) L 248, 16.9.2002, p. 1).