

EUROPEAN PARLIAMENT

2004



2009

Session document

A6-0069/2008

10.3.2008

REPORT

on the draft Commission regulation (EC, Euratom) amending Commission Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities
(SEC(2007)1013 – C6-0417/2007 – 2007/0151(CNS))

Committee on Budgets

Rapporteur: Ingeborg Gräßle

Draftsman(*) :
Jan Mulder, Committee on Budgetary Control

(*) Procedure with associated committees - Rule 47 of the Rules of Procedure

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PE398.654v03-00

Symbols for procedures

- * 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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DRAFT EUROPEAN PARLIAMENT LEGISLATIVE RESOLUTION

on the draft Commission regulation (EC, Euratom) amending Commission Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (SEC(2007)1013 – C6-0417/2007 – 2007/0151(CNS))

(Consultation procedure)

The European Parliament,

- having regard to the draft Commission regulation (SEC(2007)1013),
 - having been consulted by the Commission by letter of 20 July 2007 (C6-0417/2007),
 - having regard to Rule 51 of its Rules of Procedure,
 - having regard to the report of the Committee on Budgets and the opinion of the Committee on Budgetary Control (A6-0069/2008),
1. Approves the draft Commission regulation 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.

Text proposed by the Commission

Amendments by Parliament

Amendment 1 RECITAL 3 A (new)

(3a) In consideration of the difference in deadlines between the European Parliament's discharge decision in respect of the general budget, which is 15 May of year n+2, and its discharge decision in respect of the agencies, which is 30 April of year n+2, all actors involved should try to avoid difficulties in practice and strive

for a harmonisation of the legal bases in the future.

Justification

The deadline has to be changed in the specific regulations for each agency. The Commission should table a proposal which would adapt the date horizontally in all the specific regulations.

Amendment 2

ARTICLE 1, POINT -1 (new)

Article 2, point 1 (Regulation (EC, Euratom) No 2343/2002)

(-1) In Article 2, point 1 is replaced by the following:

"1. 'Community body' shall mean any body referred to in Article 185(1) of the general Financial Regulation.

Community bodies which actually receive contributions charged to the budget as referred to in Article 185(1) of the general Financial Regulation shall mean any Community bodies receiving direct grants from the budget and any other Community bodies receiving contributions from the budget;

Justification

The general budgetary and financial rules should apply to all bodies which generate costs charged to the budget, be it through direct grants, through the use of EU staff, through pensions of agencies' staff charged to the budget or other costs.

Amendment 3

ARTICLE 1, POINT 3, POINT (C A) (new)

Article 10, paragraph 7 (Regulation (EC, Euratom) No 2343/2002)

(ca) Paragraph 7 is replaced by the following:

"7. The appropriations available at 31 December arising from the assigned revenue referred to in Article 19 shall be carried over automatically. The

appropriations available corresponding to assigned revenue carried over must be used first. By 1 June of the following year at the latest, the Community body shall inform the Commission on the implementation of the assigned revenue carried over. The Commission shall send a summary report on the usage of the assigned revenue of all Community bodies to the budgetary authority by 15 July of the following year at the latest."

Justification

The text of the FR should be in line with the Joint Declaration on Assigned Revenues as agreed by the two arms of the budgetary authority at the Conciliation of 13 July 2007 which attach a great importance to the monitoring of the assigned revenues, especially to those related to the Community Agencies and asks the Commission to report regularly on their implementation, in particular on the basis of a specific document before the first reading of the budget

Amendment 4

ARTICLE 1, POINT 6 A (new)

Article 20, paragraph 2 (Regulation (EC, Euratom) No 2343/2002)

(6a) In Article 20, paragraph 2 is replaced by the following:

"2. Acceptance of donations which may involve *any* financial charge shall be subject to the prior authorisation of the management board, which shall take a decision within two months of the date on which the request is submitted to it. If the management board fails to take a decision within that period, the donation shall be deemed accepted."

Justification

Concerns only the English. Any donation causing costs in the future has to be authorized by the management board.

Amendment 5

ARTICLE 1, POINT 7

Article 23, paragraph 4 (Regulation (EC, Euratom) No 2343/2002)

4. The Director shall inform the management board as soon as possible of all transfers made.

4. The Director shall inform the management board as soon as possible of all transfers made. ***The Director shall inform the budgetary authority of all transfers carried out under paragraph 2.***

Justification

In order to be able to monitor any substantial changes in the shares of an agency's budget allocated for administrative and operational expenditure, the budgetary authority shall be informed of all transfers between titles exceeding a 10%- threshold.

Amendment 6

ARTICLE 1, POINT 9, POINT (A)

Article 26, paragraph 2 (Regulation (EC, Euratom) No 2343/2002)

2. A summary of the budget and amending budgets, as finally adopted, shall be published in the Official Journal of the European Union within three months of their adoption.

2. A summary of the budget and amending budgets, as finally adopted, shall be published in the Official Journal of the European Union within three months of their adoption. ***This summary shall indicate revenue and expenditure, the changes in relation to the year before, the five main expenditure headings for the administrative and the operational Budget, the five main revenue headings, the establishment plan with permanent and temporary staff, as well as an overview of the number of contract staff and the national experts and the changes in relation to the previous year.***

Justification

Implements a recommendation of the European Court of Auditors (Opinion 4/2007) and clarifies the duty of publication, so as to enable the budgetary authority to gain a genuine overview of the development of the agency's budget.

Amendment 7

ARTICLE 1, POINT 9, POINT (B)

Article 26, paragraph 3 (Regulation (EC, Euratom) No 2343/2002)

3. The budget and amending budgets, as finally adopted, shall be transmitted for

3. The budget and amending budgets ***including the establishment plan (with***

information to the budgetary authority, the Court of Auditors and the Commission, and shall be published on the website of the Community body concerned within two months of their adoption.

permanent and temporary staff, as finally adopted, ***as well as an overview on the number of contract staff and national experts***), shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission, and shall be published on the website of the Community body concerned within two months of their adoption.

Justification

Specifies the information which the establishment plan is to contain, so as to enable the budgetary authority to gain a genuine overview of the development of the agency's staff budget.

Amendment 8

ARTICLE 1, POINT 9, POINT (B)

Article 26, paragraph 4 (Regulation (EC, Euratom) No 2343/2002)

4. The Community body shall make available, ***in an appropriate manner***, information on the beneficiaries of funds deriving from its budget. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council.

4. The Community body shall make available ***on its Internet site*** information on the beneficiaries of funds deriving from its budget. ***The published information shall be easily accessible to third parties, transparent and comprehensive (publication in full)***. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council. ***Where the information is not published in full, data on beneficiaries shall be made available in an appropriate manner to the European Parliament's Committee on Budgetary Control. Information on funds received shall be published in anonymous form, stating the reasons for confidentiality and the unit responsible for the decision on confidentiality, in accordance with the first two sentences of this paragraph.***

Justification

Ensures that 'reasons for confidentiality' are allowed, but that they do not lead to evasion of the fundamental duty of publication.

Amendment 9

ARTICLE 1, POINT 9 A (new)

Article 27, paragraph 3, point (b a) (new) (Regulation (EC, Euratom) No 2343/2002)

(9a) In Article 27(3), the following point (ba) is inserted:

"(ba) detailed documentation on assigned revenue, in particular an estimate of the operating surplus from the year n-1 in order to complete the information already available concerning the surplus of n-2;"

Justification

The text of the standard FinReg should be in line with the Joint Declaration on Assigned Revenues and the Joint Declaration on Decentralised Agencies as agreed by the two arms of the budgetary authority at the Conciliation of 13 July 2007 which "attach a great importance to the monitoring of the assigned revenues, especially to those related to the Community agencies".

Amendment 10

ARTICLE 1, POINT 9 B (new)

Article 27, paragraph 3, point (d a) (new)

(9b) In Article 27(3), the following point (da) is added:

"(da) an estimate of the balance of the outturn account within the meaning of Article 81 from the year N-1."

Amendment 11

ARTICLE 1, POINT 9 C (new)

Article 27, paragraph 3 a (new), (Regulation (EC, Euratom) No 2343/2002)

(9c) In Article 27, the following paragraph 3a is inserted:

"3a. The Community body shall also send to the Commission and the budgetary authority by 31 March each year at the latest:

(a) its draft work programme,

(b) its updated multi-annual staff policy plan, established in line with the guidelines set by the Commission,

(c) information on the number of officials, temporary and contract staff and national experts for the year n-1 and n as well as an estimate for the year n+1,

(d) information on contributions in kind granted by the host Member State to the Community body."

Amendment 12

ARTICLE 1, POINT 9 D (new)

Article 27, paragraph 5 (Regulation (EC, Euratom) No 2343/2002)

(9d) In Article 27, paragraph 5 is replaced by the following:

"5. The budgetary authority shall adopt the establishment plan of the Community body and any subsequent amendment thereto in accordance with Article 32(1). The approved establishment plan shall be published in an annex to Section III - Commission - of the general budget of the European Union together with an estimate of the number of contract staff planned and provisionally budgeted for the financial year concerned."

Justification

The text of the FR should be in line with the Joint Declaration on Decentralised Agencies as agreed by the two arms of the budgetary authority at the Conciliation of 13 July 2007.

Amendment 13
ARTICLE 1, POINT 9 E (new)
Article 31, point 1 (b) (Regulation (EC, Euratom) No 2343/2002)

(9e) In Article 31, point 1(b) is replaced by the following:

"(b) the estimated revenue for the preceding financial year and the revenue for year n – 2, including assigned revenue;"

Justification

The text of the FR should be in line with the Joint Declaration on Assigned Revenues as agreed by the two arms of the budgetary authority at the Conciliation of 13 July 2007 which "ask the Commission and the other institutions to provide appropriate, timely and detailed documentation on assigned revenues ... to accompany the Preliminary Draft Budget".

Amendment 14
ARTICLE 1, POINT 12
Article 35, paragraph 1 (Regulation (EC, Euratom) No 2343/2002)

1. All financial actors within the meaning of Chapter 2 of this Title and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any ***measures of budget implementation*** which may bring their own interests into conflict with those of the Community body. Should such a case arise, the person in question must refrain from such measures and refer the matter to the competent authority.

1. All financial actors within the meaning of Chapter 2 of this Title and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any ***action*** which may bring their own interests into conflict with those of the Community body. Should such a case arise, the person in question must refrain from such measures and refer the matter to the competent authority.

Justification

Aims to achieve consistency with the terminology of the EU Financial Regulation (Art. 52) and to implement paragraph 3 of Opinion 4/2007 of the European Court of Auditors (OJ C 216, 14.9.2007, p. 1) , which makes it clear that persons involved in auditing and control work should not take budget implementation measures.

Amendment 15
ARTICLE 1, POINT 15

Article 40, paragraph 1, subparagraph 1 (Regulation (EC, Euratom) No 2343/2002)

1. The authorising officer shall report to the management board on the performance of his duties in the form of an annual activity report, together with financial and management information confirming that the information contained in the report presents a true and fair view except as otherwise specified in any reservations related to defined areas of revenue and expenditure.

1. The authorising officer shall report to the management board on the performance of his duties in the form of an annual activity report, together with financial and management information confirming ***in a declaration of assurance*** that the information contained in the report presents a true and fair view except as otherwise specified in any reservations related to defined areas of revenue and expenditure.

Justification

Improvement of accountability of the authorising officer.

Amendment 16

ARTICLE 1, POINT 15 A (new)

Article 40, paragraph 2 (Regulation (EC, Euratom) No 2343/2002)

(15a)) In Article 40, paragraph 2 is replaced by the following:

"2. By no later than 15 June each year, the management board shall send the budgetary authority and the Court of Auditors an analysis and an assessment of the authorising officer's annual report on the previous financial year, including his declaration of assurance. This analysis and assessment shall be included in the annual report of the Community body, in accordance with the provisions of the constituent instrument."

Justification

Improvement of accountability of the authorising officer.

Amendment 17

ARTICLE 1, POINT 16

Article 43, paragraph 2 a, subparagraph 1 (Regulation (EC, Euratom) No 2343/2002)

2a. Before the adoption of the accounts by the **Director**, the accounting officer shall sign them off, thereby certifying that he has a reasonable assurance that the accounts present a true and fair view of the financial situation of the Community body.

2a. Before the adoption of the accounts by the **management board**, the accounting officer shall sign them off, thereby certifying that he has a reasonable assurance that the accounts present a true and fair view of the financial situation of the Community body.

Justification

Align responsibility for the final accounts with the general Financial Regulation, where they are approved by "the Commission" (Articles 61 para. 2a and 129 para.3), and the FR for executive agencies, where they are approved by "the management board" (Art. 57 (b)).

Amendment 18

ARTICLE 1, POINT 19

Article 47, paragraph 4 (Regulation (EC, Euratom) No 2343/2002)

4. The specialised financial irregularities panel set up by the Commission in accordance with Article 66(4) of the general Financial Regulation, shall exercise the same powers in respect of the Community body as it does in respect of Commission departments, ***unless the management board decides to set up a functionally independent panel, or to participate in a joint panel established by several Community bodies.***

On the basis of the opinion of this panel, the Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor. If the opinion implicates the Director, the panel shall send it to the management board and the Commission's internal auditor.

4. The specialised financial irregularities panel set up by the Commission in accordance with Article 66(4) of the general Financial Regulation shall exercise the same powers in respect of the Community body as it does in respect of Commission departments.

For cases concerning agencies the panel shall foresee one seat for a representative of the agencies.

On the basis of the opinion of this panel, the Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor. If the opinion implicates the Director, the panel shall send it to the management board and the Commission's internal auditor.

The director's indications on these cases and the explanation of his follow-up decisions shall be included in the annual activity report of the director.

Justification

The Panel set up by the Commission should continue to be competent for all irregularities committed within Financial Regulation to guarantee a coherent view for dealing with these problems. Up to now the Panel treated only a few cases, there is no overload of work but the chance to have the same appreciation for the same kind of cases. The Panel decisions are based on the consultation of the relevant documents. The Panel is also competent for eventual cases in the executive agencies. The amendment aims to control the implementation of the Panel's suggestions.

Amendment 19

ARTICLE 1, POINT 22

Article 58a, paragraph 1 (Regulation (EC, Euratom) No 2343/2002)

The accounting officer shall keep a list of amounts due to be recovered, in which Community entitlements are grouped according to the date of issue of the recovery order. The list shall be added to the Community body's report on budgetary and financial management.

The accounting officer shall keep a list of amounts due to be recovered, in which Community entitlements are grouped according to the date of issue of the recovery order. The list shall be added to the Community body's report on budgetary and financial management. ***It shall specify also the waived or partially waived recovery orders.***

Justification

Aims to create transparency towards the budgetary authority and a procedure in line with the EU Financial Regulation.

Amendment 20

ARTICLE 1, POINT 23

Article 59, point (b) (Regulation (EC, Euratom) No 2343/2002)

(b) Where fees and charges are entirely determined by legislation or decisions of the management board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Community body's entitlement shall be registered.

(b) Where fees and charges are entirely determined by legislation or decisions of the management board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Community body's entitlement shall be registered. ***The accounting officer shall keep a list of the debit notes. The list shall be added to the Community body's report on budgetary and financial management.***

It shall specify also the waived or partially waived debit notes.

Justification

The amendment wants to make sure that the debit notes are considered like recovery orders and demands the same information for the debit notes as for the recovery orders.

Amendment 21

ARTICLE 1, POINT 25 A (new)

Article 69 (Regulation (EC, Euratom) No 2343/2002)

(25a) Article 69 is replaced by the following:

"Article 69

The validation, authorisation and payment of expenditure must be carried out within the time limits specified in, and in accordance with the provisions of, the general Financial Regulation and the detailed rules for its implementation. In the case of IT-based payment systems, the accounting officer shall validate the security and reliability of such systems."

Justification

The amendment aims to help very small agencies in giving them the possibility to share an internal audit function with one or several other agencies. This may help to keep the administrative costs on an acceptable level.

Amendment 22

ARTICLE 1, POINT 28

Article 74a (Regulation (EC, Euratom) No 2343/2002)

Article 265a of *the* Regulation (EC, Euratom) No 2342/2002 shall apply mutatis mutandis for the selection of experts. Such experts shall be paid on the basis of a fixed amount, for assisting the Community body, in particular in evaluating proposals and grant applications or tenders for procurement, and for

Article 265a of Regulation (EC, Euratom) No 2342/2002 shall apply mutatis mutandis for the selection of experts. Such experts shall be paid on the basis of a fixed amount, for assisting the Community body, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical

providing technical assistance in the follow-up to, and final evaluation of projects. The Community body may use the lists drawn up by the Commission or other Community bodies.

assistance in the follow-up to, and final evaluation of projects. The Community body may use the lists drawn up by the Commission or other Community bodies. ***A list with the names of the experts who cooperated with the Community body during the financial year in question and the remuneration received by these experts shall be attached to the Community body's report on budgetary and financial management to the budgetary authority, taking due account of the protection of personal data.***

Justification

The budgetary authority should be enabled to monitor the use of external experts by the agencies. This amendment is needed in addition to Article 26 paragraph 4 (new), which only concerns the publication of information on beneficiaries.

Amendment 23

ARTICLE 1, POINT 30

Article 82, paragraph 1 (Regulation (EC, Euratom) No 2343/2002)

The accounting officer shall send to the Commission's accounting officer and the Court of Auditors by no later than 1 March of the following year its provisional accounts, together with the report on budgetary and financial management during the year, referred to in Article 76 of this Regulation, so that the Commission's accounting officer can consolidate the accounts as provided for in Article 128 of the general Financial Regulation.

The accounting officer shall send to the Commission's accounting officer and the Court of Auditors by no later than 1 March of the following year its provisional accounts, together with the report on budgetary and financial management during the year, referred to in Article 76 of this Regulation, so that the Commission's accounting officer can consolidate the accounts as provided for in Article 128 of the general Financial Regulation. ***He shall provide the budgetary authority with a report on the consolidation of accounts of all agencies.***

Amendment 24

ARTICLE 1, POINT 30

Article 82, paragraph 2 (Regulation (EC, Euratom) No 2343/2002)

The accounting officer shall also send the

The accounting officer shall also send the

report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year at the latest.

report on budgetary and financial management **with his declaration of assurance** to the European Parliament and the Council by 31 March of the following year at the latest.

Justification

Clarifying amendment, follow-up to the amendments going in the same direction.

Amendment 25

ARTICLE 1, POINT 30

Article 83, paragraph 2 (Regulation (EC, Euratom) No 2343/2002)

2. On receiving the Court of Auditors' observations on the provisional accounts of the Community body, the Director shall draw up the final accounts of the Community body in accordance with Article 43, under his own responsibility, **and send them to the management board, which shall give an opinion on these accounts.**

2. On receiving the Court of Auditors' observations on the provisional accounts of the Community body, the Director shall draw up the final accounts of the Community body in accordance with Article 43, under his own responsibility. **The final accounts shall be approved by the management board.**

Justification

Align responsibility for approval of the final accounts with the general Financial Regulation where they are approved by "the Commission" (article 129 paragraph 3), and the Financial Regulation for executive agencies, where they are approved by "the management board" (Art. 57 (b)).

Amendment 26

ARTICLE 1, POINT 30

Article 83, paragraph 3 (Regulation (EC, Euratom) No 2343/2002)

3. The Director shall send the final accounts, **together with the opinion of** the management board, to the Commission's accounting officer, the Court of Auditors, the European Parliament and the Council, by 1 July of the following year at the latest.

3. The Director shall send the final accounts, **as approved by** the management board, to the Commission's accounting officer, the Court of Auditors, the European Parliament and the Council, by 1 July of the following year at the latest.

Justification

The final accounts should be approved by the management board, as in the case of executive agencies.

Amendment 27

ARTICLE 1, POINT 30 A (new)

Article 94, paragraph 1 (Regulation (EC, Euratom) No 2343/2002)

(30a) In Article 94, paragraph 1 is replaced by the following:

"1. The European Parliament, upon a recommendation from the Council, shall, before 30 April of year n+2, give a discharge to the director in respect of the implementation of the budget for year n; the director shall inform the management board of the observations of the European Parliament contained in the resolution accompanying the discharge decision."

Justification

The management board should be aware of Parliament observations.

Amendment 28

ARTICLE 1, POINT 30 B (new)

Article 94, paragraph 3 (Regulation (EC, Euratom) No 2343/2002)

(30b) In Article 94, paragraph 3 is replaced by the following:

"3. If the European Parliament postpones the decision giving a discharge, the director, in cooperation with the management board, shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision."

Justification

(Same wording as that of Regulation (EC, Euratom) No 2343/2002, adding "in cooperation with the management board,")

Amendment 29

ARTICLE 1, POINT 31 A (new)

Article 98 a (new) (Regulation (EC, Euratom) No 2343/2002)

(31a) The following Article 98a is inserted:

"Article 98a

Two years before the expiry of a financial perspective or multi-annual financial framework, the Commission shall provide the European Parliament and the Council with an opinion concerning the functioning and the necessity of each agency."

Amendment 30

ARTICLE 1, POINT 32

Article 99 (Regulation (EC, Euratom) No 2343/2002)

(32) In Article 99, the following sentence is added: 'The director shall transmit these rules to the Commission for information.';

(32) Article 99 is replaced by the following:

"Article 99

The management board shall, as far as is necessary and in agreement with the Commission, adopt detailed rules for implementing the financial regulation of the Community body, on a proposal from its director."

Justification

Parliament demands greater influence and – in consequence - responsibility from the

Commission for the decentralized agencies; the implementing rules for this Financial regulation have to be adopted in accordance with the Commission. A simple "information" as foreseen in the draft is not considered to be sufficient by the European Parliament.

EXPLANATORY STATEMENT

I. Legal bases

The bodies referred to in the title are, de facto, the Community agencies. They are bodies governed by European public law, with their own legal personality. The regulations setting up the respective agencies are acts of secondary legislation which confer on the agency concerned very specific technical, scientific or management tasks within the framework of the European Union's 'first pillar'. Only the Community legislator can create a decentralised agency. Whether the legislator is the Council acting alone or Parliament and the Council acting together depends on the legal basis for the relevant Commission proposal. In general, Community agencies coming under the first pillar are created through the codecision procedure.

Despite this high degree of autonomy, Article 185 of the EU Financial Regulation (hereinafter referred to as the FR) lays down that the Commission must adopt a framework financial regulation for these bodies, given that they are financed by means of Community funds allocated in the general budget of the European Union. Agencies' financial rules may not depart from the framework regulation except where their specific operating needs so require and with the Commission's prior consent (Article 185(1)(2) of the FR).

The regulation adopted by the Commission on the basis of this mandate on 23 December 2002 regarding the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities¹ is now to be amended. The amendments proposed by the Commission are the subject of this report.

Article 270 of the detailed rules for the implementation² of the FR lays down, in relation to Article 185 of the FR, that a list of bodies which actually receive a grant charged to the Community budget must be drawn up annually by the Commission and attached to the preliminary draft budget for each financial year. Agencies are subject in particular to the obligations referred to in Article 14(2) (principle of equilibrium) and point (3)(d) of Article 46(1) (structure and presentation of the budget) of the FR.

There are currently 24 agencies.³ They are subject to the supervision of the European Commission in terms of the legality of their acts (second sentence of Article 185(1) of the

¹ OJ L 357, 31.12.2002, p. 72.

² Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (OJ L 357, 31.12.2002), as amended by Commission Regulations (EC, Euratom) No 1261/2005 of 20 July 2005 (OJ L 201, 2.8.2005), No 1248/2006 of 7 August 2006 (OJ L 227, 19.8.2006), No 478/2007 of 23 April 2007 (OJ L 111, 28.4.2007).

³ An overview of existing agencies within the meaning of Article 185 of the FR is given by the Commission under: http://europa.eu/agencies/community_agencies/index_en.htm

FR), to discharge by the European Parliament (Article 185(2) of the FR) and external audit by the Court of Auditors of the European Communities (Article 128 of the FR).

The budget of a decentralised agency is usually organised in two budget lines within the EU budget, a Subsidy for Titles 1 + 2 line (staff and administrative expenditure) and a Subsidy for Title 3 line (operational expenditure). Even the Subsidy for Titles 1 + 2 line, which is used for paying staffing and administrative costs of the decentralised agency, falls fully under the relevant 'operational' heading of the MFF and not under Heading 5.

II. Preliminary work by the European Parliament

1. Negotiations on the 2007 - 2013 Interinstitutional Agreement

In order to keep the development of agencies under control, Parliament, in the negotiations on the new IIA, demanded a horizontal ceiling for agencies and called for an approach similar to that requested for the Commission's administrative expenditure, based on the establishment of a binding ceiling for the agencies, outside the Financial Perspective table, which can be increased only by a decision of the budgetary authority¹. Although in the end such a horizontal ceiling was not agreed, Parliament, in the course of the negotiating phase, achieved an agreement for a new procedure to be followed for the creation of future agencies: Article 47 of the IIA. In this way Parliament hoped to prevent future agencies from being financed through reprogramming or by using the margins. New agencies should not automatically be covered by the Financial Framework but might require 'fresh' money.

2. EP report on reform of the FR - amendments 132 and 133

In the course of the last reform of the EU FR², attempts by the Commission to avoid making agencies more responsible to the Commission as the legal supervisory authority were successfully resisted by Parliament. Although Parliament was unable to achieve its demand that, for reasons of transparency and accountability, all agencies that act on behalf of the Union, irrespective of whether they receive grants charged to the budget, should be subject to the framework financial regulation, the strong position of the Commission's internal auditor vis-à-vis the agencies was, at least, maintained (Article 185(3) of the FR). Thanks to the line taken by the EP, the Commission's internal auditor continues to be authorised to delegate tasks to the agencies' internal auditors whilst at the same time retaining supervision of, and responsibility, for accounting within the agencies.

3. Regular monitoring by the Committee on Budgets

¹ European Parliament resolution on Policy Challenges and Budgetary Means of the enlarged Union 2007-2013, P6_TA-PROV(2005)0224

² Grässle report on the proposal for a Council regulation amending Regulation (EC, Euratom) No 1605/2005 on the Financial Regulation applicable to the general budget of the European Communities (COM(2005)0181 – C6-0234/2005 – 2005/0090(CNS)) - P6_TA(2006)0085 of 15 March 2006

The European Parliament's Committee on Budgets regularly follows the issue of the financing of, and the legal framework for, the agencies, through the publication of working documents¹ and annual joint meetings in advance of the respective budgetary procedure.²

III. Documents regularly received by the EP

The establishment plan is regularly forwarded, together with the preliminary draft budget for the agency. All of the agencies also automatically forward their annual report, without this having to be requested. Communication between the agencies and the Committee on Budgets is satisfactory. The standing rapporteur for the agencies receives without delay given documents requested from an agency. The annual joint meetings also provide an opportunity for both sides to say how they would like to see communication between the EP and the agencies improved. However, on Parliament's side there appear to be problems in connection with the division of responsibilities, as certain documents which in the past were addressed to the EP have not been reaching the Committee on Budgets.

IV. The amendments

While the Commission's proposed amendments to the framework FR may be accepted in principle, further amendments are needed in order to align the text of the framework FR still more closely with the guiding rules of the EU FR, which take precedence; the two texts may diverge only if the specific operating requirements of the agencies so require. Some of the amendments seek to bring the text of this framework FR into line with the Joint Statements of the July conciliation with the Council under the headings 'Assigned revenues' and 'Decentralised agencies' (see Annex I). Others aim to create a better insight for the budgetary authority into the actual numbers of staff employed by the bodies, both as regards contract or temporary staff or seconded national experts. In a general way, improvements are needed as regards the agencies' reporting requirement to the budgetary authority, and amendments to this effect have also been tabled.

In your rapporteur's view, the Commission's proposed amendments to Article 23 present a certain problem. They give agencies greater room for manoeuvre (easier to make transfers from one chapter to another; shorter time-limits within which the management board may oppose transfers). This may be accepted, particularly as, in general, the possibilities for making transfers are more clearly and unequivocally defined. However, transfers of appropriations from title 03 to titles 01 and 02 (from operational to administrative funds) within agencies' budgets must be closely monitored. The legal situation to date was already unsatisfactory, as the budgetary authority was not required to be informed even where the 10% limit was exceeded. Your rapporteur is therefore proposing that the director must inform the EP if he has carried out a transfer of appropriations as referred to in Article 23(2).

¹ Most recently, the Working Document on 'Decentralised agencies and other bodies according to Article 185 of the Financial Regulation - first reflections and future prospects' of 10 April 2007 - PE 388.321v01-00

² Working Document on a meeting with the decentralised agencies on the PDB for 2008, Committee on Budgets, rapporteurs: Jutta Haug and Kyösti Virrankoski - PE 388.642v01-00

ANNEX I
**JOINT STATEMENTS ECOFIN (Budget) COUNCIL - Conciliation Meeting EP-
Council 13 July 2007**

3. Assigned revenues

"The European Parliament and the Council believe that increasing transparency in the budgetary field is part of a sound financial management of the EU funds.

In this context, they ask the Commission and the other institutions to provide appropriate, timely and detailed documentation on assigned revenues, covering actual implementation and forecasts as far as possible, to accompany the Preliminary Draft Budget. The Commission will provide appropriate information on assigned revenues in relation to carry-overs and when available transfers of appropriations; this will entail changes to the format and content of the current documentation and will not prejudice the decisions to be taken by the budgetary authority.

They attach a great importance to the monitoring of the assigned revenues, especially to those related to the Community agencies, and ask the Commission to report regularly on their implementation, in particular on the basis of a specific document before the first reading of the budget. They invite the Commission to present appropriate proposals allowing an effective monitoring and control of the assigned revenues in the context of the upcoming revision of the Framework Financial Regulation No. 2343/2002 for Community agencies.

The Commission is invited to report about the improvements made no later than the beginning of the following budgetary procedure. The European Parliament and the Council will continue to closely pay attention to the management of the assigned revenues expecting rapid improvements in this field."

4. Decentralised agencies

Concerning the creation or the modification of the scope of a body falling under Article 185 of the Financial Regulation, the two arms of the budgetary authority ask the Commission to inform them timely on the ongoing legislative procedure in order to enable them to exert their prerogatives in accordance with Point 47 of the IIA.

The European Parliament, the Council and the Commission demand greater transparency in relation to the decentralised agencies, with a view to better monitoring their development. The Commission will identify for each heading the expenditure for agencies, including its evolution over the 2007-2013 period.

They recall their joint statement on Community agencies adopted on 18 April 2007, especially its point 4, and invites the Commission to provide a list of the agencies that it is going to assess including a detailed timetable for this procedure and a detailed explanation of the criteria used for the selection of the agencies and to present the results each year at the October trilogue at the latest.

To allow the budgetary authority to get a clear and comprehensive picture of evaluations already made, the Commission should give the list of the agencies that have already been evaluated and a short summary of the major findings of these analyses.

They also recall that the abovementioned joint statement of 18 April 2007, the Commission has been invited to provide, simultaneously with each PDB, a working document covering all Community agencies.

To achieve this, decentralised agencies are requested to provide detailed information, on an annual basis, to accompany their draft estimates for the coming budget year. This should include an update of their staff policy plan, with information on the number of permanent and temporary agents covered by the establishment plans and on external staff (contractual agents) for the years $n-1$, n and $n+1$; the work programme of the agency and information on the content of their budget, detailing titles 1 and 2.

They shall also make available estimates and indicators such as rents or estimated value of buildings, statute of staff and any privileges granted to the agencies by the host Member States.

Moreover, the agencies should provide, by the end of March each year n at the latest, an estimate of the operating surplus from the year $n-1$, which is to be returned to the Community budget later in year n , in order to complete the information already available concerning the surplus of $n-2$.

The European Parliament and the Council invite the Commission to proceed to the collection of all information mentioned above, in due time for each PDB, and to collect missing information for this year."

27.2.2008

OPINION OF THE COMMITTEE ON BUDGETARY CONTROL (*)

for the Committee on Budgets

on the draft Commission regulation (EC, Euratom) amending Commission Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities
(SEC(2007)1013 – C6-0417/2007 – 2007/0151(CNS))

Draftsman(*): Jan Mulder

(*) Procedure with associated committees – Rule 47 of the Rules of Procedure

AMENDMENTS

The Committee on Budgetary Control calls on the Committee on Budgets, as the committee responsible, to incorporate the following amendments in its report:

Text proposed by the Commission¹

Amendments by Parliament

Amendment 1
RECITAL 3 A (new)

(3a) In consideration of the difference in deadlines between the European Parliament's discharge decision in respect of the general budget, which is 15 May of year n+2, and its discharge decision in respect of the agencies, which is 30 April of year n+2, all actors involved should try to avoid difficulties in practice and strive for a harmonisation of the legal bases in the

¹ Not yet published in OJ.

future.

Justification

The deadline has to be changed in the specific regulations for each agency. The Commission should table a proposal which would adapt the date horizontally in all the specific regulations.

Amendment 2

ARTICLE 1, POINT -1 (new)

Article 2, point 1 (Regulation (EC, Euratom) No 2343/2002)

(-1) In Article 2, point 1 is replaced by the following:

'1. "Community body" shall mean any body referred to in Article 185(1) of the general Financial Regulation.

Community bodies which actually receive contributions charged to the budget as referred to in Article 185(1) of the general Financial Regulation shall mean any Community bodies receiving direct grants from the budget and any other Community bodies receiving contributions from the budget;'

Justification

The general budgetary and financial rules should apply to all bodies which generate costs charged to the budget, be it through direct grants, through the use of EU staff, through pensions of agencies' staff charged to the budget or other costs.

Amendment 3

ARTICLE 1, POINT 9, POINT (A)

Article 26, paragraph 2 (Regulation (EC, Euratom) No 2343/2002)

2. A summary of the budget and amending budgets, as finally adopted, shall be published in the Official Journal of the European Union within three months of their adoption.

2. A summary of the budget and amending budgets, as finally adopted, shall be published in the Official Journal of the European Union within three months of their adoption. ***This summary shall indicate revenue and expenditure and the changes in relation to the previous year, the main***

expenditure budget lines for the administrative and operational budget, the main revenue budget lines, the establishment plan including permanent and temporary staff and an overview of the number of national experts and contract agents and the changes in relation to the previous year.

Amendment 4

ARTICLE 1, POINT 9, POINT (B)

Article 26, paragraph 4 (Regulation (EC, Euratom) No 2343/2002)

4. The Community body shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from its budget. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council.

4. The Community body shall make available ***on its website***, in an appropriate manner, information on the beneficiaries of funds deriving from its budget. ***The information made available shall be easily accessible for third parties and shall be presented in a well structured and comprehensive manner.*** This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council.

Justification

This amendment seeks to ensure that the concrete way of publication really enhances transparency.

Amendment 5

ARTICLE 1, POINT 12

Article 35, paragraph 1 (Regulation (EC, Euratom) No 2343/2002)

1. All financial actors within the meaning of Chapter 2 of this Title and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any measures ***of budget implementation*** which may bring

1. All financial actors within the meaning of Chapter 2 of this Title and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any measures which may bring their own interests into conflict

their own interests into conflict with those of the Community body. Should such a case arise, the person in question must refrain from such measures and refer the matter to the competent authority.

with those of the Community body. Should such a case arise, the person in question must refrain from such measures and refer the matter to the competent authority.

Justification

Clarify that persons involved in audit and control work should not take budget implementation measures, see ECA opinion No. 4/2007, paragraph 3.

Amendment 6

ARTICLE 1, POINT 16

Article 43, paragraph 2 a, subparagraph 1 (Regulation (EC, Euratom) No 2343/2002)

2a. Before the adoption of the accounts by the **Director**, the accounting officer shall sign them off, thereby certifying that he has a reasonable assurance that the accounts present a true and fair view of the financial situation of the Community body.

2a. Before the adoption of the accounts by the **management board**, the accounting officer shall sign them off, thereby certifying that he has a reasonable assurance that the accounts present a true and fair view of the financial situation of the Community body.

Justification

Align responsibility for the final accounts with the general Financial Regulation, where they are approved by "the Commission" (Articles 61 para. 2a and 129 para.3), and the FR for executive agencies, where they are approved by "the management board" (Art. 57 (b)).

Amendment 7

ARTICLE 1, POINT 19

Article 47, paragraph 4, subparagraph 1 (Regulation (EC, Euratom) No 2343/2002)

4. The specialised financial irregularities panel set up by the Commission in accordance with Article 66(4) of the general Financial Regulation, shall exercise the same powers in respect of the Community body as it does in respect of Commission departments, ***unless the management board decides to set up a permanent, functionally independent panel, or to participate in a permanent joint panel established by several Community bodies.***

4. The specialised financial irregularities panel set up by the Commission in accordance with Article 66(4) of the general Financial Regulation shall exercise the same powers in respect of the Community body as it does in respect of Commission departments. ***For cases concerning agencies the panel shall foresee one seat for a representative of the agencies.***

Amendment 8
ARTICLE 1, POINT 28
Article 74a (Regulation (EC, Euratom) No 2343/2002)

Article 265a of the Regulation (EC, Euratom) No 2342/2002 shall apply mutatis mutandis for the selection of experts. Such experts shall be paid on the basis of a fixed amount, for assisting the Community body, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical assistance in the follow-up to, and final evaluation of projects. The Community body may use the lists drawn up by the Commission or other Community bodies.

Article 265a of the Regulation (EC, Euratom) No 2342/2002 shall apply mutatis mutandis for the selection of experts. Such experts shall be paid on the basis of a fixed amount, for assisting the Community body, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical assistance in the follow-up to, and final evaluation of projects. The Community body may use the lists drawn up by the Commission or other Community bodies. ***A list with the names of the experts who cooperated with the Community body during the financial year in question and the remuneration received by these experts shall be attached to the Community body's report on budgetary and financial management to the budgetary authority, taking due account of the protection of personal data.***

Justification

The budgetary authority should be enabled to monitor the use of external experts by the agencies. This amendment is needed in addition to Article 26 paragraph 4 (new), which only concerns the publication of information on beneficiaries.

Amendment 9
ARTICLE 1, POINT 30
Article 83, paragraph 2 (Regulation (EC, Euratom) No 2343/2002)

2. On receiving the Court of Auditors' observations on the provisional accounts of the Community body, the Director shall draw up the final accounts of the Community body in accordance with Article 43, under his own responsibility, ***and send them to the management board, which shall give an opinion on these accounts.***

2. On receiving the Court of Auditors' observations on the provisional accounts of the Community body, the Director shall draw up the final accounts of the Community body in accordance with Article 43, under his own responsibility. ***The final accounts shall be approved by the management board.***

Justification

Align responsibility for approval of the final accounts with the general Financial Regulation where they are approved by "the Commission" (article 129 paragraph 3), and the Financial Regulation for executive agencies, where they are approved by "the management board" (Art. 57 (b)).

Amendment 10

ARTICLE 1, POINT 30

Article 83, paragraph 3 (Regulation (EC, Euratom) No 2343/2002)

3. The Director shall send the final accounts, ***together with the opinion of*** the management board, to the Commission's accounting officer, the Court of Auditors, the European Parliament and the Council, by 1 July of the following year at the latest.

3. The Director shall send the final accounts, ***as approved by*** the management board, to the Commission's accounting officer, the Court of Auditors, the European Parliament and the Council, by 1 July of the following year at the latest.

Justification

The final accounts should be approved by the management board, as in the case of executive agencies.

Amendment 11

ARTICLE 1, POINT 30 A (new)

Article 94, paragraph 1 (Regulation (EC, Euratom) No 2343/2002)

(30a) In Article 94, paragraph 1 is replaced by the following:

'1. The European Parliament, upon a recommendation from the Council, shall, before 30 April of year n+2, give a discharge to the director in respect of the implementation of the budget for year n; the director shall inform the management board on the observations of the European Parliament contained in the resolution accompanying the discharge decision.'

Justification

The management board should be aware of Parliament observations.

Amendment 12
ARTICLE 1, POINT 30 B (new)
Article 94, paragraph 3 (Regulation (EC, Euratom) No 2343/2002)

(30b) In Article 94, paragraph 3 is replaced by the following:

'3. If the European Parliament postpones the decision giving a discharge, the director, in cooperation with the management board, shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.'

(Same wording as that of Regulation (EC, Euratom) No 2343/2002, adding "in cooperation with the management board,")

Amendment 13
ARTICLE 1, POINT 31 A (new)
Article 98 a (new) (Regulation (EC, Euratom) No 2343/2002)

(31a) The following Article 98a is inserted:

'Article 98a

Two years before the expiry of a financial perspective or multi-annual financial framework, the Commission shall provide the European Parliament and the Council with an opinion concerning the functioning and the necessity of each agency.'

PROCEDURE

Title	Framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002
References	SEC(2007)1013 – C6-0417/2007 – 2007/0151(CNS)
Committee responsible	BUDG
Opinion by Date announced in plenary	CONT 29.11.2007
Associated committee(s) - date announced in plenary	29.11.2007
Drafts(wo)man Date appointed	Jan Mulder 11.9.2007
Discussed in committee	1.1.1981 28.1.2008
Date adopted	26.2.2008
Result of final vote	+ : 25 - : 0 0 : 1
Members present for the final vote	Jean-Pierre Audy, Inés Ayala Sender, Herbert Bösch, Costas Botopoulos, Mogens Camre, Paulo Casaca, Jorgo Chatzimarkakis, Antonio De Blasio, Szabolcs Fazakas, Christofer Fjellner, Ingeborg Gräßle, Umberto Guidoni, Bogusław Liberadzki, Nils Lundgren, Marusya Ivanova Lyubcheva, Hans-Peter Martin, Bill Newton Dunn, Borut Pahor, José Javier Pomés Ruiz, Alexander Stubb, Paul van Buitenen
Substitute(s) present for the final vote	Jens-Peter Bonde, Dumitru Oprea, Pierre Pribetich, Carl Schlyter, Esko Seppänen
Substitute(s) under Rule 178(2) present for the final vote	Thomas Wise

PROCEDURE

Title	Framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002
References	SEC(2007)1013 – C6-0417/2007 – 2007/0151(CNS)
Date of consulting Parliament	20.7.2007
Committee responsible Date announced in plenary	BUDG 29.11.2007
Committee(s) asked for opinion(s) Date announced in plenary	CONT 29.11.2007
Associated committee(s) Date announced in plenary	CONT 29.11.2007
Rapporteur(s) Date appointed	Ingeborg Gräßle 20.9.2004
Date adopted	28.2.2008
Result of final vote	+: 17 –: 0 0: 0
Members present for the final vote	Laima Liucija Andrikienė, Reimer Böge, Valdis Dombrovskis, Salvador Garriga Polledo, Ingeborg Gräßle, Catherine Guy-Quint, Ville Itälä, Anne E. Jensen, Vladimír Maňka, Jan Mulder, Margaritis Schinas, Esko Seppänen, László Surján, Gary Titley, Helga Trüpel
Substitute(s) present for the final vote	Thijs Berman, Peter Šťastný