



COMMISSION OF THE EUROPEAN COMMUNITIES

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Draft

COMMISSION REGULATION (EC, Euratom)

**amending Commission Regulation (EC, Euratom) No 2343/2002 on the framework
Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC,
Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of
the European Communities**

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185(1) thereof¹,

Having regard to the opinion of the European Parliament²,

Having regard to the opinion of the Council³,

Having regard to the opinion of the Court of Auditors⁴,

Whereas:

- (1) Following the amendment of Regulation (EC, Euratom) No 1605/2002 (hereinafter: “general Financial Regulation”) by Council Regulation (EC, Euratom) No 1995/2006, it is necessary to adapt Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities⁵ in order to align it with the general Financial Regulation.
- (2) Other amendments have become necessary in the light of experience gathered by the existing Community bodies.
- (3) It should be made clear that sound financial management requires effective and efficient internal control. The main features and objectives of internal control systems should be defined.

¹ OJ L 248, 16.9.2002, p.1. Regulation as amended by Regulation (EC) No 1995/2006 (OJ L 390, 30.12.2006, p. 1).

² OJ L ...

³ OJ L ...

⁴ OJ L

⁵ OJ L 357, 31.12.2002, p. 72.

- (4) In order to ensure the transparency of the use of funds deriving from their budgets, it is appropriate to provide for a general obligation whereby the Community bodies must make available information on the beneficiaries of those funds.
- (5) The list of assigned revenue proved to be incomplete and should be completed in accordance with Article 18(1) of the general Financial Regulation.
- (6) Publication of the budget of Community bodies should be simplified, while preserving the prerogatives of the budgetary authority and the Court of Auditors.
- (7) The procedure regarding transfers to be adopted by the directors of Community bodies has been applied inconsistently and should therefore be clarified.
- (8) The effects of part-time work on the establishment plan should be specified to facilitate its use especially in small Community bodies.
- (9) It is appropriate to provide for particulars regarding conflict of interest situations to cover all persons involved in procurement and grant procedures.
- (10) Treatment of similar individual transactions relating to certain routine expenditure items should be simplified with regard to *ex ante* verification obligations.
- (11) Financial liability of authorising officers should be expressively limited to cases of gross negligence and intentional misconduct.
- (12) Community bodies should be enabled to use a direct debit system, which may facilitate transactions in certain cases.
- (13) The functional independence of the accounting officer in the performance of his duties should be explicitly referred to, given that the director of the Community body, as authorising officer, is the hierarchical superior of the accounting officer.
- (14) Accounting officers' responsibility for certifying the accounts on the basis of the financial information supplied to them by authorising officers should be clarified. To this end, the accounting officer should be empowered to check the information received from the authorising officer by delegation and to enter reservations, if necessary.
- (15) It is necessary to define a set of rules for fees and charges in order to meet the needs of certain Community bodies financed from such revenue.
- (16) The specialised Financial Irregularities Panel of the Commission should become, by default, competent for Community bodies unless the latter decide to set up a panel or to participate in a joint panel established by several Community bodies.
- (17) The conditions for the use, by Community bodies, of Commission services and offices, interinstitutional European offices and the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/94 setting up a

Translation Centre for bodies of the European Union⁶ (hereinafter: Translation Centre) and joint procurement procedures with host Member States should be specified in order to reinforce interinstitutional cooperation, cooperation between Community bodies and with host Member States.

- (18) It is necessary to provide for a specific procedure for the selection of experts, similar to that laid down in the general Financial Regulation.
- (19) Regulation (EC, Euratom) No 2343/2002 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC, Euratom) No 2343/2002 is amended as follows:

- (1) Article 3 is replaced by the following:

'Article 3

The establishment and implementation of the budget of the Community body (hereinafter referred to as "the budget") shall comply with the principles of unity and budget accuracy, annuality, equilibrium, unit of account, universality, specification, and sound financial management, which requires effective and efficient internal control and transparency as provided for in this Regulation.'

- (2) In Article 8, paragraph 1 is replaced by the following:

'1. The budget shall contain non-differentiated appropriations and, where justified by operational requirements, differentiated appropriations. The latter shall consist of commitment appropriations and payment appropriations.'

- (3) Article 10 is amended as follows:

- (a) In the second subparagraph of paragraph 1, the words 'paragraphs 2 to 8' are replaced by 'paragraphs 2 to 7';

- (b) Paragraph 3 is replaced by the following:

'3. Commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure, to be defined in the rules implementing the financial regulation of each Community body, have been completed by 31 December; these amounts may then be committed up to 31 March of the following year.'

⁶ OJ L 314, 7.12.1994, p. 1. Regulation as amended by Regulation (EC) No 1645/2003 (OJ L 245, 29.9.2003, p. 13).

- (c) In paragraph 4, the first sentence is replaced by the following:

‘Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant lines in the budget for the following financial year do not cover requirements.’;

- (4) Article 13 is replaced by the following:

Article 13

1. As from 15 November of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one quarter of the appropriations decided by the management board on the corresponding budget line for the current financial year. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.
2. Expenditure which must be paid in advance, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year. In this case, the limit referred to in paragraph 1 shall not apply.’;

- (5) In Article 15, paragraph 4 is replaced by the following:

- ‘4. Community funds paid to the Community body shall constitute for its budget a balancing subsidy which shall count as pre-financing within the meaning of Article 81(1)(b)(i) of the general Financial Regulation.
5. In its payment requests, the Community body shall submit detailed and updated forecasts on its real cash requirements throughout the year.’;

- (6) Article 19 is replaced by the following:

Article 19

1. The following items of revenue shall be used to finance specific items of expenditure:
 - (a) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;
 - (b) contributions to the Community body’s activities from Member States, non-member countries or miscellaneous bodies, insofar as this is provided for in the agreement concluded between the Community body and the Member States, non-member countries or bodies in question;
 - (c) revenue from third parties in respect of goods, services or work supplied at their request, with the exception of fees and charges referred to in Article 5(a);

- (d) proceeds from the supply of goods, services and works for Community institutions or other Community bodies;
 - (e) revenue arising from the repayment of amounts wrongly paid;
 - (f) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus, which are being replaced or scrapped when the book value is fully depreciated;
 - (g) insurance payments received;
 - (h) revenue from payments connected with lettings;
 - (i) revenue from the sale of publications and films, including those on an electronic medium.
- 1a. The basic act applicable may also assign the revenue for which it provides to specific items of expenditure.
 2. All items of revenue within the meaning of paragraph 1 points (a) to (d) shall cover all direct or indirect expenditure incurred by the activity or purpose in question.
 3. The budget shall carry lines to accommodate the categories of assigned revenue referred to in paragraphs 1 and 1a and wherever possible shall indicate the amount.’;
- (7) Article 23 is replaced by the following:

Article 23

1. The Director may make transfers from one chapter to another and from one article to another without limit and from one title to another up to a maximum of 10 % of the appropriations for the financial year shown on the line from which the transfer is made.
2. Beyond the limit referred in the first paragraph, the director may propose to the management board transfers of appropriations from one title to another. The management board shall have three weeks in which to oppose such transfers; after this time-limit they shall be deemed to be adopted. In cases of urgency, the Director may shorten the time-limit to at least five working days.
3. Proposals for transfers and transfers carried out under paragraphs 1 and 2 shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the headings to be credited and for those from which the appropriations are drawn.
4. The Director shall inform the management board as soon as possible of all transfers made.’;

(8) The following Article 25a is inserted:

‘Article 25a

1. The budget shall be implemented in compliance with effective and efficient internal control.
2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance of achieving the following objectives:
 - (a) effectiveness, efficiency and economy of operations;
 - (b) reliability of reporting;
 - (c) safeguarding of assets and information;
 - (d) prevention and detection of fraud and irregularities;
 - (e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned.’;

(9) Article 26 is amended as follows:

(a) Paragraph 2 is replaced by the following:

‘2. A summary of the budget and amending budgets, as finally adopted, shall be published in the *Official Journal of the European Union* within three months of their adoption.’

(b) The following paragraphs 3 and 4 are added:

‘3. The budget and amending budgets, as finally adopted, shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission, and shall be published on the website of the Community body concerned within two months of their adoption.

4. The Community body shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from its budget. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council (*).

(*) OJ L 8, 12.1.2001, p.1.’;

(10) Article 31 point 2(c) is deleted.

(11) Article 32 is amended as follows:

- (a) In the third subparagraph of paragraph 1, the words ‘A1 and A2 and A3’ are replaced by ‘AD 16, AD 15, AD 14 and AD 13’;
- (b) In paragraph 2, the following sentence is added:
- ‘Where a staff member requests the withdrawal of the authorisation before expiry of the granted period, the Community body shall take appropriate measures to respect the limit referred to in paragraph 1 point b as soon as possible.’;
- (12) In Article 35, paragraphs 1 and 2 are replaced by the following:
- ‘1. All financial actors within the meaning of Chapter 2 of this Title and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any measures of budget implementation which may bring their own interests into conflict with those of the Community body. Should such a case arise, the person in question must refrain from such measures and refer the matter to the competent authority.
 2. There is a conflict of interests where the impartial and objective exercise of the functions of a person referred to in paragraph 1 is compromised for reasons involving family, emotional life, political or national affinity, economic interest of any other shared interest with the beneficiary.’;
- (13) In Article 38(6), the following sentence is added:
- ‘Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event, as concerns the conservation of traffic data, Article 37(2) of Regulation (EC) 45/2001 shall apply.’;
- (14) In Article 39(3), the following subparagraphs are added:
- ‘For the purpose of *ex ante* verification, a series of similar individual transactions relating to routine expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising officer responsible to constitute a single operation.
- In the case referred to in the second subparagraph, the authorising officer responsible shall, depending on his risk assessment, carry out an appropriate *ex post* verification, in accordance with paragraph 4.’;
- (15) In Article 40, paragraph 1 is replaced by the following:
- ‘1. The authorising officer shall report to the management board on the performance of his duties in the form of an annual activity report, together with financial and management information confirming that the information contained in the report presents a true and fair view except as otherwise specified in any reservations related to defined areas of revenue and expenditure.

The annual activity report shall indicate the results of his operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. The internal auditor within the meaning of Article 71 shall take note of the annual activity report and any other pieces of information identified.’;

(16) Article 43 is replaced by the following:

“Article 43

1. The management board shall appoint an accounting officer, covered by the Staff Regulations, who shall be functionally independent in the performance of his duties. He shall be responsible in the Community body for:
 - (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
 - (b) preparing and presenting the accounts in accordance with Title VII;
 - (c) keeping the accounts in accordance with Title VII;
 - (d) implementing, in accordance with Title VII, the accounting rules and methods and the chart of accounts in accordance with the provisions adopted by the Commission's accounting officer;
 - (e) laying down and validating the accounting systems and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information;
 - (f) treasury management.
2. The accounting officer shall obtain from the authorising officer, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of the Community body's assets and of budget implementation.
- 2a. Before the adoption of the accounts by the Director, the accounting officer shall sign them off, thereby certifying that he has a reasonable assurance that the accounts present a true and fair view of the financial situation of the Community body.

For that purpose the accounting officer shall satisfy himself that the accounts have been prepared in accordance with the accounting rules, methods and accounting systems established, and that all revenue and expenditure is entered in the accounts.

The authorising officer shall forward all information that the accounting officer needs in order to fulfil his duties.

The authorising officer shall remain fully responsible for the proper use of the funds they manage as well as the legality and regularity of the expenditure under their control.

- 2b. The accounting officer shall be empowered to check the information received as well as to carry out any further checks he deems necessary in order to sign off the accounts.

The accounting officer shall make reservations, if necessary, explaining exactly the nature and scope of such reservations.

- 2c. The accounting officer of the Community body shall sign off its annual accounts and send them to the Commission's accounting officer.
3. Subject to paragraph 4 of this Article and Article 44, only the accounting officer shall be empowered to manage cash and cash equivalents. He shall be responsible for their safekeeping.
4. The accounting officer may, in the performance of his duties, delegate certain tasks to subordinate staff subject to the Staff Regulations, where this is indispensable for the performance of his duties.
5. The instrument of delegation shall lay down the tasks entrusted to the delegates and their rights and obligations.

- (17) In Article 44, the following subparagraph is added:

‘Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 66 (1a), cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.’

- (18) In title IV, Chapter 3, the title of Section 2 is replaced by the following:

**‘SECTION 2
RULES APPLICABLE TO THE AUTHORISING OFFICER AND AUTHORISING
OFFICERS BY DELEGATION OR SUBDELEGATION’**

- (19) Article 47 is replaced by the following:

‘Article 47

1. The authorising officer shall be liable to payment of compensation as laid down in the Staff Regulations.
 - 1a. The obligation to pay compensation shall apply in particular if:
 - (a) the authorising officer, whether intentionally or through gross negligence on his part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and its implementing rules;

- (b) the authorising officer, whether intentionally or through gross negligence on his part, omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it, or is late in issuing a payment order, thereby rendering the Community body liable to civil action by third parties.
2. An authorising officer by delegation or subdelegation who considers that a decision falling under his responsibility is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to implement the decision in question, the latter must implement it and may not be held liable.
3. In the event of delegation, the authorising officer shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by delegation.
4. The specialised financial irregularities panel set up by the Commission in accordance with Article 66(4) of the general Financial Regulation, shall exercise the same powers in respect of the Community body as it does in respect of Commission departments, unless the management board decides to set up a functionally independent panel, or to participate in a joint panel established by several Community bodies.

On the basis of the opinion of this panel, the Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor. If the opinion implicates the Director, the panel shall send it to the management board and the Commission's internal auditor.

5. Any member of staff may be required to compensate, in whole or in part, any damage suffered by the Community body as a result of serious misconduct on his part in the course of or in connection with the performance of his duties.

The appointing authority shall take a reasoned decision, after completing the formalities laid down by the Staff Regulations with regard to disciplinary matters.’;

(20) In Article 55(3), the first subparagraph is replaced by the following:

- ‘3. Where the authorising officer responsible is planning to waive or partially waive recovery of an established amount receivable, he shall ensure that the waiver is in order and complies with the principle of sound financial management and proportionality.’;

(21) In Article 58, point (a) is replaced by the following:

- ‘(a) the debtor undertakes to pay interest at the rate specified in Article 86 of Regulation (EC, Euratom) No 2342/2002 for the entire additional period allowed, starting from the date set in the debit note’;

- (22) The following Articles 58a and 58b are inserted:

Article 58a

The accounting officer shall keep a list of amounts due to be recovered, in which Community entitlements are grouped according to the date of issue of the recovery order. The list shall be added to the Community body's report on budgetary and financial management.

The Community body shall establish a list of the body's entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to pay by a Court decision that has the force of *res judicata* and where no or no significant payment has been made for one year following its pronouncement. The list shall be published, taking account of the relevant legislation on data protection.

Article 58b

Entitlements of the Community body in respect of third parties and entitlements of third parties in respect of the Community body shall be subject to a limitation period of five years.';

- (23) Article 59 is replaced by the following:

Article 59

Where the Community body collects fees and charges referred to in Article 5(a), the following shall apply:

- a) An overall provisional estimate of such fees and charges shall be made at the beginning of each financial year.
- b) Where fees and charges are entirely determined by legislation or decisions of the management board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Community body's entitlement shall be registered.
- c) Where the Community body uses a separate invoicing system, the accounting officer shall regularly, and at least on a monthly basis, enter the accumulated sum of fees and charges received into the accounts.
- d) As a general rule the Community body shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety. If by way of exception, a service has been provided without prior payment of the corresponding charge or fee, Sections 3, 4, and 5 of this Chapter shall apply.';

- (24) Article 62 is replaced by the following:

Article 62

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budget commitment before entering into a legal obligation with third parties.
2. Global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year N+1.

Individual legal commitments relating to individual or provisional budget commitments shall be concluded by 31 December of year N.

At the end of the periods referred to in the first and second subparagraphs, the unused balance of these budget commitments shall be decommitted by the authorising officer responsible.

3. The legal commitments entered into for actions extending over more than one financial year and the corresponding budget commitments shall, save in the case of staff expenditure, have a final date for implementation set in compliance with the principle of sound financial management.

Any parts of such commitments which have not been executed six months after that final date shall be decommitted in accordance with Article 11.

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 67 has been made in a period of three years following the signing of the legal commitment shall be decommitted.’;

(25) In Article 66, the following paragraph 1a is inserted:

- ‘1a. Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, and subject to his risk analysis, the authorising officer may order the application of a direct debit system.’;

(26) In Article 72(1), point (b) is replaced by the following:

- ‘(b) for assessing the efficiency and effectiveness of the internal control and audit systems applicable to every budget implementation operation.’;

(27) Article 74 is replaced by the following:

‘Article 74

1. As regards procurement, the relevant provisions of the general Financial Regulation and Regulation (EC, Euratom) No 2342/2002 shall apply.
2. The Community body may request to be associated, as contracting authority, in the award of Commission or interinstitutional contracts and in the award of contracts of other Community bodies.
3. The Community body may conclude a contract, without having recourse to a public procurement procedure, with the Commission, the interinstitutional

offices and the Translation Centre for the supply of goods, provision of services or performance of work that the latter provide.

4. The Community body may use joint procurement procedures with contracting authorities of the host Member State to cover its administrative needs. In this case Article 125c of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis*.’;

(28) The following Title VA is inserted:

‘TITLE VA EXPERTS

Article 74a

Article 265a of the Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* for the selection of experts. Such experts shall be paid on the basis of a fixed amount, for assisting the Community body, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical assistance in the follow-up to, and final evaluation of projects. The Community body may use the lists drawn up by the Commission or other Community bodies.’;

(29) In Article 76, the last sentence is replaced by the following:

‘The accounts of the Community body shall be accompanied by a report on budgetary and financial management during the year, which shall give an account, *inter alia*, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.’;

(30) Articles 82 and 83 are replaced by the following:

‘Article 82

The accounting officer shall send to the Commission's accounting officer and the Court of Auditors by no later than 1 March of the following year its provisional accounts, together with the report on budgetary and financial management during the year, referred to in Article 76 of this Regulation, so that the Commission's accounting officer can consolidate the accounts as provided for in Article 128 of the general Financial Regulation.

The accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year at the latest.

Article 83

1. In accordance with Article 129(1) of the general Financial Regulation, the Court of Auditors shall, by 15 June of the following year at the latest, make its observations on the provisional accounts of each Community body.
2. On receiving the Court of Auditors' observations on the provisional accounts of the Community body, the Director shall draw up the final accounts of the Community body in accordance with Article 43, under his own responsibility, and send them to the management board, which shall give an opinion on these accounts.
3. The Director shall send the final accounts, together with the opinion of the management board, to the Commission's accounting officer, the Court of Auditors, the European Parliament and the Council, by 1 July of the following year at the latest.
4. The final accounts of the Community body, consolidated with those of the Commission, shall be published in the *Official Journal of the European Union* by 15 November of the following year.
5. The Director shall send the Court of Auditors a reply to the observations made in its annual report by 30 September of the following year at the latest. The replies of the Community body shall be sent to the Commission at the same time.';

(31) Article 97 is deleted;

(32) In Article 99, the following sentence is added: 'The director shall transmit these rules to the Commission for information.';

Article 2

Once this Regulation has entered into force, each body referred to in Article 185 of the general Financial Regulation shall amend its financial regulation before [*six months after publication of this regulation*].

Article 3

This Regulation shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

Done at Brussels,

For the Commission

Member of the Commission