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(Acts whose publication is obligatory)

COUNCIL REGULATION (EC, ECSC, EURATOM) No 2548/98
of 23 November 1998
amending the Financial Regulation of 21 December 1977 applicable to the
general budget of the European Communities

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 209 thereof,

Having regard to the Treaty establishing the European Coal and Steel Community, and in particular Article 78h thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Court of Auditors ⁽³⁾,

Whereas the conciliation instituted by the Joint Declaration of 4 March 1975 by the European Parliament, the Council and the Commission has taken place within a conciliation committee;

Whereas the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽⁴⁾ (hereinafter 'the Financial Regulation') must be amended to improve financial management within the institutions;

Whereas the management of commitments is sometimes subject to considerable delays and the control of ongoing commitments must therefore be strengthened; whereas to that end the provision in Article 1(7), inserted when Regulation (Euratom, ECSC, EEC) No 610/90 of 13 March 1990 amending the Financial Regulation of 21 December 1977 applicable to the general budget of the European Communities ⁽⁵⁾ was adopted, should be supplemented by providing for general provisions on cancelling appropriations in Articles 1(7) and 36(2); whereas however it should be provided that these provisions do not apply to the Structural Funds or the Cohe-

sion Fund, so as not to affect the possible development of particular provisions concerning them and having regard to the need to ensure consistency between them all;

Whereas there must be strict control of the delegation and subdelegation of powers to sign; whereas staff who exercise powers which are not delegated or subdelegated to them or who exercise powers in excess of the limits of the powers expressly conferred on them must be made liable to disciplinary action and, where appropriate, to payment of compensation;

Whereas, if management of Community programmes is subcontracted, this must be governed by appropriate provisions to guarantee the transparency of operations and to lay down the procedure for the entry in the accounts of the funds available for use in financing the programmes in question;

Whereas the financial controller is responsible for the internal audit of his institution; whereas, in this respect, he must be consulted about setting up and altering inventory systems and systems of financial management used by the authorising officers; whereas the analysis of financial management should also be submitted to the financial controller;

Whereas account must be taken of the possibilities deriving from computerised systems of financial management;

Whereas the system of accounts must be improved;

Whereas the Financial Regulation should contain adequate provisions for the entry in the accounts of traditional own resources, which have their own specific features as compared with the other own resources (VAT and GNP);

Whereas the legal commitments made by the institution and the accounting commitments submitted to financial control and recorded in the central accounts must correspond exactly, while leaving a reasonable length of time for the conclusion of the legal commitments in cases

⁽¹⁾ OJ C 296, 8. 10. 1996, p. 13 and OJ C 359, 25. 11. 1997, p. 9.

⁽²⁾ OJ C 286, 22. 9. 1997, p. 330.

⁽³⁾ Opinion delivered on 9 and 10 July 1997 (not yet published in the Official Journal).

⁽⁴⁾ OJ L 356, 31. 12. 1977, p. 1. Regulation as last amended by Regulation (EC) No 2444/97 (OJ L 340, 11. 12. 1997, p. 1).

⁽⁵⁾ OJ L 70, 16. 3. 1990, p. 1.

where the Commission's decisions count as global budgetary commitments;

Whereas the degree and nature of the risks incurred as a result of commitments and payments vary according to the sector involved; whereas consequently the financial controller should, while maintaining a minimum prior control over all the commitments and payments for all recipients as well as a systematic control in the risk sectors, be able to make distinctions in the methods of control in such a way as to enable an allocation of means while taking account of the risks; whereas systematic control must be maintained or reinstated in the risk sectors;

Whereas time limits should be set for the procedure for overruling the withholding of approval by the financial controller;

Whereas, with the introduction of the statement of assurance, it is essential that the discipline required with regard to inventories be strengthened by laying down the respective duties of the authorising officer and the accounting officer;

Whereas the procedure for the authorisation of transfers between chapters in the EAGGF Guarantee Section should be adjusted by allowing the Commission additional time to present its proposals for transfer;

Whereas Title IX of the Financial Regulation should be amended to bring its provisions into line with the criteria of transparency, publicity and competition contained in the Council Directives on the award of contracts and the international agreements to which the European Community is a signatory,

HAS ADOPTED THIS REGULATION:

Article 1

The Financial Regulation is amended as follows:

1. in Article 1(7):

- (a) the first subparagraph shall be replaced by the following:

'7. The legal commitments entered into for measures extending over more than one financial year and the corresponding commitment proposals shall contain a time limit for implementation. This date must be notified to the recipient in the appropriate legal form. The parts of those commitments not used six months after this date shall be cancelled in accordance with Article 7(6). However, the third sentence of this subparagraph shall apply to neither the Structural Funds nor the Cohesion Fund.'

- (b) the third subparagraph shall be replaced by the following:

'The Commission may, in special circumstances, adjust the time limit for implementation of these commitments, where appropriate reasons are given by the recipients.'

- (c) the following subparagraph shall be added:

'In this case, the date shall be adjusted in accordance with the same procedure as that provided for in Articles 36 to 39 for the commitment proposal and shall be notified to the recipient in the appropriate legal form.'

2. in Article 7:

- (a) in the first indent of point (a) of paragraph (2), the words 'which relate' shall be replaced by the word 'relating', the semi-colon shall be deleted and the words 'these amounts must' shall be replaced by the word 'must';

- (b) in paragraph 6, the first subparagraph shall be replaced by the following:

'When commitments in budget headings where there is a distinction between commitment appropriations and payment appropriations are cancelled as a result of total or partial non-implementation of the projects for which they were earmarked in any financial year after that in which the commitment appropriations were entered in the budget, the appropriations concerned shall, as a rule, lapse. In addition, any amounts unduly paid shall be recovered.'

3. in Article 22:

- (a) in paragraph 2, the following subparagraph shall be added:

'The Commission and other institutions may not, under any form or upon any basis whatsoever, delegate to outside entities or organisations tasks of implementing the budget which may give rise to missions on the part of the European public service, especially where powers to enter into public contracts are involved.'

- (b) in paragraph 4, the following shall be inserted as the third subparagraph:

'All acts implementing the budget which are capable of giving rise to a confusion of interests between delegator, delegatee and third party recipient of expenditure shall be prohibited.'

The implementing arrangements set out in Article 139 shall govern the conditions for implementing this Article, in particular the following aspects:

- causes of the confusion of interests,
- persons between whom the confusion of interests may arise,
- consequences of the confusion of interests.'

- (c) in paragraph 4, the following subparagraph shall be added:

'Any member of staff who authorises commitments or payments without having been delegated or subdelegated the necessary powers, or in excess of the limits of the powers expressly conferred upon him, shall render himself liable to

disciplinary action and, where appropriate, to payment of compensation in accordance with Title V. Each institution shall adopt internal rules which shall specify the procedure for issuing acts of subdelegation. Such acts shall obligatorily specify in detail the powers conferred.’;

(d) the following paragraph shall be inserted:

‘4a. When the institutions commission an outside person, body or firm to perform a Community activity, the contracts and subcontracts concluded for that purpose must contain all appropriate provisions for ensuring the transparency of the contracted and subcontracted operations in accordance with the implementing rules provided for in Article 139.

If the payments made to the subcontractors generate interest which may be used to finance the programmes in question, the following procedure shall be applied:

- periodically, at intervals of no more than six months, recovery orders shall be issued for the interest generated by these funds, which will then be booked to the statement of revenue,
- at the same time, appropriations for the corresponding amount, in both commitments and payments, shall be made available in the heading of the statement of expenditure to which the initial expenditure was charged.’;

4. in Article 24, the fourth and fifth paragraphs shall be replaced by the following:

‘The financial controller must be consulted on the setting up and alteration of the accounting systems and inventory systems of the institution to which he is attached and on the setting up and alteration of the systems of financial management used by authorising officers. He shall have access to the data of such systems.

Monitoring shall be carried out by that official by means of inspection of the files relating to expenditure and revenue and, if necessary, on the spot. The financial controller shall be responsible for the internal audit of the institution, in accordance with the implementing rules provided for in Article 139. That audit shall include, *inter alia*, assessment of the effectiveness of the management and control systems and verification that operations have been effected in a regular manner.’;

5. in Article 25, the following paragraph shall be inserted after the fourth paragraph:

‘The accounting officer shall be consulted on the setting up and alteration of the accounting systems of financial management used by authorising officers, where such systems are intended to supply data to the central accounts. He shall, at his request, have access to the data of such systems. The accounting officer

shall also be consulted on the setting up and alteration of the inventory systems.’;

6. in Article 27:

- (a) in paragraph 2, point (f) shall be deleted;
- (b) the following paragraph shall be inserted after paragraph 2:

‘2a. Notwithstanding Article 4, where products or services supplied to the Commission incorporate taxes which are refunded by Member States pursuant to the Protocol on Privileges and Immunities, the net price shall be charged to the budget.

The refund of these taxes shall be monitored separately in the accounts. Such refund shall be recorded by entry of the definitive amount in the institution’s accounts at the latest in the year following the financial year in which it was collected.’;

7. in Article 28, the following paragraph shall be added:

‘3. Notwithstanding paragraph 1, no forward estimate shall be made for the own resources defined in Article 2(1) and (2) of Decision 94/728/EC, Euratom, which are paid at fixed intervals by the Member States, before the Member States make the amounts available directly to the Commission. The authorising officer responsible shall issue a recovery order for them.

The recovery orders for the revenue referred to at Article 2(1)(a) and (b) of that Decision shall be based on the monthly statements of entitlements established by the Member States, which they send to the Commission.

The recovery orders shall be sent to the financial controller for approval. After they have received his approval, they shall be registered by the accounting officer in accordance with the implementing rules provided for in Article 139.’;

8. in Article 36:

- (a) the correction in paragraph 1 concerns the French language version;
- (b) paragraphs 2 and 3 shall be replaced by the following:

‘2. Without prejudice to Article 99, the decisions taken by the Commission in accordance with the provisions authorising it to grant financial aid from the various funds or similar operations shall constitute commitments of expenditure. Unless these decisions stipulate a different time limit for implementation in accordance with the abovementioned provisions, these commitments shall cover the total cost of the corresponding individual legal commitments up to 31 December of year $n + 1$.

During the period of implementation referred to in the first subparagraph, the conclusion of each individual legal commitment shall be registered by the authorising officer in the central accounts and booked to the commitment referred to in the first subparagraph.

The unused balance shall be released after the time limit for implementation is laid down. However, this paragraph shall apply neither to the Structural Funds nor to the Cohesion Fund.

3. The procedure for implementing paragraphs 1 and 2 shall ensure that an exact account is kept of commitments and authorisations in terms of actual needs and, as regards paragraph 2, that the specific legal commitments correspond to the overall budget commitment provided for by the Commission decision. The procedure shall be determined by the implementing rules provided for in Article 139²;

9. in Article 37, the following paragraph shall be added:

'The proposals for commitments referred to in Article 36(1) and the proposals for individual legal commitments referred to in the second subparagraph of Article 36(2) may be subject to spot checks. Such checks shall be carried out under a system which identifies risk sectors, in which there is a high probability that the conditions set out in Article 38(1) will not be fulfilled. Individual commitments shall be checked systematically in risk sectors.'

10. in Article 39, the second and third paragraphs shall be replaced by the following:

'Cases where approval is withheld and the authorising officer maintains his proposal shall be referred for a decision to the superior authority of the competent institution among those listed in Article 22(1) and (2) within two months of the date of the decision to withhold approval.

Except where the availability of the appropriations is in doubt, the said superior authority may, by a decision stating the full reasons therefor, taken on its sole responsibility, overrule such a refusal. This decision shall be final and binding with effect from the date on which approval was withheld. It must be taken by 15 February of year $n + 1$. It shall be communicated for information to the financial controller. The superior authority of each institution shall inform the Court of Auditors of all such decisions within one month. The Court of Auditors shall report annually to the Parliament and the Council, within the context of the discharge procedure, on the consequences of the decision to overrule, from the point of view of the legality of, or non-compliance with, a directive as regards public works or service contracts.'

11. in Article 44, in the third indent, the following shall be added after the words 'national currency':

'However, when payment orders are sent to the banks by means of computerised procedures, the amount need not be expressed in words;'

12. in Article 46(1), the following subparagraph shall be added:

'The decision to authorise the balance shall be adopted within the time limit laid down in Article 1(7).'

13. in Article 47, the following paragraph shall be added:

'Prior approval may be given on the basis of a spot check; this shall be carried out under a system which identifies risk sectors, in which there is a high probability that the conditions set out in the second paragraph will not be fulfilled. Payment orders shall be checked systematically in risk sectors.'

14. in Article 58(3) the following sentence shall be added:

'The tenderer's offer must from the outset contain all the essential elements required in the invitation to tender, subject to being considered inadmissible. The implementing arrangements set out in Article 139 shall apply for the purpose of establishing the criteria for identifying the essential elements of the tender.'

15. in Article 65, the following paragraphs shall be added:

'The inventory system shall be established by the authorising officer with the technical assistance of the accounting officer. This inventory system, which shall be administered by the authorising officer, shall provide the central system of accounts with all the appropriate information needed to draw up the institution's balance sheet.

The institutions shall each adopt, for their own purposes, provisions relating to the keeping of the equipment recorded in their respective balance sheets and shall determine the departments responsible for this task.'

16. Article 70 shall be amended as follows:

(a) in the first paragraph, the word 'budgetary' shall be replaced by the words 'expenditure and revenue';

(b) in the second paragraph, point (a) shall be replaced by the following:

(a) accounts of expenditure and revenue, subdivided into two separate subcategories:

— accounts of budgetary expenditure and revenue, which allow implementation of the budget to be monitored and the balance for the financial year to be determined,

— accounts of non-budgetary expenditure and revenue, which complement the previous accounts and can be used to produce a broader accounting result';

17. the following Article shall be inserted:

Article 70a

The rules for the entry in the accounts of the depreciation of assets and the rules for writing down the value of assets and for constituting provisions shall be determined by the implementing rules provided for in Article 139.;

18. Article 76 shall be replaced by the following:

Article 76

The liability of authorising officers, financial controllers, accounting officers, assistant accounting officers and administrators of advance funds to disciplinary action and, if necessary, payment of compensation may be determined in accordance with the provisions of Articles 22 and 86 to 89 of the Staff Regulations of officials of the European Communities.

All relevant data or information, including any reports and withholdings of approval by the financial controller, shall be communicated to the authority empowered to initiate the procedure concerning disciplinary and financial responsibility.;

19. Article 79 shall be replaced by the following:

Article 79

Each institution shall, not later than 1 March, transmit to the Commission, after submitting them to its financial controller, the information required for drawing up the revenue and expenditure account and the balance sheet and a contribution to the analysis of the financial management referred to in Article 80.;

20. in Article 104(2), the words 'one month before 31 January' shall be replaced by the words '10 January';

21. Article 109(3) shall be replaced by the following:

'3. It shall transmit to the Commission for agreement the results of the examination of the tendering procedure and a proposal for the award of the contract. It shall sign contracts, additions to contracts

and estimates and shall notify the Commission thereof. For contracts, additions to contracts, and estimates, the Commission, where appropriate, shall enter into individual commitments in accordance with the procedures laid down in Articles 36 to 39. Individual commitments shall count towards the commitments under the financing agreements provided for in Article 106(2), in accordance with the second subparagraph of Article 36(2).;

22. Article 112 shall be replaced by the following:

Article 112

The provisions of this section shall apply instead of those under Title IV to cases in which the Commission, in connection with external aid financed from the general budget of the European Communities, acts as contracting authority in the award of works, supply or service contracts not covered:

- by the Council Directives coordinating the award of public works, supply or service contracts, or
- by the Plurilateral Agreement on Government Procurement concluded within the World Trade Organisation.;

23. Article 113 shall be replaced by the following:

Article 113

The procedure to be followed for the award of works, supply or service contracts financed from the general budget of the European Communities for recipients of external aid shall be specified in the financing agreement or the contract, subject to the following principles.'

Article 2

This Regulation shall enter into force on the seventh 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.

Done at Brussels, 23 November 1998.

For the Council
The President
 R. EDLINGER