

Financial regulation applicable to the general budget: rules for the implementation of Regulation 1605/2002/EC, Euratom

2002/0901(CNS) - 20/07/2005 - Implementing legislative act

LEGISLATIVE ACT: Commission Regulation 1261/2005/EC amending Regulation 2342/2002/EC laying down detailed rules for the implementation of Council Regulation 1605/2002/EC on the Financial Regulation applicable to the general budget of the European Communities.

CONTENT: The principal aims of this Regulation relate to the following:

- Regulation 1605/2002/EC ('the Financial Regulation') provides that, for their own contracts, the Community institutions are to comply with the rules applicable to the Member States. Directive 2004/18/EC amended these rules. Where relevant, the amendments made by Directive 2004/18/EC are incorporated into Commission Regulation 2342/2002/EC, which essentially transposes the rules of Council Directive 92/50/EEC concerning the award of public service contracts, into the internal financial rules of the institutions.
- Those amendments concern in particular the new possibilities for electronic award procedures, including the new dynamic purchasing system for commonly used items, the competitive dialogue procedure, the rules governing contracts declared to be secret and the use of framework agreements – which for practical reasons will continue to be referred to as framework contracts for the purposes of implementing the Community budget, thus making it possible for the parties to a framework agreement to be required to compete for the award of specific contracts – and the added emphasis given to social and environmental dimensions in the evaluation of tenders. The thresholds applicable have also been revised for service contracts not subject to the agreement of the World Trade Organisation. Directive 2004/18/EC also harmonises the provisions applicable to the three main categories of contract, with reference in particular to advertising, technical specifications and the calculation of the value of the contracts.
- The provisions relating to the means of identifying interest on pre-financing payments have proved too restrictive. This Regulation makes it permissible for any accounting method to be used to identify such interest.
- Article 31 of Regulation 2342/2002/EC sets out the list of basic acts for the purposes of Article 49 of the Financial Regulation, but does not cover the whole range of legal instruments available to the Council in the field of the common foreign and security policy. The list is therefore extended to include decisions relating to the conclusion of international agreements and decisions on urgent action of limited duration to deal with crisis situations.
- The Regulation lays down a procedure for informing unsuccessful candidates and tenderers in procurement procedures conducted by the institutions on their own account. Such information will be provided before the contract is signed and will give the unsuccessful candidates the reasons why their application or tender has been rejected. The introduction of such an information procedure is designed to make the institutions subject to an obligation imposed on the Member States by the Court of Justice.
- Experience has shown that the procedures laid down in relation to low-value contracts and contracts for legal services, which are stricter than what is required under Directive 2004/18/EC, have in practice proved too cumbersome. The procedures are therefore made more flexible, in particular as concerns

publicity measures and, subject to the authorising officers risk appraisal, the supporting documents are to be provided. In the latter case the contracting authority should always be able to justify the choice.

- Following the liberalisation of the postal sector, the discrimination that has always existed between registered post and delivery by courier services will be removed, as in both instances a slip is issued when items are deposited which can serve as proof of the date of dispatch of tenders.

- Provision is made for the Community institutions to use the vocabulary laid down in Regulation 2195/2002/EC on the common procurement vocabulary.

- The 31 January deadline set for the adoption of the annual work programme for grants was proving extremely tight, or even impossible to meet, in particular where basic acts or pilot projects are adopted late or for reasons connected with committee procedures. A deadline is set which is not as tight, although the programme should continue to constitute ex ante publicity and to be an essential condition for budget implementation.

- The provisions concerning the nature of the audits required in support of requests for payment and the thresholds applying in that connection have proved to be ambiguous or unnecessarily complex. This Regulation simplifies them.

- In the field of humanitarian aid, grant beneficiaries are generally tied to the Commission by partnership agreements which provide for general and regular audit and control arrangements. In the light of his analysis of management risks, the authorising officer may consider that those arrangements offer guarantees equivalent to those offered by the audit of the accounts of an action, which is required in support of requests for payment of the balance. In those circumstances and in order to simplify management, the provisions of this Regulation allow the authorising officer not to request an audit for payments of balances.

- Lastly, with a view to enhancing effectiveness in the use of Community funds, the Regulation allows wider access to flat-rate financing, in return for which beneficiaries will be made more accountable.

ENTRY INTO FORCE 05/08/2005. Public procurement and grant award procedures launched before entry into force of this Regulation shall continue to be subject to the rules applicable at the time when those procedures were launched.