

Financial Regulation applicable to the general budget: implementation of Regulation (EC, Euratom) No 1605/2002

2006/0900(CNS) - 13/02/2007 - Text adopted by Parliament, 1st reading/single reading

The European Parliament adopted by a show of hands a resolution drafted by Ingeborg **GRÄBLE** (EPP-ED, DE) and Borut **PAHOR** (PES, SL) on the draft Commission regulation amending Regulation 2342/2002/EC laying down detailed rules for the implementation of Council Regulation 1605/2002/EC on the Financial Regulation applicable to the general budget of the European Communities.

The main amendments made by Parliament were the following:

- In order to ensure proper management of the common central database on exclusions the major practical arrangements for using the database should be laid down. Parliament specified that, following consultation of the European Data Protection Supervisor, adequate data protection standards should be applied.

- Any draft proposal for a legislative act shall clearly indicate any provisions containing exceptions to or derogations from the Financial Regulation and/or its implementing rules by expressly mentioning the relevant provisions in the final paragraph of the proposed act's Explanatory Memorandum, which shall be provided to the budgetary authority.

- Parliament deleted Article 17 on rules concerning the calculation of time-limits and percentages on transfers, in order to maintain the rights of the European Parliament as one arm of the budgetary authority.

- It clarified the fact that cost-effectiveness is a part of the principle of sound financial management.

- Reporting duties should be linked primarily to the attainment of a certain stage within the individual programme or activity. In order to have most clarity and to reduce the administrative burden on reporting entities, the intermediate targets should be identified and defined in the conceptual stage of the programme or activity.

- In order to improve the efficiency of audits and make the best use of the existing audit resources, double auditing of equal domains by various audit institutions should be avoided.

- Parliament inserted an article regarding information on budgetary remarks. The amendment aims at improving the comparison between the political will expressed in Parliament's remarks on the budget and the actual implementation (follow-up information).

- The Commission must compile a register of bodies responsible for first and second level controls under the sector specific regulations. In order to attain consistent interpretation of the EU structural legislation within the EU, the Commission will provide an inquiries helpdesk and publish best practice examples and public guidelines on the interpretation of the legislation.

- Parliament inserted an article regarding transfer of data: in any call made in the context of procurements, grants or structural funds, potential beneficiaries, candidates and tenderers must be informed that, for the purpose of safeguarding the financial interests of the Communities, their personal data may be transferred

to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel and/or to the European Anti-Fraud Office (OLAF), or to any other institution or body competent in the fields of auditing or investigation.

- The regular review of long term contracts (e.g. building leases) is necessary in order to evaluate the economic soundness of the underlying transaction.

- An authorising officer by delegation or subdelegation who receives a binding instruction which he considers to be irregular or contrary to the principle of sound financial management, in particular because the instruction cannot be carried out with the resources allocated to him, shall, in writing, so inform the authority from which he received the delegation or subdelegation. If the instruction is

confirmed in writing and that confirmation is received in good time and is sufficiently clear, in that it refers explicitly to the points which the authorising officer has challenged, the authorising officer may not be held liable; he shall carry out the instruction, unless it is manifestly illegal in which case he shall immediately refer the case to the instructing authority's superior.

- The decision regarding liability of a financial actor is formalised. Financial actors must have the possibility to defend themselves against unjustified allegations by means of a decision of the panel.

- If the Member States or any other institutions carry out recovery proceedings on behalf of the Community, the Community budget may be used to reimburse the costs associated with these proceedings, where the cost is not borne by the defaulting debtor. The cost of enforcement by third parties shall be determined bi-annually by the Commission's accounting officer and set at a rate depending on, and gradually increasing in line with, the amount to be recovered. Parliament felt that costs for recovery should be borne by the entity which ultimately benefits from the enforcement, in particular, where the cost for enforcement is not ultimately being borne by the defaulting debtor.

- Parliament clarified that debtors who caused intentional harm to the Communities financial interests may rely on the defence of prescription (limitation) only in exceptional cases. Further, in order to enhance legal certainty, limitation periods against various debtors who are jointly and separately liable should be synchronized.

- The Commission should carry out the procedures for payment in a transparent and customer-oriented manner. Parliament has amended the Article dealing with the time periods within which sums due must be paid, as well as the circumstances where the authorising officer responsible may suspend the time-limit for payment (c.f Article 106.)

- Contracts with a value less than or equal to EUR 7 000 may be awarded on the basis of a single tender.

- Where the budget is implemented by the political groups in the European Parliament or by individual Members of the European Parliament, without prejudice to the public procurement directive, contracts shall be awarded following the rules of procedure specified by the European Parliament.

- Where the contracting authority decides not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers, the authorising officer, based upon his analysis of risk, may decide to withhold pre-financing unless a financial guarantee of an equivalent amount is provided or proof of financial, economic, technical and professional capacity is being subsequently presented. Parliament felt that the mandatory requirement to withhold pre-financing appears too strict in cases, in which the applicant / tenderer e.g. is already known to the authorising officer from past projects.

- A guarantee will be required in certain cases. The risk of insolvency of public bodies is - as a general rule - extremely little. Therefore, the demand for a guarantee in cases of pre-financing should be an exception rather than a rule.

- Contracts shall be suspended under Article 103 of the Financial Regulation in order to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible. Where the term of suspension exceeds six weeks, the creditor shall be informed in writing of the reasons for the delay and of the provisional date for a decision.

- European funding must in general be publicly displayed. Exceptions may be made where, for reasons of security, public display is not desired.

- Grant agreements may be amended only by written additional agreements. Amendments to grant agreements may be made, if circumstances have changed, and the change of circumstances was not foreseen and the unchanged performance of the agreement would lead to unreasonable consequences for any of the parties or otherwise frustrate the contract. The amendment aims at increasing flexibility e.g. in research programmes, where it is discovered that certain aims cannot be fulfilled and the means shall be used in different ways to make use of the results already achieved in the progress instead of losing the entire project.

- In the case of operating grants to bodies which pursue an aim of general European interest, the Commission shall be entitled to recover the percentage of the annual profit corresponding to the Community contribution to the operating budget of the bodies concerned where these bodies are also funded by public authorities which are themselves required to recover the percentage of the annual profit corresponding to their contribution. Should the other contributing bodies have discretionary powers as to whether or not to recover part of or all of their contribution, it should also be possible for the Commission to refrain from recovery. However, recovery should be mandatory where the other contributors are either obliged to reclaim their contribution or (in case of a discretionary decision) actually carry out recovery. Where several donors have contributed to projects, each one should only be entitled to recover such share of a possible profit as represents his share in the initial contribution.

- All grants, including refunds awarded in the course of a financial year shall be published on the Internet site of the Community institutions during the first half of the year following the closure of the budget year in respect of which they were awarded.

- Where the budget is implemented by third countries or by joint management, for the purpose of enhancing transparency, the beneficiaries' data should be published generally in the same way as in direct management. It should be at the parties' discretion, on which internet site publication takes place.

- The Commission shall provide a joint front-desk service for accepting applications and providing advice and assistance to applicants. Where possible and appropriate, applicants who submit various different applications should be dealt with by one department (lead department).