



COMMISSION OF THE EUROPEAN COMMUNITIES

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**COMMISSION REGULATION (EC)**

**amending Regulation (EC) No 1653/2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes**

(presented by the Commission)

## COMMISSION REGULATION (EC)

### **amending Regulation (EC) No 1653/2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes**

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes<sup>1</sup>, and in particular Article 15 thereof,

Having regard to the opinion of the European Parliament,

Having regard to the opinion of the Council,

Having regard to the opinion of the Court of Auditors,

Whereas:

- (1) Following the adoption of Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006 amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities<sup>2</sup>, it is necessary to adapt Commission Regulation (EC) No 1653/2004 of 21 September 2004 on a standard financial regulation for the executive agencies pursuant to Council Regulation (EC) No 58/2003 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes<sup>3</sup> in order to align it with the Financial Regulation.
- (2) Other amendments became necessary in the light of experience gathered by the existing executive agencies.
- (3) It should be clarified that sound financial management requires effective and efficient internal control. The main features and objectives of internal control systems should be defined.

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<sup>1</sup> OJ L 11, 16.1.2003, p. 1.

<sup>2</sup> OJ L 390, 30.12.2006, p.1.

<sup>3</sup> OJ L 297, 22.9.2004, p. 6. Regulation as amended by Regulation (EC) No 1821/2005 (OJ L 293, 9.11.2005, p. 10).

- (4) The publication of the administrative budget of agencies should be simplified while preserving the prerogatives of the budgetary authority and the Court of Auditors.
- (5) The procedure regarding transfers to be adopted by the directors of agencies has proved to be unclear and time consuming in practice and should therefore be streamlined and accelerated.
- (6) Clarification regarding conflict of interest situations, new provisions regarding *ex ante* verification of similar individual transactions relating to certain routine expenditure items, provisions on the liability of authorising officers and the use of a direct debit system should also be introduced into the standard financial regulation.
- (7) The accounting officers' responsibility for certifying the accounts on the basis of the financial information supplied to them by the authorising officers should be clarified. To this end, the accounting officer should be empowered to check the information received by the authorising officer by delegation and to enter reservations, if necessary.
- (8) Given that executive agencies are authorising officers by delegation of the Commission, internal control issues regarding the implementation of the operational appropriations by their directors are part of the reports established pursuant to Article 86 paragraphs 3 and 4 of the general Financial Regulation. In order to streamline reporting mechanisms and avoid diffuse information flows, the report of the internal auditor regarding the administrative appropriations of executive agencies should become part of the internal auditor's report pursuant to Article 86(3) of the general Financial Regulation. For the same reason, the Commission should include the reports established by the agencies in accordance with Article 49, fourth paragraph in its report pursuant to Article 86(4) of the general Financial Regulation which is transmitted to the discharge authority.
- (9) The conditions for the use, by the executive agencies, 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 Union<sup>4</sup> (hereinafter: Translation Centre) should be clarified. A provision for the selection of experts, similar to the one introduced in the general Financial Regulation, should be inserted.
- (10) Regulation (EC) No 1653/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

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<sup>4</sup> 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).

## *Article 1*

Regulation (EC) No 1653/2004 is amended as follows:

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

### *'Article 3*

The budget shall be established and implemented in compliance with the principles of unity and budget accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management which requires effective and efficient internal control, and transparency as set out in this Regulation.';

- (2) In Article 10, the second paragraph is replaced by the following:

'However, 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 exceed one quarter of the appropriations decided by the management board on the corresponding budget line for the current financial year. They may not relate to new expenditure whose principle has not yet been acknowledged in the last budget duly adopted.';

- (3) In Article 18, the first paragraph is replaced by the following:

'The director shall take decisions on transfers of appropriations within the operating budget. He/she shall inform the management board beforehand, which may oppose such transfers. After approval by the management board or in the absence of a reply within 10 working days from the information being provided, the director may proceed with the planned transfers.';

- (4) The following Article 19a is inserted:

### *'Article 19a*

1. The budget shall be implemented in compliance with effective and efficient internal control.
2. For the purpose 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.’;

(5) Article 20 is amended as follows:

- (a) the second paragraph is replaced by the following:

‘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 published on the website of the agency concerned. A summary of the budgets and amending budgets shall be published in the *Official Journal of the European Union* within three months of their adoption.’;

- (b) the following third paragraph is added:

‘The agency 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, in particular the protection of personal data as laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (\*) and of the requirements of security.

(\*) OJ L 8, 12.1.2001, p.1.’;

(6) In Article 21, the first paragraph is replaced by the following:

‘The agency shall send the Commission, by 5 March of each year at the latest, an estimate of its revenue and expenditure for the year N+1 drawn up by its director and adopted by the management board and the general guidelines underlying that estimate, together with its work programme.’;

(7) In Article 24, the words ‘below grade A3’ are replaced by ‘below grade AD13’;

(8) In Article 27, the first paragraph is 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 agency or of the Communities. Should such a case arise, the person in question must refrain from such measures and refer the matter to his/her superior. The director must refer it to the management board.’;

(9) In Article 29, the fourth paragraph is replaced by the following:

‘Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation.

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 this case the authorising officer responsible shall, depending on his risk assessment, carry out appropriate *ex post* verification.'

Initiation and the *ex ante* and *ex post* verification of an operation shall be separate functions.'

- (10) Article 30 is replaced by the following:

*'Article 30*

The management board shall appoint an accounting officer, who shall be a seconded official or a member of the temporary staff directly recruited by the agency and who shall be responsible for the following:

- (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
- (b) drawing up the agency's accounts in accordance with Title VI;
- (c) keeping the accounts in accordance with Title VI;
- (d) implementing the accounting rules and methods and the chart of accounts in accordance with the provisions adopted by the Commission's accounting officer;
- (e) treasury management.

Before the approval of the accounts by the management board, the accounting officer shall sign them off, thereby certifying that he/she has a reasonable assurance that the accounts present a true and fair view of the financial situation of the agency.

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 he manages as well as the legality and regularity of the expenditure under his control.

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.

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 agency's assets and of budget implementation.

Save as otherwise provided in this Regulation, only the accounting officer is empowered to manage cash and cash equivalents. He/she shall be responsible for their safekeeping.’;

- (11) The following Article 30a is inserted:

*‘Article 30a*

The accounting officer may, in the performance of his duties, delegate certain tasks to his/her subordinates who are temporary staff members.’

- (12) Article 34 is amended as follows:

- (a) paragraph 1 is replaced by the following:

‘1. The authorising officer shall be liable to payment of compensation as laid down in the Staff Regulations.’;

- (b) the following paragraph 1a is inserted:

‘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;
- (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 agency liable to civil action by third parties.’;

- (13) In Article 40, the first paragraph is replaced by the following:

‘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. He/she shall report his intention to waive an established amount receivable to the management board. Such a waiver shall be by decision of the authorising officer, which must be substantiated. The authorising officer may delegate this decision only for amounts receivable of less than EUR 5 000. The waiver decision shall state what action has been taken to secure recovery and the points of law and fact on which it is based.’;

- (14) Article 42 is replaced by the following:

*‘Article 42*

Further time for payment may be granted by the accounting officer, in liaison with the authorising officer responsible, only on written request, with due indication of the reasons, provided that the debtor undertakes to pay interest for the entire period of time allowed, starting from the date set in the debit note and that, in order to safeguard the rights of the agency, he/she provides a financial guarantee covering both the principal sum and the interest.’

- (15) The following Articles 42a and 42b are inserted:

*‘Article 42a*

The accounting officer shall keep a list of amounts due to be recovered, in which entitlements of the agency are grouped according to their date of issue. The list shall be added to the report on budgetary and financial management of the agency. The agency shall establish a list of the entitlements of the agency 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 42b*

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

- (16) In Article 47 the following paragraph is inserted after the first paragraph:

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

- (17) Article 49 is amended as follows:

- (a) in the second paragraph, the fourth sentence is replaced by the following:

‘The internal auditor shall indicate, in his/her annual report submitted to the Commission pursuant to Article 86(3) of the general Financial Regulation, the number and type of audits carried out relating to agencies, the recommendations made and the action taken pursuant to these recommendations. That information shall also be submitted to the agency concerned.’



(b) the fourth paragraph is replaced by the following:

‘Every year the director shall draw up a report summarising the number and type of internal audits carried out by the internal auditor, the recommendations made and the follow-up given to those recommendation. He/she shall transmit the report to the Commission for inclusion in the report pursuant to Article 86(4) of the general Financial Regulation, after prior information of the management board.’

(18) Article 50(3) is replaced by the following:

‘3. By way of derogation from paragraph 1, where the Commission, interinstitutional offices or the Translation Centre are able to supply goods, provide services or perform work, the agencies shall first have recourse to such bodies. The same shall apply where such bodies are able to carry out these tasks via contracts with economic operators, and deliver significant additional services going beyond those of a simple intermediary or consultant. The agency shall conclude agreements with such bodies.’

(19) The following Title Va is inserted:

## **‘TITLE Va**

### *Article 50a*

Article 265a of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* for the selection of experts, to be paid on the basis of a fixed amount, for assisting the agency, 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 agencies may also use the lists of experts drawn up by the Commission.’;

(20) Article 51 is replaced by the following:

### *‘Article 51*

The accounts of the agency shall comprise the financial statements and the reports on budget implementation. They 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.’

(21) In Article 57 point (c), the words ‘on 31 October’ are replaced by ‘by 15 November’;

(22) Article 68 is deleted.

## *Article 2*

This Regulation shall enter into force on the third 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*