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

COMMISSION REGULATION (EC) No 651/2008

of 9 July 2008

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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[(1)], 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[(2)],

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[(3)], it is necessary to adapt Commission Regulation (EC) No 1653/2004[(4)] 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)[(5)].

(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.

Changes to legislation: *There are currently no known outstanding effects for the Commission Regulation (EC) No 651/2008. (See end of Document for details)*

(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.

(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.

***Changes to legislation:** There are currently no known outstanding effects for the Commission Regulation (EC) No 651/2008. (See end of Document for details)*

(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[6] 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.’;

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[7] 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.;

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.;