

**Simple Text Version of Opinion of the Court of Auditors on the EFSA
Financial Regulation**

Opinion No 3/2003
concerning the draft financial regulation of the European Food Safety Authority

THE COURT OF AUDITORS OF THE EUROPEAN COMMUNITIES

Having regard to the Treaty establishing the European Community, and in particular Article 248(4) thereof,

Having regard to Article 25 (9) of the Constituent Act¹ of the European Food Safety Authority (hereinafter called "the Authority"), which stipulates that the Management Board of the Authority, "having received the Commission's approval and the opinion of the Court of Auditors, shall adopt the Authority's financial regulation in accordance with the general financial regulation and with the legislative requirements concerning investigations conducted by the European Anti-Fraud Office",

Having regard to the draft Financial Regulation of the Authority (hereinafter called "the Draft") transmitted by a letter from its Executive Director dated 6 February 2003 and received by the Court on 17 February 2003;

Whereas pursuant to Article 185(1) of the general Financial Regulation² the Commission has adopted a framework Financial Regulation³ for the bodies set up by the Communities and having legal personality which actually receive grants charged to the budget (hereinafter called the "Framework Regulation");

Whereas the Authority has been set up by the Communities, has legal personality and actually receives grants charged to the budget;

Whereas in accordance with Article 185(1) of the general Financial Regulation the financial rules of the Authority may not depart from the Framework Regulation except where its specific operating needs so require;

Whereas the Community budget and the budgets of the bodies referred to in Article 185 of the general Financial Regulation are governed by the budgetary principles explicitly set out in the general Financial Regulation and in the Framework Regulation; whereas any departure from compliance with these principles must be justified by an urgent management need, must be proportionate to the intended objective and must not interfere more than is strictly necessary to achieve that objective;

Whereas, in the light of the above, the Court is required to examine the text submitted for its appraisal to check whether it (a) complies with the provisions of the Framework Regulation and departs from it only where its specific operating needs so require and (b) complies with the budgetary principles and

makes provision for no exceptions other than those that are strictly necessary in order to meet the legitimate intended objective.

HAS ADOPTED THE FOLLOWING OPINION:

1. In Article 10 of the Draft, rules concerning the carrying over of appropriations for payment from the differentiated appropriations should be included, as is the case in Article 10(4) of the framework Financial Regulation.
2. In the last sentence of Article 10(1) of the Draft a reference error should be corrected: it should read "in accordance with paragraphs 2 to 7 (instead of 8)".
3. Article 17 of the Draft should spell out the conditions for carrying out operations in national currencies, especially as far as the conversion rate between the euro and other currencies is concerned. The Authority could copy the relevant rules laid down in Article 7 and 8 of the Commission Regulation (EC, Euratom) No 2342/2002⁴ of 23 December 2002 laying down detailed rules for the implementation of the general Financial Regulation.
4. In accordance with Article 21(1) of the Framework Regulation, the Draft should specify the cases where certain amounts may be deducted from requests for payments, invoices or statements, which shall then be passed for payment of the net amount.
5. Article 23(1) of the Draft would allow the Executive Director to make transfers within titles I and II from one chapter to another of the same title up to a total limit of 25 % of the appropriations for the financial year. This provision is contrary to the Framework Regulation, which allows such transfers without prior consultation of the Management Board only within a total limit of 10 %.
6. In Article 30 of the Draft the Authority should not exclude the option of introducing a statement of expenditure set out on the basis of a nomenclature with a classification by purpose. This option is provided by Article 30 of the Framework Regulation.
7. The deadline for informing the financial irregularities panel should be specified in Article 41 of the Draft itself and should not be left for the Implementing Rules, if the Authority feels that the provision of the Framework Regulation ("within a reasonable period") is not sufficient given its specific operating needs.
8. According to Article 100 of the Draft, the regulation shall enter into force "on 1 January 2003 or once the agreement of the European Commission to this

text has been received." This provision is ambiguous. In the Court's opinion, the Draft can be adopted validly only once the approval by the Commission has been actually received (see Article 25(9) of the Constituent Act). A reference to the approval received from the Commission should be made in its preamble.

This opinion was adopted by the Court of Auditors in Luxembourg at its meeting of 10 April 2003.

For the Court of Auditors
Juan Manuel Fabra Vallés
President

¹ 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 matter of food safety(OJ L 31, 1.2.2002, p.1).

² Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities(OJ L 248, 16.9.2002, p. 1).

³ OJ L 357, 31.12.2002, p. 72.

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³ OJ L 357, 31.12.2002, p. 72.

⁴ OJ L 357, 31.12.2002, p.1.