

General budget of the European Communities: review of the recast Financial Regulation

2005/0090(CNS) - 04/07/2005 - Legislative proposal

PURPOSE : to amend Regulation 1605/2002/EC on the Financial Regulation applicable to the general budget of the European Communities, and present a report on the application of the provisions of the new Financial Regulation.

PROPOSED ACT : Council Regulation.

CONTENT : the Financial Regulation ('FR') was adopted in June 2002. In December 2002 the Commission adopted the Implementing Rules ('IR') of the recast FR after extensive consultation of the

institutions. Both these regulations, which apply to all institutions, entered into force on 1 January 2003. The FR is subject to review every three years, or whenever it proves necessary to do so. At the time of the adoption of the new FR in 2002, the Commission undertook to make a report by 1 January 2006 on the application of the provisions of the new FR and, in particular, on the discontinuation of centralised ex ante controls, and, if necessary, to submit appropriate proposals to the Council. This report is annexed to the document.

The main objective of the Commission's review are to improve efficiency and transparency in the operation of the rules, simplification of the procedural and documentation requirements for grants and contracts, and clarification of the rules governing methods of management.

The document describes the methods and criteria used by the Commission in its review. It makes it clear that legislative changes should be reserved for those problems where there is no alternative. Wherever possible, other solutions, such as interpretative notes or administrative measures, should be used.

The main amendments proposed are as follows:

Budgetary principles:

- regarding the principle of unity of the budget, the rule governing interest generated by pre-financing is simplified. The current rule is that pre-financing, and interest generated by it, belongs to the Community, and that interest must be recovered, at least annually. The existing scope of this rule is limited to grants subject to centralised management by the Commission services. This places a disproportionate burden on those programmes where in-house administrative resources are required to administer recovery orders. It is therefore proposed to allow for the amount of interest to be set off against the final payment to the beneficiary. This maintains the principles of Community ownership of prefinancing and accounting for the interest generated. The limits on the scope of application of the general rule should be incorporated in the FR instead of the IR.

- with regard to the principle of annuality, certain changes are made: the carry-over of non-differentiated appropriations will exceptionally be permitted in the case of expenditure on direct payments to farmers. Commitment of expenditure in advance, from 15 December of year n-1, will be exceptionally authorised for crisis management aid and humanitarian aid as referred to in Art. 110 FR. In addition, restrictions on the maximum threshold for advance commitments against the current "EAGGF/Guarantee" (from 15 November of year n-1) to cover routine management expenditure (charged to the budget of the year n) will be removed. Under the new European Agricultural Guarantee Fund, payment requests will be

concentrated overwhelmingly at the beginning of the budget year n. Non-differentiated appropriations for veterinary measures, charged against the current "EAGGF/Guarantee" will be converted into differentiated appropriations, more suited to the multi-annual nature of the expenditure.

- Regarding the principle of universality, two items are added to the list of assigned revenue (Art.18):

the possibility for Member States to make ad hoc contributions for external relations programmes; and

proceeds from the sale of vehicles, equipment, installations, etc.

- At present, the Commission must be authorised by the budgetary authority before accepting any donations. To avoid unnecessary and cumbersome procedures, it would be useful to limit the requirement for authorisation to donations which involve significant charges.

- In relation to the principle of specification of the budget, the rules governing transfers of appropriations are simplified where they have proven cumbersome or unclear: this applies to "Notification procedure" in Articles 22 and 23. Also, for reasons of efficiency, the Commission is allowed to decide autonomously on transfers from the reserve where no basic act exists for the

action concerned when the budget is established but is adopted during the year. Rules on transfers of administrative appropriations are adapted to the new Activity-Based Budgeting (ABB) structure.

Methods of management (Arts 53-57)

- The limitation of shared management to EAGFF and Structural funds is removed, to reflect current practice based on existing regulations as well as proposals for future basic acts after 2006.

- For joint management with international organisations, the definition and requirements need to be clarified and need to be completed in line with operational needs.

- The conditions and criteria for using national public-sector bodies ("national agencies") are simplified in order to facilitate their use, and the scope of the provision is extended to international public bodies.

- The specific case of special advisers/heads of mission appointed by the Council to manage certain actions in common foreign and security policy (CFSP) is included as a special case of indirect centralised management.

- The prohibition on delegating budget implementation tasks to private bodies is modified, since experience has proved the terms of this prohibition to be unnecessarily strict.

- Finally, taking account of the need for a common control framework, controls carried out by the Commission on decentralised or indirect centralised management, and where appropriate in shared management, are reinforced, particularly by adding provisions concerning the Member States' responsibilities under shared management.

Financial Actors

The relationship between the Commission's internal auditor and the agencies (FR) is adjusted (Art. 185 FR). The latter will have their own internal audit function reporting to their own management boards, whereas the Commission's internal auditor reports to the College on the procedures and systems of the Commission. As regards the Accounting Officer, his/her responsibility for certifying the accounts, on the basis of the financial information supplied to him/her by the authorising officers, is clarified.

Recovery of amounts receivable (Arts. 72-73b)

The rules on recovery of amounts receivable should be **clarified** and **strengthened**.

- Enforced recovery is assisted by ensuring that the Community's claims also benefit from the instruments adopted under the Treaty provisions on judicial cooperation in civil law matters having cross-border implications.
- Recoveries should be treated by the Member States in the same way as they treat their own fiscal claims within their jurisdiction and should enjoy the same privileges.
- The practical experience of the Commission services shows that, unlike state authorities in many national jurisdictions, the Community is not subject to a period of limitation under which financial claims extinguish after a certain period of time. The introduction of such a period of limitation corresponds to the principles of sound financial management and of equal treatment of operators. The same period of limitation of five years is already provided for fines and periodic penalty payments by the Council Regulation on the implementation of the rules on competition.

Public procurement and contracts

One of the main objectives, and achievements, of the FR adopted in 2002 was to transpose the EC Public Procurement Directives so that the Community institutions would apply the same standards as the Member States. Given the adoption of the new EC Public Procurement Directive in 2004, some further amendments to the FR are necessary:

- Including the possibility of declaring procurement to be secret.
- Distinguishing between the most serious grounds for exclusion and other grounds which involve a lower level of financial risk : the most serious grounds for exclusion should be obligatory, while the rest should be applied as necessary, on the basis of a risk assessment by the contracting authority.

Experience has proved the following amendments to be necessary:

- Possibility of sharing a common database of those candidates or tenderers in situations of exclusion;
- Extension of simplified rules to govern the awarding contracts to external experts for evaluation and technical assistance (Arts 91, 97 FR).
- Clarification of the obligations of the institutions to suspend a procurement procedure or a contract in cases of fraud, etc.

Grants

Simplification of the rules is needed: requirements for checks and guarantees need to be better adjusted to the financial risks involved.

- The scope of the title on grants is clarified (Art.108 FR) in particular as regards financing related to loan activities and shareholdings.
- As for the public procurement, it is necessary to add the principle of proportionality.
- The scope of the non-profit rule is clarified and its articulation between FR and IR.

- In certain situations, the nature of the action leaves no choice in the selection of beneficiaries. This category is therefore added in Article 110 FR.
- The same action should not give rise to more than one grant to any one beneficiary. However, some basic acts permit Community funding to be combined since it is considered useful for example for the structural funds to be complemented by interventions from other programmes (e.g. TENs). It is also made clear that the same costs can never be financed twice (Art. 111 FR).
- Where grants are given for running costs, the rule that the necessary agreement may not be signed more than four months after the start of the beneficiary's financial year has proved unnecessarily rigid. Since there are strict rules on retrospective funding, this deadline may safely be fixed at six months.
- The use of flat-rate payments is authorised at the level of the FR along with the more traditional method of reimbursing pro rata costs actually incurred (new Art. 113a).
- Certain restrictions on the eligibility of beneficiaries are removed (Art. 114 FR) in order to allow for grants to physical persons and certain types of association without legal personality.
- The rules on exclusion from grant procedures include the same distinction as that for procurement in relation to the level of seriousness (Art. 114 FR).
- The case in which the implementation of an action needs to give a financial support to third parties is expressly provided for.

Specific policy sectors in Part Two of the FR

- Title I: agriculture. Some changes have already been referred to above under the budgetary principles section. In addition, the proposal provides that provisional commitments can be made later than the normal two-month deadline after receipt of the Member States' statements of expenditure in cases where a decision on a transfer of appropriations is expected. And Art. 153 FR concerning transfers is inaccurate: reference should be made only to the notification procedure in Art. 23.
- Title II: structural funds. Terminology is adjusted to refer specifically to the structural funds, cohesion fund, fisheries funds and rural development fund. Furthermore, in the new basic acts proposed by the Commission for structural actions post-2006 the rule on the automatic decommitment of appropriations is suspended in cases of force majeure seriously disrupting the implementation of the actions. The making available again of appropriations is therefore no longer necessary in this case. The Commission, however, considers it justified to keep the case of "manifest error" attributable to itself (Art. 157). This will allow commitment appropriations to be found without disrupting the overall programming of appropriations for the seven-year period.
- Title III: Research

Exceptionally, it should be possible to make decommitted commitment appropriations available again in the case of the framework research programme, under strictly defined conditions; this will enable decommitted appropriations earmarked for projects which were not implemented totally or partially to be re-used for alternative projects of sufficient quality.

Offices

The inter-institutional European Offices are authorised to act as delegated authorising officers for appropriations corresponding to the budget of other institutions.