Implementation of the Financial Regulation by agencies

1) State of play de jure and in practice

A Financial Regulation sets out all the financial principles and rules which govern the preparation and adoption of the budget of an agency, as well as the implementation, control and discharge of this budget.

Each agency adopts its own Financial Regulation, which must not depart from the Framework Financial Regulation (FFR)\(^1\) applicable to Union bodies in the sense of Article 185\(^2\) of the general Financial Regulation (FR)\(^3\), unless the Commission has consented to specific derogation(s). It should be noted that specific provisions foreseen in an agency founding Regulation, which may foresee financial rules departing from the FFR, are not considered as formal derogations in the sense of Article 185 FR because they have been adopted by the legislative authority and therefore do not require Commission endorsement. Moreover, agencies which do not fulfil all the criteria of Article 185, in particular agencies which do not receive any contribution from the EU budget, are not obliged to respect the FFR. This is the case of CPVO and OHIM for former 1\(^{st}\) pillar agencies (although OHIM voluntarily aligns its Financial Regulation to the FFR)\(^4\), as well as all intergovernmental agencies financed directly by Member States (EDA, EUSC and ISS). Finally, agencies which are partially financed from fees and charges also need to respect the FFR and their respective fees and charges regulation.

In practice, the Commission adopts the FFR, and each agency then sends its draft Financial Regulation to DG Budget for consent. If no formal derogation is requested, DG Budget simply acknowledges that the draft Financial Regulation can be formally adopted by the Agency (usually the Management Board, the Budget Committee in the case of OHIM). If a formal derogation is requested, a Commission Decision granting the respective derogation is necessary before the agency can adopt its Financial Regulation. Since the last review of the FFR in 2008, only three regulatory agencies

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2 In accordance with Article 185 of the general Financial Regulation, agencies or Community bodies which must respect the Framework Financial Regulation are those:
   - set up by the Communities;
   - having legal personality;
   - and which receive contributions from the EU budget.
4 While OHIM in March 2009 asked the Commission for consent to its revised Financial Regulation, CPVO, according to its founding act, has no obligation to consult the Commission on its Financial Regulation which must, as far as possible, correspond to the provisions of the general Financial Regulation and depart from them only when the specific requirements of the individual operation of the Office so dictate.
have formal derogations from it\textsuperscript{5}. Agencies implement their budget in accordance with their own Financial Regulation, and resort to Commission support services whenever they need clarification or interpretation of some provisions of the FFR or their own Financial Regulation, as Commission services do.

2) Critical analysis of the issue at hand

The Financial Regulation applicable to the general budget of the European Communities and the Framework Financial Regulation (FFR) are among those regulations that provide for the most relevant control but at the same time also set most administrative requirements for EU agencies.\textsuperscript{6} The latter cover the full budget cycle of agencies, from the establishment (Art 27-32 of the FFR) and implementation (Art 33-69 and 74 of the FFR) of the budget to the presentation of the accounts (Art 76-90 of the FFR) and the audit (Art 71-73 and 91-93 of the FFR, Art 140 of the FR) and discharge procedure (Art 94-96 of the FFR). On average, administrative staff represents around 30\% of agencies' total staff.

Using ABAC facilitates compliance with the FFR

One of the advantages of agencies using the ABAC system provided by the Commission is that all updates concerning changes in the regulations are done by the Commission, thus ensuring that the agencies' accounts will be accepted. In addition, the system can be further tailored to agencies' specificities (e.g. by creating new modules) in cooperation with agencies themselves.\textsuperscript{7}

Flexibility in implementing the Financial Regulations

The obligations of the Financial Regulations sometimes hinder agencies' capacity to mobilize internal resources flexibly, which entails a significant risk in terms of cost-effectiveness. A part of this problem is solved by using the available possibilities of derogation with prior approval of the Commission, but another part of the problem remains unsolved because the margins of manoeuvre are far from fully used.\textsuperscript{8} Where the respect of FFR provisions raises serious difficulties (see the reports of the Court of auditors) or requires a significant amount of resources, it may be analysed whether the derogations granted could be generalised, on the basis of lessons drawn from their implementation in individual agencies. Some derogations have been already generalised, see footnote 47.

However, the FFR has been recently modified\textsuperscript{9} in order to allow some facilities concerning in particular the transfers' procedure (article 23 FFR), the simplification of the publication of their budgets, the specific provisions applicable to fees and charges (article 59 FFR), the possibility to apply a direct debit system for periodic payments (Article 66 FFR) and the introduction of special rules for procurement taking into account the specificities of agencies.

\textsuperscript{5} CDT (on specific provisions applicable to fees and charges), EASA (on fees and charges considered as a category of assigned revenues), EUROJUST (on public procurement). Europol (on public procurements and operational, strategic and classified information). Commission decision C(2010)3201 granting the derogation to Europol has been adopted on 19/05/2010.

\textsuperscript{6} EP study on common support, point 2.2.2, p. 27

\textsuperscript{7} EP study on common support, point 3.1.2, p. 49-50

\textsuperscript{8} Evaluation 2009, Volume II, point 2.3.2, p. 57-59

\textsuperscript{9} Commission regulation EC, EURATOM No 652/2008
account needs arising from the experience gathered by the existing bodies (Article 74 FFR).

In addition, there are unexploited simplification possibilities. For example, Article 27\textsuperscript{10} of the Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 that regulates the establishment of the budget, as well as Article 76 \textit{et seq.}\textsuperscript{11} concerning the presentation of the accounts, are among those that could be re-examined. In any case, any modification to the provisions of the FFR should be made after a thorough analysis of its impact on the respect of the principles of transparency and accountability. A possible reduction of complexity in these areas would create especially gains for small and young agencies, which are heavily loaded by these requirements.\textsuperscript{12} See also \textit{fiche} 16.

At the same time there are a number of things in the Framework Financial Regulation that cannot be changed (basic principles) – for instance, the control for fraud by OLAF – but some flexibility can be allowed where justified by a specific need in the secondary provisions which concern implementation by the agencies themselves. For instance, agency's assigned revenue is made available as from the moment it is established and not as from the moment when it has been effectively received as

\textsuperscript{10} Article 27 of the Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 that regulates the establishment of the budget

1. The budget shall be established in accordance with the provisions of the constituent instrument of that Union body.

2. In accordance with its constituent instrument, the Union body shall send the Commission an estimate of its revenue and expenditure and the general guidelines underlying that estimate, together with its work programme, by 31 March each year at the latest.

3. The estimate of revenue and expenditure of the Union body shall include:

(a) an establishment plan setting the number of permanent and temporary posts authorised within the limits of the budget appropriations, by grade and by category;

(b) where there is a change in the number of persons in post, a statement justifying the request for new posts;

(c) a quarterly estimate of cash payments and receipts;

(d) information on the achievement of all previously set objectives for the various activities as well as new objectives measured by indicators; evaluation results shall be consulted and referred to as evidence of the likely merits of a proposed budget amendment.

4. As part of the procedure for adopting the general budget, the Commission shall send the Union body's statement of estimates to the budgetary authority and propose the amount of the contribution for the Union body and the number of staff it considers that the body needs.

5. The budgetary authority shall adopt the establishment plan of the Union body and any subsequent amendment thereto in accordance with Article 32(1).

6. The budget and the establishment plan shall be adopted by the management board. They become definitive after final adoption of the general budget setting the amount of the contribution and the establishment plan and if necessary the budget and the establishment plan shall be adjusted accordingly.

\textsuperscript{11} Title VII "Presentation of the accounts and accounting", Chapter 1 "Presentation of the accounts" of the Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 that regulates the establishment of the budget

\textbf{Article 76}

The annual accounts of the Union body shall comprise:

(a) the financial statements of the Union body;

(b) the reports on implementation of the budget of the Union body.

The accounts of the Union body shall be accompanied by a report on budgetary and financial management during the year.

\textsuperscript{12} EP study on common support, point 3.3.5, p. 79
provided in Article 10(2) IR. Furthermore, the maximum amount paid by the imprest account has been reduced for agencies considering their limited budgets.

**Compliance burden diminishes with agency's age**

Newer agencies find it more difficult to cope with the financial regulations and the implementing rules, whereas older agencies generally have fewer problems with implementation. This can largely be explained by the fact that most administrative staff in agencies does not have experience within the institutions and are thus not familiar with the intricacies of implementing EU financial regulations. Thus, there seems to be a learning curve for new agencies – and their new administrative staff.\(^\text{13}\)

\(^{13}\) Evaluation 2009, Volume II, point 2.3.2, p.58