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ANNEX 20 – PART 1/3

Annex

**Handling of real estate files
following the changes brought in by the new Financial Regulation (FR) and its Rules of
Application (RAP)**

to the

COMMISSION DECISION

**on the Internal Rules on the implementation of the general budget of the
European Union (European Commission section) for the attention of the
Commission departments**

Annex

Handling of real estate files following the changes brought in by the new Financial Regulation (FR) and its Rules of Application (RAP)

BACKGROUND

1.1. Scope of the Instructions

These Instructions relate to the following ‘**Building Projects**’:

- projects covered by Article 121(1) of the Rules of Application (RAP)¹ which cover the purchase (with or without a loan), long lease (with or without option to buy), leasing, hire purchase (with or without option to buy), rental or usufruct of all types of real estate (with the exception of residential buildings);
- works covered by Article 121(3) RAP covering the construction or structural renovation of real estate;
- the sale of land or buildings covered by Article 157 FR and Article 252 RAP.

The Instructions shall be applied by the authorising officers by delegation of the Commission, including the Directors of interinstitutional European Offices, in respect of building expenditure made at headquarters and in Commission offices in the Union, and in respect of building expenditure made at other places of activity covered by the Commission budget.

The Instructions shall not apply to the Union Delegations. Here, the European External Action Service (EEAS) is responsible for Building Projects and for complying with the provisions governing information to be provided to, or approval sought from the European Parliament and the Council under Articles 203 FR and 286 RAP. However the EEAS must consult the Commission in accordance with the provisions set out in the ‘Working Arrangements’² of 13 January 2012 or with any other specific arrangements concluded between the EEAS and Commission departments.

1.2. Principles

Building Projects, including loans (service contracts) shall be implemented in accordance with the procurement procedures set out in the first part of Title V of the FR.

In implementing Building Projects, the authorising officer by delegation shall analyse the request made and the situation of the market in the light of predetermined standards defined by reference to commonly accepted criteria. He shall pay particular attention to the principle

¹ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union – C(2012) 7507 final.

² SEC(2012) 48.

of sound financial management (principles of economy, efficiency and effectiveness) and to compliance with public procurement principles (transparency, competition, equal treatment and non-discrimination).

In the case of sales, the authorising officer by delegation shall consistently seek the best possible price.

Before they are concluded, Building Projects shall be subject to an information procedure, an interservice consultation or an approval procedure in accordance with the conditions set out below.

2. INFORMATION PROCEDURE

2.1. Information to be supplied to the Commission

The authorising officer by delegation shall inform the Member of the Commission responsible of any dossier deemed important or sensitive in order to enable that Member to refer the dossier, where necessary, to the Commission in conjunction with the Member responsible for the budget.

2.2. Prior information to be supplied to the budgetary authority (early warning)

In accordance with Article 203(4) FR, for any Building Project likely to have significant financial implications for the budget as defined in Article 203(7) FR, the Commission shall inform the budgetary authority as early as possible about the building surface area required and the provisional schedule before any prospecting of the local market takes place. In the case of building work or structural renovation, the information shall be submitted before the publication of the invitations to tender. In the case of sales, the information shall be provided before the sale is advertised.

This procedure shall not apply to the acquisition of land free of charge or for a symbolic amount, or to residential buildings.

It is for the authorising officer by delegation to have the information prepared in the Commission's working languages.

The Director-General for the Budget shall be responsible for transmitting the information to the budgetary authority.

None the less, in exceptional cases where a Communication from the Commission is deemed to be the most appropriate manner in which to transmit the information to the budgetary authority, the Member responsible for the budget, in conjunction with the Member responsible, is duly empowered to prepare and formally transmit the information to the budgetary authority.

3. INTERSERVICE CONSULTATION PROCEDURE

3.1. Objective

In order to ensure that Building Projects are properly prepared from both a legal and financial standpoint, they must go through an interservice consultation procedure in accordance with the thresholds and criteria set out below.

3.2. Thresholds and criteria

- 3.2.1. The authorising officer by delegation shall consult the Legal Service and the Directorate-General for the Budget on all projects involving the acquisition of land, all projects to be financed by a loan and all projects with an average annual cost of at least EUR 500 000 and/or in cases where approval by the European Parliament and the Council is required.

The following aspects in particular shall be taken into consideration when determining average annual expenditure:

- (i) price, rent, occupancy fee or indemnity;
- (ii) expenditure connected with any specific alterations required to render the premises suitable for occupancy (partitions, cabling, security, etc.);
- (iii) interest on financing and, where applicable, on pre-financing;
- (iv) any other exceptional, related expenditure³.

- 3.2.2. This consultation does not concern real estate renovation projects for which the total costs amount to less than EUR 3 000 000, and which are covered by the annual budget or, in the case of Joint Research Centre files, by the multiannual budgetary framework for research.

- 3.2.3. The authorising officer by delegation must consult the Directorate-General for the Budget where the expenditure involved cannot be covered by the appropriations available for the current year or by the appropriations planned to meet building expenditure of the Commission in future years.

- 3.2.4. DG ECFIN must be consulted in advance in respect of projects to be financed by a property loan.

3.3. Information to be provided

Authorising officers by delegation shall provide the following information in respect of the project:

- (i) grounds for the planned building operation;
- (ii) compliance with established internal norms (surface areas, use to be made of the property, etc.);
- (iii) market surveys, rent calculation method, fees or price proposed;
- (iv) indexation;

³ Total expenditure, whether paid in a single year or spread over several years, is to be converted into average annual expenditure for the duration of the project.

- (v) payment arrangements;
- (vi) time schedules;
- (vii) any default interest;
- (viii) termination clauses;
- (ix) description and cost of alterations;
- (x) possible impact of abandoning a building which had previously been occupied;
- (xi) the draft contract for the Building Project in compliance with applicable national law.

They shall also submit the data contained in the Information Sheet in **Annex 1**.

3.4. Criteria applicable to sales

The SJ and DG BUDG must be consulted in advance in respect of all sales (or disposal of rights in rem, whether free or subject to a fee), even those to other institutions. The following information must be submitted: estimated value, determined by one or more independent experts, the procedure selected for the sale (auction, call for tender, etc.), publicity measures planned, and the contract terms and minimum prices set.

A sale by private contract may be concluded only with the other EU institutions or agencies (executive or traditional agencies).

3.5. Procedure

- 3.5.1. Decisions on Building Projects not requiring the consultation procedure provided for in point 3.2 shall be taken by the authorising officer by delegation.
- 3.5.2. With regard to Building Projects subject to the consultation procedure provided for in 3.2.1, the Legal Service and the Directorate-General for the Budget shall give a non-binding technical opinion on matters within their remit, and the authorising officer by delegation shall take the final decision on the implementation of the planned operation.
- 3.5.3. With regard to Building Projects requiring the consultation procedure provided for in 3.2.3, the authorising officer by delegation must receive a favourable opinion from the Directorate-General for the Budget before the planned operation is carried out.
- 3.5.4. The Legal Service and the Directorate-General for the Budget shall give their opinions within ten working days. The exceptions and derogations provided for in the Commission rules on interservice consultations shall apply by analogy.

4. APPROVAL PROCEDURE

4.1. Principles

Any Building Project likely to have significant financial implications for the budget shall be submitted for the approval of the budgetary authority before the conclusion of contracts, following the procedure and the deadlines set out in Article 203(5) FR or, in cases of force majeure, those set out in Article 203(6) FR.

This procedure shall not apply to contracts and preparatory studies which are necessary to assess the project costs and detailed financing data.

4.2. Thresholds and criteria

Under Article 203(7) FR, the following are considered as Building Projects likely to have significant financial implications for the budget:

- (i) any acquisition of land;
- (ii) the acquisition, sale, structural renovation, construction of buildings or any project combining these elements to be implemented in the same timeframe, exceeding EUR 3 000 000;
- (iii) any new building contract (including usufructs, long-term leases and renewals of existing building contracts under less favourable conditions) not covered by point (ii) with an annual charge of at least EUR 750 000;
- (iv) the extension or renewal of existing building contracts (including usufruct and long-term leases) under the same or more favourable conditions, with an annual charge of at least EUR 3 000 000.

These thresholds include the cost of fitting out the buildings. For rents and usufruct contracts, the thresholds shall take into account the costs of fitting out the building, but not the other charges.

This procedure shall not apply to the acquisition of land free of charge or for a symbolic amount.

4.3. Property loans

In accordance with Article 203(8) FR, a building acquisition project may be financed by means of a loan. In this case, the request for approval of the project submitted to the budgetary authority must be accompanied by a request for authorisation of the loan together with a financing plan, specifying in particular the maximum level of financing, the financing period, the type of financing, the financing conditions and the savings compared to other types of contractual arrangement.

The level of financing shall be determined following an invitation to tender (service contract) carried out in accordance with the provisions of the FR. The authorising officer by delegation may request the technical opinion of DG ECFIN, in particular for the drafting of the tender specifications and the conclusion of the loan.

4.4. Presentation of the file

The file shall be presented to the budgetary authority following the template provided in **Annex 2**, adapted as necessary to suit the specific nature of each Building Project. It will comprise, notably, in agreement with the Directorate-General for the Budget, a detailed estimate of costs and financing together with a list of pre-prepared draft contracts.

It is for the authorising officer by delegation to have the file prepared in the Commission's working languages.

The Director-General for the Budget shall be responsible for transmitting the file to the budgetary authority.

None the less, in exceptional cases where a Communication from the Commission is deemed to be the most appropriate manner in which to transmit the information to the budgetary authority, the Commissioner responsible for providing this Communication is the Member responsible for the budget, in conjunction with the Member responsible for the DG in charge of the file.

4.5. Decision of the budgetary authority

For Building Projects which require the approval of the budgetary authority, the authorising officer by delegation may go ahead with the planned operation as soon as he receives the approval of Parliament and the Council, or in any event when the deadlines for approval set out in Article 203(5) and (6) FR have expired and no decision has been taken against the project.

If the European Parliament and/or the Council take a decision opposing the Building project, the Commission must withdraw its proposal and may submit a new one.

In the case of projects concerning the acquisition of property financed by a loan, the request is deemed to be rejected if the European Parliament and the Council do not expressly approve it within the deadline set out in Article 203(8) FR.

5. REPEAL

The provisions in the Instructions for the processing of building dossiers adopted by the Commission on 23 January 2004 (written procedure E/65/2004 – SEC(2004) 62 of 16 January 2004) are hereby repealed and replaced by the present Instructions.

- Annexes⁴:**
- 1.** Building consultation sheet.
 - 2.** Model note to the budgetary authority.

⁴ http://www.cc.cec/budg/i/administrative/frame_en.html