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

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 279 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,

Having regard to the opinion of the European Parliament[(1)],

Having regard to the opinion of the Court of Auditors[(2)],

Having regard to the opinion of the European Economic and Social Committee[(3)],

Whereas:

(1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[(4)] (hereinafter the Financial Regulation), lays down the legal foundations of the financial management reform. As such, its essential elements should be maintained and strengthened. Transparency, in particular, should be reinforced by providing for information on beneficiaries of Community funds. Moreover, the budgetary principles established by the Financial Regulation should be respected in all legislative acts and derogations should be kept to a strict minimum.

(2) In the light of practical experience, certain amendments should be made to the Financial Regulation in order to facilitate budget implementation and the attainment of the underlying policy objectives and to adjust certain procedural and documentary requirements so as to make them more proportionate to the risks and cost involved, in accordance with the principle of proportionality as set out in the third subparagraph of Article 5 of the EC Treaty.

(3) All amendments should contribute to achieving the objectives of the Commission's reforms and help improve or ensure sound financial management, thus contributing to obtaining a reasonable assurance of the legality and regularity of financial operations.

Changes to legislation: *There are currently no known outstanding effects for the Council Regulation (EC, Euratom) No 1995/2006. (See end of Document for details)*

(4) Account should be taken of provisions implementing the revenue and expenditure of the budget, contained in the basic legal acts adopted for the period 2007 to 2013, in order to ensure coherence between those acts and the Financial Regulation.

(5) It should be clarified that sound financial management requires effective and efficient internal control, and the main features and objectives of internal control systems should be defined.

(6) 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 and taking into account the particular accounting period for the European Agricultural Guarantee Fund.

(7) As regards the principle of unity of the budget, the rule governing interest generated by pre-financing should be simplified. The administrative burden involved in the recovery of that interest is disproportionate to the objective pursued and it would be more efficient to allow interest to be set off against the final payment to the beneficiary.

(8) With regard to the principle of annuality, more flexibility and transparency should be introduced to respond to functional needs. The carry-over of appropriations should exceptionally be permitted in the case of expenditure on direct payments to farmers under the European Agricultural Guarantee Fund (EAGF) set up by Council Regulation (EC) No 1290/2005 of 21 June 2005, on the financing of the common agricultural policy[(5)].

(9) Payment requests from the Member States under the new agricultural regulations will be concentrated overwhelmingly at the beginning of the budget year *n*. Therefore, the maximum threshold for advance commitments against the EAGF (from 15 November of year *n-1*) to cover routine management expenditure (charged to the budget of year *n*) should be increased to three quarters of corresponding appropriations in the last adopted agricultural budget. As regards the limit on advance commitment of administrative expenditure, the text should be amended so that it refers to appropriations decided by the budgetary authority, therefore excluding transfers of appropriations.

(10) The use of non-differentiated appropriations for veterinary measures, charged against the EAGF, unduly hampers the implementation of such measures, especially in respect of the limits placed on the possibilities for carry-overs. The use of differentiated appropriations for such expenditure should therefore be permitted, as this is more in keeping with the multi-annual nature of the actions.

(11) As regards the principle of universality, two points should be added to the list of assigned revenue. First, as is currently possible under specific research programmes, it should be possible for the Member States to make ad hoc contributions, as assigned revenue, for projects under external relations programmes managed by the Commission. Second, proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are being replaced or scrapped should be treated as assigned revenue, as an encouragement to authorising officers to obtain the best prices for their disposal.

***Changes to legislation:** There are currently no known outstanding effects for the Council Regulation (EC, Euratom) No 1995/2006. (See end of Document for details)*

(12) At present, the Commission must be authorised by the budgetary authority before accepting any donations, such as gifts or bequests, which involve a charge. To avoid unnecessary and cumbersome procedures, authorisations should be made compulsory only in the case of donations exceeding a certain value and involving significant charges.

(13) The rules governing transfers of appropriations should be simplified and clarified on certain points because they have proved cumbersome or unclear in practice.

(14) For reasons of efficiency, the Commission should be allowed to decide autonomously on transfers from the reserve in cases where no basic act exists for the action concerned at the time when the budget is established, but where the basic act is adopted in the course of the year.

(15) The rules on the Commission's administrative transfers should be adapted to the new Activity-Based Budgeting (ABB) structure. Thus, provision should be made for an exemption from the 'notification procedure'. During the last month of the financial year, the Commission should be allowed to decide autonomously on transfers of appropriations concerning staff expenditure, within certain limits.

(16) A number of articles of the Financial Regulation should be amended because of the abolition of the reserve relating to Community loans and loan guarantees to third countries, and because of the adoption of a new provisioning mechanism for the Guarantee Fund for external actions.

(17) In order to accelerate the mobilisation of funds in exceptional cases of international humanitarian disasters and crises occurring at the end of the budgetary year, the Commission should be allowed to autonomously transfer unused budgetary appropriations available under the relevant heading of the multiannual financial framework to the budget titles concerned.

(18) As regards the budget procedure, the requirement laid down in the Financial Regulation that the budget be published within two months of adoption has proven unrealistic, and three months would be more practicable. The concept of an 'Activity Statement' should be inserted into Financial Regulation in order to render official one of the key elements of ABB, and the content of such statements should be defined more precisely in order to make them operational. Payment schedules should be included in the working documents accompanying the preliminary draft budget listed in the Financial Regulation instead of in the budget itself, as they are not relevant to the budgetary procedure and are unnecessarily burdensome.

(19) As regards the implementation of the budget, some adjustments are necessary in order to better reflect the specific features of the Common Foreign and Security Policy (CFSP). For reasons of legal clarity, the forms basic acts can take under the EC Treaty and under Title V and VI of the Treaty on European Union should be identified in the Financial Regulation instead of in the implementing rules. In addition, a specific provision should be added in order to properly reflect the types of preparatory measures that may be undertaken in the field of the CFSP.

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(20) As regards methods of management, the relevant Article of the Financial Regulation should be restructured for the purpose of clarity. It is also necessary to remove the limitation of shared management to the European Agricultural Guidance and Guarantee Fund (EAGGF) and Structural Funds, because additional programmes will now operate under shared management. The requirements for joint management need to be made clearer. The relevant provisions of the Financial Regulation should be completed to include in particular the European Investment Bank and the European Investment Fund as Community bodies to which tasks can be delegated by the Commission. The criteria set out in the Financial Regulation for using national public-sector bodies should be simplified in order to facilitate their use and to respond to growing operational needs, and the scope of the provision should be extended to international public bodies. The Financial Regulation should also clarify the position of special advisors or heads of mission appointed by the Council to manage certain actions in the context of the CFSP.

(21) The responsibilities of the Member States under shared management should be set out in more detail, to take account of the ongoing discussions between the institutions concerning the discharge procedure and the appropriate control systems to put in place, reflecting the mutual responsibilities of the Member States and the Commission. Following the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management[(6)], Member States should be obliged to produce an annual summary of the available audits and declarations in relation to the funds under shared management.

(22) The prohibition on delegating implementation tasks to private bodies should be modified in the Financial Regulation because the terms of that prohibition have turned out to be unnecessarily strict. It should be possible, for example, for the Commission to engage the services of a travel agency or a conference organiser to take charge of reimbursing the costs of participants at conferences, provided that no discretionary powers are exercised by the private company.

(23) The establishment by several institutions of joint financial irregularities panels should be made possible.

(24) 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.

(25) The relationship between the Commission's internal auditor and bodies set up by the Communities should be clarified. Those bodies should have their own internal audit function reporting to their own management boards, whereas the Commission's internal auditor reports to the College of Commissioners on the procedures and systems of the Commission. It should be necessary for the Commission's internal auditor only to confirm that the bodies' internal audit functions meet international standards, and for that purpose he should be able to conduct assessments of the quality of the internal audit activity.

(26) A period of limitation on the validity of claims should be introduced. The Community, unlike many of its Member States, is not subject to a period of limitation under which financial claims are extinguished after a certain period of time. Nor is the Community restricted by a period of limitation in the pursuit of its claims against third persons. The introduction of such a period of limitation corresponds to sound financial management.

(27) The Financial Regulation should reflect the importance of framework contracts in the management of public procurement. It should encourage the use of interinstitutional procurement procedures and allow for the possibility of joint procurement procedures between an institution and a contracting authority from a Member State.

(28) Certain technical adjustments should be made to ensure that the terminology of the Financial Regulation is fully in line with that of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts[7]. The possibility, open to Member States under that Directive, to determine specific procedures for contracts declared secret when their performance must be accompanied by special security measures or when the protection of the Member State so requires, should be made available to the Community institutions.

(29) In line with Directive 2004/18/EC, the rules on exclusion from a procurement procedure need to be clarified. In addition, for reasons of legal certainty and proportionality, a maximum period of exclusion should be specified in the Financial Regulation. In the light of Directive 2004/18/EC, an exception to the rules on exclusion should be made for the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

(30) It should be made obligatory under the Financial Regulation for candidates or tenderers in procurement procedures to certify, if so requested, the ownership or the management, control and power of representation of the legal entity submitting a tender or that their subcontractors are not in one of the situations referred to in Article 93 of the Financial Regulation. Tenderers should not be required to certify that they are not in one of the situations giving rise to exclusion when they participate in a procurement procedure for the award of very low-value contracts.

(31) In order to enhance the effectiveness of procurement procedures, the database of candidates or tenderers in situations of exclusion should be common to the institutions, executive agencies and bodies referred to in the Financial Regulation.

(32) In order to take account of the interests of unsuccessful tenderers, it is appropriate to provide that a contract covered by Directive 2004/18/EC cannot be signed before the end of a reasonable standstill period.

(33) The obligations of the institutions to suspend a procurement procedure or a contract under the Financial Regulation in cases of fraud and irregularities should be clarified in order to enhance the operation of the relevant provisions of that Regulation.