



COMMISSION OF THE EUROPEAN COMMUNITIES

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COMMISSION DECISION

of 05/XI/2007

**delegating powers to the Trans-European Transport Network Executive Agency
with a view to the performance of tasks linked to implementation of the Community
programmes for grants in the field of the trans-European transport network,
comprising in particular implementation of appropriations entered in the Community
budget**

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

having regard to the Treaty establishing the European Community,

having regard to Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for Executive Agencies to be entrusted with certain tasks in the management of Community programmes¹ and in particular Article 6(3) thereof (hereinafter the "Framework Regulation");

having regard to Council Regulation (EC) 2236/1995 of 18 September 1995², laying down general rules for the granting of Community financial aid in the field of trans-European networks, (hereinafter TEN Regulation);

having regard to Commission Decision 2007/60/EC of 26 October 2006 establishing the Trans-European Transport Network Executive Agency, pursuant to Council Regulation (EC) No 58/2003,

Whereas:

- (1) Article 54 of Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the financial regulation applicable to the general budget of the European Communities⁴, (hereinafter "general Financial Regulation"), provides that the Commission may entrust tasks of public authority, and in particular budget implementation tasks to executive agencies, provided that these tasks do not involve a measure of discretion implying political choices.
- (2) Article 55 of that Regulation defines executive agencies as legal persons set up by Commission decision to which powers can be delegated to implement all or part of a Community programme or project on behalf of the Commission and under its responsibility. The same Article makes the creation of such Agencies subject to the

¹ OJ L 11, 16.1.2003, p. 1.

² OJ No L 228, 23.9.1995, p. 1, last amended by Regulation (EC) No 1159/2005 of 6 July 2005, (OJ L 191, 22.7.2005, p.16).

³ OJ L 32, 6. 2. 2007, p. 88

⁴ OJ L 248, 16. 9. 2002, p. 1. Regulation as last amended by Council Regulation (EC, EURATOM) n° 1995/2006 (OJ L 390, 30. 12. 2006, p. 1)

statute, the conditions and the arrangements for the creation and operation of Executive Agencies stipulated in Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes (“Framework Regulation”).

- (3) Articles 35, 37 and 41 of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of the general Framework Regulation⁵, supplemented the provisions contained in that regulation and in the Framework Regulation. These provisions set out the prior scrutiny to be carried out by the Commission on the Agencies’ management procedures and systems and the manner in which the Agency performs the tasks entrusted by the Commission.
- (4) In the light of the cost-benefit analysis carried out and in order to achieve more efficiently the objectives set by this Community programme, it was considered necessary to have an Executive Agency perform certain management tasks; the Commission accordingly adopted decision 2007/60/EC, in line with the opinion of the Committee of the Executive Agencies, establishing the Trans-European Transport Network Executive Agency.
- (5) In accordance with Article 6(3) of the Framework Regulation, the Commission defines in an instrument of delegation the terms, criteria, parameters and procedures with which an executive agency must comply when performing the tasks referred to in Art. 6(2) of that Regulation and the details of the checks to be performed by the Commission departments responsible for Community programmes in the management of which an Agency is involved.
- (6) It is therefore necessary to adopt a delegation Decision for the Trans-European Transport Network Executive Agency,

HAS ADOPTED THIS DECISION:

SECTION 1

GENERAL

Article 1

Purpose

1. The purpose of this Decision is to lay down in detail the tasks entrusted to the Trans-European Transport Network Executive Agency (hereafter “the Agency”), and to lay down rules for implementation and for relations between the Agency and the Commission.
2. The Agency shall abide by the provisions contained in this Decision.

⁵ OJ L 357, 31.12.2002, p. 1. Regulation as last amended by Regulation (EC, EURATOM) N° 478/2007 (OJ L 111, 28.04.2007, p. 13)

3. The delegation shall be effective only after it has been formally accepted in writing by the Director on behalf of the Agency. On a proposal from the Director, the Agency's Steering Committee, in agreement with the Director-General of the parent Directorate-General, shall set the date on which the Director shall begin to implement the operational appropriations as authorising officer by delegation on the basis of this delegation.
4. The Commission may at any time suspend or terminate this delegation.

Article 2
Regulations

In performing its tasks the Agency shall comply with the rules in force, in particular:

- Regulation (EC, Euratom) No 1605/2002 (hereinafter “general Financial Regulation”),
- Regulation (EC, Euratom) No 2342/2002,
- Regulation (EC) N° 58/2003 (hereinafter "the Framework Regulation"),
- Commission Regulation (EC) No 1653/2004,
- Regulation (EC) 2236/1995 (hereinafter the "TEN Regulation"), as the legal basis for the TEN programme, within the meaning of Article 2 of the Framework Regulation, which is to be managed in whole or in part by the Agency,
- Commission's annual decisions laying down the internal rules on the implementation of the general budget of the European Communities (hereafter “Internal Rules”),
- Decision 2007/60/EC
- Commission Decision of 3 February 2004 on the early warning system (EWS)⁷,
- work programmes counting as financing decisions and ad hoc financing decisions adopted by the Commission, where appropriate after obtaining the opinion of the programme committee,
- the Conditions of Employment of Other Servants of the European Communities (CEOS).

⁶ OJ L 297, 22.9.2004, p. 6.

⁷ Decision C(2004)193/3. Decision as last amended by the 2007 Internal Rules, C (2007) 433.

SECTION 2 DEFINITION OF DELEGATED TASKS

Article 3 General framework

1. In connection with the implementation of the trans-European transport network's programme, the Agency shall handle the tasks detailed in Articles 4 and 5.
2. For this it shall be responsible for implementing, as authorising officer by delegation, the appropriations entered in the following Community budget lines:
 - 06 03 01 (completion of financial support for projects of common interest in the trans-European transport network).
3. The Director of the Agency shall exercise the powers delegated to the Agency.

Article 4 Management tasks

1. Within the guidelines set by the Commission, in particular in its work programme, the Agency shall perform the following programme implementation tasks:
 - a) managing part of the phases of the cycle of the Community funding of projects of common interest in the field of the trans-European transport network;
 - b) monitoring projects implemented under this programme, including the necessary checks on the spot;
 - c) collecting, processing and distributing data, and in particular compiling, analysing and transmitting to the Commission all information required to guide implementation of the Community programme, promote coordination and synergy with other programmes of the Communities, the Member States or international organisations and Joint Undertakings in charge of the preparation and implementation of TEN-T projects;
 - d) contributing to evaluation of the impact of the programme and to monitoring the actual effect of the measures on the market;
 - e) managing and directing a network, in particular concerning the target public (beneficiaries, projects, actors);
 - f) organising meetings, seminars in cases where this constitutes an operational expenditure and/or training;
 - g) carrying out studies and evaluations, in particular the annual and/or mid-term evaluation of implementation of the programme, and contributing to preparation and implementation of follow-up action on evaluations;

- h) preparing recommendations for the Commission on implementation of the Community programme and its future development;
 - i) planning and implementing information operations;
 - j) producing overall control and supervision data.
2. The Commission alone may perform tasks involving a measure of discretion implying political choices; in particular it remains responsible for:
- a) defining objectives, strategies and priority areas of action;
 - b) adopting work programmes counting as financing decisions or financing decisions within the meaning of Article 75 of the general Financial Regulation and Article 15 of the Internal Rules;
 - c) representing the Commission in the committee and submitting to the committee measures to be taken, where implementation of the Community programme requires, according to its legal basis, a comitology procedure; the Director of the Agency may, if necessary, assist the Commission during the committee meetings
 - d) launching interservice consultations within the Commission;
 - e) launching and taking enforceable recovery decisions within the meaning of Article 256 of the Treaty and Article 72 of the general Financial Regulation.
 - f) adopting amendments to the decisions granting aid, where necessary after the consultation of the Committee set up under Article 17 of the TEN Regulation.

Article 5
Budget implementation tasks

1. The Agency shall be responsible for adopting budget implementation instruments covering revenue and expenditure within the meaning of the general Financial Regulation. In this connection, it shall, on the basis of powers delegated by the Commission and as programmed by the Commission, carry out all operations necessary for implementing the parts of the Community programme entrusted to it, and in particular those connected with the award of contracts and grants.

The Agency shall manage the Commission decisions adopted by the Commission on the basis of the TEN Regulation in accordance with Article 4 (f); in this context the Agency shall in particular be tasked by the Commission with the following operations to implement and monitor decisions:

- a) The technical and financial analysis of all reports on the implementation of supported projects
- b) On-the spot controls
- c) The provision of administrative support/technical assistance to project promoters on all matters related to Community procedures

- d) If necessary, the preparation of draft Commission decisions modifying decisions granting aid, as well as the provision of administrative support for the preparation and conduct of inter-service consultation. In the case of substantial changes, administrative support will also be provided for the consultation of the Regulatory Committee
 - e) The preparation, implementation and follow-up of ex-post audits
 - f) On the basis of an evaluation of the corresponding technical and financial reports, the Agency will execute intermediate and final payments.
2. The Agency shall conclude in its own name the acts connected with the tasks it is assigned.

SECTION 3

CONDITIONS OF PERFORMANCE OF THE TASKS

Article 6 *Duty of performance*

1. The Agency shall perform the tasks assigned to it under this Decision in accordance with the principle of sound financial management within the meaning of Article 27 of the general Financial Regulation and shall carry out the necessary checks in accordance with the terms and arrangements laid down in the relevant rules.

The Agency's annual work programme must comply with the relevant rules and budgetary decisions and be submitted to the Commission for approval before being adopted by the Steering Committee.

2. In the performance of its tasks the Agency shall apply the instructions contained in the operational manuals approved by the Commission and the instructions of the departments responsible and shall use the model documents with any adjustments to its specific needs as agreed by the parent Directorate-General. It shall in particular apply the internal control standards put in place for Commission departments.
3. The management and internal control systems set up by the Director in accordance with Article 11(7) of the Framework Regulation shall cover the implementation of both operational appropriations and the operating appropriations in the Agency's budget.
4. The Charters of tasks and responsibilities for authorising officers by delegation adopted by the Commission shall apply to the Agency. The Charter of tasks and responsibilities for authorising officers by delegation shall be signed by the Director of the Agency, who assumes liability in connection with this function. The authorising officers by subdelegation shall sign the Charter of tasks and responsibilities for authorising officers by subdelegation and shall assume liability in connection with the function of authorising officer by subdelegation.

5. The Agency shall draw up a system of human resources management that guarantees proper performance of the tasks entrusted to it and compliance with and coherent application of the Conditions of Employment of Other Servants.
6. The Director shall, in compliance with the principles of sound financial management and proportionality, set up an audit capability to assist in dealing with risks connected with his activities.

Article 7

Contracts and contractors database

In connection with public procurement and grants, whether linked to the operational appropriations managed by the Agency or implementation of its operating budget, the Agency shall have access to the Early Warning System of the Commission and shall request introduction of the relevant information into the system.

Article 8

Visibility of Community action

In order to ensure the visibility of Community action in the acts it adopts, the Agency shall always specify in its contracts, agreements, documents and relations with third parties that it is acting under powers delegated by the Commission. The Agency shall follow the Commission's guidelines in respect of information and visibility of programmes, in particular as regards the use of the graphic image determined by the Commission.

Article 9

Confidentiality

1. The Agency undertakes to preserve the confidentiality of information supplied to it by the Commission, in accordance with the Commission's instructions, and not to disclose anything which could harm the Commission, the other Community institutions or third parties.
2. This obligation is without prejudice to Article 16 of this Decision.
3. The confidentiality obligation shall apply to the members of the Steering Committee, all the Agency staff, whatever their status, and to any outside service providers used by the Agency. An appropriate confidentiality clause shall be included in contractual documents governing their relations with the Agency.

Article 10

Protection of Community funds

The Agency shall take whatever measures and steps are required to avoid harming the Community institutions, and measures and steps to ensure effective protection of Community funds.

Article 11
Conflict of interests

The Agency shall take all appropriate precautions to prevent any risk of conflict of interests within the meaning of Article 52(2) of the general Financial Regulation and shall inform the parent Directorate-General without delay of any situation which may constitute a conflict of interests or may give rise to one, including those relating to persons who may be involved in the processing and award of contracts and grants.

SECTION 4
INFORMATION AND REPORTS ON IMPLEMENTATION

Article 12
Duty of information

1. The Agency shall immediately inform the Commission, providing it with all relevant details, of any events, including financial irregularities, which may
 - harm the Agency, the Commission or the other Community institutions,
 - delay or jeopardise performance of the tasks assigned to it by this Decision.
2. The Agency shall without delay pass on to the Commission and more particularly to OLAF, in accordance with the specific rules applicable, information on any cases of fraud or corruption or any other illegal activity which comes to its attention and of any situation which may give rise to such cases.

Article 13
Annual activity report

Each year the Director of the Agency shall prepare by no later than 1 March an activity report which shall contain two separate parts:

- a) the first part shall cover activities linked to implementation of the programme which the Agency is managing in full or in part and the related operational appropriations for which the Agency is the authorising officer by delegation from the Commission;
- b) the second part shall cover the operation of the Agency itself, and implementation of its operating budget.

The content of this report shall comply with the standards laid down by the Commission and shall refer to the objectives and performance indicators laid down in the Agency's annual activity programme.

Article 14
Other reports

1. Every six months, the Agency shall submit to the Director-General of DG TREN and to the Steering Committee a report of the performance of the tasks assigned to it containing the following data and information:
 - a) implementation of tasks assigned to the Agency (number of projects in progress / state of play / monitoring of deadlines etc.);
 - b) calls for tenders and proposals / contracts concluded / decisions granting aid implemented / decisions closed / on the spot visits carried out / number and amount of negotiated procedures
 - c) figures, aggregated at least to chapter level, on implementation of the operating budget, as regards both revenue and all expenditure appropriations. These figures shall also contain information on the use of appropriations carried over;
 - d) figures on implementation of the operational appropriations;
 - e) number and results of ex post checks carried out and audits, accompanied where appropriate by detailed information on the measures taken to remedy any problems detected;
 - f) payment times;
 - g) actions brought against decisions of the Agency.
2. The Director-General responsible for DG TREN may ask the Agency for any other report referred to in Article 11(5) of the Framework Regulation which he considers necessary for performance of the tasks assigned to the agency. He may request figures related to specific expenditure items of the operating budget such as salaries, allowances, detailed infrastructure costs, staffing levels.

SECTION 5
COMMISSION SCRUTINY OF THE AGENCY

Article 15
Scrutiny of the Agency's systems and procedures

1. DG TREN responsible for the TEN-T programme shall be the parent DG of the Agency. In this capacity it shall be responsible for monitoring and supervising the Agency. It shall handle relations between the Agency and the Commission.
2. The Director-General of DG TREN shall ensure, before the Agency begins performing its tasks, that it has put in place, in accordance with the rules of sound financial management,
 - a) control systems and procedures,

- b) where appropriate, local accounting systems,
 - c) procedures, in particular for contracts and grants.
3. The Director-General of DG TREN shall review the situation whenever there is any substantial change in procedures or systems. The Agency shall supply within a time set by DG TREN any information requested and shall inform it without delay of any substantial change in its procedures or systems and the reasons for such change.
 4. The Director-General of DG TREN shall be entitled to carry out documentary and on-the-spot checks at the Agency to ensure,
 - a) that management and internal control systems exist and operate properly in such a way as to ensure total compliance with the principle of sound financial management,
 - b) the acts performed by the Agency are lawful and comply with the rules.
 5. He may carry out ex ante and ex post checks on the Agency's operations, including checks on beneficiaries of contracts and grants. The contracts and grants signed by the Agency shall state expressly that beneficiaries undertake to accept these checks and those of the Court of Auditors and OLAF.

Article 16
Access to documents

1. 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 shall apply to documents held by the Agency.
2. The Steering Committee shall adopt the practical arrangements for implementing Regulation (EC) No 1049/2001.
3. Complaints may be made to the Ombudsman or proceedings instituted before the Court of Justice as laid down in Articles 195 and 230 respectively of the EC Treaty in respect of decisions taken by the Agency under Article 8 of Regulation (EC) No 1049/2001.

SECTION 6
FINANCIAL RESOURCES MADE AVAILABLE TO THE AGENCY FOR THE
PERFORMANCE OF ITS TASKS

Article 17
Subsidy paid to the Agency

1. The amount of the subsidy for the operation of the Agency shall be entered each year in the Commission's budget.

2. The authorising officer by delegation for implementation of these appropriations in the Community budget shall inform the Agency of the amount of this subsidy as soon as it is adopted by the budgetary authority.

Article 18

Bank account and payment of the operating subsidy

1. The Commission shall pay the Community subsidy to the Agency annually in three instalments (on 1 January, 1 May, 1 September each year) with due allowance for the real needs of the Agency.
2. The Agency shall open a specific interest-bearing bank account to which the Commission shall pay the amounts corresponding to the Community subsidy for the operation of the Agency. The amounts paid in this way shall count as pre-financing and shall therefore remain the property of the European Communities. The Agency shall inform the Commission each year when the accounts are closed of the interest yielded for which a recovery order shall be issued by the Commission.
3. The Commission shall issue annually a recovery order in respect of the positive balance deriving from the outturn account when the Agency's accounts are closed each year.

Article 19
Entry into force

This Decision shall enter into force on the day following its adoption.

Article 20
Addressee

This Decision is addressed to the Trans-European Transport Network Executive Agency.

Done at Brussels, 05/XI/2007

For the Commission
Jacques BARROT
Vice-President of the Commission

