

II

(Acts adopted under the EC Treaty/Euratom Treaty whose publication is not obligatory)

DECISIONS

COUNCIL

COUNCIL DECISION

of 24 July 2008

amending Council Decision 2000/265/EC on the establishment of a financial regulation governing the budgetary aspects of the management by the Deputy Secretary-General of the Council, of contracts concluded in his name, on behalf of certain Member States, relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'Sisnet'

(2008/670/JHA)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to first sentence of the second subparagraph of Article 2(1) of the Protocol integrating the Schengen *acquis* into the framework of the European Union, annexed to the Treaty on European Union and to the Treaty establishing the European Community,

Whereas:

- (1) The Deputy Secretary-General of the Council was authorised by Decision 1999/870/EC⁽¹⁾ and Decision 2007/149/EC⁽²⁾ to act, in the context of the integration of the Schengen *acquis* within the European Union, as representative of certain Member States for the purposes of concluding contracts relating to the installation and the functioning of the communication infrastructure for the Schengen environment, 'SISNET', and to manage such contracts, pending its migration to a communication infrastructure under the responsibility of the European Union.
- (2) The financial obligations arising under those contracts are borne by a specific budget, hereinafter 'the Sisnet budget', financing the communication infrastructure referred to in those Council Decisions.
- (3) The Sisnet budget is governed by a specific Financial Regulation established by Council Decision 2000/265/EC⁽³⁾, hereinafter referred to as the 'Sisnet

Financial Regulation', which provides for different procedures from those of the Financial Regulation applicable to the general budget of the European Communities, as set out in Council Regulation (EC, Euratom) No 1605/2002⁽⁴⁾.

- (4) It is appropriate, by analogy, to bring the Sisnet Financial Regulation into line with the Community Financial Regulation, whilst simplifying the internal procedures within the Council Secretariat, in particular by abolishing the role of the financial controller and where appropriate replacing his functions by those of the internal auditor established by Article 85 of Regulation (EC, Euratom) No 1605/2002.
- (5) Current procedures should also be made smoother and more appropriate to actual practice, for instance by adapting deadlines in respect of calls for funds and payments, and updating some provisions in the current procedural or legislative frameworks.
- (6) The Sisnet Financial Regulation was amended by Council Decision 2007/155/EC⁽⁵⁾ and Council Decision 2008/319/EC in order to allow Switzerland to participate in the Sisnet budget. Switzerland should also be allowed to participate in possible future activities of the Advisory Committee.

⁽¹⁾ OJ L 337, 30.12.1999, p. 41.

⁽²⁾ OJ L 66, 6.3.2007, p. 19.

⁽³⁾ OJ L 85, 6.4.2000, p. 12. Decision as last amended by Decision 2008/319/EC (OJ L 109, 19.4.2008, p. 30).

⁽⁴⁾ 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).

⁽⁵⁾ OJ L 68, 8.3.2007, p. 5.

(7) The proposed amendments have no financial impact on the Member States' contributions to the Sisnet budget,

3. The SIS/SIRENE Working Party shall deliver its opinion on that preliminary draft.

HAS DECIDED AS FOLLOWS:

Article 1

Decision 2000/265/EC is hereby amended as follows:

1. Article 6(4) shall be replaced by the following:

'4. The expenditure of a financial year shall be entered in the accounts for that year on the basis of expenditure authorised no later than 31 December and for which the corresponding payments were made by the accounting officer before the following 15 January.;

2. Article 7 shall be amended as follows:

(a) in paragraph 2:

(i) the first subparagraph shall be replaced by the following:

'Notwithstanding paragraph 1, the Deputy Secretary-General of the Council may forward to the representatives of the States referred to in Article 25, meeting within the framework of the SIS/SIRENE Working Party (Mixed Committee), hereinafter referred to as the "SIS/SIRENE Working Party", before 31 January, duly substantiated requests to carry over to the next financial year appropriations not committed at 15 December when the appropriations provided for the headings concerned in the budget for the following financial year do not cover requirements.;

(ii) the fourth subparagraph shall be replaced by the following:

'The SIS/SIRENE Working Party shall act on such requests for carrying over by 1 March at the latest.;

(b) paragraph 4 shall be deleted;

3. Article 8(2) to (4) shall be replaced by the following:

'2. The Deputy Secretary-General shall forward the preliminary draft budget to the SIS/SIRENE Working Party before 15 October and attach an explanatory memorandum.

4. The Deputy Secretary-General shall establish the draft budget and forward it by 15 November to the States referred to in Article 25.;

4. Article 10(2) shall be replaced by the following:

'2. An amending budget shall be submitted on an annual basis, in the three months following the closure of the accounts as laid down in Article 46(1), with the aim of entering the balance of the budget outturn from the previous financial year as revenue in the case of a positive balance or expenditure if the balance is negative.;

5. Article 12 shall be replaced by the following:

'Article 12

The budget shall be implemented in accordance with the principle that the authorising officer and the accounting officer are different individuals. The duties of authorising officer, accounting officer and internal auditor shall be mutually incompatible.;

6. Article 13(2) shall be replaced by the following:

'2. The authorising officer may decide on transfers between articles within each chapter. With the agreement of the SIS/SIRENE Working Party, he may decide on transfers between chapters within the same title. The SIS/SIRENE Working Party shall give its agreement under the same conditions as for adopting its opinion on the budget.;

7. Article 14 shall be deleted;

8. Article 16 shall be amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. For the collection of any amount owing pursuant to Article 25, or of any debt due to the States concerned by a third party relating to the conclusion, installation and functioning of Sisnet, the issue of a recovery order by the authorising officer shall be required. Recovery orders shall be forwarded to the accounting officer.;

(b) paragraph 2 shall be deleted;

9. the last sentence of Article 18(1) as well as Articles 18(2), 20(2)(g), 20(4), (20)(5), and 22 shall be deleted;
10. Article 23 shall be replaced by the following:
- 'Article 23*
- The liability to disciplinary action of the authorising officer and accounting officer in the event of failure to comply with the provisions of this Financial Regulation shall be as laid down in the Staff Regulations of Officials of the European Communities.;
11. a Chapter shall be added as follows:
- 'CHAPTER III A*
- Internal auditor**
- Article 24a*
- An internal auditor shall verify the proper operation of the budgetary implementation systems and procedures set out in this Regulation. By analogy, the internal auditor shall benefit from all the powers, shall perform all the tasks, and shall be subject to all the rules provided for in Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities (*), in particular in Part I, Title IV, Chapter 8 thereof.
- (*) 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).;
12. Article 28 shall be amended as follows:
- (a) paragraph 1 shall be replaced by the following:
- '1. Until 31 December 2008, the States referred to in Article 25 shall be required to pay 25 % of their contribution by 15 February, 1 April, 1 July and 1 October at the latest.;*
- (b) the following paragraph shall be added:
- '1a. From 1 January 2009, the States referred to in Article 25 shall be required to pay 70 % of their contribution by 1 April and 30 % by 1 October at the latest.;*
13. Article 29(6)(h) shall be replaced by the following:
- '(h) prohibit any contact between the Deputy Secretary-General and his staff, representatives of the Governments of the Member States referred to in Article 25, representatives of the Governments of Iceland, Norway and Switzerland and tenderers on matters related to that invitation to tender save, by way of special exception, under the following conditions:*
- before the closing date for the submission of tenders:
- (i) at the instance of tenderers:
- additional information solely for the purpose of clarifying the nature of the invitation to tender may be communicated to all tenderers;
- (ii) at the instance of the Deputy Secretary-General:
- if the Member States referred to in Article 25, or Iceland, Norway and Switzerland, or the General Secretariat of the Council notice an error, a lack of precision, an omission or any other type of clerical defect in the text of the invitation to tender, the General Secretariat may, in a manner identical to that applicable in respect of the original invitation to tender, inform the persons concerned accordingly;
- (iii) after the tenders have been opened and at the instance of the Member States referred to in Article 25, Iceland, Norway or Switzerland, or the General Secretariat of the Council, if some clarification is required in connection with a tender, or if obvious clerical errors contained in the tender must be corrected, the General Secretariat may contact the tenderer.;
14. Article 31 shall be replaced by the following:
- 'Article 31*
- No discrimination shall be practised between nationals of Member States and of Iceland, Norway and Switzerland on grounds of nationality in respect of contracts entered into by the Deputy Secretary-General on behalf of the Member States referred to in Article 25.;

15. the second subparagraph of Article 34 shall be replaced by the following:

'The tenders shall be opened together by a committee appointed for this purpose by the Deputy Secretary-General. It shall be composed of three high-level officials from different directorates of the Council General Secretariat.'

16. the first subparagraph of Article 35 shall be replaced by the following:

'Every tender shall be assessed by the Member States referred to in Article 25, together with Iceland, Norway and Switzerland. A report, approved unanimously by these States, shall be presented by the competent official within the Council General Secretariat designated by the authorising officer or by an alternate, also designated by the authorising officer, to the Advisory Committee referred to in Article 36.'

17. Article 36 shall be replaced by the following:

'Article 36

Contracts to be concluded by the Deputy Secretary-General on behalf of the Member States referred to in Article 25 and by the appropriate representatives of Iceland, Norway and Switzerland after an invitation to tender has been issued shall first be submitted for the opinion of an Advisory Committee on procurements and contracts.'

18. the first subparagraph of Article 37 shall be replaced by the following:

'The Advisory Committee referred to in Article 36 shall include one representative from each Member State referred to in Article 25, together with one representative from each of Iceland, Norway and Switzerland. The Member States referred to in Article 25, together with Iceland, Norway and Switzerland, shall ensure that the representatives selected have adequate expertise in informatics and/or financial matters and/or legal matters. Representatives must not have participated in the assessment of the files to be submitted to the Advisory Committee. A representative of the internal auditor shall be present as observer.'

19. Article 39(e) shall be replaced by the following:

'(e) at the request of one of the Member States referred to in Article 25 or of Iceland, Norway or Switzerland, or of a member of the Advisory Committee, or of the Deputy Secretary-General, proposed contracts involving an amount below the thresholds referred to

in point (a), where they consider that such contracts involve questions of principle or are of a special nature.'

20. Article 40 shall be replaced by the following:

'Article 40

The files submitted to the Advisory Committee for an opinion pursuant to Article 39(b) to (e), shall also be accompanied by a report approved unanimously by the Member States referred to in Article 25, as well as Iceland, Norway and Switzerland.'

21. Article 41 shall be replaced by the following:

'Article 41

The opinions of the Advisory Committee shall be signed by its chairman. In order to avoid delays in the process as a result of the intervention of the Advisory Committee, the Member States referred to in Article 25, as well as Iceland, Norway and Switzerland, may, if they deem it necessary, impose a reasonable deadline by which an opinion must be furnished. Opinions shall be communicated to the Deputy Secretary-General and to the Member States referred to in Article 25, as well as to Iceland, Norway and Switzerland. Following due consideration of that opinion, the Member States referred to in Article 25, as well as Iceland, Norway and Switzerland, shall take a final decision on the case by unanimity. Once that decision has been taken, the contract or contracts which form the subject of each case shall be concluded by the Deputy Secretary-General on behalf of the Member States referred to in Article 25 and by the appropriate representatives of Iceland, Norway and Switzerland.'

22. Article 43(6) shall be replaced by the following:

'6. Where a contract has not been performed or completion has been late, the Deputy Secretary-General shall ensure that the Member States referred to in Article 25, as well as Iceland, Norway and Switzerland, are adequately compensated in respect of all damages, interests and costs by the deduction of the amount from the deposit, whether this has been lodged directly by the supplier or contractor or by a third party.'

23. Article 46(1) shall be replaced by the following:

'1. The Deputy Secretary-General shall, within three months from the end of the budget implementation period, draw up a revenue and expenditure account and a balance sheet and transmit them to the SIS/SIRENE Working Party.'

24. Article 50(2) shall be replaced by the following:

'2. By derogation from Article 8, for the purposes of the budget referred to in paragraph 1, the Deputy Secretary-General of the Council shall forward the preliminary draft budget to the SIS/SIRENE Working Party as soon as possible after the adoption of this Financial Regulation. Following the delivery of the opinion of the SIS/SIRENE Working Party and the establishment of the draft budget, the Member States referred to in Article 25, meeting within the Council, shall adopt the budget without delay.'

Article 2

1. This Decision shall take effect from the date of its adoption.
2. It shall be published in the *Official Journal of the European Union*.

Done at Brussels, 24 July 2008.

For the Council

The President

B. HORTEFEUX
