


Procedure file

Basic information		
CNS - Consultation procedure Regulation	2006/0900(CNS)	Procedure completed
Financial Regulation applicable to the general budget: implementation of Regulation (EC, Euratom) No 1605/2002		
Amending Regulation (EC, Euratom) No 2342/2002 2002/0901(CNS)		
Subject 8.70 Budget of the Union 8.70.02 Financial regulations		

Key players			
European Parliament	Committee responsible	Rapporteur	Appointed
	CONT Budgetary Control		13/07/2006
		PPE-DE GRÄSSLE Ingeborg	13/07/2006
		PSE PAHOR Borut	
Council of the European Union	Committee for opinion	Rapporteur for opinion	Appointed
	BUDG Budgets	The committee decided not to give an opinion.	
	Council configuration	Meeting	Date
	Economic and Financial Affairs ECOFIN	2787	27/02/2007
European Commission	Commission DG	Commissioner	
	Budget	GRYBAUSKAITĖ Dalia	

Key events			
04/07/2006	Legislative proposal published	SEC(2006)0866	Summary
05/09/2006	Committee referral announced in Parliament		
23/01/2007	Vote in committee		
25/01/2007	Committee report tabled for plenary, 1st reading/single reading	A6-0007/2007	
13/02/2007	Results of vote in Parliament		
13/02/2007	Decision by Parliament	T6-0027/2007	Summary
23/04/2007	End of procedure in Parliament		
28/04/2007	Final act published in Official Journal		

Technical information	
Procedure reference	2006/0900(CNS)
Procedure type	CNS - Consultation procedure
Procedure subtype	Legislation
Legislative instrument	Regulation
	Amending Regulation (EC, Euratom) No 2342/2002 2002/0901(CNS)
Stage reached in procedure	Procedure completed
Committee dossier	CONT/6/38918

Documentation gateway					
Legislative proposal		SEC(2006)0866	04/07/2006	EC	Summary
Document attached to the procedure		N6-0009/2007 OJ C 094 28.04.2007, p. 0012	12/12/2006	EDPS	Summary
Committee draft report		PE382.446	12/12/2006	EP	
Amendments tabled in committee		PE382.620	10/01/2007	EP	
Court of Auditors: opinion, report		N6-0010/2007 OJ C 046 28.02.2007, p. 0001	25/01/2007	CofA	Summary
Committee report tabled for plenary, 1st reading/single reading		A6-0007/2007	25/01/2007	EP	
Text adopted by Parliament, 1st reading/single reading		T6-0027/2007	13/02/2007	EP	Summary
Commission response to text adopted in plenary		SP(2007)1040	21/03/2007	EC	

Additional information	
European Commission	EUR-Lex

Final act
Regulation 2007/478 OJ L 111 28.04.2007, p. 0013-0045

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

PURPOSE : to amend Regulation 2342/2002/EC, Euratom laying down detailed rules for the implementation of Council Regulation 1605/2002/EC, Euratom on the Financial Regulation applicable to the general budget of the European Communities.

PROPOSED ACT : Draft Commission Regulation.

CONTEXT : on 18 May 2006, the Commission approved a modified proposal for revising the Financial Regulation (CNS/2005/0090), incorporating to a large extent the opinions of the other institutions and taking into account the concerns expressed by representatives of civil society. The main objective of the Commission's modified proposal is to improve the efficiency and transparency of the rules by striking a better balance between the cost of control and the financial risks at stake whilst maintaining a high level of protection of the Community funds.

According to Article 184 of the current Financial Regulation (FR), a conciliation procedure between Council and Parliament will now be necessary, if the Parliament so requests, before the Council definitively adopts the revision of the FR. The objective is to rapidly reach agreement on the FR in 2006 so that the amendments can enter into force on 1 January 2007, together with the new generation of spending programmes.

In order to speed-up the legislative process the Commission is now taking the initiative to present a draft Regulation amending Regulation

2342/2002/EC, Euratom laying down the implementing rules (IR) of the FR and to consult the other institutions on the proposed amendments to the IR.

CONTENT : this draft proposal concerns the amendments to the IR which can be made only after prior modification of the FR, i.e. the amendments linked to the revision of the FR. It is based to a large extent on the Commission staff working document on the linked IR presented in October 2005 (CNS/2005/0904) which was transmitted to the other institutions for information. In addition, this draft proposal takes into account the amendments voted by the European Parliament on the FR which relate as far as their substance is concerned, to the IR.

In order to give the other institutions the opportunity to express an opinion on them, the changes deriving from those EP's amendments are included in the present draft proposal even if they do not formally require prior modification of the FR.

The proposed amendments concern the following issues:

- Budgetary principles and interests yielded by pre-financing payments (the recovery of interest on pre-financing need to be further specified, principle of unity, principle of specification of the budget);
- Methods of management (indirect centralised management; checks to be carried out by the Commission in the different methods of management; annual summary of available audits and declarations; joint management);
- Financial actors (the possibility for the authorising officer by delegation to refer a matter to the financial irregularities panel);
- Recovery of debts (privileges; limitation period);
- Public procurement and contracts (framework contracts; information relating to specific contracts based on a framework contract; refrain from requiring the declaration; form of separate lots; available legal remedies; carry out a procurement procedure jointly; common central database on exclusions; situations of legal exclusion; penalties; the modalities of the standstill procedure);
- Grants (define certain types of equity investment participation and risk bearing instruments; grants should be awarded either by a Commission decision or by a written agreement with the beneficiary; lump sums; flat rates co-financing rule; the possibility to adopt the annual work programme at an early stage, during the previous year; changes to the content of the call for proposals must remain the exception; award of grants; beneficiaries not having legal personality; information and guidance to the applicants; facilitate the management of the award procedure, very low value grants are defined; information on evident material errors in the applications; lump sums to be determined in the basic act; simplify contracts to be concluded by the beneficiary to implement a grant; organise financial support to third parties);
- Accounting (clarify the status of the report on budgetary and financial management);
- External actions (introduce a 4% decommitment rule; introduce the possibility of secret procurement procedures for security reasons; lay down the threshold for negotiated procedure on the basis of a single tender (operational expenditure);
- External experts (define the selection procedures for external individual experts for the evaluation of proposals and other forms of technical assistance).

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

Opinion of the European Data Protection Supervisor.

The proposals on the Financial Regulation and the Implementation Rules set out new obligations on the Commission concerning the award of contracts and grants to third parties in the context of management of Community funds. Taking into account that the proposals set forth rules to be followed in order to ensure the protection of the Communities' financial interests, it is essential that in doing so, the data protection and privacy rights of the persons concerned are properly guaranteed when personal data are processed.

The EDPS welcomes to have been consulted on these proposals, which foresee a sound and more transparent financial management of the Community funds. He also welcomes this occasion to highlight a number of specific aspects of data protection relating to their implementation, especially in the context of the Early Warning System.

1) On the substance, the EDPS recommends the following:

- the insertion in the Implementing Rules of references to a proactive approach (prior information and feedback information) which should be widely applied by all the concerned institutions, authorities and bodies in the light of the transparency principle;
- specific safeguards in the light of data protection principles must be implemented when a central database is established;
- the Implementing Rules should clarify, in Article 134a, the notions of candidates and tenderers as well as the categories of entities which are affected by the database;
- a precise timeframe regarding the updating of information contained in the database should be put in place in the Implementing Rules;
- to avoid inconsistency, a system of selection of authorizing officers must be put in place among Member States, authorities and bodies; their access to information, as well as the amount of data which can be accessed according to Article 95(2) should be defined in complementary administrative rules;
- in the context of transfers of personal data from the central database, those transfers are structural and therefore the need for safeguards such as contractual clauses should be laid down in the Implementing Rules;
- when data are received from third countries and international organisations, it will be important to define the data which are covered and the warranties attached to their quality, and the need for these safeguards should thus be included in the Implementing Rules;
- the wording of Article 134a(1) (3) of the Implementing Rules should be reviewed so as to refer to the institutions, executive agencies, authorities and bodies referred to in Articles 95(1) and (2) of the Financial Regulation;

- regarding the right of access of candidates and tenderers, a reference to Article 13 of Regulation 45/2001 should be included;

2) As to procedure, the EDPS:

- recommends that an explicit reference to this Opinion is made in the preamble of the Proposal;

- reminds that, as the processing operations foreseen will introduce substantial changes in the management of the database and thus will fall under Article 27 of Regulation 45/2001, the EDPS must prior check the system before it is implemented.

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

Opinion No 1/2007 on the draft Commission Regulation (EC, Euratom) amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation

(EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities.

The Court has assessed the Commission's proposal against the following principles:

- consistency with the Financial Regulation;
- compliance with the principles of sound financial management;
- simplification of administrative procedures without compromising the protection of financial interests.

The Court considers that in most cases the proposed amendments meet these conditions. However, the Court has concerns about a number of issues where:

- the new or amended Financial Regulation requirements are insufficiently developed;
- the amendments go against the principles of simplification and/or protection of financial interests; or
- there is a contradiction with the requirements of the Financial Regulation.

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

The European Parliament adopted by a show of hands a resolution drafted by Ingeborg GRÄSLE (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).