# Proposal for a Regulation of the European Parliament and of the Council amending Regulation (EC) No 178/2002 as regards the budgetary and financial rules applicable to the European Food Safety Agency and access to the Agency's documents

(2002/C 331 E/18)

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*(Submitted by the Commission on 17 July 2002)*

THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Articles 37, 95, 133 and Article 152(4)(b) thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the Economic and Social Committee,

Having regard to the opinion of the Committee of the Regions,

Acting in accordance with the procedure referred to in Article 251 of the Treaty,

Whereas:

(1) The provisions of Regulation (EC) No 178/2002 of the European Parliament and of the Council of 28 January 2002 laying down the general principles and requirements of food law, establishing the European Food Safety Authority and laying down procedures in matters of food safety [1] should be harmonised with Council Regulation (EC, Euratom) No ... of ... on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185 thereof.

(2) The general principles and limits governing right of access to documents provided for in Article 255 of the Treaty have been laid down by Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents [2].

(3) When Regulation (EC) No 1049/2001 was adopted, the three institutions agreed in a joint declaration that the agencies and similar bodies should implement rules in line with that Regulation.

(4) Appropriate provisions should therefore be included in Regulation (EC) No 178/2002 to make Regulation (EC) No 1049/2001 applicable to the European Food Safety Authority, as should a clause guaranteeing a right of appeal against a refusal of access to documents.

(5) It would be useful to clarify the rules for the conditions and procedures applying to the renewal of the term of office of the Executive Director and to harmonise the rules for all the Community bodies for which re-appointment is possible.

(6) Regulation (EC) No 178/2002 should therefore be amended accordingly,

HAVE ADOPTED THIS REGULATION:

*Article 1*

Regulation (EC) No 178/2002 is amended as follows:

1. Article 25(9) is replaced by the following:

'9. The financial rules applicable to the Authority shall be adopted by the Management Board after the Commission has been consulted. They may not depart from the framework Financial Regulation adopted by the Commission under Article 185 of Council Regulation (EC, Euratom) No ... (hereinafter "the general Financial Regulation") unless specifically required for the Authority's operation and with the Commission's prior consent.'

2. The first sentence of Article 26(1) is replaced by the following:

'The Executive Director shall be appointed by the Management Board, on the basis of a list of candidates proposed by the Commission after an open competition, following publication in the Official Journal of the European Communities and elsewhere of a call for expressions of interest. This appointment shall be for a period of five years, which, on a proposal from the Commission, may be renewed for one further period not exceeding five years.'

Article 26 is amended as follows:

(a) paragraph 2(f) is replaced by the following:

'(f) the preparation of the Authority's statement of estimates of revenue and expenditure, and the execution of its budget;'

[1] OJ L 31, 1.2.2002, p. 1.

[2] OJ L 145, 31.5.2001, p. 43.

(b) Article 26(3) is replaced by the following:

'3. Each year, the Executive Director shall submit to the Management Board for approval:

(a) a draft general report covering all the activities of the Authority in the previous year;

(b) draft programmes of work.

The Executive Director shall, following adoption by the Management Board, transmit the programmes to the European Parliament, the Council, the Commission and the Member States, and shall have them published.

The Executive Director shall, following adoption by the Management Board and by no later than 15 June, transmit the Authority's general report to the European Parliament, the Council, the Commission, the Court of Auditors, the Economic and Social Committee and the Committee of the Regions, and shall have it published.'

(c) Paragraph 4 is deleted.

3. Article 41 is replaced by the following:

'*Article 41*

**Access to documents**

Regulation (EC) No 1049/2001 of the European Parliament and of the Council shall apply to documents held by the Authority.

The Management Board shall adopt arrangements for implementing Regulation (EC) No 1049/2001 within six months of entry into force of this Regulation.

Decisions taken by the Authority under Article 8 of Regulation (EC) No 1049/2001 may be appealed by means of a complaint to the Ombudsman or an action before the Court of Justice of the European Communities, under Articles 195 and 230 of the EC Treaty respectively.'

4. Article 43(5) is replaced by the following:

'5. By 31 March at the latest each year the Management Board, on the basis of a draft drawn up by the Executive Director, shall produce a statement of estimates of revenue and expenditure for the Authority for the following financial year. This statement of estimates, which shall include a draft establishment plan together with the provisional work programme, shall be transmitted by the Management Board to the Commission and to the countries with which the Community has concluded agreements in accordance with Article 49.

On the basis of this statement of estimates, the Commission shall enter the corresponding amounts in the preliminary draft general budget of the European Communities, which it shall submit to the European Parliament and the Council (hereinafter referred to as "the budgetary authority") in accordance with Article 272 of the Treaty.

The budgetary authority shall determine the appropriations available for the subsidy to the Authority.

The budgetary authority shall adopt the establishment plan for the Authority.'

5. Article 44 is replaced by the following:

'*Article 44*

1. The Executive Director shall implement the Authority's budget.

2. The Commission's internal auditor shall exercise the same powers over the Authority as over Commission departments.

3. By 1 March at the latest following each financial year, the Authority's accounting officer shall communicate the provisional accounts to the Commission's accounting officer together with a report on the budgetary and financial management for that financial year. The Commission's accounting officer shall consolidate the provisional accounts of the institutions and decentralised bodies within the meaning of Article 128 of the general Financial Regulation.

4. By 31 March at the latest following each financial year, the Commission's accounting officer shall transmit the Centre's provisional accounts to the Court of Auditors, together with a report on the budgetary and financial management for that financial year. The report on the budgetary and financial management for the financial year shall also be transmitted to the European Parliament and the Council.

5. On receipt of the Court of Auditors' observations on the Authority's provisional accounts, pursuant to Article 129 of the general Financial Regulation, the Executive Director shall draw up the Authority's final accounts under his own responsibility and transmit them to the Management Board for an opinion.

6. The Management Board of the Authority shall deliver an opinion on the Authority's final accounts.

7. The Executive Director shall, by 1 July at the latest following each financial year, transmit the final accounts to the European Parliament, the Council, the Commission and the Court of Auditors, together with the Management Board's opinion.

8. The final accounts shall be published.

9. The Authority's Executive Director shall send the Court of Auditors a reply to its observations by 30 September at the latest. He shall also send this reply to the Management Board.

10. The European Parliament, on a recommendation from the Council acting by a qualified majority, shall, before 30 April of year N+2, give a discharge to the Executive Director in respect of the implementation of the budget for year N.'

*Article 2*

This Regulation shall enter into force on the 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.