

DECISIONS

COMMISSION DECISION (EU) 2015/2463

of 18 December 2015

on the rules of procedure of the panel referred to in Article 108 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 1605/2002 ⁽¹⁾,

Having regard to 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 ⁽²⁾, and in particular Article 144 thereof,

Whereas:

- (1) Regulation (EU, Euratom) No 966/2012 establishes a panel for assessing centrally the situations referred to in its Article 106(1) and to adopt appropriate recommendations ('the Panel').
- (2) Article 108(7) of Regulation (EU, Euratom) No 966/2012 establishes the composition of the Panel and provides that the Panel is to be assisted by a permanent secretariat provided by the Commission.
- (3) Article 144 of Delegated Regulation (EU) No 1268/2012 regulates the organisation and composition of the Panel, the procedure for appointing its Chair and the management of conflicts of interests. Article 144(5) provides for the Panel's rules of procedure to be adopted by the Commission.
- (4) It is appropriate to specify the procedure for the appointment and dismissal of the Chair and to lay down provisions on deputising for him/her where he/she is absent or prevented from attending to his/her duties.
- (5) It is necessary to lay down detailed rules on the composition of the Panel in any given case, in particular on designating the two permanent members, their deputies and the additional member representing the authorising officer.
- (6) In the interests of the proper administration of the Panel, it is appropriate to specify further the support functions to be provided by the secretariat in the framework of its proceedings.
- (7) The procedure for bringing a case before the Panel should be clarified further, in particular as regards the minimum content of the authorising officer's request.
- (8) For the benefit of economic operators, it is necessary to clarify the practical arrangements for ensuring that their right to be heard is respected.

⁽¹⁾ OJ L 298, 26.10.2012, p. 1.

⁽²⁾ OJ L 362, 31.12.2012, p. 1.

- (9) It is appropriate to specify the practical arrangements for close cooperation between the Panel and the European Anti-Fraud Office (OLAF) in the light of the Administrative Arrangements on cooperation and timely exchange of information between the Commission and OLAF.
- (10) It is appropriate to clarify the rules for the adoption of Panel recommendations.
- (11) Any processing of personal data by the Panel and its secretariat is to be carried out in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾.
- (12) Regulation (EC) No 1049/2001 of the European Parliament and of the Council ⁽²⁾ should apply to the recommendations adopted by the Panel,

HAS ADOPTED THIS DECISION:

Article 1

Subject matter

This Decision lays down the rules of procedure of the Panel referred to in Article 108 of Regulation (EU, Euratom) No 966/2012 ('the Panel').

Article 2

Appointment and dismissal of the Chair

1. The Chair of the Panel shall be appointed by the Commission in accordance with Article 144 of Delegated Regulation (EU) No 1268/2012.
2. If the Chair no longer fulfils the conditions required for the performance of his/her duties, he/she may be dismissed by the Commission.

Article 3

Deputising for the Chair

1. The Chair shall have a deputy who shall act as a replacement when he/she is absent or prevented from attending to his/her duties. The deputy shall be appointed in accordance with Article 144 of Delegated Regulation (EU) No 1268/2012.
2. Where both the Chair and his/her deputy are absent or prevented from attending to their duties, the permanent member with the higher seniority ⁽³⁾, as designated in accordance with Article 4, shall deputise. In such case, the permanent member deputising for the Chair shall be replaced by his/her deputy designated in accordance with that Article 4.

⁽¹⁾ Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (OJ L 8, 12.1.2001, p. 1).

⁽²⁾ 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 (OJ L 145, 31.5.2001, p. 43).

⁽³⁾ Commission rules on seniority apply.

Article 4

Designation of Panel members and their deputies

1. The Director of the Central Financial Service in the Directorate-General for Budget shall be one of the two permanent members of the Panel as referred to in Article 144(2) of Delegated Regulation (EU) No 1268/2012. The Director-General for Budget shall designate an official of grade AD11 or above as his/her deputy.

The Director-General for Budget shall designate the second permanent member and his/her deputy *ad personam* among officials of at least grade AD 14 and AD 11 respectively.

2. The additional member representing the requesting authorising officer, as referred to in Article 144(2) of Delegated Regulation (EU) No 1268/2012, shall be designated in accordance with the rules of procedure and the internal administrative rules of the institution, agency, Office of body concerned, as referred to in Article 65(3) of Regulation (EU, Euratom) No 966/2012.

Article 5

Designation of observers and cooperation with OLAF

1. Observers shall not participate in the adoption of recommendations by the Panel pursuant to Article 13.

2. Representatives of the following entities shall have observer status:

(a) the Commission's Legal Service;

(b) the European Anti-Fraud Office (OLAF), where the authorising officer's request is based, *inter alia*, on information transmitted by OLAF;

(c) authorising officers (other than the requesting authorising officer) of the Commission, of a European office set up by the Commission, of an executive agency, another institution, or another European office, body or agency who are concerned by the case submitted to the Panel; and

(d) any other entity invited by the Chair.

3. A representative of the Legal Service shall attend all meetings of the Panel. The Legal Service shall be informed of all written procedures as referred to in Article 10 and may provide oral or written comments. It shall do so if the Chair so requests.

4. Where OLAF has observer status pursuant to point (b) of paragraph 2, OLAF shall cooperate closely with the Panel in accordance with Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council⁽¹⁾, with due regard to the respect of procedural and fundamental rights and to the protection of whistle-blowers. In such cases, its representatives may attend all meetings of the Panel and participate in all oral and written procedures as referred to in Articles 9 and 10 by providing oral and/or written comments and shall do so where invited by the Chair.

In other cases, OLAF may be invited to provide relevant information or advice, where the Chair considers it appropriate for the protection of the Union's financial interests.

5. Authorising officers with observer status pursuant to point (c) of paragraph 2 shall attend all meetings of the Panel. They shall be informed of all written procedures as referred to in Article 10 and may provide oral and written comments.

6. Other observers shall attend the meetings of the Panel where invited by the Chair and may provide oral and written comments at the Chair's invitation.

⁽¹⁾ Regulation (EU, Euratom) No 883/2013 of the European Parliament and of the Council of 11 September 2013 concerning investigations conducted by the European Anti-Fraud Office (OLAF) and repealing Regulation (EC) No 1073/1999 of the European Parliament and of the Council and Council Regulation (Euratom) No 1074/1999 (OJ L 248, 18.9.2013, p. 1).

*Article 6***Prevention and management of conflicts of interests**

1. Any member or observer whose participation in the Panel's deliberations would raise a conflict of interests as regards a specific agenda item shall inform the Chair and the secretariat without delay and in any case prior to the start of the deliberations.
2. In the event of an identified conflict of interest, the member or observer shall withdraw his/her participation and refrain from discussing the agenda item and from participating in the deliberations, the consensus or the vote, where applicable.
3. The members and observers shall be required to sign a declaration of absence of conflict of interests prior to the start of the Panel's deliberations on any given case.
4. Where the Chair finds himself/herself in a situation of conflict of interest with regard to a specific agenda item, he/she shall inform the secretariat and withdraw his/her participation. In such cases, the Chair shall be replaced by his/her deputy.
5. Paragraphs 1, 2 and 3 shall apply *mutatis mutandis* to the deputy Chair, the deputy members and the members of the secretariat of the Panel.

*Article 7***Permanent secretariat**

1. The Panel's secretariat shall be provided by and attached administratively to the Directorate-General for Budget.
2. The secretariat's tasks shall be as laid down in Article 144 of Delegated Regulation (EU) No 1268/2012. In particular, the secretariat shall:
 - (a) verify that requests for referral of a case to the Panel are complete before transmitting them to the Chair and the members;
 - (b) identify any other authorising officers concerned by the case who may be proposed as possible observers;
 - (c) identify cases where OLAF should be invited to provide relevant information or advice as provided for in the second subparagraph of Article 5(4).
 - (d) draw up the agenda for the Panel's meetings under the responsibility of the Chair and send it to the members and observers;
 - (e) attend the deliberations of the Panel and draw up the minutes of each meeting;
 - (f) notify the economic operators and other authorising officers concerned in accordance with Article 108(8) of Regulation (EU, Euratom) No 966/2012;
 - (g) notify the requesting authorising officer of the recommendation adopted by the Panel;
 - (h) handle requests for access to Panel documents, in particular its recommendations, in accordance with Regulation (EC) No 1049/2001.

*Article 8***Referral of cases to the Panel**

1. The Panel shall be convened at the request of any authorising officer of the Commission, of another institution, of a European office set up by the Commission, of an executive agency, or of another European office, body or agency.
2. The request shall be transmitted to the secretariat electronically by e-mail to Panel-secretariat-BUDG@ec.europa.eu and under encryption, in accordance with the encryption rules in force in the Commission.
3. Where the authorising officer becomes aware of information as referred to in Articles 106(2) and 108(3) of Regulation (EU, Euratom) No 966/2012, he/she shall refer the case to the Panel no later than two months after this information has been brought to his/her knowledge, except in duly justified cases.
4. The request of the authorising officer referring a case to the Panel shall contain the information required in Article 108(8)(a) of Regulation (EU, Euratom) No 966/2012. The authorising officer shall also transmit any relevant information, in particular OLAF reports where the information is transmitted by OLAF in accordance with Articles 7(6) and 11 of Regulation (EU, Euratom) No 883/2013.
5. Only a request accompanied by the information referred to in paragraph 4 shall trigger the start of the period referred to in Article 108(8)(f) of Regulation (EU, Euratom) No 966/2012.
6. The request shall be no more than ten pages in length excluding annexes, except in cases involving particularly complex legal or factual issues.

*Article 9***Convening a meeting**

A meeting of the Panel shall be convened by the Chair for the purpose of:

- (a) establishing the preliminary classification in law, as referred to in point (b) of Article 108(8) of Regulation (EU, Euratom) No 966/2012;
- (b) adopting a recommendation as referred to in Article 108(9) of that Regulation.

*Article 10***Written procedure**

1. On the initiative of the Chair or at the request of a member of the Panel, the preliminary classification in law may be established, and the recommendation may be adopted, by written procedure. Any member of the Panel and/or the Chair may object to the use of the written procedure. In such cases, the Chair shall convene a meeting within a reasonable time.
2. The Chair shall set the deadline for the written procedure according to the urgency of the matter, taking due account of the time limits referred to in Article 12.

*Article 11***Right to submit written observations**

1. The Panel shall uphold the right of the economic operator concerned to submit observations in accordance with Article 108(8) of Regulation (EU, Euratom) No 966/2012.

2. Disclosure of information stemming from, or relating to, investigations conducted or coordinated by OLAF shall require OLAF's agreement which shall be provided in the framework of the oral and written procedure referred to in Article 5(4).
3. Where the request of the authorising officer is based on information transmitted by OLAF and in order to ensure that the confidentiality of investigations conducted or coordinated by OLAF and of national investigations or judicial proceedings, where known to OLAF, is not impaired, the Panel shall consult OLAF prior to issuing the notification to the economic operator referred to in Article 108(8) of Regulation (EU, Euratom) No 966/2012.
4. The economic operator shall submit observations to the secretariat in writing and in electronic format by e-mail to Panel-secretariat-BUDG@ec.europa.eu as an ordinary electronic file produced using word-processing software.
5. The written observations shall in principle be no more than ten pages in length excluding annexes, except in cases involving particularly complex legal or factual issues.

Article 12

Applicable time limits

1. The applicable time limits for the Panel to adopt its recommendation shall be those laid down in point (f) of Article 108(8) of Regulation (EU, Euratom) No 966/2012.
2. In particular, the need to translate any observations submitted by the economic operator may give rise to an exceptional and duly justified case in which the deadline for the Panel to adopt its recommendation may be extended.

Article 13

Adoption of the recommendation

The Panel shall endeavour to reach a consensus.

In the absence of a consensus, the matter shall be put to a vote where:

- (a) the Chair has one vote;
- (b) the two permanent members together have one vote;
- (c) the additional member representing the requesting authorising officer has one vote.

The position of the Panel shall be approved by absolute majority.

Article 14

Notification of the recommendation

1. The Panel shall notify the requesting authorising officer of its recommendation without delay.
2. The Panel shall simultaneously notify its recommendation to the observers, if any, and to OLAF, where the case is based on information transmitted by OLAF.

Article 15

Confidentiality of the deliberations

The deliberations of the Panel shall be and shall remain secret.

*Article 16***Protection of personal data**

Any processing of personal data by the Panel and its Secretariat shall comply with Regulation (EC) No 45/2001.

*Article 17***Transitional provisions**

Pending the appointment of the Chair and his/her deputy, the permanent member with the higher seniority shall carry out the duties of the Chair of the Panel.

Article 18

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

Done at Brussels, 18 December 2015.

For the Commission
The President
Jean-Claude JUNCKER
