

**EUROPEAN MARITIME SAFETY AGENCY**  
**AGENCE EUROPEENNE POUR LA SECURITE MARITIME**

Brussels, 9 December 2003

**Regulation of the European Maritime Safety Agency**  
**of 9 December 2003**

**laying down detailed rules for the implementation of the Financial Regulation of 9 December 2003 applicable to the Budget of the European Maritime Safety Agency**

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## **EXPLANATORY MEMORANDUM**

### **1. INTRODUCTION**

The new General Financial Regulation resulting from the recasting exercise was adopted by the Council on 25 June 2002. It is to enter into force on 1 January 2003. It contains rules on the presentation of the budget, the responsibility of the authorising officers, financial management, controls and audits. According to Article 185 of the General Financial Regulation, a framework regulation applicable to EU agencies has been proposed, as a basis for the new Financial Regulation of the Agency.

The current Regulation laying down detailed rules for the implementation of certain provisions of the Financial Regulation, hereinafter referred to as the "implementing rules", is an essential accompaniment, especially as the text of the Financial Regulation has been simplified so that now it merely sets out the basic principles and definitions and consigns all details and measures for practical implementation to the implementing rules. The Financial Regulation cannot therefore really be applied with full effect on 1 January 2003 without the implementing regulation.

Because of this principle of simplification, the new implementing rules are far more developed than Regulation No 3418/93 of 9 December 1993 which was previously in force. This trend has been accentuated by the inclusion in the Financial Regulation of new provisions relating, for example, to grants and by editorial choices such as the decision to transpose the directives on the coordination of procedures for the award of public contracts.

### **2. ASPECTS RELATING TO FORM**

The Financial Regulation concentrates on the basic regulatory framework and it has entrusted the Agency with the task of determining the technical rules and the operational details needed, in consultation with the Commission. It also improves the readability of the text and reduces the risk of duplication or contradictory rules.

In addition to a good many new provisions or provisions adapted from the Regulation in force, the Regulation laying down detailed rules for implementing the Financial Regulation thus includes a number of provisions from the new General Financial Regulation.

### **3. ASPECTS RELATING TO SUBSTANCE**

As regards the substance, the Regulation amends the current implementing rules across the board.

#### **A. Confirmation of the principles of budget law (Title II)**

(a) Principle of Unity

Interest yielded by the funds which are the property of the European Communities are to be entered on the revenue side of the general budget. The implementing rules explain in this connection that the pre-financing type of payment remains in principle the property of the Communities, unless the basic act provides otherwise, and where such payments are made to Member States, staff or under procurement contracts, and in connection with joint management. The implementing rules therefore lay down the rules governing interest yielded by such pre-financing and the accounting arrangements applying to it.

(b) Principle of annuality

The carryover of appropriations, an indispensable management instrument recognised by the Treaties, is a management tool available to the Commission under Article 9 of the **General Financial Regulation**.

Article 3 of the implementing rules explains the concept of preparatory stages which have to be completed by 31 December of year N, in line with the new provisions relating to global commitments and the obligation to use the appropriations before 31 March of the following year.

(c) Principle of unit of account

As the **General Financial Regulation** allows an exception to the principle of unit of account for the accounting officer in the case of the duly substantiated cash requirements, and for the imprest administrators, the implementing rules lay down the rules of conversion to be applied in these cases (rates, entry in the account at the end of the year). However, these rules do not prevent application of specific sectoral rules, particularly in the agricultural sector.

These provisions are consistent with current legislation; they clarify certain provisions, particularly as regards the rate to be used for conversion.

(d) Principle of universality

The implementing rules specify the treatment to be given to two exceptions to the principle of universality:

- assigned revenue resulting in particular from the contributions by Member States of EFTA States to certain Community programmes and from sanctions imposed on Member States declared to have an excessive deficit;
- the offsetting of revenue and expenditure in the budget in accordance with Article 20 of the **General Financial Regulation**.

(e) Principle of specification

The implementing rules spell out the rules governing transfers and notification of the budgetary authority, in particular for the emergency aid reserve.

(f) Principle of sound financial management

The implementing rules confirm the policy which has been conducted for a number of years in connection with the evaluation of the economy, efficiency and effectiveness of Community policies by means of two instruments:

- evaluation throughout the programme cycle. Evaluation has to be carried out not only *ex ante*, but also mid-term and *ex post* to define the objectives and the cost of the various activities more effectively; this task should be made easier by the new activity-based budgeting (ABB) presentation;
- the financial statements accompanying each legislative proposal and containing all the information necessary, including that on the prevention of irregularities and measures to combat fraud.

(g) Principle of transparency

In addition to the publication of the budget in the Official Journal of the European Communities, a summary of the budget figures will be published in January so that the public will have early access to the main budget information.

## **B. Establishment and structure of the budget (Title III)**

As well as the usual details about presentation and budget remarks, Article 18 of the implementing rules gives a new definition of administrative expenditure in preparation for the transition to ABB. (Activity based budgeting).

## **C. Implementation of the budget (Title IV)**

The implementing rules take over the provisions of the Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure as regards the Commission's specific powers, the rules for pilot schemes and preparatory actions and the possible forms of basic acts.

### C. 1. Budget implementation arrangements

For the purposes of sound financial management and in order to resolve the difficulties relating to the technical and administrative assistance offices, the General Financial Regulation clearly identifies three possible methods for implementing Community appropriations for both internal policies and external action:

- (a) **centralised management** by the Commission, performed directly by its departments or indirectly by delegating powers to certain types of agency providing specific management guarantees, within the institutions' public authority prerogatives involving a wide power of discretion,
- (b) **shared management** with the Member States or **decentralised management** with the beneficiary third countries in the case of external action,
- (c) **finally joint management**, when funds are pooled with international organisations.

## C. 2. Role of the financial actors (authorising officers and accounting officer)

A key element of the reform is the improvement and modernisation of financial management and the development of a new culture with the focus on the results obtained from the use of Community funds.

- (a) The purpose of the changes made to the Financial Regulation is to give authorising officers **exclusive responsibility** for internal controls within their departments and for the financial decisions they take in the exercise of their duties.

The authorising officers must assume full responsibility for the regularity, legality, efficiency and effectiveness of their management in accordance with the risks presented by the operations concerned. This means that the duties to be carried out must be defined in advance and that these controls must be integrated in the management process. For this purpose and in accordance with the recommendations of the Court of Auditors. The implementing rules sets out the objectives to be attained by the management and internal control systems and procedures established by the authorising officer.

The implementing rules also supplement the General Financial Regulation as regards definition of the duties and tasks of the various financial actors, which, for the authorising officers in particular, requires the organisation of financial operations and the *ex ante* and *ex post* verifications to be introduced and the transmission of an annual activity report to the Agency.

All operations in preparation for the adoption of an act of budget implementation must be verified *ex ante* to ensure that the expenditure is in order and complies with the rules and that the principles of sound financial management have been applied.

This machinery is supplemented by *ex post* verifications organised, where necessary, on a sample basis using risk analysis.

The officials responsible for the verifications will be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or appropriate professional experience. They will also be subject to a specific code of professional standards drawn up by the Agency. This code determines, particularly on matters such as internal control, inspection and audit:

- the level of technical and financial competence required of these officials, the missions and tasks assigned to them;
- the rules of conduct, and in particular the standards of ethics and integrity that they must comply with;
- the methods, techniques and control standards that they must apply.

Because of the risks involved, the implementing rules also call for an annual report listing contracts resulting from negotiated procedures and

obliges each institution to send a report on the matter to the discharge authority.

- (b) Because Ex-ante financial Control has disappeared, the Agency decided to install a function of audit capability, to be exercised in house, and consisting of advising and supporting authorising officers in daily management, especially for control systems and methods, to be implemented. To ensure independence and effectiveness, the reporting line is only with both the Director and the Management Board of the Agency.
- (c) The implementing rules lay down the minimum requirements for each institution to set up, in accordance with its own organisation, the special financial irregularities panel provided for in Articles 60 and 66 of the **General Financial Regulation**.

The implementing rules specify in particular:

- the conditions for referring matters to this panel, which deals only with cases where there is no suspicion of fraud (which come under OLAF's jurisdiction), irrespective of whether the matter is referred by the institution or directly by an official or other member of staff,
- the purely consultative role of this panel in relation to the appointing authority or, where appropriate, the authority responsible for concluding contracts of employment.

- (d) Role of the accounting officer

The implementing rules confirm that the accounting officer is appointed by the institution from the officials on the grounds of his particular competence. An interim statement of accounts is drawn up and signed in acceptance by the new accounting officer.

The implementing rules lay down the accounting officer's duties as regards cash management, the management of bank accounts and the keeping of supporting documents relating to the accounts. They stress that payments may be made by bank transfer only if the bank account details of the payment beneficiary have previously been entered in a common file kept by each institution.

Finally, it is pointed out that the accounting officer must be consulted on the introduction and modification of the inventory systems kept by the authorising officers. He must give his agreement to the introduction and modification of the financial management systems set up by the authorising officer when these systems are intended to provide data for the accounts.

### C. 3. Role of the internal auditor

The internal audit function is operated by the internal auditor of the Commission. The internal auditor has to ensure that the systems of management, control and internal audit set up by the authorising officers responsible are operating smoothly. The implementing rules also make arrangements for the dissemination of best practices between the institutions.

In addition, they set out the guarantees of functional independence given to the internal auditor, viz. control over his work programme, freedom from instructions of any kind or restrictions in the performance of his functions, a special system of liability and the possibility of bringing an action before the Court of Justice of the European Communities.

#### C. 4. Revenue management

- (a) The implementing rules give details of the individual stages for all the financial actors from the estimate of an amount receivable to final collection. The revenue operations involving the authorising officer (estimate of amount receivable, establishment of the amount receivable, drawing up of the recovery order, copy of the debit note to be sent to the debtor) are set out in the same way as for expenditure operations. The recovery measures at the accounting officer's disposal, in particular the rules on the offsetting of debts, are spelled out.
- (b) The provisions applicable to default interest have been amended in order to incorporate on this point Directive 2000/35/EC on combating late payment in commercial transactions for commercial relations between the Communities and undertakings within the meaning of that directive.
- (c) The implementing rules also specify the cases in which debts may be waived in view of the cost of recovery, the age of the debt or the insolvency of the debtor or in accordance with the principle of proportionality.

Finally, the waiving of a duly established debt is distinguished from the cancellation of an unduly established debt and the technical and accounting adjustment to alter the actual amount to be recovered which does not imply any abandonment of the Communities' established entitlements.

#### C. 5. Management of expenditure

- (a) The Financial Regulation now gives a clearer definition of the terms "budget commitment" (reservation of appropriations) and "legal commitment" (obligations entered into towards third parties) by making a further distinction between global, individual and provisional budget commitments.

The implementing rules specify the conditions for implementing global and provisional budget commitments by setting out the measures to be taken before and after. In particular, the implementing rules state that the global commitment may be implemented by means of a financing agreement or individual legal commitments. The provisional

commitment is implemented either by the conclusion of individual legal commitments or, in cases of expenditure on staff, directly by payments. There are now rules for the time limit for adopting the global commitment: this must occur at the latest before the decision on the selection of beneficiaries is taken and, where implementation of the appropriations involves the adoption of a work programme, at the earliest after that programme has been adopted.

The implementing rules allow decommitment of a budget commitment corresponding to a legal commitment for which no payment has been made in a period of three years following the signing of the legal commitment.

The present Regulation also sets out the rules for the registration of legal commitments under a global commitment and the implementation of provisional commitments.

In addition, the implementing rules contain provisions for cases where the rule that there be a single signatory for the budget and legal commitment does not apply.

- (b) The implementing rules then provide the necessary clarifications about the validation of expenditure by linking the "certified correct" endorsement in the authorising officer's department and the signing of a "passed for payment" by the authorising officer himself.
- (c) The implementing rules also lay down the time limits for validation, authorisation and payment in line with the communication of the Commission of 28 June 2000 (SEC(2000)1094). Under these rules, payment must be made within 45 days from the date when an admissible payment request is registered. The authorising officer responsible may suspend this payment period, provided that he informs the creditors, if the amount is not due or if the appropriate supporting documents have not been produced. For contracts or agreements where payment is conditional on approval of a report, the payment request cannot be deemed admissible until the report is approved. The time limit for approving this report is set out in the implementing rules.

On expiry of this 45-day time limit, default interest will be due from the institution at the same rate as that applying to overdue debts, except for amounts due to Member States.

The implementing rules also state that the authorising officer responsible, depending on the basic act and in compliance with the principle of sound financial management, will lay down in the contracts and agreements the nature of the documents used in support of payments. It also specifies that the implementation reports constitute supporting documents.

Finally, the implementing rules define the various types of payment and the supporting documents required. They specify that the entire pre-financing and interim payments count against the payment of balances.

## **D. Procurement and grants (Titles V and VI)**

### **D. 1. Procurement (Title V)**

- (a) In addition to the principles laid down in the General Financial Regulation, which are directly applicable for the Agency, the Title relating to procurement mainly consists of a full transposition of the Directives currently applicable to the coordination of procedures for the award of public service, supply and works contracts, pending adoption of the new consolidated directive by the Council and Parliament. This title will have to be amended once that directive has been adopted.

Depending on the specific needs of the Agency and other institutions and bodies, these rules can go beyond what the Directives lay down, particularly as regards sanctions. To protect the Communities' financial interests, a database is to be set up of tenderers or candidates who have been excluded because of convictions for fraud, corruption or money-laundering or because of serious violations of contractual provisions in earlier relations with one of the institutions.

- (b) As in the General Financial Regulation, this Title first defines its scope and then the general principles and procedures applicable to all procurement (Chapter I) before listing the provisions applicable to institutions acting on their own account, particularly as regards thresholds and time limits for procedures (Chapter II).
- (c) The basic principles of transparency or non-discrimination and the equality of treatment between tenderers or candidates also apply to contracts beyond or outside the scope of the Directives, such as building contracts.

The implementing rules thus institutionalise the procedure for calling for the expression of interest for contracts involving €50 000 or more and a certain type of *ex post* publicity for all procurement by the institutions, in addition to the obligation to inform the economic operators who have taken part in a specific award procedure.

They also clarify the role and responsibility of the authorising officers as awarding authorities, particularly in respect of the committees for the evaluation of tenders and requests to participate, whose opinion is advisory.

- (d) The implementing rules also cover management options such as framework contracts, whose legal status has so far been uncertain.

Sound financial management also justifies the development of instruments such as financial guarantees to protect Communities' financial interests when tenders are submitted, when the pre-financing is made available and also as a performance guarantee. The period of these guarantees, to be supplied preferably by a bank or financial institution, must be sufficient for them to be activated; they will be released, as appropriate, on:

- award of the contract,
- consolidation of the pre-financing in the interim payments,
- performance of the contract, in accordance with its terms.

Finally, in the general context of giving authorising officers greater responsibility, the implementing rules confirm that the Advisory Committee on Procurement and Contracts (ACPC) will no longer act as an *ex ante* control body for acts of budget implementation.

#### D. 2. Grants (Title VI)

A title concerning grants has been included in the implementing rules, even if there is no specific provision at that time in the basic act of the Agency (regulation of the Council EC 1035/97) as initially adopted, giving the Agency the possibility to award grants.

Grants have gradually become an important instrument for Community assistance both inside and outside the European Union. However, so far the General Financial Regulation and its implementing rules have not contained any specific provisions relating to the award of grants. Grants have therefore developed without any precise regulatory framework, although the Commission did draw up a guide for its departments in 1998.<sup>1</sup>

The recasting of the General Financial Regulation and its implementing rules provides an opportunity for remedying these shortcomings by creating a specific title for grants.

The purpose of this Title is to set out the rules for implementing the principles for the award, control and payment of grants and the exceptions and instruments of flexibility necessary for sound management of Community funds listed in the General Financial Regulation:

- (a) principles of transparency and equality of treatment, through:
  - the annual programming of activities and use of calls for proposals, except in cases of emergency, particularly involving humanitarian aid, or in duly substantiated monopoly situations,
  - publication of grants paid, except where there may be a threat to the safety of the beneficiaries or to business interests,
  - the collective nature of evaluation, but with clarification of the role and responsibility of the authorising officers, particularly with regard to the evaluation committees whose opinions are advisory,
  - justification of award decisions and the obligation to notify applicants who have replied to a call for proposals;

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<sup>1</sup> Vademecum on grant management, 14 July 1998.

- (b) statement of the principles of no-cumulation, no-profit and obligatory co-financing for the purposes of sound financial management; however, the implementing rules introduce the flexibility needed to avoid unduly cumbersome management by allowing partial or total transition from reimbursement of actual costs to flat-rate financing of part of an action; this approach focuses more on the results with regard to Community objectives than on a detailed check of financial statements with regard to the initial forecasts. The external co-financing requirements are relaxed by the authorisation to authorising officers to accept contributions in kind;
- (c) statement of the principle of non-retroactivity, subject to the necessary flexibility in such fields as humanitarian aid;
- (d) application of the same exclusion criteria as for contracts, particularly in the case of fraud or corruption, to protect the Communities' financial interests.

Finally, the implementing rules provide the necessary details about the course of the procedure for awarding grants and the instruments of sound financial management constituted by:

- (a) grant agreements, possibly under a long-term partnership,
- (b) compulsory external audits of the accounts for the largest grants in order to increase the Commission's capacity for analysing the financial viability of potential beneficiaries and checking financial statements after the operation or work programmes agreed have been carried out,
- (c) the guarantees demanded for pre-financing to protect the Commission against the burden of final recovery if the budget for the operation is less than initially planned or against the risk of default by the beneficiary.

#### **E. Keeping and presentation of the accounts (Title VII)**

During the recasting of the General Financial Regulation, the transparency of the economic and financial information produced by the Communities for the audit bodies and the public was increased so that all the information on the use of public funds and the institutions' assets and liabilities would be available in a clear and understandable form.

This assumes that the accounting information underlying the Communities' accounts is drawn up in line with internationally accepted accounting methods, that all the institutions and bodies responsible for presenting accounts for consolidation by the Commission use the same methods and that the composition and structure of the financial statements and the budget implementation statements are appropriate for each set of readers.

This harmonisation is undertaken by the Commission's accounting officer. These are the principles on which the draft implementing rules are based. It is therefore the task of the implementing rules to set out, by reference to the generally accepted **accounting principles**, the principles on which the financial statements are based:

- the going-concern principle, which generally requires that the accounts assume that the institutions are established for an indefinite duration;
- the principle of prudence, which means that assets are not overstated and liabilities are not understated;
- the principles of consistent accounting methods and the comparability of information, which lead to the same rules being applied in all fields, with no changes from one year to the next, apart from duly substantiated exceptions;
- the principle that the information presented must be accurate, exhaustive, relevant and comprehensible in order to give the reader a true and fair view of assets and liabilities, the financial situation and the year's outturn.

The implementing rules also set out the principles of materiality, no-netting, the entry of transactions in the accounts and substance over form.

The implementing rules supplement these principles with rules on the valuation of assets and liabilities and the principle that provisions may be constituted.

The implementing rules also have to specify the content and presentation of each of the documents constituting **the financial statements**. For the financial statements, these are the balance sheet and the economic outturn account, the cash flow table, the statement showing changes in capital and the annex to these statements. For the budget implementation statement, they consist of the budget outturn account and an annex.

Finally, the implementing rules cover the property inventory and the procedure for the sale of fixed assets contained in the inventory.

**Accounting methods** will differ in line with the information which they are intended to supply.

On the other hand, the **general accounts**, which record operations for entry in the balance sheet of the Communities, are based on accrual accounting and the implementing rules set out procedures in respect of the organisation of the accounts, the content of the accounting ledgers, the chart of accounts, registration and verification of operations. Attention should be drawn in particular to the principle that all accounting records must specify the origin, content and booking reference of each item and the references of the relevant supporting documents so that they can be traced.

## **F. Other issues (Title VIII)**

### **F. 1. Agencies**

The implementing rules list the bodies referred to in Article 185 of the General Financial Regulation which are subject to the framework General Financial Regulation for the agencies, granting of discharge by Parliament, authority of the Commission's internal auditor and the accounting standards laid down by the Commission's accounting officer.

### **F. 2. Updating**

Title VIII (final provisions) contains a provision calling for the regular updating, mainly through indexation to inflation in the European Union, of the various thresholds and amounts stipulated in the Regulation laying down rules for implementing the Financial Regulation.

# REGULATION OF THE EUROPEAN MARITIME SAFETY AGENCY

of 9 December 2003

## laying down detailed rules for the implementation of the Financial Regulation applicable to the budget of the European Maritime Safety Agency

THE MANAGEMENT BOARD OF THE EUROPEAN MARITIME SAFETY AGENCY

Having regard to Council Regulation EC n° 1035/97 of 2 June 1997,

Having regard to Council Regulation (EC) No 1605/2002 of 25 June 2002 (hereinafter “The General Financial Regulation”) applicable to the general budget of the European Communities,<sup>1</sup> and in particular Article 185 thereof,

Having regard to the Financial Regulation of 3 July 2003 applicable to the Budget of the European Maritime Safety Agency.

Having consulted the Commission and the Court of Auditors.

Whereas:

- (1) The provisions of the Financial Regulation of the Agency of 9 December 2003 have been simplified to confine the Regulation to the basic principles and definitions relating to the establishment, execution and control of the budget (hereinafter "the budget").
- (2) These implementing rules must therefore not only supplement the Financial Regulation in respect of the provisions for which it expressly refers to the implementing rules but also in respect of the provisions whose application requires the implementing measures to be determined in advance.
- (3) These implementing rules constitute a recasting of all existing rules for the application of the Financial Regulation and are mainly inspired of the provisions of the implementing rules of the General Financial Regulation, with minor adaptations taking into account the specificities of the Agency
- (4) As for the establishment and presentation of the budget, it is necessary to determine the contents of the general introduction to the budget, the working documents backing up the budget and the budget remarks to ensure that the budgetary authority is fully informed. In the new activity-based budgeting (ABB) presentation, the definition and classification of administrative appropriations are also set out.
- (5) As regards the role of the financial actors, the reform of financial management, together with the dropping of centralised *ex ante* controls, increases the responsibilities of the authorising officers in all revenue and expenditure operations, including in

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<sup>1</sup> JOCE of 16.09.2002 p.1

terms of internal control systems. The tasks, responsibilities and principles of the procedures to be observed must therefore be laid down. The internalisation of *ex ante* controls requires, in particular, a clear distinction between initiation tasks and the verification of budget implementation and each institution must also adopt a code of professional standards applicable to staff responsible for *ex ante* and *ex post* verifications. Provision must then be made for accounting for the responsibilities assumed in an annual report to the institution covering the results of the *ex post* verifications; arrangements must also be made for keeping the supporting documents relating to the operations carried out. Finally, as they represent derogations, negotiated procedures for the award of public contracts must be covered by a special report to the institution which is to be sent to the discharge authority.

- (6) As regards internal control and taking into account the specificities of the Agency, a function of audit capability is created to assist and support the financial actors of the Agency, in the daily management of revenue and expenditure.
- (7) In order to clarify responsibilities, a precise definition must also be given of the tasks and responsibilities of the accounting officer in connection with the accounting systems, treasury management, the management of bank accounts and third-party files. The arrangements for the termination of the accounting officer's duties are also spelled out.
- (8) Once the tasks and responsibilities of each actor are laid down, they may be held liable only under the conditions set out in the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants. However, a new Financial Irregularities Panel has to be set up in appropriate manner in each institution to determine whether irregularities of a financial nature may have occurred. The procedure by which an authorising officer may seek confirmation of an instruction and thus be release from any liability is also set out.
- (9) In the case of procurement, the option taken is to transpose Council Directives 92/50/EEC, 93/36/EEC and 93/37/EEC relating to the coordination of procedures for the award of public service, supply and works contracts, as amended by Directive 97/52/EEC of the European Parliament and of the Council of 13 October 1997 amending Directives 92/50/EEC, 93/36/EEC and 93/37/EEC relating to the coordination of procedures for the award of public service, supply and works contracts respectively.<sup>2</sup> This first requires definition of the various types of contract, the advertising and publication measures applicable, appeals and the main features of existing procedures, the specification of selection criteria and the possible award arrangements, rules for access to tender documents, communication with tenderers and candidates and, when the Agency awards contracts on its own account, the various thresholds applicable and the rules for estimating the value of the contracts to be awarded. For the sake of transparency of procedures and equal treatment of candidates, as well as the full responsibility of authorising officers in the final choice, the procedure for opening and then evaluating tenders and requests to participate is then described, from the appointment of a committee up to the substantiated and documented award decision, which ultimately falls to the contracting authority. The financial guarantees needed to protect the Communities' financial interests are also

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<sup>2</sup> OJ L 209, 24.7.1992, p.1; OJ L 199, 908.1993, p.1; OJ L 111, 30.4.1994, p.115 and OJ L 328, 28.11.1997, p.1.

described. Finally, rules are provided for the contracting authorities' powers to impose administrative penalties in order to ensure their proportionate and dissuasive nature and a certain equality of treatment between the various institutions and between departments.

- (10) The scope of the title on grants must also be clarified, particularly with regard to the different methods for implementing the budget, but also with regard to the type of action or body of general European interest eligible for a grant. The characteristics of the annual work programme and the calls for proposals are set out. Again with regard to the requirements of transparency, equal treatment for applicants and the liability of authorising officers, the award procedure is described from the application for the grant to its evaluation, by a committee, in the light of previously specified selection and award criteria, before the authorising officer takes his final, appropriately documented decision. Sound financial management then requires that the Agency demands guarantees at the application stage, through the provision of financial audits for the larger amounts, and then on payment of the pre-financing, through the demand for advance financial guarantees, and finally on final payment, through the provision of financial audits for the requests which present most risk. Sound management and control of the no-profit and co-financing principles also require rules to be laid down for the possible use of flat-rate payments. Finally, the sound management of Community funds means that the grant beneficiaries themselves must comply with the principles of transparency and the equal treatment of potential contractors and the award of the contract to the tender offering best value for money when the action is partly sub-contracted. Finally, penalties in this matter are based on what exists for procurement.
- (11) As regards the keeping and presentation of the accounts, each of the generally accepted accounting principles on which the financial statements have to be based must be defined, with the exception of the principle of accrual accounting which, in view of its importance and its innovatory nature, is defined in the General Financial Regulation. It is also necessary to specify the conditions for entering a transaction in the accounts and the rules for valuing assets and liabilities and the constitution of provisions. It should be specified that the accounts must be accompanied by a report on budgetary and financial management and details should be given of the content and presentation of the elements making up the financial statements (balance sheet, economic outturn account, cash-flow table) and their annex and the budget implementation statements (budget outturn account plus annex).
- (12) On accounting matters, it should be specified that the Agency's accounting officer should produce documents describing the organisation of the accounts and the accounting procedures of his institution and set out the conditions to be respected by the computerised accounting systems. As for the keeping of the accounts, it is necessary to specify the principles applicable to the accounting ledgers, the trial balance, the periodical reconciliation of the totals in this balance and the inventory and to specify the components of the chart of accounts adopted by the Commission's accounting officer. The rules applicable to the registration of operations, in particular the double-entry method, the rules for the conversion of operations which are not denominated in euro and the supporting documents for accounting entries, must be laid down. The content of the accounting records must also be specified.
- (13) Finally, the rules relating to the property inventory are laid down and the respective responsibilities of the accounting officers and authorising officers in this field are

clarified, together with the rules applicable to the resale of property entered in the inventory.

- (14) The various thresholds and amounts referred to in this Regulation must be regularly updated by linking them with the inflation recorded in the European Union, with the exception of the thresholds applicable to procurement.

## **TITLE I**

### **SUBJECT**

*Article 1*  
*Subject*  
*(Article 1 of the Financial Regulation)*

This Regulation sets out the rules for implementing certain provisions of the Financial Regulation of 3 October 2003 (hereinafter "Financial Regulation") which lays down the rules for the establishment and implementation of the budget of the European Maritime Safety Agency, hereinafter "budget".

## **TITLE II**

### **BUDGETARY PRINCIPLES**

#### **CHAPTER 1**

##### **PRINCIPLE OF ANNUALITY**

*Article 2*  
*Appropriations for the year*  
*(Article 8 of the Financial Regulation)*

The commitment appropriations and payment appropriations entered in the budget for a financial year and which have to be used during that year shall consist of the appropriations authorised for the year. The appropriations authorised for the year are:

- (a) appropriations provided in the budget, including by amending budgets;
- (b) appropriations carried over;
- (c) appropriations made available again;
- (d) appropriations arising from payments on account which are repaid
- (e) appropriations provided following the receipt of assigned revenue.

*Article 3*  
*Carryover of appropriations*  
*(Article 10 of the Financial Regulation).*

1. The commitment appropriations referred to in Article 10 of the Financial Regulation may be carried over only if the commitments could not be made before 31 December of that financial year for reasons not attributable to the authorising officer and if the preparatory stages are sufficiently advanced to make it reasonable to judge that the commitment may be made before 31 March of the following year.
2. The preparatory stages referred to in Article 10(3) of the Financial Regulation which should be completed by 31 December of the financial year in order to allow a carryover to the following year are in particular:
  - (a) for global commitments, the adoption of a financing decision or the closing by that date of the consultation of the departments concerned within each institution for the adoption of the decision;
  - (b) for individual commitments, the advanced stage of preparation of the contracts or agreements. This advanced stage of preparation of the contracts or agreements shall mean the completion of the selection of potential contractors or beneficiaries.
3. Appropriations carried over in accordance with Article 10(3) of the Financial Regulation which have not been committed by 31 March of the following year shall be automatically cancelled.
4. Appropriations carried over in accordance with Article 10(3) of the Financial Regulation may be used until 31 December of the following year.
5. The accounts shall identify appropriations carried over in this way.

**CHAPTER 2**  
**PRINCIPLE OF UNIT OF ACCOUNT**

*Article 4*  
*Rate of conversion between the euro and other currencies*  
*(Article 17 of the Financial Regulation)*

1. Without prejudice to specific provisions arising from the application of sectoral regulations, conversion between the euro and another currency shall be made using the daily euro rate published in the C series of the Official Journal of the European Communities.
2. If no daily rate is published in the Official Journal of the European Communities for the currency in question, the Agency shall use the accounting rate referred to in paragraph 3.

*Article 5*  
*Rate to be used for conversion between the euro and other currencies*  
*(Article 17 of the Financial Regulation)*

1. Without prejudice to specific provisions deriving from the application of sectoral regulations, the rate to be used for converting between the euro and other currencies shall be that of the day when the payment order or recovery order is drawn up by the authorising department.
2. In the case of euro imprest accounts, the rate to be used shall be determined by the date of the payment by the bank.

*Article 6*  
*Conversion into euro of expenditure committed at the end of the budget year*  
*(Article 17 of the Financial Regulation)*

The December euro rates shall be used to calculate the obligations outstanding at the end of the financial year.

**CHAPTER 3**  
**PRINCIPLE OF UNIVERSALITY**

*Article 7*  
*Contributions from Member States to research programmes*  
*(Article 19 of the Financial Regulation)*

1. The Member States' contributions for financing certain supplementary research programmes, provided for in Article 5 of Regulation (EC) No 1150/2000, shall be paid as follows:
  - (a) seven twelfths of the sum entered in the budget shall be paid by no later than 31 January of the current year,
  - (b) the remaining five twelfths shall be paid by no later than 15 July of the current year.
2. Where the budget is not finally adopted before the start of a financial year, the contributions provided for in paragraph 1 shall be based on the sum entered in the budget for the previous financial year.
3. Any contribution or additional payment owed by the Member States to the budget must be entered in the Agency's account or accounts within thirty days of the call for funds.
4. Payments made shall be entered in the account provided for in Regulation (EC) No 1150/2000 and shall be subject to the conditions laid down by that Regulation.

## Article 8

### *Assigned revenue resulting from the participation of EFTA States in certain Community programmes (Article 19 of the Financial Regulation)*

1. The budget structure to accommodate the participation of the EFTA States in certain Community programmes shall be as follows:
  - (a) in the statement of revenue, a line with a token entry (p.m.) shall be entered to accommodate the full amount of the EFTA States' contribution for the year in question. The estimated amount shall be shown in the budget remarks;
  - (b) in the statement of expenditure:
    - (i) the remarks for each line relating to the Community activities in which the EFTA States participate shall show "for information" the estimated amount of the participation,
    - (ii) an annex, forming an integral part of the budget, shall set out all the lines covering the Community activities in which the EFTA States participate.

This annex reflects and is part of the structure to accommodate the appropriations corresponding to this participation, as provided for in paragraph 2, and to allow the expenditure to be implemented.

2. Under Article 82 of the Agreement on the European Economic Area, the amounts of the annual participation of the EFTA States - as confirmed to the Commission by the EEA Joint Committee in accordance with Article 1(5) of Protocol 32 annexed to that Agreement - shall give rise to the provision, at the start of the year, of the full amounts of the corresponding appropriations for commitments and appropriations for payments.
3. If, in the course of the year, additional appropriations are provided on the budget lines with EFTA State participation without the EFTA States being able, during that year, to adjust their contributions in order to comply with the "proportionality factor" provided for in Article 82 of the Agreement on the European Economic Area, the Commission shall be authorised, as a provisional and exceptional measure, to use its cash resources to pre-finance the share of the EFTA States. Whenever new appropriations are provided, the Commission shall, as soon as possible, call in the corresponding contributions from the EFTA States. The Commission shall inform the budgetary authority each year of the decisions taken.

The pre-financing shall be regularised as soon as possible in the budget for the following year.

4. In accordance with Article 19 of the Financial Regulation, the financial contributions of the EFTA States shall constitute assigned revenue. The accounting officer shall adopt appropriate measures to ensure that use of the revenue arising from these contributions and of the corresponding appropriations is monitored separately.

In the report provided for in Article 77 of the Financial Regulation, the Commission shall show separately the implementation, in both revenue and expenditure, corresponding to EFTA State participation.

*Article 9*  
*Passing for payment of the net amount*  
*(Article 21(1) of the Financial Regulation)*

Pursuant to Article 21 of the Financial Regulation, the following deductions may be made from payment requests, invoices or statements, which shall then be passed for payment of the net amount:

- (a) penalties imposed on a party to a contract;
- (b) adjustments of amounts paid unduly, which may be set off against payments of the same type to the same payee under the title, chapter, article and financial year in respect of which the excess payment was made.

**CHAPTER 4**  
**PRINCIPLE OF SPECIFICATION**

*Article 10*  
*Grounds for requests for transfers of appropriations*  
*(Article 23 of the Financial Regulation)*

Proposals for transfers and all information for the budgetary authority concerning transfers made under Article 23 of the Financial Regulation shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the lines to which the appropriations are to be transferred and for those from which they are taken.

**CHAPTER 5**  
**PRINCIPLE OF SOUND FINANCIAL MANAGEMENT**

*Article 11*  
*Evaluation*  
*(Article 25 of the Financial Regulation)*

1. Proposals for all programmes and actions occasioning additional expenditure or a reduction in revenue for the budget shall be the subject of an *ex ante* evaluation, which shall identify:
  - (a) the need to be met in the short or long term;

- (b) the objectives to be achieved;
  - (c) the results expected and the indicators needed to measure them;
  - (d) the added value of Community involvement;
  - (e) the risks, including fraud, linked with the proposals and the alternative options available;
  - (f) the lessons learned from similar experiences in the past;
  - (g) the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost-effectiveness principle;
  - (h) the monitoring system to be set up.
2. All programmes or actions shall then be the subject of an interim and/or *ex post* evaluation in terms of the human and financial resources allocated and the results obtained in order to verify that they were consistent with the objectives set, as follows:
- (a) the results obtained in carrying out a multiannual programme shall be periodically evaluated in accordance with a timetable which will allow the findings of this evaluation to be taken into account for any decision on the continuation, modification or suspension of the programme;
  - (b) actions financed on an annual basis shall have their results evaluated at least every six years. This requirement may also be met by the final reports sent by the bodies which carried out the action.

*Article 12*  
*Financial statement*  
*(Article 25 of the Financial Regulation)*

1. Any proposal for an act submitted to the legislative authority which may have an impact on the budget, including changes in the number of posts, shall include a financial statement.
- The financial statement shall contain the financial and economic data for the assessment by the legislative authority of the need for Community action. It shall provide appropriate details of coherence and any synergy with other financial instruments.
- In the case of multiannual operations, the financial statement shall contain the foreseeable schedule of annual requirements in appropriations and posts and an evaluation of their medium-term financial impact.
2. In order to prevent any risk of fraud or irregularity which might adversely affect the protection of the Communities' financial interests, the financial statement shall provide information regarding existing and planned fraud prevention and protection measures.

**CHAPTER 6**  
**PRINCIPLE OF TRANSPARENCY**

*Article 13*  
*Provisional publication of a summary of the budget*  
*(Article 26 of the Financial Regulation)*

Pending official publication, a summary of the budget figures shall be published on the Internet site of the institutions, on the Agency's initiative, within four weeks of the date of the final adoption of the budget.

**TITLE III**  
**ESTABLISHMENT AND STRUCTURE OF THE BUDGET**

**CHAPTER 1**  
**ESTABLISHMENT OF THE BUDGET**

*Article 14*  
*General introduction to the preliminary draft budget*  
*(Article 27 of the Financial Regulation)*

The Agency shall draw up the general introduction to the preliminary draft budget.

The general introduction shall comprise:

- (a) financial tables covering the entire budget;
- (b) as regards the titles in the Agency's section:
  - (i) a description of the policies and activities for which the appropriations are requested, with due account for the principles and requirements set out in Articles 27 and 33(2)(d) of the General Financial Regulation,
  - (ii) an explanation of the changes in appropriations from one financial year to the next.

*Article 15*  
*Working documents in support of the preliminary draft budget*  
*(Article 27 of the Financial Regulation)*

The preliminary draft budget shall be accompanied by working documents containing the following information:

- (a) in respect of staff of the Agency:

- (i) a statement of the policy for permanent and temporary staff;
  - (ii) for each category of staff, an organisation chart of budgetary posts and persons in post on the date of the presentation of the preliminary draft budget, indicating their distribution by grade and administrative unit;
  - (iii) where a change in the number of persons in post is proposed, a statement justifying such change;
  - (iv) a list of posts broken down by policy area; or/and main objective.
- (b) a detailed statement of borrowing and lending policy.

*Article 16*  
*Preliminary draft amending budgets*  
*(Article 28 of the Financial Regulation)*

Preliminary draft amending budgets shall be accompanied by statements of grounds and the information on the implementation of the budget for the preceding and current financial years available at the time of their establishment.

## **CHAPTER 2**

### **STRUCTURE AND PRESENTATION OF THE BUDGET**

*Article 17*  
*Nomenclature for the statement of expenditure*  
*(Art 30 of the Financial Regulation)*

1. The Agency may decide to have a presentation of statement of expenditure according to one of the following
  - a) Presentation based on the nature of activities:
    1. Staff expenditure
    2. Buildings, equipment and miscellaneous operating expenditure
    3. Operating expenditure
  - b) Presentation according to activity based budgeting management:

This presentation is based on the division of expenditure between main activities of the Agency as described in the EC regulation 1035/97 of 2 June 1997.
2. Where the Agency may decide to change the presentation of statement of expenditure, the budget presentation during the transitional period should follow the two options as mentioned under paragraph 1 a) and b)

*Article 18*  
*Administrative appropriations*  
*(Article 31 of the Financial Regulation)*

Within the respective chapters, administrative appropriations shall be divided into separate headings by title according to the following classification:

- (a) expenditure on staff authorised in the establishment plan: there shall be an amount of appropriations and a number of posts corresponding to this expenditure;
- (b) expenditure on external staff (including auxiliary staff and agency staff) and other management expenditure (including representation expenses and mission expenses);
- (c) expenditure on buildings and other related expenditure, including cleaning and maintenance, rental and hiring, telecommunications, water, gas and electricity;
- (d) support expenditure.

The Agency's administrative expenditure of a type common to all titles may also be set out in a separate summary statement classified by type.

*Article 19*  
*Actual expenditure in the last financial year for which the accounts have been closed*  
*(Article 31 of the Financial Regulation)*

For the purposes of establishing the budget, actual expenditure in the last financial year for which the accounts have been closed shall be determined as follows:

- (a) in commitments: commitments entered in the accounts during the financial year against appropriations for that financial year as defined in Article 5;
- (b) in payments: payments made during the financial year, i.e. for which a payment order has been sent to the bank, against appropriations for that financial year as defined in the same article.

*Article 20*  
*Budget remarks*  
*(Article 31 of the Financial Regulation)*

The budget remarks shall include:

- (a) the references of the basic act, where one exists, considering that in the community field, a "basic act" may take the form of a regulation, a directive or a decision.
- (b) all appropriate explanations concerning the nature and purpose of the appropriations.

# **TITLE IV**

## **IMPLEMENTATION OF THE BUDGET**

### **CHAPTER 1**

#### **GENERAL PROVISIONS**

##### *Article 21*

*Delegation by the Director of  
his powers of authorising officer  
(Article 34 of the Financial Regulation)*

1. The Director as appointing authority is the only responsible for delegating the powers of authorising officer.
2. Only heads of Department can receive a delegation for acting as authorising officer of the Agency.
3. All officials or other servants shall sign a declaration on liability and conflicts of interest before they can receive a delegation.
4. Authorising officers by delegation may decide to install among themselves special procedures to ensure best practise in coordination and control of the budget management. If doing so, they shall notify the Director of the detailed description of the procedures and actors involved.
5. The authorising officers by delegation shall act with a view to maintain excellence in the relationship with the internal auditor and the Court of Auditors. They shall take care that files and records are permanently updated and available on request.

##### *Article 22*

*Definition of a conflict of interests  
(Article 35 of the Financial Regulation)*

1. Acts that may be tainted by a conflict of interests may include one of the following forms:
  - (a) granting oneself or others unjustified direct or indirect benefits;
  - (b) refusing to grant a beneficiary the rights or benefits to which he is entitled;
  - (c) committing undue or wrongful acts or failing to carry out acts that are mandatory.
3. The competent authority referred to in Article 35 of the Financial Regulation shall be the hierarchical superior of the member of staff concerned. He shall confirm in writing

whether or not there is a conflict of interests. If there is, he shall himself take any appropriate decision.

#### *Article 23*

##### *Prior checks carried out by the Agency (Article 36 of the Financial Regulation)*

1. Where the Agency implements the budget by shared, decentralised or indirect centralised management, it shall first carry out document and on-the-spot checks into the existence, relevance and proper operation within the entities to which it entrusts implementation, in accordance with the rules of sound financial management, and, in cases of decentralised management, in full or in part depending on the degree of decentralisation agreed, of:
  - (a) procedures applied;
  - (b) control systems;
  - (c) accounting systems;
  - (d) procurement and grant award procedures.
2. The Agency shall review such arrangements as necessary whenever there are substantial changes to procedures or systems in order to ensure continued compliance with the conditions set out in paragraph 1.
3. These entities shall provide the Agency, by the date stipulated, with any information it requests and shall inform it without delay of any substantial changes in their procedures or systems. The Agency shall, as appropriate, specify such obligations in the instruments of delegation or agreements concluded with these entities.
4. Where the Agency implements the budget by joint management, the verification agreements concluded with the international organisations concerned shall apply.

#### *Article 24*

##### *Direct centralised management (Article 36 of the Financial Regulation)*

Where the Agency implements the budget on a centralised basis directly in its departments, implementation tasks shall be performed by the financial actors within the meaning of Articles 37 to 44 of the Financial Regulation.

#### *Article 25*

##### *Eligibility of national public-sector bodies or private-law entities with a public-service mission and conditions for delegation of powers to them (Article 36 of the Financial Regulation)*

1. The Agency may delegate tasks involving the exercise of public authority to national public-sector bodies or private-law entities with a public-service mission only if they are governed by the law of the Member States of the European Union, the EEA or

countries that have applied to join the European Union save where the basic act provides otherwise.

2. The Agency shall ensure that these bodies or entities offer adequate financial guarantees, issued preferably by a public authority, in particular as regards full recovery of amounts due to the Agency.
3. Where the Agency is planning to entrust tasks involving the exercise of public authority, and in particular tasks of budget implementation to a body referred to in Article 36 of the Financial Regulation, it shall analyse compliance with the principles of economy, effectiveness and efficiency. If this analysis shows that delegation best satisfies the requirements of sound financial management, it shall, before proceeding to implement the delegation, request the opinion of the competent committee provided for in the basic act, which may also give its opinion on the planned application of the selection criteria.

#### *Article 25*

##### *Designation of national public-sector bodies or private-law entities with a public-service mission (Article 36 of the Financial Regulation)*

1. The national public-sector bodies or private-law entities with a public-service mission shall be set up in accordance with the law of the Member State or the country by which they are governed.
2. Such bodies or entities shall be chosen in an objective and transparent manner to match the implementation requirements identified by the Agency. This choice may not entail any discrimination between the Member States or countries concerned.
3. In cases of management by a network requiring the designation of at least one body or entity by Member State or by country concerned, the body or entity shall be designated by the Member State or the country concerned in accordance with the provisions of the basic act.

In other cases the Agency shall designate these bodies or entities in agreement with the Member States or countries concerned and in accordance with the provisions of the basic acts.

#### *Article 26*

##### *Compliance with rules on procurement (Article 36 of the Financial Regulation)*

Where the Agency entrusts tasks to private bodies under Article 36 of the Financial Regulation, it shall conclude a contract in accordance with the provisions of the Financial Regulation.

*Article 27*  
*Detailed arrangements for indirect centralised management*  
*(Article 36 of the Financial Regulation)*

1. Where the Agency entrusts implementing tasks to agencies, bodies or entities under Article 36 of the Financial Regulation, it shall conclude an agreement with them.
2. Such agreement shall include the following provisions:
  - (a) a description of the tasks entrusted;
  - (b) the conditions and detailed arrangements for performing the tasks, including the control arrangements;
  - (c) the rules on reporting to the Agency on how the tasks are performed;
  - (d) the conditions under which performance of the tasks is terminated;
  - (e) the detailed arrangements for the Agency's control;
  - (f) the conditions governing the use of separate bank accounts, the beneficiary of the interest yielded and the use made of it;
  - (g) the provisions guaranteeing the visibility of Community action in relation to the other activities of the body;
  - (h) an undertaking to refrain from any act which may give rise to a conflict of interests within the meaning of Article 22.
3. The agencies, bodies or entities referred to in paragraph 1 shall not have the status of authorising officers by delegation.

*Article 28*  
*Clearance of accounts procedures in decentralised or shared management*  
*(Article 36 of the Financial Regulation)*

1. The purpose of the clearance of accounts procedure referred to in Article 36 of the Financial Regulation shall be to ensure that expenditure by the Member States in the context of shared management or by third countries in the context of decentralised management and which may be chargeable to the Community budget is in order and consistent with the applicable Community rules.
2. Without prejudice to specific provisions contained in sectoral rules, the clearance of accounts procedure shall consist of:
  - (a) the declaration of expenditure by the Member States or non-member countries in the form of accounts certified by a technically competent department or body functionally independent of the spending agency;
  - (b) document and, where appropriate, on-the-spot checks by the Agency, subject to no limitations or restrictions, on the content of these accounts and on the underlying transactions, including checks on beneficiaries;

- (c) establishment by the Agency of the amount of expenditure recognised as chargeable to the budget, following an adversarial procedure and after the Member States or third countries have been notified;
  - (d) calculation of the financial correction arising from the difference between declared expenditure and expenditure recognised as chargeable to the budget;
  - (e) recovery or repayment of the balance arising from the difference between recognised expenditure and the sums already paid to the Member States or third countries. Recovery shall be by offsetting as specified in Article 80.
3. The clearance of accounts procedure described in paragraphs 1 and 2 shall apply depending on the degree of decentralisation agreed.

*Article 29*  
*Joint management*  
*(Articles 36 of the Financial Regulation)*

1. The appropriations used in joint management with international organisations within the meaning of Articles 53 and 165 of the General Financial Regulation shall finance actions, performance of which requires the pooling of resources from a number of donors, where it is not reasonably possible or appropriate to assign the share contributed by each donor to each type of expenditure.
2. The international organisations referred to in paragraph 1 are as follows:
- (a) international public-sector organisations set up by intergovernmental agreements and specialised agencies set up by such organisations;
  - (b) the International Committee of the Red Cross (ICRC);
  - (c) the International Federation of National Red Cross and Red Crescent Societies.

**CHAPTER 2**  
**FINANCIAL ACTORS**

**SECTION 1**  
**RIGHTS AND OBLIGATIONS OF THE FINANCIAL ACTORS**

*Article 30*  
*Rights and obligations of the financial actors*  
*(Article 37 of the Financial Regulation)*

The Agency shall provide each financial actor with the resources required to perform his duties and a charter describing in detail his tasks, rights and obligations.

## SECTION 2 AUTHORISING OFFICER

### *Article 31*

*Assistance for authorising officers by delegation and subdelegation  
(Article 37 of the Financial Regulation)*

The authorising officer responsible may be assisted in his duties by members of staff entrusted, under his responsibility, with certain operations required for the implementation of the budget and production of the financial and management information. In order to prevent any conflicts of interests, these members of staff shall be subject to the obligations referred to in Article 35 of the Financial Regulation.

### *Article 32*

*Segregation of duties of initiation and verification of an operation  
(Articles 37 and 39 of the Financial Regulation)*

Initiation of an operation shall be understood to mean all the operations which are normally carried out by the staff referred to in Article 31 and which are preparatory to the adoption of the acts implementing the budget by the competent authorising officer, holder of a delegation or a sub delegation.

### *Article 33*

*Management and internal control procedures  
(Article 38(4) of the Financial Regulation)*

The management and internal control systems and procedures shall be designed to:

- (a) achieve the objectives of the policies, programmes and action of the institution in accordance with the principle of sound financial management;
- (b) comply with the rules of Community law and minimum control standards established by the institution;
- (c) safeguard assets and information;
- (d) prevent and detect irregularities, errors and fraud;
- (e) identify and prevent management risks;
- (f) ensure reliable production of financial and management information;
- (g) keep supporting documents relating to and subsequent to budget implementation and to budget implementation measures;
- (h) keep documents relating to advance guarantees for the institution and keep a log to provide suitable monitoring of such guarantees.

*Article 34*  
*Audit capabilities*  
*(Article 38 of the Financial Regulation)*

1. The Agency shall create a function of audit capabilities to assist authorising officers in their duties mentioned in Articles 38 (1) and 38(4) of the Financial Regulation.
2. The functions of audit capabilities consists in the preparation, and follow up of Management and internal control procedures. It includes the setting up and implementation of the Code of professional standards mentioned in article 39 (6) of the *Financial Regulation*.
3. The official or agent in charge of the function mentioned in paragraph 1 is assisting the Director, as principal authorising officer and delegator for the harmonisation and effectiveness of control systems and procedures of the Agency.
4. The official or agent in charge of the function mentioned in paragraph 1 may be asked to assist and advise authorising officers by delegation for the implementation of best practise in the field of internal control. He shall inform the Director of all such requests and act with diligence for providing assistance.
5. The official or agent in charge of the function mentioned in paragraph 1 may be asked by the Director to undertake controls outside of the Agency as an ex post verification of the activities of implementation of revenue and expenditure of the Agency. He may ask the Director to designate staff members of the Agency to assist him in the verifications, especially for control of beneficiaries.
6. The official or agent in charge of the function mentioned in paragraph 1 may be asked to assist the Director and the authorising officers for the definition and follow up of the evaluation of programmes and activities referred to in article 25(4) of the Financial Regulation.
7. The official and agent in charge of the function mentioned in paragraph 1 shall report on the performance of his duties in the form of an annual activity report, to the Management Board and the Director. This annual report may contain recommendations with a view to optimise internal control systems and procedures.

*Article 35*  
*Keeping of supporting documents by authorising officers*  
*(Article 38(6) of the Financial Regulation)*

The management systems and procedures concerning the original supporting documents shall provide for:

- (a) such documents to be numbered;
- (b) such documents to be dated;
- (c) registers to be kept identifying the exact location of such documents;

- (d) such documents to be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate.

Documents relating to operations not definitively closed shall be kept for longer than provided for in point (d) of the first subparagraph, until the end of the year following that in which the operations are closed.

*Article 36*  
*Code of professional standards*  
*(Article 39(6) of the Financial Regulation)*

1. The staff designated by the authorising officer responsible to verify financial operations shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience.
2. The Agency shall draw up a code of professional standards which shall determine, on matters such as internal control, inspection and audit:
  - (a) the level of technical and financial competence required of the staff referred to in paragraph 1;
  - (b) the obligation for them to undergo continuing training;
  - (c) their missions, role and tasks;
  - (d) the rules of conduct, and in particular the standards of ethics and integrity that they must comply with and the rights they enjoy;
  - (f) the methods, techniques and control standards that they must apply.
3. The code of professional standards may be amended on an annual basis, depending on experience gained and the needs of the Agency.

*Article 37*  
*Failure of the authorising officer by delegation to take action*  
*(Article 42 of the Financial Regulation)*

The failure of the authorising officer by delegation to take action as referred to in Article 60(6) of the General Financial Regulation shall mean the absence of any reply within a reasonable time given the circumstances of the case and, at all events, within a month at most.

*Article 38*  
*Ex post verification and annual report*  
*(Article 39(4) of the Financial Regulation)*

The result of the *ex post* verifications shall, with other matters, be set out in the annual activity report submitted by the authorising officer by delegation to his institution.

*Article 39*  
*Transmission of financial and management information to the accounting officer*  
*(Article 43(2) of the Financial Regulation)*

The authorising officer by delegation shall send the accounting officer, in accordance with the rules adopted by the latter, the financial and management information required for the performance of the accounting officer's duties.

*Article 40*  
*Report on negotiated procedures*  
*(Articles 40 and 42 of the Financial Regulation)*

Authorising officers by delegation shall record, for each financial year, contracts concluded by negotiated procedures within the meaning of Articles 124, 125, 240, 242, 244 and 245 of the General Financial Regulation. If the proportion of negotiated procedures in relation to the number of contracts awarded by the same authorising officer by delegation increases appreciably in relation to earlier years or if this proportion is distinctly higher than the average for the Agency, the authorising officer responsible shall report to the Director setting out any measures taken to reverse this trend. The Agency shall send a report to the discharge authority.

**SECTION 3**  
**ACCOUNTING OFFICER**

*Article 41*  
*Appointment of the accounting officer*  
*(Article 43 of the Financial Regulation)*

The accounting officer shall be appointed from officials subject to the Staff Regulations of Officials and other agents of the European Communities.

The accounting officer must be chosen by the Agency on the grounds of his particular competence as evidenced by diplomas or by equivalent professional experience.

*Article 42*  
*Termination of duties of the accounting officer*  
*(Article 43 of the Financial Regulation)*

1. An interim statement of account shall be drawn up without delay in the event of termination of the duties of the accounting officer.
2. This statement shall be made up of the accounts provided for in Title VII of the Financial Regulation, closed on the last day of the month in which the accounting officer terminates his duties.
3. No interim statement of account shall be required where the accounting officer terminates his duties at the end of a financial year.

4. The interim statement or, in the circumstances referred to in paragraph 3, the provisional accounts referred to in Article 128 of the General Financial Regulation shall be transmitted by the accounting officer who is terminating his duties or, if this is not possible, by an official or agent in his department to the new accounting officer, who, within no more than one month from the date of transmission, must sign in acceptance and may make reservations.

*Article 43*  
*Opinion on accounting and inventory systems*  
*(Article 43 of the Financial Regulation)*

Where financial management systems set up by the authorising officer provide data for the institution's accounts or are used to justify data in these accounts, the accounting officer must give his agreement to the introduction and modification of such systems.

The accounting officer shall also be consulted regarding the introduction and modification by the authorising officers responsible of inventory systems and systems for valuing assets and liabilities.

*Article 44*  
*Treasury management*  
*(Article 43 of the Financial Regulation)*

1. The accounting officer shall ensure that the Agency has at its disposal sufficient funds to cover the cash requirements arising from budgetary implementation.
2. For the purposes of paragraph 1, the accounting officer shall set up cash management systems enabling him to draw up cash-flow forecasts.

*Article 45*  
*Management of bank accounts*  
*(Article 43 of the Financial Regulation)*

1. For the requirements of treasury management, the accounting officer may open accounts in the name of the institution with financial institutions or national central banks or cause such accounts to be opened. In duly warranted circumstances, he may open accounts in currencies other than the euro.
2. The accounting officer shall negotiate the operating terms for accounts with financial institutions, in accordance with the principles of sound financial management, efficiency and competitive tendering.
3. At least every five years the accounting officer shall relaunch competitive tendering between financial institutions with which accounts are opened.
4. The accounting officer shall ensure strict compliance with the operating terms for accounts opened with financial institutions.
5. The Commission's accounting officer shall be responsible for harmonising the operating terms for accounts opened by the various institutions and bodies referred to

in Article 185 of the General Financial Regulation after consulting the accounting officers of the institutions and bodies concerned.

*Article 46*  
*Signatures on accounts*  
*(Article 43 of the Financial Regulation)*

The terms governing the opening, operation and use of accounts shall stipulate that depending on internal control requirements, cheques, bank credit transfer orders or any other banking operations must be signed by one or more duly authorised members of staff.

To this end the Agency shall communicate to all financial institutions with which it has opened accounts the names and specimen signatures of the authorised officials.

*Article 47*  
*Management of accounts*  
*(Article 43 of the Financial Regulation)*

1. The accounting officer shall ensure that the balance on the bank accounts provided for in Article 45 does not deviate significantly from the cash-flow forecasts referred to in Article 44(2) and in any event,
  - (a) that none of these accounts is in debit;
  - (b) that the balance of accounts held in foreign currencies is periodically converted into euro.
2. The accounting officer may not maintain balances in foreign currency accounts which might cause excessive losses to the institution as a result of exchange rate fluctuations.

*Article 48*  
*Transfers and conversion operations*  
*(Article 43 of the Financial Regulation)*

Without prejudice to Article 55, the accounting officer shall be authorised to conduct transfers between accounts opened in the name of the Agency with financial institutions and to conduct currency conversion operations.

*Article 49*  
*Methods of payment*  
*(Article 43 of the Financial Regulation)*

Payments shall be made by bank credit transfer or by cheque.

*Article 50*  
*Third-party files*  
(Article 43 of the Financial Regulation)

1. The accounting officer may make payments by bank credit transfer only if the bank account details of the payee have first been entered in a common file by institution.

Entry in the file of the payee's bank account details or modification of those details shall be based on a document, in paper or electronic form, certified by the payee's bank.

2. With a view to payment by bank credit transfer, authorising officers may enter into a commitment towards a third party on behalf of their institution only if that third party has provided the documentation required for its entry in the file.

Authorising officers shall check that the bank account details communicated by the payee are still valid when each payment order is drawn up.

In connection with pre-accession aid, individual commitments may be concluded with the public authorities in the countries applying for accession to the European Union without a prior entry in the third-party file. In this event the authorising officer shall do his utmost to ensure that the entry is made as quickly as possible. The agreements shall provide that communication to the Agency of the payee's bank account details is a condition to be fulfilled before the first payment can be made.

*Article 51*  
*Keeping of supporting documents by the accounting officer*  
(Article 43 of the Financial Regulation)

Supporting documents for the accounting system and for the preparation of the accounts referred to in Title VII of the Financial Regulation shall be kept for at least five years from the date Parliament grants discharge for the budgetary year to which the documents relate.

However, documents relating to operations not definitively closed shall be kept for longer, until the end of the year following that in which the operations are closed.

The authorising officers shall liaise with the Accounting officer before deciding in which department the supporting documents shall be kept.

**SECTION 4**  
**IMPREST ADMINISTRATOR**

*Article 52*  
*Conditions of use of imprest accounts*  
(Article 44 of the Financial Regulation)

1. Where the small sums involved make it materially impossible or inefficient to carry out payment operations by budgetary procedures, imprest accounts may be set up to pay such expenditure.

2. The imprest administrator shall be authorised to provisionally validate and pay expenditure, on the instructions of the authorising officer responsible.
3. The creation of an imprest account and the appointment of an imprest administrator shall be the subject of a decision by the accounting officer, on a duly substantiated proposal from the accounting officer responsible. The decision shall stipulate the responsibilities and obligations of the imprest administrator and the authorising officer.

Changes to the operating terms for an imprest account shall also be the subject of a decision by the accounting officer on a duly substantiated proposal by the authorising officer responsible.

*Article 53*  
*Conditions governing creation and payment*  
*(Article 44 of the Financial Regulation)*

1. The decision setting up an imprest account and appointing an imprest administrator and the decision amending the operating terms for an imprest account shall specify in particular:
  - (a) the maximum amount which can be initially provided as an imprest, and its purpose;
  - (b) whether a bank account or post office giro account is to be opened in the name of the Agency;
  - (c) the nature and maximum amount of each item of expenditure which may be paid by the imprest administrator to third parties or collected from them.
  - (d) the frequency with which supporting documents must be produced, the procedure for producing them and the arrangements for transmitting them to the authorising officer for settlement;
  - (e) the procedure to be followed if the imprest has to be replenished;
  - (f) that imprest transactions shall be settled by the authorising officer within the following month, so that the accounting balance and the bank balance can be reconciled;
  - (g) the period of validity of the authorisation given to the imprest administrator by the accounting officer;
  - (h) the identity of the appointed imprest administrator.

The maximum amount referred to in point (c) of this paragraph may not exceed EUR 5000 for each item of expenditure

2. The imprest administrator may make payments to third parties on the basis and within the limits of:

- (a) prior budget and legal commitments signed by the authorising officer responsible;
  - (b) the positive residual balance of the imprest account, in cash or at the bank.
3. Payments from imprest accounts may be made by bank credit transfer, cheque or other means of payment.
  4. Payments made shall be followed by formal final validation decisions and/or payment orders signed by the authorising officer responsible

*Article 54*  
*Choice of imprest administrators*  
*(Article 44 of the Financial Regulation)*

Imprest administrators shall be chosen from category A or B officials or other agents subject to the Staff Regulations. They shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience.

*Article 55*  
*Endowment of imprest accounts*  
*(Article 44 of the Financial Regulation)*

1. The accounting officer shall make payments endowing imprest accounts and shall monitor these accounts from the point of view of opening of bank accounts and delegation of signatures and controls on the spot and in the centralised accounts. The accounting officer shall endow the imprest accounts. Imprests shall be paid to the bank account opened for the imprest.

Imprest accounts may also be endowed directly by miscellaneous local revenue such as that arising from:

- (a) sales of equipment,
- (b) publications,
- (c) miscellaneous repayments,
- (d) interest.

The imprest shall be settled, in terms of expenditure or miscellaneous or assigned revenue, in accordance with the decision setting up the imprest account referred to in Article 53 and the provisions of the General Financial Regulation. The amounts in question shall be deducted by the authorising officer when he subsequently replenishes the imprest accounts concerned.

2. In order, in particular, to avoid any exchange losses, the imprest administrator may make transfers between different bank accounts relating to the same imprest.

*Article 56*  
*Controls by authorising officers and accounting officers*  
*(Article 44 of the Financial Regulation)*

1. The imprest administrator shall keep an account of the funds he has at his disposal, in cash and at the bank, and of payments made and amounts received, in accordance with the rules and on the instructions given by the accounting officer. Statements of this account shall be accessible at all times to the authorising officer responsible and a monthly list of transactions together with supporting documents shall be sent in the following month by the imprest administrator to the authorising officer for settlement of the imprest operations.
2. The accounting officer shall himself, or through an official or other servant in his own department or in the authorising department specially empowered for this purpose, carry out checks, which should normally be effected on the spot and without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time limit set. The accounting officer shall communicate the findings of these checks to the authorising officer responsible.

*Article 57*  
*Procurement procedure*  
*(Article 44 of the Financial Regulation)*

Payments made from imprest accounts may, within the limits laid down in Article 115(4), consist simply of the payment of costs against invoices, without prior acceptance of a tender.

**CHAPTER 3**  
**LIABILITY OF THE FINANCIAL ACTORS**

**SECTION 1**  
**RULES APPLICABLE TO AUTHORISING OFFICERS BY DELEGATION AND**  
**SUBDELEGATION**

*Article 58*  
*Bodies responsible in matters of fraud*  
*(Article 47 of the Financial Regulation)*

The authorities and bodies referred to in Article 60(6) and Article 65(2) of the General Financial Regulation shall be understood to mean the Anti-Fraud Office (OLAF) and bodies designated by the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter "the Staff Regulations") and the decisions of the Community institutions concerning the terms and conditions for internal investigations in relation to the prevention of fraud, corruption and any other illegal activity detrimental to the Communities' interests.

*Article 59*  
*Confirmation of instructions*  
*(Article 47 of the Financial Regulation)*

1. An authorising officer who considers that instructions he is required to act on are irregular or contrary to the principles of sound financial management, in particular because the measure cannot be implemented with the resources provided, must inform in writing the authority from which he received the delegation or subdelegation. If the instructions are confirmed in writing and this confirmation is received in good time and is sufficiently clear, in that it refers explicitly to the points which the authorising officer by delegation or subdelegation has challenged, he may not be held liable; he shall carry out the instructions, unless they constitute a breach of criminal law or of the relevant safety standards.
2. The same provisions shall apply where an authorising officer learns, when acting on instructions he has been given, that the circumstances of the case may give rise to an irregular situation.
3. Any instructions that are confirmed under the conditions described in Article 66(2) of the General Financial Regulation must be recorded by the authorising officer by delegation responsible and mentioned in his annual activity report.

*Article 60*  
*Financial irregularities*  
*(Article 47 of the Financial Regulation)*

Without prejudice to the powers of OLAF, the financial irregularities panel shall be competent for any infringement of a provision of the General Financial Regulation or of a provision relating to financial management or the control of operations resulting from an act or omission of an official or other servant.

*Article 61*  
*Financial irregularities panel*  
*(Article 47 and of the Financial Regulation)*

The appointing authority or, where appropriate, the authority authorised to conclude contracts of employment may refer to the panel referred to in Article 48 of the General Financial Regulation for an opinion cases of financial irregularities within the meaning of Article 60.

Where a case is referred to it by the appointing authority or the authority authorised to conclude contracts of employment, the panel shall deliver an opinion evaluating whether irregularities within the meaning of Article 60 have occurred, how serious they are and what their consequences might be. Should the panel's analysis suggest that the case referred to it is a matter for OLAF, it shall without delay refer it back to the appointing authority or the authority authorised to conclude contracts of employment and shall inform OLAF at once.

When the panel referred to in the first subparagraph is informed of a matter by a member of staff in accordance with Article 60(6) of the General Financial Regulation, it shall transmit the file to the appointing authority or, where appropriate,

to the authority authorised to conclude contracts of employment and shall inform the reporting member of staff of that transmittal.

## **CHAPTER 4 REVENUE OPERATIONS**

### **SECTION 1 ESTIMATE OF AMOUNTS RECEIVABLE**

*Article 62  
Estimate of amounts receivable  
(Article 52 of the Financial Regulation)*

1. Estimates of amounts receivable shall specify the type of revenue and the budget item to which they are to be booked and, as far as possible, the particulars of the debtor and the estimated amount.

When drawing up an estimate of amounts receivable, the authorising officer responsible shall check in particular that:

- (a) the revenue is booked to the correct budget item;
  - (b) the estimate is in order and conforms to the relevant provisions and to the principles of sound financial management.
2. The authorising officer responsible shall register estimates of amounts receivable in the accounting system. Subject to Article 161(2) of the General Financial Regulation, an estimate of amounts receivable shall not have the effect of creating commitment appropriations. Appropriations may be created only after the sums due have actually been recovered by the Agency.

### **SECTION 2 ESTABLISHMENT OF AMOUNTS RECEIVABLE**

*Article 63  
Procedure  
(Article 53 of the Financial Regulation)*

1. In establishing the amount receivable the authorising officer shall acknowledge that the Agency have a claim on the debtor and shall draw up an instrument demanding that the debtor pay the debt.
2. The recovery order is the operation by which the authorising officer responsible instructs the accounting officer to recover the amount established.
3. The debit note is to inform the debtor that:
  - (a) the Agency have established the amount receivable;

- (b) payment of the debt to the Agency is due on a certain date (hereinafter "due date");
- (c) failing payment by the due date the debt shall bear interest at the rate referred to in Article 71, without prejudice to any specific regulations applicable;
- (d) wherever possible the institution shall effect recovery by offsetting after the debtor has been informed;
- (e) failing payment by the due date the institution shall effect recovery by enforcement of any guarantee lodged in advance;
- (f) if, after all the above steps, the amount has not been recovered in full, the institution shall effect recovery by enforcement of a decision secured either in accordance with Article 72(2) of the General Financial Regulation or by legal action.

The authorising officer shall send the debit note to the debtor with a copy to the accounting officer.

*Article 64*  
*Establishment of amounts receivable*  
*(Article 53 of the Financial Regulation)*

To establish an amount receivable the authorising officer responsible shall ensure that:

- (a) the debt really exists;
- (b) the debt is due;
- (c) the particulars of the debtor are correct;
- (d) the amount to be recovered is correct;
- (e) the amount to be recovered is booked to the correct budget item;
- (f) the supporting documents are in order; and
- (g) the procedure conforms to the principle of sound financial management.

*Article 65*  
*Supporting documents for the establishment of amounts receivable*  
*(Article 53 of the Financial Regulation)*

1. The establishment of any amount receivable shall be based on supporting documents certifying the Agency's entitlement.
2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or shall, on his own responsibility, ascertain that this has been done.

3. The supporting documents shall be kept by the authorising officer in accordance with Articles 33 and 35.

### **SECTION 3**

#### **AUTHORISATION OF RECOVERY**

*Article 66*  
*Establishment of the recovery order*  
*(Article 54 of the Financial Regulation)*

1. The recovery order shall specify:
  - (a) the financial year to which the revenue is to be booked;
  - (b) the references of the act or legal commitment which is the source of the debt and gives rise to the entitlement to recovery;
  - (c) the budget article and any other subdivision that may apply, including, where appropriate, the references of the corresponding budget commitment;
  - (d) the amount to be recovered, expressed in euro;
  - (e) the name and address of the debtor;
  - (f) the due date; and
  - (g) the possible method of recovery, including in particular recovery by offsetting or enforcement of any guarantee lodged.
2. The recovery order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.

### **SECTION 4**

#### **RECOVERY**

*Article 67*  
*Collection formalities*  
*(Article 55 of the Financial Regulation)*

1. When the accounting officer recovers an amount due, an entry shall be made in the accounts and the authorising officer responsible shall be informed.
2. A receipt shall be issued in respect of all cash payments made to the accounting officer.

*Article 68*  
*Recovery by offsetting*  
*(Article 55 of the Financial Regulation)*

At any point in the procedure the accounting officer shall, after informing the authorising officer responsible and the debtor, recover established entitlements by offsetting in cases where the debtor also has a claim on the Agency that is certain, of a fixed amount and due relating to a sum established by a payment order.

*Article 69*  
*Recovery procedure failing voluntary payment*  
*(Articles 54 and 55 of the Financial Regulation)*

1. Without prejudice to Article 68, if the full amount has not been recovered by the due date stipulated in the debit note, the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.
2. Without prejudice to Article 68, where the recovery method referred to in paragraph 1 cannot be used and the debtor has failed to pay in response to the letter of formal notice sent by the accounting officer, the accounting officer shall enforce a recovery decision secured either in accordance with Article 72(2) of the General Financial Regulation or by legal action.

*Article 70*  
*Additional time for payment*  
*(Article 55 of the Financial Regulation)*

The accounting officer, in collaboration with the authorising officer responsible, may allow additional time for payment only at the written request of the debtor, with due indication of the reasons, provided that:

- (a) the debtor undertakes to pay interest at the rate specified in Article 71 for the entire additional period allowed, starting from the date on which the payment was originally due, and
- (b) in order to safeguard the Community's rights, the debtor provides a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the accounting officer. This guarantee may be replaced by a joint and several guarantee by a third party approved by the accounting officer.

*Article 71*  
*Default interest*  
*(Article 53(3) of the Financial Regulation)*

1. Without prejudice to any specific provisions deriving from the application of sectoral rules, any debt not repaid on the due date shall bear interest in accordance with paragraphs 2 and 3.

2. The interest rate for debts not repaid on the due date shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Communities* on the first working day of the month in which the debt is due, increased by:
  - (a) seven percentage points where the source of the debt is the award of public supply and service contracts referred to in Title V;
  - (b) three and a half percentage points in all other cases;
3. Interest shall be calculated from the day following the due date specified in the debit note up to the date on which the debt is repaid in full,
4. Any partial payments shall first cover the interest determined in accordance with paragraphs 2 and 3.

#### *Article 72*

#### *Waiving of recovery of an established debt (Article 55 of the Financial Regulation)*

1. The authorising officer responsible may waive recovery of all or part of an established debt only:
  - (a) where the foreseeable cost of recovery would exceed the debt to be recovered and the waiver would not harm the Agency image;
  - (b) where the debt cannot be recovered in view of its age or the insolvency of the debtor;
  - (c) pursuant to the principle of proportionality in accordance with predetermined procedures within the Agency and subject to the following criteria:
    - (i) compulsory criteria, applicable in all circumstances:
      - the facts, in the light of the gravity of the irregularity giving rise to the establishment of the amount receivable (fraud, repeat offence, intent, diligence, good faith, manifest error);
      - the impact that waiving recovery of the debt would have on the operation of the Agency and its financial interests (amount involved, risk of setting a precedent, undermining of the authority of the law);
    - (ii) in addition to the above criteria, which are mandatory in all circumstances, the authorising officer may also have to take the following criteria into account depending on the circumstances of the case:
      - any distortion of competition that would be caused by the waiving of recovery of the debt;

- the economic and social damage that would be caused were the debt to be recovered in full.
- 2. The waiving of recovery referred to in Article 73(2) of the General Financial Regulation shall be substantiated and reference made to the action taken to secure recovery and the points of law and fact on which the waiver is based. The authorising officer responsible shall waive recovery in accordance with the procedure provided for in Article 66.
- 3. The waiving of recovery of an established debt may not be delegated where the amount to be waived:
  - (a) is EUR one million or more; or
  - (b) is EUR 100 000 or more, where this represents 25% or more of the established debt.

Beneath the thresholds set out in the first subparagraph, the Agency shall lay down in its internal rules the conditions and procedure for delegating the power to waive recovery of an established debt.

*Article 73*  
*Cancellation of an established debt*  
*(Article 55 of the Financial Regulation)*

1. In the event of a mistake as to a point of law, the authorising officer responsible shall cancel the established debt in accordance with Articles 77 and 78; cancellation shall be suitably substantiated.
2. The Agency shall lay down in its internal rules the conditions and procedure for delegating the power to cancel an established debt.

*Article 74*  
*Technical and accounting adjustment of the amount of an established debt*  
*(Article 55 of the Financial Regulation)*

1. The authorising officer responsible shall adjust the amount of an established debt upwards or downwards when the discovery of an error of fact entails the alteration of the amount of the debt, provided that this correction does not involve the loss of the Agency's established entitlement. This adjustment shall be made in accordance with Articles 65 and 66 and shall be suitably substantiated.
2. The Agency shall lay down in its internal rules the conditions and procedure for delegating the power to make a technical and accounting adjustment to an established debt.

## **CHAPTER 6**

### **EXPENDITURE OPERATIONS**

*Article 75*  
*Financing decision*  
*(Article 60 of the Financial Regulation)*

The financing decision shall determine the essential elements of an action involving expenditure from the budget.

#### **SECTION 1**

#### **COMMITMENT OF EXPENDITURE**

*Article 76*  
*Global and provisional commitments*  
*(Article 61 of the Financial Regulation)*

1. The global budget commitment shall be implemented either by the conclusion of a financing agreement – itself providing for the subsequent conclusion of one or more individual legal commitments – or by the conclusion of one or more individual legal commitments.

Financing agreements relating to macro-financial assistance, budgetary support and other specific forms of budgetary aid may give rise to payments without the conclusion of individual legal commitments.

2. The provisional budget commitment shall be implemented either by the conclusion of one or more individual legal commitments giving rise to an entitlement to subsequent payments or, in cases relating to expenditure on staff management, directly by payments.

*Article 77*  
*Adoption of a global commitment*  
*(Article 61 of the Financial Regulation)*

A global commitment shall be made on the basis of a financing decision. It shall be made at the latest before the decision on the selection of beneficiaries is taken and, where implementation of the appropriations concerned involves the adoption of a work programme, at the earliest after that programme has been adopted.

*Article 78*  
*Decommitment failing payment within three years*  
*(Article 62 of the Financial Regulation)*

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 68 of the General Financial Regulation has been made

in a period of three years following the signing of the legal commitment shall be decommitted.

*Article 79*  
*Single signature*  
*(Article 61 of the Financial Regulation)*

The rule that there be a single signatory for the budget commitment and the corresponding legal commitment shall not apply in the following cases alone:

- (a) where the commitments are provisional;
- (b) where global commitments relate to financing agreements with third countries,
- (c) where the Agency's decision constitutes the legal commitment;
- (d) where the global commitment is implemented by a number of legal commitments, for which different authorising officers by delegation are responsible;

*Article 80*  
*Registration of individual legal commitments*  
*(Article 62 of the Financial Regulation)*

In the case of a global budget commitment followed by several individual legal commitments, the authorising officer responsible shall register in the central accounts the amounts of these successive individual legal commitments. The authorising officer responsible shall check that the aggregate amount does not exceed the amount of the global commitment covering them.

The registration in the accounts shall indicate the references of the global commitment against which the individual commitments are being booked.

The authorising officer responsible shall register the amounts in the accounts before signing the corresponding individual legal commitment.

*Article 81*  
*Administrative expenditure covered by provisional commitments*  
*(Article 61 of the Financial Regulation)*

Items regarded as routine administrative expenditure which may give rise to provisional commitments shall include the following:

- (a) expenditure on staff, whether or not covered by the Staff Regulations, and on other human resources and pensions;
- (b) expenditure relating to Members of the Agency such as Members of the Board;
- (c) training expenditure;
- (d) expenditure on competitions, selection and recruitment;
- (e) mission expenses;

- (f) representation expenses;
- (g) meeting expenses;
- (h) freelance interpreters and/or translators;
- (i) exchanges of officials;
- (j) recurring rentals of movable and immovable property;
- (k) miscellaneous insurance;
- (l) cleaning and maintenance;
- (m) welfare expenditure;
- (n) the use of telecommunications services;
- (o) financial charges;
- (p) legal expenses;
- (q) damages;
- (r) working clothes;
- (s) water, gas and electricity;
- (t) periodical publications on paper or in electronic versions.

## **SECTION 2**

### **VALIDATION OF EXPENDITURE**

#### *Article 82*

#### *Validation and "passing for payment"* *(Article 65 of the Financial Regulation)*

1. Validation of any expenditure shall be based on supporting documents within the meaning of Article 89 attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.
2. The authorising officer responsible shall personally check the supporting documents or shall, on his own responsibility, ascertain that this has been done, before taking the decision to validate the expenditure.
3. The validation decision shall be expressed by the signing of a "passed for payment" voucher by the authorising officer responsible.

*Article 83*  
*Passing for payment of procurement contracts*  
*(Article 65 of the Financial Regulation)*

For payments corresponding to procurement contracts, the endorsement "passed for payment" shall certify that:

- (a) the institution has received and formally registered an invoice drawn up by the contractor;
- (b) the invoice itself, or an internal document accompanying it, has been endorsed "certified correct" and signed by an official or other servant technically competent and duly empowered by the authorising officer responsible;
- (c) all aspects of the invoice have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

The endorsement "certified correct" referred to in point (b) shall certify that the services stipulated in the contract have been properly provided, or that the supplies stipulated in the contract have been properly delivered, or that the work stipulated in the contract has been properly carried out. For supplies and work, the official or other servant technically competent shall draw up a provisional acceptance certificate, then a final acceptance certificate at the end of the guarantee period laid down in the contract. These two certificates shall count as the "certified correct" endorsement.

*Article 84*  
*Passing for payment of grants*  
*(Article 65 of the Financial Regulation)*

For payments corresponding to grants, the endorsement "passed for payment" shall certify that:

- (a) the institution has received and formally registered a payment request drawn up by the beneficiary;
- (b) the payment request itself, or an internal document accompanying the payment request received, has been endorsed "certified correct" and signed by an official or other servant technically competent and empowered by the authorising officer responsible, thereby certifying that the action or work programme carried out by the beneficiary is in all respects in compliance with the grant agreement;
- (c) all aspects of the payment request have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

*Article 85*  
*Passing for payment of staff expenditure*  
*(Article 65 of the Financial Regulation)*

For payments corresponding to staff expenditure, the endorsement "passed for payment" shall certify that the following supporting documents exist:

- (a) in respect of monthly salary:
  - (i) the complete list of staff, giving all the components of remuneration,
  - (ii) a form (personal information sheet) based on decisions taken in each individual case, showing any change occurring in any component of remuneration,
  - (iii) in the case of recruitments or appointments, a certified true copy of the recruitment or appointment decision which accompanies the validation of the first salary payment;
- (b) in respect of other remunerations (staff paid on an hourly or daily basis): a statement signed by the authorised official or other servant showing the days and hours worked;
- (c) in respect of overtime: a statement signed by the authorised official or other servant certifying the amount of overtime worked;
- (d) in respect of mission expenses:
  - (i) the travel order signed by the competent authority,
  - (ii) the statement of mission expenses, signed by the official on mission and by the administrative superior to whom the appropriate powers have been delegated, and showing, in particular, the place of mission, the dates and times of departure and arrival at the place of mission, travel expenses, subsistence expenses, and other expenses duly authorised on production of supporting documents;
- (e) in respect of other staff expenditure: the supporting documents referring to the decision on which the expenditure is based and giving all the components of the calculation.

*Article 86*  
*Material form of "passed for payment"*  
*(Article 65 of the Financial Regulation)*

In a non-computerised system, "passed for payment" shall take the form of a stamp incorporating the signature of the authorising officer responsible. In a computerised system, "passed for payment" shall take the form of validation using the personal password of the authorising officer responsible.

<b>Invoice n°</b>	<b>Name</b>	<b>Date</b>	<b>Signature</b>
Certified correct			
Passed for payment			

### **SECTION 3**

#### **AUTHORISATION OF EXPENDITURE**

##### *Article 87*

##### *Checks on payments by the authorising officer (Article 66 of the Financial Regulation)*

When drawing up the payment order, the authorising officer responsible shall ensure that:

- (a) the payment order has been properly issued, meaning that a corresponding validation decision has been taken previously in the form of "passed for payment", the particulars of the payee are correct and the amount is due;
- (b) the payment order corresponds to the budget commitment against which it is booked;
- (c) the expenditure is charged to the correct item in the budget;
- (d) appropriations are available.

##### *Article 88*

##### *Mandatory details on payment orders and transmission to the accounting officer (Article 66 of the Financial Regulation)*

1. The payment order shall state:
  - (a) the financial year to which the expenditure is to be booked,
  - (b) the budget article and any other subdivision that may apply,
  - (c) the references of the legal commitment giving rise to an entitlement to payment,
  - (d) the references of the budget commitment against which it is to be booked,
  - (e) the amount to be paid, expressed in euro,
  - (f) the name, address and bank account details of the payee,
  - (g) the object of the expenditure,
  - (h) the means of payment

- (i) the entry of the goods in the inventory in accordance with Article 210.
2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.

## **SECTION 4**

### **PAYMENT OF EXPENDITURE**

#### *Article 89*

#### *Supporting documents*

*(Article 67 of the Financial Regulation)*

1. Pre-financing and renewed pre-financing shall be paid either on the basis of the contract, the agreement or the basic act, or on the basis of supporting documents which make it possible to check the conformity of the actions financed with the terms of the contract or agreement in question. Interim payments and payments of balances shall be made on production of supporting documents which make it possible to check that the action financed has been carried out in accordance with the terms of the contract or agreement concluded with the beneficiary or the basic act.
2. The authorising officer responsible shall lay down, in compliance with the principle of sound financial management, the nature of the supporting documents referred to in paragraph 1 in accordance with the basic act and the contracts and agreements concluded with the beneficiary. Interim and final technical and financial implementation reports, signed by the beneficiary, shall constitute supporting documents for the purposes of this provision.
3. The supporting documents shall be kept by the authorising officer responsible in accordance with Articles 33 and 35.

#### *Article 90*

#### *Booking of pre-financing and interim payments*

*(Article 67 of the Financial Regulation)*

1. Pre-financing is intended to provide the beneficiary with a float. It may be split into a number of payments.
2. An interim payment, which may be repeated, is intended to reimburse expenditure incurred by the beneficiary on the basis of a statement of expenditure when the action is in progress. It may clear pre-financing in whole or in part, without prejudice to the provisions of the basic act.
3. The closure of the expenditure shall take the form of the payment of the balance, which may not be repeated and clears all preceding payments, or a recovery order.

## SECTION 5 TIME LIMITS FOR EXPENDITURE OPERATIONS

### *Article 91 Payment times and default interest (Article 69 of the Financial Regulation)*

1. Sums due shall be paid within no more than forty-five calendar days from the date on which an admissible payment request is registered by the authorised department of the authorising officer responsible; the date of payment shall be understood to mean the date on which the institution's account is debited.
2. For contracts or agreements where payment depends on approval of a report, the payment request may not be considered admissible until the report has been approved, either explicitly with the beneficiary being informed, or implicitly as the time allowed by the contract for approval has expired without being suspended by means of a formal document sent to the beneficiary.

The time allowed for approval may not exceed:

- (a) twenty days for straightforward contracts relating to the supply of goods and services;
  - (b) forty-five days for other contracts and grant agreements;
  - (c) sixty days for contracts involving technical services which are particularly complex to evaluate.
3. The authorising officer responsible may suspend the payment period by informing creditors, at any time during the period stipulated in paragraph 1, that the payment request cannot be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information comes to the notice of the authorising officer responsible which puts in doubt the eligibility of expenditure appearing in a payment request, the authorising officer may suspend the payment period for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The authorising officer shall inform the beneficiary in question as soon as possible.

The remainder of the payment period shall begin to run again from the date when the properly formulated payment request is first registered.

4. On expiry of the time limit laid down in paragraph 1, the creditor may, within two months of receiving late payment, demand interest in accordance with the following provisions:
  - (a) the interest rates shall be those referred to in the first subparagraph of Article 71(2),
  - (b) the interest shall be due for the period elapsing from the day following expiry of the time limit for payment up to the day of payment.

This provision shall not apply to Member States.

## **CHAPTER 7 IT SYSTEMS**

*Article 92*  
*Description of IT systems*  
*(Article 70 of the Financial Regulation)*

Where computer systems and subsystems are used to process budget implementation operations, a full description of each system or subsystem shall be required.

Each description shall define the content of all data fields and describe how the system treats each individual operation. It shall show in detail how the system guarantees the existence of a complete audit trail for each operation.

*Article 93*  
*Periodical save*  
*(Article 70 of the Financial Regulation)*

The data in computer systems and subsystems shall be saved periodically and kept in a safe place.

## **CHAPTER 8 INTERNAL AUDITOR**

*Article 94*  
*Conduct of audits*  
*(Article 71 of the Financial Regulation)*

The internal auditor shall perform his functions in accordance with the relevant international standards. Internal audit activity shall focus on the effectiveness and efficiency of existing and projected management and control systems.

*Article 95*  
*Operational resources*  
*(Article 71 of the Financial Regulation)*

The Commission shall provide the internal auditor with the resources required for the proper performance of his audit function and a mission charter detailing his tasks, duties and obligations, according to the provisions of article 86 of the General Financial Regulation. The mission Charter is communicated to the Management Board, the Director, the authorising and accounting officers of the Agency.

*Article 96*  
*Work programme*  
*(Article 72 of the Financial Regulation)*

1. The internal auditor shall adopt his work programme and shall submit it to the Management Board and the Director of the Agency.
2. The Agency may ask the internal auditor to carry out audits not included in the work programme referred to in paragraph 1.

*Article 97*  
*Reports of the internal auditor*  
*(Article 72(4) of the Financial Regulation)*

1. The internal auditor shall submit to the Agency the annual internal audit report provided for in Article 72(4) of the Financial Regulation, indicating the number and type of internal audits carried out, the principal recommendations made and the action taken on those recommendations.

This annual report shall also mention any systemic problems detected by the specialised panel set up under Article 66(4) of the General Financial Regulation.

2. This report shall be sent to the departments audited to see that action is taken on the recommendations by the Director and the departments responsables.
3. The Agency shall consider, on the basis of the recommendations made in the reports of the internal auditor, whether the recommendations made are suitable for an exchange of best practices with the other institutions and bodies of the Community.

*Article 98*  
*Independence*  
*(Article 72 (2) of the Financial Regulation)*

The internal auditor shall enjoy complete independence in the conduct of his audits. He may not be given any instructions nor be restricted in any way as regards the performance of the functions which, by virtue of his appointment, are assigned to him under the General Financial Regulation.

*Article 99*  
*Liability of the internal auditor*  
*(Article 73 of the Financial Regulation)*

The Agency, proceeding in accordance with this Article, may act to have the internal auditor, as an official or other servant subject to the Staff Regulations, declared liable for his actions.

The Management Board shall request the Commission to take a reasoned decision to open an investigation. That decision shall be communicated to the interested party. The commission, in close cooperation with the Agency, may put in charge of the investigation, under its direct responsibility, one or more officials of a grade equal to or higher than that of the member of

staff concerned. In the course of the investigation, the views of the interested party must be heard.

The investigation report shall be communicated to the interested party, who shall then be heard by the institution on the subject of that report.

On the basis of the report and the hearing, the Commission after consultation of the Agency, shall adopt either a reasoned decision terminating the proceedings or a reasoned decision in accordance with Articles 22 and 86 to 89 of the Staff Regulations. Decisions imposing disciplinary measures or financial penalties shall be notified to the interested party and communicated, for information purposes, to the other institutions and the Court of Auditors.

The interested party may appeal against such decisions to the Court of Justice of the European Communities, as provided for in the Staff Regulations.

#### *Article 100*

#### *Action before the Court of Justice of the European Communities (Article 73 of the Financial Regulation)*

Without prejudice to the remedies allowed by the Staff Regulations, the internal auditor may bring an action directly before the Court of Justice of the European Communities for any act relating to the performance of his duties as internal auditor. Such an action must be lodged within three months of the date of notification of the act in question.

Such actions shall be investigated and heard as provided for in Article 91(5) of the Staff Regulations.

## **TITLE V PROCUREMENT**

### **CHAPTER 1 GENERAL PROVISIONS**

#### *Article 101*

#### *Provisions and rules applicable to procurement of the Agency. (Article 74 of the Financial Regulation)*

1. The provisions of Title V of part one of the General Financial Regulation are applicable to procurement of the Agency and form part of the Financial Regulation of the Agency.
2. According to Article 74 of the Financial Regulation, the detailed rules for implementing the provisions referred to in paragraph 1 are also applicable to the Agency, as stipulated in Articles 102 to 145 of the present Regulation.

3. By analogy and for the application of the present Regulation, the term institution designates the Agency.
4. For this title, headings of the articles of the detailed rules refer to the provisions of the General Financial Regulation.

## **SECTION 1**

### **SCOPE AND AWARD PRINCIPLES**

*Article 102*  
*Definitions and scope*  
*(Article 88 of the General Financial Regulation)*

1. Building contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate.
2. Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. The delivery of products may in addition include siting, installation and maintenance.
3. Works contracts cover either the execution, or both the execution and design, of works or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.
4. Service contracts cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts. These services are listed in Annexes IA and IB to Council Directive 92/50/EEC.
5. A contract covering both products and services shall be considered a service contract where the value of the services in question exceeds that of the products included in the contract.
6. The terms "supplier", "contractor" and "service provider" refer to three categories of economic operator, natural or legal persons, who supply products, execute works and provide services respectively. Economic operators who have submitted a tender are referred to as "tenderers". Those who have asked to be allowed to take part in a restricted or negotiated procedure are referred to as "candidates".
7. Departments of the Community institutions shall be considered to be contracting authorities.

*Article 103*  
*Framework contracts*  
*(Article 88 of the General Financial Regulation)*

1. A framework contract is a contract concluded between a contracting authority and an economic operator for the purpose of laying down the essential terms governing a series of specific contracts to be awarded during a given period, in particular regarding duration, subject, prices, conditions of performance and the quantities envisaged.

The contracting authority may also conclude multiple framework contracts, which are separate contracts with identical terms awarded to a number of suppliers or service providers. The specifications referred to in Article 116 shall then specify the maximum number of operators with whom the contracting authority will conclude contracts.

The duration of such framework contracts may not exceed four years, save in exceptional cases justified in particular by the subject of the framework contract.

Contracting authorities may not make undue use of framework contracts or use them in such a way that the purpose or effect is to prevent, restrict or distort competition.

2. Specific contracts based on the framework contracts referred to in paragraph 1 shall be awarded in accordance with the terms laid down in the framework contract.
3. Only specific contracts concluded under these framework contracts shall be preceded by a budget commitment.

**SECTION 2**  
**PUBLICATION**

*Article 104*  
*Advertising of contracts covered by the public procurement directives*  
*(Article 90 of the General Financial Regulation)*

1. Publication shall consist of a pre-information notice, a contract notice and an award notice.
2. The pre-information notice shall be the indicative notice by which the contracting authorities make known the estimated total value of contracts, by category of service or groups of products, and the essential characteristics of works contracts which they intend to award during a budgetary year, where the estimated total amount is equal to or greater than the thresholds laid down in Article 143.

The pre-information notice shall be sent to the Office for Official Publications of the European Communities as soon as possible and by no later than 31 March each year in the case of supply and service contracts and, in the case of works contracts, as soon as possible after the decision approving the programme for those contracts.

3. The contract notice shall be the means by which the contracting authorities make known their intention to launch a procurement procedure. It shall be compulsory for

contracts where the estimated amount is equal to or greater than the thresholds laid down in Article 144. It shall not be compulsory for contracts corresponding to services listed in Annex IB to Council Directive 92/50/EEC.

Contracting authorities wishing to organise a contest shall issue a notice announcing their intention.

4. The award notice shall give the outcome of the procedure for contracts where the amount is equal to or greater than the thresholds laid down in Article 144. It shall not be compulsory for contracts awarded under a framework contract.

The award notice shall be sent to the Office for Official Publications of the European Communities no later than forty-eight calendar days after the procedure is closed, i.e. from the date on which the contract is signed.

5. The notices shall be drawn up in accordance with the models annexed to Commission Directive 2001/78/EC<sup>3</sup>

#### *Article 105*

#### *Advertising of contracts outside the scope of the public procurement directives (Article 90 of the General Financial Regulation)*

1. Contracts with a value below the thresholds provided for in Articles 143 and 144 and the service contracts referred to in Annex IB to Council Directive 92/50/EEC shall be advertised by appropriate means in order to ensure competitive tendering and impartiality of the procurement procedure. This shall involve:
  - (a) if no contract notice as referred to in Article 104(3) has been published, notice of a call for expressions of interest for contracts covering a similar subject with a value of no less than the amount referred to in Article 114;
  - (b) the annual publication of a list of contractors, specifying the subject and the amount of the contract awarded.
2. A list of contractors to whom building contracts are awarded shall be published annually.
3. Information relating to contracts with a value of no less than the amount referred to in Article 114 shall be sent to the Office for Official Publications of the European Communities; the annual lists of contractors shall be sent by no later than 31 March following the end of the financial year.

*Ex ante* advertising and the annual publication of the list of contractors shall be on the Internet site of the institutions. Publication may also be in the *Official Journal of the European Communities*.

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<sup>3</sup> Commission Directive 2001/78/EC of 13 September 2001 amending Annex IV to Council Directive 93/36/EEC, Annexes IV, V and VI to Council Directive 93/37/EEC, Annexes III and IV to Council Directive 92/50/EEC, as amended by Directive 97/52/EC, and Annexes XII to XV, XVII and XVIII to Council Directive 93/38/EEC, as amended by Directive 98/4/EC (Directive on the use of standard forms in the publication of public contract notices).

*Article 106*  
*Publication of notices*  
*(Article 90 of the General Financial Regulation)*

1. The Office for Official Publications of the European Communities shall publish the notices referred to in Articles 104 and 105 in the *Official Journal of the European Communities* no later than twelve calendar days after their dispatch.

This period shall be reduced to five calendar days in the case of the fast-track procedures referred to in Article 128 and if the notices have been prepared and sent electronically.

2. The contracting authorities must be able to provide evidence of the date of dispatch.

*Article 107*  
*Other forms of advertising*  
*(Article 90 of the General Financial Regulation)*

Contracts may also be advertised in any other way, notably in electronic form. Any such advertising shall refer to the notice published in the Official Journal of the European Communities, as provided for in Article 106, if one has been published, and may not precede the publication of that notice, which alone is authentic.

Such advertising may not introduce any discrimination between candidates or tenderers nor contain details other than those contained in the abovementioned contract notice, if one has been published.

**SECTION 3**  
**PROCUREMENT PROCEDURES**

*Article 108*  
*Types of procurement procedure*  
*(Article 91 of the General Financial Regulation)*

1. Contracts shall be awarded by call for tender, using the open, restricted or negotiated procedure after publication of a contract notice or by negotiated procedure without prior publication of a contract notice, where appropriate following a contest.
2. Calls for tender are:
  - (a) open where all interested economic operators may submit a tender,
  - (b) restricted where all economic operators may ask to take part and only candidates satisfying the selection criteria referred to in Article 121 and invited simultaneously and in writing by the contracting authorities may submit a tender.

The selection phase may be repeated for each individual contract or may involve drawing up a list of potential candidates under the procedure referred to in Article 114.

3. In a negotiated procedure, the contracting authorities shall consult tenderers of their choice who satisfy the selection criteria laid down in Article 121 and negotiate the terms of the contract with one or more of them.

In negotiated procedures where a contract notice is published, as referred to in Article 113, the contracting authorities shall simultaneously and in writing invite the selected candidates to negotiate.

4. Contests are procedures which enable the contracting authority to acquire, mainly in the fields of architecture and civil engineering or data processing, a plan or design proposed by a selection board after being put out to competition with or without the award of prizes.

#### *Article 109*

##### *Number of candidates in restricted or negotiated procedures (Article 91 of the General Financial Regulation)*

1. In a restricted procedure, including the procedure referred to in Article 114, the number of candidates invited to submit a tender may not be less than five, provided that a sufficient number of candidates satisfy the selection criteria.

The contracting authority may also provide for a maximum number of twenty candidates, depending on the subject of the contract and on the basis of objective and non-discriminatory selection criteria. In this case, the range and criteria shall be indicated in the contract notice or the call for expressions of interest referred to in Articles 104 and 105.

At all events, the number of candidates invited to tender must be sufficient to ensure genuine competition.

2. In negotiated procedures the number of candidates invited to negotiate may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria.

At all events, the number of candidates invited to tender must be sufficient to ensure genuine competition.

This clause shall not apply to contracts involving very small amounts, as referred to in Article 115(3).

#### *Article 110*

##### *Arrangements for negotiated procedures (Article 91 of the General Financial Regulation)*

Contracting authorities shall negotiate with tenderers the tenders they have submitted in order to adapt them to the requirements set out in the contract notice referred to in Article 104, in the specifications and in any additional documents and in order to find the tender offering best value.

During the negotiation, the contracting authorities shall ensure equal treatment for all tenderers.

*Article 111*  
*Contests*  
*(Article 91 of the General Financial Regulation)*

1. The rules for the organisation of a contest shall be communicated to those interested in taking part.

The number of candidates invited to take part must be enough to ensure genuine competition.

2. The selection board shall be appointed by the authorising officer responsible. It shall be made up exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required for participation in a contest, at least one third of its members must have the same or an equivalent qualification.

The selection board shall be autonomous in its opinions. Its opinions shall be adopted on the basis of projects submitted to it anonymously by the candidates and solely in the light of the criteria set out in the contest notice.

3. The proposals of the selection board, based on the merits of each project, and its observations, shall be recorded in a report signed by its members.

Candidates shall remain anonymous until the selection board has given its opinion.

4. The contracting authority shall then take a decision giving the name and address of the candidate selected and the reasons for the choice by reference to the criteria announced in the contest notice, especially if it departs from the proposals made in the selection board's opinion.

*Article 112*  
*Use of a negotiated procedure without prior publication of a contract notice*  
*(Article 91 of the General Financial Regulation)*

1. Contracting authorities may use the negotiated procedure without prior publication of a contract notice in the following cases:

- (a) where no tenders or no suitable tenders have been submitted in response to an open procedure or restricted procedure after the initial procedure has been completed, provided that the original terms of the contract as specified in the documents relating to the invitation to tender referred to in Article 116 are not substantially altered;
- (b) where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator;
- (c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events not attributable to the contracting authorities and likely to jeopardise the Communities' interests, the time limits for the other procedures provided for in Articles 126, 127 and 128 cannot be kept;

- (d) where a service contract follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates: in the latter case, all successful candidates shall be invited to participate in the negotiations;
- (e) for additional services and works not included in the project initially considered nor in the contract first concluded but which have, through unforeseen circumstances independent of the contracting authority, become necessary for the performance of the services or works, subject to the conditions set out in paragraph 2;
- (f) for additional contracts consisting of the repetition of similar services or works entrusted to the contractor awarded an earlier contract by the same contracting authorities, provided that the subject of the contract conforms to a basic project and that the first contract was awarded under the open or restricted procedure.

As soon as the first project is put up for tender, the option of using this procedure shall be pointed out, and the total estimated cost of the additional contracts shall be taken into consideration in calculating the thresholds referred to in Article 144. This procedure may be used only during the three years following the conclusion of the original contract.

- (g) for supply contracts:
  - (i) in the case of additional deliveries which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire equipment having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts may not exceed three years;
  - (ii) where the products involved are manufactured purely for the purpose of research, experiment, study or development, with the exception of commercial viability tests and large-scale production aimed at recovering research and development costs;
- (h) for building contracts, after prospecting the local market;
- (i) for contracts with a value below the threshold laid down in Article 115 (2).

2. For the additional services and works referred to in paragraph 1(e), the contracting authority may make use of the negotiated procedure without prior publication of a contract notice on condition that the award is made to the contractor performing the contract:

- (a) where such additional contracts cannot be technically or economically separated from the main contract without serious inconvenience for the contracting authority, or
- (b) where such services or works, although separable from the performance of the original contract, are strictly necessary for its completion.

The aggregate value of additional contracts may not exceed 50% of the amount of the initial contract.

#### *Article 113*

##### *Use of a negotiated procedure after prior publication of a contract notice (Article 91 of the General Financial Regulation)*

Contracting authorities may use the negotiated procedure after having published a contract notice in the following cases:

- (a) in the event of the submission of tenders which are irregular or unacceptable, by reference in particular to the selection or award criteria, in response to an open or restricted procedure which has been completed, provided that the original terms of the contract as specified in the documents relating to the invitation to tender referred to in Article 116 are not substantially altered.

Contracting authorities may refrain from publishing a contract notice where they include in the negotiated procedure all the tenderers who satisfy the selection criteria and who, during the previous procedure, submitted tenders in accordance with the formal requirements of the procurement procedure;

- (b) for service and works contracts, in exceptional cases where the nature of the services or works or the risks attaching thereto do not permit prior overall pricing by the tenderer;
- (c) where the nature of the service to be procured, in particular in the case of financial services and intellectual services, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender according to the rules governing open or restricted procedures;
- (d) for works contracts, where the works are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs;
- (e) for the service contracts referred to in Annex 1B to Council Directive 92/50/EEC.

#### *Article 114*

##### *Simplified restricted procedure involving a call for expressions of interest (Article 91 of the General Financial Regulation)*

1. A call for expressions of interest constitutes a means of preselecting candidates who will be invited to submit tenders in future restricted invitations to tender for contracts of a value of EUR 50 000 or more.
2. The list drawn up following a call for expressions of interest shall be valid for no more than three years from the date when the notice referred to in Article 105(1)(a) is sent to the Office for Official Publications of the European Communities.

Any interested person may submit an application at any time during the period of validity of the list, with the exception of the last three months of this period.

3. When a specific contract is to be awarded, the contracting authority shall invite either all candidates entered on the list or only some of them, on the basis of objective and non-discriminatory selection criteria specific to that contract, to submit a tender.

*Article 115*  
*Low-value contracts*  
*(Article 91 of the General Financial Regulation)*

1. A restricted procedure with at least five tenderers being consulted but without a call for expressions of interest may be used for contracts with a value of less than EUR 50 000.
2. The negotiated procedure with at least three tenderers may be used for contracts with a value of less than EUR 13 800.
3. Contracts with a value of less than EUR 1 050 may be awarded on the basis of a single tender.
4. Payments made from imprest accounts may consist simply of the payment of costs against invoices, without prior acceptance of a tender, where the expenditure is less than EUR 200.

*Article 116*  
*Documents relating to the invitation to tender*  
*(Article 92 of the General Financial Regulation)*

1. The documents relating to the invitation to tender shall include at least:
  - (a) the invitation to submit a tender or to negotiate;
  - (b) the attached specifications, to which shall be annexed the general terms and conditions applicable to contracts;
  - (c) the model contract.

The documents relating to the invitation to tender shall contain a reference to the advertising measures taken under Articles 104 to 107.

2. The invitation to tender shall at least:
  - (a) specify the procedure for submitting tenders, including in particular the closing date and time for submission, how they are to be presented, any requirement as to the use of a standard reply form, the documents to be attached, including evidence of financial, economic, technical and professional capacity referred to in Article 121 and the address to which they must be sent;
  - (b) state that submission of the tender implies acceptance of the specifications and of the general terms and conditions referred to in paragraph 1 to which it relates and that this submission binds the contractor to whom the contract is awarded during performance of the contract;

- (c) specify the period during which a tender will remain valid and may not be varied in any respect;
  - (d) prohibit any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid down in Article 134 and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit;
3. The specifications shall at least:
- (a) specify the exclusion and selection criteria applying to the contract, save in the restricted procedure and in the negotiated procedures following publication of a notice referred to in Article 113; in such cases these criteria shall appear solely in the contract notice or the call for expressions of interest;
  - (b) specify the award criteria and their relative weighting, if this is not specified in the contract notice;
  - (c) set out the technical specifications referred to in Article 117;
  - (d) state the minimum requirements which variants must meet in procedures awarding the contract to the tender offering best value for money referred to in Article 124(2), where the contracting authority has not stated in the contract notice that such variants are prohibited;
  - (e) state that the Protocol on Privileges and Immunities or, where appropriate, the Vienna Convention applies;
  - (f) specify the evidence of access to contracts, as set out in Article 135.
4. The model contract shall in particular:
- (a) specify the penalties for failure to comply with its clauses;
  - (b) specify the details which must be contained in invoices or in the relevant supporting documents in accordance with the provisions of Article 83;
  - (c) specify the law applicable to the contract and the competent court for hearing disputes.
5. The contracting authorities may demand information from the tenderer on any part of the contract he may intend to subcontract to third parties and on the identity of any subcontractors.

*Article 117*  
*Technical specifications*  
*(Article 92 of the General Financial Regulation)*

1. Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering.

2. They shall define the characteristics required of a product, service or material or work with regard to the purpose for which they are intended by the contracting authority.

These characteristics shall include:

- (a) the quality levels;
- (b) environmental performance;
- (c) design for all requirements (including accessibility for disabled people);
- (d) the levels and procedures of conformity assessment;
- (e) fitness for use;
- (f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;
- (g) for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the contracting authority may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve.

3. The technical specifications shall be formulated as follows:

- (a) either with reference to European standards, or to European technical approvals or common technical specifications, where such exist, to international standards or to other technical reference material produced by European standards institutions or, failing this, their national equivalents. Every reference shall be accompanied by "or equivalent".
- (b) or in terms of performances or functional requirements; they shall be sufficiently detailed to enable tenderers to determine the purpose of the contract and the contracting authorities to award the contract;
- (c) or by a mixture of the two processes.

4. Where the contracting authorities make use of the possibility of referring to the specifications referred to in paragraph 3(a), they may not reject a tender on the grounds that it does not comply with the said specification provided that the tenderer or candidate proves, to the satisfaction of the contracting authority, by any appropriate means, that it is the equivalent of the requirements set.

5. Where the contracting authorities make use of the possibility provided for in paragraph 3(b) of prescribing specifications in terms of performances or functional requirements, they may not reject a tender which complies with a national standard transposing a European standard, a European technical approval or common technical specifications, an international standard or technical reference material

produced by European standards institutions, if these specifications relate to the necessary performances or functional requirements.

6. Save in exceptional cases, which must be duly justified, these specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production which would have the effect of favouring or eliminating certain products or competitors.

Where it is not possible to provide a sufficiently detailed and intelligible description of the subject of the contract, the reference shall be followed by the expression "or equivalent".

#### *Article 118*

##### *Price revision*

*(Article 92 of the General Financial Regulation)*

1. The documents relating to the invitation to tender shall clearly state whether a firm, non-revisable price must be quoted.
2. If this is not the case, it shall lay down the conditions and/or formulas for revision of prices during the lifetime of the contract. In this case the contracting authority shall take particular account of:
  - (a) the object of the procurement procedure and the economic situation in which it is taking place;
  - (b) the type of tasks and contract and their duration;
  - (c) its financial interests.

#### *Article 119*

##### *Administrative and financial penalties*

*(Articles 93 to 96 and 114 of the General Financial Regulation)*

1. (a) Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have been guilty of making false declarations or have been found to have seriously failed to meet their contractual obligations in an earlier procurement procedure shall be excluded from the award of contracts and grants for a maximum of two years from the time when the infringement is established, to be confirmed after an adversarial procedure with the contractor.

This period may be extended to three years in the event of a repeat offence within five years of the first infringement.

- (b) Tenderers or candidates who have been guilty of making false declarations shall also be subject to financial penalties representing 2 to 10% of the total value of the contract being awarded.

Contractors who have been found to have seriously failed to meet their contractual obligations shall also be subject to financial penalties representing 2 to 10% of the total value of the contract in question.

This rate may be increased to 4 to 20% in the event of a repeat offence within five years of the first infringement.

2. In the cases referred to in Article 93(a), (c), and (d) of the General Financial Regulation, the candidates or tenderers shall be excluded from the award of contracts and grants for a maximum of two years from the time when the infringement is established, to be confirmed after an adversarial procedure with the contractor.

In the cases referred to in Article 93(b) and (e) of the General Financial Regulation, the candidates or tenderers shall be excluded from the award of contracts and grants for a minimum of one year and a maximum of four years from the date of notification of the judgment.

These periods may be extended to five years in the event of a repeat offence within five years of the first infringement or the first judgment.

3. The cases referred to in Article 93(1)(e) of the General Financial Regulation shall be the following:

- (a) cases of fraud referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995,<sup>4</sup>
- (b) cases of corruption referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997,<sup>5</sup>
- (c) cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council,<sup>6</sup>
- (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC.<sup>7</sup>

#### *Article 120*

##### *Evidence*

##### *(Article 96 of the General Financial Regulation)*

1. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer is not in one of the situations described in Article 93(a), (b) or (e) of the General Financial Regulation production of a recent extract from the judicial record

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<sup>4</sup> OJ C 316, 27.11 1995, p. 48.

<sup>5</sup> OJ C 195, 25.6.1997, p. 1.

<sup>6</sup> OJ L 351, 29 12 1998, p. 1. Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union.

<sup>7</sup> OJ L 166, 28.6.1991, p.77. Directive of 10 June 1991 as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ L 344, 28.12.2001, p. 76).

or, failing that, a recent equivalent document issued by a judicial or administrative authority in the country of origin or provenance showing that these requirements are satisfied.

2. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer is not in the situation described in Article 93(d) of the General Financial Regulation a recent certificate issued by the competent authority of the Member State concerned.

Where no such certificate is issued in the country concerned, it may be replaced by a sworn or, failing this, solemn statement by the interested party before a judicial or administrative authority, a notary or a qualified professional organisation in his country of origin or provenance.

*Article 121*  
*Selection criteria*  
*(Article 97(1) of the General Financial Regulation)*

1. The contracting authorities shall draw up clear and non-discriminatory selection criteria.
2. The following selection criteria shall apply in every procurement procedure:
  - (a) the eligibility of the tenderer or candidate to take part in the procedure, checks having been carried out on the possible grounds for exclusion referred to in Articles 93 and 94 of the General Financial Regulation,
  - (b) criteria for assessing his financial, economic, technical and professional capacity.

The contracting authority may lay down minimum capacity levels below which it cannot select candidates.

3. Any tenderer or candidate may be asked to prove that he is authorised to perform the contract under national law, i.e. by way of inclusion in a trade or professional register or sworn declaration or certificate, membership of a specific organisation, express authorisation, entry in VAT register.
4. The contracting authorities shall lay down in the contract notice or call for expressions of interest or invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates.
5. The information requested by the contracting authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.

*Article 122*  
*Economic and financial capacity*  
*(Article 97(1) of the General Financial Regulation)*

1. Proof of economic and financial capacity may be furnished by one or more of the following documents:
  - (a) appropriate statements from banks or evidence of relevant professional risk indemnity insurance;
  - (b) the presentation of balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established;
  - (c) a statement of overall turnover and turnover concerning the works, supplies or services covered by the contract during a period which may be no more than the last three financial years.
2. If, for some exceptional reason which the contracting authority considers justified, the tenderer or candidate is unable to provide the references requested by the contracting authority, he may prove his economic and financial capacity by any other means which the contracting authority judges appropriate.
3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing the undertaking of those entities to place those resources at its disposal.

*Article 123*  
*Technical and professional capacity*  
*(Article 97(1) of the General Financial Regulation)*

1. Technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraph 2. In procurement procedures for supplies requiring siting or installation operations, services and/or works, this capacity shall be assessed in particular with regard to their know-how, efficiency, experience and reliability.
2. Evidence may be furnished on the basis of the following documents, according to the nature, quantity or scale and purpose of the supplies, services or works to be provided:
  - (a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;
  - (b) a list:

- (i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private.

Where the services are provided to contracting authorities, evidence of their performance shall be in the form of certificates issued or countersigned by the competent authority.

- (ii) of the works carried out in the last five years, with the sums, dates and place. The list of the most important works shall be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed;
- (c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
- (d) a description of the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
- (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- (f) in respect of supplies, samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
- (g) a statement of average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;
- (h) an indication of the proportion of the contract which the service provider may intend to subcontract.

Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's agreement, on the supplier's technical capacity and production capacity and, if necessary, on its study and research facilities and quality control measures.

3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing the undertaking of those entities to place those resources at its disposal.

#### *Article 124*

##### *Award arrangements and criteria*

##### *(Article 97(2) of the General Financial Regulation)*

1. Contracts shall be awarded in one of the following two ways:

- (a) under the automatic award procedure, in which case the contract is awarded to the lowest price submitted that is in order and satisfies the conditions laid down;
  - (b) under the best-value-for-money procedure.
2. The tender offering the best value for money shall be the one with the best price-quality ratio, taking into account criteria justified by the purpose of the contract such as the price offered, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, profitability completion or delivery times, after-sales service and technical assistance.
3. The contracting authority shall specify the weighting it will apply to each of the criteria for determining best value for money in the contract notice or in the specifications.

The weighting applied to price in relation to the other criteria must not result in the neutralisation of price in the choice of the contractor.

If, in exceptional cases, weighting is technically impossible, particularly on account of the subject of the contract, the contracting authority shall merely specify the decreasing order of importance in which the criteria are to be applied.

*Article 125*  
*Abnormally low tenders*  
*(Article 97(2) of the General Financial Regulation)*

1. If, for a given contract, tenders appear to be abnormally low, the contracting authority shall, before rejecting such tenders on this ground alone, request in writing details of the constituent elements of the tender which it considers relevant and shall verify those constituent elements, after due hearing of the parties, taking account of the explanations received.

The contracting authority may, in particular, take into consideration explanations relating to:

- (a) the economics of the manufacturing process, of the services provided and of the construction method;
  - (b) the technical solutions chosen or the exceptionally favourable conditions available to the tenderer;
  - (c) the originality of the tender.
2. Where the contracting authority establishes that a tender is abnormally low as a result of state aid provided, the tender may be rejected on this ground alone only where the tenderer is unable to prove, within a reasonable time determined by the contracting authority, that the aid in question has been awarded definitively and in accordance with the procedures and decisions specified in the Community rules on state aid.

*Article 126*  
*Time limits for receipt of tenders and requests to participate*  
*(Article 98(1) of the General Financial Regulation)*

1. The time limits for the receipt of tenders and requests to participate, laid down in calendar days by the contracting authorities, shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders, taking particular account of the complexity of the contract or the need to visit the site or consult on the spot the documents annexed to the specifications.
2. In open procedures, the time limit for receipt of tenders shall be no less than fifty-two days from the date when the contract notice is sent.
3. In restricted and negotiated procedures where a contract notice is published, the time limit for receipt of requests to participate shall be no less than thirty-seven days from the date when the contract notice is sent.

In restricted procedures for contracts beyond the thresholds set in Article 114, the time limit for receipt of tenders shall be no less than forty days from the date when the invitation to tender is sent.

In the restricted procedures referred to in Article 114, the time limit for receipt of tenders shall be no less than twenty-one days from the date when the invitation to tender is sent.

4. Where the contracting authorities, in accordance with Article 104, have sent for publication a pre-information notice containing all the information required in the contract notice no less than fifty-two days and no more than twelve months before the date when the contract notice is sent, the time limit for the receipt of tenders may generally be reduced to thirty-six days and shall in no circumstances be less than twenty-two days from the date of dispatch of the contract notice, in the case of open procedures, or may be reduced to twenty-six days from the date of dispatch of the invitation to submit a tender, in the case of restricted procedures.

*Article 127*  
*Time allowed for access to invitation to tender documents*  
*(Article 98(1) of the General Financial Regulation)*

1. Provided that the request was made in good time before the deadline for the submission of tenders, the specifications and additional documents shall be sent to all economic operators who have requested the specifications or expressed interest in submitting a tender within six days of the receipt of their request.
2. Provided it has been requested in good time, additional information relating to the specifications shall be supplied simultaneously to all economic operators who have requested the specifications or expressed interest in submitting a tender no later than six days before the deadline for the receipt of tenders.
3. If, for whatever reason, the specifications and the additional documents or information cannot be supplied within the time limits set in paragraphs 1 and 2, or where tenders can be made only after a visit to the site or after on-the-spot consultation of the documents annexed to the specifications, the time limits for the

receipt of tenders referred to in Article 126 shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders. This extension shall be advertised in appropriate manner, in accordance with the arrangements set out in Articles 104 to 107.

4. If all the invitation to tender to documents are freely, fully and directly accessible by electronic means, the contract notice referred to in Article 104(3) shall give the Internet address at which these documents can be consulted.

In that case any additional documents and information shall also be made freely, fully and directly accessible as soon as they are supplied to all the economic operators who have requested the specifications or expressed interest in submitting a tender.

#### *Article 128*

##### *Time limits in urgent cases*

*(Article 98(1) of the General Financial Regulation)*

1. Where duly substantiated urgency renders impracticable the time limits laid down in Article 126(3), contracting authorities may set the following time limits:
  - (a) a time limit for the receipt of requests to participate which may not be less than fifteen days from the date on which the contract notice was sent;
  - (b) a time limit for the receipt of tenders which may not be less than ten days from the date of the invitation to tender.
2. Provided it has been requested in good time, additional information on the specifications shall be communicated to all candidates no later than four days before the deadline for the receipt of tenders.

#### *Article 129*

##### *Methods of communication*

*(Article 98(1) of the General Financial Regulation)*

1. Requests to participate shall be submitted by letter, fax or electronic mail; requests submitted by fax or electronic mail shall be confirmed by letter before expiry of the time limits set in Article 126.
2. Tenderers may submit tenders:
  - (a) either by post; in which case the tender documents shall specify that the relevant date shall be the date of despatch by registered post, as evidenced by the postmark;
  - (b) or by hand-delivery to the premises of the institution by the tenderer himself or by an agent, including courier service; the tender documents shall specify, in addition to the information referred to in Article 116(2)(a), the department to which tenders shall be delivered against a signed and dated receipt.

3. In order to maintain secrecy and avoid any difficulties where tenders are sent by letter, the invitation for tender must include a provision as follows:

'Tenders shall be submitted in a sealed envelope itself enclosed within a second sealed envelope. The inner envelope shall bear, in addition to the name of the department to which it is addressed, as indicated in the invitation to tender, the words "Invitation to tender - Not to be opened by the mail service". If self-adhesive envelopes are used, they must be sealed with adhesive tape and the sender must sign across this tape.'

*Article 130*  
*Tender guarantees*  
*(Article 98(2) of the General Financial Regulation)*

The contracting authority may require a tender guarantee representing 1 to 2 % of the total value of the contract; it shall conform to Article 136.

It shall be released when the contract is awarded. If no tender is submitted by the deadline set or if the tender is subsequently withdrawn, the guarantee shall be retained.

*Article 131*  
*Opening of tenders and requests to participate*  
*(Article 98(3) of the General Financial Regulation)*

1. All requests to participate and tenders that satisfy the requirements of Article 129(1) and (2) shall be opened.
2. Where the value of a contract exceeds the threshold laid down in Article 115(2), the authorising officer responsible shall appoint a committee to open the tenders.

The committee shall be made up of at least three officials or other servants, representing at least two organisational entities with no hierarchical link between them.

3. One or more members of the opening committee shall initial the documents proving the date and time of despatch of each tender.

They shall also initial:

- (a) either each page of each tender, or,
- (b) the cover page and the pages containing the financial details of each tender, the integrity of the initial tender being guaranteed by any appropriate technique employed by a department that is independent of the authorising department, save in the cases referred to in the third subparagraph of paragraph 2.

Where the contract is awarded under the automatic award procedure in accordance with Article 124(1)(a), the prices quoted in tenders satisfying the requirements shall be made public.

The members of the committee shall sign the written record of the opening of the tenders received, identifying those tenders which satisfy the requirements and those which do not, giving the grounds on which tenders rejected do not satisfy the requirements by reference to the methods of submitting tenders referred to in Article 129.

#### *Article 132*

##### *Committee for the evaluation of tenders and requests to participate (Article 98(4) of the General Financial Regulation)*

1. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance.

It shall be appointed by the authorising officer to give an advisory opinion for contracts with a value above the threshold referred to in Article 115(2).

2. The committee shall be made up of at least three officials or other servants representing at least two organisational entities with no hierarchical link between them.

The committee may be composed of the same members as the committee opening the tenders.

3. Tenders which do not satisfy all the essential requirements set out in the supporting documentation for invitations to tender or the specific requirements laid down therein shall be eliminated.

However, the evaluation committee may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted, within a time limit set by it, where it is a question of documentation for the purpose of determining whether candidates or tenderers satisfy the selection criteria.

4. In the case of abnormally low tenders as referred to in Article 125 of this Regulation, the committee shall request any relevant information concerning the composition of the tender.

#### *Article 133*

##### *Results of the evaluation (Articles 99 and 100 of the General Financial Regulation)*

1. A written record of the evaluation and ranking of requests to participate and tenders declared to satisfy the requirements shall be drawn up and dated. It shall be signed by all the members of the evaluation committee. It shall be kept for future reference.
2. It shall contain at least the following:
  - (a) the name and address of the contracting authority, and the subject and value of the contract or of the framework contract;

- (b) the names of the candidates or tenderers proposed and the reasons for their selection;
  - (c) the names of the candidates or tenderers rejected and the reasons for their rejection;
  - (d) the reasons for the rejection of tenders found to be abnormally low;
  - (e) the names of the candidates or contractor proposed and the reasons for this choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.
3. The contracting authority shall then take its decision giving at least the following:
- (a) the name and address of the contracting authority, and the subject and value of the contract or of the framework contract;
  - (b) the names of the candidates or tenderers proposed and the reasons for their selection;
  - (c) the names of the candidates or tenderers rejected and the reasons for their rejection;
  - (d) the reasons for the rejection of tenders found to be abnormally low;
  - (e) the names of the candidates or contractor selected and the reasons for this choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
  - (f) in the case of negotiated procedures, the circumstances referred to in Articles 112 and 113, which justify their use;
  - (g) where appropriate, the reasons why the contracting authority has decided not to award a contract.

#### *Article 134*

##### *Contacts between contracting authorities and tenderers*

##### *(Article 99 of the General Financial Regulation)*

1. Contact between the contracting authority and tenderers during the contract award procedure shall be authorised, by way of special exception, under the conditions set out in paragraphs 2 and 3.
2. Before the closing date for the submission of tenders, in respect of the additional documents and information referred to in Article 127, the contracting authority may:
  - (a) at the instance of tenderers, communicate additional information solely for the purpose of clarifying the nature of the contract; such information shall be communicated on the same date to all tenderers who have asked for the specifications;

- (b) at its own instance, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the contract notice, invitation to tender or specifications, in a manner identical with that applicable in respect of the original invitation to tender, inform the persons concerned on the same date.
3. If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors contained in the tender must be corrected, the contracting authority may contact the tenderer; this contact may not lead to any alteration of the terms of the tender.
4. In every case where contact has been made, a 'note for the file' shall be drawn up.

*Article 135*  
*Information for candidates and tenderers*  
*(Articles 100(2) and 101 of the General Financial Regulation)*

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract, including the grounds for any decision not to award a contract for which there has been competitive tendering or to recommence the procedure.
2. The contracting authority shall, within not more than fifteen days of the date on which a written request is received, communicate the information provided for in Article 100(2) of the General Financial Regulation.

**SECTION 4**  
**GUARANTEES AND CONTROL**

*Article 136*  
*Advance guarantee*  
*(Article 102 of the General Financial Regulation)*

1. Where suppliers, contractors or service providers are required to lodge a guarantee in advance, it must be for an amount and a period that are sufficient for it to be activated.
2. The guarantee shall be supplied by a bank or an authorised financial institution. It may be replaced by a joint and several guarantee by a third party.

The guarantee shall be denominated in euro.

It shall have the effect of making the bank or financial institution stand as irrevocable collateral security, or first-call guarantor of the contractor's obligations.

*Article 137*  
*Performance guarantee*  
*(Article 102 of the General Financial Regulation)*

1. A performance guarantee may be demanded by the authorising officer in accordance with the usual commercial terms for supply and service contracts and in accordance with the special specifications for works contracts.

This guarantee shall be mandatory above EUR 345 000 for works contracts.

2. A guarantee corresponding to 10% of the total value of the contract may be constituted by deductions from payments as and when they are made.

It may be replaced by an amount withheld from the final payment in order to constitute a guarantee until final acceptance of the services, supplies or works.

3. Guarantees shall be released in accordance with the terms of the contract, save where the contract has not been performed or has been performed incorrectly or completion is late. In such cases a proportion of the guarantee shall be retained in proportion to the seriousness of the damage suffered.

*Article 138*  
*Guarantee for pre-financing*  
*(Article 102 of the General Financial Regulation)*

A guarantee shall be required in return for the payment of pre-financing exceeding EUR 150 000.

The guarantee shall be released as and when the pre-financing is deducted from interim payments or payments of balances to the contractor in accordance with the terms of the contract.

*Article 139*  
*Suspension in the event of errors or irregularities*  
*(Article 103 of the General Financial Regulation)*

1. Contracts shall be suspended under Article 103 of the General Financial Regulation in order to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible.
2. A substantial error or irregularity consists of any infringement of a provision of a contract or regulation resulting from an act or an omission which causes or might cause a loss to the Community budget.

## **CHAPTER 2**

### **SPECIFIC PROVISIONS APPLICABLE TO CONTRACTS AWARDED BY THE COMMUNITY INSTITUTIONS ON THEIR OWN ACCOUNT**

#### *Article 140*

##### *Identification of contracting authorities for the calculation of thresholds (Article 104 of the General Financial Regulation)*

For the purpose of calculating the thresholds laid down in Article 105 of the General Financial Regulation, each authorising officer by delegation or subdelegation within each institution shall be deemed to be a contracting authority.

#### *Article 141*

##### *Separate contracts and contracts with lots (Article 105 of the General Financial Regulation)*

1. The estimated value of a contract may not be determined with a view to evading the requirements laid down in this Regulation, nor may a contract be split up for the same end.
2. Where the subject of a service or works contract is subdivided into several lots, each one the subject of an individual contract, the value of each lot shall be taken into account for the overall evaluation of the applicable threshold.

Where the overall value of lots is equal or to or greater than the thresholds laid down in Article 144, the provisions of Articles 90(1) and 91(1) and (2) of the General Financial Regulation shall apply to each of the lots, save those with an estimated value of less than EUR 80 000 in the case of service contracts, or less than EUR 1 000 000 in the case of works contracts, provided that the aggregate amount of these lots does not exceed 20% of the aggregate value of all the lots making up the contract in question.

3. Where the planned purchase of uniform supplies may be covered by simultaneous contracts in separate lots, the estimated value of all these lots shall be taken as the basis for determining the applicable threshold.

#### *Article 142*

##### *Arrangements for estimating the value of certain contracts (Article 105 of the General Financial Regulation)*

1. For the purposes of calculating the estimated amount of a contract, the contracting authority shall include the contractor's total estimated remuneration.

Where a contract provides for options, the basis for calculation shall be the maximum amount authorised, including the use of option clauses.

2. For service contracts, account shall be taken of:
  - (a) in the case of insurance services, the premium payable;

- (b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;
  - (c) in the case of design contracts, the fees, prizes or commissions payable.
- 3. In the case of service contracts which do not specify a total price or supply contracts for leasing, rental or hire purchase of products, the value to be taken as the basis for calculating the estimated value shall be:
  - (a) in the case of fixed-term contracts:
    - (i) where their term is forty-eight months or less in the case of services or twelve months or less in the case of supplies, the total contract value for their duration;
    - (ii) where their term is more than twelve months in the case of supplies, the total value including the estimated residual value;
  - (b) in the case of contracts for an indefinite period or, in the case of services, for a period exceeding forty-eight months, the monthly value multiplied by forty-eight.
- 4. In the case of service or supply contracts which are awarded regularly or are to be renewed within a given time, the contract value shall be established on the basis of:
  - (a) either the actual aggregate cost of similar contracts for the same categories of services or products awarded over the previous financial year or twelve months, adjusted, where possible, for anticipated changes in quantity or value over the twelve months following the initial contract;
  - (b) or the estimated aggregate cost during the twelve months following the first service performed or first delivery or during the term of the contract, where this is greater than twelve months.
- 5. In the case of works contracts, account shall be taken not only of the value of the works but also of the estimated total value of the supplies needed to carry out the works and made available to the contractor by the contracting authority.

*Article 143*  
*Thresholds for pre-information notices*  
*(Article 105 of the General Financial Regulation)*

The thresholds provided for in Article 104 for publication of a pre-information notice shall be:

- (a) EUR 750 000 for the supply and service contracts listed in Annex IA to Directive 92/50/EEC;
- (b) EUR 6 242 028 for works contracts.

*Article 144*

*Thresholds for the application of the public procurement directives procedures  
(Article 105 of the General Financial Regulation)*

1. The thresholds referred to in Article 105 of the General Financial Regulation shall be:
  - (a) EUR 162 293 for the supply and service contracts listed in Annex IA to Directive 92/50/EEC, with the exception of the research and development contracts listed in category 8 of that annex;
  - (b) EUR 200 000 for the service contracts listed in Annex IB to Directive 92/50/EEC and for the research and development service contracts listed in category 8 of Annex IA to that Regulation;
  - (c) EUR 6 242 028 for works contracts.
2. The time limits referred to in Article 105 of the General Financial Regulation shall be those specified in Articles 126, 127 and 128.

*Article 145*

*Evidence of access to contracts  
(Articles 106 and 107 of the General Financial Regulation)*

The specifications shall require tenderers to indicate in which State they have their headquarters or domicile and to present the supporting evidence normally acceptable under their own law.

**TITLE VI  
GRANTS**

**CHAPTER 1  
SCOPE**

*Article 146*

*Grants awarded by the Agency  
(Article 75 of the General Financial Regulation)*

1. The legal base or basic act for grants award by the Agency is the EC Council Regulation n° 1035/97 of 06 June 1997 establishing the European Maritime Safety Agency and its subsequent modifications.
2. The Agency may award grants when mentioned in the provisions of the Regulation n° 1035/97 as mentioned in paragraph 1.

*Article 147*  
*Provisions and rules applicable to grants awarded by the Agency*  
*(Article 75 of the Financial Regulation)*

1. The provisions of Title VI of part one of the General Financial Regulation are applicable to grants awarded by the Agency and form part of the Financial Regulation of the Agency.
2. According to Article 75 of the Financial Regulation, the detailed rules for implementing the provisions referred to in paragraph 1, are also applicable to the Agency, as stipulated in articles 148 to 172 of the present Regulation.
3. By analogy and for the application of the present Regulation, the term institution designates the Agency.
4. For this title, headings of the articles of the detailed rules refer to the provisions of the General Financial Regulation.

*Article 148*  
*Scope*  
*(Article 108 of the General Financial Regulation)*

1. The grant agreements with the bodies referred to in Article 25 are governed by this Title.  
  
On the other hand, the procedure for awarding and concluding those agreements is not subject to this Title.
2. The benefit deriving from an interest subsidy on certain loans shall constitute grants for the purposes of this Title.
3. Equity holdings, with the exception of those for international financial institutions such as the EBRD, and grants which are reimbursable in certain circumstances shall also constitute grants for the purposes of this Title.

*Article 149*  
*Actions eligible*  
*(Article 108 of the General Financial Regulation)*

An action, which may receive a grant within the meaning of Article 108 of the General Financial Regulation, must be clearly identified.

No action may be split for the purpose of evading the financing rules laid down in this Regulation.

*Article 150*  
*Bodies pursuing an aim of general European interest*  
*(Article 108 of the General Financial Regulation)*

A body pursuing an aim of general European interest is:

- (a) a European body involved in education, training or research and study in European policies or a European standards institution;
- (b) or a European network representing non-profit bodies active in the Member States or in the candidate countries and promoting principles and policies consistent with the objectives of the Treaties.

*Article 151*  
*Partnerships*  
*(Article 108 of the General Financial Regulation)*

1. Specific grant agreements may form part of framework partnership agreements.
2. A framework partnership agreement may be concluded with beneficiaries with a view to establishing long-term cooperation with the Commission or/and with the Agency.

This framework agreement shall specify the common objectives, the nature of actions planned on a one-off basis or as part of an approved annual work programme, the procedure for awarding specific grants, in compliance with the principles and procedural rules in this Title, and the general rights and obligations of each party under the specific agreements.

The duration of such agreements may not exceed four years, save in exceptional cases, justified in particular by the subject of the framework agreement.

Authorising officers may not make undue use of framework agreements or use them in such a way that the purpose or effect is to infringe the principles of transparency or equal treatment of applicants.

3. Partnership framework agreements shall be treated as grants for the purposes of the award procedure; they shall be subject to the *ex ante* advertising procedures referred to in Article 155.
4. Specific grants based on such framework agreements shall be awarded in accordance with the procedures set out in the agreements, in compliance with the principles of this Title.

They shall be subject to the *ex post* publication procedures laid down in Article 157.

5. Only the specific agreements based on these framework agreements shall be preceded by a budget commitment.

*Article 152*  
*Content of grant agreements*  
*(Article 108 of the General Financial Regulation)*

1. The agreement shall in particular lay down:
  - (a) the subject;

- (b) the beneficiary;
  - (c) the duration, namely
    - (i) the date of its entry into force and its termination,
    - (ii) the starting date and the duration of the action or financial year being funded,
  - (d) the maximum possible funding, in the form of:
    - (i) the maximum amount of the grant and
    - (ii) the maximum rate of funding of the eligible costs of the action or approved work programme, save in the case of the flat-rate amounts referred to in Article 169(1);
  - (e) a detailed description of the action or, for an operating grant, of the work programme approved for that year approved by the authorising officer;
  - (f) the general terms and conditions applicable to all agreements of this type; these shall include determination of the applicable law, the court competent to hear disputes and acceptance by the beneficiary of audits by the Commission, the Agency, OLAF and the Court of Auditors and of the *ex post* publication rules referred to in Article 157, in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council.<sup>8</sup> The agreement may lay down the arrangements and time limits for suspension in accordance with Article 171;
  - (g) the estimated overall budget and details of the eligible costs of the action or approved work programme, save in the case of the flat-rate amounts referred to in Article 169(1);
  - (h) where implementation of the action involves procurement, the principles referred to in Article 172 or the procurement rules which the beneficiary must comply with;
  - (i) the responsibilities of the beneficiary, in particular in terms of sound financial management and submission of activity and financial reports;
  - (j) the arrangements and time limits for approving these reports and for payment by the Agency.
2. In the cases referred to in Article 151, the framework agreement shall specify the information referred to in paragraph 1(a),( b), (c)(i), (d)(ii), (f), (h), (i) and (j).
- The specific agreement shall contain the information referred to in paragraph 1(a), (b) (c), (d), (e), (g) and, where necessary, (i).
3. Grant agreements may be amended only by written additional agreements. Such additional agreements shall not have the purpose or the effect of making changes to

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<sup>8</sup> OJ L 8, 12.1.2001, p. 1.

the agreements which might call into question the grant award decision or result in unequal treatment of beneficiaries.

## **CHAPTER 2 AWARD PRINCIPLES**

### *Article 153 No-profit rule (Article 109(2) of the General Financial Regulation)*

1. The grant may not have the purpose or effect of producing a profit for the beneficiary. Profit shall be defined as:
  - (a) a surplus of receipts over the costs of the action in question when the request is made for final payment of a grant for an action, subject to point (b);
  - (b) for actions designed specifically to strengthen the financial capacity of a beneficiary, in the field of external action, distribution to the members making up the beneficiary body of the surplus revenue resulting from its activity leading to their personal enrichment, in the case of a grant for an action;
  - (c) a surplus balance on the operating budget of a body in receipt of an operating grant.
2. The provisions of paragraph 1 shall not apply to study, research or training scholarships paid to natural persons, nor in the case of prizes awarded following contests, nor in the case of the flat-rate amounts referred to in Article 169(1).

### *Article 154 Annual programming (Article 110(1) of the General Financial Regulation)*

1. The annual work programme for grants shall be adopted by the Agency. It shall be published on the grants Internet site of the Agency by no later than 31 March each year.

The work programme shall specify the basic act, the objectives, the schedule of calls for proposals with the indicative amount and the results expected.
2. Any substantial change in the grants programme shall also be published as specified in paragraph 1.

### *Article 155 Content of calls for proposals (Article 110(1) of the General Financial Regulation)*

1. Calls for proposals shall specify:
  - (a) the objectives pursued;

- (b) the eligibility, selection and award criteria as referred to in Articles 114 and 115 of the General Financial Regulation, and the relevant supporting documents;
  - (c) the arrangements for Community financing;
  - (d) the arrangements and final date for the submission of proposals and the possible start-up date for the actions and the planned date for closing the award procedure.
2. Calls for proposals shall be published on the Internet site of the Agency and by any other appropriate medium, including the *Official Journal of the European Communities*, in order to provide maximum publicity among potential beneficiaries.

*Article 156*  
*Exceptions to calls for proposals*  
*(Article 110(1) of the General Financial Regulation)*

1. Grants may be awarded without a call for proposals only in the following cases:
- (a) for the purposes of humanitarian aid, within the meaning of Council Regulation No 1257/96<sup>9</sup> and aid for crisis situations within the meaning of paragraph 2;
  - (b) in other exceptional and duly substantiated emergencies;
  - (c) to bodies with a *de jure* or *de facto* monopoly, duly substantiated in the Agency award decision, or to bodies identified in the basic act mentioned in Article 146.
2. Crisis situations shall be understood to mean, for third countries, situations:
- (a) posing a threat to law and order, the security and safety of individuals, threatening to escalate into armed conflict or to destabilise the country, and
  - (b) which could seriously harm:
    - (i) the safeguarding of the common values, fundamental interests, independence and integrity of the European Union,
    - (ii) the security of the European Union, peace-keeping and international security, promotion of international cooperation or development and strengthening of democracy, the rule of law, respect for human rights and fundamental freedoms, in accordance with Article 11 of the Treaty on European Union and Article 3 of Council Regulation (EC) No 381/2001.<sup>10</sup>

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<sup>9</sup> OJ L 163, 2.7.1996. Council Regulation of 20 June 1996.

<sup>10</sup> OJ L 57, 27.2.2001, p. 5. Regulation of 26 February 2001 creating a rapid-reaction mechanism.

*Article 157*  
*Ex post publication*  
*(Article 110(2) of the General Financial Regulation)*

1. All grants awarded in the course of a financial year shall be published on the Internet site of the Agency during the first half of the year following the closure of the budget year in respect of which they were awarded.

In cases where management is delegated to the bodies referred to in Article 54 of the General Financial Regulation, reference shall be made at least to the address of the website where this information can be found if it is not published directly on the Internet site of the Agency.

The information may also be published by any other appropriate medium, including the *Official Journal of the European Communities*.

2. The following shall be published with the agreement of the beneficiary in accordance with Article 152(1)(f):
  - (a) the name and address of the beneficiaries;
  - (b) the subject of the grant;
  - (c) the amount awarded and, save in the case of the flat-rate amounts referred to in Article 169(1), the rate of funding of the costs of the action or approved work programme.

This obligation may be waived if publication of the information may threaten the safety of the beneficiaries or harm their business interests.

*Article 158*  
*Joint financing*  
*(Article 111 of the General Financial Regulation)*

An action may be financed jointly from separate budget lines by a number of authorising officers.

*Article 159*  
*Retrospective effect for management of humanitarian aid and crisis situations*  
*(Article 112 of the General Financial Regulation)*

In order to ensure that humanitarian aid operations and operations in crisis situations within the meaning of Article 156(2) are conducted efficiently, expenditure incurred by a beneficiary before the date of submission of the application shall be eligible for Community financing solely in the following cases:

- (a) where the expenditure relates to the constitution of stocks by the applicant for use in connection with the action for which the grant is awarded;

- (b) by way of exception and for properly justified reasons, where the financing decision and the grant application explicitly provide for this by setting an eligibility date earlier than the date for submission of applications.

*Article 160*  
*External co-financing*  
*(Article 113 of the General Financial Regulation)*

1. The beneficiary shall supply evidence of the co-financing provided, either by way of own resources, or in the form of financial transfers from third parties, or in kind, save in the case of the flat-rate amounts referred to in Article 169(1).
2. The authorising officer may, in duly justified exceptional cases, accept co-financing in kind, In such cases the value of such contributions must not exceed:
  - (a) either the costs actually borne and duly supported by accounting documents,
  - (b) or the costs generally accepted on the market in question,

Contributions involving buildings referred to in Article 102(1) shall be excluded from the calculation of the amount of co-financing.

**CHAPTER 3**  
**AWARD PROCEDURE**

*Article 161*  
*Financing applications*  
*(Article 114 of the General Financial Regulation)*

1. Applications shall be made on the form distributed by the authorising officers responsible and in accordance with the criteria laid down in the legal basis and the call for proposals.
2. They shall show that the applicant exists as a legal person and has the financial and operational capacity to complete the proposed action or work programme, subject to Article 164(4). For this purpose the authorising officer shall request a declaration from potential beneficiaries on their honour; the profit and loss account, the balance sheet for the last financial year for which the accounts have been closed and any other supporting document requested in the call for proposals shall, depending on the analysis of management risks conducted by the authorising officer responsible on his own responsibility, also be attached to the application.
3. The budget for the action or the operating budget attached to the application must have revenue and expenditure in balance and show clearly the costs which are eligible for financing from the Community budget, save in the case of the flat-rate amounts referred to in Article 169(1).
4. For actions where the cost to be financed exceeds EUR 300 000 and for operating grants of over EUR 50 000, the application shall be accompanied by an external audit report produced by an approved auditor. This report shall certify the accounts for the

last year available, give an assessment of the viability of the body within the meaning of Article 164(2) and identify the grants received during the year.

The provisions of the first subparagraph shall apply only to the first application made by a beneficiary to an authorising officer in any one budget year.

In the case of agreements linking the Agency and/or the Commission and a number of beneficiaries, these thresholds shall apply to each beneficiary.

In the case of partnerships referred to in Article 151, an external audit covering the last two years available must be produced before the framework agreement is concluded.

The authorising officer responsible may, depending on the analysis of management risks, waive this obligation for public bodies, the international organisations referred to in Article 29, and beneficiaries who have accepted joint and several liability in the case of agreements with a number of beneficiaries.

5. The applicant shall indicate the sources and amounts of any other funding received or applied for in the same year for the same action or for any other action and for routine activities.

*Article 162*  
*Proof of applicants' eligibility*  
*(Article 114 of the General Financial Regulation)*

Applicants shall declare on their honour that they are not in one of the situations listed in Article 93 of the General Financial Regulation. The authorising officer responsible may, depending on the analysis of management risks, request the proof referred to in Article 120. Requesters shall be bound to supply this proof, unless there is a material impossibility recognised by the authorising officer responsible.

*Article 163*  
*Financial penalties*  
*(Article 114 of the General Financial Regulation)*

Applicants who are found guilty of false declarations may be subject to financial penalties as laid down in Article 119 in proportion to the value of the grants in question.

Beneficiaries who have been found to have seriously failed to meet their contractual obligations may be subject to financial penalties under the same conditions.

*Article 164*  
*Selection criteria*  
*(Article 115(1) of the General Financial Regulation)*

1. The selection criteria shall be published in the call for proposals and shall be such as to make it possible to assess the applicant's financial and operational capacity to complete the proposed action or work programme.

2. The applicant must have stable and sufficient sources of funding to maintain his activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding. He must have the professional competencies and qualifications required to complete the proposed action or work programme unless specifically provided otherwise in the basic act.
3. Financial and operational capacity shall be verified in particular on the basis of an analysis of the supporting documents referred to in Article 161.
4. The verification of financial capacity shall not apply to natural persons in receipt of scholarships nor to public bodies, nor to the international organisations referred to in Article 29.

In the case of the partnerships referred to in Article 151, this verification shall be performed before the framework agreement is concluded.

*Article 165*  
*Award criteria*  
*(Article 115(2) of the General Financial Regulation)*

1. The award criteria shall be published in the call for proposals.
2. The award criteria shall be such as to award grants either to the actions which maximise the overall effectiveness of the Community programme which they implement or to the bodies whose work programme is designed to attain the same result. These criteria shall be defined in such a way as to ensure also that the Community funds are properly managed.

These criteria shall be applied in such a way as to select the planned actions or work programmes which give the Agency an assurance of compliance with its objectives and priorities and guarantee the visibility of the Community financing.

3. The award criteria shall be defined in such a way that it will be possible subsequently to carry out an evaluation.

*Article 166*  
*Evaluation of applications and award*  
*(Article 116 of the General Financial Regulation)*

1. The authorising officer responsible shall appoint a committee to evaluate the proposals, save in the case of a Agency's decision on a specific sectoral programme.

It shall be made up of at least three officials or other servants representing at least two organisational entities with no hierarchical link between them.

Outside experts may assist this committee by decision of the authorising officer responsible.

2. The evaluation committee may ask an applicant, within a time limit which it sets, to provide additional proof or to clarify the supporting documents establishing financial and operational capacity.

3. Upon completion of its work, the members of the committee shall sign a record of all the proposals examined, containing an assessment of their quality and identifying those which may receive funding. Where necessary this record shall rank the proposals examined.

The record shall be kept for future reference.

4. The authorising officer responsible shall then take his decision giving at least:
  - (a) the subject and the overall amount of the decision;
  - (b) the name of the beneficiaries, the title of the actions, the amounts accepted and the reasons for this choice, including where he departs from the opinion of the committee;
  - (c) the names of any applicants excluded and the reasons for this choice.
5. The provisions of paragraphs 1 to 4 shall not apply to beneficiaries of grants who are identified in the basic act.

*Article 167*  
*Information for applicants*  
*(Article 116 of the General Financial Regulation)*

Applicants shall be informed within fifteen days after the award decision has been sent to the beneficiaries.

## **CHAPTER 4**

### **PAYMENT AND CONTROL**

*Article 168*  
*Supporting documents for requests for payments*  
*(Article 117 of the General Financial Regulation)*

1. For each grant, pre-financing shall not be renewed until at least 70% of the total amount of any earlier pre-financing has been cleared. The statement of the beneficiary's outlay shall be produced in support of any request for a further payment.
2. An external audit of the accounts for the action or of the body in receipt of an operating grant produced by an approved auditor may be demanded by the authorising officer responsible in support of any payment on the basis of his analysis of management risks.

The authorising officer responsible shall give reasons for not requesting an external audit where payment of pre-financing and interim payments exceed EUR 500 000 per year and per agreement, for payments of balances exceeding EUR 100 000 and for operating grants of more than EUR 50 000.

In the case of an agreement linking the Agency and a number of beneficiaries, these thresholds shall apply to each beneficiary.

*Article 169*  
*Flat-rate financing*  
*(Article 117 of the General Financial Regulation)*

1. In addition to cases of scholarships and prizes, the basic act may authorise flat-rate financing for contributions of less than EUR 5 000 or the use of scales of unit costs.

In order to ensure compliance with the co-financing, no-profit and sound financial management principles, these flat-rate amounts and scales shall be reviewed at least every two years by the authorising officer responsible. The amounts shall be approved by the Agency.

2. The grant agreement may authorise flat-rate cover
  - (a) of the beneficiary's overheads up to a maximum of 7% of total eligible costs for the action, save where the beneficiary is in receipt of an operating grant financed from the Community budget;
  - (b) of certain mission expenses on the basis of a *per diem* scale approved annually by the Agency.

The ceiling provided for in point (a) of the first subparagraph may be exceeded by reasoned decision of the Agency.

*Article 170*  
*Advance guarantee*  
*(Article 118 of the General Financial Regulation)*

1. The authorising officer responsible may require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.
2. Where pre-financing represents over 80% of the total amount of the grant, payment may not be made until after the beneficiary has lodged a guarantee subject to the assessment and acceptance of the authorising officer responsible.

For NGOs operating in the field of external action, this guarantee shall be demanded in respect of pre-financing exceeding EUR one million or representing over 90% of the total amount of the grant.

The guarantee shall be valid for a period sufficiently long to allow it to be activated.

3. The guarantee shall be provided by an approved bank or financial institution established in one of the Member States.

This guarantee may be replaced by a joint and several guarantee by a third party or by the joint guarantee of the beneficiaries of an action who are parties to the same grant agreement.

The guarantee shall be denominated in euro.

It shall have the effect of making the bank or financial institution, third party or the other beneficiaries stand as irrevocable collateral security, or first-call guarantor of the grant beneficiary's obligations.

4. It shall be released as the pre-financing is gradually cleared against interim payments or payments of balances in accordance with the conditions laid down in the grant agreement.
5. The authorising officer may waive the obligation laid down in paragraph 2 for public-sector bodies and the international organisations referred to in Article 29.

The authorising officer responsible may also exempt from this obligation beneficiaries who have concluded a framework partnership agreement under Article 151.

*Article 171*  
*Suspension and reduction of grants*  
*(Article 119 of the General Financial Regulation)*

1. The authorising officer responsible shall suspend payments and reduce the grant or demand reimbursement pro rata by the beneficiary:
  - (a) where the agreed action or work programme is not carried out at all, properly, in full or on time;
  - (b) where amounts exceeding the financing ceilings set in the agreement have been paid, in particular if the agreed action or work programme has been carried out at a lower cost than initially forecast;
  - (c) where the budget for the action or the operating budget reveals a surplus *ex post*.
2. Payments may also be suspended following presumed infringements of other clauses of the agreement. The purpose of such suspension shall be to give time to check whether the presumed infringements have in fact occurred and, where appropriate, to rectify them.

**CHAPTER 5**  
**IMPLEMENTATION**

*Article 172*  
*Implementation contracts*  
*(Article 120 of the General Financial Regulation)*

1. Where implementation of the assisted actions requires the award of procurement contracts, beneficiaries of grants shall award the contract to the tender offering best value for money, i.e. the one offering the best price-quality ratio, in compliance with

the principles of transparency and equal treatment for potential contractors, care being taken to avoid any conflict of interests.

2. For the purposes of paragraph 1 the authorising officer responsible may require beneficiaries to abide by special rules, determined with due respect for the value of the contracts concerned. the relative size of the Community contribution in relation to the total cost of the action and the management risk.

In that case such rules shall be included in the grant agreement.

## **TITLE VII**

### **KEEPING AND PRESENTATION OF THE ACCOUNTS**

#### **CHAPTER 1**

#### **PRESENTATION OF THE ACCOUNTS**

##### *Article 173*

*Report on budgetary and financial management during the year  
(Article 76 of the Financial Regulation)*

The report on budgetary and financial management during the year shall give an accurate description of:

- (a) the achievement of the objectives for the year, in accordance with the principle of sound financial management;
- (b) the financial situation and the events which have had a significant influence on activities during the year.

##### *Article 174*

*Exception to the accounting principles  
(Article 78 of the Financial Regulation)*

Where, in a specific case, the accounting officers consider that an exception should be made to the content of one of the accounting principles defined in Articles 175 to 181, this exception must be duly substantiated and reported in the annex to the financial statements referred to in Article 191.

##### *Article 175*

*Going-concern principle  
(Article 78 of the Financial Regulation)*

1. The going-concern principle means that for the purposes of preparing the financial statements, the institutions and the bodies referred to in Article 185 of the General Financial Regulation shall be deemed to be established for an indefinite duration.

2. Where there are objective indications that an institution or a body referred to in Article 185 of the General Financial Regulation is to cease its activities, the accounting officer shall present this information in the annex, indicating the reasons. He shall apply the accounting rules with a view to determining the liquidation value of the institution or body concerned.

*Article 176*  
*Principle of prudence*  
*(Article 78 of the Financial Regulation)*

The principle of prudence means that assets and income shall not be overstated and liabilities and charges shall not be understated. However, the principle of prudence does not allow the creation of hidden reserves or undue provisions.

*Article 177*  
*Principle of consistent accounting methods*  
*(Article 78 of the Financial Regulation)*

1. The principle of consistent accounting methods means that the structure of the components of the financial statements and the accounting methods and valuation rules may not be changed from one year to the next.
2. The Agency's accounting officer may not depart from the principle of consistent accounting methods other than in exceptional circumstances, in particular:
  - (a) in the event of a significant change in the nature of the entity's operations;
  - (b) where the change made is for the sake of a more appropriate presentation of the accounting operations.

*Article 178*  
*Principle of comparability of information*  
*(Article 78 of the Financial Regulation)*

1. The principle of comparability of information means that for each item the financial statements shall also show the amount of the corresponding item the previous year.
2. Where, pursuant to paragraph 1, the presentation or the classification of one of the components of the financial statements is changed, the corresponding amounts for the previous year shall be made comparable and reclassified.

Where it is impossible to reclassify items, this shall be explained in the annex.

*Article 179*  
*Materiality principle*  
*(Article 78 of the Financial Regulation)*

1. The materiality principle means that all operations which are of significance for the information sought shall be taken into account in the financial statements. Materiality

shall be assessed in particular by reference to the nature of the transaction or the amount.

2. Transactions may be aggregated where:
  - (a) the transactions are identical in nature, even if the amounts are large;
  - (b) the amounts are negligible;
  - (c) aggregation makes for clarity in the financial statements.

*Article 180*  
*No-netting principle*  
*(Article 78 of the Financial Regulation)*

The no-netting principle means that receivables and debts may not be offset against each other, nor may charges and income, save where charges and income derive from the same transaction, from similar transactions or from hedging operations and provided that they are not individually material.

*Article 181*  
*Principle of reality over appearance*  
*(Article 78 of the Financial Regulation)*

The principle of reality over appearance means that accounting events recorded in the financial statements shall be presented by reference to their economic nature.

*Article 182*  
*Entry of transactions in the accounts*  
*(Article 79 of the Financial Regulation)*

1. Every transaction shall be entered in the accounts where:
  - (a) the economic impact is such as to increase or reduce the assets or liabilities of the Agency;
  - (b) a reliable estimate can be given of its cost or value.
2. The accounting methods provided for in Article 132 of the General Financial Regulation shall specify the event giving rise to the entry of each transaction in the accounts.

*Article 183*  
*Valuation of assets and liabilities*  
*(Article 79 of the Financial Regulation)*

1. Assets and liabilities shall be valued at purchase price or production cost. However, the value of non-financial fixed assets shall be written down for depreciation. In addition a write-down may be applied where the value of an asset decreases and an increase in the value of a liability may be covered by a provision.

2. The accounting rules and methods referred to in Article 132 of the General Financial Regulation may lay down that all items or only some of them shall be valued at a value other than their purchase price.

*Article 184*  
*Provisions*  
*(Article 79 of the Financial Regulation)*

A provision shall be made if, and only if:

- (a) a current obligation exists as a result of a past event;
- (b) resources representing economic benefits will probably have to be used to extinguish the obligation; and
- (c) the amount of the obligation can be reliably estimated.

*Article 185*  
*Structure of the balance sheet*  
*(Article 80 of the Financial Regulation)*

1. The balance sheet shall be made up of the various items classified by titles and sub-titles.
2. Assets items shall be classified by increasing degree of liquidity, and liability items by increasing degree of callability.

*Article 186*  
*Presentation of the balance sheet*  
*(Article 80 of the Financial Regulation)*

For the presentation of the balance sheet, the accounting officer shall use at least the following headings:

**Assets**

Formation expenses

Intangible fixed assets

Tangible fixed assets

Financial fixed assets

Debtors: due in over one year

Stocks

Debtors: due in one year or less

Cash and cash equivalents

Prepayments and accrued income

## **Liabilities**

Capital (made up of the economic result for the year, the result brought forward from earlier years and reserves)

Provisions

Creditors: due in over one year

Creditors: due in one year or less

Accruals and deferred income

### *Article 187*

#### *Economic outturn account (Article 80 of the Financial Regulation)*

The economic outturn account shall show the income and charges for the year, classified according to their nature.

### *Article 188*

#### *Presentation of the economic outturn account (Article 80 of the Financial Regulation)*

For the presentation of the economic outturn account, the accounting officer shall apply the following minimum layout:

Operating revenue

- Operating expenditure

= Operating result

+/- Financial result

+/- Result from ordinary activities

+/- Exceptional result

= Result for the year

### *Article 189*

#### *Cash flow table (Article 80 of the Financial Regulation)*

The cash flow table shall show treasury movements.

The treasury shall be made up of the following:

- (a) cash in hand,
- (b) bank accounts and deposits payable on demand and
- (c) other disposable assets which can quickly be converted to cash and whose value is stable.

*Article 190*  
*Cash flow classification*  
*(Article 80 of the Financial Regulation)*

1. The cash flow table referred to in Article 80 of the Financial Regulation shall show treasury movements broken down into operating flows, investment flows and financial flows.
2. The operating cash flow shall show treasury movements resulting from ordinary activities.
3. The investment cash flow shall show treasury movements resulting from the purchase or sale of fixed assets.
4. The financial cash flow shall show the treasury movements resulting from borrowing and lending and any other financial source.

*Article 191*  
*Annex to the financial statements*  
*(Article 80 of the Financial Regulation)*

The annex referred to in Article 80 of the Financial Regulation shall form an integral part of the financial statements. It shall contain at least the following information:

- (a) accounting principles, rules and methods;
- (b) explanatory notes, supplying additional information not contained in the body of the financial statements which is necessary for an accurate picture;
- (c) off-balance-sheet commitments showing entitlements and obligations not included in the balance sheet which could have a material impact on the assets and liabilities, the financial situation or the result of the entity concerned.

*Article 192*  
*Explanatory notes*  
*(Article 80 of the Financial Regulation)*

The explanatory notes shall be presented with cross references to the items in the financial statements to which they relate and in the same order of presentation.

*Article 193*  
*Budget outturn account*  
*(Article 81 of the Financial Regulation)*

1. The budget outturn account shall contain:
  - (a) information on revenue comprising:
    - (i) changes in the revenue entered in the budget;
    - (ii) the revenue outturn;
    - (iii) entitlements established;
  - (b) information showing changes in the total commitment and payment appropriations available;
  - (c) information showing the use made of the total commitment and payment appropriations available;
  - (d) information showing commitments outstanding, those carried over from the previous year and those made during the year.
2. As regards information on revenue, a statement shall also be attached showing, for each Member State, the breakdown of amounts of own resources still to be recovered at the end of the financial year and covered by a recovery order

*Article 194*  
*Annex to the budget outturn statements*  
*(Article 81 of the Financial Regulation)*

The annex to the budget outturn statements referred to in Article 81 of the Financial Regulation shall contain at least:

- (a) information on budget principles, types of appropriation and the structure of the budget;
- (b) information on commitments outstanding;
- (c) the information required for a proper understanding of the budget outturn.

## **CHAPTER 2 ACCOUNTING**

### **SECTION 1 COMMON PROVISIONS**

*Article 195  
Organisation of the accounts  
(Article 84 of the Financial Regulation)*

1. The accounting officer of the Agency shall draw up documents describing the organisation of the accounts and accounting procedures of his institution.
2. In drawing up the financial statements, as little use as possible shall be made of information from outside the accounts.
3. Budget revenue and expenditure shall be recorded in the computerised system referred to in Article 196, according to the economic nature of the operation, as current revenue or expenditure or as capital.

*Article 196  
Computerised systems  
(Article 84 of the Financial Regulation)*

1. The accounts shall be kept with the help of one or more computer programs.
2. Where accounts are kept using computerised systems and subsystems, such systems and subsystems shall be described in full.

This description shall define the content of all data fields and specify how the system treats individual operations. It shall state how the system guarantees the existence of a complete audit trail for each operation.

The descriptions of computerised accounting systems and subsystems shall indicate any links between these systems and the central accounting system (particularly as regards the transfer of data and the reconciliation of balances).

### **SECTION 2 GENERAL ACCOUNTS**

*Article 197  
Accounting ledgers  
(Article 86 of the Financial Regulation)*

1. The Agency shall keep a journal, a general ledger and an inventory.

2. The accounting ledgers shall consist of electronic documents which are identified by the accounting officer and offer full guarantees for use as evidence.
3. Entries in the journal shall be transferred to the general ledger, itemised according to the chart of accounts referred to in Article 200.
4. The journal and the general ledger may be split into as many special journals and special ledgers as are necessary to meet requirements.
5. Entries recorded in special journals and special ledgers shall be centralised at least every month in the journal and in the general ledger.

*Article 198*  
*Trial balance*  
*(Article 86 of the Financial Regulation)*

The Agency shall establish a trial balance covering all asset, liability and outturn accounts, including the accounts cleared during the year, with, in each case:

- (a) account number;
- (b) description;
- (c) total debits;
- (d) total credits;
- (e) balance.

*Article 199*  
*Inventory*  
*(Article 86 of the Financial Regulation)*

1. The inventory is a statement of all assets and liabilities, indicating for each item the quantity and value on the inventory date.
2. The data in the inventory shall be kept and organised in such a way as to justify the content of each of the accounts included in the trial balance.
3. As regards the inventory of fixed assets, the provisions of Articles 208 to 215 shall apply.

*Article 200*  
*Chart of accounts*  
*(Article 85 of the Financial Regulation)*

1. The chart of accounts shall be adopted by the Commission's accounting officer.
2. The chart of accounts shall divide the accounts into classes.

Each class may be subdivided into groups or subgroups, as required.

3. The chart of accounts must contain at least the following classes:
  - (a) for the balance-sheet accounts:
    - (i) class 1: accounts for capital, provisions and creditors due in over one year,
    - (ii) class 2: accounts for formation expenses, fixed assets and debtors due in over one year,
    - (iii) class 3: stock accounts,
    - (iv) class 4: accounts for debtors and creditors due in one year or less,
    - (v) class 5: financial accounts,
  - (b) for the revenue and expenditure accounts:
    - (i) class 6: charges accounts,
    - (ii) class 7: income accounts,
  - (c) for the special accounts:

classes 8 and 9: special accounts,
  - (d) for off-balance-sheet transactions:

class 0: off-balance-sheet transactions.
4. The chart of accounts shall be detailed enough to allow operations to be recorded in accordance with accounting standards.
5. The contents of each account and class and its operation shall be laid down in the chart of accounts.

*Article 201*  
*Entries in the accounts*  
*(Article 87 of the Financial Regulation)*

1. Entries shall be made using the double entry method, whereby any movement or variation recorded in the accounts shall be represented by an entry establishing an equivalence between the amount debited and the amount credited in the various accounts affected by that entry.
2. The euro counterpart of a transaction denominated in a currency other than the euro shall be calculated and entered in the accounts.

Transactions in foreign currencies in accounts which can be revalued shall be revalued at least each time the accounts are closed.

This revaluation shall be based on the rates laid down in accordance with Article 5.

*Article 202*  
*Accounting records*  
*(Article 87 of the Financial Regulation)*

All accounting records shall specify the origin, content and booking reference of each data item and the references of the relevant supporting documents.

*Article 203*  
*Supporting documents*  
*(Article 87 of the Financial Regulation)*

1. Each entry shall be based on a dated and numbered supporting document, produced on paper or on a medium which guarantees the reliability and safeguarding of its content for the periods laid down in Article 35.
2. Operations of the same type, carried out in the same place and on the same day may be summarised in a single supporting document.

*Article 204*  
*Recording in the journal*  
*(Article 87 of the Financial Regulation)*

Accounting operations shall be recorded in the journal by one of the following methods, which are not mutually exclusive:

- (a) either day by day, operation by operation,
- (b) or in the form of a periodic summary of the total amounts involved in operations, provided that all documents allowing verification of individual operations day by day are kept.

*Article 205*  
*Validation of entries*  
*(Article 87 of the Financial Regulation)*

1. Entries in the journal and in an inventory ledger shall be made final by means of a validation procedure prohibiting any change to or deletion of the entry.
2. A closure procedure designed to freeze the chronology of records and guarantee their inviolability shall be implemented before the final financial statements are presented.

*Article 206*  
*Reconciliation of accounts*  
*(Article 87 of the Financial Regulation)*

1. The balance shown on each account in the trial balance shall be reconciled periodically, and at least whenever the accounts are closed.

2. Periodically, and at least whenever the accounts are closed, the accounting officer shall check that the data in the inventory ledger correspond to the actual situation, in particular as regards:
  - (a) cash at bank - by reconciliation of the statements of account from financial institutions,
  - (b) cash in cash offices - by reconciliation with the data in the cash book.The fixed assets accounts shall be reviewed in accordance with Article 212.
3. The suspense accounts shall be reviewed periodically by the accounting officer so that they can be cleared as soon as possible.

### **SECTION 3**

#### **BUDGET ACCOUNTS**

*Article 207*  
*Content and keeping of budget accounts*  
*(Article 89 of the Financial Regulation)*

1. The budget accounts shall show, for each subdivision of the budget:
  - (a) in the case of expenditure:
    - (i) the appropriations authorised in the initial budget, the appropriations entered in amending budgets, the appropriations carried over, the appropriations available in respect of participation by third parties, transfers of appropriations and the total appropriations thus available;
    - (ii) the commitments and payments in respect of the financial year;
  - (b) in the case of revenue:
    - (i) the estimates entered in the initial budget, the estimates entered in amending budgets, revenue from contributions by third parties and the total amount of estimates thus determined,
    - (ii) the entitlements established and the amounts recovered in respect of the financial year in question;
  - (c) the commitments still to be paid and revenue still to be recovered carried forward from previous financial years.

The commitment appropriations and payment appropriations referred to in point (a) of the first paragraph shall be entered and shown separately,

2. The budget accounts shall show separately:
  - (a) the use of appropriations carried over and the appropriations for the year;

(b) the clearance of outstanding commitments.

On the revenue side, amounts still to be recovered from previous financial years shall be shown separately.

3. The budget accounts may be organised in such a way as to develop a cost accounting system.
4. The budget accounts shall be kept using computer systems, in books or on file cards.

### **CHAPTER 3 PROPERTY INVENTORIES**

*Article 208  
Property inventories  
(Article 90 of the Financial Regulation)*

The system of property inventories shall be established by the authorising officer with technical assistance from the accounting officer. This inventory system must supply all the information required for keeping the accounts.

*Article 209  
Safeguarding property  
(Article 90 of the Financial Regulation)*

The Agency shall adopt provisions on safeguarding the property included in their respective balance sheets and decide which administrative departments are responsible for the inventory system.

*Article 210  
Entries in the inventory  
(Article 90 of the Financial Regulation)*

All items acquired whose purchase price or production cost is EUR 420 or more, with a period of use greater than one year, and which are not consumables shall be entered in the inventory and recorded in the fixed assets accounts.

*Article 211  
Content of the inventory  
(Article 90 of the Financial Regulation)*

The inventory shall contain an appropriate description of each item and specify its location, the date of acquisition and its unit cost.

*Article 212*  
*Inventory checks*  
*(Article 90 of the Financial Regulation)*

Inventory checks carried out by the Agency shall be performed in such a way as to ensure that each item physically exists and matches the relevant entry in the inventory. Such checks shall be carried out under a three-year verification programme.

*Article 213*  
*Resale of property*  
*(Article 90 of the Financial Regulation)*

Officials and other servants of the Agency may not acquire items that are resold by the Agency or other institutions and bodies, save where those items are resold by public tender procedure.

*Article 214*  
*Procedure for sale of fixed assets*  
*(Article 90 of the Financial Regulation)*

1. Sales of fixed assets shall be advertised locally in appropriate fashion, if the unit purchase value is EUR 8 100 or more. The period between publication of the last announcement and conclusion of the sales contract shall be no less than fourteen days.

They shall be the subject of a notice of sale published in the Official Journal of the European Communities, if the unit purchase value is EUR 391 100 or more. Appropriate advertising may also be placed in the Member States' press. The period between publication of the notice in the Official Journal of the European Communities and conclusion of the sales contract shall be no less than one month.

2. The Agency may forgo advertising where the cost of advertising exceeds the expected return from the operation.
3. The Agency shall always endeavour to obtain the best price for sales of fixed assets.

*Article 215*  
*Procedure for disposing of fixed assets*  
*(Article 90 of the Financial Regulation)*

A statement or record shall be drawn up by the authorising officer whenever any property in the inventory is sold, given away free of charge, scrapped, hired out or missing on account of loss, theft or any other reason.

The statement or record shall indicate in particular whether the item must be replaced at the expense of an official or other servant of the Communities or any other person.

Where immovable property or major installations are made available free of charge, a contract must be drawn up and the case notified in an annual report sent to the European Parliament and the Council when the preliminary draft budget is presented.

## **TITLE VIII**

### **FINAL PROVISIONS**

#### *Article 216*

#### *Bodies referred to in Article 185 of the General Financial Regulation (Article 100 of the Financial Regulation)*

1. The bodies which may receive subsidies from the budget are as follows:
  - (1) the European Agency for the Development of Vocational Training,
  - (2) the European Foundation for the Improvement of Living and Working Conditions,
  - (3) the European Training Foundation,
  - (4) the European Environment Agency,
  - (5) the European Monitoring Agency for Drugs and Drug Addiction,
  - (6) the European Agency for the Evaluation of Medicinal Products,
  - (7) the Office for Harmonisation in the Internal Market,
  - (8) the European Agency for Safety and Health at Work,
  - (9) the Community Plant Variety Office,
  - (10) the Translation Agency for Bodies of the European Union,
  - (11) the European Maritime Safety Agency,
  - (12) the European Agency for Reconstruction,
  - (13) Eurojust,
  - (14) the European Food Safety Authority,
  - (15) European Aviation Safety Agency,
  
2. The obligations referred to in Articles 44(3)(d) and 185 of the General Financial Regulation shall apply only to bodies actually receiving a subsidy from the budget. The Agency is one of these bodies.

#### *Article 217*

#### *Updating of thresholds and amounts*

1. The thresholds and amounts stipulated in Articles 53, 114, 115, 137, 138, 161, 168, 169, 210 and 214 shall be updated every three years in line with movements in the consumer price index in the European Union.

2. The thresholds for contracts referred to in Article 143(b) and Article 144(1)(a) and (c) shall be adjusted every two years in accordance with Articles 7(1)(b) of Directive 92/50/EEC, 6(2)(a) of Directive 93/37/EEC and 5(1)(c) of Directive 93/36/EEC.
3. The Commission, which shall establish the new amounts and thresholds in accordance with the timetable and criteria set out in paragraphs 1 and 2, shall inform the Agency and have them published in the *Official Journal of the European Communities*.

*Article 218*

This Regulation shall enter into force upon signature by the Chairman of the EMSA Administrative Board.

Done at Brussels, 9 December 2003

*For the Management Board*

*The Chairman*

B. Wadsworth