

Proposal for a Council Regulation amending Regulation (EC) No 2965/94 as regards the budgetary and financial rules applicable to the Translation Centre for the Bodies of the European Union and access to the Centre's documents

(2002/C 331 E/06)

COM(2002) 406 final — 2002/0167(CNS)

(Submitted by the Commission on 17 July 2002)

EXPLANATORY MEMORANDUM

1. General

The new Financial Regulation applicable to the general budget of the EC will enter into force on 1 January 2003. It presents a new approach concerning the budgetary and financial status of the decentralised Community Agencies.

The most important novelties concerning Community Agencies are as follows:

— Article 185:

- The Commission adopts a framework Financial Regulation applicable to the bodies set up by the Communities, having legal personality and which actually receive grants from the general budget. The financial rules of these bodies may not depart from the framework Regulation unless specifically required for their operation and with the Commission's prior consent.
- Discharge for the implementation of the budgets of the bodies referred to in paragraph 1 is to be given by the European Parliament, acting on a recommendation by the Council.
- The Commission's internal auditor exercises the same powers over these bodies as over Commission departments.
- The above-mentioned bodies must apply the accounting rules established by the Commission's accounting officer so that their accounts can be consolidated with the Commission's accounts.

— Article 46(3)(d):

- The establishment plans of the bodies defined in Article 185(1) are to be decided by the general budgetary authority.

These novelties require corresponding amendments to the legal acts establishing the Agencies concerned. While the full details of the financial and budgetary regime applicable to a given Agency are contained in the respective Financial Regulation, the legal act establishing the Agency (typically a Council Regulation) also contains provisions concerning financial and budgetary issues (e.g. the establishment and implementation of the budget, arrangements for budget control, the presentation of accounts, discharge and the procedure for adopting the Agency's Financial Regulation).

It is therefore necessary to make changes to the various legal acts establishing the Agencies in order to implement the new system. These changes are the subject of the present proposals.

Concerning those decentralised bodies which do not fall within the definition of Article 185(1), one change in their regulatory framework seems unavoidable in the light of one fundamental aspect of the new Financial Regulation, i.e. the dropping of all centralised *ex ante* financial control.

In these proposals the Commission also tackles two further questions concerning the decentralised Community bodies.

The first is connected with the current general reform process, viz. the question of transparency and public access to documents. During the recasting process the institutions agreed to include in the new Financial Regulation a provision that the public should have access to information relating to the decentralised bodies to the extent laid down by the EC regulatory framework. Furthermore, when adopting European Parliament and Council Regulation (EC) No 1049/2001 on public access to Parliament, Council and Commission documents, the three institutions agreed in a joint declaration that the Community Agencies should apply the same rules as regards access to documents. To put this agreement into effect, the Commission is proposing to amend the basic acts setting up the 15 decentralised bodies.

The second question concerns the procedure for appointing the Directors of the Community bodies. When the constituent acts were adopted, it was the Council's intention to allow for the possibility of renewing the terms of office of these Directors, but the Commission considers that the way most of them are worded at the moment does not properly reflect this aim. The provision for renewing a term of office suggests only that the present holder of the post may apply for a further term of office. However, this does not exempt the Community bodies from applying the procedure laid down in the constituent acts. This interpretation is derived from the parallel wording used in Article 214(1) of the EC Treaty on the appointment of Commission Members, and in Articles 223 and 225 on the appointment of judges to the Court of Justice. The special position of Directors of Community bodies warrants retaining this parallel approach and so departing from the interpretation of Article 8 of the Conditions of Employment of Other Servants of the European Communities, which allows a contract to be extended without a new selection procedure.

In order to make it clear that a new selection procedure is not necessary at the end of each Director's term of office, the Commission therefore proposes to clarify the existing texts.

On a proposal from the relevant management organ, it will be possible to extend the contract without engaging a new selection procedure. This possibility would make for a balance between the need for continuity in the management of Community bodies and the advantage of opening up the body to new ideas and new policies. The restriction to a single extension would not stop the person concerned applying for the same post at the end of the second term of office and taking part in a new selection procedure. A person could then have more than two terms of office after successfully passing a new selection procedure.

2. Scope of the proposals:

Taking into account the above-mentioned development of the general recasting process, it is assumed that the new arrangements (Articles 185 and 46(3)(d)) will apply to the thirteen existing Community Agencies, namely

- the European Centre for the Development of Vocational Training (Thessaloniki) ⁽¹⁾;
- the European Foundation for the Improvement of Living and Working Conditions (Dublin) ⁽²⁾;
- the European Environment Agency (Copenhagen) ⁽³⁾;
- the European Training Foundation (Turin) ⁽⁴⁾;
- the European Monitoring Centre for Drugs and Drug Addiction (Lisbon) ⁽⁵⁾;
- the European Agency for the Evaluation of Medicinal Products (London) ⁽⁶⁾;
- the European Agency for Safety and Health at Work (Bilbao) ⁽⁷⁾;
- the Translation Centre for the Bodies of the EU (Luxembourg) ⁽⁸⁾;

⁽¹⁾ Regulation (EC) No 337/75 of 10 February 1975.

⁽²⁾ Regulation (EC) No 1365/75 of 26 May 1975.

⁽³⁾ Regulation (EC) No 1210/90 of 7 May 1990.

⁽⁴⁾ Regulation (EC) No 1360/90 of 7 May 1990.

⁽⁵⁾ Regulation (EC) No 302/93 of 8 February 1993.

⁽⁶⁾ Regulation (EC) No 2309/93 of 22 July 1993.

⁽⁷⁾ Regulation (EC) No 2062/94 of 18 July 1994.

⁽⁸⁾ Regulation (EC) No 2965/94 of 28 November 1994.

- the European Monitoring Centre on Racism and Xenophobia (Vienna) ⁽¹⁾;
- the European Agency for Reconstruction (Thessaloniki) ⁽²⁾;
- the European Food Safety Authority ⁽³⁾;
- the European Aviation Safety Agency ⁽⁴⁾;
- the European Maritime Safety Agency ⁽⁵⁾;

as well as to one body established under the Third Pillar, but treated as a traditional Community body in budgetary and financial terms, Eurojust ⁽⁶⁾.

There are two decentralised Community bodies which do not receive grants from the general budget, namely

- the Office for Harmonisation in the Internal Market (Alicante) ⁽⁷⁾

and

- the Community Plant Variety Office (Angers) ⁽⁸⁾.

They therefore do not fall within the definition of Article 185. However, they are affected by the proposals to bring their internal control mechanisms into line with the new Financial Regulation.

Finally, it was also intended to cover the European Railway Agency (COM(2002) 23 final). However, since the legislative procedure to set up this new agency is at an early stage, it has been decided not to include it in the present proposal.

As regards transparency, the amendments to include provisions regarding access to documents will concern the fifteen existing Community Agencies (irrespective of the applicability of Article 185), but not Eurojust ⁽⁹⁾.

Clarification of the provisions covering the procedure for appointing the Directors of the agencies is proposed for these thirteen Community bodies. This is not necessary in the case of Regulation 1360/90 as amended by Regulation 1572/98, which is used as the model for the proposed wording, or for Eurojust. In the case of Eurojust, the Administrative Director is not the head of the agency but comes under the authority of the College and its President (Article 29(4) of Decision 2002/187/JHA). In this case, therefore, the Administrative Director's position is not commensurable with that of Members of the Commission or of the Court of Justice. Regulation 2667/2000 establishing the European Agency for Reconstruction makes no provision for renewing the term of office of its Director. There is therefore no proposal to amend that Regulation in that particular respect.

3. The substance of the present proposals

3.1. Concerning the fourteen bodies receiving grants from the general budget and therefore covered by Article 185 of the new Financial Regulation, the main elements of the proposals are as follows:

⁽¹⁾ Regulation (EC) No 1035/97 of 2 June 1997.

⁽²⁾ Regulation (EC) No 2667/2000 of 5 December 2000.

⁽³⁾ Regulation (EC) No 178/2002 of 28 January 2002.

⁽⁴⁾ COM(2000) 595 final, 4.12.2000. Regulation (EC) No .../2002 of ... June 2002.

⁽⁵⁾ COM(2002) 802 final, 8.12.2000. Regulation (EC) No .../2002 of ... June 2002.

⁽⁶⁾ Council Decision 2002/187/JHA of 28 February 2002.

⁽⁷⁾ Regulation (EC) No 40/94 of 20 December 1993.

⁽⁸⁾ Regulation (EC) No 2100/94 of 27 July 1994.

⁽⁹⁾ Regulation (EC) No 1049/2001 is not directly applicable to the Third Pillar.

- as a result of Article 185 itself:
 - the European Parliament, acting on a recommendation from the Council, becomes the discharge authority;
 - the powers of the Commission's Internal Auditor are spelled out and centralised *ex ante* control is dropped;
 - provisions are laid down on the presentation of accounts that are in line with the recasting;
 - in line with a declaration made by the Commission on Article 185:
 - The Commission has committed itself to consulting Parliament, the Council and the Court of Auditors on the framework Financial Regulation to be adopted under Article 185(1). For this reason, there will be no further need to maintain in the legal acts establishing the various decentralised bodies a formal requirement to consult the Court on each individual Financial Regulation;
 - as a result of Article 46(3)(d):
 - a rule provides that the establishment plan is adopted by the general budget authority;
 - in order to provide a degree of technical harmonisation:
 - the responsibility for implementing the budget will lie with the Director (which is currently not the case for the two 'first-generation' Agencies, CEDEFOP Thessaloniki and the Dublin Foundation);
 - competence for the adoption of each Agency's individual Financial Regulation will rest with the respective body's management board or equivalent (after the Commission has been consulted). This will harmonise the individual procedures considerably. Currently, responsibility for adopting each body's Financial Regulation rests either with the Council or with the management board or equivalent, with or without the involvement of the Commission and the Court of Auditors in the process. These disparities are simply historical accidents in the development of the agencies, and are not objectively justified;
 - the terminology used in the field of budgetary procedure is harmonised to some extent with the terminology of the new general Financial Regulation;
 - the present Financial Regulations ⁽¹⁾ of the two 'first-generation' agencies are repealed:
 - hitherto, the Financial Regulations of CEDEFOP Thessaloniki and the Dublin Foundation have been Council Regulations. As already mentioned, there is no justification for maintaining these exceptions to the general rule. In the present circumstances, such a procedure no longer seems appropriate for this kind of instrument.
- 3.2. As regards the two Community agencies not covered by Article 185, it must be borne in mind that the new Financial Regulation implies a fundamental change concerning the audit and control mechanisms. Thus, it seems logical that in the Regulations setting up these agencies, at least the control provisions should be modernised (in particular as one of them — CPVO Angers — still relies upon the Commission's Financial Controller, a function which is to be abolished with the entry into force of the new general Financial Regulation).
- 3.3. It will be recalled that the Commission in 1997 had already presented proposals for amending the Regulations setting up nine of the aforementioned decentralised bodies ⁽²⁾. Taking into account that these proposals have in part become obsolete and are in part covered by the present proposals as well, the Commission takes the opportunity formally to withdraw them.

⁽¹⁾ Regulations (EC) No 1416/76 and No 1417/76 of 1 June 1976.

⁽²⁾ COM(1997) 489 final, 6.10.1997, amended by COM(1998) 289 final, 4.5.1998.

3.4. As regards the question of transparency in the fifteen existing agencies, it is proposed to introduce a clause to the following effect:

- Regulation No 1049/2001 applies to documents of the agencies;
- the management boards will adopt the necessary implementing rules;
- the Court of Justice is competent to decide on appeals against decisions made by the agencies on access to documents.

3.5. As for the procedure for appointing the Directors of the Community bodies, it is proposed to align the wording of the relevant provisions of the constituent acts on Article 7(1) of Regulation No 1360/90 of 7 May 1990 ⁽¹⁾ as amended by Regulation No 1572/98 of 17 July 1998 ⁽²⁾.

4. Procedural issues

4.1. The following procedures apply to the 18 basic acts directly affected by the present document:

- Article 308 (Council unanimity after consulting Parliament): Regulations (EC) Nos 337/75, 1365/75, 1360/90, 302/93, 2309/93, 2062/94, 2100/94, 40/94, 2965/94, 1035/97 (with Article 213) and 2667/2000;
- Article 175 (Article 251 procedure, plus consultation of the Economic and Social Committee and the Committee of the Regions): Regulation (EC) No 1210/90;
- Article 251 (codecision): Regulation (EC) No 178/2002 (with Articles 37, 95, 133 and 152(4)(b); i.e. also with the consultation of the Economic and Social Committee and the Committee of the Regions), COM(2000) 595 final (with Article 80(2)), COM(2000) 802 final (with Article 80(2));
- Article 279 (Council unanimity, after consulting Parliament and the Court of Auditors): Regulations (EC) Nos 1416/76 and 1417/76;
- Article 34(2)(c) (with Article 31 of the EU Treaty (Council unanimity): Council Decision 2002/187/JHA.

4.2. As regards the European Agency for the Evaluation of Medicinal Products, the constituent act in force (Regulation No 2309/93) is to be replaced by a new constituent act following the Commission proposal COM(2001) 404 final.

If Regulation No 2309/93 is replaced by a new constituent act, the proposal for the amendment of that constituent act should be read as a proposal for the amendment of this new constituent act.

In that event the Commission will provide all the technical expertise necessary to help the legislative authority to adapt the proposal to the relevant provisions of this new act.

⁽¹⁾ OJ L 131, 23.5.1990, p.1.

⁽²⁾ OJ L 206, 23.7.1998, p.1.

5. Need for a fast track procedure

Since the new Financial Regulation must, as already mentioned, enter into force on 1 January 2003, the present proposals must be adopted, under the appropriate legislative procedure, by the end of 2002.

The Commission invites all institutions concerned by the adoption of these proposals to speed up the procedure so that the amendments to the legal bases of the bodies concerned may enter into force in parallel with the new Financial Regulation.

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The provisions of Regulation (EC) No 2965/94 of 28 November 1994 should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.
- (2) Article 10 of Regulation (EC) No 2965/94 should be revised to clarify the arrangements for financing the Centre.
- (3) The general principles and limits governing right of access to documents provided for in Article 255 of the EC Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾.
- (4) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.
- (5) Appropriate provisions should therefore be included in Regulation (EC) No 2695/94 to make Regulation (EC) No 1049/2001 applicable to the Translation Centre for the Bodies of the European Union, as should a clause guaranteeing a right of appeal against a refusal of access to documents.
- (6) Regulation (EC) No 2965/94 should therefore be amended accordingly.
- (7) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Director and to harmonise the rules for all the Community bodies for which re-appointment is possible,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EEC) No 2965/1994 is amended as follows:

1. Paragraph 3 of Article 8 is replaced by the following:

‘The Management Board shall adopt the annual report on the Centre's activities and transmit it by 15 June at the latest to the European Parliament, the Council, the Commission, the Court of Auditors and the bodies referred to in Article 2.’

2. Article 9(1) is replaced by the following:

‘The Centre shall be under the authority of a Director appointed by the Management Board, on a proposal from the Commission, for a period of five years, which, on a proposal from the Commission, may be extended for one further period not exceeding five years.’

3. Paragraph 2(b) of Article 10 is replaced by the following:

‘Subject to the provisions set out in subparagraph (c), the Centre's revenue shall comprise

— payments made by the bodies for which the Centre works and by the institutions and organs with which collaboration has been agreed in return for work performed by it, and

— a Community subsidy, in particular to finance interinstitutional activities.’

4. Article 13 is replaced by the following:

‘Article 13

1. Estimates of all the revenue and expenditure of the Centre shall be prepared for each financial year, corresponding to the calendar year, and shall be shown in the budget of the Centre, which shall include an establishment plan.

2. The revenue and expenditure shown in the budget shall be in balance.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

3. Each year the Management Board, on the basis of a draft drawn up by the Director, shall produce a statement of estimates of revenue and expenditure for the Centre for the following financial year. This statement of estimates, which shall include a draft establishment plan, shall be transmitted by the Management Board to the Commission by 31 March at the latest.

The Commission shall take account of the statement of estimates in drawing up the forecasts of subsidies for the bodies referred to in Article 2 in the preliminary draft general budget of the European Communities (hereinafter "the general budget").

The statement of estimates shall be transmitted by the Commission to the European Parliament and the Council (hereinafter referred to as the "budgetary authority") together with the preliminary draft general budget.

The budgetary authority shall adopt the establishment plan for the Centre.

4. The Management Board shall adopt the Centre's budget before the beginning of the budget year, adjusting it as necessary to the Community subsidy referred to in Article 10(2)(b) in the light of the payments made by the bodies referred to in Article 2.'

5. Paragraphs 2 and 3 of Article 14 are replaced by the following:

'2. The Commission's internal auditor shall exercise the same powers over the Centre as over Commission departments.

3. By 1 March at the latest following each financial year, the Centre's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of Council Regulation (EC, Euratom) No ... (*) (hereinafter "the general Financial Regulation").

4. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

5. On receipt of the Court of Auditors' observations on the Centre's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Director shall draw up the Centre's final accounts under his own responsibility and transmit them to the Management Board for an opinion.

6. The Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council and the Court of Auditors, together with the Management Board's opinion.

7. The final accounts shall be published.

8. The Centre's Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

9. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N + 2, give a discharge to the Director of the Centre in respect of the implementation of the budget for year N.

(*) OJ L ...'

6. Article 15 is replaced by the following:

'Article 15

The financial rules applicable to the Centre shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of the Financial Regulation applicable to the general budget of the European Communities unless specifically required for the Centre's operation and with the Commission's prior consent.'

7. A new Article 18a is inserted:

'Article 18a

Regulation (EC) No 1049/2001 of the European Parliament and of the Council (*) shall apply to documents held by the Centre.

The Management Board shall adopt the arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Centre under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice, under Articles 195 and 230 of the EC Treaty respectively.

(*) OJ L 145, 31.5.2001, p. 43.'

Article 2

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

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