AFRICAN UNION
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UNIÃO AFRICANA

Addis Ababa, ETHIOPIA P. O. Box 3243 Telephone: +251 11 5517700 Fax: +251 11 5517844
Website: www.au.int

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REPORT ON THE DELEGATION OF AUTHORITY TO THE COMMISSION IN MATTERS RELATING TO THE INTERNAL MANAGEMENT OF THE COMMISSION

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I. BACKGROUND

1. During the 11th Extraordinary Summit of the Assembly of the African Union, the Assembly, para 28 of Assembly Decision Ext/Assembly/AU/Dec.1(XI), decided as follows:

> ***FURTHER REQUESTS*** *the Chairperson of the Commission to submit through the Executive Council, at its February 2019 Ordinary Session, specific proposals on delegation of authority to the Commission in matters pertaining to the internal management of the Commission, in order to ensure greater flexibility and responsiveness in the pursuit of the mandate of the Commission*;

II. CONTEXT

2. The proposals have been prepared within the context of the ongoing reform of the Commission which should ultimately deliver three institutional outcomes:

a) A well-managed Commission, driving performance and delivery based on clear lines of authority, accountability while maintaining a commitment to collaboration and team work.

b) A co-ordinated Commission delivering concrete results in line with agreed priorities and plans, maintaining the highest fiduciary standards and accountability in the management of its resources in line with value for money.

c) A performance-based Commission, staffed by motivated personnel, who have a clear career path, maintain high ethical standards, have a strong commitment to Pan-African values in the delivery of their work and are not subject to administrative impunity or arbitrariness

III. WHAT ARE THE KEY ISSUES?

3. The following two questions have guided the preparation of this report:

a) Are there any specific powers or authorities that need to be delegated to the Commission to enhance the internal functioning of the Commission?

b) Are there any contradictions in the legal texts with respect to the functions or responsibilities of the Commission in relation to other entities or Organs that affect the smooth functioning of the Commission and Organs of the Union?

4. Article 20(1) of the Constitutive Act, establishes the AU Commission as the Secretariat of the Union. Article 20 (3) of the Constitutive Act, states that the structure, functions and regulations of the Commission shall be determined by the Assembly.

5. The functions of the Commission are set out in Article 3 of the Statutes of the Commission. The Commission is, however, responsible for preparing any financial and administrative rules and regulations as well as structural proposals. These are to be submitted to the Policy Organs through the Permanent Representatives Committee.

6. The role of the Chairperson of the Commission is outlined in Articles 7 and 8 of the Statutes of the Commission and Article 1 of the Financial Rules and Regulations of the African Union. The Chairperson's administrative powers in relation to staffing and human resource management are set out in the Staff Rules and Regulations of the African Union.

Chairperson's administrative and financial authorities

7. The Chairperson has the ultimate accounting authority for all the resources of the Union (Article 1, FRR). The Chairperson in his/her role as Accounting Officer:

a) Shall be responsible for the administration and enforcement of these Rules and Regulations, (Article 6 (1), FRR);
b) Shall assume overall responsibility for the administrative operations to ascertain the solvency of the Union and the settlement of incurring expenses (Article 6 (2), FRR);
c) Has the ultimate authority to enter into commitments and to make disbursements chargeable to the resources of the Union in accordance with the appropriations made in the budget of the Union, (Article 6 (3), FRR);
d) Shall grant authority to incur expenses and make commitments chargeable to the budget, in accordance with the appropriations made in the budget of the Union, to the Controlling Officers who shall be directly accountable to him/her (Article 6 (4), FRR);
e) Has accountability over Controlling Officers with the responsibility for administration and finance of their respective Organs and institutions of the Union, (Article 6 (5), FRR);
f) Is accountable to the Executive Council, (Article 6 (10), FRR);

8. The Chairperson has the following authorities within the framework of the Staff Rules and Regulations:

a) The power of appointment of all non-elected and non-special/political staff of the Commission (Chapter 6 Regulation 6.1b). For this category of staff, the Chairperson holds:

    i. The power of periodic advancement from one step to another in the salary scale as well as promotion, (Chapter 6 Regulation 6.1b);

ii. The power of transfer and release/termination in accordance with the provisions of the SRR (Chapter 6 Regulation 6.1b);

iii. In exercising his/her authority under Article 6.1(b) of the Regulations, the Chairperson shall be advised by the Appointment, Promotion and Recruitment Board (APROB).

b) The power to determine the terms and conditions for the classification of posts in accordance with the nature of the duties and responsibilities matching the posts (Chapter III, Rule 11);

c) The power to determine the age limit, qualifications and experience for each post to be filled (Chapter V, Rule 27.4);

d) The power to advertise all vacant posts, though s/he may exercise discretion to first advertise internally to benefit regular staff members in line with the provisions of the SRR (Chapter V, Rule 28.1);

e) The power to ensure that appropriate learning and development programmes are available for the benefit of staff (Chapter VII Rule 37.1a); and

f) The power to take administrative as well as disciplinary measures (in line with the process and provisions of the SRR) against a staff member found in breach of the Regulations and Rules of the Union. S/he may issue an oral or written warning or reprimand against a staff member.

9. In addition to the above, the Commission is responsible for ensuring that staff members are evaluated annually by the immediate supervisors for their efficiency, competence and integrity through performance appraisal mechanisms that shall assess the staff member's compliance with the deliverable standards set out in the Staff Regulations and Rules for purposes of accountability and continuity in the service of the Union (Chapter VI, Rule 36a).

IV. REVIEW OF RELEVANT LEGAL PROVISIONS

The Assembly's powers with respect to the Commission:

10. The relevant provisions of the Rules of Procedure of the AU Assembly are as follows:

a) Rule 4 (1) (t), the Assembly has the power to determine the structure, functions and regulations of the Commission;

b) Rule 4 (2), the Assembly may delegate any of its powers and functions to any other organ of the Union.

The Executive Council's powers with respect to the Commission:

11. The relevant provisions of the Rules of Procedure of the Executive Council are as follows:

a) Rule 5 (1) (q), the Executive Council has the power to consider the Staff Rules and Regulations and the Financial Rules and Regulations of the Commission and submit them to the Assembly for adoption;

The Statutes of the Commission:

12. The relevant provisions of the Rules of Procedure of the AU Assembly are as follows:

a) Article 3 (f), the Commission can establish, on the basis of approved programmes, such operational units as it may deem necessary;

b) Article 3 (j), the Commission shall prepare the Union's Programme and Budget for approval by the policy organs;

c) Article 20 (1), the Commission shall prepare the Programme and Budget of the Union every two (2) years and shall submit it, through the PRC and the Executive Council, to the Assembly for consideration.

d) Article 3 (2) (v), the Commission shall prepare the Staff Rules and Regulations for approval by the Assembly;

e) Article 7 (1), the responsibilities of the Chairperson are as follows: S/he is the **Chief Executive Officer**; **the legal representative of the Union**; and the **Accounting Officer of the Commission**;

The Permanent Representatives functions with respect to the Commission:

13. The relevant provisions of the Rules of Procedure of the PRC are as follows:

a) Rule 4(1)(f), the PRC considers the programme and Budget of the Union as well as administrative, budgetary and financial matters of the Commission, and makes recommendations to the Executive Council;

b) Rule 4(1)(g), the PRC considers the Financial Report of the Commission and makes recommendations to the Executive Council;

c) Rule 4(1(i), the PRC considers reports on the implementation of the budget of the Union.

14. However, there appear to be a number of limitations placed on some of the Articles 3 and 20 functions of the Commission and the Article 7 Chief Executive functions of the Chairperson with a requirement that some of these functions are exercised in conjunction with the PRC as follows:

a) Article 8 (f), the Chairperson shall prepare, **in conjunction with the PRC**, and submit the Staff Rules to the Executive Council, for approval;

b) Article 8 (g), the Chairperson shall prepare, **together with the PRC**, and transmit to Member States the Budget, Audited Accounts and Programme of Work at least one (1) month before the commencement of the sessions of the Assembly and the Executive Council; (*NB: This also appears to contradict Article 11 of the AU Financial Rules and Regulations of the African Union, which state that the budget of the Union shall be prepared by the Accounting Officer, defined in Article 1 of the FRR as the Chairperson of the Commission*).

c) Article 8 (p), the Chairperson, **in conjunction with the PRC**, assess the need for branches, administrative and technical offices as may be considered necessary for the adequate functioning of the Commission, and create or abolish them as necessary, with the approval of the Assembly;

d) Article 18 (3), the recruitment of senior administrative, professional and technical staff of the Commission, **shall be undertaken following consultation with the PRC**.

V. ASSESSMENT

15. With respect to the first question, consideration should be given to requesting the Assembly to delegate some of its powers to determine the structure of the Commission (Rule 4 (1) (t)) to the Commission itself. The rationale for requesting such a delegation is as follows- for operational flexibility, transparency and the avoidance of the mistakes of the past. It is well established that the Maputo structure never reflected the real operational and programmatic needs of the Commission and over the years the structure was subjected to various irregular and informal amendments and changes.

16. To avoid this and ensure full transparency and responsiveness of the overall structure, the Commission should have the flexibility to undertake periodic restructuring, based on a clear rationale and within clear financial limits approved by the Assembly. It should be noted that the Statutes of the Commission already give the Commission the power to establish, on the basis of approved programmes, such operational units as it may deem necessary (Article 3f). Under this proposals this would be extended to cover all departments, directorates and units.

17. With respect to the second question, yes there are contradictions in the legal texts with respect to the functions or responsibilities of the Commission that affect the smooth functioning of the Commission and Organs of the Union. There is a need to address the contradictions at three principal levels:

a) First, to address the internal contradiction between Articles 3 and 8 of the Statutes of the Commission. Article 8 should be aligned to reflect Article 3 which states clearly that it is the Commission that is mandated to ‘prepare’ the budget, financial and administrative rules and regulations, the programme of work as well as any new structural proposals

b) Second, to address the contradiction between Article 8 of the Statutes of the Commission and Rule 4 of the Rules of Procedures of the Permanent Representatives Committee. It is clear that the PRC's function is to consider proposals from the Commission and ultimately advise the Executive Council on the content of the proposals submitted. Article 8 should therefore be amended to remove 'in conjunction with the PRC' where relevant.

c) Third, and in light of (i) the various audit reports of the Board of External Auditors which have highlighted a number of recurring accountability issues with respect to financial and administrative governance within some Organs and (ii) given the Chairperson's role as Accounting Officer of the Union, a review of the delegation of his administrative and financial authorities to relevant AU Organs within the context of Articles 6(1) and Article 6(5) of the Financial Rules and Regulations should be initiated.

VI. RECOMMENDATIONS

(1) That the Commission should be delegated the powers to undertake the restructuring or establishment of programmatic and operational units, that do not exceed 10% of the already allocated or approved operating budget, upon notification of the Assembly and with a report to be submitted to Policy Organs on completion of the establishment of the structure/s.

(2) That the contradictions in the relevant legal texts regarding the respective roles and responsibilities of the Commission, the Chairperson of the Commission and the Permanent Representatives Committee be addressed as follows:

a) That the relevant Articles of the Statutes of the Commission be amended to reflect that the Commission and Chairperson of the Commission are responsible for the preparation of the budget, staff rules and regulations. These documents are then to be submitted, through the PRC, to the Executive Council and Assembly;

b) That Article 18(3) be deleted in its entirety. Since the Assembly shall approve the overall structure, functions and regulations of the Commission within an agreed budget, there is no additional need for the initiation of senior staffing recruitment processes to be approved by the PRC. If the Assembly delegates some of its powers to restructure or establish new;

c) The alignment of Article 7(1) of the Statutes of the Commission on the role of the Chairperson of the Commission as the Accounting Officer of the Commission, with Article 1 of the AU Financial Rules and Regulations of the African Union, which state that the Chairperson of the Commission is the Accounting Officer of the African Union as a whole and not just the AU Commission;

d) That the forthcoming reviews of the Financial and Staff Rules and Regulations be presented to the Executive Council, through the PRC, by July 2019 for initial consideration. This will provide the framework for strengthening the financial and administrative regulations of the Commission. The Commission is mandated to prepare proposed amendments and proposals in this regard;

e) That the Chairperson of the Commission, in line with his Article 1 powers (FRR) as Accounting Officer of the Union, initiate a review of the current delegation of his authorities with respect to finance and administration within relevant AU Organs with a view to strengthening overall governance and accountability and establishing clear guidelines ad modalities for the effective and accountable functioning of the Organs.

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