

EUROPEAN PARLIAMENT

1999



2004

Session document

FINAL

A5-0154/2001

27 April 2001

REPORT

on the draft Commission regulation (EURATOM, ECSC, EC) amending
Commission Regulation No 3418/93 of 9 December 1993 laying down detailed
rules for the implementation of certain provisions of the Financial Regulation of
21 December 1977
(SEC(2000) 1890 – C5-0699/2000 – 2000/0901(CNS))

Committee on Budgetary Control

Rapporteur: Michiel van Hulten

<i>Symbols for procedures</i>

- * Consultation procedure
majority of the votes cast
- **I Cooperation procedure (first reading)
majority of the votes cast
- **II Cooperation procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- *** Assent procedure
*majority of Parliament's component Members except in cases
covered by Articles 105, 107, 161 and 300 of the EC Treaty and
Article 7 of the EU Treaty*
- ***I Codecision procedure (first reading)
majority of the votes cast
- ***II Codecision procedure (second reading)
*majority of the votes cast, to approve the common position
majority of Parliament's component Members, to reject or amend
the common position*
- ***III Codecision procedure (third reading)
majority of the votes cast, to approve the joint text

(The type of procedure depends on the legal basis proposed by the Commission)

Amendments to a legislative text

In amendments by Parliament, amended text is highlighted in ***bold italics***. Highlighting in *normal italics* is an indication for the relevant departments showing parts of the legislative text for which a correction is proposed, to assist preparation of the final text (for instance, obvious errors or omissions in a given language version). These suggested corrections are subject to the agreement of the departments concerned.

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PROCEDURAL PAGE

By letter of 17 November 2000 the Commission consulted Parliament, pursuant to Article 139 of the Financial Regulation, on the draft Commission regulation (EURATOM, ECSC, EC) amending Commission Regulation No 3418/93 of 9 December 1993 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977 (SEC(2000) 1890 - 2000/0901 (CNS)).

At the sitting of 15 December 2000 the President of Parliament announced that she had referred this proposal to the Committee on Budgetary Control as the committee responsible and the Committee on Budgets for its opinion (C5-0699/2000).

The Committee on Budgetary Control appointed Michiel van Hulten rapporteur at its meeting of 7 February 2001.

The committee considered the Commission proposal and draft report at its meetings of 21 March and 26 April 2001.

At the latter meeting the committee adopted the draft legislative resolution unanimously and decided to apply the procedure without debate provided for in Rule 114(1) of the Rules of Procedure.

The following were present for the vote: Diemut R. Theato, chairman; Freddy Blak and Herbert Bösch, vice-chairmen; Michiel van Hulten, rapporteur; Jean-Louis Bourlanges (for Thierry B. Jean-Pierre), Mogens N.J. Camre, (for Isabelle Caullery), Paulo Casaca (for Eluned Morgan), Raffaele Costa, Anne Ferreira, Christos Folias (for Brigitte Langenhagen), Christopher Heaton-Harris, Helmut Kuhne, John Joseph McCartin (for José Javier Pomés Ruiz), Jan Mulder (for Antonio Di Pietro), Heide Rühle (for Claude Turmes), Bart Staes, Rijk van Dam and Kyösti Tapio Virrankoski (for Lousewies van der Laan).

The Committee on Budgets decided on 21 March 2001 not to deliver an opinion.

The report was tabled on 27 April 2001.

The deadline for tabling amendments will be indicated in the draft agenda for the relevant part-session.

LEGISLATIVE PROPOSAL

Proposal for a draft Commission regulation (EURATOM, ECSC, EC) amending Commission Regulation No 3418/93 of 9 December 1993 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977 (SEC(2000) 1890 – C5-0699/2000 – 2000/0901(CNS))

The proposal is amended as follows:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1 Recital 14a(new)

*The raising of the threshold for referral to the ACPC should be evaluated by the Internal Audit Service of the Commission and by the Court of Auditors six months after the entry into force of this Regulation.
The Commission shall propose any changes to the Financial Regulation or the Implementing Rules it considers necessary.*

Amendment 2

Article 1(2)

Article 1

1. Proposals for all new programmes and actions occasioning expenditure from the general budget of the European Communities shall be the subject of an *ex ante* evaluation, which shall identify:

- (a) the need to be met,
- (b) the objectives to be *pursued*,
- (c) the results expected and the *associated* indicators,

Article 1

1. Proposals for all new programmes and actions occasioning expenditure from the general budget of the European Communities shall be the subject of an *ex ante* evaluation, which shall identify:

- (a) the need to be met,
- (b) the objectives to be *realised*,
- (c) the results expected and the indicators *needed to measure them*,

¹ OJ C (not yet published).

- (d) the added value of Community involvement,
- (e) the alternative options available,
- (f) the lessons learned from similar experiences in the past,
- (g) the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard to the cost-effectiveness principle,
- (h) the monitoring system to be set up.

- (d) the ***expected*** added value of Community involvement,
- (e) ***the risks associated with the proposals and*** the alternative options available,
- (f) the lessons learned from similar experiences in the past,
- (g) the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard to the cost-effectiveness principle ***and the principles of annuality and specification,***
- (h) the monitoring system to be set up,
- (i) an analysis of the risk of fraud (if necessary, in cooperation with OLAF) and precautions against fraud.***

Justification

The ex ante evaluation must clearly address possible risks and drawbacks surrounding the programmes proposed. The budget heading against which expenditure is to be booked must be clearly identified. The proposed programmes and measures must be examined for potential susceptibility to fraud.

Amendment 3

Article 1(7)

Article 9a

Before embarking on any act implementing the budget, delegators and delegates shall declare to their hierarchical superior, in writing, any confusion or conflict ***with private or personal*** interests ***in relation to the beneficiary or beneficiaries which might impair their ability to perform their duties impartially and objectively.***

Article 9a

Before embarking on any act implementing the budget, delegators and delegates shall declare to their hierarchical superior, in writing, any confusion or conflict ***of*** interests.

A confusion or conflict of interests exists where persons carrying out an act implementing the budget may directly or indirectly obtain advantages for themselves or for persons related or otherwise linked to them or where their ability to perform their

*duties impartially and objectively is
impaired for other reasons*

The hierarchical superior of the delegator or delegatee shall confirm in writing ***whether or not a confusion or conflict of interests exists. If it does,*** the act may ***not*** be carried out.

The hierarchical superior of the delegator or delegatee shall confirm in writing ***if*** the act may ***nonetheless*** be carried out. ***The financial controller shall be notified of all such instances without delay. The internal auditor shall regularly examine, at least once a year, all such instances.***

Delegators or delegates who fail to declare the existence of a confusion or conflict of interests shall be liable to disciplinary action and payment of compensation in accordance with Articles 73 to 77 of the Financial Regulation. They shall be similarly liable if they carry out an act implementing the budget when their hierarchical superior has confirmed the existence of a confusion or conflict of interests.

Delegators or delegates who fail to declare the existence of a confusion or conflict of interests shall be liable to disciplinary action and payment of compensation in accordance with Articles 73 to 77 of the Financial Regulation. They shall be similarly liable if they carry out an act implementing the budget when their hierarchical superior has confirmed the existence of a confusion or conflict of interests.

Justification

It must be clearly defined what confusion or conflict of interests means. In addition, there must be an ex ante check of each instance by the financial controller and an ex post facto check by the internal auditor to ensure that confusions and conflicts of interests are ruled out as far as possible and that superiors do not abuse their discretionary powers.

Amendment 4

Article 1(8)(d)

"3. When operations are managed by integrated computer systems in accordance with paragraphs 1 and 2, the verifications carried out by the accounting officer to validate payment operations may be supplemented by regular verifications of these systems."

"3. When operations are managed by integrated computer systems in accordance with paragraphs 1 and 2, the verifications carried out by the accounting officer to validate payment operations may be supplemented by regular verifications of these systems, ***which shall be carried out on the spot if necessary.***"

Justification

Amendment 5

Article 1(12)

"The monthly amount of the special allowance referred to in Article 75(4) of the Financial Regulation shall be:

(a) EUR 137 for the accounting officer;

(b) EUR 92 for assistant accounting officers;

(c) EUR 46 for imprest administrators, where the amount of the imprest is at least EUR 3 800 and where the amount of the imprest is at least thirty consecutive days.

This allowance shall be denominated in euros and the appropriate amount shall be credited to the guarantee account provided for in Article 32."

"The monthly amount of the special allowance referred to in Article 75(4) of the Financial Regulation shall be EUR **1**; the appropriate amount shall be credited to the guarantee account provided for in Article 32."

Justification

Accounting officers and assistant accounting officers are insured against possible risks in connection with their professional activities. These additional payments, which would be used to establish a guarantee fund to cover any cash or bank deficits, are therefore no longer warranted. Until such time as the appropriate provisions are deleted as part of the reform of the Financial Regulation, then, these payments should be reduced to a symbolic amount.

Amendment 6

Article 1(14)

After Title V, the following title is inserted:

RULES APPLICABLE TO THE INTERNAL AUDITOR AND TO THE ASSISTANT INTERNAL AUDITORS

The following Article 40a is inserted:

The internal audit function shall be performed in accordance with the relevant international standards. ***Internal audit reports*** shall ***contain an assessment of the effectiveness of management and control systems and an analysis of sound management.***

The reports shall be sent to the services audited and to the persons designated by the institution concerned.

The following Article 43a is inserted:

The internal audit function shall be performed in accordance with the relevant international standards. ***The internal auditor*** shall ***examine and report to his institution on the effectiveness of management and control systems, the regularity of budget operations, compliance with the budget principles of annuality and specification*** and an analysis of sound management.

The following Article 43b is inserted:

The institutions may appoint one or more assistant internal auditors. They shall report to the internal auditor, who shall decide on the powers to be delegated to them.

The following Article 43c is inserted:

The internal auditor and the assistant internal auditors shall be chosen by the institution from nationals of the Member States on the grounds of their particular qualifications.

The following Article 43d is inserted:

In carrying out his control duties, the internal auditor shall be completely independent and shall be accountable only to the institution. He may not receive any instructions nor accept any constraint as regards the performance of the duties assigned to him pursuant to the provisions of the Financial Regulation by virtue of his appointment.

These provisions shall also apply to the assistant internal auditors, within the limits of the powers delegated to them by their immediate superior, the internal auditor.

The following Article 43e is inserted:

The internal auditor and the assistant internal auditors shall have access to all supporting documents and to all other documents relating to their duties. They may carry out on-the-spot checks.

The following Article 43f is inserted:

Without prejudice to the appeal procedures provided for in the Staff Regulations, the internal auditors and the assistant internal auditors may lodge an appeal with the Court of Justice with regard to any act relating to their duties. Such appeals must be lodged within three months from the date of notification of the act in question.

The provisions of the first paragraph shall also apply to appeals by the institution against its internal auditor or its assistant internal auditors.

Appeals shall be investigated and heard as provided for in Article 91(5) of the Staff Regulations.

The following Article 43g is inserted:

In addition to the annual report referred to in the Financial Regulation, the internal auditor may present reports to the institution at any time and on any subject having financial implications.

Justification

Following adoption of the Regulation amending the Financial Regulation with regard to segregation between internal audit duties and ex ante financial control, the requisite implementing provisions for the work of the internal auditor must be laid down. As far as possible, they must be modelled on the equivalent provisions for the financial controller. The brief and very generally formulated text proposed by the Commission is inadequate and is not commensurate with the importance attaching to the internal auditor's duties.

Amendment 7

Article 1(21)

The second paragraph of Article 82 is replaced by the following:

Deleted; present wording of Article 82(2) retained

"Decisions to set up imprest accounts or to amend or substantially alter the conditions governing their operation shall be taken by the accounting officer on a duly reasoned proposal from the authorising officer after obtaining the financial controller's approval."

Justification

At present, a decision by the institution itself is necessary to set up imprest accounts and appoint imprest administrators. That should remain so in order, in addition, to ensure that the number of imprest accounts is kept to the bare minimum genuinely needed, as has repeatedly been called for by the Court of Auditors.

Amendment 8

Article 1(22)

The first paragraph of Article 83 is replaced by the following:

Deleted; present wording of Article 83 retained

"Decisions to appoint imprest administrators shall be taken by the accounting officer on a duly reasoned proposal from the authorising officer."

Justification

At present, a decision by the institution itself is necessary to set up imprest accounts and appoint imprest administrators. That should remain so in order, in addition, to ensure that the number of imprest accounts is restricted to the bare minimum genuinely needed, as has repeatedly been called for by the Court of Auditors.

Amendment 9

Article 1(36)

Article 107 is replaced by the following:

"1. The limit above which the powers of the Advisory Committee on Procurement and Contracts provided for in Article 63 of the Financial Regulation take effect shall be EUR 500 000.

In the case of contracts worth between EUR 50 000 and EUR 500 000, the authorising officer shall send the ACPC an information sheet to enable it to decide whether or not an opinion should be given on the contract. The ACPC shall inform the authorising officer of its decision within five working days of receiving the request. In the meantime the authorising officer may not enter into any commitments on behalf of the institution.

2. An authorising officer may also request that the ACPC deliver an opinion a contract which he has submitted.

3. *Requests for opinions and information sheets* shall be examined by a permanent department under the authority of the chair of the ACPC.

This department shall **decide**, in the light of volume, risks involved and unusual nature,

Article 107 is replaced by the following:

"1. The limit above which the powers of the Advisory Committee on Procurement and Contracts provided for in Article 63 of the Financial Regulation take effect shall be EUR 500 000.

In the case of contracts worth between EUR 50 000 and EUR 500 000, the authorising officer shall send the ACPC an information sheet to enable it to decide whether or not an opinion should be given on the contract. The ACPC shall inform the authorising officer of its decision within five working days of receiving the request. In the meantime the authorising officer may not enter into any commitments on behalf of the institution.

2. An authorising officer may also request that the ACPC deliver an opinion a contract which he has submitted.

3. *Information sheets and requests for opinions by authorising officers pursuant to Article 111(g)* shall be examined by a permanent department **which shall be independent in carrying out its duties and shall be subject only to** the authority of the chair of the ACPC.

This department shall **make a recommendation to the ACPC**, in the light of volume, risks involved and unusual

which items should be examined in detail by the ACPC.

4. Each institution may set itself a lower limit in accordance with the criteria it determines.”

nature, *as to* which items should be examined in detail by the ACPC.

4. Each institution may set itself a lower limit in accordance with the criteria it determines.”

Justification

This amendment takes account of the recommendation in the second report of the Committee of Independent Experts.

Amendment 10

Article 1a (new)

Six months after the entry into force of this Regulation, the Commission and the Court of Auditors shall evaluate and report on the new arrangements for the referral of contracts to the Advisory Committee on Procurements and Contracts. The evaluation shall consider in particular whether the threshold referred to in Article 107 of Commission Regulation No 3418/93 as amended by this Regulation is set at an appropriate level. The Commission shall forward these reports to the European Parliament and the Council and shall propose any changes to the Financial Regulation or the implementing rules it considers necessary. Until the evaluation has been completed, the threshold referred to in Article 107 of Commission Regulation No 3418/93 as amended by this Regulation shall be taken to be EUR 200 000.

DRAFT LEGISLATIVE RESOLUTION

European Parliament legislative resolution on the draft Commission regulation (EURATOM, ECSC, EC) amending Commission Regulation No 3418/93 of 9 December 1993 laying down detailed rules for the implementation of certain provisions of the Financial Regulation of 21 December 1977 (SEC(2000) 1890 – C5-0699/2000 – 2000/0901(CNS))

The European Parliament,

- having regard to the Commission proposal (SEC(2000) 1890¹),
 - having been consulted by the Commission pursuant to Article 139 of the Financial Regulation of 21 December 1977 (C5-0699/2000),
 - having regard to the report of the Committee on Budgetary Control (A5-0154/2001),
1. Approves the Commission proposal as amended;
 2. Calls on the Commission to alter its draft regulation accordingly;
 3. Asks to be consulted again if the Commission should intend to depart from the text approved by Parliament;
 4. Instructs its President to forward its position to the Council and Commission.

¹ OJ C (not yet published).

EXPLANATORY STATEMENT

Article 139 of the Financial Regulation provides for the adoption of implementing measures to flesh out the provisions of the Financial Regulation that refer to implementing measures:

"In consultation with the European Parliament and the Council and after the other institutions have delivered their opinions, the Commission shall adopt implementing measures for this Financial Regulation."

The current implementing rules have not been amended since 1993 despite nine series of changes to the Financial Regulation. A 1996 Commission proposal to amend the implementing rules was never adopted due to differences with the seventh series of amendments adopted in 1998.

The present proposal takes account of the recent series of amendments to the Financial Regulation and of Opinion 4/97 of the Court of Auditors. It consists largely of a number of legally required changes, technical improvements (to take account, *inter alia*, of the further computerisation of financial systems) and clarifications.

The key substantive change proposed is the raising of the threshold for the compulsory submission of procurement contracts to the Advisory Committee on Procurement and Contracts (ACPC / CCAM). In its second report, the Committee of Independent Experts made the following recommendation in relation to the ACPC:

"The CCAM, which at present does no more than carry out near-routine implementation checks and is slowing down what is already an excessively cumbersome procedure, has to be reformed. Very strict limits should be imposed on the number of matters considered. Draft contracts should be selected under the personal responsibility of the chairman of the CCAM, assisted by the secretariats of the committee and the Central Contracts Unit, working in synergy. Contracts not selected must be abandoned immediately, and, instead, those few matters deemed to serve as example should be studied in depth. In hierarchical terms, CCAM meetings should take place at a sufficiently high level, but not so high that full members would more often than not be prevented from attending. The CCAM must be constituted as a joint body in order to provide a forum for dialogue between administrative and operating DGs. Opinion thresholds should be raised substantially, broadly according to the types of contracts (see 2.2.78 to 2.2.98)."
(Recommendation 13)

In the proposed recasting of the Financial Regulation, the ACPC would disappear altogether, as part of moves to make authorising officers fully responsible for their actions. While this proposal makes sense in principle, it is difficult to estimate the impact it will have in the absence of sufficient experience with the new system of financial management and control the Commission is currently seeking to implement. This report therefore suggests that the raising of the threshold for referral to the ACPC should be evaluated by the Internal Audit Service of the Commission and by Court of Auditors six months after the entry into force of the new implementing rules.