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COVER NOTE

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| From: | Secretary-General of the European Commission, signed by Mr Jordi AYET PUIGARNAU, Director |
| date of receipt: | 30 October 2015 |
| To: | Mr Jeppe TRANHOLM-MIKKELSEN, Secretary-General of the Council of the European Union |

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| No. Cion doc.: | C(2015) 7554 final |
| Subject: | Commission Delegated Regulation (EU) .../... of 30 October 2015 amending Delegated Regulation (EU) No 110/2014 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council |

Delegations will find attached document C(2015) 7554 final.

Encl.: C(2015) 7554 final



Brussels, 30.10.2015
C(2015) 7554 final

COMMISSION DELEGATED REGULATION (EU) .../...

of 30.10.2015

amending Delegated Regulation (EU) No 110/2014 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE DELEGATED ACT

The adoption of this delegated act follows the adoption of Regulation No XXX/2015 (EU, Euratom) of the European Parliament and of the Council of XX XXX 2015 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (hereinafter "the Financial Regulation").

The amended provisions of Articles 60 and 209 of the Financial Regulation introduce an alignment of the rules on discharge, external audit and annual reporting of the bodies operating under Article 209 of the Financial Regulation with those of the bodies operating under Article 208 of the Financial Regulation.

Article 209 of the Financial Regulation provides for the adoption of a delegated act pursuant to Article 290 of the Treaty on the Functioning of the European Union (hereinafter 'TFEU') on a Model Financial Regulation for public-private partnership bodies which shall lay down the principles necessary to ensure sound financial management of Union funds and which shall be based on Article 60 of the general Financial Regulation.

Some provisions laid down in Delegated Regulation (EU) No 110/2014 should therefore be updated in line with the amended Financial Regulation and Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of the Financial Regulation.

2. CONSULTATIONS PRIOR TO THE ADOPTION OF THE ACT

The proposal has been elaborated taking into account the conclusions of the Round Table of 13 November 2014 on discharge and audit of the Joint Undertakings.

The Commission, when preparing and drawing up this delegated act ensured a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

3. LEGAL ELEMENTS OF THE DELEGATED ACT

The delegated act is made pursuant to Articles 60 and 209 of the amended Financial Regulation. The provisions of the delegated act related to annual reporting, audit of the accounts by external independent auditors and discharge have been aligned with the corresponding provisions of Delegated Regulation (EU) No 1271/2013 which applies to the bodies referred to in Article 208 of the Financial Regulation.

COMMISSION DELEGATED REGULATION (EU) .../...

of 30.10.2015

amending Delegated Regulation (EU) No 110/2014 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council

THE EUROPEAN COMMISSION,

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

Having regard to Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002¹, and in particular Article 209 thereof,

Whereas:

- (1) Regulation (EU, Euratom) No 547/2014 of the European Parliament and of the Council² was accompanied by a joint statement on the separate discharge for Joint Undertakings under Article 209 of the Financial Regulation. In accordance with that statement, Regulation (EU, Euratom) No XXX/2015 of the European Parliament and of the Council³ aligned the rules on external audit and discharge applicable to the public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 (hereinafter ‘PPP bodies’) with those applicable to the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012. It also extended the non-application of the provisions laid down in paragraphs 5 and 6 of Article 60 of Regulation (EU, Euratom) No 966/2012 to the PPP bodies.
- (2) Since the discharge for the implementation of the budget of each PPP body is to be given by the European Parliament, upon recommendation of the Council, to the director of the PPP body, the provisions of Commission Delegated Regulation (EU) No 110/2014⁴ which relate to the reporting obligations of the PPP bodies and to the discharge procedure should be made consistent with the corresponding provisions of

¹ OJ L 298, 26.10.2012, p. 1.

² Regulation (EU, Euratom) No 547/2014 of the European Parliament and of the Council of 15 May 2014 amending Regulation (EU, Euratom) No 966/2012 on the financial rules applicable to the general budget of the Union (OJ L 163, 29.5.2014, p. 18).

³ Regulation (EU, Euratom) No XXX/2015 of the European Parliament and of the Council of [DATE][please insert the full title of the act] (OJ L XX, DD/MM/YYYY, p. XX).

⁴ Commission Delegated Regulation (EU) No 110/2014 on the model financial regulation for public-private partnership bodies referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 38, 7.2.2014, p. 2).

Commission Delegated Regulation (EU) No 1271/2013⁵. In particular, it is necessary to introduce the obligation for each PPP body to provide a consolidated annual activity report which includes comprehensive information on the implementation of its work programme, budget, staff establishment plan, its management and internal control systems. Furthermore, the procedure for drawing up the provisional accounts and approving the final account of the PPP bodies should be aligned to the one laid down in Delegated Regulation (EU) No 1271/2013.

- (3) In line with the new obligation introduced in Article 209(2) of Regulation (EU, Euratom) No 966/2012, which requires that an independent external auditor verify the annual account of the PPP body, the provisions in Delegated Regulation (EU) No 110/2014 should be aligned with the corresponding provisions in Delegated Regulation (EU) No 1271/2013.
- (4) In the award of contracts, the relevant provisions of Regulation (EU, Euratom) No 966/2012 and Commission Delegated Regulation (EU) No 1268/2012⁶ should apply, subject to any specific provision of the constituent instrument of the PPP body or of the basic act of the programme the implementation of which is entrusted to the PPP body in order to ensure a coherent implementation with actions directly managed by the Commission.
- (5) This Regulation should enter into force on the day following that of its publication in the Official Journal of the European Union in order to allow for the timely adoption of the revised financial rules of the PPP bodies in view of their entry into force as of 1 January 2016, and thus to ensure the effective application of the new external audit requirements to the audits of the annual accounts of the PPP bodies for 2016,

HAS ADOPTED THIS REGULATION:

Article 1

Delegated Regulation (EU) No 110/2014 is amended as follows:

- (1) in Article 1, the first paragraph is replaced by the following:

“This Regulation lays down the essential principles on the basis of which the Public-Private Partnership body (hereinafter "PPP body") shall adopt its own financial rules. The financial rules of the PPP body shall not depart from this Regulation except where its specific needs so require and with the Commission's prior consent in accordance with the fourth subparagraph of Article 209(1) of Regulation (EU, Euratom) No 966/2012.”;

- (2) in Article 17, paragraph 4 is replaced by the following:

⁵ Commission Delegated Regulation (EU) No 1271/2013 of 30 September 2013 on the framework financial regulation for the bodies referred to in Article 208 of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council (OJ L 328, 7.12.2013, p. 42).

⁶ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

“4. The authorising officer shall conserve the supporting documents relating to operations carried out for a period of five years from the date of the decision granting discharge in respect of implementation of the budget of the PPP body for the year concerned. Personal data contained in the supporting documents shall be deleted where possible when those data are not necessary for control and audit purposes. In any event, as regards the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply.”;

(3) Article 20 is replaced by the following:

“Article 20

Annual reporting

1. The authorising officer shall report annually to the governing board on the performance of his or her duties in the form of a consolidated annual activity report containing:

(a) information on:

(i) the implementation of the PPP body's annual work programme, budget and staff resources;

(ii) management and internal control systems including the summary of number and type of internal audits carried out by the internal auditor, the internal audit capabilities, the recommendations made and the action taken on those recommendations and on the recommendations of previous years, as referred to in Articles 26 and 28;

(iii) any observations of the Court of Auditors and the actions taken on those observations;

(iv) the accounts and the report on budgetary and financial management without prejudice to Articles 39, 41 and 42;

(b) a declaration of the authorising officer stating whether he or she has a reasonable assurance that unless otherwise specified in any reservations related to defined areas of revenue and expenditure:

(i) the information contained in the report presents a true and fair view;

(ii) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;

(iii) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The consolidated annual activity report shall indicate the results of the operations by reference to the objectives set, the risks associated with the operations, the use made of the resources provided and the efficiency and effectiveness of the internal control systems, including an overall assessment of the costs and benefits of controls.

The consolidated annual report shall be submitted to the governing board for assessment.

2. No later than 1 July each year, the governing board shall send the consolidated annual activity report together with its assessment of it to the Court of Auditors, the Commission, the European Parliament and the Council.

3. Additional reporting requirements may be laid down in the constituent instrument in duly justified cases, in particular when it is required by the nature of the field in which the body operates.”;

(4) in Article 33, paragraph 1 is replaced by the following:

“1. As regards procurement, Title V of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to paragraphs 3 to 6 of this Article and any specific provisions of the constituent instrument or the basic act of the programme the implementation of which is entrusted to the PPP body.”;

(5) Article 35 is replaced by the following:

“Article 35

Grants

As regards grants, Title VI of Regulation (EU, Euratom) No 966/2012 and Delegated Regulation (EU) No 1268/2012 shall apply subject to any specific provisions of the constituent instrument or of the basic act of the programme the implementation of which is entrusted to the PPP body.”

(6) in Article 39, the third paragraph is replaced by the following:

“Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the PPP body shall send the report on budgetary and financial management to the European Parliament, the Council, the Commission and the Court of Auditors by 31 March of the following financial year.”;

(7) Article 43 is replaced by the following:

“Article 43

Provisional accounts and approval of the final accounts

1. Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the PPP body shall send the provisional accounts to the accounting officer of the Commission and to the Court of Auditors by 1 March of the following year.

In the case referred to in the first subparagraph, the accounting officer of the PPP body shall also send by 1 March of the following year a reporting package to the accounting officer of the Commission, in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

2. The Court of Auditors shall, by 1 June of the following year at the latest, make its observations on the provisional accounts of the PPP body.

On receiving the Court of Auditor's observations on the provisional accounts, the accounting officer shall draw up the final accounts of the PPP body. The director shall send the final accounts to the governing board which shall issue an opinion on them.

Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the accounting officer shall send the final accounts and the opinion of the governing board to the accounting officer of the Commission, the Court of Auditors, the European Parliament and the Council, by 1 July of the following financial year. In such case the accounting officer of the PPP body shall also send by 1 July a reporting package to the accounting officer of the Commission in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

Where the accounts of the PPP body are required to be consolidated in accordance with the accounting rules referred to in Article 143 of Regulation (EU, Euratom) No 966/2012, the accounting officer of the PPP body shall also send to the Court of Auditors, with a copy to the accounting officer of the Commission, at the same date as the transmission of the final accounts, a representation letter covering those final accounts.

The final accounts shall be accompanied by a note drawn up by the accounting officer in which the latter declares that the final accounts were prepared in accordance with this chapter and with the applicable accounting principles, rules and methods.

The final approved accounts of the PPP body shall be published in the Official Journal of the European Union by 15 November of the following year.

The Director of the PPP body shall send to the Court of Auditors a reply to the observations made in its annual report by 30 September of the following year at the latest. The replies of the PPP body shall be sent to the Commission at the same time.”;

- (8) the heading of Chapter 9 is replaced by the following:

“CHAPTER 9

EXTERNAL AUDIT, DISCHARGE AND COMBATTING FRAUD”;

- (9) Articles 46 and 47 are replaced by the following:

“Article 46

External audit

1. An independent external auditor shall verify that the annual accounts of the PPP body properly present the income, expenditure and financial position of the PPP body prior to the consolidation in the final accounts of the PPP body.

Unless otherwise provided for in the constituent instrument, the Court of Auditors shall prepare a specific annual report on the PPP body in line with the requirements of Article 287(1) of the Treaty on the Functioning of the European Union. In preparing the report, the Court shall consider the audit work performed by the independent external auditor referred to in the first subparagraph and the action taken in response to his or her findings.

2. The PPP body shall send to the Court of Auditors the budget of the PPP body, as finally adopted. It shall inform the Court of Auditors, as soon as possible, of all decisions and acts adopted pursuant to Articles 6, 7 and 10.

3. The scrutiny carried out by the Court of Auditors shall be governed by Articles 158 to 163 of Regulation (EU, Euratom) No 966/2012.

Article 47

Timetable of the discharge procedure

1. The European Parliament, upon a recommendation from the Council, shall, before 15 May of year n+2 except where otherwise provided in the constituent instrument, give a discharge to the director in respect of the implementation of the budget for year n. The director shall inform the governing board of the observations of the European Parliament contained in the resolution accompanying the discharge decision.

2. If the time-limit provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the director of the reasons for the postponement.

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

(10) the following Articles 47a and 47b are inserted:

“Article 47a

The discharge procedure

1. The discharge decision shall cover the accounts of all the revenue and expenditure of the PPP body, the budget result and the assets and liabilities of the PPP body shown in the financial statement.

2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements of the PPP body. It shall also examine the annual report drawn up by the Court of Auditors, together with the replies of the director of the PPP body, any relevant special reports by the Court of Auditors in respect of the financial year concerned and the Court of

Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

3. The director shall submit to the European Parliament, at its request, in the same manner as provided for in Article 165(3) of Regulation (EU, Euratom) No 966/2012 any information required for the smooth application of the discharge procedure for the financial year concerned.

Article 47b

Follow-up measures

1. The director shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.

2. At the request of the European Parliament or the Council, the director shall report on the measures taken in the light of the observations and comments referred to paragraph 1. The director shall send a copy thereof to the Commission and the Court of Auditors.”;

(11) in Article 48, paragraph 1 is replaced by the following:

“1. The PPP body shall grant Commission staff and other persons authorised by it, as well as the Court of Auditors, access to its sites and premises and to all the information, including information in electronic format, needed in order to conduct their audits.”;

(12) Article 50 is replaced by the following:

“Article 50

Adoption of the PPP body's financial rules

1. Without prejudice to paragraph 2, each PPP body referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 shall adopt new financial rules within nine months of the date on which the PPP body falls within the scope of Article 209 of that Regulation.

2. Each PPP body referred to in Article 209 of Regulation (EU, Euratom) No 966/2012 which has already adopted its financial rules in accordance with this Regulation shall revise them in view of their entry into force on 1 January 2016.”.

Article 2

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

It shall apply from 1 January 2016.

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

Done at Brussels, 30.10.2015

For the Commission
The President
Jean-Claude JUNCKER