COMMISSION IMPLEMENTING DECISION (EU) 2022/219

of 11 February 2022

establishing rules of procedure for the review, pursuant to Article 22(1) of Council Regulation (EC) No 58/2003, of the legality of acts of executive agencies which injure a third party and have been referred to the Commission by any person directly or individually concerned

THE EUROPEAN COMMISSION,

Having regard to the Treaty on the Functioning of the European Union,

Having regard to Council Regulation (EC) No 58/2003 ([1]), and in particular Article 22(1) thereof,

Whereas:

(1) Pursuant to Article 22(1) of Regulation (EC) No 58/2003, the Commission may be asked to review the legality of any act of an executive agency which injures a third party.

(2) After hearing the arguments put forward by the interested third party and those of the executive agency concerned, the Commission must take a decision within 2 months.

(3) In its final decision under Article 22(3) of Regulation (EC) No 58/2003, the Commission either upholds the executive agency's act or decides that the executive agency must modify it (either in whole or in part).

(4) The executive agency concerned must take the necessary measures to comply with the Commission's decision under Article 22(4) of Regulation (EC) No 58/2003.

(5) Following its assessment, the Commission may suspend the implementation of the act at issue or prescribe interim measures in case the rights of the party instituting the legality review risk being jeopardised.

(6) Building up on the experience gained, it is necessary to establish rules of procedure for the legality review of acts of executive agencies pursuant to Article 22(1) of Regulation (EC) No 58/2003.

(7) These rules of procedure shall not apply to review procedures undertaken by the Commission on its own initiative under Article 22(2) of Regulation (EC) No 58/2003, nor procedures instituted by Member States under Article 22(1) of that Regulation.

(8) These rules of procedure shall be complemented by the Annex to the Commission Decision establishing guidelines for the establishment and operation of executive agencies financed from the EU budget and other sources,

HAS ADOPTED THIS DECISION:

Article 1

The rules of procedure for the review by the Commission of the legality of acts of executive agencies pursuant to Article 22(1) of Regulation (EC) No 58/2003 are set out in the Annex.

Article 2

This Decision shall enter into force on the twentieth day following that of its publication in the *Official Journal of the European Union*.

([1]) OJ L 11, 16.1.2003, p. 1.

Done at Brussels, 11 February 2022.

For the Commission
The President
Ursula VON DER LEYEN

ANNEX

Rules of procedure for the review, pursuant to Article 22(1) of Council Regulation (EC) No 58/2003, of the legality of acts of executive agencies which injure a third party and have been referred to the Commission by any person directly or individually concerned

Article 1

Subject matter

1. These rules of procedure shall apply to proceedings instituted by a directly or individually concerned person (the 'complainant') under Article 22(1) of Regulation (EC) No 58/2003, seeking a review of the legality of an act referred to in Article 2(1) of these rules of procedure (the 'legality review procedure').

2. These rules of procedure do not cover review procedures undertaken by the Commission on its own initiative under Article 22(2) of Regulation (EC) No 58/2003, nor procedures instituted by Member States under Article 22(1) of that Regulation.

Article 2

Scope

1. The legality review procedure shall cover the following acts undertaken by an executive agency, in its capacity as an administrative authority:

(a) rejections of a grant application;

(b) rejections of a tender or a request to participate in a tender submitted in a procurement procedure;

(c) rejections of an application submitted in a prize contest;

(d) refusals to validate a legal entity or specific legal status in the Participants Register, as well as assessments of financial or operational capacity of applicants.

2. The legality review procedure shall be limited to the verification of the following:

(a) legal and procedural errors, such as errors in the evaluation procedure or insufficient motivation of the act subject to legality review;

(b) manifest errors of assessment which influence the overall outcome of the act subject to legality review;

(c) factual errors which influence the overall outcome of the act subject to legality review;

(d) misuse of power.

3. The legality review procedure shall not cover issues that are within the executive agency's margin of discretion, such as evaluation of the quality of the proposals, applications or tenders.

Article 3

Competent service

The competent service for the legality review procedure is the Directorate-General responsible for delegating the budget of a programme, or part of a programme, to the executive agency concerned.

Article 4

Acknowledgement of receipt and registration

1. The receipt of the request for legality review shall be confirmed by a registered acknowledgment of receipt.

2. Only complete requests shall be registered. The requests for legality review shall be considered complete where they fulfil all of the following conditions:

(a) they are submitted in writing;

(b) they are transmitted through the administrative channel(s) indicated in the contested act;

(c) they identify the complainant, the contested act and the reasons justifying the review.

3. The request shall comprise maximum 7 000 characters (space, line feed included).

4. If the request is incomplete or exceeds the maximum number of characters set in paragraph 3 of this Article, the competent service shall ask the complainant to complete or adjust it within a 2-week deadline. The registration shall take place after submission of the complete request.

5. If the complainant does not complete or adjust the request within the 2-week deadline, the request shall be considered to have been withdrawn and the file shall be closed.

Article 5

Admissibility of requests

Requests for legality review shall be considered admissible where they fulfil all of the following conditions:

(a) they are submitted by a natural or legal person directly or individually concerned by the contested act;

(b) they are submitted within 1 month of the day on which the complainant learned of the contested act;

(c) they concern acts that fall within the scope of Article 22(1) of Regulation (EC) No 58/2003.

Article 6

Requests for clarification and additional information

1. If the request for legality review is unclear or if additional information is needed, the competent service shall ask the complainant to clarify the request or to submit such additional information within 5 working days.

2. Requests for clarification or additional information shall not justify raising new grounds or arguments, unless those are based on new elements or evidence that the complainant learned about after the submission of the request for legality review.

Article 7

Parallel complaints

1. Where the request for legality review has been submitted in parallel with a request for an internal administrative review procedure within the executive agency and both requests concern the same act of the executive agency, the legality review procedure shall be suspended until the administrative review procedure within the executive agency is completed.

2. If the internal administrative review procedure within the executive agency confirms the contested act, the legality review procedure shall be resumed if the complainant confirms within 1 month from the date of the confirmation of the contested act by the executive agency that he or she maintains the request for legality review.

Where the complainant confirms the request, the legality review procedure shall cover both the initially contested act and the act taken by the executive agency after the internal administrative review procedure.

Where the complainant does not confirm the request, it shall be considered withdrawn and the file shall be closed without further notice.

3. If the internal administrative review procedure within the executive agency does not confirm the contested act, the legality review procedure shall deemed to be devoid of purpose and the file shall be closed without further notice.

Article 8

Suspension and interim measures

1. The legality review procedure shall only suspend the implementation of the contested act if the Commission decides so.

2. Requests for interim measures and suspension of the implementation of the contested act shall be decided by the Commission taking into account the nature of the contested act, the plausibility of the claim and its urgency.

3. The implementation of the contested act shall not be suspended or interim measures shall not be prescribed if the complainant's rights are or can be preserved until the adoption of the legality review decision.

4. If the implementation of the contested act is suspended or interim measures are prescribed, the executive agency shall take all measures necessary to comply with such decisions.

Article 9

Executive agency observations

1. The request for legality review shall be transmitted to the executive agency after its registration. The executive agency shall be invited to submit its observations within 5 working days.

2. Where additional information is needed, the executive agency shall be invited to provide clarifications on its observations.

Article 10

Deadline for decisions

1. The Commission's legality review decision shall be notified to the complainant and the executive agency within 2 months from the day following the registration date or, in case of parallel complaints as set out in Article 7, from the end of the suspension of the request for legality review.

2. A decision notified after the expiry of the 2-month deadline shall replace any implicit rejection as referred to in Article 22(1), third subparagraph, of Regulation (EC) No 58/2003.

Article 11

Assessment and decision-making process

1. Fair, transparent and impartial treatment shall be ensured at all times, with due respect to confidential information. All exchanges shall be done in writing and be limited to the clarification of the submissions. There shall be no hearings.

2. The legality review decision shall be adopted in accordance with Articles 12 to 16 of the Rules of Procedure of the Commission ([1]). All Commission departments with a legitimate interest in the decision shall be consulted through formal interservice consultation in accordance with Article 23 of those Rules of Procedure.

3. The legality of the contested act shall be assessed on the basis of the arguments of both parties.

4. The Commission decision may:

(a) reject the request for legality review as inadmissible;

(b) reject the request for legality review as unfounded because there are no elements indicating that the contested act was unlawful;

(c) reject the request for legality review since the error(s) found did not affect the final outcome of the decision taken by the executive agency;

(d) consider the request for legality review well founded.

5. In the cases referred to in points (a), (b) and (c), the contested act shall be upheld. In the case referred to in point (d), the contested act shall be annulled.

6. The Commission decision shall not cover issues concerning the legality of the contested act not raised by the complainant and only identified by the Commission during the legality review procedure.

7. The Commission decision may include specific instructions to the executive agency on the measures needed for follow-up.

Article 12

Notification and follow-up

1. The Commission shall inform the complainant and the executive agency about the legality review decision.

2. If the Commission annuls the contested act, the executive agency shall promptly take the necessary measures to comply with the decision. The executive agency shall report on the implementation of the decision to the competent service.

3. The implementation shall be monitored and, if needed, supervised by the competent service in accordance with the decision delegating powers to the agency.

([1]) C(2000) 3614 (OJ L 308, 8.12.2000, p. 26).