

Proposal for a Council Regulation laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes

(2001/C 120 E/08)

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(Submitted by the Commission on 14 December 2000)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 308 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) The Legislative Authority is creating an increasing number of programmes in a wide range of fields targeting a variety of categories of beneficiaries which are operations provided for in Article 3 of the Treaty (Community programmes). The Commission is normally responsible for adopting measures to implement such programmes.
- (2) Implementation of these Community programmes is financed, at least in part, from appropriations entered in the general budget of the European Union. Under Article 274 of the Treaty, the Commission is responsible for executing that budget.
- (3) To enable the Commission to fulfil its proper responsibilities towards the other Institutions and the citizens of the Union, it must be able to focus primarily on its institutional missions. It should therefore be able to delegate some of its tasks relating to the management of Community programmes to third parties. Moreover, externalising certain management tasks could be a more efficient and effective way of achieving the goals of such Community programmes.
- (4) Externalisation of management tasks should stay within the limits set by the institutional system as laid out in the Treaty. This means that missions assigned to the Institutions by the Treaty where anything is left to the discretion of the Institution concerned and which involve translating political choices into practice may not be externalised.
- (5) Externalisation should only be used after assessment of a number of factors (such as a cost-benefit analysis that includes the costs for coordination and controls, efficiency and flexibility in the implementation of externalised tasks, simplification of the procedures used, proximity of externalised activities to final beneficiaries, visibility of the Community as promoter of the programme concerned, the need to maintain an adequate level of know-how inside the Commission).
- (6) One form of externalisation consists in using Community bodies which are legal entities in their own right (executive agencies).
- (7) In order to ensure uniformity of executive agencies in institutional terms, their statute should be laid down by regulation, and in particular certain essential aspects of their structure, tasks, operation, budget system, supervision and responsibility.
- (8) As the Institution responsible for implementing the various Community programmes, the Commission is qualified to assess whether, and to what extent, it is appropriate to entrust management tasks relating to one or more specific Community programmes to an executive agency. Recourse to an executive agency does not relieve the Commission of its responsibilities under the Treaty, particularly Article 274. It must therefore be able to closely circumscribe the action of each executive agency and maintain real control over its operation, particularly its governing bodies.
- (9) This means that the Commission must have the power to decide to create (and, where appropriate, abolish) an executive agency in accordance with rules laid down by the legislator. Since the decision to set up an executive agency is a measure of general scope within the meaning of Article 2 of Council Decision 1999/468/EC of 28 June 1999 laying down the procedures for the exercise of implementing powers conferred on the Commission⁽¹⁾, such decisions should be adopted by use of the regulatory procedure provided for in Article 5 of that Decision.
- (10) The Commission must also be able to appoint both the members of the steering committee of each executive agency and its director, to ensure that in delegating tasks which are its own prerogative to an executive agency, the Commission does not thereby relinquish control of it.
- (11) The activities performed by an executive agency must also fully comply with the programming that the Commission defines for the Community programmes which the agency is involved in managing. The agency's annual work programme must therefore be subject to the Commission's approval.

⁽¹⁾ OJ L 184, 17.7.1999, p. 23.

(12) To ensure that externalisation is effective and that full benefit is drawn from the expertise which an executive agency can offer, the Commission must be allowed to delegate to it all or part of the implementing tasks for one or more Community programmes, except for those demanding discretionary powers in translating political choices into action. Tasks which may be delegated include managing all or some of the phases in the lifetime of a given project, executing the budget, gathering and processing information to be passed on to the Commission, and preparing recommendations for the Commission.

(13) Since the budget of an executive agency would be intended to finance only its operating costs, its revenue should consist chiefly of a percentage, to be determined by the Budgetary Authority, of the financial allocation to the Community programme which the agency is involved in managing.

(14) In order to protect the scope of Article 274 of the Treaty, the operating appropriations of the Community programmes which an executive agency is involved in managing must continue to be entered in the general budget of the European Union and must be implemented by direct charging to the general budget. The financial operations relating to these appropriations must therefore be carried out in accordance with the Financial Regulation governing the general budget of the European Communities.

(15) It should also be possible to entrust an executive agency with tasks relating to the management of programmes that are financed from sources other than the general budget of the European Union. In such cases, this Regulation should apply, subject to specific provisions in the legal bases of the programmes concerned.

(16) The objective of transparency and reliability in the management of executive agencies requires that internal and external checks be made on their operation, that agencies be made accountable for their actions and that the public should have access to the documents they hold, on terms and within limits similar to those referred to in Article 255 of the Treaty.

(17) Each executive agency must collaborate intensively and continuously with the Commission departments responsible for the Community programmes that it is involved in managing. To facilitate this collaboration as much as possible, each executive agency should be located at the place where the Commission departments are sited.

(18) The Treaty provides for no powers for the adoption of this Regulation other than those conferred by Article 308,

HAS ADOPTED THIS REGULATION:

Article 1

Scope

This Regulation defines the statute of executive agencies to which the Commission, under its own control and responsibility, may entrust certain tasks relating to the management of Community programmes.

Article 2

Definitions

For the purposes of this Regulation:

- (a) 'Executive agency' means a legal entity established in accordance with this Regulation,
- (b) 'Community programme' means any operation or set of operations or other initiative which the relevant legal basis or budgetary authorisation requires to be implemented by the Commission for the benefit of one or more categories of specific beneficiaries, by committing expenditure.

Article 3

Creation and winding-up of executive agencies

1. The Commission may decide to set up an executive agency with a view to entrusting it with certain tasks relating to the management of one or more Community programmes. That decision may set the duration of existence of the agency.
2. Where the Commission considers that it no longer needs the services of an executive agency which it has created, it may decide to wind it up. In such cases, the Commission shall appoint two liquidators to liquidate the agency. In the same decision, the Commission shall specify the conditions on which the executive agency is to be liquidated. The net assets after liquidation shall be transferred to the general budget of the European Union.
3. The Commission shall adopt the decisions referred to in paragraphs 1 and 2 in accordance with the procedure laid down in Article 23(2) hereof.
4. All executive agencies set up under paragraph 1 must comply with this Regulation.

Article 4

Legal status

1. An executive agency is a Community body and has a public service mission.

2. An executive agency shall be a legal entity in its own right. In each of the Member States, it shall enjoy the most extensive legal capacity accorded to legal entities under national law. It may, in particular, acquire or dispose of movable and immovable property and be a party to legal proceedings.

Article 5

Headquarters

An executive agency shall have its headquarters in one of the places where the Commission departments are located. It may decide to set up branch offices, both inside and outside the territory of the Member States, if this will serve to improve the performance of its tasks in implementing the Community programmes it is called on to manage.

Article 6

Tasks

To attain the object stated in Article 3(1), the Commission may entrust an executive agency with any tasks required to implement a Community programme, except for those demanding discretionary powers in translating political choices into action.

In particular, executive agencies may be entrusted with the following tasks:

- (a) drawing up recommendations to the Commission about the implementation of a Community programme;
- (b) managing some or all of the phases in the lifetime of specific individual projects in the context of implementing a Community programme, and carrying out the necessary checks to that end, by adopting the relevant decisions where the Commission has empowered it to do so;
- (c) adopting budget execution acts concerning both revenue and expenditure in implementation of a Community programme, and all other related actions, where the Commission has empowered it to do so;
- (d) gathering, analysing and passing on to the Commission all the information needed to guide the implementation of a Community programme.

The terms, criteria, parameters and procedures with which an executive agency must comply when performing the tasks referred to above and the details of the controls to be applied by the Commission departments responsible for Community programmes which an agency is involved in managing shall be defined by the Commission in the instrument of delegation.

Article 7

Structure

1. An executive agency shall be managed by a steering committee and a director.
2. An executive agency's director shall have authority over its staff.

Article 8

Steering Committee

1. Each steering committee shall consist of five members appointed by the Commission.
2. The term of office of the members of the steering committee shall be at least two years. The appointment may be renewed. On expiry of their term of office, or should they resign, the members shall remain in office until their appointment is renewed or a replacement has been appointed.
3. The steering committee shall choose a chairperson and vice-chairperson from among its members.
4. The steering committee shall meet when convened by the chairperson, at least twice a year. It may also be convened at the request of its members, by at least a simple majority, or at the request of the director.
5. Any member of the steering committee unable to attend a meeting may be represented by another member specially empowered for the meeting concerned. Each member may represent only one other member. Should the chairperson be unable to attend, the steering committee shall be chaired by the vice-chairperson.
6. The steering committee's decisions shall be adopted by a simple majority of votes. In the event of a tie, the chair shall have the casting vote.

Article 9

Tasks of the steering committee

1. Each steering committee shall adopt its own rules of procedure.
2. On the basis of a draft submitted by the director after approval by the Commission, the steering committee shall adopt the executive agency's annual work programme no later than the beginning of each year. The work programme must comply with the programming defined by the Commission in accordance with the legal acts establishing the Community programmes which the executive agency is involved in managing.

The annual work programme may be amended during the year following the same procedure, in particular to take account of Commission decisions on the Community programmes concerned. The operations included in the annual work programme shall be accompanied by an estimate of the necessary expenditure.

3. The steering committee shall adopt the executive agency's operating budget in accordance with the procedure laid down in Article 13 hereof.

4. The steering committee shall obtain the Commission's agreement before deciding to accept any legacies, gifts and grants from sources other than the Community.

5. The steering committee may decide to set up branch offices of the executive agency as referred to in Article 5 hereof.

6. The steering committee shall adopt any special rules needed to implement the right of access to the executive agency's documents in accordance with Article 22(1) hereof.

7. No later than 31 March each year, the steering committee shall adopt and present to the Commission an annual report on the activities of the executive agency during the previous year and their financing.

8. The steering committee shall perform the other tasks entrusted to it by this Regulation.

Article 10

Director

1. The Director of the agency shall be appointed by the Commission, and shall be an official within the meaning of the rules and regulations applicable to officials and other servants of the European Communities.

2. The director shall be appointed for a term of four years. The appointment may be renewed. After receiving an opinion of the steering committee, the Commission may remove the director from office before expiry of this term of office.

Article 11

Tasks of the director

1. The director shall represent the executive agency. He or she shall be responsible for its management.

2. The director shall prepare the work of the steering committee, in particular the draft annual work programme of the executive agency. The director shall participate, without voting, in the work of the steering committee.

3. The director shall ensure that the annual work programme of the executive agency is implemented. In particular, the director shall be responsible for performance of the tasks referred to in Article 6 and shall adopt the relevant decisions to that effect. The director shall act as the executive agency's delegated authorising officer for executing the operational appropriations relating to the programmes which the agency is involved in managing, where the Commission has empowered the agency to perform budget execution tasks.

4. The director shall draw up the provisional statement of revenue and expenditure and, as authorising officer, shall execute the executive agency's operating budget in accordance with the Financial Regulation as referred to in Article 15 hereto.

5. The director shall be responsible for preparing and publishing the reports which the executive agency must present to the Commission. This includes the annual report on the activities of the executive agency referred to in Article 9(7) and all other reports, of a general or specific nature, which the Commission asks the executive agency to produce.

6. The director shall be empowered under the arrangements applicable to other servants of the European Communities to act vis-à-vis the staff of the executive agency as the authority authorised to conclude employment contracts. The director shall be in charge of all other matters relating to the staff of the executive agency.

Article 12

Operating budget

1. All revenue and expenditure of an executive agency shall be the subject of forecasts for each financial year (identical with the calendar year) and shall be entered in its operating budget, which shall include the establishment plan submitted to the Budgetary Authority. The establishment plan, consisting exclusively of temporary posts, shall specify the number, grade and category of the staff employed by the executive agency during the financial year concerned.

2. The revenue and expenditure of the executive agency's operating budget shall be in balance.

3. An executive agency's revenue shall include a grant entered in the general budget of the European Union, without prejudice to other revenue.

Article 13

Preparation of the operating budget

1. Each year the director shall draw up a draft operating budget for the executive agency, covering the agency's running costs for the following financial year, and submit it to the steering committee.

2. No later than 1 March each year, the steering committee shall adopt the draft operating budget for the following year and submit it to the Commission.

3. On the basis of this draft budget and in the light of the Commission's programming for the Community programmes which the executive agency is involved in managing, the Commission shall propose, as part of the annual budget procedure, the annual grant to the executive agency's operating budget as a specified percentage of the annual financial allocation to the programmes concerned.

4. At the beginning of each budget year, the steering committee shall adopt the executive agency's operating budget, on the basis of the annual grant thus determined by the competent Budgetary Authority, at the same time as it adopts the annual work programme, adjusting the budget in accordance with the different contributions granted to the executive agency and any funds from other sources.

Article 14

Execution and discharge of the operating budget

1. The director shall execute an executive agency's operating budget.
2. No later than 31 March each year, the director shall submit detailed accounts to the European Parliament, the Court of Auditors, the Commission and the steering committee showing all the revenue and expenditure for the previous budget year.
3. The European Parliament shall grant discharge to an executive agency for the execution of its budget no later than 30 April of year n+2.

Article 15

Financial regulation applying to the operating budget

The financial regulation applicable to the operating budget of the executive agency shall be adopted by the Commission, after receiving the opinion of the Court of Auditors, in accordance with the procedure laid down in Article 23(2) and in compliance with Article 142 of the Financial Regulation applicable to the general budget of the European Union ⁽¹⁾.

Article 16

Financial regulation applying to operating appropriations

1. Where the Commission has delegated tasks to the executive agency relating to the budget execution of operating appropriations for Community programmes under Article 6(c), such appropriations shall be entered in the general budget of the European Union and shall be executed by direct charging to that budget.
2. The director shall act as the executive agency's delegated authorising officer for executing these operating appropriations and shall comply to that end with the obligations laid down in the Financial Regulation applicable to the general budget of the European Communities.

Article 17

Programmes financed from sources other than the general budget

Articles 13 and 16 shall apply without prejudice to the specific provisions laid down in the legal bases of programmes financed from sources other than the general budget of the European Union.

Article 18

Staff

1. An executive agency's staff shall be subject to the rules and regulations applicable to officials and other servants of the

European Communities. The steering committee, in agreement with the Commission, shall adopt the necessary implementing rules.

2. An executive agency's staff shall consist partly of Community officials seconded by the Institutions to the executive agency as temporary officials, and partly of other servants recruited by the executive agency.

3. The Protocol on the privileges and immunities of the European Communities shall apply to both the executive agency and its staff as referred to in paragraph 2.

Article 19

Supervision

1. The Commission's internal auditor and financial controller shall enjoy the same powers and perform the same tasks with regard to an executive agency as to the Commission's departments.

The auditor shall report findings and recommendations to both the Commission and the executive agency, each of which shall implement such recommendations according to its respective powers.

2. As soon as an executive agency is created it shall subscribe to the inter-institutional agreement on internal investigations conducted by the European Anti-Fraud Office (OLAF) ⁽²⁾. The steering committee shall formalise this assent and adopt the provisions needed to facilitate OLAF's conduct of its internal inquiries.

3. The Court of Auditors shall scrutinise an executive agency's accounts in accordance with Article 248 of the Treaty.

4. All acts of an executive agency, in particular all decisions adopted and contracts concluded by it, must provide explicitly that the Commission's internal auditor, OLAF and the Court of Auditors may inspect files and, where necessary, make on-the-spot checks, including at the premises of final beneficiaries of funds and, where applicable, the intermediaries that distribute them.

Article 20

Liability

1. The contractual liability of an agency shall be governed by the law applicable to the contract in question.

2. In the case of non-contractual liability, an executive agency shall make good any damage caused by the agency or its servants in the performance of their duties, in accordance with the general principles common to the laws of the Member States. The Court of Justice shall have jurisdiction in disputes relating to compensation for any such damage.

⁽¹⁾ OJ L 356, 31.12.1977, p. 1. Regulation last amended by Council Regulation (EC, ECSC, Euratom) No 2673/1999.

⁽²⁾ OJ L 136, 31.5.1999, p. 15.

*Article 21***Legality of acts**

The Court of Justice shall monitor the legality of acts of an executive agency intended to have binding legal effect on the same terms and conditions as laid down in Article 230 of the Treaty relating to the control of legality of the acts of the Commission.

*Article 22***Access to documents and confidentiality**

1. All citizens of the European Union and all physical and legal persons resident in or having their head office in a Member State shall have right of access to the documents of an executive agency subject to the same conditions and limits as those laid down in Regulation (EC) No .../... of the European Parliament and of the Council on access to documents of ...⁽¹⁾.

An agency's steering committee shall adopt any provisions needed to implement such right of access no later than during the first year after the creation of the executive agency.

2. The members of the steering committee, the director and members of staff and all persons involved in the activities of an executive agency shall be required, even after termination of their appointments, not to disclose information which, by its nature, is covered by confidentiality.

*Article 23***Committee procedure**

1. The Commission shall be assisted by a Committee for Executive Agencies, composed of representatives of the Member States and chaired by a representative of the Commission.

2. Where reference is made to this paragraph, the regulatory procedure provided for in Article 5 of Decision 1999/468/EC shall apply, subject to Article 7 of that Decision.

3. The period provided for in Article 5(6) of Decision 1999/468/EC shall be three months.

*Article 24***Entry into force**

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Communities*.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

⁽¹⁾ Proposal for a Regulation of the European Parliament and of the Council regarding public access to European Parliament, Council and Commission documents (COM(2000)30 final/2, 21.2.2000).