

## COMMISSION REGULATION (EC) No 651/2008

of 9 July 2008

**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 of the European Union,

Having regard to the opinion of the Court of Auditors <sup>(2)</sup>,

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>(3)</sup>, it is necessary to adapt Commission Regulation (EC) No 1653/2004 <sup>(4)</sup> in order to align it with Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (hereinafter: general Financial Regulation) <sup>(5)</sup>.
- (2) Other amendments became necessary in the light of experience gathered by the existing 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.
- (4) The publication of the administrative budget of agencies should be simplified while preserving the prerogatives of the budgetary authority and of 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. It 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) Accrued transparency vis-à-vis the budgetary authority should be ensured through new information requirements incumbent on the agencies in the budget procedure in particular as regards the number of contract staff and waivers to recovery of established amounts receivable.
- (8) In order to ensure the transparency of the use of funds deriving from the budget, it is necessary to make available information on the beneficiaries of these funds within certain limits necessary to protect legitimate public and private interests.
- (9) In order to strengthen the protection of the financial interest of the Communities, agencies should participate in fraud prevention activities of the European Anti-fraud Office.
- (10) In order to ensure that personal data is kept for no longer than is necessary for the purposes for which the data were collected or for which they are further processed, specific requirement should be laid down as regards supporting documents.

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

<sup>(2)</sup> OJ C 216, 14.9.2007, p. 1.

<sup>(3)</sup> OJ L 390, 30.12.2006, p. 1.

<sup>(4)</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).

<sup>(5)</sup> OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

- (11) In order to strengthen the protection of the financial interests of the Communities, agencies should establish a list of amounts receivable, 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 after its pronouncement. This list should be published, taking into account the legislation applicable to data protection.
- (12) 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.
- (13) Given that 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(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 the fourth paragraph of Article 49 of Regulation (EC) No 1653/2004 in its report pursuant to Article 86(4) of the general Financial Regulation which it forwards to the discharge authority.
- (14) The conditions for the use, by the 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>(1)</sup> should be clarified. A provision for the selection of experts, corresponding to the one introduced in the general Financial Regulation, should be inserted.
- (15) In order to strengthen the protection of the financial interests of the Communities and given that agencies cannot exercise certain prerogatives exclusively assigned to the Community institutions, they should be required to insert specific contractual clauses in their contracts
- concluded with third parties enabling them to exercise certain rights, including the suspension and termination of contracts and tender procedures and the establishment of a limitation period.
- (16) For reasons of transparency vis-à-vis the budgetary authority, an information procedure for projects with significant impact on the administrative budget of the agency should be introduced.
- (17) Article 14(3) of Regulation (EC) No 58/2003 provides for discharge no later than 29 April of year N+2 while explicitly stating that the discharge shall be granted together with that relating to implementation of the general budget of the European Union. Following the revision of the general Financial Regulation, which provides for discharge for the implementation of the general budget of the European Union before 15 May of year N+2, the content of Article 14(3) of Regulation (EC) No 58/2003 became inconsistent. The discharge date for the operating budget of the executive agencies should therefore be harmonised with the one for the general budget.
- (18) Regulation (EC) No 1653/2004 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

#### 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 the fourth paragraph of Article 9, the following sentence is added:

'By 1 June of the year N+1 at the latest, the agency shall inform the Commission of the implementation of the assigned revenues carried over.;

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

3. 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.;

4. 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 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 three weeks from the information being provided, the director may proceed with the planned transfers.;

5. In Title II, Chapter 7, 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.;

6. 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 Internet site 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.

The summary shall show the five main revenue and the five main expenditure budget lines, the establishment plan and an estimate of the number of contract staff, expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts. It shall also indicate the figures for the previous year.;

- (b) the following paragraphs are added:

'The agency shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, including experts contracted pursuant to Article 50b. The publication shall be easily accessible, transparent and comprehensive. 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.

Where information is published only in anonymous form, the agency shall, upon request, provide information on the beneficiaries concerned to the European Parliament in an appropriate manner.

(\*) OJ L 8, 12.1.2001, p. 1.;

7. Article 21 is replaced by the following:

*'Article 21*

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 draft work programme.

The agency's estimate of revenue and expenditure shall include:

- (a) an establishment plan setting the number of temporary posts authorised within the limits of the budget appropriations, by grade and by category;
- (b) where there is a change in the number of persons in post, a statement justifying the request for new posts;
- (c) a quarterly estimate of cash payments and receipts;
- (d) the number of contract staff and seconded national experts working in the agency and the estimated number for the year N+1;
- (e) an estimation of assigned revenue;
- (f) information on the achievement of all previously set objectives of the various activities as well as new objectives measured by indicators;

Evaluation results shall be consulted and referred to as evidence for the likely merits of an increase or decrease of the agency's proposed operating budget in comparison with its operating budget for year N.;

8. Article 22 is amended as follows:

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

'The Commission, as part of the procedure for adopting the general budget, shall send the agency's statement of estimates to the budgetary authority and propose the amount of the subsidy for the agency and the number of staff it considers that the agency needs. The Commission shall provide the draft establishment plan of the agency and an estimate of the number of contract staff expressed in full-time equivalent for which appropriations are proposed.'

- (b) in the third paragraph of Article 22, the following sentence is added: 'The establishment plan shall be published in an Annex to Section III — Commission — of the general budget.';

9. In point 1 of Article 23, point (b) is replaced by the following:

- '(b) the revenue for the preceding financial year and the revenue for year N-2, including assigned revenue.';

10. In the second subparagraph of Article 24(1), the words 'below grade A3' are replaced by 'below grade AD13';

11. In Article 25, the following subparagraph is added:

'Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, the agencies shall participate in fraud prevention activities of the European Anti-fraud Office.';

12. In Article 27, the first paragraph is replaced by the following:

'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 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 superior. The director must refer it to the management board.';

13. Article 29 and 30 are replaced by the following:

'Article 29

1. The authorising officer shall be responsible for implementing revenue and expenditure in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with. He shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget. 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) No 45/2001 shall apply.

2. The authorising officer shall put in place, in compliance with the minimum standards adopted by the Commission for its own departments and having due regard to the specific risks associated with his management environment and the nature of the action financed, the organisational structure and the internal management and control procedures suited to the performance of his duties, including where appropriate *ex post* verifications.

Depending on the nature and scope of the duties, the authorising officer may establish within his departments an expertise and advice function designed to help him control the risks involved in his activities.

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.

3. In accordance with Article 9(7) of Regulation (EC) No 58/2003, the authorising officer shall report, by 15 March each year, 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.

#### Article 30

1. 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) laying down and validating the accounting system and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information; the accounting officer shall be empowered to verify that validation criteria are respected;

(f) treasury management.

2. Before the approval of the accounts by the management board, 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 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.

3. Save as otherwise provided in this Regulation, only the accounting officer is empowered to manage cash and cash equivalents. He shall be responsible for their safe-keeping.;

14. In Title IV, Chapter 2, the following Article 30a is inserted:

*'Article 30a*

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

15. 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.;

16. In Article 35(1), the following paragraph is added:

'The director shall refer, in anonymous form, to opinions of the panel in his annual activity report and indicate the follow-up measures taken.;

17. In Article 38, the third paragraph is replaced by the following:

'The contracts concluded by the agency with economic operators shall provide that any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with Commission Regulation (EC, Euratom) No 2342/2002 (\*). The condition whereby interest on late payment is due to the agency, including the rate for default interest, shall be explicitly referred to in the contracts.

(\*) OJ L 357, 31.12.2002, p. 1.'

18. 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 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.;

19. 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 provides a financial guarantee covering both the principal sum and the interest.'

20. In Title IV, Chapter 4, the following Articles 42a and 42b are inserted:

*'Article 42a*

The accounting officer shall keep a list of amounts due to be recovered. Entitlements of the agency shall be grouped in the list according to the date of issue of the recovery order. He shall also indicate decisions to waive or partially waive recovery of established amounts receivable. 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 relating to its administrative budget, 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. The limitation period shall be laid down in the contracts concluded by the agency.;

21. 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.;

22. 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 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 recommendations. He shall transmit the report to the Commission after prior information of the management board. The Commission shall include this report in its report pursuant to Article 86(4) of the general Financial Regulation.;

23. Article 50 is replaced by the following:

'Article 50

1. As regards procurement for the operation of the agency, the provisions of the general Financial Regulation and Regulation (EC, Euratom) No 2342/2002 shall apply subject to paragraphs 3 to 5 of this Article.

2. Agencies may ask to be associated, as contracting authority, with the award of Commission or interinstitutional contracts.

3. 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.

4. For the application of Article 101 of the general Financial Regulation, the call for tender shall provide that the agency may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.

5. For the application of Article 103 of the general Financial Regulation, calls for tender launched by the agency shall provide that it may suspend the procedure and may take whatever measures are necessary, including cancellation of the procedure under the conditions laid down in that Article.

For the application of Article 103 of the general Financial Regulation, the contracts concluded by the agency shall stipulate that it may take the measures specified in that Article under the conditions laid down therein.;

24. The following Titles VA and VB are inserted:

TITLE VA

#### PROJECTS WITH SIGNIFICANT BUDGET IMPLICATIONS

Article 50a

The management board shall, as soon as possible, inform the budgetary authority of its intention to implement any project which may have significant financial implications for the funding of its operating budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the project notify the agency concerned of its intention to issue such an opinion. Failing a reply, the agency may proceed with the planned operation.

This opinion shall be forwarded to the agency concerned and the Commission within two weeks of the notification pursuant to the second paragraph.

TITLE VB

#### EXPERTS

Article 50b

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.;

25. 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.'

26. Article 57 is amended as follows:

(a) point (a) is replaced by the following:

'(a) the management board shall notify, by 1 March following the end of the financial year, the accounting officer of the Commission and the Court of Auditors of the provisional accounts accompanied by the report on the budgetary and financial management during the year and shall send the report on budgetary and financial

management to the European Parliament and the Council by the same date.'

(b) in point (c), the words 'on 31 October' are replaced by 'by 15 November';

27. In Article 66, the first paragraph is replaced by the following:

'The European Parliament, upon recommendation from the Council, which shall decide by qualified majority, shall give a discharge to the director in respect of the implementation of the administrative budget for year N before 15 May of year N+2. The director shall inform the management board of the observations of the European Parliament contained in the resolution accompanying the discharge procedure.'

28. Article 68 is deleted.

*Article 2*

This Regulation shall enter into force on the 20th 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, 9 July 2008.

*For the Commission*  
Dalia GRYBAUSKAITĖ  
*Member of the Commission*

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