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COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 15.12.2008
C(2008)8630

COMMISSION DECISION

of 15.12.2008

granting consent to the derogations requested by the IMI Joint Undertaking from Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002

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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, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹, and in particular Article 185(1) thereof,

Having regard to Council Regulation (EC) No 73/2008 setting up the Joint Undertaking for the implementation of the Joint Technology Initiative on Innovative Medicines (hereafter "IMI Joint Undertaking")² and in particular Article 6 thereof,

Whereas:

- (1) By Regulation (EC, Euratom) No 2343/2002³, the Commission adopted a framework Financial Regulation for the Community bodies referred to in Article 185 of Regulation (EC, Euratom) No 1605/2002, from which the financial rules of such bodies may not depart except where their specific operating needs so require and with the Commission's prior consent.
- (2) Following the amendment of Regulation (EC, Euratom) No 1605/2002 (hereinafter: "general Financial Regulation") by Council Regulation (EC, Euratom) No 1995/2006, Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation has been adapted accordingly⁴.
- (3) Article 6 of Council Regulation (EC) No 73/2008 provides that the IMI Joint Undertaking shall adopt specific financial rules in accordance with Article 185(1) of the Financial Regulation. They may depart from the rules laid down in Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of the Financial Regulation where the specific operating needs of the IMI Joint Undertaking so require and subject to prior consent of the Commission. The Directorate General for Research

1 OJ L 248, 16.9.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 1525/2007 (OJ L 343, 27.12.2007, p. 9).

2 OJ L 30, 04.02.2008, p. 38

3 OJ L 357, 31.12.2002, p. 72., as amended by Commission Regulation (EC, Euratom) No 652/2008 (OJ L 181, 10.07.2008, p. 23)

4 Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008 amending Regulation (EC, Euratom) No 2343/2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities (EC, Euratom), OJ L 181, 10.07.2008, p. 23

as the parent Directorate General, acting on behalf of the Joint Undertaking for the preparatory acts during transition towards autonomy of the Joint Undertaking according to Article 16(1) of Council Regulation (EC) No 73/2008, submitted a draft on 28 May 2008 annexed to this Decision. As regards the derogations from the framework Financial Regulation that are already foreseen in Council Regulation (EC) No 73/2008 setting up the IMI Joint Undertaking, no Commission Decision accepting the derogations is necessary since these derogations have already been authorised by the Legislative Authority.

- (4) In Articles 10 and 11 of the draft Financial Rules, the Joint Undertaking proposes a provision allowing for the cancelled appropriations to be entered in the estimate of revenue and expenditure up to the following three financial years in order to ensure the overall implementation of the Joint Undertaking's tasks and activities.
- (5) In Article 19 of the draft Financial Rules, voluntary contributions and other donations were added to the list of items that shall be used to finance specific items of expenditure (assigned revenue) according to the operational needs of the Joint Undertaking. Moreover, it is appropriate to add contributions of the Members if provided for in the agreement between the Joint Undertaking and the Members.
- (6) In Article 20(1) of the draft Financial Rules, the Joint Undertaking proposes to add voluntary contributions in the list of donations that may be accepted by the Executive Director. The Joint Undertaking also proposes the transfer of contracts linked to the donation without having recourse to a public procurement procedure, provided that they offer best value for money.
- (7) In Article 25(4) of the draft Financial Rules, the Joint Undertaking proposes to carry out the ex-ante evaluation for its programmes and activities only if appropriate. Given that the establishment of the Joint Undertaking was already subject to two ex-ante evaluations and that annual work programmes set up by the Commission services according to Article 110 of the General Financial Regulation are not subject to a separate ex-ante evaluation, the derogation is justified.
- (8) In Article 28(4) of the draft Financial Rules, the Joint Undertaking proposes to submit the draft Annual Implementation Plan (equivalent to the work programmes of the Commission) to the Commission for the establishment of the budget since the Annual Implementation Plan will only be adopted at the end of the year.
- (9) In Article 33(1) a derogation is introduced aimed at ensuring a certain flexibility in the management of the posts authorized in the budget in view of the limited staff capacity of the Joint Undertaking. It is proposed that the Governing Board may modify the establishment plan by up to 20% of the posts authorized. This freedom continues to be restricted by the dual limit of budget appropriations for a financial year and the total number of posts authorized by the establishment plan; in addition there will be no latitude as regards grade AD 16, AD15, AD14 and AD13 posts.
- (10) In Article 42 of the draft Financial Rules, in view of the participation of the Members other than the Commission, the obligation of the Executive Director to inform the authorities and bodies designated by the applicable legislation in the event of any illegal activity which may harm the interests of the Commission is extended to the interest of Joint Undertaking or of any of its Members. Accordingly, Article 47(2)

provides that in the event of illegal activity, fraud or corruption committed by the authorising officer or imprest administrator that may harm the interest of the IMI Joint Undertaking or of its Members, the matter should be referred to the authorities and bodies designated by the applicable legislation.

- (11) Article 51 provides for the request for payment also to its other (industrial) Members for the payment of its contribution to the running costs as foreseen in the Statutes of the Joint Undertaking.
- (12) Article 76(5) extends the possibility of concluding contracts without having recourse to a public procurement procedure to the other members of the Joint Undertaking (industrial Members) for the supply of goods, provision of services or performance of work that they directly provide. This derogation facilitates the access of the Joint Undertaking to better and cheaper supply of goods and services as well as avoiding excessive costs in managing procurement procedures through reinforced cooperation among the Joint Undertaking's members. The potential abuse of this flexibility is precluded by the explicit reference to the works, supplies or services that the members directly provide. In view of the public-private partnership nature of the IMI Joint Undertaking and the underlying balanced partnership principle this derogation is justified.
- (13) Article 80(3) of the draft Financial Rules derogates from Article 129(1) and 129(2) of Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002⁵ (hereafter "Implementing Rules of the general Financial Regulation") by modifying the threshold for the use of the negotiated procedure. The threshold for negotiated procedure with consultation of at least five candidates is raised to the thresholds laid down in Directive 2004/18/EC (currently EUR 137,000) and the threshold for negotiated procedure with consultation of at least three candidates is raised to EUR 60,000. These derogations are justified in view of the contribution of the private partner (50% of the running costs) and the limited number of procurement procedures to be launched by the Joint Undertaking. Therefore, in particular the restricted procedure following a call for expressions of interest does not suit the needs of the Joint Undertaking.
- (14) Article 95(2) of the draft Financial Rules allows a flat rate for the funding of the beneficiary's indirect costs up to a maximum of 20% of the total eligible costs in derogation from Article 181(3) of the Implementing Rules of the general Financial Regulation. This percentage takes into account the relatively high indirect costs in research activities while not constituting an excessively high percentage which could give rise to a profit. The same flat rate applies to beneficiaries in indirect actions funded by the Seventh Framework Programme for Research.
- (15) Articles 94(5) and 107 of the draft Financial Rules provide for the accession of new project participants to the grant agreement. Since according to its Article 1 the Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for

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OJ L 357, 31.12.2002, p. 1, as last amended by Regulation No 478/2007 of 23 April 2007 (OJ L 111, 28.04.2007, p. 13)

the dissemination of research results (2007-2013)⁶ does not apply to the IMI Joint Undertaking, it is appropriate to include a provision on the accession to the grant agreements in order to harmonize the treatment between the participants in the research activities of the IMI Joint Undertaking and those of the indirect actions of the Seventh Framework Programme.

- (16) Article 100(2) of the draft Financial Rules defines the eligible costs in accordance with Article 31(3) of Regulation (EC) No 1906/2006 of the European Parliament and of the Council of 18 December 2006 laying down the rules for the participation of undertakings, research centres and universities in actions under the Seventh Framework Programme and for the dissemination of research results (2007-2013). Since this Regulation does not apply to the IMI Joint Undertaking, it is appropriate to harmonize the definition of the eligible costs for the participants in the research activities of the IMI Joint Undertaking and those of the indirect actions of the Seventh Framework Programme.
- (17) Article 104 of the draft Financial Rules introduces a provision on the interest generated by pre-financing paid by the Joint Undertaking to the beneficiaries in line with the respective provisions of the general financial Regulation and its Implementing Rules. Given the fact that the main objective of the Joint Undertaking is the award of grants, it is appropriate to include a provision that governs the interest yielded by pre-financing.
- (18) Article 110 of the draft Financial Rules provides for the use of experts, in particular for assistance in evaluating proposals and grant applications or tenders for procurement, from a list drawn by the Joint Undertaking following a call for expression of interest, from lists drawn by the Commission, other Community bodies or if deemed appropriate from outside the lists. This derogation from Article 265a of the Implementing Rules of the general Financial Regulation is justified in order to put at the disposal of the Joint Undertaking the broadest possible pool of experts in this specific area. The Executive Director shall take all necessary steps to ensure that an expert is not faced with a conflict of interests in relation to the matter on which he/she is required to provide an opinion, including the signature of a declaration that the expert has no conflict of interests at the time of the appointment and that he/she undertakes to inform the Joint Undertaking if any conflict should arise in the course of carrying out his/her duties.
- (19) In the light of the specific operating needs of the Joint Undertaking and its nature as a public-private-partnership, the consent to the derogation requested by the IMI Joint Undertaking should be granted.

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OJ L 391, 30.12.2006, p. 1.

HAS ADOPTED THIS DECISION:

Article 1

The Commission hereby grants consent, with regard to the Financial Rules of the IMI Joint Undertaking, to the derogations from Articles 10, 11, 19, 20, 25, 27, 32, 41, 46, 50, 74, 74b and 75 of Regulation (EC, Euratom) No 2343/2002 as set out in the annex to this Decision.

Article 2

This Decision is addressed to the IMI Joint Undertaking:

IMI Joint Undertaking

Alain Vanvossel

European Commission - DG RTD

IMI Joint Undertaking Interim Executive Director

CDMA 02/152

BE-1049 Brussels

Done at Brussels, 15.12.2008

For the Commission
Dalia GRYBAUSKAITE
Member of the Commission