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(Acts whose publication is obligatory)

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 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:

(1) An increasing number of programmes are being created in a wide range of fields targeting a variety of categories of beneficiaries, as part of the activities provided for in Article 3 of the Treaty. The Commission is, as a rule, responsible for adopting measures to implement such programmes (Community programmes).

(2) Implementation of the Community programmes concerned is financed, at least in part, from appropriations entered in the general budget of the European Union.

(3) Under Article 274 of the Treaty, the Commission is responsible for implementing the budget.

(4) If the Commission is to be properly accountable to citizens, it must focus primarily on its institutional tasks. It should therefore be able to delegate some of the tasks relating to the management of Community programmes to third parties. Outsourcing certain management tasks could, moreover, be a way of achieving the goals of such Community programmes more effectively.

(5) Outsourcing of management tasks should nevertheless stay within the limits set by the institutional system as laid out in the Treaty. This means that tasks assigned to the institutions by the Treaty which require discretionary powers in translating political choices into action may not be outsourced.

(6) Outsourcing should, moreover, be subject to a cost-benefit analysis taking account of a number of factors such as identification of the tasks justifying outsourcing, a cost-benefit analysis which includes the costs of coordination and checks, the impact on human resources, efficiency and flexibility in the implementation of outsourced tasks, simplification of the procedures used, proximity of outsourced activities to final beneficiaries, visibility of the Community as promoter of the Community programme concerned and the need to maintain an adequate level of know-how inside the Commission.

(7) One form of outsourcing consists in using Community bodies which have legal personality (executive agencies).

(8) In order to ensure uniformity of executive agencies in institutional terms, their statute should be laid down, in particular as regards certain essential aspects of their structure, tasks, operation, budget system, staff, supervision and responsibility.

(9) As the institution responsible for implementing the various Community programmes, the Commission is best qualified to assess whether and to what extent it is appropriate to entrust management tasks relating to one or more specific Community programmes to an executive agency. Recourse to an executive agency does not, however, relieve the Commission of its responsibilities under the Treaty, and in particular Article 274 thereof. It must therefore be able closely to circumscribe the action of each executive agency and maintain real control over its operation, and in particular its governing bodies.

(10) This means that the Commission must have the power to decide to create and, where appropriate, wind up an executive agency in accordance with this Regulation. Since the decision to set up an executive agency is a measure of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission [4], such decisions should be adopted in accordance with Decision 1999/468/EC.

[1] OJ C 120 E, 24.4.2001, p. 89 and OJ C 103 E, 30.4.2002, p. 253.
[2] Opinion delivered on 5 July 2001 (not yet published in the Official Journal).
[3] OJ C 345, 6.12.2001, p. 1.
[4] OJ L 184, 17.7.1999, p. 23.

(11) The Commission must also be able to appoint both the members of the Steering Committee of each executive agency and its director, to ensure that in delegating tasks which are its own prerogative to an executive agency, the Commission does not thereby relinquish control of it.

(12) The activities performed by an executive agency must also fully comply with the programming which the Commission defines for the Community programmes in the management of which the agency is involved. The agency's annual work programme must therefore be subject to the Commission's approval and comply with budgetary decisions.

(13) To ensure that outsourcing is effective and that full benefit is drawn from the expertise of an executive agency, the Commission must be allowed to delegate to it all or some of the implementing tasks for one or more Community programmes, except for those requiring discretionary powers in translating political choices into action. Tasks which may be delegated include managing all or some of the phases in the lifetime of a given project, implementing the budget, gathering and processing information to be forwarded to the Commission and preparing recommendations for the Commission.

(14) Since the budget of an executive agency is intended to finance only its running costs, its revenue should consist chiefly of a subsidy entered in the general budget of the European Union, to be determined by the budgetary authority, and drawn from the financial allocation to the Community programme in the management of which the agency is involved.

(15) With a view to the application of Article 274 of the Treaty, the operational appropriations of the Community programmes which an executive agency is involved in managing must continue to be entered in the general budget of the European Union and must be implemented by direct charging to that budget. The financial operations relating to these appropriations must therefore be carried out in accordance 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 ([1]).

(16) An executive agency may be entrusted with implementing tasks relating to the management of programmes which are financed from sources other than the general budget of the European Union. However, this should not lead even indirectly to extra administrative costs, which should be covered by additional appropriations entered in the general budget concerned. In such cases, this Regulation should apply, subject to specific provisions in the basic acts relating to the Community programmes concerned.

(17) The objective of transparency and reliability in the management of executive agencies requires that internal and external checks be made on their operation. To this end, executive agencies should be made accountable for their actions and the Commission should exercise administrative supervision over the executive agency, without ruling out the possibility of an audit by the Court of Justice.

(18) The public should have access to the documents held by the executive agencies, on terms and within limits similar to those in Article 255 of the Treaty.

(19) Each executive agency must collaborate intensively and continuously with the Commission departments responsible for the Community programmes which it is involved in managing. To facilitate such collaboration as much as possible, each executive agency should be located at the place where the Commission and its departments are located in accordance with the Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol annexed to the Treaty on European Union and to the Treaties establishing the European Community, the European Coal and Steel Community and the European Atomic Energy Community.

(20) For the adoption of this Regulation, the Treaty does not provide for powers other than those conferred by Article 308,

HAS ADOPTED THIS REGULATION:

Article 1

Aim

This Regulation lays down the statute of executive agencies to which the Commission, under its own control and responsibility, may entrust certain tasks relating to the management of Community programmes.

Article 2

Definitions

For the purpose of this Regulation:

(a) 'executive agency' means a legal entity established in accordance with this Regulation;

(b) 'Community programme' means any activity, set of activities or other initiative which the relevant basic instrument or budgetary authorisation requires the Commission to implement for the benefit of one or more categories of specific beneficiaries, by committing expenditure.

Article 3

Setting-up and winding-up of executive agencies

1. The Commission may decide, after a prior cost-benefit analysis, to set up an executive agency with a view to entrusting it with certain tasks relating to the management of one or more Community programmes. It shall determine the lifetime of the executive agency.

([1]) OJ L 248, 16.9.2002, p. 1.

The cost-benefit analysis shall take into account a number of factors such as identification of the tasks justifying outsourcing, a cost-benefit analysis which includes the costs of coordination and checks, the impact on human resources, possible savings within the general budgetary framework of the European Union, efficiency and flexibility in the implementation of outsourced tasks, simplification of the procedures used, proximity of outsourced activities to final beneficiaries, visibility of the Community as promoter of the Community programme concerned and the need to maintain an adequate level of know-how inside the Commission.

2. At the date determined when setting up the executive agency, the Commission may extend the duration of its lifetime for a period not exceeding that originally provided for. Such extension may be renewed. Where the Commission considers that it no longer requires the services of an executive agency which it has set up, or that its existence no longer complies with the principles of sound financial management, it shall decide to wind it up. In that event, it shall appoint two liquidators. The Commission shall determine the conditions for liquidation of the executive agency. The net result after liquidation shall be taken up in the general budget of the European Union. The decision to extend its lifetime, renew such extension or wind up the agency shall be taken on the basis of the cost-benefit analysis referred to in paragraph 1.

3. The Commission shall adopt the decisions referred to in paragraphs 1 and 2 in accordance with the procedure laid down in Article 24(2). They shall be amended in accordance with the same procedure. The Commission shall forward to the Committee referred to in Article 24(1) all the information necessary in this context, in particular the cost-benefit analysis referred to in paragraph 1 of this Article and the evaluation reports referred to in Article 25.

4. When adopting a Community programme, the Commission shall inform the budgetary authority of whether it intends to set up an executive agency to implement the programme.

5. All executive agencies set up under paragraph 1 of this Article must comply with this Regulation.

Article 4

Legal status

1. An executive agency is a Community body with a public service role.

2. An executive agency shall have legal personality. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal persons under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings. To this end, it shall be represented by its Director.

Article 5

Location

1. An executive agency shall be located at the place where the Commission and its departments are located, in accordance with the Protocol on the location of the seats of the institutions and of certain bodies and departments of the European Communities and of Europol.

2. It shall organise its departments according to the management needs of the Community programmes for which it is responsible and according to the criteria of sound financial management.

Article 6

Tasks

1. To attain the objective set out in Article 3(1), the Commission may entrust an executive agency with any tasks required to implement a Community programme, with the exception of tasks requiring discretionary powers in translating political choices into action.

2. Executive agencies may in particular be entrusted with the following tasks:

(a) managing some or all of the phases in the lifetime of a project, in relation with specific individual projects, in the context of implementing a Community programme and carrying out the necessary checks to that end, by adopting the relevant decisions using the powers delegated to it by the Commission;

(b) adopting the instruments of budget implementation for the revenue and expenditure and carrying out all activities required to implement a Community programme on the basis of the power delegated by the Commission, and in particular activities linked to the awarding of contracts and grants;

(c) gathering, analysing and transmitting to the Commission all the information needed to guide the implementation of a Community programme.

3. The terms, criteria, parameters and procedures with which an executive agency must comply when performing the tasks referred to in paragraph 2 and the details of the checks to be performed by the Commission departments responsible for Community programmes in the management of which an agency is involved shall be defined by the Commission in the instrument of delegation.

Article 7

Structure

1. An executive agency shall be managed by a Steering Committee and a director.

2. An executive agency's director shall have authority over its staff.

Article 8

Steering Committee

1. The Steering Committee shall consist of five members appointed by the Commission.

2. The term of office of the members of the Steering Committee shall be two years in principle and shall take into account the length of time fixed for implementation of the Community programme, management of which has been entrusted to the executive agency. The appointment may be renewed. On expiry of their term of office, or should they resign, the members shall remain in office until their appointment is renewed or they have been replaced.

3. The Steering Committee shall choose a chairperson and deputy-chairperson from among its members.

4. The Steering Committee shall meet when convened by the chairperson, at least four times a year. It may also be convened at the request of its members, by at least a simple majority, or at the request of the director.

5. Any member of the Steering Committee unable to attend a meeting may be represented by another member specially empowered for the meeting concerned. Each member may represent only one other member. Should the chairperson be unable to attend, the Steering Committee shall be chaired by the deputy-chairperson.

6. The Steering Committee's decisions shall be adopted by a simple majority of votes. In the event of a tie, the chair shall have the casting vote.

Article 9

Tasks of the Steering Committee

1. The Steering Committee shall adopt its own rules of procedure.

2. On the basis of a draft submitted by the director and after approval by the Commission, the Steering Committee shall, no later than the beginning of each year, adopt the executive agency's annual work programme comprising detailed objectives and performance indicators. The work programme must comply with the programming defined by the Commission in accordance with the instruments establishing the Community programmes in the management of which the executive agency is involved. The annual work programme may be amended during the year following the same procedure, in particular to take account of Commission decisions relating to the Community programmes concerned. The projects included in the annual work programme shall be accompanied by an estimate of the necessary expenditure.

3. The Steering Committee shall adopt the executive agency's administrative budget by the procedure laid down in Article 13.

4. The Steering Committee shall obtain the Commission's agreement before deciding to accept any gifts, legacies and grants from sources other than the Community.

5. The Steering Committee shall decide on the organisation of the departments of the executive agency.

6. The Steering Committee shall adopt any special rules needed to implement the right of access to the executive agency's documents in accordance with Article 23(1).

7. No later than 31 March of each year, the Steering Committee shall adopt and submit to the Commission an annual activity report together with financial and management information. The report shall be drawn up in accordance with Article 60(7) of Regulation (EC, Euratom) No 1605/2002. The report shall cover both implementation of the operating appropriations corresponding to the Community programme managed by the executive agency and the implementation of its administrative budget.

The Commission shall no later than 15 June each year send to the budgetary authority a summary of executive agencies' annual reports for the previous year, to be attached to that referred to in Article 60(7) of Regulation (EC, Euratom) No 1605/2002.

8. The Steering Committee shall adopt and apply measures to combat fraud and irregularities.

9. The Steering Committee shall perform the other tasks entrusted to it by this Regulation.

Article 10

Director

1. The director of the executive agency shall be appointed by the Commission, which shall to that end appoint an official within the meaning of the Staff Regulations of officials and the conditions of employment of other servants of the European Communities laid down by Council Regulation (EEC, Euratom, ECSC) No 259/68 [1], hereafter referred to as 'Staff Regulations'.

2. The director shall be appointed for a term of four years in principle and shall take into account the length of time fixed for implementation of the Community programme, management of which had been entrusted to the executive agency. This appointment may be renewed. After receiving the opinion of the Steering Committee, the Commission may remove the director from office before expiry of the term of office.

Article 11

Tasks of the director

1. The director shall represent the executive agency and shall be responsible for its management.

2. The director shall prepare the work of the Steering Committee, in particular the draft annual work programme of the executive agency. The director shall participate, without voting, in the work of the Steering Committee.

3. The director shall ensure that the annual work programme of the executive agency is implemented. In particular, the director shall be responsible for performance of the tasks referred to in Article 6 and shall take the relevant decisions to that effect. The director shall act as the executive agency's authorising officer by delegation as regards implementation of the operational appropriations relating to the Community programmes in the management of which the executive agency is involved, where the Commission has delegated powers to the agency to perform budget implementation tasks.

[1] OJ L 56, 4.3.1968, p. 1. Regulation as last amended by Regulation (EC, ECSC, Euratom) No 490/2002 (OJ L 77, 20.3.2002, p. 1).