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Committee on Budgetary Control

2005/0090(CNS)

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OPINION

of the Committee on Budgetary Control

for the Committee on Budgets

on the proposal for a Council regulation amending Regulation (EC, Euratom)
No 1605/2002 on the Financial Regulation applicable to the general budget of
the European Communities
(COM(2005)0181 – C6-0234/2005 – 2005/0090(CNS))

Rule 47 - enhanced cooperation

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PA_Leg

SHORTJUSTIFICATION

There is hardly any other item of legislation which has such a practical impact on staff at the Commission and the other institutions as the Financial Regulation. Some 40% of the Commission's employees have dealings with its rules and instructions, most of them on a daily basis. Yet the Regulation lacks clarity and structure, making it untransparent; the numerous cross-references impede understanding and render it difficult to find the answers to questions quickly. Nearly three years after the Financial Regulation was adopted, the helpdesk of DG Budget is still receiving an average of five queries from users every working day, seeking answers to their problems with the Financial Regulation and its implementing provisions. Sizeable manuals have been compiled: each DG has drawn up its own rules and procedures on the basis of the Regulation. In addition, DG Budget has adopted its own internal rules. A complex, contradictory and confusing body of law on the implementation of the budget has come into being, which, even after lengthy training, may be only partly comprehended.

The consequences of the complex procedural provisions are bureaucratisation of processes, protracted procedures and attempts to evade responsibility by involving as many hierarchies and procedural stages as possible. 'Clients' - applicants for grants and bidders for contracts - are increasingly frustrated at a Europe which not only makes it difficult for citizens, organisations, industry and research centres to obtain money but also, by means of complex and costly application procedures, renders unobtainable substantial sums intended for disbursement in Europe.

Insoluble, fundamental contradictions remain: for example, competing legislation. The scope of the Financial Regulation and its general validity are restricted by legislation which goes further, for example the basic legal acts. These may at any time contradict even key provisions of the Financial Regulation. Thus a weapon which was thought to be keen-bladed is in reality blunted. Moreover, the Financial Regulation covers only the direct, central administration: other administrative bodies adopt their own rules and where they are concerned, the picture so far remains vague at best.

The Commission has submitted a proposal for a revision which in part certainly represents a step in the right direction. It has made proposals for dealing with a number of pressing administrative problems. One of its answers is to encroach upon Parliament's prerogatives. Life will be made easier for applicants for EU funding only if at the same time the administration also benefits from the changes. The Commission has not attached much importance to more user-friendly access to EU markets and subsidies, building up a joint capacity for problem-solving, databases and harmonisation of procedures, which are applied differently from DG to DG, in order to reduce work and costs and simplify procedures, both for the Commission and for users. Much also remains to be done to tackle the administrative problems of the Commission and the other institutions. In its Opinion no 10/2005, the Court of Auditors therefore criticises the excessive scale of the revision (Paragraph 50) while at the same time objecting that the revision does not provide 'the solution to certain management needs' and that it is not 'radical' enough (Paragraph 53).

The rapporteurs of the European Parliament are tabling 116 amendments relating to 63 articles. Parliament's priorities here are not the same as the Commission's: Parliament highlights preserving Parliament's powers of control and rights to information and measures

to reduce the difficulties facing anybody wishing to work with the EU. There is a particular focus on Parts V and VI of the Financial Regulation, markets and grants, i.e. those parts with which members of the public come into contact via organisations, research establishments and enterprises. In the view of the rapporteurs, easing of procedures and the proportionality of the effort involved to the size of a contract or grant are the criteria for assessing administrative action.

Of the Commission's 95 amendments concerning 93 articles, 28 are modified. In another 28 cases, the Commission's proposed amendments are rejected entirely. In 34 articles both the Commission and Parliament agree that reform is needed. Parliament's amendments concern 63 articles. Altogether, the Commission and the rapporteurs are proposing 185 amendments to 122 of the 187 articles in the Financial Regulation.

The rapporteurs realise that this will not make the Financial Regulation any simpler to understand and apply. They therefore advocate in addition that, in the medium term, the Financial Regulation should be completely overhauled with the assistance of experts on grants and tender procedures, and one of their key observations to the Commission and Council is that, in its current form, the Financial Regulation can only be reformed to a limited extent. A new version drafted with a view to simplification, better comprehensibility and output budgeting would be the appropriate answer and the best for Europe and its administration.

The main considerations underlying our amendments are as follows:

1. Preserving Parliament's prerogatives

- The amendments concerning **transfers of appropriations** (Art. 2, 19, 22, 23, 26, 153 and 160a) and rights to information (Art. 28, 29, 46(1)(1)(f), 33, 83 and 110) are rejected.
- In Art. 183 the **adoption of implementing provisions** is for the first time made conditional on the **assent of the budgetary authority**.

2. Europe - acting more efficiently, using simpler procedures

- **Proportionality of administrative action:** the required effort and the work to be put into checking should be proportionate to the amounts and risks involved (Art. 2(1)a; Art. 27(1) and 27(2)(4)).
- **The administration should review its actions in relation to the costs and risks involved** (Art. 89(1), 93a, 117 to 119).
- **In procurement procedures, the time expended on documentation, and its cost, should be minimised** (Art. 93a, Art. 89(3)).
- So that the other institutions can also benefit from the experience and economies of scale of large units, **procurement procedures should in principle be interinstitutional** (Art. 89(3)).
- A **central standardisation agency** (dealing with a particular 'family' of grants - e.g. research) with uniform forms, provisions and, wherever possible, procedures to provide **information to applicants and carry out benchmarking** should help to improve access to grants (Art. 109 a (new) and to streamline application procedures.
- A **database for the notification of participants in procurement procedures** (Art. 109 a (new)) is intended to facilitate application procedures and avoid the hitherto

customary requirement for applicants to submit multiple copies of the same documents and for the Commission to consider them more than once.

- In procurement procedures, **small and medium-sized enterprises** should, if possible, not be excluded in advance on account of their size (Art. 89(4)).
- **Competition should not be impeded** by long-term commitments in framework contracts (Art. 91 a (new)).
- A two-stage procedure should make it possible in advance to **screen out at the earliest possible stage applications which are doomed to failure in advance**, and only to request further documentation after that, in order to keep the costs of unsuccessful applications down (Art. 115(2)a)).
- A **review body** should ensure that awards are made lawfully in a **speedy and relatively informal** procedure (Art. 100a, 100b), in accordance with the obligations which also apply to the Member States.

3. Europe - acting more reliably

- The **costs of applying for grants must be proportionate to the amount to be awarded** (Art. 115(4)).
- **Commission decisions** rather than voluminous contracts may be the basis for grants (Art. 108). This will make procedures less protracted and burdensome in the case of small grants.
- Authorising officers should **assist applicants for grants with the procedure, particularly if they are inexperienced** (Art. 114(5)).
- Applicants should be able to assess the prospects of success of their application from the outset, but should then also enjoy legal certainty, which is the purpose of **compulsory indication of all rules applicable to a grant** (Art. 110(1)(2)).
- **Eligible costs** should be defined for the grants procedure (Art. 113a (1) a); in particular, costs of sureties and audits should be included (Art. 117(3)).
- If the preconditions for a project which is to be subsidised change, this should **not automatically lead to a cut in the EU's financial contribution**, which can have undesirable effects (e.g. forcing the closure of a project) (Art. 119(2)).
- **Reductions must be proportionate to the error objected to** (Art. 119). The aim is to make the EU more predictable for beneficiaries of grants, thus increasing legal certainty, including in the field of research (Art. 160b).

4. Europe - acting more quickly and cost-effectively

- Award procedures should become more efficient. In particular, their duration should be reduced and the costs to bidders and applicants should be cut. For this purpose, requirements to produce evidence should accord with the principle of proportionality.
- **Annual programmes** for grants should be published **as early as possible** (i.e. by 1 March). **Invitations to tender may also be issued even before the beginning of the year**, in order to avoid peaks in work during the year (Art. 110(1)(1)), provided that reference is made to the fact that the budget procedure has not yet been completed.
- During grant procedures, and to conclude them, **independent rather than external audits** may be provided for, in order to cut costs, in which connection audit costs must be proportionate to the amount of the grant being audited (Art. 117(2)).

5. Europe - acting in a transparent and consistent manner

- **Community staff** must inform their superior if they **participate** in a tender procedure, including a grant application procedure, in order to improve the image of the Union and transparency (Art. 94).
- In order to avoid duplication of grants, anyone who applies for a grant must make it known that he has applied for **more than one grant**, and the total costs eligible for financing must not be exceeded (Art. 111).
- Bidders who have committed criminal offences in the past should be **debarred** from awards for five or ten years (Art. 93).

Art. 66(1) applies the principle of **liability of authorising officers**. **Deliberate damage** should give rise to an obligation to compensate the damage in full, and should be subject to strict requirements as regards the limitation period (Art. 73b). Otherwise, liability should be limited to 12 months' salary.

CONCLUSIONS

The Committee on Budgetary Control calls on the Committee on Budgets, as the committee responsible, to accept the legislative proposal as submitted by the Commission with the following amendments:

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 Commission

Amendments by Parliament

Amendment 1 RECITAL 1

(1) Council Regulation (EC, Euratom) No 1605/2002, hereinafter “the Financial Regulation”, lays down the legal foundations of the financial management reform. As such, its essential elements should be maintained and strengthened. Moreover, it establishes budgetary principles which should be respected by all legislative acts and from which derogations should be kept to a strict minimum.

(1) Council Regulation (EC, Euratom) No 1605/2002, hereinafter “the Financial Regulation”, lays down the legal foundations of the financial management reform. As such, its essential elements should be maintained and strengthened. Moreover, it establishes budgetary principles, *derived from Article 268 et seq. of the EC Treaty*, which should be respected by all legislative acts and from

which derogations should be kept to a strict minimum.

Justification

Budgetary principles are mainly derived from Article 268 et seq. of the EC Treaty.

Amendment 2

RECITAL 2

(2) Certain amendments are justified in light of practical experience in order to facilitate budget implementation and the realisation of the underlying policy objectives and to ***adjust some procedural and documentary requirements so as to make them more proportionate to the risks and cost involved.***

(2) Certain amendments are justified in light of practical experience in order to facilitate budget implementation and the realisation of the underlying policy objectives and to ***enshrine expressly the principle of proportionality of administrative action set forth in Article 5 of the EC Treaty, so as to make it clear that it is proportionate to the risks and cost involved.***

Justification

Reference should be made to the universal principle of proportionality of the Community institutions' actions so as to prevent Union citizens and third parties from being overburdened as a result of administrative action.

Amendment 3

RECITAL 3

(3) All amendments must contribute to achieving the objectives of the Commission's reforms, should help improve or ensure sound financial management, and should ***enhance the protection of*** the Communities' financial interests against fraud and illegal activities, thus contributing to obtaining a reasonable assurance of the legality and regularity of financial operations.

(3) All amendments must contribute to achieving the objectives of the Commission's reforms, should help improve or ensure sound financial management, and should ***more effectively protect*** the Communities' financial interests against fraud and illegal activities, thus contributing to obtaining a reasonable assurance of the legality and regularity of financial operations.

Amendment 4
RECITAL 5 A (new)

(5a) Pursuant to point 1 of the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the EC Treaty and appended to the Treaty of Amsterdam of 2 October 1997, each institution, in exercising the powers conferred on it, is required to comply with the principle of proportionality, according to which any action by the Community must not go beyond what is necessary to achieve the objectives of the Treaty.

Justification

Reference should be made to the universal principle of proportionality of the Community institutions' actions so as to prevent Union citizens and third parties from being overburdened as a result of administrative action.

Amendment 5
RECITAL 6

(6) On certain points, more efficiency and transparency is needed with regard to the application of budgetary principles, in order better to suit operational needs.

(6) Practical experience of applying the Financial Regulation has shown that, when exercising their powers in individual instances financial actors make too little use of their discretion. That also means that they may use their discretion to decide independently, in individual instances, when a measure is proportionate within the meaning of Article 5 of the EC Treaty and the Protocol on the application of the principles of subsidiarity and proportionality, annexed to the EC Treaty and appended to the Treaty of Amsterdam of 2 October 1997.

Justification

The failure of those who apply the Financial Regulation to use their discretionary powers is one reason why procedure is so cumbersome.

Amendment 6
RECITAL 12

(12) At present, the Commission must be authorised by the budgetary authority before accepting donations, such as gifts or bequests, which involve a charge. To avoid unnecessary and cumbersome procedures, authorisations should be made compulsory ***only in the case of significant charges.***

(12) At present, the Commission must be authorised by the budgetary authority before accepting donations, such as gifts or bequests, which involve a charge. To avoid unnecessary and cumbersome procedures, authorisations should be made compulsory ***where there are follow-up costs.***

Justification

To safeguard Parliament's rights.

Amendment 7
RECITAL 13

(13) In relation to the principle of specification of the budget, the rules governing transfers of appropriations should be simplified and clarified on certain points because in practice they have proven cumbersome or unclear. The intention was for Article 22 of the Financial Regulation to apply to institutions other than the Commission since the Commission has its own regime. That provision should therefore be amended accordingly.

deleted

Justification

To safeguard Parliament's rights.

Amendment 8
RECITAL 14

(14) As regards the "notification procedure", the Commission and the other institutions notify their transfer proposals to the budgetary authority, which may invoke the normal procedure if it wishes to raise objections. In such

deleted

cases, in theory, the normal deadlines apply for the decision of the budgetary authority on the transfer. However, the text does not state when time for the purposes of the deadline is to be deemed to start running, and that omission should be remedied.

Justification

To safeguard Parliament's rights.

Amendment 9
RECITAL 16

(16) For reasons of efficiency, the Commission should be allowed to decide autonomously on transfers from the reserve in cases where no basic act, within the meaning of Article 49 of the Financial Regulation, exists for the action concerned at the time when the budget is established, but where the basic act is adopted in the course of the year. *deleted*

Justification

To safeguard Parliament's rights.

Amendment 10
RECITAL 17

(17) The rules on the Commission's administrative transfers should be adapted to the new Activity-Based Budgeting (ABB) structure. Thus, the "notification procedure" should be limited to transfers between articles, within the administrative chapter of each title, which exceed 10% of the appropriations of the year. On the other hand, transfers between articles of different titles financing expenditure of *deleted*

identical nature should be decided autonomously by the Commission.

Justification

To safeguard Parliament's rights.

Amendment 11
RECITAL 22 A (new)

(22a) The rules on the liability of authorising officers should be more clearly defined for greater legal certainty.

Amendment 12
RECITAL 27

(27) A period of limitation on the validity of claims should be introduced. The Community, unlike many of its Member States, is not subject to a period of limitation under which financial claims are extinguished after a certain period of time. Nor is the Community restricted by a period of limitation in the pursuit of its claims against third persons. The introduction of such a period of limitation in a new Article 73b corresponds to sound financial management.

(27) A period of limitation on the validity of claims should be introduced. The Community, unlike many of its Member States, is not subject to a period of limitation under which financial claims are extinguished after a certain period of time. Nor is the Community restricted by a period of limitation in the pursuit of its claims against third persons. The introduction of such a period of limitation in a new Article 73b corresponds to sound financial management. ***However, perpetrators of deliberate damage should not be able to invoke limitation to the same extent as other debtors. The start of the limitation period should therefore be confined to the point in time when the entire scope of a claim has been established.***

Amendment 13
RECITAL 27 A (new)

(27a) Supply and service contract award procedures must be streamlined and brought more into line with the needs of tenderers. In this connection, attention should be paid in particular to ensuring that the principle of proportionality also extends to documentation efforts. Framework contracts should be reflected in the Financial Regulation. Competition should not be constrained as a result of unnecessarily long contractual ties in framework contracts, and small and medium-sized undertakings should not be effectively debarred right from the outset, because of their size, from contract award procedures.

Amendment 14
RECITAL 27 B (new)

(27b) Award procedures should be carried out on an interinstitutional basis so as to ease the administrative burden on smaller entities too.

Amendment 15
RECITAL 29

(29) The Financial Regulation rules on the exclusion of tenderers impose a stricter regime for the Community institutions than that provided for in Directive 2004/18/EC. *The Financial Regulation makes no distinction between the most serious grounds for exclusion and other grounds. Directive 2004/18/EC, on the other hand, does make such a distinction and that distinction should be made available for the Community institutions. Articles 93 and 94 of the Financial Regulation should provide for mandatory exclusion in the most serious cases, while allowing the possibility for the contracting authority, on the basis of a risk assessment, to add other cases of*

(29) The Financial Regulation rules on the exclusion of tenderers impose a stricter regime for the Community institutions than that provided for in Directive 2004/18/EC. *The exclusion of tenderers should be subject to the principle of proportionality. The exclusion period should be limited to no more than 10 years so as to prevent disproportionate penalties. Exclusions for more than five years should take place only on the basis of an unappealable judgment.*

exclusion. The same distinction should be made in Article 114 of the Financial Regulation, as regards grants. The rules on penalties, laid down in Article 96 of that Regulation, should be adjusted accordingly.

Amendment 16
RECITAL 30 A (new)

(30a) The requirement to provide supporting documents should be confined to what is necessary. The documentation effort required should be based on the value of the contract concerned.

Amendment 17
RECITAL 30 B (new)

(30b) For externally documenting administrative fairness and propriety, Community servants involved in award procedures or grant procedures should always notify their superiors accordingly so as to rule out any conflict of interest.

Amendment 18
RECITAL 32 A (new)

(32a) Tenderers who have been passed over should have effective legal safeguards, as the Member States are also required to provide. To that end, independent vetting bodies should be set up which can verify award procedures quickly, and without disproportionate efforts, and provide effective legal protection.

Amendment 19
RECITAL 32 B (new)

(32b) Protecting the Union's financial interests must not demand too much of contractors. The provision of security by contractors should therefore be restricted to instances where this is justified and must not go beyond the purpose of providing the security.

Amendment 20
RECITAL 34

(34) As regards grants, simplification of the rules is needed. ***Requirements for checks and guarantees should be more proportionate to the financial risks involved. Some essential changes need to be made first in the Financial Regulation, so that detailed provision can later be made in the implementing rules.*** The scope of grants needs to be clarified in Article 108 of the Financial Regulation, in particular as regards financing related to loan activities and share-holdings. ***The principle of proportionality has to be added.***

(34) As regards grants, simplification of the rules is needed. ***The requirements of the administrative procedure made of the parties involved in it must be proportionate at all times. Accordingly, unsuccessful applications should be screened out at as early a stage in the procedure as possible, in order to spare applicants needless efforts.*** The scope of grants needs to be clarified in Article 108 of the Financial Regulation, in particular as regards financing related to loan activities and share-holdings. ***Particularly in the case of small amounts, it must be possible to provide assistance on the basis of an individual decision instead of a voluminous, complex assistance agreement.***

Justification

Reference should be made to the universal principle of proportionality of the Community institutions' actions so as to prevent Union citizens and third parties from being overburdened as a result of administrative action.

Amendment 21
RECITAL 36

(36) The rule that grants should be awarded on the basis of calls for proposals has proved its worth. Experience has shown, however, that in certain situations the nature of the action leaves no choice in the

(36) The rule that grants should be awarded on the basis of calls for proposals has proved its worth. ***In this connection, it should be ensured in the interests of legal certainty and planning certainty that***

selection of beneficiaries, and Article 110 of the Financial Regulation should expressly recognise that such exceptional cases arise.

requirements notified to applicants at the start of the tendering process do not change during the procedure. Experience has shown, however, that in certain situations the nature of the action leaves no choice in the selection of beneficiaries, and Article 110 of the Financial Regulation should expressly recognise that such exceptional cases arise.

Amendment 22
RECITAL 37

(37) The rule that the same action should not give rise to more than one grant to any one beneficiary should be adjusted because some basic acts do permit Community funding to be combined and such cases may increase in future in order to ensure the effectiveness of expenditure. However, the opportunity should be taken to make clear in Article 111 of the Financial Regulation that the same costs can never be financed twice by the Community budget.

(37) The opportunity should be taken to make clear in Article 111 of the Financial Regulation that the same costs can never be financed twice by the Community budget ***and that cost eligibility may not exceed 100%,***

Justification

Reflects amendments to articles.

Amendment 23
RECITAL 39

(39) For reasons of clarity and transparency, the use of flat-rate payments should be authorised in a new Article 113a of the Financial Regulation, to co-exist with the more traditional method of reimbursing costs actually incurred.

(39) For reasons of clarity and transparency, the use of flat-rate payments should be authorised in a new Article 113a of the Financial Regulation, to co-exist with the more traditional method of reimbursing costs actually incurred. ***There should be a clearer definition of eligible costs.***

Amendment 24

RECITAL 40

(40) In Article 114 of the Financial Regulation, certain restrictions on the eligibility of beneficiaries should be removed in order to allow for grants to natural persons and certain types of entity which lack legal personality.

(40) *Obligations for grant beneficiaries to provide supporting documents and the penalties to which they are subject should at all times be proportionate to the risk involved. Furthermore, in Article 114 of the Financial Regulation, certain restrictions on the eligibility of beneficiaries should be removed in order to allow for grants to natural persons and certain types of entity which lack legal personality.*

Justification

Reference should be made to the universal principle of proportionality of the Community institutions' actions so as to prevent Union citizens and third parties from being overburdened as a result of administrative action.

Amendment 25 RECITAL 40 A (new)

(40a) *To enhance information for applicants, a joint body should be set up to deal with standardising applications for similar types of funding, providing applicants with information, and benchmarking for awarding funding.*

Amendment 26 RECITAL 47

(47) It is necessary to allow appropriations which have been decommitted as a result of total or partial non-implementation of the projects for which they were earmarked to be made available again. However, that should be possible only under strict conditions, ***and only in the area of research, since research projects present a higher financial risk than those in other policy areas.***

(47) *Because of the special importance of research support for European Union competitiveness, it is necessary to allow appropriations which have been decommitted as a result of total or partial non-implementation of the projects for which they were earmarked to be made available again. However, that should be possible only under strict conditions.*

Justification

Reflects amendments to articles.

Amendment 27

ARTICLE 1, POINT 2

Article 2, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

Any provision concerning the implementation of the revenue and expenditure of the budget, contained in another legislative act, must comply ***in particular*** with the budgetary principles set out in ***Title II***.

Any provision concerning the implementation of the revenue and expenditure of the budget, contained in another legislative act, must comply with the budgetary principles set out in ***Article 268 et seq. of the EC Treaty***.

Justification

It is incomprehensible why the term 'in particular' has been added; it should therefore be deleted. Budgetary principles are already laid down in Article 268 et seq. of the EC Treaty, however.

Amendment 28

ARTICLE 1, POINT 2

Article 2, paragraph 1 a (new) (Regulation (EC, Euratom) No 1605/2002)

Any measure taken by institutions to implement the budget pursuant to this Regulation shall comply with the principle of proportionality laid down in Article 5 of the EC Treaty.

Justification

Reference should be made to the universal principle of proportionality of the Community institutions' actions so as to prevent Union citizens and third parties from being overburdened as a result of administrative action.

Amendment 29

ARTICLE 1, POINT 6

Article 12, paragraph 2 (Regulation (EC, Euratom) No 1605/2002)

However, in duly substantiated exceptional cases, the appropriations for the purposes of crisis management aid and humanitarian aid operations may be committed as from 15 December of each year against the appropriations provided for the following financial year. Such commitments may not exceed one quarter of the appropriations on the corresponding budget line for the last adopted budget.

However, in duly substantiated exceptional cases, the appropriations for the purposes of crisis management aid and humanitarian aid operations may be committed as from 15 December of each year against the appropriations provided for the following financial year. Such commitments may not exceed one quarter of the appropriations on the corresponding budget line for the last adopted budget. ***The budgetary authority shall be notified of these commitments.***

Justification

To safeguard Parliament's rights.

Amendment 30

ARTICLE 1, POINT 6 A (new)

Article 14, paragraph 2 (Regulation (EC, Euratom) No 1605/2002)

Article 14(2) is replaced by the following:

"Without prejudice to Article 46(1)(4), the European Community and the European Atomic Energy Community, as well as the bodies set up by the Communities as referred to in Article 185, may not raise loans except in the case of direct financing necessary for the acquisition of immovable property intended to be used by the institutions on which the budgetary authority has issued a favourable opinion under Article 179(3)."

Justification

To carry out their building projects, the various institutions have had to make use of indirect-financing arrangements, whereas direct financing through bank loans ought to make it possible to secure better rates and greater transparency.

Amendment 31

ARTICLE 1, POINT 7

Article 16, paragraph 2, subparagraph 2 (new) (Regulation (EC, Euratom) No 1605/2002)

Currency conversion operations shall be carried out in such a way that there is no

major change to Union cofinancing for project grants.

Justification

To make sure that project partners can rely on EU cofinancing.

Amendment 32

ARTICLE 1, POINT 9

Article 19, paragraph 2, subparagraph 1 (Regulation (EC, Euratom) No 1605/2002)

Acceptance of donations which involve **a significant financial charge** shall be subject to the authorisation of the European Parliament and the Council, both of which shall act on the matter within two months of the date of receipt of the request from the Commission.

Acceptance of donations which involve **follow-up costs** shall be subject to the authorisation of the European Parliament and the Council, both of which shall act on the matter within two months of the date of receipt of the request from the Commission.

Justification

To safeguard Parliament's rights.

Amendment 33

ARTICLE 1, POINT 10

Article 22, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

1. Any institution other than the Commission may, within its own section of the budget, make transfers:

1. Any institution other than the Commission may, within its own section of the budget, make transfers from one title to another, **from one chapter to another and from one article to another** within a total limit of 10% of the appropriations for the financial year on the line from which the transfer is to be made.

(a) from one title to another within a total limit of 10% of the appropriations for the financial year on the line from which the transfer is to be made;

(b) *from one chapter to another without limit.*

Justification

To safeguard Parliament's rights.

Amendment 34
ARTICLE 1, POINT 10

Article 22, paragraph 2, subparagraph 1 (Regulation (EC, Euratom) No 1605/2002)

2. Three weeks before making the transfers referred to in paragraph 1, the institutions shall inform the budgetary authority **and the Commission** of their intentions. In the event of **duly substantiated** reasons being raised within this period by either branch of the budgetary authority, the procedure laid down in Article 24 shall apply.

2. Three weeks before making the transfers referred to in paragraph 1, the institutions shall inform the budgetary authority of their intentions. In the event of reasons being raised within this period by either branch of the budgetary authority, the procedure laid down in Article 24 shall apply.

Justification

Simplification.

Amendment 35
ARTICLE 1, POINT 10

Article 22, paragraph 2, subparagraph 2 (Regulation (EC, Euratom) No 1605/2002)

The budgetary authority shall take decisions on these transfers within the time limits laid down in Article 24, which shall be deemed to begin on the date on which the budgetary authority was informed by the institution of the intended transfer.

deleted

Justification

To safeguard Parliament's rights.

Amendment 36
ARTICLE 1, POINT 10

Article 22, paragraph 3 (Regulation (EC, Euratom) No 1605/2002)

3. Any institution other than the

3. Any institution other than the

Commission may propose to the budgetary authority, within its own section of the budget, transfers from one title to another exceeding the limit of 10% of the appropriations for the financial year on the line from which the transfer is to be made. ***The budgetary authority shall inform the Commission accordingly.*** Those transfers shall be subject to the procedure laid down in Article 24.

Commission may propose to the budgetary authority, within its own section of the budget, transfers from one title to another exceeding the limit of 10% of the appropriations for the financial year on the line from which the transfer is to be made. Those transfers shall be subject to the procedure laid down in Article 24.

Justification

The original wording in the Financial Regulation was better. The amendment proposed by the Commission does not in any way help to clarify matters.

Amendment 37

ARTICLE 1, POINT 10

Article 22, paragraph 4 (Regulation (EC, Euratom) No 1605/2002)

4. Any institution other than the Commission may, within its own section of the budget, make transfers within chapters without first informing the budgetary authority. *deleted*

Justification

To safeguard Parliament's rights.

Amendment 38

ARTICLE 1, POINT 11, LETTER A, NUMBER I

Article 23, paragraph 1, point b (Regulation (EC, Euratom) No 1605/2002)

(i) point (b) is replaced by the following: *deleted*
"(b) as regards staff and operating expenditure, transfer appropriations from one title to another only between articles financing expenditure of identical nature";

Justification

To safeguard Parliament's rights.

Amendment 39
ARTICLE 1, POINT 11, LETTER A, NUMBER II
Article 23, paragraph 1, point d (Regulation (EC, Euratom) No 1605/2002)

(ii) the following point (d) is added: ***deleted***

"(d) transfer appropriations from the "provisions" title referred to in Article 43 for the cases where no basic act exists for the action concerned when the budget is established but is adopted during the course of the budget year";

Justification

To safeguard Parliament's rights.

Amendment 40
ARTICLE 1, POINT 11, LETTER A, NUMBER III
Article 23, paragraph 1, subparagraph 2 (Regulation (EC, Euratom) No 1605/2002)

(iii) the second subparagraph is deleted; ***deleted***

Justification

To safeguard Parliament's rights.

Amendment 41
ARTICLE 1, POINT 11, LETTER B
Article 23, paragraph 1 a (Regulation (EC, Euratom) No 1605/2002)

(b) the following paragraph 1a is inserted: ***deleted***

"1a. The Commission shall inform the budgetary authority three weeks before making the following:

(a) transfers between articles within the chapter corresponding to administrative appropriations of the same title which exceed 10% of the appropriations of the year shown on the article from which the transfer is made;

(b) transfers referred to in point (c) of paragraph 1.

In the event of duly substantiated reasons being raised within that three-week period by either branch of the budgetary

authority, the procedure laid down in Article 24 shall apply. The budgetary authority shall take decisions on these transfers within the time limits laid down in Article 24, which shall be deemed to begin on the date on which the budgetary authority was informed by the Commission of the intended transfer."

Justification

To safeguard Parliament's rights.

Amendment 42

ARTICLE 1, POINT 11, LETTER C

Article 23, paragraph 2 (Regulation (EC, Euratom) No 1605/2002)

***(c) in paragraph 2, "paragraph 1(c)" is deleted
replaced by "paragraphs 1 and 1a".***

Justification

To safeguard Parliament's rights.

Amendment 43

ARTICLE 1, POINT 12

Article 26, paragraph 2, subparagraph 1 (Regulation (EC, Euratom) No 1605/2002)

(12) In Article 26(2), the first subparagraph is replaced by the following:

"Decisions on transfers to allow the utilisation of the reserve for emergency aid shall be taken by the budgetary authority on a proposal from the Commission. A separate proposal must be submitted for each individual operation."

Justification

To safeguard Parliament's rights.

Amendment 44
ARTICLE 1, POINT 12 A (new)
Article 27, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

(12a) In Article 27, paragraph 1 is replaced by the following:

"1. Budget appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency, effectiveness and proportionality."

Justification

The aim is to avoid uncontrollable expenses or commitments

Amendment 45
ARTICLE 1, POINT 12 B (new)
Article 27, paragraph 2, subparagraph 3 a (new) (Regulation (EC, Euratom) No 1605/2002)

12b. In Article 27(2), the following subparagraph is added:

"Proportionality is concerned with an appropriate relationship between effort, including effort on checks, and the amounts and risks involved."

Justification

The Commission is called on to review the effort it makes on checks, the aim being to bring costs into line with risks.

Amendment 46
ARTICLE 1, POINT 12 C (new)
Article 27, paragraph 4 a (new) (Regulation (EC, Euratom) No 1605/2002)

(12c) In Article 27, the following paragraph is added:

"4a. Institutions shall set up systems for measuring and comparing efficiency as regards procurement procedures and the procedure for the award of grants."

Justification

The Commission seeks to follow the principles of sound financial management in implementing the budget. Three main elements of sound financial management are economy, efficiency and effectiveness. Commission officials are mainly concentrating on 'economy', which can be broken down as "best value through procedural compliance". The principle of efficiency described in the Financial Regulation (Article 27(2)2) as "best relationship between resources employed and results achieved". Taking into account this principle would force the Commission not only to focus on "procedure check lists" but taking into account the context of the grant and procurement procedures and the administrative costs resulting from the procedures. Looking on the high costs involved for the potential beneficiaries, the need for emphasising the efficiency criteria seems even more important.

Amendment 47

ARTICLE 1, POINT 12 C (new)

Article 27, paragraph 4 a (new) (Regulation (EC, Euratom) No 1605/2002)

12c. In Article 27, the following paragraph is added:

"4a. For carrying out programmes and activities, procedure shall be governed by their content. The requirements of this Article shall be specified in the implementing rules."

Justification

EU policy content must influence administrative procedures, and not vice versa.

Amendment 48

ARTICLE 1, POINT 12 D (new)

Article 28, paragraph 2 (Regulation (EC, Euratom) No 1605/2002)

12d. Article 28(2) shall be replaced by the following:

"2. During the budgetary procedure, institutions and other bodies shall provide the necessary information for a

comparison between changes in the appropriations required and the initial forecasts made in the financial statements. This information shall include progress made and the stage reached by the legislative authority in its consideration of proposals presented. The appropriations required shall, where appropriate, be revised in the light of the progress of deliberations on the basic act."

(Corresponds to Article 28(2) of Regulation (EC, Euratom) No 1605/2002, with the word 'Commission' being replaced by 'institutions and other bodies'.)

Justification

Rewording: 'Commission' has been replaced by 'institutions and other bodies'.

Amendment 49

ARTICLE 1, POINT 12 E (new)

Article 28, paragraph 3 (Regulation (EC, Euratom) No 1605/2002)

12e. Article 28(3) shall be replaced by the following:

"3. In order to prevent risk of fraud or irregularity, institutions and other bodies shall record in the financial statement any information regarding existing and planned fraud prevention and protection measures."

(Corresponds to Article 28(2) of Regulation (EC, Euratom) No 1605/2002, with the word 'Commission' being replaced by 'institutions and other bodies'.)

Justification

Rewording: 'Commission' has been replaced by 'institutions and other bodies'.

Amendment 50

ARTICLE 1, POINT 13

Article 29, paragraph 2 (Regulation (EC, Euratom) No 1605/2002)

(13) ***In*** Article 29, ***paragraph 2*** is replaced by the following:

(13) Article 29 is replaced by the following:

"Article 29

1. The budget shall be established and implemented and the accounts presented in compliance with the principle of transparency.

"2. The President of the European Parliament shall have the budget and amending budgets, as finally adopted, published in the *Official Journal of the European Union*.

2. The President of the European Parliament shall have the budget and amending budgets, as finally adopted, published in the *Official Journal of the European Union*.

The budget shall be published within three months following the date on which the budget is declared finally adopted.

The budget shall be published within three months following the date on which the budget is declared finally adopted.

The consolidated annual accounts and the report on budgetary and financial management drawn up by each institution shall be published in the Official Journal of the European Union."

The consolidated annual accounts and the report on budgetary and financial management drawn up by each institution shall be published in the Official Journal of the European Union."

The Commission reports shall also contain information on action taken on the remarks in the budget."

The Commission reports shall also contain information on action taken on the remarks in the budget."

Justification

Providing the budgetary legislative authority with information.

Amendment 51

ARTICLE 1, POINT 13 B (new)

Article 30 a (new) (Regulation (EC, Euratom) No 1605/2002)

(13b) The following Article 30a is inserted:

"Article 30a

Principle of effective and efficient internal control

1. The implementation of the budget shall be ensured through effective and efficient internal control in accordance with each management mode.

2. For the purpose of the implementation of the budget, internal control is defined as a process applicable at all levels in the chain of control and designed to provide

reasonable assurance as to the achievement of the following objectives:
(a) effectiveness and efficiency of operations;
(b) reliability of financial reporting;
(c) safeguarding of assets and information and prevention and detection of fraud and irregularities; and
(d) adequate management of the risks related to the legality and regularity of the underlying transactions."

Or. en

Justification

In accordance with the proposals made by the European Commission in their Action Plan and recital J of the 2004 draft-discharge resolution, efficient internal control should be included as one of the budgetary principles in the Financial Regulation.

Amendment 52

ARTICLE 1, POINT 16, LETTER A

Article 43, paragraph 1, subparagraph 2 (Regulation (EC, Euratom) No 1605/2002)

(a) in the second subparagraph of paragraph 1, "Article 24" is replaced by "Articles 23 and 24"; *deleted*

Justification

To safeguard Parliament's rights.

Amendment 53

ARTICLE 1, POINT 16, LETTER B

Article 43, paragraph 2 (Regulation (EC, Euratom) No 1605/2002)

(b) in paragraph 2, "Article 24" is replaced by "Articles 23 and 24". *deleted*

Justification

To safeguard Parliament's rights.

Amendment 54

ARTICLE 1, POINT 19, LETTER A, NUMBER II

Article 46, paragraph 1, point (1), point (f) (Regulation (EC, Euratom) No 1605/2002)

(ii) point (f) is deleted; deleted

Justification

Reinstatement of current wording so as to safeguard Parliament's rights concerning information in the budget.

Amendment 55

ARTICLE 1, POINT 19, LETTER B

Article 46, paragraph 1, point (2) (Regulation (EC, Euratom) No 1605/2002)

(b) point (2) is replaced by the following: deleted
"2. In the section for each institution, the revenue and expenditure shall be shown in the same structure as in point 1";

Justification

Reinstatement of current wording so as to safeguard Parliament's rights concerning information in the budget.

Amendment 56

ARTICLE 1, POINT 19, LETTER C

Article 46, paragraph 1, point (3), point (c) (Regulation (EC, Euratom) No 1605/2002)

(c) in point (3), point (c) is replaced by the following: deleted
"(c) as regards scientific and technical staff, the classification may be based on groups of grades, in accordance with the conditions laid down in each budget; the establishment plan must specify the number of highly qualified technical or scientific personnel who are accorded special advantages under the specific provisions of the Staff Regulations;"

Justification

Reinstatement of original wording so as to safeguard Parliament's rights concerning information.

Amendment 57

ARTICLE 1, POINT 19, LETTER D

Article 46, paragraph 1, point 5 (Regulation (EC, Euratom) No 1605/2002)

(d) point (5) is replaced by the following: *deleted*

"(5) the budget lines under revenue and expenditure necessary for implementing the Guarantee Fund for external actions."

Justification

Community loans and loan guarantees are not yet abolished and the new provisioning mechanism for the Guarantee Fund for external actions not yet adopted. They have to appear in the budget.

Amendment 58

ARTICLE 1, POINT 20 A (new)

Article 48, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

20a. Article 48(1) shall be replaced by the following:

"1. The institutions shall implement the revenue and expenditure of the budget in accordance with this Regulation, on its own responsibility and within the limits of the appropriations authorised."

(Corresponds to Article 48(1) of Regulation (EC, Euratom) No 1605/2002, with the word 'Commission' being replaced by 'institutions'.)

Justification

Rewording.

Amendment 59

ARTICLE 1, POINT 22, LETTER A

Article 53, paragraph 3, subparagraph 2, introduction (Regulation (EC, Euratom) No 1605/2002)

In order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the Member States shall take all the measures necessary to:

In order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the Member States shall take all the **legislative, regulatory, administrative or other** measures necessary **for protecting the Communities' financial interests in order** to:

Justification

More precise.

Amendment 60

ARTICLE 1, POINT 22, LETTER A

Article 53, paragraph 3, point (b) (Regulation (EC, Euratom) No 1605/2002)

(b) prevent and deal with irregularities and fraud;

(b) prevent and deal with irregularities, ***mismanagement*** and fraud;

Justification

The Commission must devote as much attention to the fight against mismanagement as to the fight against fraud and irregularities.

Amendment 61

ARTICLE 1, POINT 23, LETTER B, NUMBER -1 (new)

Article 54, paragraph 2, introduction (Regulation (EC, Euratom) No 1605/2002)

(– i) The introduction is amended as follows:

'2. Where the Commission implements the budget on a centralised, indirect basis, pursuant to Article 53(2), or pursuant to Article 53(4), subject to compliance with the restrictions laid down in paragraph 1 it may delegate sovereign tasks, in particular budget-implementation tasks, to the following bodies:'

Justification

The delegation of budget-implementation tasks to the bodies referred to in Article 54(2) has thus far been confined to the area of centralised, indirect management. This considerably restricts the scope for the delegation of tasks, in particular in respect of measures in the external policy sphere. Such measures are increasingly being implemented on the basis of decentralised management. In order to guarantee effective budget implementation, it must therefore also be possible to delegate tasks carried out on the basis of decentralised management.

Amendment 62
ARTICLE 1, POINT 23, POINT (C A) (new)
Article 54, paragraph 3 a (new) (Regulation (EC, Euratom) No 1605/2002)

(ca) The following paragraph is added:

*"3a. When exercising the powers conferred on it by the Commission pursuant to Article 50, the European Parliament may, in keeping with the provisions of its Rules of Procedure, and by adopting specific rules, delegate implementation tasks to its political groups for well defined appropriations.
This specific regulation cannot deviate from Article 56, unless the specific requirements of the functioning of the political groups necessitate it."*

Justification

As it is provided by Article 185 for the bodies set up by the communities and having legal personality which receive grants charged to the budget, the specific nature of the parliamentary groups as administrative entities and the specific requirements of the activities of the Members of the European Parliament may also need to be reflected in the implementation of the current rules.

Amendment 63
ARTICLE 1, POINT 24
Article 56, paragraph 1, introduction (Regulation (EC, Euratom) No 1605/2002)

1. Where the Commission implements the budget by indirect centralised management, **it** shall first obtain evidence of the existence, relevance and proper operation within the entities to which **it entrusts** implementation, in accordance with the rules of sound financial management, of the following:

1. Where the Commission **or the European Parliament** implements the budget by indirect centralised management, **they** shall first obtain evidence of the existence, relevance and proper operation within the entities to which **they entrust** implementation, in accordance with the rules of sound financial management, of the following:

Justification

By virtue of the amendment to Article 54, payments to Parliament's political groups fall into the category of indirect centralised management. The amendment to Article 56 is an automatic consequence of that change.

Amendment 64

ARTICLE 1, POINT 24

Article 56, paragraph 3 (Regulation (EC, Euratom) No 1605/2002)

3. The Commission shall ensure supervision, evaluation and control of the implementation of the tasks entrusted. **It** shall take the equivalence of control systems into account when **it carries** out controls using **its** own control systems.

3. The Commission **and/or the European Parliament** shall ensure supervision, evaluation and control of the implementation of the tasks entrusted. **They** shall take the equivalence of control systems into account when **they carry** out controls using **their** own control systems.

Justification

By virtue of the amendment to Article 54, payments to Parliament's political groups fall into the category of indirect centralised management. The amendment to Article 56 is an automatic consequence of that change.

Amendment 65

ARTICLE 1, POINT 27

Article 60, paragraph 7, sentence 1 (Regulation (EC, Euratom) No 1605/2002)

(27) In Article 60, **the first sentence of** paragraph 7 is replaced by the following:

"7. The authorising officer by delegation shall report to his/her institution on the performance of his/her duties in the form of an annual activity report together with financial and management information and a declaration of assurance certifying that the information contained in the report presents a true and fair view."

(27) In Article 60, paragraph 7 is replaced by the following:

"7. The authorising officer by delegation shall report to his/her institution on the performance of his/her duties in the form of an annual activity report together with financial and management information and **any reservations in relation to the latter accompanied by** a declaration of assurance certifying that the information contained in the report presents a true and fair view.

This report shall indicate the results of the operations by reference to the objectives

set, the risks associated with these operations, the use made of the resources provided and the way the internal control system functions. The internal auditor shall take note of the annual report and any other pieces of information identified. The Commission shall no later than 15 June each year send to the budgetary authority a summary of the annual reports for the previous year. These reports shall set out details of the measures taken to limit the risk of errors in connection with the operations dealt with in the report and an assessment of the effectiveness of those measures."

Justification

The deletion of these words was perhaps an error, to be corrected. Furthermore, the possibility of reservations to the management information report is introduced.

Amendment 66

ARTICLE 1, POINT 28, POINT (-A) (new)

Article 61, paragraph 1, point (-e a) (new) (Regulation (EC, Euratom) No 1605/2002)

(-a) In paragraph 1, the following point (ea) is inserted:

(ea) the effective functioning of these systems;

Justification

Paragraph 1 f) follows directly from the Court of Auditors' Opinion 10/2005 point 30:

"In order for the Accounting Officers to be in a position to certify that the accounts present a true and fair view as provided by Article 123 of the current Financial Regulation, such validation should cover the effective functioning of systems over the period concerned"

Amendment 67

ARTICLE 1, POINT 28, POINT (A)

2a. The accounting officer shall prepare the accounts on the basis of the information presented under paragraph 2. The final accounts drawn up under Article 129(2) and (3) shall be accompanied by a certificate established by the accounting officer, by which he declares that they were prepared in accordance with Title VII and with the accounting principles, rules and methods set out in annex to the financial statements.

2a. Before their adoption by the institution, the accounting officer shall sign off the accounts, certifying that they present a true and fair view of the financial situation of the institution.

For this purpose the accounting officer shall satisfy himself that the accounts have been prepared in accordance with the accounting rules, methods and accounting systems established under his responsibility as laid down in this Regulation for the accounts of his institution, and that all revenue and expenditure is entered in the accounts.

He is empowered to check the information received as well as to carry out any further checks he deems necessary in order to sign off the accounts.

He will make reserves if necessary, explaining exactly the nature and scope of such reserves.

The authorising officers by delegation shall forward all information the accounting officer needs in order to exercise his duties. The authorising officers remain fully responsible for the proper use of the funds they manage as well as the legality and regularity of the expenditure under their control.

The accounting officers of the other institutions and agencies shall sign off their annual accounts and send the certificate to the Commission's accounting officer.

Justification

This follows the principles set out in Parliament's 2003 discharge report:

The Accounting Officer shall assume overall responsibility for the integrity of the accounts for the Institution as a whole (Paragraph 7).

The Accounting Officer shall sign off the accounts and if there are qualifications

(s)he shall explain exactly the nature and scope of the reservations made (Paragraph 8).

Parliament agrees with the thrust of the recent reform of financial management in the Commission which was to give responsibility to each Director-General but takes the view that the assurance given by the Directors-General must be supported by an overall assurance by the Accounting Officer, who shall be fully accountable and have the necessary means to fulfil this duty (Paragraph 9).

Amendment 68

ARTICLE 1, POINT 32, LETTER A

Article 66, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

Article 66 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

‘The authorising officer shall be liable for payment of compensation as laid down in the Staff Regulations, ***which specify that a member of staff covered by the relevant provisions may be required to make good, in whole or in part, any damage suffered by the Communities as a result of serious misconduct on his/her part in the course of or in connection with the performance of his/her duties, in particular if he/she*** determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and the implementing rules.’

Article 66 is amended as follows:

(a) in paragraph 1, the first sentence is replaced by the following:

‘The authorising officer shall be liable for payment of compensation as laid down in the Staff Regulations.

The requirement to pay compensation shall apply in particular if

– ***the authorising officer, whether intentionally or through serious negligence on his part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and the implementing rules,***

– ***the authorising officer, whether intentionally or through serious negligence on his part, omits to draw up a document establishing a debt, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the institution liable to civil action by third parties.***

When the case and the degree of misconduct are considered, all circumstances, in particular the resources made available to the authorising officer to enable him to perform his duties, must

*be taken into account.
In keeping with the principle of proportionality, the level of liability of the authorising officer shall be assessed primarily on the basis of the degree of misconduct. If the authorising officer acts negligently, the liability shall be restricted to a maximum of 12 months' salary. If the authorising officer acts intentionally or deliberately, he shall be liable for the entire loss suffered.'*

Justification

Clarification. Incorporation of the principle of proportionality.

Amendment 69

ARTICLE 1, POINT 32, POINT (B A) (new)

Article 66, paragraph 4 (Regulation (EC, Euratom) No 1605/2002)

(ba) Paragraph 4 replaced by the following:

*4. Each institution **must** set up **or participate in the joint establishment of** a specialised financial irregularities panel which shall function independently and determine whether a financial irregularity has occurred and what the consequences, if any, should be. **Joint panels may be set up by a group of institutions. The members of a specialised panel may be appointed from any institution.***

Justification

The smaller institutions in particular could benefit greatly from pooling administrative resources in this way.

Amendment 70
ARTICLE 1, POINT 33 A (NEW)
Article 72, paragraph 2 a (new) (Regulation (EC, Euratom) No 1605/2002)

(33a) In Article 72, the following paragraph 2a is added:

"2a. Unduly paid amounts belong to the Community budget and should be recovered, taking into account the principle of proportionality, and entered into the budget.

When recovery procedures are dealt with by the Member States or by other organisations, the Community budget may be used to reimburse the costs associated with these recoveries. The Implementing Rules will govern these reimbursements."

Amendment 71
ARTICLE 1, POINT 35
Article 73b (Regulation (EC, Euratom) No 1605/2002)

Without prejudice to the provisions of specific regulations and the application of the Council Decision relating to the Communities' own resources system, entitlements of the Communities in respect of third parties and entitlements of third parties in respect of the Communities shall be subject to a limitation period of five years.

Without prejudice to the provisions of specific regulations and the application of the Council Decision relating to the Communities' own resources system, entitlements of the Communities in respect of third parties and entitlements of third parties in respect of the Communities shall be subject to a limitation period of five years.

If the entitlement is the result of deliberate damage to the Communities' interests, the limitation period shall commence at the earliest on the date on which the damage and the justification for and level of the entitlement to compensation were actually and legally recognised and placed on record. The limitation period shall be interrupted by the assertion of the claim in the courts. If a number of debtors are jointly and severally liable, the interruption with regard to one debtor shall apply to all those jointly and severally liable.

The date for calculating the limitation period and the conditions for interrupting this period shall be laid down in the implementing rules.

The date for calculating the limitation period and the conditions for interrupting this period shall *otherwise* be laid down in the implementing rules.

Justification

Persons who deliberately damage the Communities' interests should be able to invoke the statute of limitations only if no action is brought within the limitation period even though the damage has been recognised in full.

Amendment 72

ARTICLE 1, POINT 35 A (new)

Article 74, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

(35a) In Article 74, paragraph 1 is replaced by the following:

"Revenue received by way of fines, agreements, periodic penalty payments and other penalties, amounts recovered and any accrued interest shall not be finally recorded as budgetary revenue as long as the decisions imposing them can be annulled by the Court of Justice."

Amendment 73

ARTICLE 1, POINT 37 A (new)

Article 79, paragraph 1 a (new) (Regulation (EC, Euratom) No 1605/2002)

37a. In Article 79, the following paragraph is added:

'Claims for payment shall give rise to payments by the Commission only in duly substantiated cases.'

Justification

Speeding up procedures and avoiding red tape.

Amendment 74

ARTICLE 1, POINT 37 B (new)

Article 83, paragraph 1 a (new) (Regulation (EC, Euratom) No 1605/2002)

37b. In Article 83, the following

paragraph is added:
'The institutions shall submit to the budgetary authority a report on compliance with the time-limits laid down in the implementing rules and on the suspension of those time-limits.'

Justification

The budgetary authority should be more fully informed about the implementation of the budget.

Amendment 75

ARTICLE 1, POINT 39, LETTER A A (new)

Article 88, paragraph 1, subparagraph 1, sentence 2 (new) (Regulation (EC, Euratom) No 1605/2002)

(aa) In paragraph 1, the following subparagraph 1a is added:

'A start may be made on implementing the contract only after it has been signed.'

Justification

The current practice - that of making a start on implementation before the contract has been signed - brings with it risks for all the parties involved and can lead to serious breaches of the Member States' financial regulations. The objective of this amendment is to create greater legal certainty and to speed up contract-signing procedures.

Amendment 76

ARTICLE 1, POINT 39 A (new)

Article 89 (Regulation (EC, Euratom) No 1605/2002)

39a. Article 89 is amended as follows:

'Article 89

1. All public contracts financed in whole or in part by the budget shall comply with the principles of transparency, proportionality, equal treatment and non-discrimination.

2. All procurement contracts shall be put out to tender on the broadest possible base, except when use is made of the negotiated procedure referred to in Article 91(1)(d).

3. With a view to minimising marginal

costs and avoiding parallel procurement procedures, the contracting authority shall take appropriate measures to ensure that procurement procedures are carried out on an interinstitutional basis.

4. Due account should be taken of the interests of small- and medium-sized undertakings primarily by splitting contracts, where appropriate, into specialist or part-lots. The thresholds laid down in Articles 105 and 167 may not be circumvented by means of such splitting.

Justification

High costs must not serve to deter economic operators from submitting tenders. The measure is designed to facilitate access for market participants and, at the same time, strengthen competition. Steps should be taken to improve administrative efficiency and cost-effectiveness in connection with procurement procedures. At the same time, smaller units which rarely carry out procurement procedures should be able to benefit from the expertise acquired by larger units. When procurement takes place, small- and medium-sized undertakings should not be economically disadvantaged simply because they are unable to cope with the full volume of a contract. In such cases, the contracting authority should consider the scope for awarding contracts on the basis of part- and/or specialist lots, subject to compliance with the relevant thresholds.

Amendment 77

ARTICLE 1, POINT 39 B (new)

Article 90, paragraph 1, subparagraph 1, sentence 2 (Regulation (EC, Euratom) No 1605/2002)

- 39b. In Article 90(1), the following sentence is added to the subparagraph:

'This shall also apply to contracts concluded under a framework contract if, as a result of the conclusion of an individual contract or of the aggregate volume of the contracts concluded under the framework contract, the thresholds provided for in Articles 105 and 167 are exceeded.'

Justification

Broadening of the requirement to publish and, as a result, improved transparency in the area of framework contracts.

Amendment 78
ARTICLE 1, POINT 41 A (new)
Article 91 a (new) (Regulation (EC, Euratom) No 1605/2002)

41a. The following article is added:

'Article 91a

1. If the contracting authority establishes that

(a) the likely administrative costs of implementing several simultaneous or successive procurement procedures in respect of similar items exceed the likely savings to be achieved by implementing those procurement procedures and are therefore inefficient, or

(b) the subject of the contract necessitates such a step, and

(c) competition would not be disproportionately restricted as a result, it may decide to conclude a framework contract. The authorising officer must include a copy of the duly substantiated decision to conclude a framework contract in the relevant files.

2. The duration of the framework contract for the provision of services may not exceed 24 months, although tacit extension for a period of up to 24 months shall be admissible (basic duration). Provision may be made for partial termination, provided that this is consistent with the purpose of the contract.

3. The contract may be tacitly extended only if the requirements laid down in paragraph 1 have been met at the time the decision to extend the contract is taken. The authorising officer must check that the requirements have been met and include a document setting out the results in the relevant files.

4. If, on the basis of an assessment carried out at the time when the contract

is concluded, the purpose of the contract can be achieved only if the contract is concluded for a period in excess of the basic duration, the authorising officer must also include a document setting out the reasons for exceeding that basic duration in the relevant files.

5. If the contract is for the supply of goods, when the framework contract is concluded, and notwithstanding the requirements laid down in paragraph 1, suitable arrangements must be made to ensure that the contracting authority does not suffer any economic disadvantage for the period of the framework contract.'

Justification

Framework contracts bring substantial economic risks with them. They are standard administrative practice and a legal basis for their use should therefore be laid down in the Financial Regulation. Competition should be restricted as little as possible through the conclusion of framework contracts. At the same time, the Union's financial interests should be protected as comprehensively as possible. In particular, precautions must be taken against price deterioration. In the case of supply contracts, this can be achieved, for example, by avoiding exclusive contracts or by incorporating a price revision or termination clause.

Amendment 79

ARTICLE 1, POINT 41 B (new)

Article 92 (Regulation (EC, Euratom) No 1605/2002)

41b. Article 92 is amended as follows:

'Article 92

1. A full, clear and precise description of the subject of the contract must be given in the documents relating to the invitation to tender.

2. The selection criteria for evaluating the capability of candidates or tenderers and the award criteria for evaluating the content of the tenders shall be defined in advance and set out in the call for tender.

3. Candidates or tenderers shall be informed in advance of the grounds for exclusion (Articles 93 and 94).

4. Subject to the provisions of Article 93a, candidates' or tenderers' attention shall be drawn to the requirement that they must notify the contracting authority without delay if one or more of the exclusion criteria applies to them and, if necessary, confirm that none of the criteria applies. Attention shall be drawn to the legal implications of Article 96.

5. In the case of a framework contract, candidates' or tenderers' attention shall be drawn to the fact that other institutions are also entitled to receive deliveries on the basis of the terms and conditions laid down in the framework contract.'

Justification

The aim of the amendment is to improve readability and systematically bring together in one place the provisions governing the content of tender documents, which are currently spread over several separate articles. It also seeks to make clear that the grounds for exclusion are applied on the basis of the law and to substantiate the notification requirement imposed on tenderers and candidates. The reference to the possible imposition of penalties in the event of breaches of the rules is necessary to avoid developments which parties have no reason to expect. Other institutions must also be able to benefit from the economic advantages offered by a framework contract.

Amendment 80

ARTICLE 1, POINT 42

Article 93, paragraph 1, point (a) (Regulation (EC, Euratom) No 1605/2002)

(a) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or ***any other illegal activity detrimental to the Communities' financial interests***;

(a) ***during a period of five years prior to the date on which the invitation to tender is issued*** they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or ***a similar criminal activity***; ***the duration of the exclusion may be extended to up to 10 years if the candidate or tenderer has been the subject of a judgment which has the force of res judicata for an action detrimental to the Communities' financial interests***;

Justification

For reasons of legal certainty, and in keeping with the hierarchy of norms, the duration of the

exclusion as a result of a criminal conviction must be laid down in the Financial Regulation. In that connection, the duration of the exclusion should vary depending on whether the conviction is for offences involving the assets of third parties or of the Communities. In the latter case, an exclusion period of up to 10 years pursuant to Article 96 can be justified. Given the protracted nature of proceedings in cases involving economic crimes, the date when a judgment becomes final is not taken as the start of the exclusion period, in order to rule out any legal uncertainty and excessively long exclusion periods. In such cases, the date of the judgment at first instance, even if not final, is the determining factor.

Amendment 81

ARTICLE 1, POINT 42

Article 93, paragraph 3, (Regulation (EC, Euratom) No 1605/2002)

3. The situations of exclusion shall be defined in advance and communicated to candidates or tenderers. *Deleted*

Justification

Provision incorporated into Article 92(3).

Amendment 82

ARTICLE 1, POINT 42

Article 93, paragraph 4, subparagraph 1 (Regulation (EC, Euratom) No 1605/2002)

4. Candidates or tenderers must certify that they are not in one of the situations listed in paragraph 1 and, as appropriate, that they are not in one of the situations listed in paragraph 2.

4. *Subject to the provisions of Article 93a,* candidates or tenderers must certify that they are not in one of the situations listed in paragraph 1 and, as appropriate, that they are not in one of the situations listed in paragraph 2.

Justification

Simplification of administrative arrangements vis-à-vis candidates or tenderers: certification should be required in a manner consistent with the principle of proportionality.

Amendment 83

ARTICLE 1, POINT 42

Article 93, paragraph 4, subparagraph 2 (Regulation (EC, Euratom) No 1605/2002)

Where the candidate or tenderer is a legal entity, information on the ownership or on the management, control and power of representation of the legal entity must be provided, whenever requested by the contracting authority. ***deleted***

Justification

This matter has been dealt with in the second paragraph of Article 93a(1)(c) as part of the systematisation of the provisions on the requirement to produce supporting documents.

Amendment 84
ARTICLE 1, POINT 42
Article 93a (new) (Regulation (EC, Euratom) No 1605/2002)

Article 93a

(1) Notwithstanding the provisions of Article 89, at all stages of the procurement procedure administrative requirements and requirements to produce supporting documents must be clearly defined and directly linked to the procedure in question.

In particular:

(a) except in the case of contracts involving small amounts for which a single tender lodged under the negotiated procedure is admissible, authorising officers may, on the basis of their risk assessment, waive the requirement to supply one or more supporting documents;

(b) in the case of other procurement procedures conducted pursuant to Article 91(3), the contracting authority may require a certificate and/or other supporting documents which prove that the candidate is not in one of the situations listed in Articles 93 and 94 and that he meets the other award criteria;

(c) in all other cases, the contracting authority may require candidates or tenderers to produce those supporting

documents which it regards as essential to the implementation of the procurement procedure.

In addition, at the request of the contracting authority candidates or tenderers must state who owns the legal entity submitting a tender, or who makes up its management, or who exercises control or power of representation.

(2) Notwithstanding the provisions of Section 4, payments on account may not be retained on the sole grounds that no use was made of the possibility of requiring candidates or tenderers to produce supporting documents.'

Justification

This provision applies the principle of proportionality to the requirements to produce supporting documents. The aim is to strike a balance between protection of the Communities' interests, on the one hand, and administrative effort, on the other.

Amendment 85

ARTICLE 1, POINT 42

Article 94, paragraph 1 a (new) (Regulation (EC, Euratom) No 1605/2002)

Notwithstanding any other provisions concerning conflicts of interest, in particular those laid down in Article 52, a conflict of interest within the meaning of letter (a) shall be presumed to exist if, at any stage of a procedure relating to the award of a grant, the candidate or tenderer was an employee of the Communities, provided that his participation in the procurement procedure was not authorised in advance by his superior.

Justification

Restricts the application of this article to grants procedures since Communities' employees are per se forbidden to conclude contracts with the Communities.

Amendment 86
ARTICLE 1, POINT 43
Article 95 (new) (Regulation (EC, Euratom) No 1605/2002)

(43) In Article 95, the following paragraph is added:

"However, for cost-effectiveness reasons, two or more institutions may agree to use a common database."

(43) Article 95 is replaced by the following:

"Article 95

1. Each institution shall communicate the details of candidates and tenderers who are in one of the situations described in Articles 93 and 94 to a central database operated by the Commission.

2. The database shall be consulted by authorising officers in all institutions and agencies before awarding a tender. Access to the database shall be granted also to the relevant authorities of the Member States. Access may be granted to third countries and international organisations if this is necessary on important public interest grounds without prejudice to Community rules on the processing of personal data.

3. The Member States shall communicate to the Commission details of economic operators in one of the situations mentioned in Article 93(1)(a) and (2)(b) and (c) where the conduct of these operators was detrimental to the Communities' financial interest and the Communities have not already been part of judicial proceedings. The Member States' authorities shall consult the Commission's databases when awarding a contract if financial resources from EU funds are involved and apply the information accordingly."

Amendment 87
ARTICLE 1, POINT 44
Article 96, paragraph 2 a (new) (Regulation (EC, Euratom) No 1605/2002)

(2a) A candidate or tenderer may be excluded for a period of more than five

years only on the basis of a judgment or analogous decision against the candidate or tenderer which has the force of res judicata for an action justifying exclusion which is detrimental to the Communities' interests.

Justification

In line with Article 93.

Amendment 88
ARTICLE 1, POINT 44 A
Article 97, paragraph 2 a, Section 3a (new) (Regulation (EC, Euratom) No 1605/2002)

44a. Before Article 97, the following new Section 3a is added:

'Section 3a

Rights of the parties involved in procurement procedures'

Justification

Makes clear that the parties involved in procurement procedures not only have obligations, but also rights which the contracting authority must respect.

Amendment 89
ARTICLE 1, POINT 44 B (new)
Article 97, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

44b. Article 97(1) is deleted.

Justification

Improved readability and systematisation.

Amendment 90
ARTICLE 1, POINT 46. LETTER A A (new)
Article 97, paragraph 2 (Regulation (EC, Euratom) No 1605/2002)

(aa) Paragraph 2 is amended as follows:

‘(2) Only in duly justified cases, the contracting authority may require tenderers, as provided in the implementing rules, to lodge a security in advance as a guarantee that the bids made will not be withdrawn.’

Justification

Minimisation of the need to require tenderers to lodge securities.

Amendment 91

ARTICLE 1, POINT 46 A (new)

Article 100, paragraph 2 a (new) (Regulation (EC, Euratom) No 1605/2002)

46a. In Article 100, the following paragraph is added:

‘(2a) The contract may not be signed prior to the expiry of a 14-week period commencing on the date on which the candidate or tenderer was notified of the rejection of its tender (paragraph 2, first phrase), provided that the Communities would not suffer a significant financial loss as a result. The time-limit shall begin to run only once the candidate or tenderer has been informed in writing of the legal remedies available against the decision, in particular as regards the instance, time-limit and form. A contract signed prior to expiry of the time-limit shall be null and void.’

Justification

Unsuccessful tenderers should be informed about the possibilities for challenging contract award decisions. This will make for effective scrutiny of such decisions and, by extension, greater transparency.

Amendment 92

ARTICLE 1, POINT 46 B (new)

Article 100 a (new) (Regulation (EC, Euratom) No 1605/2002)

46b. The following article is added:

'Article 100a

(1) The Commission shall take the measures necessary to ensure that, as regards procedures for the award of public contracts falling within the scope of the Financial Regulation, decisions taken by the contracting authorities may be reviewed effectively and, in particular, as rapidly as possible in accordance with the conditions set out, in particular, in Article 100b(7) in order to determine whether such decisions have infringed Community law in the field of public procurement or other provisions implementing that law.

(2) The Commission shall ensure that the review procedure is available, in accordance with conditions to be laid down in the implementing rules, at least to any person having or having had an interest in obtaining a particular public supply or public works contract and who has been or risks being harmed by an alleged infringement. In particular, the Commission may require that the person seeking the review must have previously notified the contracting authority of the alleged infringement and of his intention to seek review.'

Justification

Requirements equivalent to those imposed on Member States under Directive 89/665/EEC of 21 December 1989.

Amendment 93

ARTICLE 1, POINT 46 C (new)

Article 100 b (new) (Regulation (EC, Euratom) No 1605/2002)

46c. The following article is added:

'Article 100b

1. The Commission shall ensure that the measures taken concerning the review procedures specified in Article 100a include provision for the powers required to:

(a) take, at the earliest opportunity and by way of interlocutory procedures, interim measures with the aim of correcting the alleged infringement or preventing further damage to the interests concerned, including measures to suspend or to ensure the suspension of the procedure for the award of a public contract or the implementation of any decision by the contracting authority;

(b) either set aside or ensure the setting aside of decisions taken unlawfully, including the removal of discriminatory technical, economic or financial specifications in the invitation to tender, the contract documents or in any other document relating to the contract award procedure;

(c) award damages to persons harmed by an infringement.

2. The powers specified in paragraph 1 may be conferred on separate bodies responsible for different aspects of the review procedure.

3. Review procedures need not in themselves have an automatic suspensive effect on the contract award procedures to which they relate.

4. The Commission may provide that when considering whether to order interim measures the body responsible may take into account the probable consequences of the measures for all interests likely to be harmed, as well as the public interest, and may decide not to grant such measures where their negative consequences could exceed their benefits. A decision not to grant interim measures shall not prejudice any other claim of the person seeking these measures.

5. The Commission may provide that where damages are claimed on the grounds that a decision was taken unlawfully, the contested decision must first be set aside by a body having the necessary powers.

6. The effects of the exercise of the powers

referred to in paragraph 1 on a contract concluded subsequent to its award shall be laid down in the implementing rules. Furthermore, except where a decision must be set aside prior to the award of damages, the Commission may provide that, after the conclusion of a contract following its award, the powers of the body responsible for the review procedures shall be limited to awarding damages to any person harmed by an infringement.

7. The Commission shall ensure that decisions taken by bodies responsible for review procedures can be effectively enforced.

8. Where bodies responsible for review procedures are not judicial in character, written reasons for their decisions shall always be given. Furthermore, in such a case, provision must be made to guarantee procedures whereby any allegedly illegal measure taken by the review body or any alleged defect in the exercise of the powers conferred on it can be the subject of judicial review or review by another body which is a court or tribunal within the meaning of Article 234 of the EC Treaty and independent of both the contracting authority and the review body.

The members of such an independent body shall be appointed and leave office under the same conditions as members of the judiciary as regards the authority responsible for their appointment, their period of office, and their removal. At the least the President of this independent body shall have the same legal and professional qualifications as members of the judiciary. The independent body shall take its decisions following a procedure in which both sides are heard, and these decisions shall, by means determined by the Commission, be legally binding.'

Justification

Requirements equivalent to those imposed on the Member States under Directive 89/665/EEC

of 21 December 1989.

Amendment 94
ARTICLE 1, POINT 46 D (new)
Article 102 (Regulation (EC, Euratom) No 1605/2002)

46. Article 102 is amended as follows:

'Article 102

In certain duly substantiated cases, the contracting authority may require contractors to lodge a guarantee in advance in order to:

(a) ensure full performance of the contract;

(b) limit the financial risks connected with pre-financing and payments on account.

In the case of payments on account, guarantees shall be required only if the payment does not relate to supplies already delivered or services provided on the basis of instalments agreed in advance.'

Justification

Administrative simplification. In cases where supplies have already been delivered or services provided, a security is superfluous.

Amendment 95
ARTICLE 1, POINT 50, LETTER -A (new)
Article 108, paragraph 1, subparagraph 1, introduction (Regulation (EC, Euratom)
No 1605/2002)

(-a) In paragraph 1, subparagraph 1, the introduction is amended as follows:

'1. Grants are direct financial contributions, by way of donation, from the budgets of the institutions in order to finance.'

(Same wording as the first subparagraph of Article 108(1) of Regulation (EC, Euratom) No 1605/2002 with the addition of the words 'of the institutions')

Justification

The implementing rules create ambiguity by sometimes making 'the Commission' and sometimes 'the authorising officer' responsible for practical implementing measures. The proposed clarification would do away with the current ambiguity and clearly extend the scope of the provisions of Title VI, 'Grants', to cover all the institutions.

Amendment 96

ARTICLE 1, POINT 50, LETTER -A A (new)

Article 108, paragraph 1, subparagraph 2 (Regulation (EC, Euratom) No 1605/2002)

(-aa) Paragraph 1, subparagraph 2, is amended as follows:

'Grants shall be the subject of a written award agreement or an award decision to be notified to the applicant. The decision to award a grant may lay down terms and conditions, requirements or time-limits provided that those provisions could also have been the subject of a grant award agreement.'

Justification

The amendment seeks to make it possible for grants to be awarded by means of Commission decisions, rather than just grant award agreements. Article 249 of the EC Treaty includes decisions among the range of legal measures which the Communities may take. The award of grants on the basis of decisions can therefore do much to reduce red tape, in particular where small sums are involved, and to shorten the procedure. The possibility of incorporating terms and conditions, time-limits or requirements in the grant award agreement will make for more flexible implementation.

Amendment 97

ARTICLE 1, POINT 50

Article 108, paragraph 2, point g a and g b (new) (Regulation (EC, Euratom) No 1605/2002)

(ga) expenditure on organisations mainly consisting of (former) members and staff of an Institutions that:

- promote the interest or support the

*functioning of the institution; and/or
- organize cultural, sportive, social and other activities to the benefit of the Institution and/or its (former) members and staff; and*

(gb) expenditure in the framework of cooperation with third persons, not governed by the provisions on procurement, and related to the information policy of the institution. These categories are considered administrative expenditure within the meaning of Article 49. They shall be dealt with in a separate budget item.

Justification

Financial support granted to in-house organisations which is essential to their proper functioning should be removed from the scope of the provisions on grants, since a number of principles applied to grants, such as the annual call for proposals and degressivity, are not appropriate when it comes to dealing with financial support provided by the institutions for organisations consisting of their Members or staff.

Amendment 98

ARTICLE 1, POINT 52

Article 109, paragraph 1, subparagraph 2 (Regulation (EC, Euratom) No 1605/2002)

They may not be cumulative or awarded retrospectively **and** they must involve co-financing.

They may not be cumulative or awarded retrospectively; **notwithstanding the provisions governing the award of grants as lump sums or on the basis of flat-rate financing (Article 113a(1)(b) and (c)),** they must involve co-financing.

Justification

These provisions do away with the co-financing requirement for grants awarded as lump sums or on the basis of flat-rate financing.

Amendment 99

ARTICLE 1, POINT 52

Article 109, paragraph 3, point (d a) (new) (Regulation (EC, Euratom) No 1605/2002)

(da) own resources, in particular contributions and membership fees, aggregated in the annual operations of a political party at European level in accordance with Article 2(1) and 2(2) of Regulation (EC) No 2004/2003, which exceed the 25% of eligible cost to be borne by the beneficiary according to Article 10(2) of Regulation (EC) No 2004/2003.

Amendment 100

ARTICLE 1, POINT 52 A (new)

Article 109 a (new) (Regulation (EC, Euratom) No 1605/2002)

52a. The following article is added:

‘Article 109a

Bodies which award grants shall cooperate in setting up a joint body with the task of providing information to and advising applicants. In particular, this body shall:

- lay down joint standards for the application forms for similar grants and monitor the size and readability of the application forms,***
- supply information to potential applicants (in particular by means of seminars and the provision of handbooks) and***
- maintain a database with the help of which the Commission can notify applicants.’***

Justification

The body to be set up on the basis of cooperation will establish uniform standards to govern dealings with grant beneficiaries. This will substantially reduce administrative costs for both beneficiaries and the award body. In that connection, with a view to simplifying the application procedure standards which are as similar as possible should be laid down for similar forms of grants (e.g. support for youth activities, research). The establishment of a centralised database will ensure that supporting documents need only be submitted once, generating time and cost savings for both the Commission and applicants.

Amendment 101

ARTICLE 1, POINT 52 B (new)
Article 110, paragraph 1, subparagraph 1 (Regulation (EC, Euratom) No 1605/2002)

52b. Article 110(1), subparagraph 1, is amended as follows:

'1. Grants shall be subject to an annual programme, to be published at the start of the year, and at all events not later than 1 March, with the exception of crisis management aid and humanitarian aid operations.'

(Same wording as the first subparagraph of Article 110(1) of Regulation (EC, Euratom) No 1605/2002 with the addition of the words 'and at all events not later than 1 March')

Justification

The shortening of the time-limit will serve to speed up grant award procedures.

Amendment 102
ARTICLE 1, POINT 53
Article 110, paragraph 1, subparagraph 2 (Regulation (EC, Euratom) No 1605/2002)

That work programme shall be implemented through the publication of calls for proposals save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary or of the action leave no other choice for a given action.

That work programme shall be implemented through the publication of calls for proposals save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary or of the action leave no other choice for a given action. ***The call for proposals may already be published in the previous year, subject to the availability of the appropriations in the following year. Irrespective of the time of publication and notwithstanding Article 115, it shall indicate all the rules which apply to the award of the grant (particularly the exclusion criteria as referred to in Articles 93 and 94), in which connection references to provisions are permissible. Throughout the procedure, the rules to be applied shall be binding in the version applicable at the time of the announcement.***

Justification

Publication the previous year is intended to prevent grant procedures from being concentrated at the beginning of the following year, which causes delays. Applicants should enjoy legal certainty throughout the procedure. The prohibition on any amendment while a procedure is in progress will reduce the quantity of administrative work for the beneficiaries and the Commission, tighten up procedures and unify policy on grants.

Amendment 103

ARTICLE 1, POINT 53 A (new)

Article 110, paragraph 2 a (Regulation (EC, Euratom) No 1605/2002)

53a. The following paragraph 2a is inserted in Article 110:

'2a. Simultaneously with publication pursuant to paragraph 2, the Commission shall forward to the European Parliament a report on:

(a) the number of applicants in the past year;

(b) the number and percentage of successful applications per call for proposals and per subsidising agency;

(c) the mean duration of the procedure from publication of the call for proposals to the conclusion of the grant agreement or the issuing of a decision on awarding a grant per call for proposals and per subsidising agency;

(d) the mean period until the final assessment and final payment (Article 119, paragraph 1).'

Justification

In view of the long duration of procedures relating to grants, reporting is essential, as a vital precondition for improvements. This will make it possible to compile a differentiated assessment of the degree of success by comparing the plan of work and its implementation.

Amendment 104

ARTICLE 1, POINT 54

Article 111 (Regulation (EC, Euratom) No 1605/2002)

One action may give rise to the award of only one grant from the budget to any one

1. One action may give rise to the award of only one grant from the budget to any one

beneficiary, *except where otherwise authorized by the basic acts concerned.*

A beneficiary may be awarded only one operating grant from the budget per financial year.

In any case, the same costs shall not be financed twice by the budget.

beneficiary.

2. A beneficiary may be awarded only one operating grant from the budget per financial year. ***The applicant shall immediately inform the authorising officers of any multiple applications and multiple grants for the project.***

3. In any case, the same costs shall not be financed twice by the budget. ***On no account may the combined total costs eligible for financing be exceeded.***

Justification

The obligation for the beneficiary of a grant, who is closer to the matter in hand, to provide information will help to avoid unlawful parallel grants or exceeding of the maximum permissible grant.

Amendment 105

ARTICLE 1, POINT 56

Article 113 a, paragraph 1 a (new) (Regulation (EC, Euratom) No 1605/2002)

1a. The following, in particular, may be claimed as costs eligible for financing:
(a) the costs of a bank guarantee or comparable surety to be lodged by the beneficiary of the grant pursuant to Article 118;

(b) the amounts of turnover tax which the beneficiary of the grant cannot claim as a deduction of input tax;

(c) the costs of an external audit (Articles 117 and 119)

(d) administrative expenditure and staff and equipment costs;

(e) depreciation.

Justification

Small enterprises or organisations, in particular, cannot themselves bear the costs of lodging surety. However, these should not in consequence in effect be excluded from subsidisation. The same applies to nongovernmental organisations, which do not have the benefit of a deduction of input tax.

Amendment 106
ARTICLE 1, POINT 57

Article 114, paragraph 3, subparagraph 2 (Regulation (EC, Euratom) No 1605/2002)

Applicants **must** certify that they are not in one of the situations referred to in the first subparagraph.

Applicants **shall** certify, **taking account of the principles in Article 109, at the request of the authorising officer**, that they are not in one of the situations referred to in the first subparagraph.

Justification

It should become possible for the authorising officer to make use of certification flexibly and in accordance with his own assessment of the risk. This will reduce the amount of administrative work.

Amendment 107
ARTICLE 1, POINT 57

Article 114, paragraph 4 (Regulation (EC, Euratom) No 1605/2002)

4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 96.

Such penalties may also be imposed on beneficiaries who, during the implementation of the grant agreement, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.

4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 96.

Such penalties may also be imposed on beneficiaries who, during the implementation of the grant agreement, **intentionally or through gross negligence**, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.

Justification

Clarification.

Amendment 108
ARTICLE 1, POINT 57

Article 114, paragraph 4 a (new) (Regulation (EC, Euratom) No 1605/2002)

4a. The authorising officer shall propose that declarations be issued, applications

made or declarations or applications be corrected if it is clearly only due to an oversight or ignorance that they have not been issued or made or have been issued or made incorrectly. In so far as necessary and feasible and permissible in the light of the possibilities available, he shall provide information about the rights and obligations of the participants in the procedure.

The authorising officer shall keep appropriate records of contacts with applicants during the procedure.

Justification

This provision is intended to make it possible for applicants to submit successful applications for grants even if they are not used to dealing with subsidising agencies and have no legal advisor. Nongovernmental organisations have complained about the lack of cooperation. This is intended to make the European Union a more attractive funding partner. Transparency and certainty of the procedure are the aims of the requirement to keep records.

Amendment 109

ARTICLE 1, POINT 57 A (new)

Article 115, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

57a. Article 115, paragraph 1, is replaced by the following:

'1. Using selection criteria stated in advance in the call for proposals, the applicant's ability to complete the proposed action or work programme shall be evaluated. This shall be without prejudice to Article 110, paragraph 1.

The selection criteria shall give a picture of the specific characteristics of the projects and their quality and implementation.'

(Same wording as Article 115(1) of Regulation (EC, Euratom) No 1605/2002 with the addition of the words 'stated in advance in the call for proposals' and of the second sentence and second subparagraph.).

Justification

The provision will create a parallel with Articles 110 and 116, pursuant to which applicants must be informed in advance of all provisions relevant to the grant. Publishing the selection criteria in advance will make the procedure more transparent. Moreover, applicants will be given a better opportunity to assess the likelihood of success of their application at an early stage, thereby avoiding the unnecessary effort of submitting applications which will manifestly fail.

Amendment 110

ARTICLE 1, POINT 57 B (new)

Article 115, paragraphs 2 a (new) and 2 b (new) (Regulation (EC, Euratom) No 1605/2002)

57b. The following paragraphs 2a and 2b are inserted in Article 115:

'2a. The award procedure shall as a matter of principle be divided into several procedural stages, the first of which shall solely comprise an approximate evaluation of the permissible applications submitted. If an application already cannot have any prospect of success after this stage of the procedure, the applicant shall be informed accordingly in accordance with Article 116, paragraph 3. Each subsequent stage of the procedure must be clearly distinct from the previous one, particularly as regards the quantity and substance of the evidence to be submitted by the applicant. If evidence is required from an applicant, it may be required only once in the course of the procedure. Data which have been obtained shall be stored in a database (Article 109a). Efforts shall be made to complete the procedure speedily.

2b. Notwithstanding the principles in Article 109, paragraph 1, the authorising officer shall, throughout the procedure, take particular care to ensure that the effort required of an applicant for purposes of publication, documentation and the provision of other compulsory evidence pertaining to a grant is not disproportionate to the value of the grant to be awarded.'

Justification

Dividing the procedure into several stages should facilitate a prior selection. This can also reduce the submission of substantial documentation during the early stage of the procedure. The same purpose will be served by the checking function of the authorising officer.

Amendment 111

ARTICLE 1, POINT 58

Article 116, paragraph 1, (Regulation (EC, Euratom) No 1605/2002)

1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, with a view to determining which proposals may be financed.

1. Proposals shall be evaluated ***in the course of two months*** on the basis of pre-announced selection and award criteria, with a view to determining which proposals may be financed.

Justification

The provision seeks to establish clear time frame for decision making.

Amendment 112

ARTICLE 1, POINT 58 A (NEW)

Article 116, paragraph 3 (Regulation (EC, Euratom) No 1605/2002)

(58a) In Article 116, paragraph 3 is replaced by the following:

"3. The authorising officer responsible shall inform applicants in writing of the decision concerning their application and sign the contract after the expiry of the period referred to in Article 100(2a).

If the grant requested is not awarded, the institution shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria already announced."

Justification

The provision seeks to establish clear time frame for decision making.

Amendment 113
ARTICLE 1, POINT 58 A (new)
Article 117 (Regulation (EC, Euratom) No 1605/2002)

58a. Article 117 is replaced by the following:

'Article 117

1. The pace of payments shall be determined by the financial risks involved, the duration and progress of the action or the costs incurred by the beneficiary. Payments must be made within a reasonable period.

If the schedule of payments is laid down contractually or by a decision, payments shall be made without any further demand when they fall due. This shall be without prejudice to Article 119, paragraph 2.

2. In order to ascertain the financial risks, the authorising officer may, taking account of the principles in Article 109, paragraph 1, require the beneficiary of the grant to submit an attestation by an independent auditor. The implementing provisions may provide for cases in which an attestation is to be obtained from an external auditor or in which an attestation is not required.'

(The first sentence of paragraph 2 is identical to Article 117 of Regulation (EC, Euratom) No 1605/2002)

Justification

The provision is intended to help speed up the procedure. Institutions which have their own audit offices should be allowed to use them rather than having to resort to external auditors. This will avoid procedural costs.

Amendment 114
ARTICLE 1, POINT 58 B (new)
Article 118 (Regulation (EC, Euratom) No 1605/2002)

58b. Article 118 is replaced by the following:

'Article 118

The authorising officer responsible may, if other equally effective ways of minimising risk are not available, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.'

(As Article 118 of Regulation (EC, Euratom) No 1605/2002 with the addition of the words 'if other equally effective ways of minimising risk are not available')

Justification

Requiring security in the form of bank guarantees would cause considerable difficulties, particularly to small businesses, businesses in certain Member States and small nongovernmental organisations. It should therefore be made clear that this is intended only to be the last resort if other equally effective forms of security cannot be considered.

Amendment 115

ARTICLE 1, POINT 58 C (new)

Article 119 (Regulation (EC, Euratom) No 1605/2002)

58c. Article 119 is replaced by the following:

'Article 119

1. The amount of the grant shall not become final until after the institution has accepted the final reports and accounts, without prejudice to subsequent checks by the institution. In this case the limitation period (Article 73b) against the institution shall commence when the last payment is made. The limitation period (Article 73b) against the beneficiary shall commence when the amount of the grant becomes final.

(2) Should the beneficiary fail to comply with his/her legal or contractual obligations or with obligations laid down in the decision on the award of a grant, the grant may be suspended, reduced or terminated in accordance with the provisions provided for by the implementing rules after the beneficiary has been given the opportunity to make

his/her observations.

Reductions must be proportionate to the error objected to.

If the breach of duty is not due to the conduct of the beneficiary, the grant shall be suspended, reduced or terminated only in exceptional cases, particularly if implementing or upholding the grant would result in the ceiling for project costs eligible for financing being exceeded or if the dereliction of duty has the effect of making it impossible for the aim of the grant to be achieved any longer.'

Justification

Applies the principle of proportionality. In particular, automatic reduction of the EU grant if one or more co-financers withdraws through no fault of the beneficiary might result in failure of the overall project. Care should be taken to avoid this. The reference to the provisions concerning limitation is intended to compel the institution to conduct the final evaluation, at the latest, before the limitation period expires. This should increase legal certainty for the beneficiary of the grant.

Amendment 116

ARTICLE 1, POINT 59

Article 120, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

1. Where implementation of the action requires the award of procurement contracts *by the beneficiary, the relevant procedures shall be as set out in the implementing rules.*

1. Where implementation of the action requires the award of procurement contracts, *this shall be subject to the principles in Title V of this Part.*

The implementing provisions may provide for arrangements for a simplified procedure, depending on the size of the contract.

Justification

Administrative simplification.

Amendment 117

ARTICLE 1, POINT 61

Article 122 (Regulation (EC, Euratom) No 1605/2002)

61. *In Article 122, 'Article 185' is replaced by 'Article 121'.*

61. Article 122 *is replaced by the following:*

'Article 122

A report on budgetary and financial management in the budget year concerned shall be attached to the accounts of the institutions and of the bodies referred to in Article 121, which gives an account, inter alia, of the rate of implementation of the appropriations and of transfers of appropriations among the various budget items.'

Justification

The aim is to clarify the objectives and substance of the various reports provided for by the Financial Regulation. It would be desirable for the annual reports of authorising officers to focus on the use of resources, the attainment of objectives, the development of activities and the internal control framework, while the report on budgetary and financial management focuses on aspects of budget implementation.

Amendment 118

ARTICLE 1, POINT 68 A (new)

Article 139, paragraph 2 (Regulation (EC, Euratom) No 1605/2002)

68a. Article 139, paragraph 2, is replaced by the following:

'2. The institutions shall forward their internal financial rules to the Court of Auditors and the budgetary authority, for information.'

Justification

To ensure that the budgetary authority is informed.

Amendment 119

ARTICLE 1, POINT 69 B (new)

Article 143, paragraph 3 (Regulation (EC, Euratom) No 1605/2002)

(69b) In article 143, paragraph 3 is replaced by the following:

"3. The annual report shall contain an

assessment of the soundness of financial management. It shall contain an evaluation of the efficiency and regularity of the budgetary and economic management."

Justification

The differentiation is intended to make clear that, in its auditing remit, the Court of Auditors should confine itself to assessing the formal legality of revenue and expenditure but should also assess the substantive appropriateness of the transactions audited.

Amendment 120
ARTICLE 1, POINT 75
Article 153, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

75. In Article 153, paragraph 1 is replaced by the following: ***deleted***

'1. Where the Commission may transfer appropriations pursuant to Article 23, it shall take its decision by 31 January of the following financial year at the latest and shall inform the budgetary authority three weeks before making the transfers referred to in point (a) of Article 23(1).'

(Article 153, paragraph 1, as amended, corresponds to the original version in Regulation (EC, Euratom) No 1605/2002)

Justification

Preservation of Parliament's prerogatives.

Amendment 121
ARTICLE 1, POINT 82 A (new)
Article 160 b (new) (Regulation (EC, Euratom) No 1605/2002)

82a. The following Article 160b is inserted after Article 160a:
'Article 160b

Notwithstanding Article 110, a call for proposals may already be published in the previous year, subject to the availability of the appropriations in the following year. Irrespective of the time of publication and notwithstanding Article 115, the

Commission shall indicate all the rules which apply to the award of the grant (particularly the exclusion criteria as referred to in Articles 93 and 94), in which connection references to provisions are permissible. Throughout the procedure, the rules to be applied shall be binding in the version applicable at the time of the announcement.'

Justification

See the amendment to Article 110. Publication the previous year is intended to prevent grant procedures from being concentrated at the beginning of the year, which causes delays. Applicants should enjoy legal certainty throughout the procedure. The prohibition on any amendment while a procedure is in progress will reduce the quantity of administrative work for the beneficiaries, tighten up procedures and unify policy on grants

Amendment 122

ARTICLE 1, POINT 85 A (new)

Article 168, paragraph 1, subparagraph 1 a (new) (Regulation (EC, Euratom) No 1605/2002)

(85a) In article 168, paragraph 1, the following subparagraph is inserted:

"As regards Community external assistance, the rules for the participation in tendering procedures laid down in Regulation (EC) No 2110/2005 of the European Parliament and the Council of 14 December 2005 on access to Community external assistance¹ and Council Regulation (EC) No 2112/2005 of 21 November 2005 on access to Community external assistance² apply.

1 OJ L 344, 27.12.2005, p. 1.

2 OJ L 344, 27.12.2005, p. 23."

Justification

The two regulations for the untying of aid were adopted in 2005. They open the tendering procedures for persons from non-EU and non-beneficiary countries favouring developing countries and applying the principle of reciprocity for non-EU developed countries. These rules have to be applied and should be incorporated in the Financial Regulation.

Amendment 123
ARTICLE 1, POINT 87
Article 169a, paragraph 1a (new) (Regulation (EC, Euratom) No 1605/2002)

The following, in particular, may be claimed as costs eligible for financing:

(a) the costs of a bank guarantee or comparable surety to be lodged by the beneficiary of the grant pursuant to Article 118;

(b) the amounts of turnover tax which the beneficiary of the grant cannot claim as a deduction of input tax;

(c) the costs of an external audit (Articles 117 and 119);

(d) the costs of administrative expenditure and staff and equipment costs;

(e) depreciation.

Justification

See the amendment to Article 113a: Small nongovernmental organisations, in particular, working in the field of development aid cannot themselves bear the costs of lodging surety. However, these should not in consequence in effect be excluded from subsidisation. The same applies to the problem of nongovernmental organisations, which do not have the benefit of a deduction of input tax.

Amendment 124
ARTICLE 1, POINT 94 A (new)
Article 179, paragraph 3 (Regulation (EC, Euratom) No 1605/2002)

(94a) In article 179, paragraph 3 is replaced by the following:

"3. The institutions shall inform the two branches of the budgetary authority as soon as possible, but at least 3 weeks prior to any deadline before which a decision has to be taken by the budgetary authority, of any building project likely to have significant financial implications for the budget."

Justification

In order to be able to make sound financial judgements as a budgetary authority on a building project with implications for the European Union's budget, the Institutions referred to under paragraph 179.3 need to inform the two branches at least 3 weeks prior to any deadline before which a decision has to be taken by the budgetary authority. This will enable both arms of the budgetary authority to ask for more clarification and further inquiries when deemed necessary.

Amendment 125

ARTICLE 1, POINT 94 A (new)

Article 183 (Regulation (EC, Euratom) No 1605/2002)

***94a. Article 183 is replaced by the following:
'Article 183***

The budgetary authority shall give its assent to the implementing provisions of this Financial Regulation.'

Justification

Preservation of Parliament's prerogatives.

Amendment 126

ARTICLE 1, POINT 95 -A (new)

Article 185, paragraph 1 (Regulation (EC, Euratom) No 1605/2002)

(95 -a) In article 185, paragraph 1 is replaced by the following:

"1. The Commission shall adopt a framework financial regulation for the bodies set up by the Union and having legal personality. The financial rules of these bodies may not depart from the framework regulation except where their specific operating needs so require and with the Commission's prior consent."

Justification

For reasons of transparency, accountability and consistency, 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.

Amendment 127
ARTICLE 1, POINT 95
Article 185, paragraph 3 (Regulation (EC, Euratom) No 1605/2002)

3. Each body referred to in paragraph 1 shall establish an internal audit function which must be performed in compliance with the relevant international standards. The Commission's internal auditor shall certify that the operation of the audit function respects international audit standards and, for that purpose, may conduct quality audits.

3. The Commission's internal auditor shall conduct the audits for the bodies referred to in paragraph 1. The bodies referred to in paragraph 1 may establish an internal audit function. The Commission's internal auditor may, in duly substantiated cases, delegate his task to their internal auditors. This delegation shall be made in writing, setting out the reasons for delegation and the names of the responsible auditors (delegating and delegate). Notwithstanding the delegation, the Commission's internal auditor may conduct internal audits for the bodies referred to in paragraph 1 and revoke the delegation at any time he thinks fit.

In cases in which an internal audit function is set up by the bodies referred to in paragraph 1, it shall be performed in compliance with guidelines established by the Commission's internal auditor. These guidelines shall include a duty to submit all and any reports made to the Commission's internal auditor. The Commission's internal auditor shall certify that the operation of the audit function meets internal audit standards and, for that purpose, may conduct quality audits."

Justification

Clarify position of Commission's Internal Auditor. Commission's Internal Auditor is being empowered to delegate tasks to agencies' internal audit services while maintaining control over and responsibility for accounting within the agencies.

Amendment 128
ARTICLE 1, POINT 95
Article 185, paragraph 4 (Regulation (EC, Euratom) No 1605/2002)

4. The bodies referred to in Article 121 shall apply the accounting rules set out in Article 133 so that their accounts can be consolidated with the Commission's accounts. *deleted*

Justification

Superfluous. Covered by Article 133.

PROCEDURE

Title	Proposal for a Council regulation amending Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities
References	[COM(2005)0181] – C[6-0234/2005] – [2005/0090(CNS)]
Committee responsible	BUDG
Opinion by Date announced in plenary	CONT 17.11.2005
Enhanced cooperation – date announced in plenary	6.9.2005
Draftsmen Date appointed	Ingeborg Gräßle, Borut Pahor 23.5.2005
Previous drafts(wo)man	
Discussed in committee	31.1.2006 26.1.2006
Date adopted	22.2.2006
Result of final vote	+: 28 -: 1 0: 1
Members present for the final vote	Herbert Bösch, Simon Busuttil, Mogens N.J. Camre, Paulo Casaca, Petr Duchoň, Szabolcs Fazakas, Markus Ferber, Christofer Fjellner, Béla Glattfelder, Ingeborg Gräßle, Umberto Guidoni, Rodi Kratsa-Tsagaropoulou, Véronique Mathieu, Jan Mulder, Borut Pahor, José Javier Pomés Ruiz, Paul Rübig, Bart Staes, Margarita Starkevičiūtė, Alexander Stubb, Kyösti Virrankoski
Substitute(s) present for the final vote	Jens-Peter Bonde, Daniel Caspary, Robert Goebbels, Joel Hasse Ferreira, Edit Herczog, Silvana Koch-Mehrin, Ashley Mote, Esko Seppänen
Substitute(s) under Rule 178(2) present for the final vote	Ayuso