

Financial Regulation
and **implementing rules**
applicable to the general budget
of the European Communities

Synoptic presentation

And a selection of legal texts
relevant to establishing
and implementing the budgets

EUROPEAN COMMISSION

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PREFACE

Designed for practical use, this compendium contains the main legal texts which set out the regulatory framework for the management of EU funds, in particular the Financial Regulation and its implementing rules.

The **Financial Regulation** is the European Union's pivotal point of reference for the principles and procedures governing the establishment and implementation of the EU budget and the control of the European Communities' finances. The **implementing rules** contain detailed and more technical rules, essential for the day to day application of the Financial Regulation. To help the reader, these rules are presented here synoptically, i.e. alongside the Financial Regulation articles they refer to.

A review of the financial rules is required at least every three years. This book presents the reviewed Financial Regulation, as amended by the Council in December 2006, and applicable, for most of its provisions, as of May 2007. The new rules provide for the simplification of some unnecessarily cumbersome procedures, improve accountability and financial control and increase the transparency of EU spending. These are crucial elements in the development of a modern, efficient financial management system.

For a more complete picture, the reader will also find, in the second part of this book, excerpts from a selection of legal texts which relate to EU financial management. These include selected provisions of the founding treaties, the own resources decisions, and, last but not least, the interinstitutional agreement on budgetary discipline and sound financial management — a document which formalises the multiannual financial framework for the period 2007–13 and the rules for its management in relation to the annual budgetary procedure.

1. FINANCIAL REGULATION AND ITS IMPLEMENTING RULES

1.1. REFERENCES

Council Regulation (EC, Euratom) No 1605/2002

of 25 June 2002

**on the Financial Regulation applicable to the general budget
of the European Communities**

(OJ L 248, 16.9.2002, p. 1)

Amended by:

Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006

(OJ L 390, 30.12.2006, p. 1)

Council Regulation (EC) No 1525/2007 of 17 December 2007

(OJ L 343, 27.12.2007, p. 9)

Corrected by:

Corrigendum, OJ L 025, 30.1.2003, p. 43 (1605/2002)

Corrigendum, OJ L 099, 14.4.2007, p. 18 (1605/2002)

Corrigendum, OJ L 048, 22.2.2008, p. 88 (1995/2006)

Commission Regulation (EC, Euratom) No 2342/2002

of 23 December 2002

**laying down detailed rules for the implementation of Council Regulation
(EC, Euratom) No 1605/2002 on the Financial Regulation applicable
to the general budget of the European Communities**

(OJ L 357, 31.12.2002, p. 1)

Amended by:

Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005

(OJ L 201, 2.8.2005, p. 3)

Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006

(OJ L 227, 19.8.2006, p. 3)

Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007

(OJ L 111, 28.4.2007, p. 13)

Corrected by:

Corrigendum, OJ L 345, 28.12.2005, p. 35 (2342/2002)

1.2. ENTRY INTO FORCE AND APPLICATION

Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities

(OJ L 248, 16.9.2002, p. 1)

‘Article 187

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Communities*.

It shall apply from 1 January 2003’.

Council Regulation (EC, Euratom) No 1995/2006 of 13 December 2006

(OJ L 390, 30.12.2006, p. 1)

‘Article 2

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from the date of entry into application of the Commission Regulation amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of the Financial Regulation and at the latest from 1 May 2007.

However, point 80 and points 84 to 94 of Article 1 of this Regulation shall apply from 1 January 2007’.

Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

(OJ L 357, 31.12.2002, p. 1)

‘Article 273

Entry into force

This Regulation shall enter into force on 1 January 2003’.

Commission Regulation (EC, Euratom) No 1261/2005 of 20 July 2005

(OJ L 201, 2.8.2005, p. 3)

‘Article 3

This Regulation shall enter into force on the third day following its publication in the *Official Journal of the European Union*’.

Commission Regulation (EC, Euratom) No 1248/2006 of 7 August 2006

(OJ L 227, 19.8.2006, p. 3)

'Article 3

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

Commission Regulation (EC, Euratom) No 478/2007 of 23 April 2007

(OJ L 111, 28.4.2007, p. 13)

'Article 3

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

It shall apply from 1 May 2007.

However, point (45)(d) of Article 1 shall apply from 1 January 2008 and point (59) of Article 1 shall apply from 1 January 2009.

1.3. SYNOPTIC PRESENTATION

PART ONE COMMON PROVISIONS

Financial Regulation

TITLE I SCOPE

FR Article 1

This Regulation lays down the rules for the establishment and implementation of the general budget of the European Communities, hereinafter 'the budget', and the presentation and auditing of the accounts.

For the purposes of this Regulation, the Economic and Social Committee, the Committee of the Regions, the Ombudsman and the European Data Protection Supervisor shall be treated as Community institutions.

IR *Implementing rules*

Article 1

Subject *(Article 1 of the Financial Regulation)*

This Regulation sets out the rules for implementing the provisions of Regulation (EC, Euratom) No 1605/2002 (hereinafter 'the Financial Regulation').

The institutions concerned by this Regulation are the institutions within the meaning of the Financial Regulation.

FR Article 2

Any provision concerning the implementation of the revenue and expenditure of the budget, contained in another legislative act, must comply with the budgetary principles set out in Title II.

IR *Article 2*

Legislative acts concerning the implementation of the budget
(Articles 2 and 49 of the Financial Regulation)

The Commission shall annually update in the preliminary draft budget the information on the acts referred to in Article 2 of the Financial Regulation

Any proposal or amendment to a proposal submitted to the legislative authority shall clearly indicate the provisions containing derogations from the Financial Regulation or from this Regulation and state the specific reasons justifying such derogations in the relevant Explanatory Memorandum.

TITLE II

BUDGETARY PRINCIPLES

FR *Article 3*

The budget shall be established and implemented in compliance with the principles of unity, budgetary accuracy, annuality, equilibrium, unit of account, universality, specification, sound financial management which requires effective and efficient internal control, and transparency as set out in this Regulation.

IR *Nihil*

CHAPTER 1

PRINCIPLES OF UNITY AND OF BUDGET ACCURACY

FR *Article 4*

1. The budget is the instrument which, for each financial year, forecasts and authorises all revenue and expenditure considered necessary for the European Community and the European Atomic Energy Community.
2. The revenue and expenditure of the Communities shall comprise:
 - (a) the revenue and expenditure of the European Community, including administrative expenditure occasioned for the institutions by the provisions of the Treaty on European Union relating to the common foreign and security policy and police and judicial cooperation in criminal

matters, and the operational expenditure occasioned by implementation of those provisions where this is charged to the budget;

(b) the expenditure and revenue of the European Atomic Energy Community.

3. The budget shall record the guarantee for borrowing-and-lending operations entered into by the Communities and payments to the Guarantee Fund for external actions.

IR *Nihil*

FR Article 5

1. Subject to Article 74, no revenue shall be collected and no expenditure effected unless booked to a line in the budget.
2. No expenditure may be committed or authorised in excess of the authorised appropriations.
3. An appropriation may not be entered in the budget if it is not for an item of expenditure considered necessary.
4. Subject to Articles 5a, 18 and 74, interest yielded by the funds which are the property of the Communities shall be entered in the budget as miscellaneous revenue.

IR *Nihil*

FR Article 5a

1. Interest generated by pre-financing payments shall be assigned to the programme or the action concerned and deducted from the payment of the balance of the amounts due to the beneficiary.

The Regulation laying down the rules for implementing this Regulation, hereinafter 'the implementing rules', shall specify the cases in which the authorising officer responsible shall, by way of exception, recover annually such interest. That interest shall be entered in the budget as miscellaneous revenue.

2. Interest shall not be due to the Communities in the following cases:
 - (a) pre-financing which does not represent a significant amount, as determined in the implementing rules;
 - (b) pre-financing paid under a procurement contract within the meaning of Article 88;

- (c) pre-financing paid to Member States;
- (d) pre-financing paid under the pre-accession aid;
- (e) advances paid to members of the institutions and to staff in accordance with the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants of the European Communities, hereinafter 'the Staff Regulations';
- (f) pre-financing paid in the framework of joint management as referred to in point (c) of Article 53(1).

IR Article 3

Scope of pre-financing

(Article 5a of the Financial Regulation)

1. In the case of direct centralised management involving a number of partners, indirect centralised management and decentralised management within the meaning of Article 53 of the Financial Regulation, the rules laid down in Article 5a of the Financial Regulation shall apply solely to the entity receiving pre-financing directly from the Commission.
2. Pre-financing shall be regarded as representing a significant amount within the meaning of Article 5a(2)(a) of the Financial Regulation if the amount is higher than EUR 50 000.

However, for external actions pre-financing shall be regarded as representing a significant amount if the amount is higher than EUR 250 000. For crisis management aid and humanitarian aid operations, pre-financing shall be regarded as representing a significant amount if it exceeds per agreement EUR 750 000 at the end of each financial year and is for projects of a duration of more than 12 months.

Article 4

Recovery of interest yielded by pre-financing

(Article 5a of the Financial Regulation)

1. The authorising officer responsible shall recover for each reporting period following the implementation of the decision or agreement the amount of interest generated by pre-financing payments which exceed EUR 750 000 per agreement at the end of each financial year.
2. The authorising officer responsible may recover at least once a year the amount of interest generated by pre-financing payments lower than

those referred to in paragraph 1, taking account of the risks associated with his management environment and the nature of the actions financed.

3. The authorising officer responsible shall recover the amount of interest generated by pre-financing payments which exceeds the balance of the amounts due as referred to in Article 5a(1) of the Financial Regulation.

Article 4a

Accounting for interest yielded on pre-financing *(Article 5a of the Financial Regulation)*

1. Authorising officers shall ensure that, in grant decisions or agreements with beneficiaries and intermediaries, pre-financing is paid to bank accounts or sub-accounts which allow the funds and related interest to be identified. Otherwise, the accounting methods of the beneficiaries or intermediaries must make it possible to identify the funds paid by the Community and the interest or other benefits yielded by these funds.
2. In the cases referred to in the second subparagraph of Article 5a(1) of the Financial Regulation, the authorising officer responsible shall draw up, before the end of each financial year, estimates of the amount of any interest or equivalent benefit yielded by these funds and shall establish a provision for that amount. That provision shall be entered in the accounts and cleared by effective recovery, following the implementation of the decision or agreement.

Where pre-financing is paid from the same budget line, under the same basic act and to beneficiaries covered by the same award procedure, the authorising officer may draw up a single estimate of amounts receivable for a number of debtors.

3. Articles 3 and 4 and paragraphs 1 and 2 of this Article shall be without prejudice to the entry of pre-financing on the assets side of financial statements, as laid down in the accounting rules referred to in Article 133 of the Financial Regulation.

CHAPTER 2

PRINCIPLE OF ANNUALITY

FR Article 6

The appropriations entered in the budget shall be authorised for one financial year which shall run from 1 January to 31 December.

IR *Nihil*

FR Article 7

1. The budget shall contain differentiated appropriations, which shall consist of commitment appropriations and payment appropriations, and non-differentiated appropriations.
2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the current financial year, subject to Articles 77(2) and 166(2).
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.
4. Paragraphs 1 and 2 shall be without prejudice to the special provisions of Titles I, IV and VI of Part Two. They shall not prevent appropriations being committed globally nor budgetary commitments being made in annual instalments.

IR *Nihil*

FR Article 8

1. The revenue of a financial year shall be entered in the accounts for the financial year on the basis of the amounts collected during the financial year. However, the own resources for the month of January of the next financial year may be paid in advance pursuant to the Council Regulation implementing the Decision on the system of the Communities' own resources.
2. The entries in respect of value added tax own resources, the additional GNP-based resource and any financial contributions may be adjusted in accordance with the Regulation referred to in paragraph 1.

3. The appropriations authorised for a given financial year may be used solely to cover expenditure committed and paid in that financial year and to cover amounts due against commitments from earlier financial years.
4. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December, subject to the global commitments referred to in Article 77(2) and the financing agreements referred to in Article 166(2), which shall be entered in the accounts on the basis of the budget commitments up to 31 December.
5. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year at the latest.
6. By way of derogation from paragraphs 3, 4 and 5, the expenditure of the Guarantee Section of the European Agricultural Guidance and Guarantee Fund (EAGGF) shall be entered in the accounts for a financial year in accordance with the rules laid down in Title I of Part Two.

IR Article 5

Appropriations for the financial year
(Article 8(3) 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 that financial year. The appropriations authorised for the financial year are:

- (a) appropriations provided in the budget, including by amending budgets;
- (b) appropriations carried over;
- (c) appropriations made available again in accordance with Articles 157 and 160a of the Financial Regulation;
- (d) appropriations arising from payments on account which have been repaid in accordance with Article 228;
- (e) appropriations provided following the receipt of revenue assigned during the financial year or during previous financial years and not used.

1. Appropriations which have not been used at the end of the financial year for which they were entered shall be cancelled.

However, they may be carried over to the following financial year only, by a decision taken by the institution concerned by 15 February at the latest, in accordance with paragraphs 2 and 3 or be carried over automatically in accordance with paragraph 4.

2. Differentiated commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of:

- (a) amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure have been completed by 31 December. These amounts may then be committed up to 31 March of the following year;

- (b) amounts which are necessary when the legislative authority has adopted a basic act in the final quarter of the financial year and the Commission has been unable to commit the appropriations provided for this purpose by 31 December.

3. Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant lines in the budget for the following financial year do not cover requirements. The institution concerned shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.

4. Non-differentiated appropriations corresponding to obligations duly contracted at the close of the financial year shall be carried over automatically to the following financial year only.

5. The institution concerned shall inform the European Parliament and the Council (hereinafter 'the budgetary authority') by 15 March at the latest of the carry-over decision it has taken and shall state, for each budget line, how the criteria in paragraphs 2 and 3 have been applied to each carry-over.

6. Appropriations placed in reserve and appropriations for staff expenditure may not be carried over.

Carryover of appropriations

(Article 9(2) of the Financial Regulation)

1. The commitment appropriations referred to in Article 9(2)(a) of the Financial Regulation may be carried over only if the commitments could not be made before 31 December of the financial year for reasons not attributable to the authorising officer and if the preparatory stages are sufficiently advanced to make it reasonable to surmise that the commitment will be made by no later than 31 March of the following year.
2. The preparatory stages referred to in Article 9(2)(a) 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 within the meaning of Article 76 of the Financial Regulation, 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 within the meaning of Article 76 of the Financial Regulation, 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 9(2)(a) of the Financial Regulation which have not been committed by 31 March of the following financial year shall be automatically cancelled.

The Commission shall inform the budgetary authority by 30 April of the appropriations cancelled in this way.
4. Appropriations carried over in accordance with Article 9(2)(b) of the Financial Regulation may be used until 31 December of the following financial year.
5. The accounts shall identify appropriations carried over in this way.
6. The appropriations for staff expenditure referred to in Article 9(6) of the Financial Regulation are those for remuneration and allowances for members and staff of the institutions.

FR Article 10

Revenue not used and appropriations available at 31 December arising from the assigned revenue referred to in Article 18 shall be carried over automatically. The appropriations available corresponding to assigned revenue carried over must be used first.

IR *Nihil*

FR Article 11

Without prejudice to Articles 157 and 160a, where amounts are decommitted as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were entered in the budget, the appropriations concerned shall be cancelled.

IR *Nihil*

FR Article 12

The appropriations entered in the budget may be committed with effect from 1 January, once the budget has been finally adopted, save as otherwise provided in Title I and Title VI of Part Two.

IR *Nihil*

FR Article 13

1. If the budget has not been finally adopted at the beginning of the financial year, the first paragraph of Article 273 of the EC Treaty and the first paragraph of Article 178 of the Euratom Treaty shall apply to commitment and payment of expenditure which it has been possible to book to a specific line in the budget as part of implementation of the last budget duly adopted.
2. Commitments may be made per chapter to a maximum of one quarter of the total allotted appropriations in the chapter in question of the previous financial year plus one twelfth for each month which has elapsed.

Payments may be made monthly per chapter to a maximum of one twelfth of the allotted appropriations in the chapter in question of the preceding financial year.

The limit of the appropriations provided for in the draft budget in preparation may not be exceeded.

3. If the continuity of action by the Communities and management needs so require:
 - (a) the Council, acting by a qualified majority at the request of the Commission and after consulting the European Parliament, may simultaneously authorise two or more provisional twelfths both for commitments and for payments over and above those automatically made available by the provisions of paragraphs 1 and 2;
 - (b) for expenditure other than that necessarily resulting from the Treaties or acts adopted pursuant thereto, the third paragraph of Article 273 of the EC Treaty and the third paragraph of Article 178 of the Euratom Treaty shall apply.

The additional twelfths shall be authorised in full and shall not be divisible.

4. If, for a given chapter, the authorisation of two or more provisional twelfths granted in the circumstances and under the procedures provided for in paragraph 3 is not sufficient to cover the expenditure necessary to avoid a break in continuity of the Communities' activity in the area covered by the chapter in question, authorisation may exceptionally be given to exceed the amount of the appropriations entered in the corresponding chapter of the budget of the preceding financial year. The budgetary authority shall act under the procedures provided for in paragraph 3. However, the available overall total of the appropriations in the budget of the preceding financial year may in no circumstances be exceeded.

IR Article 6a

Provisional twelfths *(Article 13(2) of the Financial Regulation)*

The total allotted appropriations of the previous financial year, as specified in Article 13(2) of the Financial Regulation, shall be understood to refer to the appropriations for the financial year referred to in Article 5 of this Regulation, after adjustment for the transfers made during that financial year.

CHAPTER 3

PRINCIPLE OF EQUILIBRIUM

FR Article 14

1. Budget revenue and payment appropriations must be in balance.
2. Without prejudice to Article 46(1)(4), the European Community and the European Atomic Energy Community, as well as the bodies set up by the Communities as referred to in Article 185, may not raise loans.

IR *Nihil*

FR Article 15

1. The balance from each financial year shall be entered in the budget for the following financial year as revenue in the case of a surplus or as a payment appropriation in the case of a deficit.
2. The estimates of such revenue or payment appropriations shall be entered in the budget during the budgetary procedure and in a letter of amendment presented pursuant to Article 34. They shall be drawn up in accordance with the Council Regulation implementing the Decision on the system of the Communities' own resources.
3. After the presentation of the accounts for each financial year, any discrepancy with the estimates shall be entered in the budget for the following financial year through an amending budget devoted solely to that discrepancy. In such a case, the preliminary draft amending budget must be submitted by the Commission within 15 days following the submission of the provisional accounts.

IR *Nihil*

CHAPTER 4

PRINCIPLE OF UNIT OF ACCOUNT

FR Article 16

The budget shall be drawn up and implemented in euro and the accounts shall be presented in euro.

However, for the cash-flow purposes referred to in Article 61, the accounting officer and, in the case of imprest accounts, the imprest administrators, and, for the needs of the administrative management of the Commission's External Service, the authorising officer responsible shall be authorised to carry out operations in national currencies as laid down in the implementing rules.

IR Article 7

Rate of conversion between the euro and other currencies

(Article 16 of the Financial Regulation)

1. Without prejudice to specific provisions arising from the application of sector-specific Regulations, conversion between the euro and another currency by the responsible authorising officer shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union*.

Where conversion between the euro and another currency is to be made by the contractors or beneficiaries, the specific arrangements for conversion contained in procurement contracts, grant agreements or financing agreements shall apply.

- 1a. In order to avoid that currency conversion operations have a significant impact on the level of Community co-financing or a detrimental impact on the Community budget, the specific arrangements for conversion referred to in paragraph 1 shall provide, if appropriate, for a rate of conversion between the euro and other currencies to be calculated using the average of the daily exchange rate in a given period.
2. If no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, the responsible authorising officer shall use the accounting rate referred to in paragraph 3.

3. For the purposes of the accounts provided for in Articles 132 to 137 of the Financial Regulation and subject to Article 213 of this Regulation, conversion between the euro and another currency shall be made using the monthly accounting exchange rate of the euro. That accounting exchange rate shall be established by the Commission's accounting officer by means of any source of information he regards as reliable, on the basis of the exchange rate on the penultimate working day of the month preceding that for which the rate is established.

Article 8

Rate to be used for conversion between the euro and other currencies *(Article 16 of the Financial Regulation)*

1. Without prejudice to specific provisions deriving from the application of sector-specific Regulations, or from specific procurement contracts, grant agreements and financing agreements, the rate to be used for conversion between the euro and other currencies shall, in cases where the conversion is carried out by the responsible authorising officer, be that of the day on which 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 for the conversion between the euro and other currencies shall be determined by the date of payment by the bank.
3. For the regularisation of imprest accounts in national currencies, as referred to in Article 16 of the Financial Regulation, the rate to be used for the conversion between the euro and other currencies shall be that of the month of the expenditure from the imprest account concerned.
4. For the reimbursement of flat rate expenditure, or expenditure arising from the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter: Staff Regulations) which is fixed at a ceiling, and which is paid in a currency other than the euro, the rate to be used shall be that which is in force when the entitlement arises.

Article 9

Information on cash transfers by the Commission between different currencies *(Article 16 of the Financial Regulation)*

Each quarter the Commission shall send the Member States a statement of transfers carried out between different currencies.

Article 268

Conversion into euro of commitments or estimates of amounts receivable from before 1 January 2003

(Article 16 of the Financial Regulation)

Budget commitments and the estimates of amounts receivable referred to in Article 161(2) of the Financial Regulation made before 1 January 2003 in a currency other than the euro shall be calculated in euro by no later than 1 June 2003 at the rate referred to in Article 7, applicable on 1 January 2003.

CHAPTER 5

PRINCIPLE OF UNIVERSALITY

FR *Article 17*

Total revenue shall cover total payment appropriations, subject to Article 18. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to Article 20.

IR *Nihil*

FR *Article 18*

1. Without prejudice to Article 160(1a) and Article 161(2), the following items of revenue shall be used to finance specific items of expenditure:
 - (a) financial contributions from Member States to certain research programmes pursuant to the Council Regulation implementing the Decision on the system of the Communities' own resources;
 - (aa) financial contributions from Member States and other donor countries, including in both cases their public and parastatal agencies, or from international organisations to certain external aid projects or programmes financed by the Community and managed by the Commission on their behalf, pursuant to the relevant basic act;
 - (b) interest on deposits and the fines provided for in the Regulation on speeding up and clarifying the implementation of the excessive deficit procedure;
 - (c) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests, including the earmarked revenue specific to each institution;

- (d) contributions to Community activities from third countries or various bodies;
 - (e) revenue from third parties in respect of goods, services or work supplied at their request;
 - (ea) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are being replaced or scrapped when the book value is fully depreciated;
 - (f) revenue arising from the repayment of amounts wrongly paid;
 - (g) proceeds from the supply of goods, services and works for other institutions or bodies, including refunds by other institutions or bodies of mission allowances paid on their behalf;
 - (h) insurance payments received;
 - (i) revenue from payments connected with lettings;
 - (j) revenue from the sale of publications and films, including those on an electronic medium.
2. The basic act applicable may also assign the revenue for which it provides to specific items of expenditure.
 3. The budget shall carry lines to accommodate the categories of assigned revenue referred to in paragraphs 1 and 2 and wherever possible shall indicate the amount.

IR *Article 10*

Structure to accommodate assigned revenue and provision of corresponding appropriations

(Article 18 of the Financial Regulation)

1. Without prejudice to Articles 12 and 13, the structure to accommodate assigned revenue in the budget shall comprise:
 - (a) in the statement of revenue of each institution's section, a budget line to receive the revenue;
 - (b) in the statement of expenditure, the budget remarks, including general remarks, shall show which lines may receive the appropriations corresponding to the assigned revenue which are made available.

In the case referred to in point (a) of the first subparagraph, a token entry (p.m.) shall be made and the estimated revenue shall be shown for information in the remarks.

2. The appropriations corresponding to assigned revenue may be made available, both as commitment appropriations and as payment appro-

priations, when the revenue has been received by the institution, save in the case provided for in Articles 160(1a) and 161(2) of the Financial Regulation. They shall be made available automatically save in the case of repayments of payments on account, referred to in Article 156 of the Financial Regulation, and in the case of financial corrections in connection with the Structural Funds.

Article 11

Contributions from Member States to research programmes

(Article 18(1)(a) of the Financial Regulation)

1. The Member States' contributions to the financing of certain supplementary research programmes, provided for in Article 5 of Regulation (EC, Euratom) 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 financial year;
 - (b) the remaining five twelfths shall be paid by no later than 15 July of the current financial year.
2. Where the budget has not been 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 shall be entered in the Commission's account or accounts within thirty calendar days of the call for funds.
4. Payments made shall be entered in the account provided for in Regulation (EC, Euratom) No 1150/2000 and shall be subject to the conditions laid down by that Regulation.

Article 12

Assigned revenue resulting from the participation of EFTA States in certain Community programmes

(Article 18(1)(d) 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 financial 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.

The annex referred to in point (b)(ii) of the first subparagraph reflects and is part of the structure to accommodate the appropriations corresponding to such 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 (EEA), 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 financial year, of the full amounts of the corresponding appropriations for commitments and appropriations for payments.
3. If, in the course of the financial 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 accordingly in order to comply with the 'proportionality factor' provided for in Article 82 of the Agreement on the European Economic Area, the Commission may, as a provisional and exceptional measure, use its cash resources to pre-finance the share of the EFTA States. Whenever such additional 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 any such decisions taken.

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

4. In accordance with Article 18(1)(d) 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 those contributions and of the corresponding appropriations is monitored separately.

In the report provided for in Article 131(2) of the Financial Regulation, the Commission shall show separately the stage of implementation, in both revenue and expenditure, corresponding to EFTA State participation.

Article 13

Proceeds of sanctions imposed on Member States declared to have an excessive deficit

(Article 18(1)(b) of the Financial Regulation)

The budget structure to accommodate the proceeds of the sanctions referred to in Section 4 of Council Regulation (EC) No 1467/97 shall be as follows:

- (a) in the statement of revenue, a line carrying a token entry (p.m.) shall be entered to accommodate the interest on such amounts;
- (b) at the same time, and without prejudice to Article 74 of the Financial Regulation, entry of those amounts in the statement of revenue shall give rise to the provision, in the statement of expenditure, of commitment appropriations and payment appropriations. These appropriations shall be implemented in accordance with Article 17 of the Financial Regulation.

FR *Article 19*

1. The Commission may accept any donation made to the Communities, such as foundations, subsidies, gifts and bequests.
2. Acceptance of donations of a value of EUR 50 000 or more which involve a financial charge, including follow-up costs, exceeding 10 % of the value of the donation made, shall be subject to the authorisation of the European Parliament and of the Council, both of which shall act on the matter within two months of the date of receipt of the request from the Commission. If no objection has been made within that period, the Commission shall take a final decision in respect of acceptance.

IR *Article 13a*

Charges entailed by acceptance of donations to the Communities

(Article 19(2) of the Financial Regulation)

For the purposes of the authorisation of the European Parliament and of the Council referred to in Article 19(2) of the Financial Regulation, the Commission shall estimate and duly explain the financial charges, including follow-up costs, entailed by the acceptance of donations made to the Communities.

FR Article 20

1. The implementing rules may specify the cases where certain revenue may be deducted from invoices or requests for payment, which shall then be passed for payment of the net amount.
2. The cost of products or services provided to the Communities incorporating taxes refunded by the Member States pursuant to the Protocol on the Privileges and Immunities of the European Communities or by third countries on the basis of the relevant agreements shall be charged to the budget for the ex-tax amount.
3. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget. The final gain or loss shall be included in the balance for the year.

IR Article 14

Passing for payment of the net amount (Article 20(1) of the Financial Regulation)

Pursuant to Article 20(1) 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 parties to procurement contracts or beneficiaries of a grant;
- (b) discounts, refunds and rebates on individual invoices and payment requests;
- (c) interest generated by pre-financing payments, as referred to in the first subparagraph of Article 5a(1) of the Financial Regulation.

Article 15

Accounts for recoverable taxes (Article 20(2) of the Financial Regulation)

Any taxes borne by the Communities under Article 20(2) of the Financial Regulation shall be entered in a suspense account until they are refunded by the States concerned.

CHAPTER 6

PRINCIPLE OF SPECIFICATION

FR Article 21

Appropriations shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.

IR *Nihil*

FR Article 22

1. Any institution other than the Commission may, within its own section of the budget, transfer appropriations:
 - (a) from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made;
 - (b) from one chapter to another and from one article to another without limit.
2. Three weeks before making the transfers referred to in paragraph 1, the institutions shall inform the budgetary authority of their intentions. In the event of duly substantiated reasons being raised within this period by either branch of the budgetary authority, the procedure laid down in Article 24 shall apply.
3. Any institution other than the Commission may propose to the budgetary authority, within its own section of the budget, transfers from one title to another exceeding the limit of 10 % of the appropriations for the financial year on the line from which the transfer is to be made. Those transfers shall be subject to the procedure laid down in Article 24.
4. Any institution other than the Commission may, within its own section of the budget, make transfers within articles without informing the budgetary authority beforehand.

IR Article 17

Rules concerning the calculation of percentages of transfers of the institutions other than the Commission
(Article 22 of the Financial Regulation)

1. The percentages referred to in Article 22 of the Financial Regulation shall be calculated at the time the request for transfer is made and with refer-

ence to the appropriations provided in the budget, including amending budgets.

2. The amount to be taken into consideration shall be the sum of the transfers to be made on the line from which transfers are being made, after adjustment for earlier transfers made.

The amount corresponding to the transfers which can be carried out autonomously by the institution concerned without a decision of the budgetary authority shall not be taken into consideration.

Article 19

Grounds for requests for transfers of appropriations (Articles 22 and 23 of the Financial Regulation)

Proposals for transfers and all information for the budgetary authority concerning transfers made under Articles 22 and 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 to be taken.

FR *Article 23*

1. The Commission may, within its own section of the budget:
 - (a) transfer appropriations within articles and transfers between articles within each chapter;
 - (b) as regards expenditure on staff and administration, transfer appropriations from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made, and up to a maximum of 30 % of the appropriations for the year shown on the line to which the transfer is made;
 - (c) as regards operational expenditure, transfer appropriations between chapters within the same title, up to a maximum total of 10 % of the appropriations for the year shown on the line from which the transfer is made;
 - (d) transfer appropriations, as soon as the basic act is adopted pursuant to the procedure laid down in Article 251 of the Treaty, from the 'provisions' title referred to in Article 43 for the cases where no basic act existed for the action concerned when the budget was established.

Three weeks before making the transfers referred to in points (b) and (c) of the first subparagraph, the Commission shall inform the budgetary authority of its decision. In the event of duly substantiated reasons being raised within that three-week period by either branch of the budgetary authority, the procedure laid down in Article 24 shall apply.

However, during the last two months of the financial year, the Commission may autonomously transfer appropriations concerning expenditure on staff, external staff and other agents from one title to another within the total limit of 5 % of the appropriations of the financial year. The Commission shall inform the budgetary authority within two weeks after its decision on those transfers.

The Commission shall inform the budgetary authority within two weeks after its decision on transfers referred to in point (d) of the first subparagraph.

2. The Commission may propose to the budgetary authority, within its own section of the budget, transfers other than those referred to in paragraph 1.

IR *Article 17a*

Rules concerning the calculation of percentages of transfers of the Commission (Article 23 of the Financial Regulation)

1. The percentages referred to in Article 23(1) of the Financial Regulation shall be calculated at the time the request for transfer is made and with reference to the appropriations provided in the budget, including amending budgets.
2. The amount to be taken into consideration shall be the sum of the transfers to be made on the line from which or to which transfers are being made, after adjustment for earlier transfers made.

The amount corresponding to the transfers which can be carried out autonomously by the Commission without a decision of the budgetary authority shall not be taken into consideration.

Article 18

Administrative expenditure (Article 23 of the Financial Regulation)

The expenditure referred to in point (b) of the first subparagraph of Article 23(1) of the Financial Regulation shall cover, for each policy area, the items referred to in Article 27.

Article 19

Grounds for requests for transfers of appropriations (Articles 22 and 23 of the Financial Regulation)

Proposals for transfers and all information for the budgetary authority concerning transfers made under Articles 22 and 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 to be taken.

FR Article 24

1. The budgetary authority shall take decisions on transfers of appropriations as provided for in paragraphs 2, 3 and 4, save as otherwise provided in Title I of Part Two.
2. In the case of proposals for transfers of appropriations relating to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith, the Council shall, after consulting the European Parliament, act by a qualified majority within six weeks, except in urgent cases. The European Parliament shall deliver its opinion within such time as will permit the Council to take note of it and to act within the stipulated time limit. Where the Council does not act within this time limit, the proposals for transfers shall be deemed to be approved.
3. In the case of proposals for transfers relating to expenditure other than that necessarily resulting from the Treaties or from acts adopted in accordance therewith, the European Parliament shall, after consulting the Council, act within six weeks, except in urgent cases. The Council shall deliver its opinion, by a qualified majority, within such time as will permit the European Parliament to take note of it and to act within the stipulated time limit. Where no decision is taken within this time limit, the proposals for transfers shall be deemed to be approved.
4. Proposals for transfers relating both to expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith and to other expenditure shall be deemed to be approved if neither the European Parliament nor the Council has decided otherwise within six weeks of the date on which the two institutions received the proposals. If, in the case of such proposals for transfers, the European Parliament and the Council reduce the proposed transfer by different amounts, whichever is the smaller of the amounts accepted by one of the two institutions shall be deemed to be approved. Where one of the institutions rejects the principle of the transfer, the transfer shall not be made.

IR *Nihil*

FR *Article 25*

1. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry (p.m.).
2. Appropriations corresponding to assigned revenue may be transferred only if such revenue is used for the purpose to which it is assigned.

IR *Nihil*

FR *Article 26*

1. Transfers within the titles of the budget devoted to the European Agricultural Guarantee Fund (EAGF), the Structural Funds, the Cohesion Fund, the European Fisheries Fund, the European Agricultural Fund for Rural Development (EAFRD) and Research shall be the subject of special provisions under Titles I, II and III of Part Two.
2. Decisions on transfers to allow the utilisation of the reserve for emergency aid shall be taken by the budgetary authority on a proposal from the Commission. A separate proposal must be submitted for each individual operation.

The procedure provided for in Article 24(2) and (3) shall apply. If the Commission proposal is not agreed to by both arms of the budgetary authority and there is a failure to arrive at a common position on the utilisation of this reserve, the European Parliament and the Council shall refrain from acting on the Commission's proposal for a transfer.

3. In duly substantiated exceptional cases of international humanitarian disasters and crises, occurring after 15 December of the budgetary year, the Commission may transfer unused budgetary appropriations for the current budgetary year still available in the budget titles falling under heading 4 of the multiannual financial framework to the budget titles concerning the crisis management aid and humanitarian aid operations. The Commission shall inform the two branches of the budgetary authority immediately after making such transfers.

IR *Article 20*

Grounds for requests for transfers from the emergency aid reserve
(Article 26 of the Financial Regulation)

Proposals for transfers to allow the utilisation of the emergency aid reserve, referred to in Article 26 of the Financial Regulation, shall be accompanied

by appropriate and detailed supporting documents showing:

- (a) for the line to which the transfer is to be made, the most recent information available for the implementation of appropriations and the estimate of requirements up to the end of the financial year;
- (b) for all lines relating to external action, the implementation of appropriations up to the end of the month preceding the request for transfer and an estimate of requirements up to the end of the financial year, including a comparison with the initial estimate;
- (c) an analysis of the possibilities of reallocating appropriations.

CHAPTER 7

PRINCIPLE OF SOUND FINANCIAL MANAGEMENT

FR Article 27

1. Budget appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by the institution for the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency is concerned with the best relationship between resources employed and results achieved.

The principle of effectiveness is concerned with attaining the specific objectives set and achieving the intended results.

3. Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget. Achievement of those objectives shall be monitored by performance indicators for each activity and information shall be provided by the spending authorities to the budgetary authority. Such information, as referred to in Article 33(2)(d), shall be provided annually and at the latest in the documents accompanying the preliminary draft budget.
4. In order to improve decision-making, institutions shall undertake both *ex ante* and *ex post* evaluations in line with guidance provided by the Commission. Such evaluations shall be applied to all programmes and activities which entail significant spending and evaluation results disseminated to spending, legislative and budgetary authorities.

Evaluation

(Article 27 of the Financial Regulation)

1. All proposals for programmes or activities occasioning budget expenditure shall be the subject of an *ex ante* evaluation, which shall address:
 - (a) the need to be met in the short or long term;
 - (b) the added value of Community involvement;
 - (c) the objectives to be achieved;
 - (d) the policy options available, including the risks associated with them;
 - (e) the results and impacts expected, in particular economic, social and environmental impacts, and the indicators and evaluation arrangement needed to measure them;
 - (f) the most appropriate method of implementation for the preferred option(s);
 - (g) the internal coherence of the proposed programme or activity and its relations with other relevant instruments;
 - (h) the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost-effectiveness principle;
 - (i) the lessons learned from similar experiences in the past.
2. The proposal shall set out the arrangements for monitoring, reporting and evaluation, taking due account of the respective responsibilities of all levels of government that will be involved in the implementation of the proposed programme or activity.
3. All programmes or activities, including pilot projects and preparatory actions, where the resources mobilised exceed EUR 5 million shall be the subject of an interim and/or *ex post* evaluation 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 enables the findings of that evaluation to be taken into account for any decision on the renewal, modification or suspension of the programme;

(b) activities financed on an annual basis shall have their results evaluated at least every six years.

Points (a) and (b) of the first subparagraph shall not apply to each of the projects or actions conducted within the activities for which the requirement may be met by the final reports sent by the bodies which carried out the action.

4. The evaluations referred to in paragraphs 1 and 3 shall be proportionate to the resources mobilised for and the impact of the programme or activity concerned.

FR Article 28

1. Any proposal or initiative submitted to the legislative authority by the Commission or by a Member State in conformity with the relevant provisions of the EC Treaty or the Treaty on European Union (TEU), which may have an impact on the budget, including changes in the number of posts, must be accompanied by a financial statement and the evaluation provided for in Article 27(4) of this Regulation.

Any amendment to a proposal or initiative submitted to the legislative authority which may have appreciable implications for the budget, including changes in the number of posts, must be accompanied by a financial statement prepared by the institution proposing the amendment.

2. During the budgetary procedure, the Commission shall provide the necessary information for a comparison between changes in the appropriations required and the initial forecasts made in the financial statements. This information shall include progress made and the stage reached by the legislative authority in its consideration of proposals presented. The appropriations required shall, where appropriate, be revised in the light of the progress of deliberations on the basic act.
3. In order to prevent the risk of fraud and irregularities, the financial statement referred to in paragraph 1 shall record any information regarding existing and planned fraud prevention and protection measures.

IR Article 22

Financial statement (Article 28 of the Financial Regulation)

1. The financial statement shall contain the financial and economic data for the assessment by the legislative authority of the need for Commu-

nity action. It shall provide appropriate information as regards coherence with other financial instruments and any possible synergy.

In the case of multiannual operations, the financial statement shall contain the foreseeable schedule of annual requirements in terms of 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.

FR Article 28a

1. The budget shall be implemented in compliance with effective and efficient internal control as appropriate in each management mode, and in accordance with the relevant sector-specific Regulations.
2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance of achieving the following objectives:
 - (a) effectiveness, efficiency and economy of operations;
 - (b) reliability of reporting;
 - (c) safeguarding of assets and information;
 - (d) prevention and detection of fraud and irregularities;
 - (e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned.

IR Article 22a

Effective and efficient internal control (Article 28a(1) of the Financial Regulation)

1. Effective internal control shall be based on best international practices and include in particular the following:
 - (a) segregation of tasks;
 - (b) an appropriate risk management and control strategy including controls at beneficiary level;

- (c) avoidance of conflicts of interests;
 - (d) adequate audit trails and data integrity in data systems;
 - (e) procedures for monitoring of performance and for follow-up of identified internal control weaknesses and exceptions;
 - (f) periodic assessment of the sound functioning of the control system.
2. Efficient internal control shall be based on the following elements:
- (a) the implementation of an appropriate risk management and control strategy coordinated among appropriate actors involved in the control chain;
 - (b) the accessibility of control results to all appropriate actors involved in the control chain;
 - (c) the timely application of corrective measures including, where appropriate, dissuasive penalties;
 - (d) clear and unambiguous legislation underlying the policies;
 - (e) the elimination of multiple controls;
 - (f) the principle of improving the cost-benefit ratio of controls.

CHAPTER 8

PRINCIPLE OF TRANSPARENCY

FR Article 29

1. The budget shall be established and implemented and the accounts presented in compliance with the principle of transparency.
2. The President of the European Parliament shall have the budget and amending budgets, as finally adopted, published in the *Official Journal of the European Union*.

The budget shall be published within three months following the date on which the budget is declared finally adopted.

The consolidated annual accounts and the report on budgetary and financial management drawn up by each institution shall be published in the *Official Journal of the European Union*.

IR Article 23

Provisional publication of the budget

(Article 29 of the Financial Regulation)

As soon as possible and no later than four weeks after the final adoption of the budget, the final detailed budget figures shall be published in all languages on the Internet site of the institutions, on the Commission's initiative, pending official publication in the *Official Journal of the European Union*.

FR Article 30

1. Information on borrowing-and-lending operations contracted by the Communities for third parties shall appear in an Annex to the budget.
2. Information on the operations of the Guarantee Fund for external actions shall appear in the financial statements.
3. The Commission shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from the budget held by it when the budget is implemented on a centralised basis and directly by its departments, and information on the beneficiaries of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management.

This information shall be made available with due observance of the requirements of confidentiality, in particular the protection of personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2001 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽²⁾, and of the requirements of security, taking into account the specificities of each management mode referred to in Article 53 and where applicable in conformity with the relevant sector-specific rules.

IR Article 25

Working documents in support of the preliminary draft budget

(Articles 30 and 33 of the Financial Regulation)

In support of the preliminary draft budget, the following working documents shall be provided:

⁽¹⁾ OJ L 281, 23.11.1995, p.31. Directive as amended by Regulation (EC) No 1882/2003 (OJ L 284, 31.10.2003, p.1).

⁽²⁾ OJ L 8, 12.1.2001, p.1.

- (a) in respect of staff of the institutions:
 - (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 at the beginning of the year in which the preliminary draft budget is presented, indicating their distribution by grade and administrative unit,
 - (iii) where a change in the number of persons in post is proposed, a statement of the reasons justifying such change,
 - (iv) a list of posts broken down by policy area;
- (b) a detailed statement of borrowing and lending policy;
- (c) in respect of subsidies to the bodies referred to in Article 32 of the Financial Regulation, an estimate of revenue and expenditure prefaced by an explanatory memorandum drawn up by the bodies concerned and, for the European Schools, a statement showing revenue and expenditure prefaced by an explanatory memorandum.

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

ESTABLISHMENT OF THE BUDGET

FR Article 31

The European Parliament, the Council, the Court of Justice of the European Communities, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the Ombudsman and the European Data Protection Supervisor shall draw up an estimate of their revenue and expenditure, which they shall send to the Commission before 1 July each year.

These estimates shall also be sent by these institutions to the budgetary authority for information by no later than 1 July each year. The Commission shall draw up its own estimates, which it shall also send to the budgetary authority by the same date.

In preparing its own estimates the Commission shall use the information referred to in Article 32.

IR *Nihil*

FR Article 32

Each body referred to in Article 185 shall, in accordance with the instrument establishing it, send to the Commission by 1 April each year an estimate of its revenue and expenditure, including the establishment plan, and its work programme.

The Commission shall forward these documents to the budgetary authority for information, except in the case provided for in point (3)(d) of Article 46(1).

IR *Nihil*

FR Article 33

1. The Commission shall place a preliminary draft budget before the Council by 1 September each year at the latest. It shall at the same time transmit the preliminary draft budget to the European Parliament.

The preliminary draft budget shall contain a summary general statement of the expenditure and revenue of the Communities and consolidate the estimates referred to in Article 31.

2. The Commission shall attach to the preliminary draft budget:
 - (a) an analysis of financial management in the previous year and the commitments outstanding;
 - (b) where appropriate, an opinion on the estimates of the other institutions which may contain different estimates, accompanied by the reasons therefor;
 - (c) any working paper it considers useful in connection with the establishment plans of the institutions and the grants which the Commission awards to the bodies referred to in Article 185 and to the European Schools;
 - (d) the activity statements containing the following:
 - information on the achievement of all previously set specific, measurable, achievable, relevant and timed objectives for the various activities as well as new objectives measured by indicators,
 - full justification and cost-benefit approach for proposed changes in the level of appropriations,
 - clear rationale for intervention at the EU level in keeping, *inter alia*, with the principle of subsidiarity,

- information on the implementation rates of the previous year's activity and implementation rates for the current year.

Evaluation results shall be consulted and referred to as evidence of the likely merits of proposed budget changes;

- (e) a summary statement of the schedule of payments due in subsequent financial years to meet budgetary commitments entered into in earlier financial years.

IR *Article 24*

General introduction to the preliminary draft budget *(Article 33 of the Financial Regulation)*

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

Each of the sections of the preliminary draft budget shall be preceded by an introduction drawn up by the institution concerned.

The general introduction shall comprise:

- (a) financial tables covering the entire budget;
- (b) as regards the titles in the Commission section:
 - (i) a description of the policies substantiating entitlement to the appropriations requested, with due account for the principles and requirements set out in Articles 27 and 33(2)(d) of the Financial Regulation,
 - (ii) the grounds for changes in appropriations from one financial year to the next.

Article 25

Working documents in support of the preliminary draft budget *(Articles 30 and 33 of the Financial Regulation)*

In support of the preliminary draft budget, the following working documents shall be provided:

- (a) in respect of staff of the institutions:
 - (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 at the beginning of the year in which

- the preliminary draft budget is presented, indicating their distribution by grade and administrative unit,
- (iii) where a change in the number of persons in post is proposed, a statement of the reasons justifying such change,
 - (iv) a list of posts broken down by policy area;
- (b) a detailed statement of borrowing and lending policy;
- (c) in respect of subsidies to the bodies referred to in Article 32 of the Financial Regulation, an estimate of revenue and expenditure prefaced by an explanatory memorandum drawn up by the bodies concerned and, for the European Schools, a statement showing revenue and expenditure prefaced by an explanatory memorandum.

FR *Article 34*

1. The Commission may, on its own initiative or if requested by the other institutions, each in respect of its own section, present to the Council a letter of amendment to the preliminary draft budget on the basis of new information which was not available at the time the preliminary draft was established.
2. However, save as otherwise agreed by the institutions or in exceptional circumstances, the Commission shall put such letter of amendment to the Council at least thirty days before the first reading of the draft budget by the European Parliament. The Council must put the letter of amendment to the European Parliament at least fifteen days before the said first reading.

IR *Nihil*

FR *Article 35*

1. The Council shall establish the draft budget in accordance with the procedure laid down in Article 272(3) of the EC Treaty and Article 177(3) of the Euratom Treaty.
2. The Council shall place the draft budget before the European Parliament by 5 October of the year preceding that of implementation of the budget at the latest. The Council shall attach to that draft budget an explanatory memorandum defining its reasons for departing from the preliminary draft budget.

IR *Nihil*

FR Article 36

1. The President of the European Parliament shall declare the budget finally adopted in accordance with the procedure provided for in Article 272(7) of the EC Treaty and Article 177(7) of the Euratom Treaty.
2. Once the budget has been declared finally adopted, each Member State shall, from 1 January of the following financial year or from the date of the declaration of final adoption of the budget if that is after 1 January, be bound to make over to the Community the payments due as specified in the Council Regulation implementing the Decision on the system of the Communities' own resources.

IR *Nihil*

FR Article 37

1. If there are unavoidable, exceptional or unforeseen circumstances, the Commission may present preliminary draft amending budgets.

Requests for amending budgets, in the same circumstances as referred to in the preceding paragraph, from institutions other than the Commission shall be sent to the Commission.

Before presenting a preliminary draft amending budget, the Commission and institutions other than the Commission shall examine the scope for reallocation of the relevant appropriations, taking into account any expected under-implementation of appropriations.

2. The Commission shall, save in exceptional circumstances, submit any preliminary draft amending budget to the Council by 1 September each year at the latest. It may attach an opinion to the requests for amending budgets from the other institutions.
3. The budgetary authority shall discuss them with due account for their urgency.

IR *Article 26*

Preliminary draft amending budgets (Article 37(1) 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.

FR Article 38

1. Where the Council receives a preliminary draft amending budget, it shall draw up a draft amending budget in accordance with Articles 35 and 37.
2. Except for the timetable, Articles 35 and 36 shall apply to amending budgets. They must be substantiated by reference to the budget whose estimates they are amending.

IR *Nihil*

FR Article 39

The Commission and the budgetary authority may agree to bring forward certain dates for the transmission of the estimates, and for the adoption and transmission of the preliminary draft and draft budgets. This arrangement may not, however, have the effect of shortening or prolonging the periods allowed for consideration of these texts under Article 272 of the EC Treaty and Article 177 of the Euratom Treaty.

IR *Nihil*

CHAPTER 2

STRUCTURE AND PRESENTATION OF THE BUDGET

FR Article 40

The budget shall consist of:

- (a) a general statement of revenue and expenditure;
- (b) separate sections subdivided into statements of revenue and expenditure for each institution.

IR *Nihil*

1. Commission revenue and the revenue and expenditure of the other institutions shall be classified by the budgetary authority according to their type or the use to which they are assigned under titles, chapters, articles and items.
2. The statement of expenditure for the Commission section shall be set out on the basis of a nomenclature adopted by the budgetary authority and classified according to purpose.

A title shall correspond to a policy area and a chapter shall, as a rule, correspond to an activity.

Each title may include operating appropriations and administrative appropriations.

The administrative appropriations for a title shall be grouped in a single chapter.

IR Article 27

Administrative appropriations
(Article 41 of the Financial Regulation)

Where the statement of expenditure of a section of the budget is presented in a nomenclature based on a classification by purpose, 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 employment posts corresponding to this expenditure;
- (b) expenditure on external staff (including auxiliary staff and agency staff) and other management expenditure (including representation expenses and meeting 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 Commission's administrative expenditure of a type common to all titles shall also be set out in a separate summary statement classified by type.

FR Article 42

The budget may not contain negative revenue.

The own resources paid under the Council Decision on the system of the Communities' own resources shall be net amounts and shall be shown as such in the summary statement of revenue in the budget.

IR *Nihil*

FR Article 43

1. Each section of the budget may include a 'provisions' title. Appropriations shall be entered in this title in the following two circumstances:

- (a) where no basic act exists for the action concerned when the budget is established;
- (b) where there are serious grounds for doubting the adequacy of the appropriations or the possibility of implementing, under conditions consonant with sound financial management, the appropriations entered on the lines concerned.

The appropriations in this title may be used only after transfer in accordance with the procedure laid down in Article 23(1)(d), where the adoption of the basic act is subject to the procedure laid down in Article 251 of the Treaty, and that of Article 24, for all other cases.

2. In the event of serious implementation difficulties, the Commission may propose, in the course of a financial year, that appropriations be transferred to the 'provisions' title. The budgetary authority shall take a decision on these transfers as provided in Article 24.

IR *Nihil*

FR Article 44

The Commission section of the budget may include a 'negative reserve' limited to a maximum amount of EUR 200 million. This reserve, which shall be entered in a separate chapter, may comprise both commitment appropriations and payment appropriations.

This reserve must be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 23 and 25.

IR *Nihil*

FR Article 45

1. The Commission section of the budget shall include a reserve for emergency aid for third countries.
2. The reserve referred to in paragraph 1 shall be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 24 and 26.

IR *Nihil*

FR Article 46

1. The budget shall show:
 - (1) in the general statement of revenue and expenditure:
 - (a) the estimated revenue of the Communities for the financial year in question,
 - (b) the estimated revenue for the preceding financial year and the revenue for year n-2,
 - (c) the commitment and payment appropriations for the financial year in question,
 - (d) the commitment and payment appropriations for the preceding financial year,
 - (e) the expenditure committed and the expenditure paid in year n-2,
 - (f) deleted,
 - (g) appropriate remarks on each subdivision, as set out in Article 41(1);
 - (2) in the section for each institution, the revenue and expenditure shall be shown in the same structure as in point (1);
 - (3) as regards staff:
 - (a) for each section of the budget, an establishment plan setting the number of posts for each grade in each category and in each service and the number of permanent and temporary posts authorised within the limits of the budget appropriations,
 - (b) an establishment plan for staff paid from the research and technological development appropriations for direct action and an establishment plan for staff paid from the same appropriations for indirect action; the establishment plans shall be classified by category and grade and shall distinguish between permanent and temporary posts, authorised within the limits of the budget

appropriations,

(c) as regards scientific and technical staff, the classification may be based on groups of grades, in accordance with the conditions laid down in each budget; the establishment plan must specify the number of highly qualified technical or scientific personnel who are accorded special advantages under the specific provisions of the Staff Regulations,

(d) an establishment plan setting the number of posts by grade and by category for each body referred to in Article 185 which receives a grant charged to the budget. The establishment plans shall show next to the number of posts authorised for the financial year the number authorised for the preceding year;

(4) as regards borrowing-and-lending operations:

(a) in the general statement of revenue, the budget lines corresponding to the relevant operations and intended to record any reimbursements received from beneficiaries who initially defaulted, leading to activation of the performance guarantee. These lines shall carry a token entry (p.m.) and be accompanied by appropriate remarks,

(b) in the Commission section:

(i) the budget lines containing the Communities' performance guarantees in respect of the operations in question. These lines shall carry a token entry (p.m.), so long as no effective charge which has to be covered by definitive resources has arisen,

(ii) remarks giving the reference to the basic act and the volume of the operations envisaged, the duration and the financial guarantee given by the Communities in respect of these operations,

(c) in a document annexed to the Commission section, as an indication:

(i) ongoing capital operations and debt management,

(ii) the capital operations and debt management for the financial year in question;

(5) the budget lines under revenue and expenditure necessary for implementing the Guarantee Fund for external actions.

2. In addition to the documents referred to in paragraph 1 the budgetary authority may attach any other relevant documents to the budget.

IR Article 28

Actual expenditure in the last financial year for which the accounts have been closed

(Article 46(1)(e) 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, that is to say, for which a payment order has been sent to the bank, against appropriations for that financial year as defined in the same article.

Article 29

Budget remarks

(Article 46(1)(g) of the Financial Regulation)

The budget remarks shall include:

- (a) the references of the basic act, where one exists;
- (b) all appropriate explanations concerning the nature and purpose of the appropriations.

Article 30

Establishment plan

(Article 46(1)(3)(a) of the Financial Regulation)

The staff of the Supply Agency shall appear separately in the Commission establishment plan.

FR Article 47

1. The establishment plan described in point 3 of Article 46(1) shall constitute an absolute limit for each institution or body; no appointment may be made in excess of the limit set.

However, save in the case of grades AD 16, AD 15 and AD 14, each institution or body may modify establishment plans by up to 10 % of posts authorised, subject to two conditions:

- (a) that the volume of staff appropriations corresponding to a full financial year is not affected, and
- (b) that the limit of the total number of posts authorised by each establishment plan is not exceeded.

Three weeks before making the modifications referred to in the second subparagraph, the institutions shall inform the budgetary authority of their intentions. In the event of duly justified reasons being raised within this period by either branch of the budgetary authority, the institutions shall refrain from making the modifications and the normal procedure shall apply.

2. By way of derogation from the first subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments.

IR *Nihil*

TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 1

GENERAL PROVISIONS

FR *Article 48*

1. The Commission shall implement the revenue and expenditure of the budget in accordance with this Regulation, on its own responsibility and within the limits of the appropriations authorised.
2. The Member States shall cooperate with the Commission so that the appropriations are used in accordance with the principle of sound financial management.

Information on transfers of personal data for audit purposes
(Article 48 of the Financial Regulation)

In any call made in the context of grants or procurements implemented in direct centralised management, potential beneficiaries, candidates and tenderers shall, in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council⁽¹⁾ be informed that, for the purposes of safeguarding the financial interests of the Communities, their personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office (hereinafter 'OLAF').

⁽¹⁾ OJ L 8, 12.1.2001, p.1.

FR Article 49

1. A basic act shall first be adopted before the appropriations entered in the budget for any action by the Communities or by the European Union may be used.

A basic act is a legal act which provides a legal basis for the action and for the implementation of the corresponding expenditure entered in the budget.

2. In application of the EC Treaty and the Euratom Treaty, a basic act is an act adopted by the legislative authority and may take the form of a Regulation, a directive, a decision within the meaning of Article 249 of the EC Treaty or a decision *sui generis*.
3. In application of Title V of the Treaty on European Union (concerning common foreign and security policy — CFSP), a basic act may take one of the forms specified in Articles 13(2) and (3), 14, 18(5), 23(1) and (2) and 24 of the Treaty on European Union.
4. In application of Title VI of the Treaty on European Union (concerning police and judicial cooperation in criminal matters), a basic act may take one of the forms referred to in Article 34(2) of the Treaty on European Union.
5. Recommendations and opinions do not constitute basic acts within the meaning of this Article, nor do resolutions, conclusions, declarations or other acts which have no legal effects.
6. By way of derogation from paragraphs 1 to 4, the following may be implemented without a basic act provided the actions which they are intended to finance fall within the powers of the Communities or the European Union:
 - (a) appropriations for pilot schemes of an experimental nature designed to test the feasibility of an action and its usefulness. The relevant commitment appropriations may be entered in the budget for not more than two successive financial years;

(b) appropriations for preparatory actions in the fields of application of the EC Treaty and the Euratom Treaty and of Title VI of the TEU, designed to prepare proposals with a view to the adoption of future actions. The preparatory actions are to follow a coherent approach and may take various forms. The relevant commitment appropriations may be entered in the budget for not more than three successive financial years. The legislative procedure must be concluded before the end of the third financial year. In the course of the legislative procedure, the commitment of appropriations must correspond to the particular features of the preparatory action as regards the activities envisaged, the aims pursued and the persons benefited. Consequently, the means implemented cannot correspond in volume to those envisaged for financing the definitive action itself.

When the preliminary draft budget is presented, the Commission shall submit a report to the budgetary authority on the actions referred to in points (a) and (b) which shall also contain an assessment of results and the follow-up envisaged;

(c) appropriations for preparatory measures in the field of Title V of the Treaty on European Union (concerning CFSP). These measures shall be limited to a short period of time and shall be designed to establish the conditions for European Union action in fulfilment of the objectives of the CFSP and for the adoption of the necessary legal instruments.

For the purpose of EU crisis management operations, preparatory measures are designed inter alia to assess the operational requirements, to provide for a rapid initial deployment of resources, or to establish the conditions on the ground for the launching of the operation.

Preparatory measures shall be agreed by the Council, in full association with the Commission. To this end, the Presidency, assisted by the Secretary-General of the Council/High Representative for the CFSP, shall inform the Commission as early as possible of the Council's intention to launch a preparatory measure and in particular of the estimated resources required for this purpose. In conformity with the provisions of this Regulation, the Commission shall take all the necessary measures to ensure a rapid disbursement of the funds;

(d) appropriations for one-off actions, or even actions for an indefinite duration, carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level pursuant to the EC Treaty and the Euratom Treaty other than its right of legislative initiative referred to in point (b) and under specific powers directly conferred on it by those Treaties, a list of which is given in the implementing rules;

(e) appropriations for the operation of each institution under its administrative autonomy.

Legislative acts concerning the implementation of the budget*(Articles 2 and 49 of the Financial Regulation)*

The Commission shall annually update in the preliminary draft budget the information on the acts referred to in Article 2 of the Financial Regulation

Any proposal or amendment to a proposal submitted to the legislative authority shall clearly indicate the provisions containing derogations from the Financial Regulation or from this Regulation and state the specific reasons justifying such derogations in the relevant Explanatory Memorandum.

*Article 32***Maximum amounts for pilot schemes and preparatory actions***(Article 49(6)(a) and (b) of the Financial Regulation)*

1. The total amount of appropriations for the pilot schemes referred to in Article 49(6)(a) of the Financial Regulation may not exceed EUR 40 million in any budget year.
2. The total amount of appropriations for new preparatory actions referred to in Article 49(6)(b) of the Financial Regulation may not exceed EUR 50 million in any budget year, and the total amount of appropriations actually committed for preparatory actions may not exceed EUR 100 million.

*Article 32a***Preparatory measures in the field of the common foreign and security policy***(Article 49(6)(c) of the Financial Regulation)*

The financing of measures agreed by the Council for the preparation of EU crisis management operations under Title V of the Treaty on European Union shall cover incremental costs directly arising from a specific field deployment of a mission or team involving, inter alia, personnel from the EU institutions, including high-risk insurance, travel and accommodation costs and per diem payments.

Article 33

Specific powers of the Commission under the Treaties

(Article 49(6)(d) of the Financial Regulation)

1. The articles of the EC Treaty which directly confer specific powers on the Commission are as follows:
 - (a) Article 138 (social dialogue);
 - (b) Article 140 (studies, opinions and consultations on social matters);
 - (c) Articles 143 and 145 (special reports on social matters);
 - (d) Article 152(2) (initiatives to promote coordination on health protection matters);
 - (e) Article 155(2) (initiatives to promote coordination on trans-European networks);
 - (f) Article 157(2) (initiatives to promote coordination on matters relating to industry);
 - (g) Article 159, second paragraph (report on progress made towards achieving economic and social cohesion);
 - (h) Article 165(2) (initiatives to promote coordination on research and technological development);
 - (i) Article 173 (report on research and technological development);
 - (j) Article 180(2) (initiatives to promote coordination of development cooperation policies).
2. The articles of the Euratom Treaty which directly confer specific powers on the Commission are as follows:
 - (a) Article 70 (financial support, within the limits set by the budget, for prospecting programmes in the territories of the Member States);
 - (b) Article 77 *et seq.* (safeguards).
3. In the presentation of the preliminary draft budget, further detail may be added to the lists set out in paragraphs 1 and 2, with an indication of the articles in question and the amounts involved.

FR *Article 50*

The Commission shall confer on the other institutions the requisite powers for the implementation of the sections of the budget relating to them.

Each institution shall exercise these powers in accordance with this Regulation and within the limits of the appropriations authorised.

IR *Nihil*

FR *Article 51*

The Commission and each of the other institutions may, within their departments, delegate their powers of budget implementation in accordance with the conditions laid down by this Regulation and by their internal rules and within the limits which they lay down in the instrument of delegation. Those so empowered may act only within the limits of the powers expressly conferred upon them.

IR *Nihil*

FR *Article 52*

1. All financial actors and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Communities. Should such a case arise, the person in question must refrain from such actions and refer the matter to the competent authority.
2. There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.

IR *Article 34*

Definition of a conflict of interests
(Article 52(2) of the Financial Regulation)

1. Acts likely to be vitiated by a conflict of interests within the meaning of Article 52(2) of the Financial Regulation may, inter alia, take one of the following forms:

- (a) granting oneself or others unjustified direct or indirect advantages;
 - (b) refusing to grant a beneficiary the rights or advantages to which that beneficiary is entitled;
 - (c) committing undue or wrongful acts or failing to carry out acts that are mandatory.
2. The competent authority referred to in Article 52(1) of the Financial Regulation shall be the hierarchical superior of the member of staff concerned. The hierarchical superior shall confirm in writing whether or not there is a conflict of interests. If there is, the hierarchical superior shall personally take any appropriate decision.
3. A conflict of interests shall be presumed to exist if an applicant, candidate or tenderer is a member of staff covered by the Staff Regulations, unless his participation in the procedure has been authorised in advance by his superior.

CHAPTER 2

METHODS OF IMPLEMENTATION

FR Article 53

The Commission shall implement the budget in accordance with the provisions set out in Articles 53a to 53d in any of the following ways:

- (a) on a centralised basis;
- (b) by shared or decentralised management;
- (c) by joint management with international organisations.

IR *Nihil*

FR Article 53a

Where the Commission implements the budget on a centralised basis, implementation tasks shall be performed either directly by its departments or indirectly, in accordance with Articles 54 to 57.

Direct centralised management
(Article 53a of the Financial Regulation)

Where the Commission 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 58 to 68 of the Financial Regulation and in compliance with the conditions laid down in this Regulation.

1. Where the Commission implements the budget by shared management, implementation tasks shall be delegated to Member States. That method shall apply in particular to the actions referred to in Titles I and II of Part Two.
2. Without prejudice to complementary provisions included in relevant sector-specific Regulations, and in order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the Member States shall take all the legislative, regulatory and administrative or other measures necessary for protecting the Communities' financial interests. To this effect they shall in particular:
 - (a) satisfy themselves that actions financed from the budget are actually carried out and to ensure that they are implemented correctly;
 - (b) prevent and deal with irregularities and fraud;
 - (c) recover funds wrongly paid or incorrectly used or funds lost as a result of irregularities or errors;
 - (d) ensure, by means of relevant sector-specific Regulations and in conformity with Article 30(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget.

To that effect, the Member States shall conduct checks and shall put in place an effective and efficient internal control system, according to the provisions laid down in Article 28a. They shall bring legal proceedings as necessary and appropriate.

3. Member States shall produce an annual summary at the appropriate national level of the available audits and declarations.
4. In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.

Measures to promote best practices
(Article 53b of the Financial Regulation)

The Commission shall compile a register of bodies responsible for management, certification and audit activities under the sector-specific Regulations. In order to promote best practices in the implementation of the Structural Funds and the European Fisheries Fund, the Commission shall make available for information purposes to those responsible for management and control activities a methodological guide setting out its own control strategy and approach, including checklists, and best practice examples which have been identified.

Article 42**Clearance-of-accounts procedures in decentralised or shared management**
(Articles 53b and 53c of the Financial Regulation)

1. The purpose of the clearance-of-accounts procedure referred to in Articles 53b and 53c 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 in:
 - (a) the declaration of expenditure by the Member States or third 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 Commission, subject to no limitations or restrictions, on the content of those accounts and on the underlying transactions, including checks made with beneficiaries;
 - (c) establishment by the Commission 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 83.

3. In the context of decentralised management, the clearance-of-accounts procedure described in paragraphs 1 and 2 shall apply in accordance with the degree of decentralisation agreed.

Article 42a

Summary of audits and declarations

(Article 53b(3) of the Financial Regulation)

1. The summary shall be provided by the appropriate authority or body designated by the Member State for the area of expenditure concerned in accordance with the sector-specific rules.
2. The part related to audits shall:
 - (a) include, as concerns agriculture, the certificates established by the certification bodies, and, as concerns structural and other similar measures, the audit opinions provided by the audit authorities;
 - (b) be provided by 15 February of the year following the year of the audit activity for agricultural expenditure and for structural and other similar measures.
3. The part related to declarations shall:
 - (a) include, as concerns agriculture, the statements of assurance provided by the paying agencies, and, as concerns structural and other similar measures, certifications by the certifying authorities;
 - (b) be provided by 15 February of the following financial year for agricultural expenditure and for structural and other similar measures.

FR *Article 53c*

1. Where the Commission implements the budget by decentralised management, implementation tasks shall be delegated to third countries in accordance with Article 56 and Title IV of Part Two, without prejudice to delegation of residual tasks to bodies referred to in Article 54(2).

2. In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.
3. Third countries to which implementation tasks are delegated shall ensure, in conformity with Article 30(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget.

IR Article 42

Clearance-of-accounts procedures in decentralised or shared management
(Articles 53b and 53c of the Financial Regulation)

1. The purpose of the clearance-of-accounts procedure referred to in Articles 53b and 53c 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 in:
 - (a) the declaration of expenditure by the Member States or third 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 Commission, subject to no limitations or restrictions, on the content of those accounts and on the underlying transactions, including checks made with beneficiaries;
 - (c) establishment by the Commission 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 83.

3. In the context of decentralised management, the clearance-of-accounts procedure described in paragraphs 1 and 2 shall apply in accordance with the degree of decentralisation agreed.

Article 269

Decentralised management of pre-accession aid
(Article 53c of the Financial Regulation)

In connection with the pre-accession aid referred to in Council Regulation (EEC) No 3906/89 ⁽¹⁾ and Council Regulation (EC) No 555/2000 ⁽²⁾, the rules concerning checks laid down in Article 35 shall not affect the decentralised management already in operation with the candidate countries in question.

⁽¹⁾ OJ L 375, 23.12.1989, p.11.

⁽²⁾ OJ L 68, 16.3.2000, p.3.

FR *Article 53d*

1. Where the Commission implements the budget by joint management, certain implementation tasks shall be delegated to international organisations, in accordance with the implementing rules, in the following cases:
 - (a) wherever the Commission and the international organisation are bound by a long-term framework agreement laying down the administrative and financial arrangements for their cooperation;
 - (b) wherever the Commission and the international organisation elaborate a joint project or programme;
 - (c) where the funds of several donors are pooled and are not earmarked for specific items or categories of expenditure, that is to say, in the case of multi-donor actions.

These organisations shall, in their accounting, audit, internal control and procurement procedures, apply standards which offer guarantees equivalent to internationally accepted standards.

2. Individual agreements concluded with international organisations for the award of financing shall contain detailed provisions for the implementation of the tasks entrusted to such international organisations.
3. International organisations to which implementation tasks are delegated shall ensure, in conformity with Article 30(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget.

Checks to be carried out by the Commission

(Articles 53d, 54(2)(c) and 56 of the Financial Regulation)

1. Decisions entrusting implementing tasks to the entities or persons referred to in Article 56 of the Financial Regulation shall include all appropriate arrangements for ensuring the transparency of operations carried out.

The Commission shall review those arrangements as necessary whenever there are substantial changes to the procedures or systems applied by such entities or persons, in order to ensure continued compliance with the conditions set out in Article 56.

2. The entities or persons concerned shall provide the Commission, within a specified time limit, with any information it requests and shall inform it without delay of any substantial changes in their procedures or systems.

The Commission shall, as appropriate, set out the obligations in the decisions referred to in paragraph 1, or in the agreements concluded with those entities or persons.

3. The Commission may accept that the procurement procedures of the bodies referred to in Articles 54(2)(c) and of the beneficiaries referred to in Article 166(1)(a) of the Financial Regulation are equivalent to its own, with due account for internationally accepted standards.
4. Where the Commission implements the budget by joint management, the verification agreements concluded with the international organisations concerned shall apply.
5. The independent external audit referred to in Article 56(1)(d) of the Financial Regulation shall be at least performed by an audit service functionally independent of the entity to which the Commission entrusts implementation tasks and shall perform its duties in accordance with internationally accepted auditing standards.

Article 43**Joint management**

(Articles 53d, 108a and 165 of the Financial Regulation)

1. The Commission shall ensure that suitable arrangements exist for the control and audit of the action in its entirety.

2. The international organisations referred to in Article 53d of the Financial Regulation shall be:

- (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.

For the purposes of Article 53d of the Financial Regulation, the European Investment Bank and the European Investment Fund shall be assimilated to international organisations.

3. Where the budget is implemented by joint management with international organisations in accordance with Articles 53d and 165 of the Financial Regulation, the organisations and the actions to be financed shall be chosen in an objective and transparent manner.
4. Without prejudice to Article 35 of this Regulation, agreements concluded with the international organisations referred to in Article 53d of the Financial Regulation shall contain in particular the following:
- (a) a definition of the action, the project or the programme to be implemented under joint management;
 - (b) the conditions and the detailed arrangements for their implementation, including in particular the principles for the award of procurement contracts and grants;
 - (c) the rules on reporting to the Commission on implementation;
 - (d) provisions obliging the organisation to which implementation tasks are entrusted to exclude from participation in a procurement or grant award procedure candidates or applicants who are in the situations referred to in points (a), (b) and (e) of Article 93(1) and in points (a) and (b) of Article 94 of the Financial Regulation;
 - (e) the conditions for payments of the Community contribution, and the supporting documents required to justify the payments;
 - (f) the conditions under which this implementation terminates;
 - (g) the detailed arrangements for Commission scrutiny;
 - (h) provisions granting the Court of Auditors access to the information required to perform its duties, if necessary on the spot, in accordance with the verification agreements concluded with the international organisations concerned;

- (i) provisions regarding the use of any interest yielded;
 - (j) provisions guaranteeing the visibility of the Community action, project or programme in relation to the other activities of the organisation;
 - (k) provisions on the publication of the beneficiaries of funds deriving from the budget, which require the international organisations to publish the information in accordance with Article 169 of this Regulation.
5. A project or programme shall be considered to be jointly elaborated when the Commission and the international public sector body jointly assess the feasibility and define the implementation agreements.
6. In the implementation of projects in joint management, international organisations shall comply with at least the following requirements:
- (a) procurement and grant award procedures shall comply with the principles of transparency, proportionality, sound financial management, equal treatment and non-discrimination, lack of conflicts of interests and respect of internationally accepted standards;
 - (b) grants may not be cumulative or awarded retrospectively;
 - (c) grants must involve co-financing, save as otherwise provided in Article 253;
 - (d) grants may not have the purpose or effect of producing a profit for the beneficiary.

Those requirements shall be expressly established in the agreements concluded with the international organisations.

FR Article 54

1. The Commission may not delegate to third parties the executive powers it enjoys under the Treaties where they involve a large measure of discretion implying political choices. The implementing tasks delegated must be clearly defined and fully supervised as to the use made of them.

The delegation of budget-implementation tasks shall comply with the principle of sound financial management which requires effective and efficient internal control and shall ensure compliance with the principle of non-discrimination, and the visibility of Community action. No implementing tasks delegated in this way may give rise to conflicts of interests.

2. Within the limits laid down in paragraph 1, the Commission may, when implementing the budget by indirect centralised management or by decentralised management under Articles 53a or 53c, delegate tasks of public authority and in particular budget implementation tasks to:
 - (a) agencies governed by Community law, referred to in Article 55, hereinafter 'executive agencies';
 - (b) bodies set up by the Communities as referred to in Article 185 and other specialised Community bodies, such as the European Investment Bank or the European Investment Fund, provided that to do so is compatible with the tasks of each body as defined in the basic act;
 - (c) national or international public sector bodies or bodies governed by private law with a public service mission providing adequate financial guarantees and complying with the conditions provided for in the implementing rules;
 - (d) persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union, and identified in the relevant basic act within the meaning of Article 49 of this Regulation.
3. Where the bodies referred to in paragraph 2 perform implementation tasks, they shall conduct regular checks to ensure that the actions to be financed from the budget have been implemented correctly.

Such bodies or persons shall take appropriate measures to prevent irregularities and fraud and if necessary bring legal proceedings to recover funds wrongly paid or incorrectly used.

IR Article 35

Checks to be carried out by the Commission (Articles 53d, 54(2)(c) and 56 of the Financial Regulation)

1. Decisions entrusting implementing tasks to the entities or persons referred to in Article 56 of the Financial Regulation shall include all appropriate arrangements for ensuring the transparency of operations carried out.

The Commission shall review those arrangements as necessary whenever there are substantial changes to the procedures or systems applied by such entities or persons, in order to ensure continued compliance with the conditions set out in Article 56.

2. The entities or persons concerned shall provide the Commission, within a specified time limit, with any information it requests and shall inform it without delay of any substantial changes in their procedures or systems.

The Commission shall, as appropriate, set out the obligations in the decisions referred to in paragraph 1, or in the agreements concluded with those entities or persons.

3. The Commission may accept that the procurement procedures of the bodies referred to in Articles 54(2)(c) and of the beneficiaries referred to in Article 166(1)(a) of the Financial Regulation are equivalent to its own, with due account for internationally accepted standards.
4. Where the Commission implements the budget by joint management, the verification agreements concluded with the international organisations concerned shall apply.
5. The independent external audit referred to in Article 56(1)(d) of the Financial Regulation shall be at least performed by an audit service functionally independent of the entity to which the Commission entrusts implementation tasks and shall perform its duties in accordance with internationally accepted auditing standards.

Article 37

Exercise of powers delegated to executive agencies

(Articles 54(2)(a) and 55(2) of the Financial Regulation)

1. Decisions to delegate powers to executive agencies shall authorise them, as authorising officers by delegation, to implement appropriations relating to the Community programme the management of which is entrusted to them.
2. Deleted.
3. The Commission's instrument of delegation shall contain the same provisions as are listed in Article 41(2). It shall be formally accepted in writing by the director on behalf of the executive agency.

Article 38

Eligibility of national or international public sector bodies or private law entities with a public service mission for the delegation of powers and conditions relating thereto

(Article 54(2)(c) of the Financial Regulation)

1. The Commission may delegate tasks involving the exercise of public authority to:
 - (a) international public sector bodies;
 - (b) national public sector bodies or private law entities with a public service mission governed by the law of a Member State, one of the

EEA States or one of the countries that is a candidate for membership of the European Union or, if appropriate, by the law of any other country.

2. The Commission shall ensure that the bodies or entities referred to in paragraph 1 offer adequate financial guarantees, issued preferably by a public authority, in particular as regards full recovery of amounts due to the Commission.
3. Where the Commission intends to entrust tasks involving the exercise of public authority, and in particular tasks of budget implementation, to a body referred to in point (c) of Article 54(2) of the Financial Regulation, it shall analyse compliance with the principles of economy, effectiveness and efficiency.

Article 39

Designation of national or international public sector bodies or private law entities with a public service mission

(Article 54(2)(c) of the Financial Regulation)

1. The national public sector bodies or private law entities with a public service mission shall be subject to the law of the Member State or the country in which they have been set up.
2. The bodies or entities referred to in paragraph 1 or international public sector bodies shall be chosen in an objective and transparent manner, in accordance with the principle of sound financial management, to match the implementation requirements identified by the Commission. That choice may not entail any discrimination between the various 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 all other cases, the Commission shall designate such bodies or entities in agreement with the Member States or countries concerned.

4. Where the Commission entrusts implementing tasks to bodies referred to in point (c) of Article 54(2) of the Financial Regulation, it shall inform annually the legislative authority of the cases and bodies concerned by providing commensurate justification of the use of such bodies.

Article 39a

Persons entrusted with the management of specific actions pursuant to Title V of the Treaty on European Union

(Article 54(2)(d) of the Financial Regulation)

Persons entrusted with the management of specific actions as referred to in point (d) of Article 54(2) of the Financial Regulation shall put in place the appropriate structures and procedures in order to assume the responsibility for the funds that they will manage. Those persons shall have the status of common foreign and security policy special advisers of the Commission pursuant to Articles 1 and 5 of the Conditions of Employment of Other Servants of the European Communities.

Article 41

Detailed arrangements for indirect centralised management

(Articles 54(2)(b), (c) and (d) of the Financial Regulation)

1. Where the Commission entrusts implementing tasks to bodies, entities or persons referred to in points (b), (c) and (d) of Article 54(2) of the Financial Regulation, it shall conclude an agreement with them laying down the detailed arrangements for the management and control of funds and the protection of the financial interests of the Communities.
2. The agreement referred to in paragraph 1 shall include the following provisions:
 - (a) a definition of the tasks assigned;
 - (b) the conditions and detailed arrangements for performing the tasks, including appropriate provisions for demarcating responsibilities and organising the controls to be carried out;
 - (c) the rules on reporting to the Commission on how the tasks are performed;
 - (d) the conditions under which performance of the tasks terminates;
 - (e) the detailed arrangements for Commission scrutiny;
 - (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 52(2) of the Financial Regulation.

3. The bodies, entities or persons referred to in paragraph 1 shall not have the status of authorising officers by delegation.

FR Article 55

1. The executive agencies shall be legal persons under Community law created by Commission Decision to which powers may be delegated to implement all or part of a Community programme or project on behalf of the Commission and under its responsibility in accordance with Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive agencies to be entrusted with certain tasks in the management of Community programmes ⁽¹⁾.
2. Implementation of the corresponding operational appropriations shall be carried out by the director of the agency.

IR Article 37

Exercise of powers delegated to executive agencies
(Articles 54(2)(a) and 55(2) of the Financial Regulation)

1. Decisions to delegate powers to executive agencies shall authorise them, as authorising officers by delegation, to implement appropriations relating to the Community programme the management of which is entrusted to them.
2. Deleted.
3. The Commission's instrument of delegation shall contain the same provisions as are listed in Article 41(2). It shall be formally accepted in writing by the director on behalf of the executive agency.

FR Article 56

1. Where the Commission implements the budget by indirect centralised management, it shall first obtain evidence of the existence and proper operation within the entities to which it entrusts implementation of the following:

⁽¹⁾ OJ L 11, 16.1.2003, p. 1.

- (a) transparent procurement and grant-award procedures which are non-discriminatory and exclude any conflict of interest and which are in accordance with the provisions of Titles V and VI respectively;
- (b) an effective and efficient internal control system for the management of operations, which includes effective segregation of the duties of authorising officer and accounting officer or of the equivalent functions;
- (c) an accounting system that enables the correct use of Community funds to be verified and the use of funds to be reflected in Community accounts;
- (d) an independent external audit;
- (e) public access to information at the level provided for in Community Regulations;
- (f) adequate annual *ex post* publication of beneficiaries of funds deriving from the budget in conformity with Article 30(3).

The Commission may accept that the audit, accounting and procurement systems of the entities referred to in paragraphs 1 and 2 are equivalent to its own, with due account for internationally accepted standards.

2. In the case of decentralised management, the criteria laid down in paragraph 1 with the exception of the criterion provided in point (e), shall apply, in full or in part, depending on the degree of decentralisation, agreed between the Commission and the third country, national or international public sector bodies concerned.

Notwithstanding paragraph (1)(a) and Article 169a, the Commission may decide:

- in the case of pooling of funds, and
- under the conditions provided in the basic act,

to use the procurement or grant procedures of the beneficiary partner country or as agreed among donors.

Before taking such a decision, the Commission shall first obtain evidence on a case-by-case basis that such procedures satisfy the principles of transparency, equal treatment and non-discrimination, prevent any conflict of interest, offer guarantees equivalent to internationally accepted standards and ensure compliance with the provisions of sound financial management which requires effective and efficient internal control.

The third country, national or international public sector bodies concerned shall undertake to fulfil the following obligations:

- (a) to comply, subject to the first subparagraph of this paragraph, with the criteria laid down in paragraph 1;

- (b) to ensure that the audit referred to in point (d) of paragraph 1 is exercised by a national institution for independent external auditing;
 - (c) to conduct regular checks to ensure that the actions to be financed from the budget have been implemented correctly;
 - (d) to take appropriate measures to prevent irregularities and fraud and, if necessary, to bring legal proceedings to recover funds wrongly paid.
3. The Commission shall ensure supervision, evaluation and control of the implementation of the tasks entrusted. It shall take the equivalence of control systems into account when it carries out controls using its own control systems.

IR *Article 35*

Checks to be carried out by the Commission
(Articles 53d, 54(2)(c) and 56 of the Financial Regulation)

1. Decisions entrusting implementing tasks to the entities or persons referred to in Article 56 of the Financial Regulation shall include all appropriate arrangements for ensuring the transparency of operations carried out.

The Commission shall review those arrangements as necessary whenever there are substantial changes to the procedures or systems applied by such entities or persons, in order to ensure continued compliance with the conditions set out in Article 56.

2. The entities or persons concerned shall provide the Commission, within a specified time limit, with any information it requests and shall inform it without delay of any substantial changes in their procedures or systems.

The Commission shall, as appropriate, set out the obligations in the decisions referred to in paragraph 1, or in the agreements concluded with those entities or persons.

3. The Commission may accept that the procurement procedures of the bodies referred to in Articles 54(2)(c) and of the beneficiaries referred to in Article 166(1)(a) of the Financial Regulation are equivalent to its own, with due account for internationally accepted standards.
4. Where the Commission implements the budget by joint management, the verification agreements concluded with the international organisations concerned shall apply.

5. The independent external audit referred to in Article 56(1)(d) of the Financial Regulation shall be at least performed by an audit service functionally independent of the entity to which the Commission entrusts implementation tasks and shall perform its duties in accordance with internationally accepted auditing standards.

FR Article 57

1. The Commission may not entrust measures of implementation of funds deriving from the budget, including payment and recovery, to external private sector entities or bodies, except in the case referred to in Article 54(2)(c) or in specific cases where the payments involved are to be made to beneficiaries determined by the Commission, are subject to conditions and amounts fixed by the Commission and do not involve the exercise of discretion by the entity or body making the payments.
2. The tasks which may be entrusted by contract to external private sector entities or bodies other than those which have a public service mission are technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgment.

IR Article 40

Compliance with the procurement rules *(Article 57 of the Financial Regulation)*

Where the Commission entrusts tasks to private bodies under Article 57(2) of the Financial Regulation, it shall conclude a contract in accordance with the provisions of Title V of Part One of the Financial Regulation.

CHAPTER 3

FINANCIAL ACTORS

SECTION 1

PRINCIPLE OF SEGREGATION OF DUTIES

FR Article 58

The duties of authorising officer and accounting officer shall be segregated and mutually incompatible.

IR Article 44

Rights and obligations of the financial actors *(Article 58 of the Financial Regulation)*

Each institution 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

FR Article 59

1. The institution shall perform the duties of authorising officer.
 - 1a. For the purposes of this Title, the term 'staff' refers to persons covered by the Staff Regulations.
2. Each institution shall lay down in its internal administrative rules the staff of an appropriate level to whom it delegates in compliance with the conditions in its rules of procedure the duties of the authorising officer, the scope of the powers delegated and the possibility for the persons to whom these powers are delegated to subdelegate them.
3. The powers of authorising officer shall be delegated or subdelegated only to staff.
4. Authorising officers by delegation or subdelegation may act only within the limits set by the instrument of delegation or subdelegation. The responsible authorising officer by delegation or subdelegation may be assisted in his/her task by one or more members of staff entrusted, under his/her responsibility, to carry out certain operations necessary for implementation of the budget and presentation of the accounts.

IR Article 45

Assistance for authorising officers by delegation and subdelegation
(Article 59 of the Financial Regulation)

1. The authorising officer responsible may be assisted in his duties by persons covered by the Staff Regulations (hereinafter: 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 conflict of interests, staff assisting authorising officers by delegation or subdelegation shall be subject to the obligations referred to in Article 52 of the Financial Regulation.
2. Each institution shall inform the budgetary authority whenever an authorising officer by delegation takes up his duties, changes duties or terminates his duties.

Article 46

Internal provisions governing delegations
(Article 59 of the Financial Regulation)

In accordance with the Financial Regulation and this Regulation, each institution shall lay down in its internal rules such measures for the management of appropriations as it considers necessary for proper implementation of its section of the budget.

FR Article 60

1. The authorising officer shall be responsible in each institution for implementing revenue and expenditure in accordance with the principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with.
2. To implement expenditure, the authorising officer by delegation and by subdelegation shall make budgetary commitments and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminaries for the implementation of appropriations.
3. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.

4. The authorising officer by delegation shall put in place, in compliance with the minimum standards adopted by each institution and having due regard to the risks associated with the management environment and the nature of the actions financed, the organisational structure and the internal management and control procedures suited to the performance of his/her duties, including where appropriate *ex post* verifications. Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation. The initiation and the *ex ante* and *ex post* verification of an operation shall be separate functions.
5. All staff responsible for controlling the management of financial operations must have the necessary professional skills. They shall respect a specific code of professional standards established by each institution.
6. Any member of staff involved in the financial management and control of transactions who considers that a decision he/she is required by his/her superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he/she is required to observe shall inform the authorising officer by delegation in writing and, if the latter fails to take action, the panel referred to in Article 66(4). In the event of any illegal activity, fraud or corruption which may harm the interests of the Community, he/she shall inform the authorities and bodies designated by the applicable legislation.
7. The authorising officer by delegation shall report to his institution on the performance of his duties in the form of an annual activity report together with financial and management information confirming that the information contained in the report presents a true and fair view except as otherwise specified in any reservations related to defined areas of revenue and expenditure.

That report shall indicate the results of the operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. The internal auditor shall take note of the annual report and any other pieces of information identified. No later than 15 June each year, the Commission shall send to the budgetary authority a summary of the annual reports for the previous year.

Segregation of duties of initiation and verification of an operation*(Article 60(4) of the Financial Regulation)*

1. Initiation of an operation shall be understood to mean all the operations which are normally carried out by the staff referred to in Article 45 and which are preparatory to the adoption of the acts implementing the budget by the competent authorising officer, holder of a delegation or a subdelegation.
2. *Ex ante* verification of an operation shall be understood to mean all the *ex ante* checks put in place by the authorising officer responsible in order to verify its operational and financial aspects.
3. Each operation shall be subject at least to an *ex ante* verification. The purpose of that verification shall be to ascertain that:
 - (a) the expenditure and revenue are in order and comply with the provisions applicable, in particular those of the budget and the relevant Regulations and of any acts adopted in implementation of the Treaties or Regulations and, where appropriate, the terms of contracts;
 - (b) the principle of sound financial management referred to in Chapter 7 of Title II of the Financial Regulation is applied.

For the purpose of *ex ante* verification, a series of similar individual transactions relating to routine expenditure on salaries, pensions, reimbursement of mission expenses and medical expenses may be considered by the authorising officer responsible to constitute a single operation.

In the case referred to in the second subparagraph, the authorising officer responsible shall, depending on his risk assessment, carry out an appropriate *ex post* verification, in accordance with paragraph 4.

4. The *ex post* verifications on documents and, where appropriate, on the spot shall check that operations financed by the budget are correctly implemented and in particular that the criteria referred to in paragraph 3 are complied with. These verifications may be organised on a sample basis using risk analysis.
5. The members of staff responsible for the verifications referred to in paragraphs 2 and 4 shall be different from those members of staff performing the tasks of initiation referred to in paragraph 1 and they shall not be subordinate to the latter.

Article 48

Management and internal control procedures

(Article 60(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 actions 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 the institution's assets and information;
- (d) prevent and detect irregularities, errors and fraud;
- (e) identify and prevent management risks and manage them effectively;
- (f) ensure reliable production of financial and management information;
- (g) keep supporting documents relating to and subsequent to budget implementation and budget implementation measures;
- (h) keep documents relating to advance guarantees for the institution and keep a log to enable such guarantees to be adequately monitored.

Article 49

Keeping of supporting documents by authorising officers

(Article 60(4) of the Financial Regulation)

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

- (a) such documents to be numbered;
- (b) such documents to be dated;
- (c) registers, which may be computerised, 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, that is to say, until the end of the year following that in which the operations are closed.

Personal data contained in supporting documents shall be deleted where possible when those data are not necessary for budgetary discharge, control and audit purposes. In any event, as concerns the conservation of traffic data, Article 37(2) of Regulation (EC) No 45/2001 shall apply.

Article 50

Code of professional standards

(Article 60(5) 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, or after an appropriate training programme.
2. Each institution shall draw up a code of professional standards which determine, on matters of internal control:
 - (a) the level of technical and financial competence required of the staff referred to in paragraph 1;
 - (b) the obligation for such staff to undergo continuing training;
 - (c) the mission, role and tasks allocated to them;
 - (d) the rules of conduct, in particular the standards of ethics and integrity that they must comply with and the rights they enjoy.
3. Each institution shall put in place the appropriate structures to distribute to authorising departments and update periodically appropriate information concerning the control standards and the methods and techniques available for that purpose.

Article 51

Failure of the authorising officer by delegation to take action

(Article 60(6) of the Financial Regulation)

Failure by the authorising officer by delegation to take action, as referred to in Article 60(6) of the 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 52

Ex post verification and annual activity report (Article 60(7) 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 53

Transmission of financial and management information to the accounting officer (Article 60 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 54

Report on negotiated procedures (Article 60 of the Financial Regulation)

Authorising officers by delegation shall record, for each financial year, contracts concluded under the negotiated procedures referred to in Articles 126(1)(a) to (g), 127(1)(a) to (d), 242, 244 and 246. 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 that proportion is distinctly higher than the average recorded for the institution, the authorising officer responsible shall report to the institution setting out any measures taken to reverse that trend. Each institution shall send a report on negotiated procedures to the budgetary authority. In the case of the Commission, that report shall be annexed to the summary of the annual activity reports referred to in Article 60(7) of the Financial Regulation.

Article 72

Bodies responsible in matters of fraud (Articles 60(6) and 65(2) of the Financial Regulation)

The authorities and bodies referred to in Articles 60(6) and 65(2) of the Financial Regulation shall be understood to mean the bodies designated

by 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 74

Financial irregularities

(Articles 60(6) and 66(4) of the Financial Regulation)

Without prejudice to the powers of OLAF, the Panel referred to in Article 43a (hereinafter ‘the Panel’) shall be competent in respect of any infringement of a provision of the Financial Regulation or of a provision relating to financial management or the checking of operations resulting from an act or omission of a member of staff.

Article 75

Financial irregularities panel

(Articles 60(6) and 66(4) of the Financial Regulation)

1. Cases of financial irregularities as referred to in Article 74 of this Regulation shall be referred to the Panel by the appointing authority for an opinion referred to in the second subparagraph of Article 66(4) of the Financial Regulation.

An authorising officer by delegation may refer a matter to the Panel if he considers that a financial irregularity has occurred. The Panel shall deliver an opinion evaluating whether irregularities within the meaning of Article 74 have occurred, how serious they are and what their consequences might be. Where the Panel’s analysis suggests that the case referred to it is a matter for OLAF, it shall transmit the file to the appointing authority without delay and shall inform OLAF at once.

When the Panel is directly informed of a matter by a member of staff in accordance with Article 60(6) of the Financial Regulation, it shall transmit the file to the appointing authority and shall inform the member of staff accordingly. The appointing authority may request the Panel’s opinion on the case.

2. The institution or, in the case of a joint Panel, the participating institutions shall, depending on its or their own internal organisation, specify the operating arrangements of the Panel and its composition, which shall include an external participant with the required qualifications and expertise.

SECTION 3

ACCOUNTING OFFICER

FR Article 61

1. Each institution shall appoint an accounting officer who shall be responsible in each institution for:
 - (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
 - (b) preparing and presenting the accounts in accordance with Title VII;
 - (c) keeping the accounts in accordance with Title VII;
 - (d) laying down, in accordance with Title VII, the accounting rules and methods and the chart of accounts;
 - (e) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information; the accounting officer shall be empowered to verify the respect of validation criteria;
 - (f) treasury management.
2. The accounting officer shall obtain from authorising officers, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of the Communities' assets and of budgetary implementation.
- 2a. Before the adoption of the accounts by the institution, the accounting officer shall sign them off, thereby certifying that he has a reasonable assurance that the accounts present a true and fair view of the financial situation of the institution.

For that purpose, the accounting officer shall satisfy himself that the accounts have been prepared in accordance with the accounting rules, methods and accounting systems established under his responsibility as laid down in this Regulation for the accounts of his institution, and that all revenue and expenditure is entered in the accounts.

The authorising officers by delegation shall forward all information that the accounting officer needs in order to fulfil his duties.

The authorising officers shall remain fully responsible for the proper use of the funds they manage as well as the legality and regularity of the expenditure under their control.

- 2b. The accounting officer shall be empowered to check the information received as well as to carry out any further checks he deems necessary in order to sign off the accounts.

The accounting officer shall make reservations, if necessary, explaining exactly the nature and scope of such reservations.

- 2c. The accounting officers of the other institutions and agencies shall sign off their annual accounts and send them to the Commission's accounting officer.
3. Save as otherwise provided in this Regulation, only the accounting officer is empowered to manage cash and cash equivalents. He shall be responsible for their safekeeping.

IR Article 55

Appointment of the accounting officer (Article 61 of the Financial Regulation)

Each institution shall appoint an accounting officer from officials subject to the Staff Regulations of Officials of the European Communities.

The accounting officer shall, obligatorily, be chosen by the institution on the grounds of his particular competence as evidenced by diplomas or by equivalent professional experience.

Article 56

Termination of duties of the accounting officer (Article 61 of the Financial Regulation)

1. A trial balance shall be drawn up without delay in the event of termination of the duties of the accounting officer.
2. The trial balance accompanied by a handing-over report shall be transmitted by the accounting officer who is terminating his duties or, if this is not possible, by an official in his department to the new accounting officer.

The new accounting officer shall sign the trial balance in acceptance within one month from the date of transmission and he may make reservations.

The handing-over report shall also contain the result of the trial balance and any reservations made.

3. Each institution shall inform the budgetary authority of the appointment or termination of duties of its accounting officer.

Article 57

Opinion on accounting and inventory systems

(Article 61 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 substantiate data in those accounts, the accounting officer must give his agreement to the introduction or modification of such systems.

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

Article 58

Treasury management

(Article 61 of the Financial Regulation)

1. The accounting officer shall ensure that his institution 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.
3. The Commission's accounting officer shall divide up the funds available in accordance with Regulation (EC, Euratom) No 1150/2000.

Article 59

Management of bank accounts

(Article 61 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/she 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 have been 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, after consulting the accounting officers of the other institutions, for harmonising the operating terms for accounts opened by the various institutions.

Article 60

Signatures on accounts

(Article 61 of the Financial Regulation)

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

To that end, the accounting officer of each institution shall communicate to all financial institutions with which the institution concerned has opened accounts the names and specimen signatures of the authorised members of staff.

Article 61

Management of account balances

(Article 61 of the Financial Regulation)

1. The accounting officer shall ensure that the balance on the bank accounts provided for in Article 59 does not deviate significantly from the cash-flow forecasts referred to in Article 58(2) and in any event:
 - (a) that none of those accounts is in debit;
 - (b) that the balance of accounts held in other 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 62

Transfers and conversion operations (Article 61 of the Financial Regulation)

Without prejudice to Article 69, the accounting officer shall conduct transfers between accounts opened in the name of the institution with financial institutions, and conduct currency conversion operations.

Article 63

Methods of payment (Article 61 of the Financial Regulation)

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

Article 64

Legal entities file (Article 61 of the Financial Regulation)

1. The accounting officer may make payments by bank credit transfer only if the payee's bank account details and information confirming the payee's identity, or any modification, have first been entered in a common file by the institution.

Any such entry in the file of the payee's legal and bank account details or modification of those details shall be based on a supporting document, the form of which shall be defined by the Commission's accounting officer.

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 inform the accounting officer of any change in the legal and bank account details communicated to them by the payee and shall check that these details are valid before a payment is made.

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 such cases 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 Commission of the payee's bank account details is a condition to be fulfilled before the first payment can be made.

Article 65

Keeping of supporting documents by the accounting officer
(Article 61 of the Financial Regulation)

Supporting documents for the accounting system and for the preparation of the accounts referred to in Article 121 of the Financial Regulation shall 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.

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

Each institution shall decide in which department the supporting documents are to be kept.

FR *Article 62*

The accounting officer may, in the performance of his duties, delegate certain tasks to subordinate staff.

The instrument of delegation shall lay down the tasks entrusted to the delegates.

IR *Article 255*

Persons empowered to administer accounts
(Article 62 of the Financial Regulation)

Each institution shall lay down the conditions in accordance with which the staff it designates and empowers to administer accounts in the local units referred to in Article 254 are authorised to communicate the names and specimen signatures to local financial institutions.

SECTION 4

IMPREST ADMINISTRATOR

FR Article 63

1. Imprest accounts may be set up for the collection of revenue other than own resources and for the payment of small sums as defined in the implementing rules.

However, in the field of crisis management aid and humanitarian aid operations within the meaning of Article 110, imprest accounts may be used without any limitation on the amount while respecting the level of appropriations decided by the budgetary authority on the corresponding budget line for the current financial year.

2. Imprest accounts shall be endowed by the institution's accounting officer and shall be placed under the responsibility of imprest administrators designated by the institution's accounting officer.

IR Article 66

Conditions of use of imprest accounts

(Article 63 of the Financial Regulation)

1. Where, owing to the limited amounts involved, it is materially impossible or inefficient to carry out payment operations by budgetary procedures, imprest accounts may be set up for the payment of such expenditure.
2. The imprest administrator may provisionally validate and pay expenditure, on the basis of a detailed framework set out in the instructions from the authorising officer responsible. Those instructions shall specify the rules and conditions under which the provisional validation and payments shall be carried out and, where appropriate, the terms for signing legal commitments within the meaning of Article 94(1)(e).
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 authorising officer responsible. That decision shall set out the respective responsibilities and obligations of the imprest administrator and the authorising officer.

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

Article 67

Conditions governing creation and payment

(Article 63 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 may 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 institution;
 - (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 will be settled by the authorising officer by no later than the end of 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.
2. In proposals for decisions setting up imprest accounts the authorising officer responsible shall ensure that:
 - (a) priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;
 - (b) imprest accounts are used only in substantiated cases.

The maximum amount which may be paid by the imprest administrator where it is materially impossible or inefficient to carry out payment operations by budgetary procedures shall not exceed EUR 60 000 for each item of expenditure.

3. 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.
4. Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 80 of the Financial Regulation, cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.
5. Payments made shall be followed by formal final validation decisions and/or payment orders signed by the authorising officer responsible.

Article 68

Choice of imprest administrators

(Article 63 of the Financial Regulation)

Imprest administrators shall be chosen from officials or, should the need arise and only in duly substantiated cases, from other members of staff. Imprest administrators shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.

Article 69

Endowment of imprest accounts

(Article 63 of the Financial Regulation)

1. The accounting officer shall make payments endowing imprest accounts and shall monitor those 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 67 and the provisions of the 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 70

Checks by authorising officers and accounting officers

(Article 63 of the Financial Regulation)

1. The imprest administrator shall keep an account of the funds 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 that account shall be accessible at all times to the authorising officer responsible and a list of transactions shall be established at least once a month and be sent the following month together with supporting documents by the imprest administrator to the authorising officer responsible for settlement of the imprest operations.
2. The accounting officer shall carry out, or have carried out by a staff member in his own department or in the authorising department specially empowered for that purpose, checks, which must as a general rule be effected on the spot and without warning, to verify the existence of the funds allocated to the imprest administrators and the book-keeping and to check that imprest transactions are settled within the time limit set. The accounting officer shall communicate the findings of those checks to the authorising officer responsible.

Article 71

Procurement procedure

(Article 63 of the Financial Regulation)

Payments made from imprest accounts may, within the limits laid down in Article 129(4), consist simply in the payment of costs against invoices, without prior acceptance of a tender.

Article 254

Creation of imprest accounts (Article 63 of the Financial Regulation)

For the payment of certain categories of expenditure, one or more imprest accounts may be set up in each local unit outside the Community in accordance with Article 63 of the Financial Regulation. A local unit shall be, for instance, a Community delegation, office or branch office in a third country.

The decision setting up such an imprest account shall lay down its operating terms in accordance with Article 67 and on the basis of the specific needs of each local unit.

CHAPTER 4 **LIABILITY OF THE FINANCIAL ACTORS**

SECTION 1 **GENERAL RULES**

FR Article 64

1. Without prejudice to any disciplinary action, authorising officers by delegation and subdelegation may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.
2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his/her duties by the authority which appointed him/her.
3. Without prejudice to any disciplinary action, imprest administrators may at any time be suspended temporarily or definitively from their duties by the authority which appointed them.

IR *Nihil*

FR Article 65

1. The provisions of this Chapter are without prejudice to any liability under criminal law which the financial actors referred to in Article 64 may incur as provided in the applicable national law and in the provisions in force on the protection of the Communities' financial interests and on the fight against corruption involving officials of the Communities or officials of Member States.
2. Each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, without prejudice to Articles 66, 67 and 68. In the event of illegal activity, fraud or corruption which may harm the interests of the Community, the matter will be submitted to the authorities and bodies designated by the applicable legislation.

IR Article 72

Bodies responsible in matters of fraud

(Articles 60(6) and 65(2) of the Financial Regulation)

The authorities and bodies referred to in Articles 60(6) and 65(2) of the Financial Regulation shall be understood to mean the bodies designated by 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.

SECTION 2

RULES APPLICABLE TO AUTHORISING OFFICERS BY DELEGATION AND SUBDELEGATION

FR Article 66

1. The authorising officer shall be liable for payment of compensation as laid down in the Staff Regulations.
 - 1a. The obligation to pay compensation shall apply in particular if:
 - (a) the authorising officer, whether intentionally or through gross negligence on his part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and the implementing rules;

- (b) the authorising officer, whether intentionally or through gross negligence on his part, omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the institution liable to civil action by third parties.
2. An authorising officer by delegation or subdelegation who considers that a decision which it is his/her responsibility to take is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to take the decision in question, the authorising officer may not be held liable.
 3. In the event of subdelegation within his services, the authorising officer by delegation continues to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by subdelegation.
 4. Each institution shall set up a specialised financial irregularities panel or participate in a joint panel established by several institutions. The panels shall function independently and determine whether a financial irregularity has occurred and what the consequences, if any, should be.

On the basis of the opinion of this panel, the institution shall decide whether to initiate proceedings entailing liability to disciplinary action or to payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the authorising officer by delegation, provided the latter is not the person involved, as well as to the internal auditor.

IR Article 73

Confirmation of instructions

(Article 66(2) of the Financial Regulation)

1. An authorising officer by delegation or subdelegation who receives a binding instruction which he considers to be irregular or contrary to the principle of sound financial management, in particular because the instruction cannot be carried out with the resources allocated to him, shall, in writing, so inform the authority from which he received the delegation or subdelegation. If that instruction is confirmed in writing and that 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, the authorising officer may not be held liable; he shall carry out the instruction, unless it is manifestly illegal or constitutes a breach of the relevant safety standards.

2. Paragraph 1 shall also apply in cases where an authorising officer learns, in the course of acting on a binding instruction, that the circumstances of the case may give rise to an irregular situation.
3. Any instructions confirmed in the circumstances described in Article 66(2) of the Financial Regulation shall be recorded by the authorising officer by delegation responsible and mentioned in his annual activity report.

Article 74

Financial irregularities

(Articles 60(6) and 66(4) of the Financial Regulation)

Without prejudice to the powers of OLAF, the Panel referred to in Article 43a (hereinafter ‘the Panel’) shall be competent in respect of any infringement of a provision of the Financial Regulation or of a provision relating to financial management or the checking of operations resulting from an act or omission of a member of staff.

Article 75

Financial irregularities panel

(Articles 60(6) and 66(4) of the Financial Regulation)

1. Cases of financial irregularities as referred to in Article 74 of this Regulation shall be referred to the Panel by the appointing authority for an opinion referred to in the second subparagraph of Article 66(4) of the Financial Regulation.

An authorising officer by delegation may refer a matter to the Panel if he considers that a financial irregularity has occurred. The Panel shall deliver an opinion evaluating whether irregularities within the meaning of Article 74 have occurred, how serious they are and what their consequences might be. Where the Panel’s analysis suggests that the case referred to it is a matter for OLAF, it shall transmit the file to the appointing authority without delay and shall inform OLAF at once.

When the Panel is directly informed of a matter by a member of staff in accordance with Article 60(6) of the Financial Regulation, it shall transmit the file to the appointing authority and shall inform the member of staff accordingly. The appointing authority may request the Panel’s opinion on the case.

2. The institution or, in the case of a joint Panel, the participating institutions shall, depending on its or their own internal organisation, specify the operating arrangements of the Panel and its composition, which shall include an external participant with the required qualifications and expertise.

SECTION 3

RULES APPLICABLE TO ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS

FR *Article 67*

An accounting officer shall be liable to disciplinary action and payment of compensation, as laid down and in accordance with the procedures in the Staff Regulations. He/She may in particular render himself liable by any of the following forms of misconduct:

- (a) he/she loses or damages monies, assets and documents in his/her keeping;
- (b) he/she wrongly alters bank accounts or postal giro accounts;
- (c) he/she recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
- (d) he/she fails to collect revenue due.

IR *Nihil*

FR *Article 68*

An imprest officer shall be liable to disciplinary action and payment of compensation, as laid down and in accordance with the procedures in the Staff Regulations. He/She may in particular render himself liable by any of the following forms of misconduct:

- (a) he/she loses or damages monies, assets and documents in his/her keeping;
- (b) he/she cannot provide proper supporting documents for the payments he/she has made;
- (c) he/she makes payments to persons other than those entitled;
- (d) he/she fails to collect revenue due.

IR *Nihil*

CHAPTER 5 REVENUE OPERATIONS

SECTION 1 MAKING AVAILABLE OF OWN RESOURCES

FR Article 69

An estimate of revenue constituted by own resources, as referred to in the Council Decision on the system of the Communities' own resources, shall be entered in the budget in euro. It shall be made available in accordance with the Council Regulation implementing that Decision.

IR Article 76

Rules applying to own resources *(Article 69 of the Financial Regulation)*

The authorising officer shall draw up a schedule indicating when the own resources defined in the Decision on the system of the European Communities' own resources will be made available to the Commission.

Own resources shall be established and recovered in accordance with the rules adopted pursuant to the Decision referred to in the first paragraph.

SECTION 2 ESTIMATE OF AMOUNTS RECEIVABLE

FR Article 70

1. An estimate of the amount receivable shall first be made by the authorising officer responsible in respect of any measure or situation which may give rise to or modify an amount owing to the Communities.
2. By way of derogation from paragraph 1, no estimate of the amount receivable shall be made before Member States make available to the Commission the amounts of own resources defined in the Council Decision on the system of the Communities' own resources which are paid at fixed intervals by the Member States. The authorising officer responsible shall issue a recovery order in respect of these amounts.

Estimate of amounts receivable
(Article 70 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 complies with the provisions applicable and the principle of sound financial management.
2. Subject to Articles 160(1a) and 161(2) of the Financial Regulation, an estimate of amounts receivable shall not have the effect of making commitment appropriations available. In the cases referred to in Article 18 of the Financial Regulation, appropriations may be made available only after the sums due have actually been recovered by the Communities.

SECTION 3

ESTABLISHMENT OF AMOUNTS RECEIVABLE

1. Establishment of an amount receivable is the act by which the authorising officer by delegation or subdelegation:
 - (a) verifies that the debt exists;
 - (b) determines or verifies the reality and the amount of the debt;
 - (c) verifies the conditions in which the debt is due.
2. The own resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due must be established by a recovery order to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible.
3. Amounts wrongly paid shall be recovered.
4. The conditions in which interest on late payment is due to the Communities shall be laid down in the implementing rules.

Procedure

(Article 71 of the Financial Regulation)

1. The establishment by the authorising officer responsible of an amount receivable shall constitute recognition of the right of the Communities in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt.
2. The recovery order shall be the operation by which the authorising officer responsible instructs the accounting officer to recover the amount established.
3. The debit note shall be to inform the debtor that:
 - (a) the Communities have established the amount receivable;
 - (b) if payment of the debt is made before the deadline specified, no default interest will be due;
 - (c) failing payment by the deadline referred to in point (b) the debt shall bear interest at the rate referred to in Article 86, without any prejudice to any specific Regulations applicable;
 - (d) failing payment by the deadline referred to in point (b) the institution shall effect recovery either by offsetting or by enforcement of any guarantee lodged in advance;
 - (e) the accounting officer may effect recovery by offsetting before the deadline referred to in point (b), where it is necessary to protect the Communities' financial interests when he has justified reasons for believing that the amount due to the Commission would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting;
 - (f) if, after all those steps have been taken, 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 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 79

Establishment of amounts receivable

(Article 71 of the Financial Regulation)

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

- (a) the receivable is certain and not subject to any condition;
- (b) the receivable is of fixed amount, expressed precisely in cash terms;
- (c) the receivable is due and is not subject to any payment time;
- (d) the particulars of the debtor are correct;
- (e) the amount to be recovered is booked to the correct budget item;
- (f) the supporting documents are in order; and
- (g) the principle of sound financial management is complied with, in particular with regard to the criteria referred to in point (a) of Article 87(1).

Article 80

Supporting documents for the establishment of amounts receivable

(Article 71 of the Financial Regulation)

1. The establishment of an amount receivable shall be based on supporting documents certifying the Communities' entitlement.
2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or, on his own responsibility, shall ascertain that this has been done.
3. The supporting documents shall be kept by the authorising officer in accordance with Articles 48 and 49.

Article 86

Default interest

(Article 71(4) of the Financial Regulation)

1. Without prejudice to any specific provisions deriving from the application of sector-specific Regulations, any amount receivable not repaid

on the deadline referred to in Article 78(3)(b) shall bear interest in accordance with paragraphs 2 and 3 of this Article.

2. The interest rate for amounts receivable not repaid on the deadline referred to in Article 78(3)(b) 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 Union*, in force on the first calendar day of the month in which the deadline falls, increased by:
 - (a) seven percentage points where the obligating event is a public supply and service contract referred to in Title V;
 - (b) three and a half percentage points in all other cases.
3. Interest shall be calculated from the calendar day following the deadline referred to in Article 78(3)(b) and specified in the debit note up to the calendar day 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.
5. In the case of fines, where the debtor provides a financial guarantee which is accepted by the accounting officer in lieu of a provisional payment, the interest rate applicable from the deadline referred to in Article 78(3)(b) shall be the rate referred to in paragraph 2 of this Article increased by only one and a half percentage points.

SECTION 4

AUTHORISATION OF RECOVERY

FR Article 72

1. The authorisation of recovery is the act whereby the authorising officer by delegation or subdelegation responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he/she has established.
2. The institution may formally establish an amount as being receivable from persons other than States by means of a decision which shall be enforceable within the meaning of Article 256 of the EC Treaty.

Establishment of the recovery order*(Article 72 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 deadline referred to in Article 78(3)(b);
 - (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.
3. The accounting officer of each institution shall keep a list of amounts due to be recovered. Community entitlements shall be grouped in the list according to the date of issue of the recovery order. He shall transfer this list to the accounting officer of the Commission.

The accounting officer of the Commission shall prepare a consolidated list showing the amount due per institution and per date of issue of the recovery order. The list shall be added to the Commission's report on budgetary and financial management.
4. The Commission shall establish a list of Community entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to pay by a Court decision that has the force of res judicata and where no or no significant payment has been made for one year following its pronouncement. The list shall be published, taking account of the relevant legislation on data protection.

Article 84

Recovery procedure failing voluntary payment (Articles 72 and 73 of the Financial Regulation)

1. Without prejudice to Article 83, if the full amount has not been recovered by the deadline referred to in Article 78(3)(b) and specified 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 83, 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 Financial Regulation or by legal action.

SECTION 5

RECOVERY

FR Article 73

1. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer responsible. He/She shall exercise due diligence to ensure that the Communities receive their revenue and shall see that their rights are safeguarded.

The accounting officer shall recover amounts by offsetting them against equivalent claims that the Communities have on any debtor who himself/herself has a claim on the Communities that is certain, of a fixed amount and due.

2. Where the responsible authorising officer by delegation is planning to waive or partially waive recovery of an established amount receivable, he/she shall ensure that the waiver is in order and complies with the principle of sound financial management and proportionality in accordance with the procedures and the criteria laid down in the implementing rules. The waiver decision must be substantiated. The authorising officer may delegate the decision only as laid down in the implementing rules.

The responsible authorising officer may furthermore cancel or adjust an established amount receivable, in accordance with the conditions set out in the implementing rules.

Collection formalities

(Article 73 of the Financial Regulation)

1. Upon the recovery of an amount receivable, the accounting officer shall make an entry in the accounts and shall inform the authorising officer responsible.
2. A receipt shall be issued in respect of any cash payments made to the accounting officer or imprest administrator.

Article 83**Recovery by offsetting**

(Article 73 of the Financial Regulation)

1. Where the debtor has a claim on the Communities that is certain, of a fixed amount and due, relating to a sum established by a payment order, the accounting officer shall, once the deadline referred to in Article 78(3)(b) has passed, recover established amounts receivable by offsetting.

In exceptional circumstances, where it is necessary to safeguard the financial interests of the Communities, when the accounting officer has justified reasons for believing that the amount due to the Communities would be lost, the accounting officer shall recover by offsetting before the deadline referred to in Article 78(3)(b).

2. Before proceeding with any recovery in accordance with paragraph 1, the accounting officer shall consult the authorising officer responsible and inform the debtors concerned.

Where the debtor is a national authority or one of its administrative entities, the accounting officer shall also inform the Member State concerned at least ten working days in advance of his intention to resort to recovery by offsetting. However, in agreement with the Member State or administrative entity concerned, the accounting officer may proceed with the recovery by offsetting before that deadline has passed.

3. The offsetting referred to in paragraph 1 shall have the same effect as a payment and discharge the Communities for the amount of the debt and, where appropriate, of the interest due.

Article 84

Recovery procedure failing voluntary payment

(Articles 72 and 73 of the Financial Regulation)

1. Without prejudice to Article 83, if the full amount has not been recovered by the deadline referred to in Article 78(3)(b) and specified 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 83, 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 Financial Regulation or by legal action.

Article 85

Additional time for payment

(Article 73 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, and provided that the following two conditions are fulfilled:

- (a) the debtor undertakes to pay interest at the rate specified in Article 86 for the entire additional period allowed, starting from the deadline referred to in Article 78(3)(b);
- (b) in order to safeguard the Community's rights, the debtor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the institution's accounting officer.

The guarantee referred to in point (b) of the first paragraph may be replaced by a joint and several guarantee by a third party approved by the institution's accounting officer.

Article 85a

Recovery of fines, periodic penalty payments and other penalties *(Articles 73 and 74 of the Financial Regulation)*

1. Where an action is brought before a Community court against a Commission decision imposing a fine, periodic penalty payment or other penalty under the EC Treaty or Euratom Treaty and until such time as all legal remedies have been exhausted, the accounting officer shall provisionally collect the amounts concerned from the debtor or request him to provide a financial guarantee. The guarantee requested shall be independent of the obligation to pay the fine, periodic penalty payment or other penalty and shall be enforceable upon first call. It shall cover the claim as to principal and the interest due as specified in Article 86(5).
2. After all legal remedies have been exhausted, the provisionally collected amounts and the interest they have yielded shall be entered into the budget or repaid to the debtor. In the event of a financial guarantee, the latter shall be enforced or released.

Article 87

Waiving of recovery of an established amount receivable *(Article 73 of the Financial Regulation)*

1. The authorising officer responsible may waive recovery of all or part of an established amount receivable only in the following cases:
 - (a) where the foreseeable cost of recovery would exceed the amount to be recovered and the waiver would not harm the Community's image;
 - (b) where the amount receivable cannot be recovered in view of its age or the insolvency of the debtor;
 - (c) where recovery is inconsistent with the principle of proportionality.
2. In the case referred to in point (c) of paragraph 1, the authorising officer responsible shall act in accordance with predetermined procedures established within each institution and shall apply the following criteria which are compulsory and applicable in all circumstances:

- (a) the facts, having regard to the gravity of the irregularity giving rise to the establishment of the amount receivable (fraud, repeat offence, intent, diligence, good faith, manifest error);
- (b) the impact that waiving recovery would have on the operation of the Communities and their financial interests (amount involved, risk of setting a precedent, undermining of the authority of the law).

Depending on the circumstances of the case, the authorising officer responsible may also have to take the following additional criteria into account:

- (a) any distortion of competition that would be caused by the waiving of recovery;
 - (b) the economic and social damage that would be caused were the debt to be recovered in full.
3. The waiver decision referred to in Article 73(2) of the Financial Regulation shall be substantiated and shall refer to the diligence exercised 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 Article 81.
4. The waiving of recovery of an established amount receivable may not be delegated by the institution where the amount to be waived:
- (a) is EUR 1 million or more; or
 - (b) is EUR 100 000 or more, where this represents 25 % or more of the established amount receivable.

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

5. Each institution shall send to the budgetary authority each year a report on the waivers referred to in paragraphs 1 to 4 involving EUR 100 000 or more. In the case of the Commission, that report shall be annexed to the summary of the annual activity reports referred to in Article 60(7) of the Financial Regulation.

Article 88

Cancellation of an established amount receivable *(Article 73 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 amount receivable in accord-

ance with Articles 80 and 81; cancellation shall be suitably substantiated.

2. Each institution shall lay down in its internal rules the conditions and procedure for delegating the power to cancel an established amount receivable.

Article 89

Technical and accounting adjustment of an established amount receivable (Article 73 of the Financial Regulation)

1. The authorising officer responsible shall adjust the established amount receivable upwards or downwards if the discovery of an error of fact necessitates the alteration of the amount, provided that the correction does not imply relinquishment of the Communities' established entitlement. Such adjustment shall be made in accordance with Articles 80 and 81 and shall be suitably substantiated.
2. Each institution shall lay down in its internal rules the conditions and procedure for delegating the power to make a technical and accounting adjustment of an established amount receivable.

FR *Article 73a*

Without prejudice to the provisions of specific Regulations and the application of the Council Decision relating to the Communities' own resources system, entitlements of the Communities in respect of third parties and entitlements of third parties in respect of the Communities shall be subject to a limitation period of five years.

The date for calculating the limitation period and the conditions for interrupting this period shall be laid down in the implementing rules.

IR *Article 85b*

Rules for limitation periods (Article 73a of the Financial Regulation)

1. The limitation period for entitlements of the Communities in respect of third parties shall begin to run on the expiry of the deadline communicated to the debtor in the debit note as specified in Article 78(3)(b).

The limitation period for entitlements of third parties in respect of the Communities shall begin to run on the date on which the payment of the third party's entitlement is due according to the corresponding legal commitment.

2. The limitation period for entitlements of the Communities in respect of third parties shall be interrupted by any act of an institution, or a Member State acting at the request of an institution, notified to the third party and aiming at recovering the debt.

The limitation period for entitlements of third parties in respect of the Communities shall be interrupted by any act notified to the Communities by their creditors or on behalf of their creditors aiming at recovering the debt.

3. A new limitation period of five years shall begin to run on the day following the interruptions referred to in paragraph 2.
4. Any legal action relating to an amount receivable as referred to in paragraph 1, including actions brought before a court which later declares itself not to have jurisdiction, shall interrupt the limitation period. The new limitation period of five years shall not begin until a judgment having the force of *res judicata* is given or there is an extrajudicial settlement between the same parties on the same action.
5. Where the accounting officer allows the debtor additional time for payment in accordance with Article 85, this shall be considered as an interruption of the limitation period. The new limitation period of five years shall begin to run on the day following the expiry of the extended time for payment.
6. Entitlements shall not be recovered after the expiry of the limitation period, as established in paragraphs 1 to 5.

FR Article 74

Revenue received by way of fines, periodic penalty payments and other penalties and any accrued interest shall not be finally recorded as budgetary revenue as long as the decisions imposing them may be annulled by the Court of Justice.

The first paragraph shall not apply to decisions on clearance of accounts or financial corrections.

IR *Article 85a*

Recovery of fines, periodic penalty payments and other penalties
(Articles 73 and 74 of the Financial Regulation)

1. Where an action is brought before a Community court against a Commission decision imposing a fine, periodic penalty payment or other penalty under the EC Treaty or Euratom Treaty and until such time as all legal remedies have been exhausted, the accounting officer shall provisionally collect the amounts concerned from the debtor or request him to provide a financial guarantee. The guarantee requested shall be independent of the obligation to pay the fine, periodic penalty payment or other penalty and shall be enforceable upon first call. It shall cover the claim as to principal and the interest due as specified in Article 86(5).
2. After all legal remedies have been exhausted, the provisionally collected amounts and the interest they have yielded shall be entered into the budget or repaid to the debtor. In the event of a financial guarantee, the latter shall be enforced or released.

CHAPTER 6
EXPENDITURE OPERATIONS

FR *Article 75*

1. Every item of expenditure shall be committed, validated, authorised and paid.
2. Except in the case of appropriations which can be implemented without a basic act in accordance with Article 49(6)(e), the commitment of the expenditure shall be preceded by a financing decision adopted by the institution or the authorities to which powers have been delegated by the institution.

IR *Article 90*

Financing decision
(Article 75 of the Financial Regulation)

1. The financing decision shall set out the essential elements of an action involving expenditure from the budget.
2. For grants, the decision adopting the annual work programme referred to in Article 110 of the Financial Regulation shall be considered to be

the financing decision within the meaning of Article 75 of the Financial Regulation, provided that it constitutes a sufficiently detailed framework.

As regards procurement, where the implementation of the corresponding appropriations is provided for by an annual work programme constituting a sufficiently detailed framework, this work programme shall also be considered to be the financing decision for the procurement contracts involved.

3. In order to be considered a sufficiently detailed framework, the work programme adopted by the Commission shall set out the following.

(a) For grants:

- (i) the reference to the basic act and the budgetary line;
- (ii) the priorities of the year, the objectives to be fulfilled and the foreseen results with the appropriations authorised for the financial year;
- (iii) the essential selection and award criteria to be used to select the proposals;
- (iv) the maximum possible rate of co-financing and if different rates are envisaged the criteria to be followed for each rate;
- (v) the timetable and the indicative amount of the calls for proposals.

(b) For procurement:

- (i) the global budgetary envelope reserved for the procurements during the year;
- (ii) the indicative number and type of contracts envisaged and if possible their subject in generic terms;
- (iii) the indicative time frame for launching the procurement procedures.

If the annual work programme does not provide this detailed framework for one or more actions, it must be modified accordingly or a specific financing decision must be adopted containing the information referred to in points (a) and (b) of the first subparagraph for the actions concerned.

4. Without prejudice to any specific provision of a basic act, any substantial change in a financing decision already adopted shall follow the same procedure as the initial decision.

SECTION 1

COMMITMENT OF EXPENDITURE

FR Article 76

1. The budgetary commitment is the operation reserving the appropriation necessary to cover subsequent payments to honour a legal commitment.

The legal commitment is the act whereby the authorising officer enters into or establishes an obligation which results in a charge.

The budgetary commitment and the legal commitment shall be adopted by the same authorising officer, save in duly substantiated cases as provided for in the implementing rules.

2. The budgetary commitment is individual when the beneficiary and the amount of the expenditure are known.

The budgetary commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.

The budgetary commitment is provisional when it is intended to cover the expenditure referred to in Article 150 or routine administrative expenditure and either the amount or the final beneficiaries are not definitively known.

3. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the basic act so provides and for administrative expenditure. Where the budgetary commitment is thus divided into annual instalments, the legal commitment shall stipulate this, except in the case of expenditure on staff.

IR Article 91

Global and provisional commitments (Article 76(2) 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 legal commitments, or by the conclusion of one or more legal commitments.

Financing agreements in the field of financial assistance and budgetary support which constitute legal commitments may give rise to payments without the conclusion of other legal commitments.

2. The provisional budget commitment shall be implemented either by the conclusion of one or more legal commitments giving rise to an entitlement to subsequent payments or, in cases relating to expenditure on staff management or on communications activities engaged in by the institutions for the coverage of Community events, directly by payments.

Article 92

Adoption of a global commitment

(Article 76 of the Financial Regulation)

1. A global commitment shall be made on the basis of a financing decision.

The global commitment 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 within the meaning of Article 166, at the earliest after that programme has been adopted.

2. Where the global commitment is implemented by the conclusion of a financing agreement, the second subparagraph of paragraph 1 shall not apply.

Article 94

Single signature

(Article 76 of the Financial Regulation)

1. The rule that there be a single signatory for the budget commitment and the corresponding legal commitment may be departed from 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 institution's decision constitutes the legal commitment;
- (d) where the global commitment is implemented by a number of legal commitments, for which different authorising officers are responsible;
- (e) where, in connection with imprest accounts available for external action, legal commitments must be signed by members of staff of the local units referred to in Article 254 on the instructions of the

authorising officer responsible, who remains, however, fully responsible for the underlying transaction;

(f) where an institution has delegated authorising officer powers to the director of an interinstitutional European office pursuant to Article 174a(1) of the Financial Regulation.

2. If the authorising officer responsible who signed the budget commitment is not available and remains unavailable for a period incompatible with the time limits for concluding the legal commitment, that legal commitment shall be concluded by the person designated under the deputation rules adopted by each institution, provided that that person has the status of authorising officer in accordance with Article 59(2) of the Financial Regulation.

Article 96

Administrative expenditure covered by provisional commitments (Article 76 of the Financial Regulation)

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

- (a) expenditure on staff, whether or not covered by the Staff Regulations, on other human resources and pensions and on the remuneration of experts;
- (b) expenditure relating to Members of the institution;
- (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, including interest;
- (r) work equipment;
- (s) water, gas and electricity;
- (t) periodical publications on paper or in electronic versions.

FR *Article 77*

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budgetary commitment before entering into a legal obligation with third parties.
2. Subject to the special provisions of Title IV of Part Two, global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year n+1.

Subject to Article 76(3) and Article 179(2), individual legal commitments relating to individual or provisional budgetary commitments shall be concluded by 31 December of year n.

At the end of the periods referred to in the first and second subparagraphs, the unused balance of these budgetary commitments shall be decommitted by the authorising officer responsible.

The amount of each individual legal commitment adopted following a global commitment shall, prior to signature, be registered by the authorising officer responsible in the budgetary accounts and booked to the global commitment.

3. The legal commitments entered into for actions extending over more than one financial year and the corresponding budgetary commitments shall, save in the case of staff expenditure, have a final date for implementation set in compliance with the principle of sound financial management.

Any parts of such commitments which have not been executed six months after that date shall be decommitted in accordance with Article 11.

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 81 has been made in a period of three years following the signing of the legal commitment shall be decommitted.

IR Article 95

Registration of individual legal commitments

(Article 77 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.

FR Article 78

1. When adopting a budgetary commitment, the authorising officer responsible shall ensure that:
 - (a) the expenditure has been charged to the correct item in the budget;
 - (b) the appropriations are available;
 - (c) the expenditure conforms to the provisions of the Treaties, of the budget, of this Regulation, of the implementing rules and of all acts adopted in accordance with the Treaties and Regulations;
 - (d) the principle of sound financial management is complied with.
2. When registering a legal commitment, the authorising officer shall ensure that:
 - (a) the commitment is covered by the corresponding budgetary commitment;
 - (b) the expenditure is regular and conforms to the provisions of the Treaties, of the budget, of this Regulation, of the implementing rules and of all acts adopted in accordance with the Treaties and the Regulations;
 - (c) the principle of sound financial management is respected.

IR *Nihil*

SECTION 2

VALIDATION OF EXPENDITURE

FR Article 79

Validation of expenditure is the act whereby the authorising officer responsible:

- (a) verifies the existence of the creditor's entitlement;
- (b) determines or verifies the reality and the amount of the claim;
- (c) verifies the conditions in which payment is due.

IR Article 97

Validation and 'passing for payment'

(Article 79 of the Financial Regulation)

1. Validation of any expenditure shall be based on supporting documents within the meaning of Article 104 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 validating the expenditure.
3. The validation decision shall be expressed by the signing of a 'passed for payment' voucher by the authorising officer responsible or by an official or other servant technically competent, empowered by formal decision of the responsible authorising officer. Such empowerment decisions shall be kept for future reference.

Article 98

Passing for payment of procurement contracts

(Article 79 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 the invoice received, 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) of the first paragraph shall certify that the services provided for in the contract have been properly provided, or that the supplies provided for in the contract have been properly delivered, or that the work provided for 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. Those two certificates shall count as the 'certified correct' endorsement.

Article 99

Passing for payment of grants

(Article 79 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, empowered by the authorising officer responsible; by such endorsement, he certifies 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 100

Passing for payment of staff expenditure

(Article 79 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, whenever such change occurs, any change 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 such as staff paid on an hourly or daily basis: a statement signed by the authorised member of staff showing the days and hours worked;
- (c) in respect of overtime: a statement signed by the authorised member of staff 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 member of staff 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 101

Material form of 'passed for payment'

(Article 79 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

or of a technically competent member of staff, empowered by the authorising officer responsible in accordance with Article 97. In a computerised system, 'passed for payment' shall take the form of an electronically secured validation by the authorising officer responsible or by a technically competent member of staff, empowered by the authorising officer responsible.

SECTION 3

AUTHORISATION OF EXPENDITURE

FR Article 80

Authorisation of expenditure is the act whereby the authorising officer responsible, having verified that the appropriations are available and by issuing a payment order, instructs the accounting officer to pay an amount of expenditure which he/she has validated.

Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, and subject to his risk analysis, the authorising officer may order the application of a direct debit system.

IR Article 102

Checks on payments by the authorising officer

(Article 80 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', that the particulars of the payee are correct and that 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 103

Mandatory details on payment orders and transmission to the accounting officer

(Article 80 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 items in the inventory in accordance with Article 222.
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

FR *Article 81*

1. Payment shall be made on production of proof that the relevant action is in accordance with the provisions of the basic act or the contract and shall cover one or more of the following operations:
 - (a) payment of the entire amount due;
 - (b) payment of the amount due in any of the following ways:
 - (i) pre-financing, which may be divided into a number of payments,
 - (ii) one or more interim payments,
 - (iii) payment of the balance of the amounts due.
2. A distinction shall be made in the accounts between the different types of payment referred to in paragraph 1 at the time they are made.

Supporting documents*(Article 81 of the Financial Regulation)*

1. Pre-financing, including cases where it is split into a number of payments, shall be paid either on the basis of the contract, the decision, 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, decision or agreement in question. If a date of payment for pre-financing is determined in those instruments, payment of the due amount shall not be dependent upon further demand.

Interim payments and payments of balances shall be based on supporting documents which make it possible to check that the action financed has been carried out in accordance with the basic act or the decision in favour of the beneficiary, or in accordance with the terms of the contract or agreement concluded with the beneficiary.

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 shall constitute supporting documents for the purposes of paragraph 1.
3. The supporting documents shall be kept by the authorising officer responsible in accordance with Articles 48 and 49.

*Article 105***Booking of pre-financing and interim payments***(Article 81 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.

FR Article 82

Payment of expenditure shall be made by the accounting officer within the limits of the funds available.

IR *Nihil*

SECTION 5

TIME LIMITS FOR EXPENDITURE OPERATIONS

FR Article 83

The validation, authorisation and payment of expenditure must be completed within the time limits laid down in the implementing rules, which shall also specify the circumstances in which creditors paid late are entitled to receive default interest charged to the line from which the principal was paid.

IR Article 106

Payment time limits and default interest

(Article 83 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.

The payment request is not admissible if at least one essential requirement is not met.

Where the payment request is not admissible, the authorising officer shall inform the contractor or beneficiary within thirty calendar days from the date on which the payment request was initially received. That information shall include a description of all deficiencies.

2. The payment period referred to in paragraph 1 shall be thirty calendar days for payments relating to service or supply contracts, save where the contract provides otherwise.
3. For contracts and grant agreements under which payment depends on the approval of a report or a certificate, the time limit for the purposes

of the payment periods referred to in paragraphs 1 and 2 shall not begin to run until the report or certificate in question has been approved. The beneficiary shall be informed without delay.

The time allowed for approval may not exceed:

- (a) twenty calendar days for straightforward contracts relating to the supply of goods and services;
- (b) forty-five calendar days for other contracts and grant agreements;
- (c) sixty calendar days for contracts and grant agreements involving technical services or actions which are particularly complex to evaluate.

In any case, the contractor or beneficiary shall be informed in advance of the possibility that payments might be delayed for the purpose of approval of a report.

The authorising officer responsible shall inform the beneficiary by means of a formal document of any suspension of the period allowed for approval of the report or certificate.

The authorising officer responsible may decide that a single time limit for the approval of the report or the certificate and payment shall apply. This single time limit cannot exceed the aggregated maximum applicable periods for approval of the report or certificate and for payment.

4. The authorising officer responsible may suspend the time limit for payment by informing creditors, at any time during the period referred to 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 time limit for payment 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 contractor or beneficiary in question as soon as possible and set out the reasons for the suspension.

Time for the purposes of the remainder of the payment period shall begin to run again from the date on which the properly formulated payment request is first registered.

5. On expiry of the time limits laid down in paragraphs 1, 2 and 3, the creditor shall be entitled to interest in accordance with the following provisions:
 - (a) the interest rates shall be those referred to in the first subparagraph of Article 86(2);
 - (b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment.

By way of exception, when the interest calculated in accordance with the provisions of the first subparagraph is lower than or equal to EUR 200, it shall be paid to the creditor only upon a demand submitted within two months of receiving late payment.

The first and the second subparagraphs shall not apply to Member States.

6. Each institution shall submit to the budgetary authority a report on the compliance with the time limits and on the suspension of the time limits laid down in paragraphs 1 to 5. The report of the Commission shall be annexed to the summary of the annual activity reports referred to in Article 60(7) of the Financial Regulation.

CHAPTER 7

IT SYSTEMS

FR Article 84

Where revenue and expenditure operations are managed by means of computer systems, documents may be signed by a computerised or electronic procedure.

IR Article 107

Description of IT systems (Article 84 of the Financial Regulation)

Where computer systems and subsystems are used to process budget implementation operations, a full and up-to-date 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 108

Periodical save (Article 84 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

FR Article 85

Each institution shall establish an internal auditing function which must be performed in compliance with the relevant international standards. The internal auditor appointed by the institution shall be answerable to the latter for verifying the proper operation of budgetary implementation systems and procedures. The internal auditor may not be either authorising officer or accounting officer.

IR Article 109

Appointment of the internal auditor

(Article 85 of the Financial Regulation)

1. Each institution shall appoint its internal auditor in accordance with arrangements adapted to its specific features and requirements. The institution shall inform the budgetary authority of the appointment of the internal auditor.
2. Each institution shall determine, in accordance with its specific features and its requirements, the scope of the mission of the internal auditor and shall lay down in detail the objectives and procedures for the exercise of the internal audit function with due respect for international internal audit standards.
3. The institution may appoint as internal auditor, by virtue of their particular competence, an official or other servant covered by the Staff Regulations chosen from nationals of the Member States.
4. If two or more institutions appoint the same internal auditor they shall make the necessary arrangements for him to be declared liable for his actions as laid down in Article 114.
5. The institution shall inform the budgetary authority when the duties of the internal auditor are terminated.

FR Article 86

1. The internal auditor shall advise his/her institution on dealing with risks, by issuing independent opinions on the quality of management and control systems and by issuing recommendations for improving the conditions of implementation of operations and promoting sound financial management.

He/She shall be responsible in particular:

- (a) for assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them;
 - (b) for assessing the efficiency and effectiveness of the internal control and audit systems applicable to every budgetary implementation operation.
2. The internal auditor shall perform his/her duties on all the institution's activities and departments. He/She shall enjoy full and unlimited access to all information required to perform his duties, if necessary on the spot, including in the Member States and in third countries.
 3. The internal auditor shall report to the institution on his/her findings and recommendations. The institution shall ensure that action is taken on recommendations resulting from audits. The internal auditor shall also submit to the institution an annual internal audit report indicating the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.
 4. Each year the institution shall forward a report to the discharge authority summarising the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.

IR Article 110

Operating resources (Article 86 of the Financial Regulation)

The institution 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.

Article 111

Work programme

(Article 86 of the Financial Regulation)

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

Article 112

Reports of the internal auditor

(Article 86 of the Financial Regulation)

1. The internal auditor shall submit to the institution the annual internal audit report provided for in Article 86(3) 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.

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

2. Each institution shall consider whether the recommendations made in the reports of its internal auditor are suitable for an exchange of best practices with the other institutions.
3. The internal auditor shall, during the elaboration of his report, particularly focus on the overall compliance with the principle of sound financial management and shall ensure that appropriate measures have been taken in order to steadily improve and enhance its application.

FR *Article 87*

Special rules applicable to the internal auditor shall be laid down by the institution and shall be such as to guarantee that he/she is totally independent in the performance of his/her duties and to establish his responsibility.

If the internal auditor is a member of staff, he shall assume responsibility as laid down in the Staff Regulations and spelt out in the implementing rules.

Independence*(Article 87 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 Financial Regulation.

*Article 114***Liability of the internal auditor***(Article 87 of the Financial Regulation)*

The institution alone, 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 institution shall take a reasoned decision to open an investigation. That decision shall be communicated to the interested party. The institution 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 shall 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 institution shall adopt either a reasoned decision terminating the proceedings or a reasoned decision in accordance with Articles 22 and 86 of, and Annex IX to, 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 bring an action in respect of such decisions before the Court of Justice of the European Communities, as provided for in the Staff Regulations.

*Article 115***Action before the Court of Justice of the European Communities***(Article 87 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 in respect of any act relating to the performance of his duties as internal auditor. Such an action must be lodged within three months running from the calendar day on which the act in question is notified.

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

TITLE V

PROCUREMENT

CHAPTER 1

GENERAL PROVISIONS

SECTION 1

SCOPE AND AWARD PRINCIPLES

FR *Article 88*

1. Public contracts are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities within the meaning of Articles 104 and 167, in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.

These contracts comprise:

- (a) contracts for the purchase or rental of a building;
 - (b) supply contracts;
 - (c) works contracts;
 - (d) service contracts.
2. Framework contracts are contracts concluded between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. They shall be governed by the provisions of this Title concerning the award procedure, including advertising.
 3. This Title does not relate to grants, without prejudice to Articles 93 to 96.

Definitions and scope

(Article 88 of the Financial Regulation)

1. Building contracts cover the purchase, long lease, usufruct, 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. A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract.
3. Works contracts cover either the execution, or both the execution and design, of works or a work related to one of the activities referred to in Annex I to Directive 2004/18/EC of the European Parliament and of the Council ⁽¹⁾ 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. Those services are listed in Annexes IIA and IIB to Directive 2004/18/EC.
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.

A contract having as its object services and involving works that are only incidental in relation to the principal object of the contract shall be considered a service contract.

A contract having as its object services covered by Annex IIA to Directive 2004/18/EC and services covered by Annex IIB thereto shall be considered as covered by Annex IIA if the value of the services listed in that Annex exceeds that of the services listed in Annex IIB.

- 5a. The description of the various types of contract is based on the reference nomenclature constituted by the common procurement vocabulary (CPV) within the meaning of Regulation (EC) No 2195/2002 of the European Parliament and of the Council ⁽²⁾.

⁽¹⁾ OJ L 134, 30.4.2004, p. 114.

⁽²⁾ OJ L 340, 16.12.2002, p. 1.

In the event of differences between the CPV and the statistical classification of economic activities in the European Community (NACE), listed in Annex I to Directive 2004/18/EC, or between the CPV and the Central Product Classification (CPC) (provisional version), listed in Annex II to that Directive, the NACE nomenclature or the CPC nomenclature respectively shall take precedence.

6. The terms 'contractor', 'supplier' and 'service provider' refer to any natural or legal person or public entity or consortium of such persons and/or bodies which offers to execute works, supply products and provide services respectively. The terms 'economic operator' covers 'contractors', 'suppliers' and 'service providers'. 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 procedure, a competitive dialogue, or a negotiated procedure are referred to as 'candidates'.

Consortia of economic operators shall be authorised to submit tenders or to be candidates. Contracting authorities may not demand that consortia must have a given legal form in order to be allowed to submit a tender or request to take part, but the consortium selected may be required to adopt a given legal form after it has been awarded the contract if this change is necessary for proper performance of the contract.

7. Departments of the Community institutions shall be considered to be contracting authorities, save where they conclude between themselves administrative arrangements for the provision of services, the supply of products or the execution of works.

Article 117

Framework contracts and specific contracts

(Article 88 of the Financial Regulation)

1. Where a framework contract is to be concluded with several economic operators it shall be concluded with at least three operators provided that there is a sufficient number of economic operators who satisfy the selection criteria or a sufficient number of admissible tenders which meet the award criteria.

A framework contract with a number of economic operators may take the form of contracts which are separate but concluded in identical terms.

The term of a framework contract may not exceed four years, save in exceptional cases duly justified in particular by the subject of the framework contract.

In sectors subject to a rapid price and technological evolution, framework contracts without reopening of competition shall contain a stipulation either on a mid-term review or on a benchmarking system. After the mid-term review, if the conditions initially laid down are no longer geared to the price or technological evolution, the contracting authority may not use the framework contract concerned and shall take appropriate measures to terminate it.

2. Specific contracts based on framework contracts shall be awarded in accordance with the terms of the framework contract, only between the contracting authorities and the economic operators originally party to the framework contract.

When awarding specific contracts, the parties may not make substantial amendments to the terms laid down in that framework contract, in particular in the case referred to in paragraph 3.

3. Where a framework contract is concluded with a single economic operator, the specific contracts shall be awarded within the limits of the terms laid down in the framework contract.

For the award of those specific contracts, contracting authorities may consult in writing the economic operator party to the framework contract, requesting it to supplement its tender if necessary.

4. Specific contracts based on framework contracts concluded with a number of economic operators shall be awarded in accordance with the following arrangements:
 - (a) by application of the terms laid down in the framework contract without reopening competition;
 - (b) where not all the terms are laid down in the framework contract, after the parties have again competed on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, on the basis of other terms referred to in the specification for the framework contract.

For every specific contract to be awarded in accordance with the arrangements in point (b) of the first subparagraph, contracting authorities shall consult in writing the economic operators capable of performing the contract, fixing a time limit which is sufficiently long to allow tenders to be submitted. Tenders shall be submitted in writing. Contracting authorities shall award each specific contract to the tenderer who has submitted the best tender on the basis of the award criteria set out in the specification for the framework contract.

5. Only specific contracts based on framework contracts shall be preceded by a budgetary commitment.

FR Article 89

1. All public contracts financed in whole or in part by the budget shall comply with the principles of transparency, proportionality, equal treatment and non-discrimination.
2. All procurement contracts shall be put out to tender on the broadest possible base, except when use is made of the negotiated procedure referred to in Article 91(1)(d).

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

IR *Nihil*

SECTION 2 PUBLICATION

FR Article 90

1. All contracts exceeding the thresholds provided for in Article 105 or Article 167 shall be published in the *Official Journal of the European Union*.

Contract notices shall be published in advance except in the cases referred to in Article 91(2) of this Regulation, as specified in the implementing rules, and for the service contracts covered by Annex IIB to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽¹⁾.

Publication of certain information after the contract has been awarded may be dropped where it would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between them.

2. Contracts with a value below the thresholds provided for in Article 105 or Article 167 and the service contracts referred to in Annex IIB to Directive 2004/18/EC shall be advertised by appropriate means, as specified in the implementing rules.

⁽¹⁾ OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 2083/2005 (OJ L 333, 20.12.2005, p. 28).

**Advertising of contracts covered by Directive 2004/18/EC,
with the exception of contracts referred to in Annex IIB thereto
(Article 90 of the Financial Regulation)**

1. Publication for contracts with a value equal to or above the thresholds laid down in Articles 157 and 158 shall consist in a pre-information notice, a contract notice or simplified contract notice and an award notice.
2. The pre-information notice is the notice by which the contracting authorities make known, by way of indication, the estimated total value of contracts and framework 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, but excluding contracts under the negotiated procedure without prior publication of a contract notice. The pre-information notice shall be compulsory only where the estimated total value of the contracts is equal to or above the thresholds laid down in Article 157 and the contracting authority intends to make use of the possibility of shortening time limits for receipt of tenders in accordance with Article 140(4).

The pre-information notice shall be published either by the Office for Official Publications of the European Communities (OPOCE) or by the contracting authorities themselves on their buyer profile as referred to in point (2)(b) of Annex VIII to Directive 2004/18/EC.

The pre-information notice shall be sent to OPOCE or published on the buyer profile as soon as possible and in any event by no later than 31 March of each budgetary 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.

Contracting authorities which publish the pre-information notice on their buyer profile shall send to OPOCE, electronically and using the format and transmission procedures specified in point (3) of Annex VIII to Directive 2004/18/EC, a notice announcing the publication of a pre-information notice on a buyer profile.

3. The contract notice is the means by which the contracting authorities make known their intention to launch a procedure for the award of a contract or framework contract or to set up a dynamic purchasing system in accordance with Article 125a. Without prejudice to contracts concluded after a negotiated procedure as referred to in Article 126, the contract notice shall be compulsory for the following contracts: contracts with an estimated value equal to or above the thresholds laid down in points (a) and (c) of Article 158(1); research and development

contracts listed in category 8 of Annex II A to Directive 2004/18/EC with an estimated value of equal to or above the threshold laid down in point (b) of Article 158(1) of this Regulation for research and development contracts listed.

Contracting authorities which wish to award a specific contract based on a dynamic purchasing system shall make known their intention by means of a simplified contract notice.

In an open procedure, the contract notice shall specify the date, time and, where appropriate, place of the meeting of the opening committee, which shall be open to the tenderers.

Contracting authorities shall state whether or not they authorise variants and shall specify the minimum capacity levels they demand if they make use of the possibility provided for in the second subparagraph of Article 135(2). They shall set out the selection criteria referred to in Article 135 that they intend to use, the minimum number of candidates they plan to invite to tender and, where appropriate, the maximum number, and the objective and non-discriminatory criteria they intend to apply in order to limit the number, in accordance with the second subparagraph of Article 123(1).

Where there is unrestricted, direct and full access to the call for tenders by electronic means, in particular in the dynamic purchasing systems referred to in Article 125a, the Internet address at which these documents can be consulted shall appear in the contract notice.

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

Where appropriate, contracting authorities shall specify in the contract notice that the procurement procedure is an interinstitutional procurement procedure. In such cases, the contract notice shall indicate the institutions, executive agencies or bodies referred to in Article 185 of the Financial Regulation which are involved in the procurement procedure, the institution responsible for the procurement procedure and the global volume of the contracts for all those institutions, executive agencies or bodies.

4. The award notice shall give the outcome of the procedure for the award of contracts, framework contracts or contracts based on a dynamic purchasing system. In the case of contracts with a value equal to or above the thresholds laid down in Article 158, the award notice shall be compulsory. It shall not be compulsory for specific contracts based on framework contracts.

The award notice shall be sent to the Publications Office no later than forty-eight calendar days from the date on which the contract or framework contract is signed. However, notices relating to contracts based on a dynamic purchasing system may be grouped together on a quarterly basis. In such cases, they shall be sent to the Publications Office no later than forty-eight days after the end of each quarter.

Contracting authorities which have held a design contest shall send OPOCE a notice of the results of the contest.

The award notice shall also be sent to the Publications Office in the case of a contract or a framework contract with a value equal to or above the thresholds laid down in Article 158 and awarded pursuant to a negotiated procedure without prior publication of a contract notice, in sufficient time for the publication to occur before the signature of the contract, in accordance with the terms and conditions set out in Article 158a(1).

Information relating to the value and contractors of specific contracts based on a framework contract during a financial year shall be published on the Internet website of the contracting authority no later than 31 March following the end of that financial year if, as a result of the conclusion of a specific contract or of the aggregate volume of the specific contracts, the thresholds referred to in Article 158 are exceeded.

5. The notices shall be drawn up in accordance with the standard forms adopted by the Commission pursuant to Directive 2004/18/EC.

Article 119

Advertising of contracts not covered by Directive 2004/18/EC, and of the contracts referred to in Annex IIB thereto (Article 90 of the Financial Regulation)

1. Contracts with a value below the thresholds laid down in Article 158 and the service contracts referred to in Annex IIB to Directive 2004/18/EC shall be advertised by appropriate means in order to ensure competitive tendering and impartiality of the procurement procedure. Such advertising shall involve:
 - (a) if no contract notice as referred to in Article 118(3) has been published, notice of a call for expressions of interest for contracts covering a similar subject with a value greater than the amount referred to in Article 128(1);

- (b) the annual publication of a list of contractors, specifying the subject and the value of the contract awarded, for contracts with a value greater than EUR 25 000.
2. A list of contractors to whom building contracts and contracts declared secret in accordance with Article 126(1)(j) are awarded shall be published only once a year, with an indication of the subject and value of the contracts awarded. That list shall be sent to the budgetary authority. In the case of the Commission, it shall be annexed to the summary of the annual activity reports referred to in Article 60(7) of the Financial Regulation.
 3. Information relating to contracts with a value greater than the amount referred to in Article 128(1) 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 for the other contracts shall be on the Internet site of the institutions; *ex post* publication shall take place by no later than 31 March of the following financial year. Publication may also be in the *Official Journal of the European Communities*.

Article 120

Publication of notices

(Article 90 of the Financial Regulation)

1. The Office for Official Publications of the European Communities shall publish the notices referred to in Articles 118 and 119 in the *Official Journal of the European Communities* no later than twelve calendar days after their dispatch.

The period specified in the first subparagraph shall be reduced to five calendar days in the case of the fast-track procedures referred to in Article 142.

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

Article 121

Other forms of advertising

(Article 90 of the Financial Regulation)

In addition to the advertising provided for in Articles 118, 119 and 120, contracts may 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 120, 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 contract notice, if one has been published.

SECTION 3

PROCUREMENT PROCEDURES

FR Article 91

1. Procurement procedures shall take one of the following forms:

- (a) the open procedure;
- (b) the restricted procedure;
- (c) contests;
- (d) the negotiated procedure;
- (e) the competitive dialogue.

Where a public contract or a framework contract is of interest to two or more institutions, executive agencies or bodies referred to in Article 185, and whenever there is a possibility for realising efficiency gains, the contracting authorities concerned shall seek to carry out the procurement procedure on an interinstitutional basis.

Where a public contract or framework contract is necessary for the implementation of a joint action between one institution and a contracting authority from a Member State, the procurement procedure may be carried out jointly by the institution and this contracting authority, as specified in the implementing rules.

- 2. For contracts where the value exceeds the thresholds provided for in Article 105 or Article 167, use of the negotiated procedure shall be authorised only in the cases provided for in the implementing rules.
- 3. The thresholds below which the contracting authority may either use a negotiated procedure or, by way of derogation from the first subparagraph of Article 88(1), simply pay costs against invoices shall be determined in the implementing rules.
- 4. The implementing rules shall define the procurement procedure, referred to in paragraph 1, applicable to service contracts covered by Annex IIB to Directive 2004/18/EC and to contracts which are declared

to be secret, whose performance must be accompanied by special security measures, or when the protection of essential interests of the Communities or the European Union so requires.

IR *Article 122*

Types of procurement procedure

(Article 91 of the 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 tenders are open where all interested economic operators may submit a tender. That applies also in the case of the dynamic purchasing systems referred to in Article 125a.

Calls for tenders are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria referred to in Article 135 and invited simultaneously and in writing by the contracting authorities may submit a tender or a solution under the competitive dialogue procedure referred to in Article 125b.

The selection phase may be repeated for each individual contract, also in the case of a competitive dialogue, or may involve drawing up a list of potential candidates under the restricted procedure referred to in Article 128.

3. In a negotiated procedure, the contracting authorities shall consult the candidates of their choice who satisfy the selection criteria laid down in Article 135, 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 127, 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 competitive tender with or without the award of prizes.

Number of candidates in restricted or negotiated procedures

(Article 91 of the Financial Regulation)

1. In a restricted procedure, including the procedure referred to in Article 128, 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 such cases, the range and criteria shall be indicated in the contract notice or the call for expressions of interest referred to in Articles 118 and 119.

In any event, the number of candidates invited to tender must be sufficient to ensure genuine competition.

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

The number of candidates invited to tender must be sufficient to ensure genuine competition.

The first and second subparagraphs shall not apply to the following:

- (a) contracts involving very small amounts, as referred to in Article 129(3);
 - (b) contracts for legal services within the meaning of Annex IIB of Directive 2004/18/EC;
 - (c) contracts declared secret, as referred to in Article 126(1)(j).
3. Where the number of candidates meeting the selection criteria and the minimum levels is below the minimum number specified in paragraphs 1 and 2, the contracting authority may continue the procedure by inviting the candidate or candidates with the required capacities. However, the contracting authority may not include other economic operators who did not ask to take part, or candidates who do not have the required capacities.

Article 124

Arrangements for negotiated procedures

(Article 91 of the 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 118 or in the specifications and in any additional documents and in order to find the tender offering best value for money.

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

Where contracting authorities may, in accordance with Article 127, award contracts using a negotiated procedure after publishing a contract notice, they may arrange for the negotiated procedure to be conducted in stages so as to reduce the number of tenders to be negotiated, while applying the award criteria set out in the contract notice or specification. The contract notice or specification shall state that use is to be made of this possibility.

Article 125

Contests

(Article 91 of the 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 sufficient 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 the members of the selection board 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.

Candidates may be asked by the selection board to answer the questions recorded in the report in order to clarify a project. A full report of the resulting dialogue shall be drawn up.

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 125a

Dynamic purchasing system (Article 91 of the Financial Regulation)

1. The dynamic purchasing system, as referred to in Articles 1(6) and 33 of Directive 2004/18/EC, is a completely electronic process for making commonly used purchases, which is open throughout its duration to any economic operator who satisfies the selection criteria and has submitted an indicative tender that complies with the specification and any additional documents. The indicative tenders may be improved at any time provided that they continue to comply with the specification.
2. For the purposes of setting up the dynamic purchasing system, contracting authorities shall publish a contract notice stating that a dynamic purchasing system is being used and containing a reference to the Internet address offering unrestricted, direct and full access to the specification and to any additional documents from the time of publication of the notice up to the expiry of the system.

They shall indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, and all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

3. Contracting authorities shall give any economic operator, throughout the duration of the dynamic purchasing system, the possibility of submitting an indicative tender with a view to being admitted to the system under the conditions referred to in paragraph 1. They shall complete evaluation within a maximum of fifteen days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform tenderers at the earliest possible opportunity that they have been admitted to the dynamic purchasing system or that their tender has been rejected.

4. Each specific contract shall be the subject of an invitation to tender. Before issuing this invitation, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, within a time limit that may not be less than fifteen days from the date on which the simplified notice is sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

Contracting authorities shall invite all tenderers admitted to the system to submit a tender within a reasonable time. They shall award the contract to the tenderer who has submitted the tender offering best value for money on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation to tender.

5. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

Contracting authorities may not resort to this system to prevent, restrict or distort competition.

No charges may be billed to the interested economic operators or to parties to the system.

Article 125b

Competitive dialogue

(Article 91 of the Financial Regulation)

1. In the case of particularly complex contracts, where the contracting authority considers that direct use of the open procedure or the existing arrangements governing the restricted procedure will not allow the contract to be awarded to the tender offering best value for money, it may make use of the competitive dialogue referred to in Article 29 of Directive 2004/18/EC.

A contract is considered to be ‘particularly complex’ where the contracting authority is not objectively able to define the technical means capable of satisfying the needs or objectives or able to specify the legal or financial make-up of the project.

2. Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document.
3. Contracting authorities shall open a dialogue with the candidates satisfying the selection criteria set out in Article 135 in order to identify and define the means best suited to satisfying their needs.

During the dialogue, contracting authorities shall ensure equality of treatment among all tenderers and confidentiality of the solutions proposed or other information communicated by a candidate participating in the dialogue unless he/she agrees to its disclosure.

Contracting authorities may provide for the procedure to take place in successive stages in order to reduce the number of solutions to be discussed during the dialogue stage by applying the award criteria in the contract notice or the descriptive document if provision is made for this possibility in the contract notice or the descriptive document.

4. After informing the participants that the dialogue is concluded, contracting authorities shall ask them to submit their final tenders on the basis of the solution or solutions presented and specified during the dialogue. These tenders shall contain all the elements required and necessary for the performance of the project.

At the request of the contracting authority, these tenders may be clarified, specified and fine-tuned provided this does not have the effect of changing basic aspects of the tender or of the invitation to tender, variations in which could distort competition or have a discriminatory effect.

At the request of the contracting authority, the tenderer identified as having submitted the tender offering best value for money may be asked to clarify aspects of the tender or confirm commitments contained in the tender provided this does not have the effect of modifying substantial aspects of the tender or of the call for tenders and does not risk distorting competition or causing discrimination.

5. The contracting authorities may specify prices or payments to the participants in the dialogue.

Article 125c

Joint procurement procedure with a Member State (Article 91 of the Financial Regulation)

In the case of a joint procurement procedure between one institution and the contracting authority from one or more Member States, the procedural provisions applicable to the institution shall apply.

Where the share pertaining to or managed by the contracting authority of a Member State in the total estimated value of the contract is equal to or above 50 %, or in other duly justified cases, the institution may decide that the procedural rules applicable to the contracting authority from a Member State shall apply, provided that they can be considered as equivalent to those of the institution.

The institution and the contracting authority from a Member State concerned by the joint procurement procedure shall agree in particular upon the practical modalities for the evaluation of the requests for participation or the tenders, the award of the contract, the law applicable to the contract and the competent court for hearing disputes.

Article 126

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

1. Contracting authorities may use the negotiated procedure without prior publication of a contract notice, whatever the estimated value of the contract, in the following cases:
 - (a) where no tenders, or no suitable tenders, or no applications 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 call for tenders referred to in Article 130 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, it is impossible to comply with the time limits set for the other procedures and laid down in Articles 140, 141 and 142;
 - (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 envisaged or in the initial contract but which, through unforeseen circumstances, have become necessary for the performance of the services or works, subject to the conditions set out in paragraph 2;
 - (f) for new services or works consisting in the repetition of similar services or works entrusted to the economic operator awarded the initial contract by the same contracting authority, provided that these services or works conform to a basic project and that this project was the subject of an initial contract awarded under the open or restricted procedure, subject to the conditions set out in paragraph 3;

(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 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,
- (iii) in respect of supplies quoted and purchased on a commodity market,
- (iv) in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;

(h) for building contracts, after prospecting the local market;

(i) for contracts for legal services within the meaning of Annex IIB to Directive 2004/18/EC, provided that such contracts are appropriately advertised;

(j) for contracts declared to be secret by the institution or by the authorities delegated by the institution, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the Communities or of the Union so requires.

Contracting authorities may also use the negotiated procedure without prior publication of a contract notice in the case of contracts with a value less than or equal to EUR 60 000.

2. For the additional services and works referred to in point (e) of paragraph 1, 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.

3. In the cases referred to in point (f) of the first subparagraph of paragraph 1, the option of using the negotiated procedure shall be pointed out as soon as the first operation is put out to competitive tender, and the total estimated amount for the subsequent services or work shall be taken into consideration in calculating the thresholds referred to in Article 158. That procedure may be used only during the three years following conclusion of the original contract.

Article 127

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

1. Contracting authorities may use the negotiated procedure after having published a contract notice, whatever the estimated value of the contract, in the following cases:
 - (a) where tenders which are irregular or unacceptable, by reference in particular to the selection or award criteria, are submitted in response to an open or restricted procedure, or a competitive dialogue, which has been completed, provided that the original terms of the contract as specified in the call for tenders referred to in Article 130 are not substantially altered, without prejudice to the application of paragraph 2;
 - (b) in exceptional cases involving work, supplies or services where the nature or the risks 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 in accordance with 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 IIB to Directive 2004/18/EC, subject to points (i) and (j) of the first subparagraph of Article 126(1) of this Regulation and the second subparagraph thereof;
 - (f) for research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;
 - (g) for service contracts for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time.
2. In the cases referred to in point (a) of paragraph 1, contracting authorities may refrain from publishing a contract notice if they include in the negotiated procedure all the tenderers and only the tenderers satisfying the selection criteria who, during the previous procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

Article 128

Restricted procedure involving a call for expressions of interest (Article 91 of the Financial Regulation)

1. A call for expressions of interest shall constitute a means of pre-selecting candidates who will be invited to submit tenders in response to future restricted invitations to tender for contracts with a value of more than EUR 60 000, subject to Articles 126 and 127.
2. The list drawn up following a call for expressions of interest shall be valid for no more than three years from the date on which the notice referred to in point (a) of Article 119(1) 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 that period.

3. Where 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 129

Low-value contracts

(Article 91 of the Financial Regulation)

1. A negotiated procedure with consultation of at least five candidates may be used for contracts with a value less than or equal to EUR 60 000.

If, following consultation of the candidates, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

2. For contracts with a value less than or equal to EUR 25 000, the procedure referred to in paragraph 1 with consultation of at least three candidates may be used.
3. Contracts with a value less than or equal to EUR 5 000 may be awarded on the basis of a single tender.
4. Payments of amounts less than or equal to EUR 500 in respect of items of expenditure may consist simply in payment against invoices, without prior acceptance of a tender.

Article 155

Separate contracts and contracts with lots

(Articles 91 and 105 of the 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 that purpose.

Whenever appropriate, technically feasible, and cost-efficient, contracts with a value equal to or greater than the thresholds laid down in Article 158 shall be awarded at the same time in the form of separate lots.

2. Where the subject of a supply, 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 to or exceeds the thresholds laid down in Article 158, Article 90(1) and Article 91(1) and (2) of the 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 or supply contracts, or less than EUR 1 million in the case of works contracts, provided that the aggregate amount of those 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 standard supplies may give rise to simultaneous contracts in separate lots, the estimated value of all those lots shall be taken as the basis for determining the applicable threshold.
4. Where a contract is to be awarded in the form of separate lots, tenders shall be evaluated separately for each lot. If several lots are awarded to the same tenderer, a single contract covering those lots may be signed.

FR Article 92

The documents relating to the call for tenders shall give a full, clear and precise description of the subject of the contract and specify the exclusion, selection and award criteria applicable to the contract.

IR Article 130

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

1. The documents relating to the invitation to tender shall include at least:
 - (a) the invitation to tender or to negotiate or to take part in the dialogue under the procedure referred to in Article 125b;
 - (b) the attached specification or, in the case of a competitive dialogue as referred to in Article 125b, a document describing the needs and requirements of the contracting authority, or the reference for the Internet address at which such specification or document can be consulted;
 - (c) the model contract.

The documents relating to the invitation to tender shall contain a reference to the advertising measures taken under Articles 118 to 121.

2. The invitation to tender or to negotiate or to take part in the dialogue shall at least:
 - (a) specify the rules governing the lodging and presentation of tenders, including in particular the closing date and time for submission, any requirement as to the use of a standard reply form, the documents to be attached, including those in evidence of financial, economic, technical and professional capacity referred to in Article 135 if they are not specified in the contract notice, and the address to which they must be sent;

- (b) state that submission of a tender implies acceptance of the specification referred to in paragraph 1 to which the tender 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) forbid any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid down in Article 148, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit;
- (e) specify, in the case of a competitive dialogue, the date set and the address for the start of the consultation phase.

3. The specifications shall at least:

- (a) specify the exclusion and selection criteria applying to the contract, save in a competitive dialogue, in the restricted procedure and in the negotiated procedure following publication of a notice as referred to in Article 127; in such cases those criteria shall appear solely in the contract notice or the call for expressions of interest;
- (b) specify the award criteria and their relative weighting or, where appropriate, the decreasing order of importance, if this is not specified in the contract notice;
- (c) set out the technical specifications referred to in Article 131;
- (d) state the minimum requirements which variants must meet in the procedures referred to in Article 138(2) under which the contract is awarded to the tender offering best value for money, where the contracting authority has stated in the contract notice that such variants are permitted;
- (e) state that the Protocol on Privileges and Immunities or, where appropriate, the Vienna Convention on Diplomatic Relations or Consular Relations applies;
- (f) specify the evidence of access to contracts, as set out in Article 159;
- (g) specify, in the dynamic purchasing systems referred to in Article 125a, the nature of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

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 Article 98;
 - (c) state that, when the institutions are contracting authorities, Community law is the law which applies to the contract, complemented, where necessary, by national law as specified in the contract;
 - (d) specify the competent court for hearing disputes.
5. The contracting authorities may demand information from the tenderer on any part of the contract that the tenderer may intend to subcontract to third parties and on the identity of any subcontractors. In addition to the information referred to in Article 134, the contracting authority may also require the candidate or tenderer to submit information on the financial, economic, technical and professional capacities, as referred to in Articles 135, 136 and 137, of the envisaged subcontractor, in particular when subcontracting represents a significant part of the contract.

Article 131

Technical specifications

(Article 92 of the 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.

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.

2. The characteristics referred to in paragraph 1 shall include:
 - (a) the quality levels;
 - (b) environmental performance;
 - (c) wherever possible, the accessibility criteria for people with disabilities or the design for all users;
 - (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) by 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 bodies or, failing this, their national equivalents. Every reference shall be followed by the expression 'or equivalent'; or

(b) in terms of performance or of functional requirements, which may include environmental characteristics and shall be sufficiently detailed to enable tenderers to determine the purpose of the contract and the contracting authorities to award the contract; or

(c) by a mixture of those two formulation methods.

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

An appropriate means may take the form of a technical dossier of the manufacturer or a test report from a recognised body.

5. Where the contracting authorities make use of the possibility provided for in point (b) of paragraph 3, of prescribing specifications in terms of performance or of 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 a European standards body, if those specifications relate to the necessary performance or functional requirements.

The tenderer must prove to the satisfaction of the contracting authority and by any appropriate means that the tender meets the performance or functional requirements set by the contracting authority. An appropriate means may take the form of a technical dossier of the manufacturer or a test report from a recognised body.

5a. Where contracting authorities lay down environmental characteristics in terms of performance or of functional requirements, they may use the detailed specifications, or, if necessary, parts thereof, as defined by European, multinational or national eco-labels, or by any other eco-label, provided that the following conditions are satisfied:

- (a) the specifications used are appropriate to define the characteristics of the supplies or services that are the object of the contract;
- (b) the requirements for the label are drawn up on the basis of scientific information;
- (c) the eco-labels are adopted using a procedure in which all the parties concerned, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate;
- (d) the eco-labels are accessible to all interested parties.

Contracting authorities may indicate that the products or services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents. They shall accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body.

5b. A recognised body for the purposes of paragraphs 4, 5 and 5a is a test and calibration laboratory or a certification and inspection body which complies with applicable European standards.

6. Save in exceptional cases, duly warranted by the subject of the contract, those specifications may not refer to a specific make or source, or a particular process, or to trademarks, patents, types or a specific origin or production which would have the effect of favouring or eliminating certain products or economic operators.

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 132

Price revision

(Article 92 of the 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 that is not the case, the documents relating to the invitation to tender shall lay down the conditions and/or formulas for revision of prices dur-

ing the lifetime of the contract. In such cases 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.

FR Article 93

1. Candidates or tenderers shall be excluded from participation in procurement procedures if:

- (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or Regulations;
- (b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;
- (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;
- (d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
- (e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;
- (f) they are currently subject to an administrative penalty referred to in Article 96(1).

Points (a) to (d) of the first subparagraph shall not apply in the case of purchase of supplies on particularly advantageous terms from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

2. Candidates or tenderers shall certify that they are not in one of the situations listed in paragraph 1. However, the contracting authority may refrain from requiring such certification for very low value contracts, as specified in the implementing rules.

For the purpose of the correct application of paragraph 1, the candidate or tenderer, whenever requested by the contracting authority, must:

- (a) where the candidate or tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity;
 - (b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.
3. The implementing rules shall determine the maximum period during which the situations referred to in paragraph 1 give rise to the exclusion of candidates or tenderers from participation in a procurement procedure. The maximum period shall not exceed ten years.

IR *Article 133*

Illegal activities giving rise to exclusion

(Article 93 and 114 of the Financial Regulation)

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

- (a) cases of fraud as 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 ⁽¹⁾;
- (b) cases of corruption as 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 ⁽²⁾;
- (c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council ⁽³⁾;
- (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC ⁽⁴⁾.

⁽¹⁾ OJ C 316, 27.11.1995, p. 48.

⁽²⁾ OJ C 195, 25.6.1997, p. 1.

⁽³⁾ OJ L 351, 29.12.1998, p. 1.

⁽⁴⁾ OJ L 166, 28.6.1991, p. 77.

Application of exclusion criteria and duration of exclusion

(Articles 93, 94, 95 and 96 of the Financial Regulation)

1. In order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impact on the Communities' financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express their views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 95(2) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 93(3) of the Financial Regulation.

2. The period referred to in Article 93(3) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:
 - (a) from the date of the judgment having the force of res judicata in the cases referred to in points (b) and (e) of Article 93(1) of the Financial Regulation;
 - (b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 93(1)(c) of the Financial Regulation.

That period of exclusion may be extended to ten years in the event of a repeated offence within five years of the date referred to in points (a) and (b), subject to paragraph 1.

3. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 93(1) of the Financial Regulation.

Article 134

Evidence

(Articles 93 and 94 of the Financial Regulation)

1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Article 93 or 94 of the Financial Regulation.

However, in the case of restricted procedures, competitive dialogue and negotiated procedures after publication of a contract notice, whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender, all the candidates shall provide the certificates referred to in paragraph 3.

Depending on its risk assessment, the contracting authority may refrain from requiring the declaration referred to in the first subparagraph for contracts with a value less than or equal to EUR 5 000. However, for contracts referred to in Articles 241(1), 243(1) and 245(1), the contracting authority may refrain from requiring that declaration for contracts with a value less than or equal to EUR 10 000.

2. The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph 3, confirming the declaration referred to in paragraph 1 in the following cases:

- (a) for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 158;
- (b) for contracts in the field of external actions with a value equal to or greater than the thresholds laid down in Article 241(1)(a), Article 243(1)(a) or Article 245(1)(a).

For contracts with a value less than the thresholds referred to in points (a) and (b), the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3.

3. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority

shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in the first subparagraph is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

4. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraphs 1 and 3 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.
5. Where they have doubts as to whether candidates or tenderers are in one of the situations of exclusion, contracting authorities may themselves apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.
6. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 3 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the documents are not more than one year old starting from their issuing date and that they are still valid.

In such a case, the candidate or tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

7. When requested by the contracting authority, the candidate or tenderer shall submit a declaration on honour from the intended subcontractor that he is not in one of the situations referred to in Articles 93 and 94 of the Financial Regulation.

In case of doubt on this declaration on the honour, the contracting authority shall request the evidence referred to in paragraphs 3 and 4. Paragraph 5 shall apply, where appropriate.

A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for this contract:

- (a) are subject to a conflict of interest;
- (b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;
- (c) find themselves in one of the situations of exclusion, referred to in Article 93(1), for this procurement procedure.

IR Article 133a

Application of exclusion criteria and duration of exclusion
(Articles 93, 94, 95 and 96 of the Financial Regulation)

1. In order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impact on the Communities' financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express their views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 95(2) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 93(3) of the Financial Regulation.

2. The period referred to in Article 93(3) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:
 - (a) from the date of the judgment having the force of res judicata in the cases referred to in points (b) and (e) of Article 93(1) of the Financial Regulation;
 - (b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 93(1)(c) of the Financial Regulation.

That period of exclusion may be extended to 10 years in the event of a repeated offence within five years of the date referred to in points (a) and (b), subject to paragraph 1.

3. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 93(1) of the Financial Regulation.

Article 134

Evidence

(Articles 93 and 94 of the Financial Regulation)

1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Article 93 or 94 of the Financial Regulation.

However, in the case of restricted procedures, competitive dialogue and negotiated procedures after publication of a contract notice, whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender, all the candidates shall provide the certificates referred to in paragraph 3.

Depending on its risk assessment, the contracting authority may refrain from requiring the declaration referred to in the first subparagraph for contracts with a value less than or equal to EUR 5 000. However, for contracts referred to in Articles 241(1), 243(1) and 245(1), the contracting authority may refrain from requiring that declaration for contracts with a value less than or equal to EUR 10 000.

2. The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph 3, confirming the declaration referred to in paragraph 1 in the following cases:

- (a) for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 158;
- (b) for contracts in the field of external actions with a value equal to or greater than the thresholds laid down in Article 241(1)(a), Article 243(1)(a) or Article 245(1)(a).

For contracts with a value less than the thresholds referred to in points (a) and (b), the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3.

3. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in

one of the situations described in point (a), (b) or (e) of Article 93(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (d) of Article 93(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in the first subparagraph is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

4. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraphs 1 and 3 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.
5. Where they have doubts as to whether candidates or tenderers are in one of the situations of exclusion, contracting authorities may themselves apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.
6. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 3 if such evidence has already been submitted to it for the purposes of another procurement procedure and provided that the documents are not more than one year old starting from their issuing date and that they are still valid.

In such a case, the candidate or tenderer shall declare on his honour that the documentary evidence has already been provided in a previous procurement procedure and confirm that no changes in his situation have occurred.

7. When requested by the contracting authority, the candidate or tenderer shall submit a declaration on honour from the intended subcontractor that he is not in one of the situations referred to in Articles 93 and 94 of the Financial Regulation.

In case of doubt on this declaration on the honour, the contracting authority shall request the evidence referred to in paragraphs 3 and 4. Paragraph 5 shall apply, where appropriate.

1. A central database shall be set up and operated by the Commission in compliance with Community rules on the protection of personal data. The database shall contain details of candidates and tenderers which is in one of the situations referred to in Articles 93, 94, 96(1)(b) and (2)(a). It shall be common to the institutions, executive agencies and the bodies referred to in Article 185.
2. The authorities of the Member States and third countries as well as the bodies, other than those referred to in paragraph 1, participating in the implementation of the budget in accordance with Articles 53 and 54, shall communicate to the competent authorising officer information on candidates and tenderers which are in one of the situations referred to in Article 93(1) (e), where the conduct of the operator concerned was detrimental to the Communities' financial interest. The authorising officer shall receive this information and request the accounting officer to enter it into the database.

The authorities and bodies mentioned in the first subparagraph shall have access to the information contained in the database and may take it into account, as appropriate and on their own responsibility for the award of contracts associated with the implementation of the budget.

3. Transparent and coherent criteria to ensure proportionate application of the exclusion criteria shall be laid down in the implementing rules. The Commission shall define standardised procedures and technical specifications for the operation of the database.

IR Article 133a**Application of exclusion criteria and duration of exclusion**
(Articles 93, 94, 95 and 96 of the Financial Regulation)

1. In order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impact on the Communities' financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express their views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 95(2) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 93(3) of the Financial Regulation.

2. The period referred to in Article 93(3) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:

(a) from the date of the judgment having the force of *res judicata* in the cases referred to in points (b) and (e) of Article 93(1) of the Financial Regulation;

(b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 93(1)(c) of the Financial Regulation.

That period of exclusion may be extended to ten years in the event of a repeated offence within five years of the date referred to in points (a) and (b), subject to paragraph 1.

3. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 93(1) of the Financial Regulation.

Article 134a

Central database

(Article 95 of the Financial Regulation)

1. The institutions, executive agencies and bodies referred to in Article 95(1) of the Financial Regulation shall transmit to the Commission, in the format established by the Commission, information identifying the economic operators which are in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation, the grounds for exclusion and the duration of the period of exclusion.

They shall also transmit information concerning persons with powers of representation, decision-making or control over economic operators which are legal entities, when these persons have found themselves in one of the situations referred to in Articles 93, 94, 96(1)(b) and 96(2)(a) of the Financial Regulation.

The authorities and bodies referred to in Article 95(2) of the Financial Regulation shall transmit to the Commission, in the format established by the Commission:

(a) information identifying the following persons who are in one of the situations referred to in Article 93(1)(e) of the Financial Regulation, where their conduct was detrimental to the Communities' financial interests:

(i) the economic operators,

(ii) persons with powers of representation, decision-making or control over economic operators which are legal entities;

(b) the type of their conviction;

(c) the duration of the period of exclusion from procurement procedures, where applicable.

2. The institutions, agencies, authorities and bodies referred to in paragraph 1 shall designate the persons authorised to communicate to and receive from the Commission the information contained in the database.

In the case of the institutions, agencies, authorities and bodies referred to in Article 95(1) of the Financial Regulation, the designated persons shall address the information as soon as possible to the accounting officer of the Commission, and request, as appropriate, entry, modification or removal of data in the database.

In the case of the authorities and bodies referred to in Article 95(2) of the Financial Regulation, the designated persons shall address the requisite information to the Commission authorising officer responsible for the programme or action concerned, within three months of the issue of the relevant judgment.

The accounting officer of the Commission shall enter, modify or remove data in the database. He shall, via a secured protocol, provide on a monthly basis validated data contained in the database to the designated persons.

3. The institutions, agencies, authorities and bodies referred to in paragraph 1 shall certify to the Commission that the information communicated by them was established and transmitted in accordance with the principles set out in Regulation (EC) No 45/2001 and in Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾ concerning the protection of personal data.

In particular, they shall inform in advance all economic operators or persons referred to in paragraph 1 that their data may be included in the database and communicated by the Commission to the designated persons referred to in paragraph 2. They shall update, where appropriate, the information transmitted, following rectification or erasure or any modification of data.

⁽¹⁾ OJ L 281, 23.11.1995, p. 3.

Any party entered in the database shall have the right to be informed of the data stored concerning that party, upon request to the accounting officer of the Commission.

4. Member States shall take appropriate measures to assist the Commission in order to manage the database efficiently, in compliance with Directive 95/46/EC.

Appropriate arrangements shall be laid down in the agreements with the authorities of third countries and all bodies referred to in Article 95(2) of the Financial Regulation, in order to ensure compliance with these provisions and with the principles concerning the protection of personal data.

FR Article 96

1. The contracting authority may impose administrative or financial penalties on the following:

- (a) candidates or tenderers in the cases referred to in point (b) of Article 94;
- (b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

In all cases, however, the contracting authority must first give the person concerned an opportunity to present his observations.

2. The penalties referred to in paragraph 1 shall be proportionate to the importance of the contract and the seriousness of the misconduct, and may consist in:

- (a) the exclusion of the candidate or tenderer or contractor concerned from the contracts and grants financed by the budget, for a maximum period of ten years; and/or
- (b) the payment of financial penalties by the candidate or tenderer or contractor up to the value of the contract in question.

Application of exclusion criteria and duration of exclusion
(Articles 93, 94, 95 and 96 of the Financial Regulation)

1. In order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impact on the Communities' financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express their views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 95(2) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 93(3) of the Financial Regulation.

2. The period referred to in Article 93(3) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:
 - (a) from the date of the judgment having the force of res judicata in the cases referred to in points (b) and (e) of Article 93(1) of the Financial Regulation;
 - (b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 93(1)(c) of the Financial Regulation.

That period of exclusion may be extended to 10 years in the event of a repeated offence within five years of the date referred to in points (a) and (b), subject to paragraph 1.

3. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 93(1) of the Financial Regulation.

Article 134b

Administrative and financial penalties

(Articles 96 and 114 of the Financial Regulation)

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have made false declarations, have made substantial errors or committed irregularities or fraud, or have been found in serious breach of their contractual obligations may be excluded from all contracts and grants financed by the Community budget for a maximum of five years from the date on which the infringement is established as confirmed following an adversarial procedure with the contractor.

That period may be extended to ten years in the event of a repeated offence within five years of the date referred to in the first subparagraph.

2. Tenderers or candidates who have made false declarations, have committed substantial errors, irregularities or fraud, may also be subject to financial penalties representing 2 to 10 % of the total estimated value of the contract being awarded.

Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2 to 10 % of the total value of the contract in question.

That rate may be increased to 4 to 20 % in the event of a repeat infringement within five years of the date referred to in the first subparagraph of paragraph 1.

3. The institution shall determine the administrative or financial penalties taking into account in particular the elements referred to in Article 133a(1).

FR *Article 97*

1. Contracts shall be awarded on the basis of award criteria applicable to the content of the tender after the capability of economic operators not excluded under Articles 93, 94 and 96(2)(a) has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders.
2. Contracts shall be awarded by the automatic award procedure or by the best-value-for-money procedure.

Selection criteria

(Article 97(1) of the Financial Regulation)

1. The contracting authorities shall draw up clear and non-discriminatory selection criteria.
2. The selection criteria shall be applied in every procurement procedure for the purpose of assessing the financial, economic, technical and professional capacity of the candidate or the tenderer.

The contracting authority may lay down minimum capacity levels below which candidates may not be selected.

3. Any tenderer or candidate may be asked to prove that he is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.
4. The contracting authorities shall specify in the contract notice or in the call for expressions of interest or the 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 and the minimum capacity levels required in accordance with paragraph 2 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.
6. The contracting authority may, depending on its assessment of the risks, decide not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers in the case of the following contracts:
 - (a) contracts awarded by the institutions on their own account, with a value of less than or equal to EUR 60 000;
 - (b) contracts awarded in the field of external actions, with a value below the thresholds referred to in Article 241(1)(a), Article 243(1)(a) or Article 245(1)(a).

Where the contracting authority decides not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers, no pre-financing shall be made unless a financial guarantee of an equivalent amount is provided.

Article 136

Economic and financial capacity

(Article 97(1) of the Financial Regulation)

1. Proof of economic and financial capacity may in particular be furnished by one or more of the following documents:
 - (a) appropriate statements from banks or evidence of 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 considers 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 an undertaking on the part of those entities to place those resources at its disposal.

Under the same conditions, a consortium of economic operators as referred to in Article 116(6) may rely on the capacities of members of the consortium or of other entities.

Article 137

Technical and professional capacity

(Article 97(1) of the Financial Regulation)

1. Technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraphs 2 and 3. In procurement procedures for supplies requiring siting or installation opera-

tions, services and/or works, such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.

2. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of one or more of the following documents:

- (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,
 - (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 technical equipment and 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 the 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;
- (i) for public works contracts and public service contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

Where the services or supplies referred to in point (b)(i) of the first subparagraph are provided to contracting authorities, evidence of performance shall be in the form of certificates issued or countersigned by the competent authority.

3. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of 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. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.
- 3a. Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.
- 3b. Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) provided for in Regulation (EC) No 761/2001 of the European Parliament and of the Council ⁽¹⁾ or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.
4. 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 an undertaking on the part of those entities to place those resources at its disposal.

⁽¹⁾ OJ L 114, 24.4.2001, p. 1.

Under the same conditions, a consortium of economic operators as referred to in Article 116(6) may rely on the capacities of members of the consortium or of other entities.

Article 138

Award arrangements and criteria

(Article 97(2) of the Financial Regulation)

1. Without prejudice to Article 94 of the Financial Regulation, 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 tender which, while being in order and satisfying the conditions laid down, quotes the lowest price;

(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 subject of the contract such as the price quoted, 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, in the contract notice or in the specification or in the descriptive document, the weighting it will apply to each of the criteria for determining best value for money. That weighting may be expressed as a range with an appropriate maximum spread.

The weighting applied to price in relation to the other criteria must not result in the neutralisation of price in the choice of contractor, without prejudice to the scales laid down by the institution for the remuneration of certain services, such as those provided by experts for evaluation purposes.

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 138a

Use of electronic auctions

(Article 97(2) of the Financial Regulation)

1. In open, restricted or negotiated procedures in the case referred to in Article 127(1)(a), the contracting authorities may decide that the

award of a public contract shall be preceded by an electronic auction, as referred to in Article 54 of Directive 2004/18/EC, when the contract specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework contract as referred to in Article 117(4)(b) of this Regulation and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 125a.

The electronic auction shall be based either solely on prices, in which case the contract is awarded to the lowest price, or on the prices and/or the values of the features of the tenders indicated in the specification, in which case the contract is awarded to the tender offering best value for money.

2. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice.

The specification shall include the following details:

- (a) the features, the values for which will be the subject of electronic auction, provided that those features are quantifiable and can be expressed in figures or percentages;
 - (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
 - (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
 - (d) the relevant information concerning the electronic auction process;
 - (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
 - (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.
3. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases.

The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

4. When the contract is to be awarded on the basis of the tender offering best value for money, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in the first subparagraph of Article 138(3).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the tender offering best value for money, as indicated in the contract notice or in the specification; for that purpose, any ranges shall, however, be reduced beforehand to a specified value.

Where variants are authorised, a separate formula shall be provided for each variant.

5. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specification. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.
6. Contracting authorities shall close an electronic auction in one or more of the following ways:
 - (a) in the invitation to take part in the auction, they shall indicate the date and time fixed in advance;
 - (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
 - (c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

When the contracting authorities have decided to close an electronic auction in accordance with point (c), possibly in combination with the arrangements laid down in point (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

7. After closing an electronic auction, contracting authorities shall award the contract in accordance with Article 138 on the basis of the results of the electronic auction.

Contracting authorities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject matter of the contract, as put up for tender in the published contract notice and defined in the specification.

Article 139

Abnormally low tenders

(Article 97(2) of the Financial Regulation)

1. If, for a given contract, tenders appear to be abnormally low, the contracting authority shall, before rejecting such tenders on that 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. These details may relate in particular to compliance with the provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed.

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

- (a) the economics of the manufacturing process, of the provision of services or 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, it may reject the tender on that ground alone only if 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.

1. The arrangements for submitting tenders shall be such as to ensure that there is genuine competition and that the contents of tenders remain confidential until they are all opened simultaneously.
2. If deemed appropriate and proportionate, the contracting authority may require tenderers, as provided in the implementing rules, to lodge a security in advance as a guarantee that the bids made will not be withdrawn.
3. With the exception of the contracts involving small amounts referred to in Article 91(3), applications and tenders shall be opened by an opening board appointed for this purpose. Any tender or application declared by the board not to satisfy the conditions laid down shall be rejected.
4. All requests to participate or tenders declared by the opening board as satisfying the conditions laid down shall be evaluated, on the basis of the criteria provided in the documents relating to the call for tenders, in order to propose to the contracting authority the award of the contract or to proceed with an electronic auction.

IR Article 140**Time limits for receipt of tenders and requests to participate**
(Article 98(1) of the 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 for contracts with a value equal to or above the thresholds set in Article 158, the time limit for receipt of tenders shall be no less than fifty-two days from the date on which the contract notice is dispatched.
3. In restricted procedures, in cases of use of the competitive dialogue referred to in Article 125b and in negotiated procedures with publication of a contract notice for contracts above the thresholds set in Article 158, the time limit for receipt of requests to participate shall be no less than thirty-seven days from the date on which the contract notice is dispatched.

In restricted procedures for contracts with a value equal to or above the thresholds set in Article 158, the time limit for receipt of tenders

shall be no less than forty days from the date on which the invitation to tender is dispatched.

However, in the restricted procedures after a call for expressions of interest referred to in Article 128, the time limit for receipt of tenders shall be no less than twenty-one days from the date on which the invitation to tender is dispatched.

4. Where the contracting authorities, in accordance with Article 118(2), have sent a pre-information notice for publication or have themselves published a pre-information notice on their buyer profile, the time limit for the receipt of tenders may generally be reduced to thirty-six days but shall in no circumstances be less than twenty-two days from the date of dispatch of the contract notice or the invitation to tender.

The shortened time limits referred to in the first subparagraph shall be permitted only if the pre-information notice satisfies the following conditions:

- (a) it contains all the information required for the contract notice, insofar as that information is available at the time the notice is published;
 - (b) it was sent for publication between fifty-two days and twelve months before the date on which the contract notice was sent.
5. The time limits for receipt of tenders may be shortened by five days if unrestricted and direct access is available by electronic means to all documents constituting the call for tenders from the date of publication of the contract notice or the call for expressions of interest.

Article 141

Time allowed for access to invitation to tender documents

(Article 98(1) of the Financial Regulation)

1. Provided that the request was made in good time before the deadline for submission of tenders, the specification or descriptive documents in the procedure referred to in Article 125b and additional documents shall be sent, within six calendar days of the receipt of the request, to all economic operators who have requested the specification or expressed interest in taking part in a dialogue or submitting a tender, subject to the provisions of paragraph 4. Contracting authorities are not bound to reply to requests for documents made less than five working days before the deadline for submission of tenders.
2. Provided that the request was made in good time before the deadline for submission of tenders, additional information relating to the speci-

fication or the descriptive documents or additional documents shall be supplied simultaneously to all economic operators who have requested the specification or expressed interest in taking part in a dialogue or submitting a tender no later than six days before the deadline for the receipt of tenders or, in the case of requests for information received less than eight calendar days before the deadline for receipt of tenders, as soon as possible after receipt of the request. Contracting authorities are not bound to reply to requests for additional information made less than five working days before the deadline for submission 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 receipt of tenders referred to in Article 140 shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders, subject to the provisions of Article 240. That extension shall be advertised in appropriate manner, in accordance with the arrangements set out in Articles 118 to 121.
4. In the open procedure, including the dynamic purchasing systems referred to in Article 125a, if there is unrestricted and full direct access by electronic means to the entire call for tenders and any additional documents, paragraph 1 shall not apply. The contract notice referred to in Article 118(3) shall give the Internet address at which those documents can be consulted.

Article 142

Time limits in urgent cases

(Article 98(1) of the Financial Regulation)

1. Where duly substantiated urgency renders impracticable the minimum time limits laid down in Article 140(3) for restricted procedures and negotiated procedures where a contract notice is published, contracting authorities may set the following time limits, expressed in calendar days:
 - (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 is dispatched or ten days if the notice is sent to OPOCE electronically;
 - (b) a time limit for the receipt of tenders which may not be less than ten days from the date of dispatch of the invitation to tender.

2. In restricted procedures and fast-track negotiated procedures, additional information on the specifications shall, provided it has been requested in good time, be communicated to all candidates or tenderers no later than four calendar days before the deadline for receipt of tenders.

Article 143

Methods of communication

(Article 98(1) of the Financial Regulation)

1. The arrangements for the submission of tenders and requests to participate shall be determined by the contracting authority, which may choose an exclusive method of submission. Tenders and requests to participate may be submitted by letter or by electronic means. Requests to participate may also be submitted by fax.

The means of communication chosen shall be non-discriminatory in nature and shall not have the effect of restricting the access of economic operators to the award procedure.

The means of communication chosen shall be such as to ensure that the following conditions are satisfied:

- (a) each submission contains all the information required for its evaluation;
- (b) the integrity of data is preserved;
- (c) the confidentiality of tenders is preserved and the contracting authorities examine the content of tenders only after the time limit set for submitting them has expired.

Where necessary for the purposes of legal proof, the appointing authorities may decide that requests to participate submitted by fax must be confirmed by letter or electronically as soon as possible and at all events before the final date set in Articles 140 and 251.

Contracting authorities may require that electronic tenders be accompanied by an advanced electronic signature within the meaning of Directive 1999/93/EC of the European Parliament and of the Council ⁽¹⁾.

⁽¹⁾ OJ L 13, 19.1.2000, p. 12.

- 1a. Where the contracting authority authorises submission of tenders and requests to participate by electronic means, the tools used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use. The information relating to the specifications required for presentation of tenders and requests to participate, including encryption, shall be made available to the tenderers or candidates.

Moreover, the devices for the electronic receipt of tenders and requests to participate shall conform to the requirements of Annex X to Directive 2004/18/EC.

2. Where submission is by letter, tenderers may choose to submit tenders:
 - (a) either by post or by courier service, in which case the call for tenders shall specify that the evidence shall be constituted by the date of dispatch, the postmark or the date of the deposit slip;
 - (b) by hand-delivery to the premises of the institution by the tenderer in person or by an agent; for which purposes the call for tenders shall specify, in addition to the information referred to in Article 130(2)(a), the department to which tenders are to be delivered against a signed and dated receipt.
3. In order to maintain secrecy and to avoid any difficulties where tenders are sent by letter, the invitation to tender must include the following provision:

‘Tenders must be submitted in a sealed envelope itself enclosed within a second sealed envelope. The inner envelope must 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 that tape.’

Article 144

Tender guarantees

(Article 98(2) of the Financial Regulation)

The contracting authority may require a tender guarantee, lodged in accordance with Article 150, representing 1 % to 2 % of the total value of the contract.

A tender guarantee 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.

Opening of tenders and requests to participate

(Article 98(3) of the Financial Regulation)

1. All requests to participate and tenders that satisfy the requirements of Article 143 shall be opened.
2. Where the value of a contract exceeds the threshold laid down in Article 129(1), the authorising officer responsible shall appoint a committee to open the tenders.

The opening committee shall be made up of at least three persons representing at least two organisational entities of the institution concerned with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 52 of the Financial Regulation. In the representations or local units referred to in Article 254 or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

In the case of a procurement procedure launched on an interinstitutional basis, the opening committee shall be appointed by the competent authorising officer from the institution responsible for the procurement procedure. The composition of the opening committee shall reflect, insofar as possible, the interinstitutional character of the procurement procedure.

3. Where tenders are submitted by post, one or more members of the opening committee shall initial the documents proving the date and time of dispatch 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 point (a) of Article 138(1), 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, which shall identify those tenders

which satisfy the requirements and those which do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 143.

Article 146

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

1. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee set up for each of the two stages on the basis of the pre-announced exclusion and selection criteria and the award criteria respectively.

That committee shall be appointed by the authorising officer responsible to give an advisory opinion on contracts with a value above the threshold referred to in Article 129(1).

However, the authorising officer responsible may decide that the evaluation committee is to evaluate and rank the tenders on the basis of the award criteria only and that the exclusion and selection criteria are to be evaluated by other appropriate means guaranteeing the absence of conflicts of interests.

2. The evaluation committee shall be made up of at least three persons representing at least two organisational entities of the institution concerned with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 52 of the Financial Regulation.

In the representations and local units referred to in Article 254 or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

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

Outside experts may assist the committee by decision of the authorising officer responsible. The authorising officer responsible shall ensure that these experts satisfy the obligations laid down in Article 52 of the Financial Regulation.

In the case of a procurement procedure launched on an interinstitutional basis, the evaluation committee shall be appointed by the competent authorising officer from the institution responsible for the

procurement procedure. The composition of the evaluation committee shall reflect, insofar as possible, the interinstitutional character of the procurement procedure.

3. Requests to participate and 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 or the contracting authority may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time limit it specifies.

Requests to participate and tenders which are not excluded and which meet the selection criteria shall be considered admissible.

4. In the case of abnormally low tenders as referred to in Article 139 of this Regulation, the evaluation committee shall request any relevant information concerning the composition of the tender.

FR Article 99

While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers must satisfy conditions ensuring transparency and equal treatment. They may not lead to amendment of the conditions of the contract or the terms of the original tender.

IR Article 147

Results of the evaluation (Article 99 of the 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.

The written record shall be signed by all the members of the evaluation committee.

If the evaluation committee was not given responsibility for the evaluation and ranking of the tenders on the basis of the exclusion and selection criteria, the written record shall also be signed by the persons who were given that responsibility by the authorising officer responsible. The written record shall be kept for future reference.

2. The written record referred to in paragraph 1 shall contain at least the following:
 - (a) the name and address of the contracting authority, and the subject and value of the contract, the framework contract or the dynamic purchasing system;
 - (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
 - (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
 - (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 that 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, the framework contract or the dynamic purchasing system;
 - (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
 - (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
 - (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 that 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 and competitive dialogue, the circumstances referred to in Articles 125b, 126, 127, 242, 244, 246 and 247 which justify their use;
 - (g) where appropriate, the reasons why the contracting authority has decided not to award a contract.

In the case of a procurement procedure launched on an interinstitutional basis, the decision referred to in the first subparagraph shall be taken by the contracting authority responsible for the procurement procedure.

Article 148

Contacts between contracting authorities and tenderers

(Article 99 of the Financial Regulation)

1. Contact between the contracting authority and tenderers during the contract award procedure may take place, by way of 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 141, 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 to 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, inform the persons concerned on the same date and in a manner identical with that applicable in respect of the original invitation to tender.
3. If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the tender must be corrected, the contracting authority may contact the tenderer, although such 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.
5. In the case of contracts for legal services within the meaning of Annex IIB to Directive 2004/18/EC, the contracting authority may enter into the necessary contacts with tenderers to check the selection and/or award criteria.

1. The authorising officer shall decide to whom the contract is to be awarded, in compliance with the selection and award criteria laid down in advance in the documents relating to the call for tenders and the procurement rules.
2. The contracting authority shall notify all candidates or tenderers whose applications or tenders are rejected of the grounds on which the decision was taken, and all tenderers whose tenders are admissible and who make a request in writing of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

However, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

IR Article 149**Information for candidates and tenderers**

(Articles 100(2), 101 and 105 of the Financial Regulation)

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract or framework contract or admission to a dynamic purchasing system, including the grounds for any decision not to award a contract or framework contract, or set up a dynamic purchasing system, for which there has been competitive tendering or to recommence the procedure.
2. The contracting authority shall, within not more than fifteen calendar days from the date on which a written request is received, communicate the information provided for in Article 100(2) of the Financial Regulation.
3. In the case of contracts awarded by the Community institutions on their own account, with a value equal to or more than the thresholds set in Article 158 and which are not excluded from the scope of Directive 2004/18/EC, the contracting authority shall inform all unsuccessful tenderers or candidates, simultaneously and individually, by mail, fax or e-mail, that their application or tender has not been accepted, at either of the following stages:

- (a) shortly after decisions have been taken on the basis of exclusion and selection criteria and before the award decision, in procurement procedures organised in two separate stages;
- (b) as regards the award decisions and decisions to reject offers, as soon as possible after the award decision and within the following week at the latest.

In each case, the contracting authority shall indicate the reasons why the tender or application has not been accepted and the available legal remedies.

The contracting authority shall, at the same time as the unsuccessful candidates or tenderers are informed that their tenders or applications have not been accepted, inform the successful tenderer of the award decision, specifying that the decision notified does not constitute a commitment on the part of the contracting authority.

Unsuccessful tenderers or candidates may request additional information about the reasons for their rejection in writing by mail, fax or email, and all tenderers who have put in an admissible tender may obtain information about the characteristics and relative merits of the tender accepted and the name of the successful tenderer, without prejudice to the second subparagraph of Article 100(2) of the Financial Regulation. The contracting authority shall reply within no more than fifteen calendar days from receipt of the request.

Article 149a

Signature of the contract

(Articles 100 and 105 of the Financial Regulation)

Implementation of a contract may not start before the contract is signed.

FR *Article 101*

The contracting authority may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.

The decision must be substantiated and be brought to the attention of the candidates or tenderers.

Information for candidates and tenderers

(Articles 100(2), 101 and 105 of the Financial Regulation)

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract or framework contract or admission to a dynamic purchasing system, including the grounds for any decision not to award a contract or framework contract, or set up a dynamic purchasing system, for which there has been competitive tendering or to recommence the procedure.
2. The contracting authority shall, within not more than fifteen calendar days from the date on which a written request is received, communicate the information provided for in Article 100(2) of the Financial Regulation.
3. In the case of contracts awarded by the Community institutions on their own account, with a value equal to or more than the thresholds set in Article 158 and which are not excluded from the scope of Directive 2004/18/EC, the contracting authority shall inform all unsuccessful tenderers or candidates, simultaneously and individually, by mail, fax or e-mail, that their application or tender has not been accepted, at either of the following stages:
 - (a) shortly after decisions have been taken on the basis of exclusion and selection criteria and before the award decision, in procurement procedures organised in two separate stages;
 - (b) as regards the award decisions and decisions to reject offers, as soon as possible after the award decision and within the following week at the latest.

In each case, the contracting authority shall indicate the reasons why the tender or application has not been accepted and the available legal remedies.

The contracting authority shall, at the same time as the unsuccessful candidates or tenderers are informed that their tenders or applications have not been accepted, inform the successful tenderer of the award decision, specifying that the decision notified does not constitute a commitment on the part of the contracting authority.

Unsuccessful tenderers or candidates may request additional information about the reasons for their rejection in writing by mail, fax or email, and all tenderers who have put in an admissible tender may obtain information about the characteristics and relative merits of the tender accepted and the name of the successful tenderer, without prejudice to the second subparagraph of Article 100(2) of the Financial Regulation. The contracting authority shall reply within no more than fifteen calendar days from receipt of the request.

SECTION 4

GUARANTEES AND CONTROL

FR Article 102

1. The contracting authority shall require contractors to lodge a guarantee in advance in the cases specified in the implementing rules.
2. The contracting authority may, if it deems it appropriate and proportionate, require contractors to lodge such a guarantee in order to:
 - (a) ensure full performance of the contract;
 - (b) limit the financial risks connected with payment of pre-financing.

IR Article 150

Advance guarantee *(Article 102 of the 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 or the third party stand as irrevocable collateral security, or first-call guarantor of the contractor's obligations.

Article 151

Performance guarantee

(Article 102 of the Financial Regulation)

1. Subject to Article 250, 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 152

Guarantee for pre-financing

(Article 102 of the Financial Regulation)

A guarantee shall be required in return for the payment of pre-financing exceeding EUR 150 000 or in the case referred to in Article 135(6), second subparagraph.

However, where the contractor is a public body, the authorising officer responsible may, depending on his risk assessment, waive that obligation. 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 250

Guarantees

(Articles 102 and 167 of the Financial Regulation)

1. By way of derogation from Article 150, advance guarantees shall be denominated in euro or in the currency of the contract they cover.
2. The contracting authority may demand a tender guarantee, within the meaning of this Chapter, representing 1 % to 2 % of the overall value of the contract for supply and works contracts; it shall comply with the provisions of Article 150. It shall be released when the contract is awarded. It shall be retained if a tender submitted by the final date for submission is subsequently withdrawn.
3. Where the pre-financing exceeds EUR 150 000, a guarantee shall be required. However, where the contractor is a public body, the responsible authorising officer may, depending on his risks assessment, waive that obligation.

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

4. A performance guarantee may be required by the contracting authority for an amount set in the tender file and corresponding to between 5 and 10 % of the total value of the contract. That guarantee shall be determined on the basis of objective criteria such as the type and value of the contract.

However, a performance guarantee shall be required where the following thresholds are exceeded:

- (i) EUR 345 000 for works contracts;
- (ii) EUR 150 000 for supply contracts.

The guarantee shall remain valid at least until final acceptance of the supplies and works. If the contract is not properly performed the entire guarantee shall be retained.

FR Article 103

Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the institutions shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.

Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the institutions may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract.

Where such errors, irregularities or fraud are attributable to the contractor, the institutions may in addition refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor, in proportion to the seriousness of the errors, irregularities or fraud.

IR Article 153

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

1. Contracts shall be suspended under Article 103 of the 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 shall be 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

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

FR Article 104

The Community institutions shall be deemed to be contracting authorities in the case of contracts awarded on their own account. They shall delegate, in accordance with Article 59, the necessary powers for the exercise of the function of contracting authority.

IR Article 154

Identification of the appropriate level for the calculation of thresholds *(Articles 104 and 105 of the Financial Regulation)*

It shall be for each authorising officer by delegation or subdelegation within each institution to assess whether the thresholds laid down in Article 105 of the Financial Regulation have been reached.

FR Article 105

1. Subject to Title IV of Part Two of this Regulation, Directive 2004/18/EC lays down the thresholds which determine:
 - (a) the publication arrangements referred to in Article 90;
 - (b) the choice of procedures referred to in Article 91(1);
 - (c) the corresponding time limits.
2. Subject to exceptions and conditions specified in the implementing rules, the contracting authority shall not, in the case of contracts covered by Directive 2004/18/EC, sign the contract or framework contract with the successful tenderer until a period of standstill has elapsed.

Information for candidates and tenderers

(Articles 100(2), 101 and 105 of the Financial Regulation)

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract or framework contract or admission to a dynamic purchasing system, including the grounds for any decision not to award a contract or framework contract, or set up a dynamic purchasing system, for which there has been competitive tendering or to recommence the procedure.
2. The contracting authority shall, within not more than fifteen calendar days from the date on which a written request is received, communicate the information provided for in Article 100(2) of the Financial Regulation.
3. In the case of contracts awarded by the Community institutions on their own account, with a value equal to or more than the thresholds set in Article 158 and which are not excluded from the scope of Directive 2004/18/EC, the contracting authority shall inform all unsuccessful tenderers or candidates, simultaneously and individually, by mail, fax or e-mail, that their application or tender has not been accepted, at either of the following stages:
 - (a) shortly after decisions have been taken on the basis of exclusion and selection criteria and before the award decision, in procurement procedures organised in two separate stages;
 - (b) as regards the award decisions and decisions to reject offers, as soon as possible after the award decision and within the following week at the latest.

In each case, the contracting authority shall indicate the reasons why the tender or application has not been accepted and the available legal remedies.

The contracting authority shall, at the same time as the unsuccessful candidates or tenderers are informed that their tenders or applications have not been accepted, inform the successful tenderer of the award decision, specifying that the decision notified does not constitute a commitment on the part of the contracting authority.

Unsuccessful tenderers or candidates may request additional information about the reasons for their rejection in writing by mail, fax or email, and all tenderers who have put in an admissible tender may obtain information about the characteristics and relative merits of

the tender accepted and the name of the successful tenderer, without prejudice to the second subparagraph of Article 100(2) of the Financial Regulation. The contracting authority shall reply within no more than fifteen calendar days from receipt of the request.

Article 149a

Signature of the contract

(Articles 100 and 105 of the Financial Regulation)

Implementation of a contract may not start before the contract is signed.

Article 154

Identification of the appropriate level for the calculation of thresholds

(Articles 104 and 105 of the Financial Regulation)

It shall be for each authorising officer by delegation or subdelegation within each institution to assess whether the thresholds laid down in Article 105 of the Financial Regulation have been reached.

Article 155

Separate contracts and contracts with lots

(Articles 91 and 105 of the 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 that purpose.

Whenever appropriate, technically feasible, and cost-efficient, contracts with a value equal to or greater than the thresholds laid down in Article 158 shall be awarded at the same time in the form of separate lots.

2. Where the subject of a supply, 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 to or exceeds the thresholds laid down in Article 158, Article 90(1) and Article 91(1) and (2) of the 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 or supply contracts, or less than EUR 1 million in the case of works contracts, provided that

the aggregate amount of those 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 standard supplies may give rise to simultaneous contracts in separate lots, the estimated value of all those lots shall be taken as the basis for determining the applicable threshold.
4. Where a contract is to be awarded in the form of separate lots, tenders shall be evaluated separately for each lot. If several lots are awarded to the same tenderer, a single contract covering those lots may be signed.

Article 156

Arrangements for estimating the value of certain contracts

(Article 105 of the 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 or possible renewal, the basis for calculation shall be the maximum amount authorised, including the use of option clauses and renewal.

This estimate shall be made when the contract notice is sent or, where there is no such publicity, when the contracting authority initiates the award procedure.

- 1a. For framework contracts and dynamic purchasing systems the value to be taken into account shall be the maximum value of all the contracts envisaged during the total lifetime of the framework contract or dynamic purchasing system.
2. For service contracts, account shall be taken of:
 - (a) in the case of insurance services, the premium payable and other forms of remuneration;
 - (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, commissions payable and other forms of remuneration.
3. In the case of service contracts which do not specify a total price or of 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 of successive contracts 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 157

Thresholds for pre-information notices

(Article 105 of the Financial Regulation)

The thresholds referred to in Article 118 for publication of a pre-information notice shall be:

- (a) EUR 750 000 for the supply and service contracts listed in Annex IIA to Directive 2004/18/EC;
- (b) EUR 5 278 000 ⁽¹⁾ for works contracts.

⁽¹⁾ In accordance with Article 271(2) of the implementing rules of the Financial Regulation, Commission Decision No 2008/102/EC of 1 February 2008 has set the threshold at EUR 5 150 000 with effect from 1.1.2008.

Article 158

Thresholds for application of the procedures under Directive 2004/18/EC (Article 105 of the Financial Regulation)

1. The thresholds referred to in Article 105 of the Financial Regulation shall be:
 - (a) EUR 137 000 ⁽¹⁾ for the supply and service contracts listed in Annex IIA to Directive 2004/18/EC, with the exception of the research and development contracts listed in category 8 of that Annex;
 - (b) EUR 211 000 ⁽²⁾ for the service contracts listed in Annex IIB to Directive 2004/18/EC and for the research and development service contracts listed in category 8 of Annex IIA to Directive 2004/18/EC;
 - (c) EUR 5 278 000 ⁽³⁾ for works contracts.
2. The time limits referred to in Article 105 of the Financial Regulation shall be those specified in Articles 140, 141 and 142.

Article 158a

Standstill period before signature of the contract (Article 105 of the Financial Regulation)

1. The contracting authority shall not sign the contract or framework contract, covered by Directive 2004/18/EC, with the successful tenderer until 14 calendar days have elapsed.

That period shall run from either of the following dates:

- (a) the day after the simultaneous dispatch of the award decisions and decisions to reject;
- (b) where the contract or framework contract is awarded pursuant to a negotiated procedure without prior publication of a contract notice, the day after the contract award notice referred to in Article 118 has been published in the *Official Journal of the European Union*.

If necessary, the contracting authority may suspend the signing of the contract for additional examination if this is justified by the requests or comments made by unsuccessful or aggrieved tenderers or candidates or by any other relevant information received. The requests, comments or information must be received during the period set in the first sub

⁽¹⁾ In accordance with Article 271(2) of the implementing rules of the Financial Regulation, Commission Decision No 2008/102/EC of 1 February 2008 has set the threshold at EUR 133 000 with effect from 1.1.2008.

⁽²⁾ In accordance with Article 271(2) of the implementing rules of the Financial Regulation, Commission Decision No 2008/102/EC of 1 February 2008 has set the threshold at EUR 206 000 with effect from 1.1.2008.

⁽³⁾ In accordance with Article 271(2) of the implementing rules of the Financial Regulation, Commission Decision No 2008/102/EC of 1 February 2008 has set the threshold at EUR 5 150 000 with effect from 1.1.2008.

paragraph. In the case of suspension all the candidates or tenderers shall be informed within three working days following the suspension decision.

Except in the cases provided for in paragraph 2, any contract signed before the expiry of the period set in the first subparagraph shall be null and void.

Where the contract or framework contract cannot be awarded to the successful envisaged tenderer, the contracting authority may award it to the following best tenderer.

2. The period set in the first subparagraph of paragraph 1 shall not apply in the following cases:
 - (a) open procedures where only one tender has been submitted;
 - (b) restricted or negotiated procedures after prior publication of a contract notice where the tenderer to whom the contract is to be awarded was the only one who satisfies the exclusion and selection criteria, provided that, in accordance with point (a) of the first subparagraph of Article 149(3), the other candidates or tenderers have been informed of the grounds of their exclusion or rejection shortly after the relevant decisions have been taken on the basis of the exclusion and selection criteria;
 - (c) specific contracts based on a framework contract and by applying the terms set out in such a framework contract, without reopening the competition.
 - (d) extreme urgency referred to in Article 126(1)(c).

FR Article 106

Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has with the European Communities a special agreement in the field of public procurement under the conditions laid down in that agreement.

IR Article 159

Evidence of access to the market (Articles 106 and 107 of the 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.

FR Article 107

Where the Multilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the contracts shall also be open to nationals of the States which have ratified this agreement, under the conditions laid down in that agreement.

IR Article 159

Evidence of access to the market
(Articles 106 and 107 of the 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 AND FORM OF GRANTS

FR *Article 108*

1. Grants are direct financial contributions, by way of donation, from the budget in order to finance:

- (a) either an action intended to help achieve an objective forming part of a European Union policy;
- (b) or the functioning of a body which pursues an aim of general European interest or has an objective forming part of a European Union policy.

They shall be covered either by a written agreement or by a Commission decision notified to the successful applicant.

2. The following shall not constitute grants within the meaning of this Title:

- (a) expenditure on the members and staff of the institutions and contributions to the European Schools;
- (b) loans, risk-bearing instruments of the Community or Community financial contributions to such instruments, the public contracts referred to in Article 88 and aid paid as macro-financial assistance and budgetary support;
- (c) equity investments on the basis of the private investor principle, quasi-equity financing and shareholdings or equity participations in international financial institutions such as the European Bank for Reconstruction and Development (EBRD) or specialised Community bodies such as the European Investment Fund (EIF);
- (d) contributions paid by the Communities as subscriptions to bodies of which they are members;
- (e) expenditure implemented as part of shared, decentralised or joint management within the meaning of Articles 53 to 53d;
- (f) payments made to bodies to which implementation tasks are delegated in accordance with Article 54(2) and contributions made by virtue of their constitutive basic act to bodies set up by the legislative authority;
- (g) expenditure relating to fisheries markets referred to in Article 3(2) (f) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽¹⁾;

⁽¹⁾ OJ L 209, 11.08.2005, p. 1. Regulation as amended by Regulation (EC) No 320/2006 (OJ L 58, 28.2.2006, p. 42).

- (h) repayment of travel and subsistence expenses incurred by, or where appropriate any other indemnities paid to, persons invited or mandated by the institutions.
- 3. The following shall be assimilated to grants and shall be governed, as appropriate, by this Title:
 - (a) the benefit deriving from an interest subsidy on certain loans;
 - (b) equity investments or participations other than those referred to in point (c) of paragraph 2.
- 4. Each institution may award grants for communication activities where, for duly justified reasons, the use of public procurement procedures is not appropriate.

IR *Article 160*

Scope

(Article 108 of the Financial Regulation)

- 1. The procedure for the award of grants and the conclusion of agreements by the Commission with the bodies referred to in Article 54 of the Financial Regulation, in respect of the co-financing of their operating expenditure and for the purposes of making available the operational appropriations which they are delegated to manage, and with the beneficiaries of financing agreements as referred to in Article 166 of that Regulation are not subject to the provisions of this Title.

Article 160a

Subscriptions

(Article 108 of the Financial Regulation)

The subscriptions referred to in point (d) of Article 108(2) of the Financial Regulation shall be sums paid to bodies of which the Community is member, in accordance with the budgetary decisions and the conditions of payment established by the body concerned.

Article 160b

Participations

(Article 108 of the Financial Regulation)

For the purposes of Article 108(2) and (3) of the Financial Regulation, the following definitions shall apply:

- (a) ‘equity participation’ means an ownership position in an organisation or venture taken through an investment, in which returns on the investment are dependent on the profitability of the organisation or venture;
- (b) ‘share holding’ means an equity participation in the form of shares in an organisation or venture;
- (c) ‘equity investment’ means the provision of capital to a firm by an investor in return for partial ownership of that firm where, in addition, this investor may assume some management control of the firm and may share in future profits;
- (d) ‘quasi-equity financing’ means a type of financing that involves a mix of equity and debt, where the equity allows investors to achieve a high rate of return upon the success of the company or where the debt component entails a premium price contributing to the return of the investor;
- (e) ‘risk-bearing instrument’ means a financial instrument which guarantees the total or partial coverage of a defined risk, if possible in exchange for an agreed remuneration.

Article 160c

Specific rules

(Article 108(3) of the Financial Regulation)

1. Where grants as referred to in Article 108(3) of the Financial Regulation are awarded by the Commission under direct centralised management, they shall be subject to the provisions of this Title, with the exception of the following provisions:
 - (a) the no-profit rule as referred to in Article 165 of this Regulation;
 - (b) the co-financing requirement as referred to in Article 172 of this Regulation;
 - (c) for actions where the objective is to reinforce the financial capacity of a beneficiary or to generate an income, the assessment of the financial viability of the applicant as referred to in Article 173(4) of this Regulation;
 - (d) the requirement for an advance guarantee as referred to in Article 182 of this Regulation.

The first subparagraph applies without prejudice to the accounting treatment of the grants concerned, which shall be determined by the accounting officer in accordance with international accounting standards.

2. In all cases where a financial contribution is made, the authorising officer responsible shall ensure that appropriate arrangements have been made with the recipient of the contribution defining the modalities for payment and control.

Article 160e

Agreement and decision for grants

(Article 108(1) of the Financial Regulation)

1. For each Community programme or action, the annual work programme shall determine whether grants shall be covered by a decision or by a written agreement.
2. To determine the instrument to be used, the following elements shall be taken into account:
 - (a) equal treatment and non-discrimination between beneficiaries, in particular on the basis of nationality or geographical location;
 - (b) coherence of that instrument with other instruments used within the same Community programme or action;
 - (c) complexity and standardisation of the content of the actions or work programmes funded.
3. In the case of programmes managed by several authorising officers, the instrument to be used shall be determined in consultation between those authorising officers.

Article 160f

Expenditure on the members of the institutions

(Article 108(2)(a) of the Financial Regulation)

Expenditure on the members of the institutions as referred to in Article 108(2)(a) of the Financial Regulation shall include contributions to associations of current and former members of the European Parliament.

These contributions shall be implemented in accordance with the internal administrative rules of the European Parliament.

Article 161

Actions which may receive grants

(Article 108 of the Financial Regulation)

An action which may receive a grant within the meaning of Article 108 of the 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 162

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

A body pursuing an aim of general European interest is:

- (a) a European body involved in education, training, information, innovation or research and study on European policies, any activities contributing to the promotion of citizenship or human rights, or a European standards body;
- (b) 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 163

Partnerships (Article 108 of the Financial Regulation)

1. Specific grants may form part of a framework partnership.
2. A framework partnership may be established as a long-term cooperation mechanism between the Commission and the beneficiaries of grants. It may take the form of an agreement or a decision.

The framework partnership agreement or decision 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 of this Title, and the general rights and obligations of each party under the specific agreements or decisions.

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

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

3. Framework partnership agreements or decisions shall be treated as grants for the purposes of the award procedure. They shall be subject to the *ex ante* publication procedures referred to in Article 167.
4. Specific grants based on framework partnership agreements or decisions shall be awarded in accordance with the procedures laid down in those agreements or decisions, and in compliance with this Title.

They shall be subject to the *ex post* publication procedures laid down in Article 169.

Article 164

Content of grant agreements (Article 108 of the Financial Regulation)

1. The grant agreement shall at least lay down the following:
 - (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 total estimated cost of the action and the Community funding provided for, as an overall ceiling expressed as an absolute value, supplemented as appropriate by an indication of:
 - (i) the maximum rate of funding of the costs of the action or approved work programme in the case referred to in point (a) of Article 108a(1) of the Financial Regulation,
 - (ii) the lump sum or flat-rate financing referred to in points (b) and (c) of Article 108a(1) of the Financial Regulation,
 - (iii) the elements set out in points (i) and (ii) of this point in the cases referred to in point (d) of Article 108a(1) of the Financial Regulation.
 - (e) a detailed description of the action or, for an operating grant, of the work programme approved for that financial year by the authorising officer;
 - (f) the general terms and conditions applicable to all agreements of this type, such as the acceptance by the beneficiary of audits by the Commission, OLAF and the Court of Auditors and of the *ex post*

publication rules referred to in Article 169, in accordance with Regulation (EC) No 45/2001; these general terms shall at least:

- (i) state that Community law is the law which applies to the grant agreement, complemented, where necessary, by national law as specified in the grant agreement,
 - (ii) specify the competent court to hear disputes;
 - (g) the estimated overall budget;
 - (h) where implementation of the action involves procurement, the principles referred to in Article 184 or the procurement rules which the beneficiary must comply with;
 - (i) the responsibilities of the beneficiary, at least in terms of sound financial management and submission of activity and financial reports; whenever appropriate, intermediate targets shall be established, upon which those reports become due;
 - (j) the arrangements and time limits for approving those reports and for payment by the Commission;
 - (k) as appropriate, details of the eligible costs of the action or approved work programme, or of the lump sums or flat-rate financing referred to in Article 108a(1) of the Financial Regulation;
 - (l) provisions governing the public display of references to the European Communities Budget Support, unless it is not possible or appropriate according to a substantiated decision of the authorising officer.
- 1a. The grant agreement may lay down the arrangements and time limits for suspension in accordance with Article 183.
 2. In the cases referred to in Article 163, the framework partnership decision or framework partnership agreement shall specify the information referred to in points (a), (b), (c)(i), (d)(i), (f) and (h) to (k) of paragraph 1 of this Article.

The specific decision or agreement shall contain the information referred to in points (a) to (e), (g) and (k) of paragraph 1 and, where necessary, point (i) thereof.
 3. Grant agreements may be amended only by written additional agreements. Such additional agreements shall not have the purpose or the effect of making such changes to agreements as would call into question the grant award decision or be contrary to the equal treatment of applicants.

4. Paragraphs 1 to 3 shall apply *mutatis mutandis* to grant decisions.

Some of the information referred to in paragraph 1 may be provided in the call for proposals or any related document, instead of the grant decision.

FR Article 108a

1. Grants may take any of the following forms:
 - (a) reimbursement of a specified proportion of the eligible costs actually incurred;
 - (b) lump sums;
 - (c) flat-rate financing;
 - (d) a combination of the forms referred to in points (a), (b) and (c).
2. Grants shall not exceed an overall ceiling expressed in terms of absolute value.

IR Article 43

Joint management

(Articles 53d, 108a and 165 of the Financial Regulation)

1. The Commission shall ensure that suitable arrangements exist for the control and audit of the action in its entirety.
2. The international organisations referred to in Article 53d of the Financial Regulation shall be:
 - (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.

For the purposes of Article 53d of the Financial Regulation, the European Investment Bank and the European Investment Fund shall be assimilated to international organisations.

3. Where the budget is implemented by joint management with international organisations in accordance with Articles 53d and 165 of the

Financial Regulation, the organisations and the actions to be financed shall be chosen in an objective and transparent manner.

4. Without prejudice to Article 35 of this Regulation, agreements concluded with the international organisations referred to in Article 53d of the Financial Regulation shall contain in particular the following:
 - (a) a definition of the action, the project or the programme to be implemented under joint management;
 - (b) the conditions and the detailed arrangements for their implementation, including in particular the principles for the award of procurement contracts and grants;
 - (c) the rules on reporting to the Commission on implementation;
 - (d) provisions obliging the organisation to which implementation tasks are entrusted to exclude from participation in a procurement or grant award procedure candidates or applicants who are in the situations referred to in points (a), (b) and (e) of Article 93(1) and in points (a) and (b) of Article 94 of the Financial Regulation;
 - (e) the conditions for payments of the Community contribution, and the supporting documents required to justify the payments;
 - (f) the conditions under which this implementation terminates;
 - (g) the detailed arrangements for Commission scrutiny;
 - (h) provisions granting the Court of Auditors access to the information required to perform its duties, if necessary on the spot, in accordance with the verification agreements concluded with the international organisations concerned;
 - (i) provisions regarding the use of any interest yielded;
 - (j) provisions guaranteeing the visibility of the Community action, project or programme in relation to the other activities of the organisation;
 - (k) provisions on the publication of the beneficiaries of funds deriving from the budget, which require the international organisations to publish the information in accordance with Article 169 of this Regulation.
5. A project or programme shall be considered to be jointly elaborated when the Commission and the international public sector body jointly assess the feasibility and define the implementation agreements.
6. In the implementation of projects in joint management, international organisations shall comply with at least the following requirements:

- (a) procurement and grant award procedures shall comply with the principles of transparency, proportionality, sound financial management, equal treatment and non-discrimination, lack of conflicts of interests and respect of internationally accepted standards;
- (b) grants may not be cumulative or awarded retrospectively;
- (c) grants must involve co-financing, save as otherwise provided in Article 253;
- (d) grants may not have the purpose or effect of producing a profit for the beneficiary.

Those requirements shall be expressly established in the agreements concluded with the international organisations.

Article 180a

Forms of grants

(Article 108a of the Financial Regulation)

1. Community grants in the form referred to in point (a) of Article 108a(1) of the Financial Regulation shall be calculated on the basis of eligible costs, which are defined as costs actually incurred by the beneficiary and subject to a preliminary budget estimate as submitted with the proposal and included in the grant decision or agreement.
2. Lump sums as referred to in point (b) of Article 108a(1) of the Financial Regulation shall cover in global terms certain costs necessary for carrying out an action, or for the annual operation of a beneficiary, in accordance with the terms of the agreement and on the basis of an estimate.
3. Flat-rate financing as referred to in point (c) of Article 108a(1) of the Financial Regulation shall cover specific categories of expenditure which are clearly identified in advance either by applying a percentage fixed in advance or by the application of a standard scale-of-unit cost.

Article 181

Lump sums and flat-rate financing

(Article 108a of the Financial Regulation)

1. The Commission may, by way of decision, authorise the use of the following:

- (a) one or more lump sums with a unit value of EUR 25 000 or less, to cover one or more different categories of eligible costs;
- (b) flat-rate financing, in particular on the basis of the scale annexed to the Staff Regulations or as approved each year by the Commission for the accommodations costs and daily allowances for mission costs.

That decision shall determine the maximum amount for the total of such funding authorised, by grant or type of grant.

2. Where appropriate, lump sums exceeding a unit value of EUR 25 000 shall be authorised in the basic act which shall lay down the conditions of award and the maximum amounts.

Those amounts shall be adjusted every two years by the Commission on the basis of statistical data and similar objective means as referred to in Article 165(2).

3. The grant decision or agreement may authorise, in the form of flat-rates, funding of the beneficiary's indirect costs up to a maximum of 7 % of total eligible direct costs for the action, save where the beneficiary is in receipt of an operating grant financed from the Community budget. The 7 % ceiling may be exceeded by reasoned decision of the Commission.
4. The grant decision or agreement shall contain all necessary provisions in order to verify that the conditions for the award of lump sums or flat-rate financing have been respected.

CHAPTER 2

PRINCIPLES

FR Article 109

1. Grants shall be subject to the principles of transparency and equal treatment.

They may not be cumulative or awarded retrospectively and they must involve co-financing.

On no account may the combined total costs eligible, as specified in the implementing rules, for financing be exceeded.

2. Grants may not have the purpose or effect of producing a profit for the beneficiary.
3. Paragraph 2 shall not apply to the following:
 - (a) study, research or training scholarships paid to natural persons;
 - (b) prizes awarded following contests;

- (c) actions the objective of which is the reinforcement of the financial capacity of a beneficiary or the generation of an income in the framework of external actions.
4. If a political party at European level realises a surplus of income over expenditure at the end of a financial year for which it received an operating grant, part of that surplus up to 25 % of the total income for that year may, by derogation from the no-profit rule laid down in paragraph 2, be carried over to the following year provided that it is used before the end of the first quarter of this following year.

For the purpose of verifying compliance with the no-profit rule, the own resources, in particular donations and membership fees, aggregated in the annual operations of a political party at European level, which exceed 15 % of the eligible costs to be borne by the beneficiary, shall not be taken into account.

The second subparagraph shall not apply if the financial reserves of a political party at European level exceed 100 % of its average annual income.

IR *Article 160d*

Prizes

(Article 109(3)(b) of the Financial Regulation)

For the purposes of point (b) of Article 109(3) of the Financial Regulation, prizes shall be the reward for an entry in a contest.

They shall be awarded by a panel of judges who are free to decide whether or not to award prizes depending on their appraisal of the quality of the entries by reference to the rules of the contest.

The amount of the prize shall not be linked to the costs incurred by the recipient.

The rules of the contest shall lay down the award conditions and criteria and the amount of the prize.

Article 165

No-profit rule

(Article 109(2) of the Financial Regulation)

1. For the purposes of this Title, profit shall be defined as follows:
 - (a) in the case of a grant for an action, profit means a surplus of receipts over the costs incurred by the beneficiary when the request is made for final payment;

(b) in the case of an operating grant, profit means a surplus balance on the operating budget of the beneficiary.

2. Lump sums and flat-rate financing shall be determined according to Article 181 on the basis of the costs or the category of costs to which they relate, established by statistical data and similar objective means, in such a way as to exclude a priori a profit. On the same basis, those amounts shall be reassessed and, where appropriate, adjusted by the Commission every two years.

In that case, and for each grant, non-profit shall be verified at the time of the determination of the amounts.

Where the *ex post* control on the generating event reveals that the event has not occurred and an undue payment has been made to the beneficiary on a lump sum or flat-rate financing, the Commission shall be entitled to recover up to the amount of the lump sum or flat-rate financing and, in the case of a false declaration regarding the lump sum or flat-rate financing, impose financial penalties up to 50 % of the total amount of the lump sum or flat-rate financing.

Such controls are without prejudice to the verification and certification of actual costs required for the payment of grants or for grants consisting in the reimbursement of a specified proportion of the eligible costs.

3. In the case of operating grants to bodies which pursue an aim of general European interest, the Commission shall be entitled to recover the percentage of the annual profit corresponding to the Community contribution to the operating budget of the bodies concerned where these bodies are also funded by public authorities which are themselves required to recover the percentage of the annual profit corresponding to their contribution. For the purpose of calculating the amount to be recovered, the percentage corresponding to the contributions in kind to the operating budget shall not be taken into account.

Article 165a

Co-financing principle

(Article 109 of the Financial Regulation)

1. Co-financing shall require that part of the cost of an action or of the running costs of an entity is borne by the beneficiary of a grant, or by contributions other than the Community contribution.
2. In the case of grants taking one of the forms provided for in points (b) or (c) of Article 108a(1) of the Financial Regulation, or a combination thereof, co-financing shall only be assessed at the stage of the evaluation of the grant application.

1. Grants shall be subject to an annual work programme, to be published at the start of the year.

That annual work programme shall be implemented through the publication of calls for proposals, save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary or of the action leave no other choice for a given action, or where the beneficiary is identified in a basic act as recipient of a grant.

The first subparagraph shall not apply to crisis management aid and humanitarian aid operations.

2. All grants awarded in the course of a financial year shall be published annually with due observance of the requirements of confidentiality and security.

IR Article 166**Annual programming**

(Article 110(1) of the Financial Regulation)

1. An annual work programme for grants shall be prepared by each authorising officer responsible. This work programme shall be adopted by the institution and published on the grants Internet site of the institution concerned as soon as possible, if necessary during the year preceding budget implementation, and no later than 31 March of the year of implementation.

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 work programme in the course of the year shall also be adopted and published as provided for in paragraph 1.

*Article 167***Content of calls for proposals**

(Article 110(1) of the Financial Regulation)

1. Calls for proposals shall specify:
 - (a) the objectives pursued;
 - (b) the eligibility, exclusion, selection and award criteria as referred to in Articles 114 and 115 of the 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 Community institutions and possibly by any other appropriate means, including the *Official Journal of the European Union*, in order to provide maximum publicity among potential beneficiaries. They may be published during the year preceding budget implementation. Any modification of the content of the calls for proposals shall be also subject to publication under the same conditions.

Article 168

Exceptions to calls for proposals

(Article 110(1) of the 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 (EC) No 1257/96 ⁽¹⁾ 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 award decision;
 - (d) to bodies identified by a basic act, within the meaning of Article 49 of the Financial Regulation, as beneficiaries of a grant;
 - (e) in the case of research and technological development, to bodies identified in the annual work programme referred to in Article 110 of the Financial Regulation, where the basic act expressly provides for that possibility, and on condition that the project does not fall under the scope of a call for proposals;
 - (f) for actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals.

⁽¹⁾ OJ L 163, 2.7.1996, p. 1.

The cases referred to in point (f) of the first subparagraph shall be duly substantiated in the award decision.

2. Crisis situations shall be understood to mean, for third countries, situations 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 which could seriously harm:
 - (a) the safeguarding of the common values, fundamental interests, independence and integrity of the European Union;
 - (b) the security of the European Union, peacekeeping 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 ⁽¹⁾.

Article 169

Ex post publication

(Article 110(2) of the Financial Regulation)

1. All grants awarded in the course of a financial year, except scholarships paid to natural persons, shall be published, according to a standard presentation, in a dedicated and easily accessible place of the Internet site of the Community institution concerned 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 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 in the dedicated place of the Internet site of the Community institutions.

The information may also be published, according to a standard presentation, by any other appropriate means, including the *Official Journal of the European Union*.

2. The following shall be published with the agreement of the beneficiary in accordance with point (f) of Article 164(1):

⁽¹⁾ OJ L 57, 27.2.2001, p. 5.

- (a) the name and address of the beneficiaries;
- (b) the subject of the grant;
- (c) the amount awarded and, except in the case of a lump sum or flat-rate financing as referred to in Article 108a(1)(b) and (c) of the Financial Regulation, the rate of funding of the costs of the action or approved work programme.

The obligation laid down in the first subparagraph may be waived if publication of the information may threaten the safety of the beneficiaries or harm their business interests.

3. Following the publication pursuant to paragraph 2, when requested by the budgetary authority the Commission shall forward to that authority a report on:
- (a) the number of applicants in the past year;
 - (b) the number and percentage of successful applications per call for proposals;
 - (c) the mean duration of the procedure from date of closure of the call for proposals to the award of a grant;
 - (d) the number and amount of grants where the *ex post* publication obligation was waived in the past year for reasons of safety of the beneficiaries or protection of their business interest.

Article 169a

Information for applicants

(Article 110 of the Financial Regulation)

The Commission shall provide information and advice to applicants by the following means:

- (a) laying down joint standards for application forms for similar grants and monitoring the size and readability of the application forms;
- (b) supplying information to potential applicants in particular through seminars and the provision of handbooks;
- (c) maintaining permanent data for beneficiaries in the legal entity file referred to in Article 64.

FR Article 111

Each action may give rise to the award of only one grant from the budget to any one beneficiary, except where the relevant basic acts authorise otherwise.

A beneficiary may be awarded only one operating grant from the budget per financial year.

The applicant shall immediately inform the authorising officers of any multiple applications and multiple grants relating to the same action or to the same work programme.

In no circumstances shall the same costs be financed twice by the budget.

IR Article 170

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

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

FR Article 112

1. A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the grant is awarded.

In such cases, costs eligible for financing may not have been incurred prior to the date of submission of the grant application, save in duly substantiated exceptional cases as provided for in the basic act or in the case of expenditure necessary for the proper implementation of crisis management aid or humanitarian aid operations as provided for in the implementing rules.

No grant may be awarded retrospectively for actions already completed.

2. An operating grant shall be awarded within six months after the start of the beneficiary's budgetary year. Costs eligible for financing may neither have been incurred before the grant application was lodged nor before the start of the beneficiary's budgetary year.

IR Article 171

Retroactive effect for management of humanitarian aid and crisis situations
(Article 112 of the Financial Regulation)

In order to ensure that humanitarian aid operations and operations in crisis situations within the meaning of Article 168(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 substantiated reasons, where the financing decision and the grant agreement explicitly provide for this by setting an eligibility date earlier than the date for submission of applications.

FR Article 113

1. The grant may not finance the entire costs of the action, subject to Title IV of Part Two.

The grant may not finance the entire operating expenditure of the beneficiary body.

2. Unless otherwise specified in the basic act with regard to bodies pursuing an objective of general European interest, when operating grants are renewed, they shall be gradually decreased. This provision shall not apply to grants taking one of the form referred to in points (b) and (c) of Article 108a(1).

IR Article 172

External co-financing
(Article 113 of the 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 cases of contributions of a flat-rate amount and scales of unit costs referred to in Article 181(1).

2. The authorising officer responsible may accept co-financing in kind, if considered necessary or appropriate. 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 real estate as referred to in Article 116(1) shall be excluded from the calculation of the amount of co-financing.

3. For grants with a total value of less than or equal to EUR 25 000, the authorising officer responsible may, depending on his risk assessment, waive the obligation to provide the evidence for co-financing referred to in paragraph 1.

Where a single beneficiary is awarded several grants in a financial year, the threshold of EUR 25 000 shall apply to the total of those grants.

4. The co-financing principle shall be considered to be respected where the Community contribution is designed to cover certain administrative costs of a financial institution, including, where appropriate, a variable fee constituting a performance-related incentive in relation to the management of a project or programme forming an indissoluble whole.

Article 172a

Eligible costs

(Article 113 of the Financial Regulation)

1. Eligible costs are costs actually incurred by the beneficiary of a grant which meet all the following criteria:

- (a) they are incurred during the duration of the action or of the work programme, with the exception of costs relating to final reports and audit certificates;
- (b) they are indicated in the estimated overall budget of the action or work programme;
- (c) they are necessary for the implementation of the action or of the work programme which is the subject of the grant;
- (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting standards of the country where the beneficiary is established and according to the usual cost accounting practices of the beneficiary;

- (e) they comply with the requirements of applicable tax and social legislation;
 - (f) they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and efficiency.
2. Without prejudice to paragraph 1 and to the basic act, the following costs may be considered as eligible by the authorising officer responsible:
- (a) costs relating to a bank guarantee or comparable surety to be lodged by the beneficiary of the grant pursuant to Article 118 of the Financial Regulation;
 - (b) costs relating to external audits required by the responsible authorising officer either upon the request for financing or upon the request for payment;
 - (c) value added tax paid, and which cannot be refunded to the beneficiary according to the applicable national legislation;
 - (d) depreciation costs, provided they are actually incurred by the beneficiary;
 - (e) administrative expenditure, staff and equipment costs, including the salary costs of personnel of national administrations to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken.

Article 172b

Principle of gradual decrease of operating grants (Article 113(2) of the Financial Regulation)

Where operating grants are decreased, they shall be decreased in a proportionate and equitable manner.

CHAPTER 3

AWARD PROCEDURE

FR Article 114

1. Grant applications shall be submitted in writing.
2. Grant applications shall be eligible if submitted by the following:
 - (a) legal persons; grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on their behalf and assume financial liability;
 - (b) natural persons in so far as this is required by the nature or characteristics of the action or the objective pursued by the applicant.
3. Grants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 93(1), 94 and 96(2)(a).

Applicants must certify that they are not in one of the situations referred to in the first subparagraph. However, the authorising officer may refrain from requiring such certification for very low value grants, as specified in the implementing rules.

4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 96.

Such penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.

IR Article 133

Illegal activities giving rise to exclusion

(Article 93 and 114 of the Financial Regulation)

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

- (a) cases of fraud as 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 ⁽¹⁾;

⁽¹⁾ OJ C 316, 27.11.1995, p. 48.

- (b) cases of corruption as 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 ⁽¹⁾;
- (c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council ⁽²⁾;
- (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC ⁽³⁾.

Article 134b

Administrative and financial penalties

(Articles 96 and 114 of the Financial Regulation)

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have made false declarations, have made substantial errors or committed irregularities or fraud, or have been found in serious breach of their contractual obligations may be excluded from all contracts and grants financed by the Community budget for a maximum of five years from the date on which the infringement is established as confirmed following an adversarial procedure with the contractor.

That period may be extended to ten years in the event of a repeated offence within five years of the date referred to in the first subparagraph.

2. Tenderers or candidates who have made false declarations, have committed substantial errors, irregularities or fraud, may also be subject to financial penalties representing 2 % to 10 % of the total estimated value of the contract being awarded.

Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2 % to 10 % of the total value of the contract in question.

That rate may be increased to 4 % to 20 % in the event of a repeat infringement within five years of the date referred to in the first subparagraph of paragraph 1.

3. The institution shall determine the administrative or financial penalties taking into account in particular the elements referred to in Article 133a(1).

⁽¹⁾ OJ C 195, 25.6.1997, p. 1.

⁽²⁾ OJ L 351, 29.12.1998, p. 1.

⁽³⁾ OJ L 166, 28.6.1991, p. 77.

Financing applications

(Article 114 of the Financial Regulation)

1. The arrangements for the submission of grant applications shall be determined by the authorising officer responsible, who may choose the method of submission. Grant applications may be submitted by letter or by electronic means.

The means of communication chosen shall be non-discriminatory in nature and shall not have the effect of restricting the access of applicants to the award procedure.

The means of communication chosen shall be such as to ensure that the following conditions are satisfied:

- (a) each submission must contain all the information required for its evaluation;
- (b) the integrity of data must be preserved;
- (c) the confidentiality of proposals must be preserved.

For the purposes of point (c), the authorising officer responsible shall examine the content of applications only after the time limit set for submitting them has expired.

The authorising officer responsible may require that electronic submission be accompanied by an advanced electronic signature within the meaning of Directive 1999/93/EC.

2. Where the authorising officer responsible authorises submission of applications by electronic means, the tools used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use. The information relating to the specifications required for presentation of applications, including encryption shall be made available to the applicants.

Moreover, the devices for the electronic receipt of applications shall guarantee security and confidentiality.

3. Where submission is by letter, applicants may choose to submit applications in one of the following ways:
 - (a) by post or by courier service, in which case the call for proposals shall specify that the evidence shall be constituted by the date of dispatch, the postmark or the date of the deposit slip;

- (b) by hand delivery to the premises of the institution by the applicant in person or by an agent, in which case the call for proposals shall specify the department to which applications are to be delivered against a signed and dated receipt.

Article 173

Financing applications

(Article 114 of the Financial Regulation)

1. Applications shall be made on the form established in accordance with the joint standards laid down pursuant to Article 169a(a) and made available by the authorising officers responsible, and in accordance with the criteria laid down in the basic act and the call for proposals.
2. The application shall show the legal status of the applicant and his financial and operational capacity to carry out the proposed action or work programme, subject to Article 176(4).

For that purpose, the applicant shall submit a declaration on his honour and, for applications for a grant exceeding EUR 25 000, any supporting documents requested, on the basis of his risk assessment, by the authorising officer responsible. The request for such documents shall be indicated in the call for proposals.

The supporting documents may consist in particular in the profit and loss account and the balance sheet for the last financial year for which the accounts were closed.

3. The budget for the action or the operating budget attached to the application shall have revenue and expenditure in balance, subject to provisions for possible variations in exchange rates, and shall indicate the costs which are eligible for financing from the Community budget.
4. Where the application concerns grants for an action for which the amount exceeds EUR 500 000 or operating grants which exceed EUR 100 000, an audit report produced by an approved external auditor shall be submitted. That report shall certify the accounts for the last financial year available.

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 Commission and a number of beneficiaries, those thresholds shall apply to each beneficiary.

In the case of partnerships as referred to in Article 163, the audit report referred to in the first subparagraph, covering the last two financial years available, must be produced before the framework agreement is concluded.

The authorising officer responsible may, depending on his risk assessment, waive the obligation of audit referred to in the first subparagraph for secondary and higher education establishments and beneficiaries who have accepted joint and several liabilities in the case of agreements with a number of beneficiaries.

The first subparagraph shall not apply to public bodies and the international organisations referred to in Article 43(2).

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

Article 174

Evidence of non-exclusion

(Article 114 of the Financial Regulation)

Applicants shall declare on their honour that they are not in one of the situations listed in Articles 93(1) and 94 of the Financial Regulation. The authorising officer responsible may, depending on his risk analysis, request the evidence referred to in Article 134. Applicants shall be required to supply such evidence, unless there is a material impossibility recognised by the authorising officer responsible.

Article 174a

Applicants without legal personality

(Article 114 of the Financial Regulation)

When an application for a grant is submitted by an applicant who does not have legal personality, in accordance with Article 114(2)(a) of the Financial Regulation, the representatives of that applicant shall prove that they have the capacity to undertake legal obligations on behalf of the applicant, and shall offer financial guarantees equivalent to those provided by legal persons.

Article 175

Financial and administrative penalties

(Article 114 of the Financial Regulation)

Financial or administrative penalties, or both, may be imposed on applicants who have made false declarations or substantial errors, or committed irregularities or fraud, in accordance with the conditions laid down in

Article 134b and in proportion to the value of the grants in question.

Such financial or administrative penalties, or both, may also be imposed on beneficiaries who have been found in serious breach of their contractual obligations.

Article 175a

Eligibility criteria

(Article 114 of the Financial Regulation)

1. The eligibility criteria shall be published in the call for proposals.
2. The eligibility criteria shall determine the conditions for participating in a call for proposals. Those criteria shall be established with due regard for the objectives of the action and shall comply with the principles of transparency and non-discrimination.

Article 175b

Very low value grants

(Article 114(3) of the Financial Regulation)

Very low value grants shall be considered to be those grants which are lower than or equal to EUR 5 000.

FR *Article 115*

1. The selection criteria shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work programme.
2. The award criteria announced in advance in the call for proposals shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

IR *Article 176*

Selection criteria

(Article 115(1) of the 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. The applicant 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 any of the supporting documents referred to in Article 173 and requested by the authorising officer responsible in the call for proposals.

If no supporting documents were requested in the call for proposals and if the authorising officer responsible has doubts about the financial or operational capacity of applicants, he shall request them to provide any appropriate documents.

4. The verification of financial capacity in accordance with paragraph 3 shall not apply to natural persons in receipt of scholarships, to public bodies or to the international organisations referred to in Article 43(2).

In the case of the partnerships referred to in Article 163, that verification shall be performed before the framework agreement is concluded.

Article 177

Award criteria

(Article 115(2) of the Financial Regulation)

1. The award criteria shall be published in the call for proposals.
2. The award criteria shall be such as to enable grants to be awarded 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. Those 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 enable the selection of planned actions or work programmes which the Commission can be confident will comply 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.

FR Article 116

1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, with a view to determining which proposals may be financed.
2. The authorising officer responsible shall then, on the basis of the evaluation provided for in paragraph 1, draw up the list of beneficiaries and the amounts approved.
3. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the institution shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria already announced.

IR Article 178

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

1. The authorising officer responsible shall appoint a committee to evaluate the proposals, unless the Commission decides otherwise in the framework of a specific sectoral programme. The authorising officer may appoint such a committee before the final date for the submission of proposals provided for in point (d) of Article 167.

The committee shall be made up of at least three persons representing at least two organisational entities of the Commission with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 52 of the Financial Regulation.

In the representations and local units referred to in Article 254 and the delegated bodies referred to in Article 160(1), if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

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

- 1a. The authorising officer responsible shall, where appropriate, divide the process into several procedural stages. The rules governing the process shall be announced in the call for proposals.

Where a call for proposals specifies a two-stage submission procedure, only those applicants whose proposals satisfy the evaluation criteria for

the first stage shall be requested to submit a complete proposal in the second stage.

Where a call for proposals specifies a two-stage evaluation procedure, only those proposals that pass the first stage, based on the evaluation against a limited set of criteria, shall go forward for further evaluation.

The applicants whose proposals are rejected at any stage shall be informed in accordance with Article 116(3) of the Financial Regulation.

Each subsequent stage of the procedure must be clearly distinct from the previous one.

The same documents and information shall not be required to be provided more than once during the same procedure.

2. The evaluation committee or, where appropriate, the authorising officer responsible may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, in particular in the case of obvious clerical errors.

The authorising officer shall keep appropriate records of contacts with applicants during the procedure.

3. Upon completion of its work, the members of the evaluation 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 that 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 that choice, including where it is inconsistent with the opinion of the evaluation committee;
 - (c) the names of any applicants rejected and the reasons for that rejection.
5. The provisions of paragraphs 1 to 4 shall not apply to beneficiaries of grants who are identified in the basic act.

Article 179

Information for applicants
(Article 116 of the Financial Regulation)

Applicants shall be informed as soon as possible and in any case within 15 calendar days after the award decision has been sent to the beneficiaries.

CHAPTER 4

PAYMENT AND CONTROL

FR Article 117

The pace of payments shall be determined by the financial risks involved, the duration and progress of the action or the costs incurred by the beneficiary.

IR Article 180

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

1. For each grant, pre-financing may be split into several instalments.

The payment in full of the new pre-financing payment shall be subject to the consumption of at least 70 % of the total amount of any earlier pre-financing.

Where the consumption of the previous pre-financing is less than 70 %, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing payment.

The statement of the beneficiary's outlay shall be produced in support of any request for a new payment.

- 1a. The beneficiary shall, without prejudice to Article 104, certify on his honour that information contained in requests for payments is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the grant agreement and that requests for payment are substantiated by adequate supporting documents that can be checked.

2. A certificate on the financial statements and underlying accounts, produced by an approved auditor, or, in the case of public bodies, by a competent and independent public officer, may be demanded by the authorising officer responsible in support of any payment on the basis of his risk assessment. In the case of a grant for an action or of an operating grant, the certificate shall be attached to the request for payment. The certificate shall certify, in accordance with a methodology approved by the authorising officer responsible, that the costs declared by the beneficiary in the financial statements on which the request for payment is based are real, accurately recorded and eligible in accordance with the grant agreement.

Except in the case of lump sums and flat rate financing, the certificate on the financial statements and underlying accounts shall be compulsory for interim payments per financial year and for payments of balances in the following cases:

- (a) grants for an action of EUR 750 000 or more, when the cumulative amounts of requests for payment is at least EUR 325 000;
- (b) operating grants of EUR 100 000 or more.

Depending on his risk assessment, the authorising officer responsible may also waive the obligation to provide such certificate on the financial statements and underlying accounts in the case of:

- (a) public bodies and the international organisations referred to in Article 43;
- (b) the beneficiaries of grants in connection with humanitarian aid and the management of crisis situations, save in respect of payments of balances;
- (c) for payments of balances, beneficiaries of grants in connection with humanitarian aid who have signed a partnership framework agreement, as referred to in Article 163, and who have in place a system of control offering equivalent guarantees for such payments;
- (d) beneficiaries of multiple grants who have provided independent certification offering equivalent guarantees on the control systems and methodology used to prepare their claims.

In the case of an agreement linking the Commission and a number of beneficiaries, the thresholds referred to in points (a) and (b) of the second subparagraph shall apply to each beneficiary.

1. The authorising officer responsible may, if he deems it appropriate and proportionate, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.
2. The authorising officer shall require the beneficiary to lodge such a guarantee in advance in the cases specified in the implementing rules.

IR Article 182**Advance guarantee**
(Article 118 of the Financial Regulation)

1. In order to limit the financial risks connected with the payment of pre-financing, the authorising officer responsible may, on the basis of his risk assessment either require the beneficiary to lodge a guarantee in advance, for up to the same amount as the pre-financing, or split the payments into several instalments.

However, for grants with a value of less than or equal to EUR 10 000, the authorising officer responsible may require the beneficiary to lodge a guarantee in advance only in duly substantiated cases.

Such a guarantee may also be required by the authorising officer responsible, depending on his risks assessment, in the light of the method of funding laid down in the grant agreement.

Whenever a guarantee is required, it is subject to the assessment and acceptance of the authorising officer responsible.

2. Where the pre-financing represents over 80 % of the total amount of the grant and provided it exceeds EUR 60 000, a guarantee shall be required.

For NGOs operating in the field of external action, that guarantee shall be demanded in respect of pre-financing exceeding EUR 1 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. When the beneficiary is established in a third country, the authorising officer responsible may agree that a bank or financial institution established in that third country may provide the guarantee if he considers that the bank or financial

institution offers equivalent security and characteristics as those offered by a bank or financial institution established in a Member State.

At the request of the beneficiary, that guarantee may be replaced by a joint and several guarantee by a third party or by the irrevocable and unconditional joint guarantee of the beneficiaries of an action who are parties to the same grant agreement, after acceptance by the authorising officer responsible.

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. The guarantee shall be released as the pre-financing is gradually cleared against interim payments or payments of balances to the beneficiary in accordance with the conditions laid down in the grant agreement.

In the cases referred to in the second subparagraph of paragraph 1, it shall be released only upon payment of the balance.

5. The authorising officer responsible may waive the obligation laid down in paragraph 2 for public sector bodies and the international organisations referred to in Article 43.

The authorising officer responsible may also exempt from that obligation beneficiaries who have concluded a framework partnership agreement under Article 163.

FR Article 119

1. The amount of the grant shall not become final until after the institution has accepted the final reports and accounts, without prejudice to subsequent checks by the institution.
2. Should the beneficiary fail to comply with his obligations, the grant shall be suspended or reduced or terminated in the cases provided for by the implementing rules after the beneficiary has been given the opportunity to make his observations.

IR Article 183

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

The authorising officer responsible shall suspend payments in the following cases:

- (a) where the agreed action or work programme is not carried out at all, or is not carried out properly, in full or on time;
- (b) where amounts exceeding the financing ceilings set in the agreement have been paid;
- (c) where the amounts paid in accordance with the grant agreement are higher than the real costs incurred by the beneficiary for the action or where the operating budget reveals a surplus *ex post*.

Depending on the stage reached in the procedure, the authorising officer shall, after giving the beneficiary or beneficiaries the opportunity to present their comments, either reduce the grant or demand reimbursement pro rata by the beneficiary or beneficiaries.

CHAPTER 5

IMPLEMENTATION

FR Article 120

1. Where implementation of the action requires the award of procurement contracts by the beneficiary, the relevant procedures shall be as set out in the implementing rules.
2. Where implementation of the action requires financial support to be given to third parties, the beneficiary of a Community grant may give such financial support provided that the following conditions are met:
 - (a) the financial support is not the primary aim of the action;
 - (b) the conditions for the giving of such support are strictly defined in the grant decision or agreement between the beneficiary and the Commission, with no margin for discretion;
 - (c) the amounts concerned are small.

For the purpose of point (c), the maximum amount of financial support that can be paid to a third party by a beneficiary shall be determined in the implementing rules.

3. Each grant decision or agreement shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises, over all contractors and subcontractors who have received Community funds.

IR *Article 184*

Implementation contracts

(Article 120 of the Financial Regulation)

1. Without prejudice to the application of Directive 2004/18/EC, 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, that is to say, to the tender offering the best price-quality ratio, while taking care to avoid any conflict of interests.
2. Where implementation of the assisted actions requires the award of a procurement contract with a value of more than EUR 60 000, the authorising officer responsible may require beneficiaries to abide by special rules in addition to those referred to in paragraph 1.

Those special rules shall be based on rules contained in the Financial Regulation and determined with due regard 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 risk. Such special rules shall be included in the grant decision or agreement.

Article 184a

Financial support to third parties

(Article 120(2) of the Financial Regulation)

1. Provided the objectives or results to be obtained are sufficiently detailed in the conditions referred to in Article 120(2)(b) of the Financial Regulation, the margin of discretion may be considered to be exhausted if the grant decision or agreement also specifies:
 - (a) the minimum and maximum amounts of financial support that can be paid to a third party and criteria for determining the exact amount;
 - (b) the different types of activity that may receive such financial support, on the basis of a fixed list.
2. For the purpose of Article 120(2)(c) of the Financial Regulation, the maximum amount of financial support that may be paid to third parties by a beneficiary shall be EUR 100 000, with a maximum of EUR 10 000 per each third party.

TITLE VII

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1

PRESENTATION OF THE ACCOUNTS

FR Article 121

The Community accounts shall comprise:

- (a) the financial statements of the institutions as set out in Article 126, those of the bodies referred to in Article 185 and of other bodies whose accounts must be consolidated in accordance with Community accounting rules;
- (b) the consolidated financial statements which present in aggregated form the financial information contained in the financial statements of the institutions and bodies referred to in point (a);
- (c) the reports on implementation of the budget of the institutions and the budgets of the bodies referred to in Article 185;
- (d) the aggregated reports on implementation of the budget which present the information contained in the reports referred to in point (c).

IR *Nihil*

FR Article 122

1. The accounts of the institutions and bodies referred to in Article 121 shall be accompanied by a report on budgetary and financial management of the financial year.
2. The report referred to in paragraph 1 shall give an account, inter alia, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.

IR *Article 185*

Report on budgetary and financial management during the year

(Article 122 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.

The report on budgetary and financial management shall be separate from the reports on implementation of the budget referred to in Article 121 of the Financial Regulation.

FR *Article 123*

The accounts must comply with the rules and be accurate and comprehensive and present a true and fair view:

- (a) as regards the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities and cash flow;
- (b) as regards reports on budgetary implementation, of revenue and expenditure operations.

IR *Nihil*

FR *Article 124*

The financial statements shall be drawn up in accordance with the generally accepted accounting principles, namely:

- (a) going-concern basis;
- (b) prudence;
- (c) consistent accounting methods;
- (d) comparability of information;
- (e) materiality;
- (f) no netting;
- (g) reality over appearance;
- (h) accrual-based accounting.

IR *Article 186*

Exception to the accounting principles

(Article 124 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 187 to 194, that exception shall be duly substantiated and reported in the annex to the financial statements referred to in Article 203.

Article 187

Going-concern principle

(Article 124 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 121 of the 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 121 of the Financial Regulation is to cease its activities, the accounting officer shall present that information in the annex, indicating the reasons. The accounting officer shall apply the accounting rules with a view to determining the liquidation value of the institution or body concerned.

Article 188

Principle of prudence

(Article 124 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 189

Principle of consistent accounting methods

(Article 124 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 Commission'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 190

Principle of comparability of information

(Article 124 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 referred to in Article 203.

Article 191

Materiality principle

(Article 124 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 192

No-netting principle

(Article 124 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 193

Principle of reality over appearance

(Article 124 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.

FR *Article 125*

1. In accordance with the principle of accrual-based accounting, the financial statements shall show the charges and income for the financial year, regardless of the date of payment or collection.
2. The value of assets and liabilities shall be determined in accordance with the valuation rules provided for in Article 133.

IR *Article 194*

Accrual-based accounting principle

(Article 125 of the Financial Regulation)

1. The accrual-based accounting principle means that transactions and events shall be entered in the accounts when they occur and not when amounts are actually paid or recovered. They shall be booked to the financial years to which they relate.
2. The accounting methods provided for in Article 133 of the Financial Regulation shall specify the obligating event for the entry of each transaction in the accounts.

1. The financial statements shall be presented in millions of euro and shall comprise:
 - (a) the balance sheet and the economic outturn account, which represent the assets and liabilities and financial situation and the economic outturn at 31 December of the previous year; they shall be presented in accordance with the structure laid down by the Directives of the European Parliament and of the Council on the annual accounts of certain types of companies, but with account being taken of the specific nature of the Communities' activities;
 - (b) the cash-flow table showing amounts collected and disbursed during the year and the final treasury position;
 - (c) the statement of changes in capital presenting in detail the increases and decreases during the year in each item of the capital accounts.
2. The Annex to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the activities of the Communities.

IR Article 199

Economic outturn account

(Article 126 of the Financial Regulation)

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

Article 201

Cash flow table

(Article 126 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 203

Annex to the financial statements (Article 126 of the Financial Regulation)

The annex referred to in Article 126 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 204

Explanatory notes (Article 126 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.

FR *Article 127*

The budgetary implementation reports shall be presented in millions of euro. They shall comprise:

- (a) the budgetary outturn account, which sets out all budgetary operations for the year in terms of revenue and expenditure; the structure in which it is presented shall be the same as that of the budget itself;
- (b) the Annex to the budget outturn account, which shall supplement and comment on the information given in that account.

Budgetary outturn account

(Article 127 of the Financial Regulation)

1. The budgetary outturn account shall contain:
 - (a) information on revenue comprising:
 - (i) changes in the revenue estimates 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 206

Annex to the budgetary outturn account

(Article 127 of the Financial Regulation)

The annex to the budgetary outturn account referred to in Article 127 of the Financial Regulation shall contain at least:

- (a) information on the 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.

FR *Article 128*

The accounting officers of the other institutions and bodies referred to in Article 121 shall send to the Commission's accounting officer and to the Court of Auditors by 1 March of the following year at the latest their provisional accounts together with the report on budgetary and financial management during the year.

The Commission's accounting officer shall consolidate these provisional accounts with the Commission's provisional accounts and shall send to the Court of Auditors, by 31 March of the following year at the latest, the Commission's provisional accounts accompanied by its report on budgetary and financial management during the year together with the provisional consolidated accounts.

The accounting officer of each institution and body referred to in Article 121 shall also send the report on budgetary and financial management to the European Parliament and the Council by the date specified in the second paragraph.

IR *Nihil*

FR *Article 129*

1. The Court of Auditors shall, by 15 June at the latest, make its observations on the provisional accounts of each institution and each body referred to in Article 121.
2. The institutions other than the Commission, and each of the bodies referred to in Article 121, shall draw up their final accounts in accordance with Article 61 and send them to the Commission's accounting officer and the Court of Auditors by 1 July of the following year at the latest with a view to drawing up the final consolidated accounts.
- 2a. The Commission's accounting officer shall prepare the final consolidated accounts on the basis of the information presented by the other institutions under paragraph 2. The final consolidated accounts shall be accompanied by a note established by the Commission's accounting officer, by which he/she declares that they were prepared in accordance with Title VII and with the accounting principles, rules and methods set out in annex to the financial statements.
3. After approving the final consolidated accounts and its own final accounts, the Commission shall send them both to the European Parliament, the Council and the Court of Auditors before 31 July of the following financial year.

4. The final consolidated accounts shall be published in the *Official Journal of the European Communities* together with the statement of assurance given by the Court of Auditors in accordance with Article 248 of the EC Treaty and Article 160c of the Euratom Treaty by 15 November of the following financial year.

IR *Nihil*

CHAPTER 2

INFORMATION ON THE IMPLEMENTATION OF THE BUDGET

FR *Article 130*

In addition to the statements provided for in Articles 126 and 127, the Commission shall report to the European Parliament and to the Council twice a year on budgetary guarantees and the corresponding risks.

This information shall be sent to the Court of Auditors at the same time.

IR *Nihil*

FR *Article 131*

1. In addition to the statements provided for in Articles 126 and 127, the Commission's accounting officer shall send once a month to the European Parliament and to the Council figures, aggregated at chapter level at least, on the implementation of the budget, both for revenue and for expenditure against all appropriations.

These figures shall also provide details of the utilisation of appropriations carried over.

The figures shall be sent within ten working days following the end of each month.

2. Three times a year, within the thirty working days following 31 May, 31 August and 31 December, the Commission's accounting officer shall send to the European Parliament and to the Council a report on the implementation of the budget, covering both revenue and expenditure broken down by chapter, article and item.

This report shall also provide details of the utilisation of appropriations carried over from previous financial years.

3. The figures and the report on implementation of the budget shall at the same time be sent to the Court of Auditors.

IR *Nihil*

CHAPTER 3 ACCOUNTING

SECTION 1 COMMON PROVISIONS

FR Article 132

1. The institution's accounting system is the system serving to organise the budgetary and financial information in such a way that figures can be input, filed and registered.
2. The accounts shall consist of general accounts and budgetary accounts. These accounts shall be kept in euro on the basis of the calendar year.
3. The figures in the general accounts and the budgetary accounts shall be adopted at the close of the budgetary year so that the accounts referred to in Chapter 1 can be drawn up.
4. Notwithstanding paragraphs 2 and 3, the authorising officer by delegation may keep analytical accounts.

IR Article 207

Organisation of the accounts (Article 132 of the Financial Regulation)

1. The accounting officer of each institution and body referred to in Article 121 of the Financial Regulation shall draw up and keep updated 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 208, according to the economic nature of the operation, as current revenue or expenditure or as capital.

Article 208

Computerised systems

(Article 132 of the Financial Regulation)

1. The accounts shall be kept with the help of an integrated computerised system.
2. Where accounts are kept using computerised systems and subsystems, such systems and subsystems shall be described in full.

That 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 and for any change made to the computerised systems and subsystems so that it is possible at any time to identify the nature of the change and the person who made it.

The description of computerised accounting systems and subsystems shall indicate any links between those systems and the central accounting system, particularly as regards the transfer of data and the reconciliation of balances.

3. Access to the computerised systems and subsystems shall be confined to persons included on a list of authorised users which is kept and updated by each institution.

FR *Article 133*

1. The Commission's accounting officer shall, after consulting the accounting officers of the other institutions and bodies referred to in Article 121, adopt the accounting rules and methods and the harmonised chart of accounts to be applied by all the institutions, the offices referred to in Title V of Part Two and all the bodies referred to in Article 121.
2. When adopting the rules and methods referred to in paragraph 1, the Commission's accounting officer shall be guided by the internationally accepted accounting standards for the public sector but may depart from them where justified by the specific nature of the Communities' activities.

IR *Nihil*

SECTION 2

GENERAL ACCOUNTS

FR Article 134

The general accounts shall record, in chronological order using the double entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the institutions and bodies referred to in Article 121.

IR *Nihil*

FR Article 135

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.
2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.
3. The accounting system must be such as to leave a trail for all accounting entries.

IR Article 209

Accounting ledgers (Article 135 of the Financial Regulation)

1. Each institution and each body referred to in Article 121 of the Financial Regulation 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 212.
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 210

Trial balance

(Article 135 of the Financial Regulation)

Each institution and body referred to in Article 121 of the Financial Regulation shall establish a trial balance covering all the accounts of the general 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 211

Accounting reconciliations

(Article 135 of the Financial Regulation)

1. The data in the general ledger shall be kept and organised in such a way as to justify the content of each of the accounts included in the trial balance.
2. As regards the inventory of fixed assets, the provisions of Articles 220 to 227 shall apply.

Article 213

Entries in the accounts

(Article 135 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.

That revaluation shall be based on the rates laid down in accordance with Article 8.

The rate to be used for conversion between the euro and another currency to draw up the balance sheet at 31 December of year n shall be that of the last working day of year n.

3. The accounting rules adopted under Article 133 of the Financial Regulation shall specify the conversion and re-evaluation rules to be provided for the purposes of accrual accounting.

Article 214

Accounting records

(Article 135 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 215

Supporting documents

(Article 135 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 49.
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 216

Recording in the journal

(Article 135 of the Financial Regulation)

Accounting operations shall be recorded in the journal by one of the following methods, which are not mutually exclusive:

- (a) day by day, operation by operation;
- (b) in the form of a monthly summary of the total amounts involved in operations, provided that all documents allowing verification of individual operations day by day are kept.

Article 217

Validation of entries

(Article 135 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 at the latest before the final financial statements are presented.

Article 218

Reconciliation of accounts

(Article 135 of the Financial Regulation)

1. The balance of accounts in the trial balance shall be reconciled periodically, and at least at the annual closure, with the data from the management systems used by authorising officers for the management of assets and liabilities and for the daily input into the accounting system.
2. Periodically, and at least whenever the accounts are closed, the accounting officer shall check that the data in the inventory ledger referred to in Article 209 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 224.

3. The interinstitutional liaison accounts shall be reconciled and cleared monthly.
4. The suspense accounts shall be reviewed annually by the accounting officer so that they can be cleared as soon as possible.

FR Article 136

The accounting officer shall, after the close of the budgetary year and up to the date of presentation of the accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts which complies with the rules.

IR *Nihil*

SECTION 3

BUDGETARY ACCOUNTS

FR Article 137

1. The budgetary accounts provide a detailed record of budgetary implementation.
2. For the purposes of applying paragraph 1, the budgetary accounts shall record all budgetary revenue and expenditure operations provided for in Title IV of Part One.

IR Article 219

Content and keeping of budget accounts

(Article 137 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 following collection of assigned revenue, 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, assigned revenue 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 subparagraph shall be entered and shown separately.

The global provisional commitments relating to the EAGF and the corresponding payments shall also be recorded in the budget accounts.

Those commitments shall be presented in respect of total EAGF appropriations.

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 4

PROPERTY INVENTORIES

FR *Article 138*

1. Each institution and each body referred to in Article 121 shall keep inventories showing the quantity and value of all the Communities' tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.

Each institution and each body referred to in Article 121 shall check that entries in the inventory correspond to the actual situation.

2. The sale of movable property shall be suitably advertised.

IR *Article 220*

Property inventories

(Article 138 of the Financial Regulation)

The system of property inventories shall be established by the authorising officer with technical assistance from the accounting officer. That inventory system must supply all the information required for keeping the accounts and safeguarding assets.

Article 221

Safeguarding property

(Article 138 of the Financial Regulation)

Each of the institutions 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 222

Entry of items in the inventory

(Article 138 of the Financial Regulation)

All items acquired with a period of use greater than one year, which are not consumables, and whose purchase price or production cost is higher than that indicated in the accounting rules adopted under Article 133 of the Financial Regulation shall be entered in the inventory and recorded in the fixed assets accounts.

Article 223

Content of the inventory for each item

(Article 138 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 224

Inventory checks

(Article 138 of the Financial Regulation)

Inventory checks carried out by the institutions 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 an annual verification programme, save for tangible and intangible fixed assets, which shall be checked at least on a three-year basis.

Article 225

Resale of property

(Article 138 of the Financial Regulation)

Members, officials or other servants and any other staff of the institutions and bodies referred to in Article 121 of the Financial Regulation may not acquire items that are resold by these institutions and bodies, save where those items are resold by public tender procedure.

Article 226

Procedure for sale of fixed assets

(Article 138 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 calendar days.

Those sales 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 the date of 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 institutions may forgo advertising where the cost of advertising exceeds the expected return from the operation.
3. The institutions shall always endeavour to obtain the best price for sales of fixed assets.

Article 227

Procedure for disposing of fixed assets

(Article 138 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.

Article 256

Inventory and advertising of sales

(Article 138 of the Financial Regulation)

1. In the case of the delegations, the permanent inventories of movable property belonging to the Communities shall be kept locally. They shall be sent regularly to the central departments in accordance with the rules adopted by each institution.

Movable property in transit to the delegations shall be entered on a provisional list before being recorded in the permanent inventories.

2. The advertising arrangements for sales of delegations' movable property shall be in accordance with local usage.

TITLE VIII

EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1

EXTERNAL AUDIT

FR Article 139

1. The European Parliament, the Council and the Commission shall inform the Court of Auditors, as soon as possible, of all decisions and rules adopted pursuant to Articles 9, 13, 18, 22, 23, 26 and 36.
2. Each institution shall inform the Court of Auditors and the budgetary authority of any internal rules it adopts in respect of financial matters.
3. The Court of Auditors shall be informed of the appointment of authorising officers, internal auditors, accounting officers and imprest administrators and of delegation decisions under Articles 51, 61, 62, 63 and 85.

IR *Nihil*

FR Article 140

1. The examination by the Court of Auditors of whether all revenue has been received and all expenditure incurred in a lawful and proper manner shall have regard to the provisions of the Treaties, the budget, this Regulation, the implementing rules and all other acts adopted pursuant to the Treaties.
2. In the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 142, all documents and information relating to the financial management of departments or bodies with regard to operations financed or co-financed by the Communities. It shall have the power to make enquiries of any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to the aforementioned departments or bodies. The audit in the Member States shall be carried out in conjunction with the national audit institutions or, where they do not have the necessary powers, with the national departments responsible. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence.

In order to obtain all the necessary information for the performance of the task entrusted to it by the Treaties or the acts adopted pursuant to them, the Court of Auditors may be present, at its request, during the

audit operations carried out within the framework of the implementation of the budget by, or on behalf of, any Community institution.

At the request of the Court of Auditors, each institution shall authorise financial institutions holding Community deposits to enable the Court of Auditors to ensure that external data tally with the accounts.

3. In order to perform its task, the Court of Auditors shall notify the institutions and authorities to which this Regulation applies of the names of the members of its staff who are empowered to audit them.

IR *Nihil*

FR *Article 141*

The Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by the depositories or against official memoranda of cash and securities held. It may carry out such checks itself.

IR *Nihil*

FR *Article 142*

1. The Commission, the other institutions, the bodies administering revenue or expenditure on the Communities' behalf and the final beneficiaries of payments from the budget shall afford the Court of Auditors all the facilities and give it all the information which the Court of Auditors considers necessary for the performance of its task. They shall place at the disposal of the Court of Auditors all documents concerning the award and performance of contracts financed by the Community budget and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents relating thereto, all documents relating to revenue and expenditure, all inventories, all organisation charts of departments, which the Court of Auditors considers necessary for auditing the budgetary and financial outturn report on the basis of records or on the spot and, for the same purposes, all documents and data created or stored on a magnetic medium.

The other services and internal audit bodies of the national administrations concerned shall afford the Court of Auditors all the facilities which it considers necessary for the performance of its task.

The first subparagraph shall also apply to natural or legal persons receiving payments from the Community budget.

2. The officials whose operations are checked by the Court of Auditors shall:

(a) show their records of cash in hand, any other cash, securities and materials of all kinds, and also the supporting documents in respect of their stewardship of the funds with which they are entrusted, and also any books, registers and other documents relating thereto;

(b) present the correspondence and any other document required for the full implementation of the audit referred to in Article 140(1).

The information supplied under point (b) of the first subparagraph may be requested only by the Court of Auditors.

3. The Court of Auditors shall be empowered to audit the documents in respect of the revenue and expenditure of the Communities which are held by the departments of the institutions and, in particular, by the departments responsible for decisions in respect of such revenue and expenditure, the bodies administering revenue or expenditure on the Communities' behalf and the natural or legal persons receiving payments from the budget.

4. The task of establishing that the revenue has been received and the expenditure incurred in a lawful and proper manner and that the financial management has been sound shall extend to the utilisation, by bodies outside the institutions, of Community funds received by way of grants.

5. Community financing paid to beneficiaries outside the institutions shall be subject to the agreement in writing by the beneficiaries or, failing agreement on their part, by the contractors or subcontractors, to an audit by the Court of Auditors into the use made of the financing granted.

6. The Commission shall provide the Court of Auditors, at its request, with any information on borrowing-and-lending operations.

7. Use of integrated computer systems may not have the effect of reducing the access of the Court of Auditors to the supporting documents.

IR *Nihil*

FR Article 143

1. The annual report of the Court of Auditors shall be governed by the provisions of paragraphs 2 to 6 of this Article.

2. The Court of Auditors shall transmit to the Commission and the institutions concerned, by 30 June at the latest, any observations which are, in its opinion, such that they should appear in the annual report. These observations must remain confidential. Each institution shall address its reply to the Court of Auditors by 15 October at the latest. The replies of

institutions other than the Commission shall be sent to the Commission at the same time.

3. The annual report shall contain an assessment of the soundness of financial management.
4. The annual report shall contain a section for each institution. The Court of Auditors may add any summary report or general observations which it sees fit to make.

The Court of Auditors shall take all necessary steps to ensure that the replies of each institution to its observations are published immediately after the observations to which they relate.

5. The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the other institutions, by 15 November at the latest, its annual report accompanied by the replies of the institutions and shall ensure publication thereof in the *Official Journal of the European Union*.
6. As soon as the Court of Auditors has transmitted the annual report, the Commission shall inform the Member States concerned immediately of the details of that report which relate to management of the funds for which they are responsible under the rules applicable.

Following receipt of such information, the Member States shall reply to the Commission within sixty days. The latter shall transmit a summary to the Court of Auditors, the Council and the European Parliament before 28 February.

IR *Nihil*

FR Article 144

1. The Court of Auditors shall notify the institution concerned of all observations which are, in its opinion, such that they should appear in a special report. These observations must remain confidential.

The institution concerned shall have two and a half months within which to inform the Court of Auditors of any comments it wishes to make on the observations in question.

The Court of Auditors shall adopt the definitive version of the special report in question the following month.

The special reports, together with the replies of the institutions concerned, shall be transmitted without delay to the European Parliament and the Council, each of which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.

Should the Court of Auditors decide to have any such special reports published in the *Official Journal of the European Union*, they shall be accompanied by the replies of the institutions concerned.

2. The opinions referred to in Article 248(4) of the EC Treaty and Article 160c(4) of the Euratom Treaty which do not relate to proposals or drafts covered by the legislative consultation procedure may be published by the Court of Auditors in the *Official Journal of the European Union*. The Court of Auditors shall take its decision on publication after consulting the institution which requested the opinion or which is concerned by it. Opinions published shall be accompanied by any remarks by the institutions concerned.

IR *Nihil*

CHAPTER 2

DISCHARGE

FR Article 145

1. The European Parliament, upon a recommendation from the Council acting by a qualified majority, shall, before 15 May of year n+2 give a discharge to the Commission in respect of the implementation of the budget for year n.
2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Commission of the reasons for the postponement.
3. If the European Parliament postpones the decision giving a discharge, the Commission shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.

IR *Nihil*

FR Article 146

1. The discharge decision shall cover the accounts of all the Communities' revenue and expenditure, the resulting balance and the assets and liabilities of the Communities shown in the balance sheet.
2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts and financial statements referred to in Article 275 of the EC Treaty and Article 179a of the Euratom Treaty. It shall also examine the annual report made by the Court

of Auditors together with the replies of the institutions under audit, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

3. The Commission shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year in question, in accordance with Article 276 of the EC Treaty.

IR *Nihil*

FR *Article 147*

1. In accordance with Article 276 of the EC Treaty and Article 180b of the Euratom Treaty, the Commission and the other institutions shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.
2. At the request of the European Parliament or the Council, the institutions shall report on the measures taken in the light of these observations and comments, and, in particular, on the instructions they have given to those of their departments which are responsible for the implementation of the budget. The Member States shall cooperate with the Commission by informing it of the measures they have taken to act on these observations so that the Commission may take them into account when drawing up its own report. The reports from the institutions shall also be transmitted to the Court of Auditors.

IR *Nihil*

PART TWO

SPECIAL PROVISIONS

TITLE I

EUROPEAN AGRICULTURAL GUARANTEE FUND

FR *Article 148*

1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the rules relating to the European Agricultural Guarantee Fund (EAGF), and to revenue, save as otherwise provided in this Title.
2. Operations managed directly by the Commission shall be implemented in accordance with the rules laid down in Parts One and Three.

ME *Nihil*

FR *Article 149*

1. For each financial year, the EAGF shall include non-differentiated appropriations, with the exception of the expenditure related to the measures referred to in Article 3(2) of Regulation (EC) No 1290/2005, which shall be covered by differentiated appropriations.
2. Payment appropriations which have been carried over but which have not been used by the end of the financial year shall be cancelled.
3. Non-committed appropriations relating to the actions referred to in Article 3(1) of Regulation (EC) No 1290/2005 may be carried over to the next financial year only.

Such carryover shall not exceed, within a limit of 2 % of the initial appropriations referred to in the first subparagraph, the amount of the adjustment of direct payments referred to in Article 11 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers ⁽¹⁾ and which was applied during the last financial year.

Appropriations which are carried over shall be returned exclusively to the budgetary lines which cover the actions referred to in Article 3(1)(c) of Regulation (EC) No 1290/2005.

⁽¹⁾ OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 1405/2006 (OJ L 265, 26.9.2006, p. 1).

Such carryover may lead to an additional payment only to the final beneficiaries who have been subject, in the last financial year, to the adjustment of direct payments in accordance with Article 11 of Regulation (EC) No 1782/2003.

The carryover decision shall be taken, at the latest on 15 February of the year to which the carryover is being made, by the Commission, which shall inform the budgetary authority.

IR *Nihil*

FR *Article 150*

1. The Commission shall reimburse the expenditure incurred by the Member States.
2. The Commission decisions fixing the amounts of these payments shall constitute global provisional commitments, which may not exceed the total appropriations entered for the EAGF.
3. As from 15 November, routine management expenditure for the EAGF may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed three quarters of the total corresponding appropriations for the current financial year. They may apply only to expenditure for which the principle is laid down in an existing basic act.

IR *Nihil*

FR *Article 151*

1. Expenditure effected by the authorities and bodies referred to in the rules relating to the EAGF shall, within two months following receipt of the statements sent in by Member States, be the subject of a commitment by chapter, article and item. Such commitment may be made after the elapse of that two-month period whenever a procedure for a transfer of appropriations concerning the budget lines in question is necessary. Save where payment has not yet been made by the Member States or where eligibility is in doubt, the amounts shall be charged as payments within the same two-month period.

This budgetary commitment shall be deducted from the global provisional commitment referred to in Article 150.

2. Global provisional commitments which have been made for a financial year and which have not given rise to commitment on specific lines in the budget nomenclature by 1 February of the following financial year shall be cancelled in respect of the original financial year.
3. Paragraphs 1 and 2 shall apply subject to the clearance of accounts.

IR *Nihil*

FR *Article 152*

In budgetary accounting, expenditure shall be booked to the accounts for a financial year on the basis of the repayments made by the Commission to the Member States by 31 December of the year concerned at the latest, provided that the payment order has reached the accounting officer by 31 January of the following financial year at the latest.

IR *Nihil*

FR *Article 153*

1. Where the Commission may transfer appropriations pursuant to Article 23(1), it shall take its decision by 31 January of the following financial year at the latest and shall inform the budgetary authority as provided for in Article 23(1).
2. In cases other than those referred to in paragraph 1, the Commission shall submit transfer proposals to the budgetary authority by 10 January of the following financial year at the latest.

The budgetary authority shall take decisions on such transfers in accordance with the procedure provided for in Article 24, but within a time limit of three weeks.

IR *Nihil*

FR *Article 154*

1. Assigned revenue under this Title shall be assigned according to origin in accordance with Article 18(2).
2. The result of decisions on clearance of accounts, as referred to in Article 30 of Regulation (EC) No 1290/2005 shall be entered in a single Article.

IR *Nihil*

TITLE II

STRUCTURAL FUNDS, COHESION FUND, EUROPEAN FISHERIES FUND, AND EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENT

FR Article 155

1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the Regulations governing the European Agricultural Fund for Rural Development (EAFRD) ⁽¹⁾, the European Regional Development Fund (ERDF) ⁽²⁾, the European Social Fund (ESF) ⁽³⁾, the Cohesion Fund ⁽⁴⁾, and the European Fisheries Fund (EFF) ⁽⁵⁾, hereinafter 'the Funds', and to their revenue, save as otherwise provided in this Title.
2. Operations managed directly by the Commission shall also be implemented in accordance with the rules laid down in Parts One and Three of this Regulation.

IR *Nihil*

FR Article 156

1. Payment by the Commission of financial contributions from the Funds shall be made in accordance with the Regulations referred to in Article 155.
2. The time limit for interim payments by the Commission shall be laid down in accordance with the Regulations referred to in Article 155.
3. The treatment of repayments by the Member States and the implications for the amount of contributions from the Funds shall be governed by the Regulations referred to in Article 155.

IR *Nihil*

⁽¹⁾ Regulation (EC) No 1290/2005.

⁽²⁾ Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund (OJ L 210, 31.7.2006, p. 1).

⁽³⁾ Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund (OJ L 210, 31.7.2006, p. 12).

⁽⁴⁾ Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund (OJ L 210, 31.7.2006, p. 79).

⁽⁵⁾ Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ L 223, 15.8.2006, p. 1)

FR Article 157

The Commission shall automatically decommit appropriations that have been committed as provided for in the Regulations referred to in Article 155.

The decommitted appropriations may be made available again in the event of a manifest error attributable solely to the Commission.

To this end, the Commission shall examine decommitments made during the previous financial year and decide, by 15 February of the current year, on the basis of requirements, whether it is necessary to make the corresponding appropriations available again.

IR Article 228

Repayment of payments on account
(Article 157 of the Financial Regulation)

In accordance with the Regulations on the Structural Funds, the Cohesion Fund, the European Fisheries Fund and the European Agricultural Fund for Rural Development, the repayment in full or in part of payments on account in respect of a given operation shall not have the effect of reducing the contribution from the Fund to the operation concerned.

Amounts repaid shall constitute assigned revenue in accordance with point (f) of Article 18(1) of the Financial Regulation.

FR Article 158

With regard to the operational expenditure referred to in this Title, the Commission may, except in the case of the EAFRD, make transfers from one title to another, provided that the appropriations in question are for the same objective within the meaning of the Regulations governing the Funds referred to in Article 155, or are technical assistance expenditure.

IR *Nihil*

FR Article 159

Aspects concerning the management and selection of projects and audit shall be governed by the Regulations referred to in Article 155.

IR *Nihil*

TITLE III
RESEARCH

FR Article 160

1. Parts One and Three shall apply to the research and technological development appropriations, save as otherwise provided in this Title.

These appropriations shall be entered either in one of the titles of the budget relating to the policy area research by direct or indirect action or in a chapter relating to research activities in another title.

They shall be used by implementation of the actions listed in the implementing rules.

- 1a. The appropriations relating to the revenue generated by the Research Fund for Coal and Steel established by the Protocol annexed to the EC Treaty on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel shall be treated as assigned revenue within the meaning of Article 18. The commitment appropriations generated by this revenue shall be made available as soon as the amount receivable has been estimated and the payment appropriations as soon as the revenue has been received.
2. With regard to the operational expenditure referred to in this Title, the Commission may make transfers from one title to another, provided that the appropriations are used for the same purpose.
3. Experts paid from the research and technological development appropriations shall be recruited in accordance with the procedures laid down by the Council when it adopts each research framework programme.

IR Article 229

Types of operations
(Article 160 of the Financial Regulation)

1. The research and technological development appropriations shall be used to carry out direct action, indirect action under the framework

programme for research referred to in Article 166 of the EC Treaty, and the action referred to in Article 165 of that Treaty by participation in programmes and competitive activities conducted by the Joint Research Centre (JRC).

2. Direct action shall be carried out by the establishments of the JRC and shall in principle be entirely financed from the budget. It shall consist of:
 - (a) research programmes;
 - (b) exploratory research activities;
 - (c) scientific and technical support activities of an institutional nature.
3. Indirect action shall consist of programmes carried out under contracts to be concluded with third parties. The JRC may participate in those activities on the same basis as third parties.
4. To ensure that national research policies and Community research policy are mutually consistent, the Commission may take initiatives in accordance with Article 165 of the EC Treaty and charge exclusively administrative expenditure to the budget.
5. In addition to the specific programmes referred to in Article 166(3) of the EC Treaty, the Community may adopt:
 - (a) supplementary programmes in which only certain Member States take part, in accordance with Article 168 of the EC Treaty;
 - (b) programmes undertaken by several Member States, including participation in the structures created for the execution of those programmes, in accordance with Article 169 of the EC Treaty;
 - (c) cooperation with third countries or international organisations in accordance with Article 170 of the EC Treaty;
 - (d) joint undertakings, in accordance with Article 171 of the EC Treaty.
6. The activities of a competitive nature conducted by the JRC shall consist of:
 - (a) scientific and technical support activities under the research and technological development framework programmes, in principle entirely financed from the budget;
 - (b) services for third parties.
7. The estimate of the amount receivable, as referred to in Article 160(1a) of the Financial Regulation shall be sent to the accounting officer for registration.

Article 266

Transfers of research appropriations (Article 160 of the Financial Regulation)

For direct and indirect action in the field of research, referred to in Article 229(2) to (5), the procedure for transfers of appropriations for the financial year 2003 shall be governed by the first and second paragraphs of Article 95 of the Financial Regulation of 21 December 1977.

FR Article 160a

1. The commitment appropriations corresponding to the amount of the commitment decommitted as a result of total or partial non-implementation of the projects relating to research for which they were earmarked may, exceptionally and in duly substantiated cases, be made available again where it is essential to carry out the programme originally planned, unless the budget for the current financial year contains funds for this purpose.
2. For the purposes of paragraph 1, the Commission shall, at the beginning of each financial year, examine decommitments made during the previous financial year and assess, in the light of the requirements, the need for making the appropriations available again.

On the basis of this assessment, the Commission may submit appropriate proposals to the budgetary authority, by 15 February of each financial year, stating for each budget item the reasons for making these appropriations available again.

3. The budgetary authority shall decide on the Commission's proposals within six weeks. Where no decision is taken within this time limit, the proposals shall be deemed to be approved.

The amount of commitment appropriations to be made available again in year n shall in no case exceed 25 % of the total amount decommitted on the same budget line in year $n-1$.

4. Commitment appropriations made available again shall not be carried over.

Legal commitments relating to the commitment appropriations which have been made available again shall be concluded by 31 December of year n .

At the end of year n , the unused balance of the commitment appropriations made available again shall be definitively decommitted by the authorising officer responsible.

IR *Nihil*

1. The Joint Research Centre (JRC) may receive funding charged to appropriations entered outside the titles and the chapters referred to in Article 160(1) in respect of its participation on a competitive or negotiated basis in Community activities financed in whole or in part from the general budget.
2. The appropriations relating to the activities in which the JRC participates on a competitive basis shall be treated as assigned revenue within the meaning of Article 18. The commitment appropriations generated by this revenue shall be made available as soon as the amount receivable has been estimated.

The utilisation of these appropriations shall be shown in a set of analytical accounts in the budgetary outturn account for each category of action to which it relates; it shall be separate from revenue originating from financing by third parties (public or private) and from revenue from other services carried out by the Commission for third parties.

3. The rules on procurement in Title V of Part One shall not apply to the activities of the JRC on behalf of third parties.
4. By way of derogation from Article 23, the Commission may, within the title of the budget relating to the policy area 'Direct action research', make transfers between chapters of up to 15 % of the appropriation in the line from which the transfer is made.

IR Article 230**Rules applicable to the JRC**
(Article 161 of the Financial Regulation)

1. The estimates of amounts receivable referred to in Article 161(2) of the Financial Regulation shall be sent to the accounting officer for registration.
2. Where the activities conducted by the JRC for third parties involve procurement, the procurement procedure shall comply with the principles of transparency and equal treatment.

TITLE IV EXTERNAL ACTIONS

CHAPTER I GENERAL PROVISIONS

FR Article 162

1. Parts One and Three shall apply to external actions financed from the budget, save as otherwise provided in this Title.
2. The appropriations for the actions referred to in paragraph 1 shall be used by the Commission:
 - (a) either within the framework of aid granted on an autonomous basis;
 - (b) or under agreements concluded with one or more beneficiary third countries;
 - (c) or under agreements with the international organisations referred to in Article 53.

IR Article 231

Actions which may be financed *(Article 162 of the Financial Regulation)*

Appropriations for the actions referred to in Title IV, Chapter 1 of Part Two of the Financial Regulation may, in particular, finance procurement contracts, grants, including interest rate subsidies, special loans, loan guarantees and financial assistance, budgetary support and other specific forms of budgetary aid.

CHAPTER 2 IMPLEMENTATION OF ACTIONS

FR Article 163

The actions referred to in this Title may be implemented on a centralised basis by the Commission, by shared management, on a decentralised basis by the beneficiary third country or countries, or jointly with international organisations in compliance with the relevant provisions of Articles 53

to 57. Appropriations for external actions may be combined with funds from other sources to achieve a joint objective.

IR *Nihil*

FR *Article 164*

Repealed

FR *Article 165*

The implementation of actions by beneficiary third countries or international organisations is subject to scrutiny by the Commission. Such scrutiny shall be exercised either by prior approval, by *ex post* checks or by a combined procedure.

IR *Article 43*

Joint management

(Articles 53d, 108a and 165 of the Financial Regulation)

1. The Commission shall ensure that suitable arrangements exist for the control and audit of the action in its entirety.
2. The international organisations referred to in Article 53d of the Financial Regulation shall be:
 - (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.

For the purposes of Article 53d of the Financial Regulation, the European Investment Bank and the European Investment Fund shall be assimilated to international organisations.

3. Where the budget is implemented by joint management with international organisations in accordance with Articles 53d and 165 of the Financial Regulation, the organisations and the actions to be financed shall be chosen in an objective and transparent manner.
4. Without prejudice to Article 35 of this Regulation, agreements concluded with the international organisations referred to in Article 53d of the Financial Regulation shall contain in particular the following:

- (a) a definition of the action, the project or the programme to be implemented under joint management;
 - (b) the conditions and the detailed arrangements for their implementation, including in particular the principles for the award of procurement contracts and grants;
 - (c) the rules on reporting to the Commission on implementation;
 - (d) provisions obliging the organisation to which implementation tasks are entrusted to exclude from participation in a procurement or grant award procedure candidates or applicants who are in the situations referred to in points (a), (b) and (e) of Article 93(1) and in points (a) and (b) of Article 94 of the Financial Regulation;
 - (e) the conditions for payments of the Community contribution, and the supporting documents required to justify the payments;
 - (f) the conditions under which this implementation terminates;
 - (g) the detailed arrangements for Commission scrutiny;
 - (h) provisions granting the Court of Auditors access to the information required to perform its duties, if necessary on the spot, in accordance with the verification agreements concluded with the international organisations concerned;
 - (i) provisions regarding the use of any interest yielded;
 - (j) provisions guaranteeing the visibility of the Community action, project or programme in relation to the other activities of the organisation;
 - (k) provisions on the publication of the beneficiaries of funds deriving from the budget, which require the international organisations to publish the information in accordance with Article 169 of this Regulation.
5. A project or programme shall be considered to be jointly elaborated when the Commission and the international public sector body jointly assess the feasibility and define the implementation agreements.
6. In the implementation of projects in joint management, international organisations shall comply with at least the following requirements:
- (a) procurement and grant award procedures shall comply with the principles of transparency, proportionality, sound financial management, equal treatment and non-discrimination, lack of conflicts of interests and respect of internationally accepted standards;
 - (b) grants may not be cumulative or awarded retrospectively;

(c) grants must involve co-financing, save as otherwise provided in Article 253;

(d) grants may not have the purpose or effect of producing a profit for the beneficiary.

Those requirements shall be expressly established in the agreements concluded with the international organisations.

FR Article 166

1. Actions carried out shall give rise to:

(a) a financing agreement drawn up between the Commission, acting for the Communities, and the beneficiary third country or countries or the bodies they have designated, hereinafter: 'the beneficiaries';

(b) a contract or a grant agreement between the Commission and national or international public sector bodies or between the Commission and natural or legal persons responsible for carrying out the actions.

The terms on which the external aid is given shall be laid down in the instrument by which the financing agreements or the contracts or the grants provided for in points (a) and (b) shall be managed.

2. Financing agreements with the beneficiary third countries referred to in paragraph 1(a) shall be concluded by 31 December of year n+1 at the latest, year n being the one in which the budgetary commitment was made.

The individual contracts, grant decisions and agreements which implement such financing agreements shall be concluded or adopted no later than three years following the date of conclusion of the financing agreement.

Individual contracts and agreements relating to audit and evaluation may be concluded later.

3. The provision under paragraph 2 shall not apply to the multiannual programmes in the following cases:

— the cross-border cooperation, regional development, human resources development and rural development components of Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) ⁽¹⁾,

— the cross-border cooperation component of Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument ⁽²⁾.

⁽¹⁾ OJ L 210, 31.7.2006, p. 82.

⁽²⁾ OJ L 310, 9.11.2006, p. 1.

In these cases, the following rules shall apply:

- (a) any portion of a budget commitment for such a multiannual programme shall be automatically decommitted where, by 31 December of the third year following year n being the one in which the budget commitment was made:
 - (i) it has not been used for the purpose of pre-financing, or
 - (ii) it has not been used for making intermediate payments, or
 - (iii) no declaration of expenditure has been presented in relation to it;
- (b) that part of budget commitments still open on 31 December 2017 for which a declaration of expenditure has not been made by 31 December 2018 shall be automatically decommitted.

IR Article 232

Financing agreement in decentralised management

(Article 166 of the Financial Regulation)

1. Before a financing agreement is concluded for an action which is to be the subject of decentralised management, the authorising officer responsible shall ensure, by means of document checks and on-the-spot checks, that the management and control system set up by the beneficiary third country to manage the Community funds complies with Article 56 of the Financial Regulation.
2. Each financing agreement concluded in the context of decentralised management shall explicitly, in full or in part depending on the degree of decentralisation agreed, lay down provisions:
 - (a) ensuring compliance with the criteria laid down in Article 56(1) and (2) of the Financial Regulation;
 - (b) stating that, if the minimum criteria laid down in Article 56(1) and (2) of the Financial Regulation cease to be met, the Commission may suspend or terminate implementation of the agreement;
 - (c) defining the adversarial clearance of accounts procedure, as provided for in Article 53c of the Financial Regulation, which may be used to identify the liability of the third country;
 - (d) setting up the financial correction mechanisms referred to in Article 53c of the Financial Regulation and specified in Article 42 of this Regulation, in particular as regards recovery by means of off-setting where the action is fully decentralised;

(e) provisions on the publication of the beneficiaries of funds deriving from the budget.

3. The provisions referred to in point (e) of paragraph 2 shall require the third country to publish the information referred to in Article 169(2), according to a standard presentation, in a dedicated and easily accessible place of its Internet site. If such Internet publication is impossible, the information shall be published by any other appropriate means, including the national official journal.

Publication shall take place during the first half of the year following the closure of the budget year in respect of which the funds were attributed to the third country.

The third country shall communicate to the Commission the address of the place of publication and reference shall be made to this address in the dedicated place of the Internet site of the Community institutions referred to in Article 169(1). If the information is published otherwise, the third country shall give the Commission full details of the means used.

Article 233

Special loans

(Article 166 of the Financial Regulation)

A loan contract shall be drawn up between the Commission, acting for the Community, and the borrower in respect of any investment project financed by a special loan.

Article 233a

Automatic decommitment of split commitments used in multiannual programmes

(Article 166(3) of the Financial Regulation)

1. The following elements shall not be included in the calculation of the automatic decommitment provided for in Article 166(3)(a) of the Financial Regulation:
 - (a) that part of the budget commitments for which a declaration of expenditure has been made but reimbursement of which has been interrupted or suspended by the Commission at 31 December of year $n+3$;
 - (b) that part of the budget commitments for which it has not been possible to make a disbursement or a declaration of expenditure for reasons of *force majeure* seriously affecting the implementation of the programme.

National authorities claiming *force majeure* pursuant to point (b) of the first subparagraph must demonstrate the direct consequences on the implementation of all or part of the programme.

2. The Commission shall inform the beneficiary countries and the authorities concerned in good time if there is a risk of automatic decommitment. It shall inform them of the amount involved as indicated by the information in its possession. The beneficiary countries shall have two months from receiving this information to agree to the amount in question or to present observations. The Commission shall carry out the automatic decommitment not later than nine months after the timelimits laid down in points (a) and (b) respectively of Article 166(3) of the Financial Regulation.
3. In the event of automatic decommitment, the Community financial contribution to the programmes concerned shall be reduced, for the year in question, by the amount automatically decommitted. The beneficiary country shall produce a revised financing plan dividing the reduction of the aid between the priorities and measures if relevant. If it does not do so, the Commission shall reduce the amounts allocated to each priority and measure if relevant pro rata.

Article 234

Bank accounts

(Article 166 of the Financial Regulation)

1. For payments in the currency of the recipient State, accounts denominated in euro shall be opened with a financial institution in the recipient State or in one of the Member States in the name of the Commission or, by common agreement, of the recipient. The titles of those accounts shall make it possible to identify the funds in question.
2. The accounts referred to in paragraph 1 shall be endowed to meet actual cash requirements. Transfers shall be made in euro and converted, where necessary, into the currency of the recipient State as and when payments fall due, in accordance with Articles 7 and 8.

CHAPTER 3

PROCUREMENT

FR Article 167

1. The provisions of Article 56 and of Chapter 1 of Title V of Part One relating to the general provisions on procurement shall be applicable to contracts covered by this Title subject to the special provisions relating to thresholds and the arrangements for awarding external contracts laid down in the implementing rules. The contracting authorities for the purposes of this chapter shall be:
 - (a) the Commission on behalf of and for the account of one or more beneficiaries;
 - (b) the beneficiary or beneficiaries;
 - (c) a national or international public sector body or natural or legal persons who are beneficiaries of a grant for the implementation of an external action.
2. The procurement procedures must be laid down in the financing agreements or in the grant decision or grant agreement provided for in Article 166.

IR Article 235

Renting of buildings

(Article 167 of the Financial Regulation)

The only buildings contracts which may be financed from operational appropriations for external action shall be those relating to the renting of buildings already constructed at the time the lease is signed. These contracts shall be published as laid down in Article 119.

Article 236

Definitions

(Article 167 of the Financial Regulation)

1. Service contracts shall comprise study and technical assistance contracts.

A study contract is a service contract concluded between a supplier and the contracting authority which includes studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies and audits.

A technical assistance contract is where the supplier is called on to play an advisory role, to manage or supervise a project or to provide the consultants specified in the contract.

2. Where a third country has qualified management staff in its departments or entities with public sector participation, the contracts may be performed directly by these departments or entities by direct labour.

Article 237

Special provisions relating to thresholds and the arrangements for awarding external contracts

(Article 167(1)(a) and (b) of the Financial Regulation)

1. Articles 118 to 121, with the exception of the definition, Article 122(3) and (4), Articles 123, 126 to 129, 131(3) to (6), Article 139(2), Articles 140 to 146, Article 148 and Articles 151, 152 and 158a of this Regulation shall not apply to procurement contracts concluded by or on behalf of the contracting authorities referred to in points (a) and (b) of Article 167(1) of the Financial Regulation.

Implementation of the procurement provisions under this Chapter shall be decided by the Commission.

2. In the event of failure to comply with the procedures referred to in paragraph 1, expenditure on the operations in question shall not be eligible for Community financing.
3. Repealed
4. This Chapter shall not apply to the contracting authorities referred to in point (b) of Article 167(1) of the Financial Regulation where, following the checks referred to in Article 35, the Commission has authorised them to use their own procurement procedures under decentralised management.

Article 238

Procurement by the contracting authorities referred to in Article 167(1)(c) of the Financial Regulation

(Article 167(1)(c) of the Financial Regulation)

1. The provisions of this Chapter shall not apply to procurement by the contracting authorities referred to in point (c) of Article 167(1) of the Financial Regulation.

2. The provisions of this Chapter shall not apply to actions under Regulation (EC) No 1257/96.
3. The specific procurement procedures to be used in the cases referred to in paragraphs 1 and 2 shall be decided by the Commission in accordance with the principles referred to in Article 184.
4. In the event of failure to comply with the procedures referred to in paragraph 3, expenditure on the operations in question shall not be eligible for Community financing.

Article 239

Advertising and non-discrimination

(Articles 167 and 168 of the Financial Regulation)

The Commission shall take the necessary implementing measures to guarantee as wide a participation as possible, on equal terms, in competitive tendering for the award of contracts financed by the Community. To that end, care shall be taken in particular to:

- (a) ensure adequate advance publication, in reasonable time, of the pre-information notices, contract notices and award notices;
- (b) eliminate any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons referred to in Article 168 of the Financial Regulation.

Article 240

Advertising

(Article 167 of the Financial Regulation)

1. The pre-information notice for international calls for tender shall be sent to the Office for Official Publications of the European Communities as early as possible for supply and service contracts and as quickly as possible after the decision authorising the programme for works contracts.
2. For the purposes of this Chapter, the contract notice shall be published:
 - (a) at least in the *Official Journal of the European Communities* and on the Internet for international calls for tender;
 - (b) at least in the official gazette of the recipient State or in any equivalent publication for local invitations to tender.

Where the contract notice is also published locally, it must be identical to the one published in the *Official Journal of the European Communities* and on the Internet and it must be published simultaneously. The Commission shall be responsible for publication in the *Official Journal of the European Communities* and on the Internet. If the notice is published locally, this may be done by the beneficiary.

3. The award notice shall be sent when the contract is signed except where, if still necessary, the contract was declared secret or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the European Union, or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.

Article 241

Thresholds and procedures for awarding service contracts (Article 167 of the Financial Regulation)

1. The thresholds and procedures referred to in Article 167 of the Financial Regulation shall be as follows for service contracts:
 - (a) for contracts with a value of EUR 200 000 or more: an international restricted invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2);
 - (b) for contracts with a value of less than EUR 200 000: competitive negotiated procedure within the meaning of paragraph 3, provided that the use of an existing framework contract is impossible or has been unsuccessful.

Contracts with a value less than or equal to EUR 10 000 may be awarded on the basis of a single tender.

2. In the international restricted procedure referred to in point (a) of paragraph 1, the contract notice shall state the number of candidates who will be invited to submit tenders. For service contracts the number of tenderers shall be within a range of four to eight. The number of candidates allowed to submit tenders must be sufficient to ensure genuine competition.

The list of selected candidates shall be published on the Commission's Internet site.

If the number of candidates satisfying the selection criteria or the minimum capacity levels is less than the minimum number, the contracting authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.

3. Under the procedure referred to in point (b) of paragraph 1, the contracting authority shall draw up a list of at least three tenderers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 124.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If, following consultation of the tenderers, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

4. The bids shall be sent in a package or outer envelope containing two separate sealed envelopes, one bearing the words Envelope A — Technical bid, and the other the words Envelope B — Financial bid. The outer envelope shall bear:

- (a) the address indicated in the tender documents for the submission of tenders;
- (b) the reference to the call for tenders to which the tenderer is responding;
- (c) where appropriate, the numbers of the lots for which a tender is being submitted;
- (d) the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.

If interviews were envisaged in the tender documents, the evaluation committee may interview the principal members of the team of experts proposed in the technically acceptable bids, after establishing its written provisional conclusions and before definitively concluding the evaluation of the technical bids. In such cases the experts shall be interviewed by the evaluation committee, preferably collectively if they form a team, and at intervals close enough to allow comparisons to be made. Interviews shall be conducted in accordance with a standard model agreed in advance by the evaluation committee and applied to all the experts or teams called for interview. The date and time of the interview must be communicated to the tenderers at least 10 calendar days in advance. In cases of *force majeure*, preventing the tenderer from attending the interview, a new date and time must be sent to the tenderer.

5. The contract award criteria shall serve to identify the tender offering best value for money.

The tender offering best value for money shall be selected using an 80/20 weighting distribution between technical quality and price. For that purpose:

- (a) the score awarded to the technical bids shall be multiplied by 0.80;
- (b) the score awarded to the price bids shall be multiplied by 0.20.

Article 242

Use of the negotiated procedure for service contracts

(Article 167 of the Financial Regulation)

1. For service contracts, contracting authorities may use the negotiated procedure with a single tender in the following cases:
 - (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 91(1) of the Financial Regulation cannot be kept;
 - (b) where the services are entrusted to public sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;
 - (c) for services which are an extension of services already started, subject to the conditions laid down in paragraph 2;
 - (d) where the tender procedure has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;
 - (e) where the contract concerned follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates, in which case, all successful candidates shall be invited to participate in the negotiations;
 - (f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;
 - (g) where one attempt for the use of the competitive negotiated procedure following the unsuccessful use of a framework contract has

failed. In this case, after cancelling the competitive negotiated procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;

- (h) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires.

For the purposes of point (a) of the first subparagraph, operations carried out in crisis situations as referred to in Article 168(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

Where the Commission is not the contracting authority, the use of the negotiated procedure is subject to the prior agreement of the responsible authorising officer.

2. Services which are an extension of services already started, as referred to in point (c) of paragraph 1, are as follows:
 - (a) additional services not covered by the principal contract but which, as a result of unforeseen circumstances, have become necessary for the performance of the contract, provided that the additional service cannot be technically and economically separated from the principal contract without serious inconvenience for the contracting authority and the aggregate amount of additional services does not exceed 50 % of the value of the principal contract;
 - (b) additional services consisting in the repetition of similar services entrusted to the contractor providing services under a first contract, provided that:
 - (i) a contract notice was published for the first service and the possibility of using the negotiated procedure for new services for the project and the estimated cost were clearly indicated in the contract notice published for the first service,
 - (ii) the extension of the contract is a single one and for a value and duration not exceeding the value and the duration of the initial contract.

Thresholds and procedures for awarding supply contracts

(Article 167 of the Financial Regulation)

1. The thresholds and procedures referred to in Article 167 of the Financial Regulation shall be as follows for supply contracts:

- (a) for contracts with a value of EUR 150 000 or more: an international open invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2);
- (b) for contracts with a value of EUR 60 000 or more but less than EUR 150 000: a local open invitation to tender within the meaning of Article 122(2) and point (b) of Article 240(2);
- (c) for contracts with a value of less than EUR 60 000: competitive negotiated procedure within the meaning of paragraph 2.

Contracts with a value of less than or equal to EUR 10 000 may be awarded on the basis of a single tender.

2. Under the procedure referred to in point (c) of paragraph 1, the contracting authority shall draw up a list of at least three suppliers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 124.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If following consultation of the suppliers, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

3. Each technical and financial bid must be placed in a single sealed envelope, itself placed in a package or outer envelope. The inner envelope shall bear:
 - (a) the address indicated in the tender documents for the submission of tenders;
 - (b) the reference to the call for tenders to which the tenderer is responding;
 - (c) where appropriate, the numbers of the lots for which a tender is being submitted;
 - (d) the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.

At the place and time set in the tender documents, the tenders shall be opened in public by the evaluation committee. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the contracting authority considers appropriate must be announced.

4. In the case of a supply contract not involving after-sales service, the sole award criterion shall be price.

Where proposals for after-sales service or for training are particularly significant, the tender offering best value for money shall be chosen, with due account for the technical quality of the service offered and the price quoted.

Article 244

Use of the negotiated procedure for supply contracts

(Article 167 of the Financial Regulation)

1. Supply contracts may be awarded by negotiated procedure with a single tender in the following cases:

- (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 91(1) of the Financial Regulation cannot be kept;
- (b) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;
- (c) for additional deliveries by the original supplier 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 either incompatibility or disproportionate technical difficulties in operation and maintenance;
- (d) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;

- (e) where after two attempts the competitive negotiated tender procedure has been unsuccessful, that is to say, where no administratively and technically valid tender or no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the competitive negotiated procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;
- (f) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires;
- (g) for contracts in respect of supplies quoted and purchases on a commodity market;
- (h) for contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law.

Where the Commission is not the contracting authority, the use of the negotiated procedure is subject to the prior agreement of the responsible authorising officer.

2. For the purposes of point (a) of paragraph 1, operations carried out in crisis situations as referred to in Article 168(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

Article 245

Thresholds and procedures for awarding works contracts (Article 167 of the Financial Regulation)

1. The thresholds and procedures referred to in Article 167 of the Financial Regulation shall be as follows for works contracts:
 - (a) for contracts with a value of EUR 5 million or more:
 - (i) in principle an international open invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2),

(ii) exceptionally, in view of the characteristics of certain works and after the agreement of the authorising officer responsible if the Commission is not the contracting authority, an international restricted invitation to tender within the meaning of Article 122(2) and point (a) of Article 240(2);

(b) for contracts with a value of EUR 300 000 or more but less than EUR 5 million: a local open invitation to tender within the meaning of Article 122(2) and point (b) of Article 240(2);

(c) for contracts with a value of less than EUR 300 000: a competitive negotiated procedure within the meaning of paragraph 2;

Contracts with a value of less than or equal to EUR 10 000 may be awarded on the basis of a single tender.

2. Under the procedure referred to in point (c) of paragraph 1, the contracting authority shall draw up a list of at least three contractors of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 124.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

If, following consultation of the contractors, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.

3. The selection criteria shall cover the capacity of the tenderer to carry out similar contracts, in particular by reference to works carried out in recent years. With selection being made in this way and since inadmissible tenders have already been eliminated, the only award criterion shall be the price.
4. Each technical and financial bid must be placed in a single sealed envelope, itself placed in a package or outer envelope. The inner envelope shall bear:
 - (a) the address indicated in the tender documents for the submission of tenders;
 - (b) the reference to the call for tenders to which the tenderer is responding;
 - (c) where appropriate, the numbers of the lots for which a tender is being submitted;
 - (d) the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.

At the place and time set in the tender documents, the tenders shall be opened in public by the evaluation committee. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the contracting authority thinks appropriate must be announced.

Article 246

Use of the negotiated procedure for works contracts *(Article 167 of the Financial Regulation)*

1. Works contracts may be awarded by negotiated procedure with a single tender in the following cases:
 - (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 91(1) of the Financial Regulation cannot be kept;
 - (b) for additional works not included in the initial contract concluded but which have, through unforeseen circumstances, become necessary for carrying out the work described therein, subject to the conditions laid down in paragraph 2;
 - (c) where the tender procedure has been unsuccessful, that is where no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;
 - (d) where the competitive negotiated tender procedure, after two attempts, has been unsuccessful, that is to say, where no administratively and technically valid tender or no qualitatively and/or financially worthwhile tender has been received. In such cases, after cancelling the competitive negotiated procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;
 - (e) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires.

For the purposes of point (a) of the first subparagraph, operations carried out in crisis situations as referred to in Article 168(2) shall be con-

sidered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

Where the Commission is not the contracting authority, the use of the negotiated procedure is subject to the prior agreement of the responsible authorising officer.

2. The additional works referred to in point (b) of paragraph 1 shall be awarded to the contractor already carrying out the work:
 - (a) where such works cannot be technically or economically separated from the main contract without serious inconvenience for the contracting authority;
 - (b) where such works, although separable from the performance of the original contract, are strictly necessary for its completion;
 - (c) where the aggregate value of contracts awarded for additional works does not exceed 50 % of the value of the principal contract.

Article 247

Use of the negotiated procedure for buildings contracts

(Article 167 of the Financial Regulation)

Buildings contracts as referred to in Article 235 may be awarded by negotiated procedure after the local market has been prospected and after the Commission has given its agreement if it is not the contracting authority.

Article 248

Choice of procurement procedure for mixed contracts

(Article 167 of the Financial Regulation)

In the case of contracts involving both supplies of services and supplies of goods or execution of works, the contracting authority, after the Commission has given its agreement if it is not the contracting authority, shall determine the thresholds and procedures applicable by reference to the predominant aspect assessed on the basis of the relative value and the operational significance of the various components of the contract.

Tender documents

(Article 167 of the Financial Regulation)

1. The tender documents referred to in Article 130 shall be drawn up on the basis of best international practices and in accordance with the provisions of this Chapter regarding advertising and contacts between the contracting authority and tenderers.
2. For service contracts, the tender file must contain the following documents:
 - (a) instructions to tenderers, which must include:
 - (i) the type of contract,
 - (ii) the award criteria and their weightings,
 - (iii) the possibility of interviews and the timetable for them,
 - (iv) whether variants are permitted,
 - (v) the proportion of sub-contracting which may be authorised,
 - (vi) the maximum budget available for the contract,
 - (vii) the currency of tenders;
 - (b) shortlist of candidates selected (mentioning the ban on association);
 - (c) general conditions for service contracts;
 - (d) specific conditions which amplify, supplement or derogate from the general conditions;
 - (e) terms of reference indicating the planned timetable for the project and dates from which it is planned that the principal experts must be available;
 - (f) price schedule (for completion by the tenderer);
 - (g) tender form;
 - (h) contract form;
 - (i) bank (or similar) guarantee forms for the payment of pre-financing.
3. For supply contracts, the tender file must contain the following documents:
 - (a) instructions to tenderers, which must include:

- (i) the selection and award criteria,
 - (ii) whether variants are authorised,
 - (iii) the currency of tenders;
 - (b) general conditions for supply contracts;
 - (c) specific conditions which amplify, supplement or derogate from the general conditions;
 - (d) technical annex containing any plans, technical specifications and the planned timetable for performance of the contract;
 - (e) price schedule (for completion by the tenderer);
 - (f) tender form;
 - (g) contract form;
 - (h) bank (or similar) guarantee forms for:
 - (i) the tender,
 - (ii) payment of pre-financing,
 - (iii) proper performance.
4. For works contracts, the tender file must contain the following documents:
- (a) instructions to tenderers, which must include:
 - (i) the selection and award criteria,
 - (ii) whether variants are authorised,
 - (iii) the currency of tenders;
 - (b) general conditions for works contracts;
 - (c) specific conditions which amplify, supplement or derogate from the general conditions;
 - (d) technical annexes containing plans, technical specifications and the planned timetable for performance of the contract;
 - (e) price schedule (for completion by the tenderer) and the breakdown of prices;
 - (f) tender form;
 - (g) contract form;
 - (h) bank (or similar) guarantee forms for:
 - (i) the tender,

(ii) payment of pre-financing,

(iii) proper performance.

5. In the event of contradiction, the specific conditions referred to in point (d) of paragraph 2, point (c) of paragraph 3 and point (c) of paragraph 4 shall override the general conditions.

Article 250

Guarantees

(Articles 102 and 167 of the Financial Regulation)

1. By way of derogation from Article 150, advance guarantees shall be denominated in euro or in the currency of the contract they cover.
2. The contracting authority may demand a tender guarantee, within the meaning of this Chapter, representing 1 to 2 % of the overall value of the contract for supply and works contracts; it shall comply with the provisions of Article 150. It shall be released when the contract is awarded. It shall be retained if a tender submitted by the final date for submission is subsequently withdrawn.
3. Where the pre-financing exceeds EUR 150 000, a guarantee shall be required. However, where the contractor is a public body, the responsible authorising officer may, depending on his risks assessment, waive that obligation.

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

4. A performance guarantee may be required by the contracting authority for an amount set in the tender file and corresponding to between 5 and 10 % of the total value of the contract. That guarantee shall be determined on the basis of objective criteria such as the type and value of the contract.

However, a performance guarantee shall be required where the following thresholds are exceeded:

(i) EUR 345 000 for works contracts;

(ii) EUR 150 000 for supply contracts.

The guarantee shall remain valid at least until final acceptance of the supplies and works. If the contract is not properly performed the entire guarantee shall be retained.

Time limits for procedures

(Article 167 of the Financial Regulation)

1. Tenders must reach the contracting authority at the address and by no later than the date and time shown in the invitation to tender. The time limit for receipt of tenders and requests to participate, laid down by the contracting authorities, shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.

For service contracts, the minimum time between the date of dispatch of the letter of invitation to tender and the final date for receipt of tenders shall be fifty days. However, in urgent cases and with the prior authorisation of the Commission, other time limits may be authorised.

2. Tenderers may put questions in writing no later than twenty-one days before the closing date for receipt of tenders. The contracting authority shall provide the answers to the questions no later than eleven days before the closing date for submission of tenders.
3. In international restricted procedures, the time limit for receipt of tenders shall be no less than thirty days from the date on which the contract notice is published. The period between the date on which the letter of invitation is sent and the final date for the receipt of tenders shall be no less than fifty days. However, in certain exceptional cases and with the prior authorisation of the Commission, other time limits may be authorised.
4. In international open procedures, the time limits for receipt of tenders, running from the date on which the contract notice is sent, shall be at least:

(a) ninety days for works contracts,

(b) sixty days for supply contracts.

However, in certain exceptional cases and with the prior authorisation of the Commission, other time limits may be authorised.

5. In local open procedures, the time limits for receipt of tenders, running from the date when the contract notice is published, shall be at least:

(a) sixty days for works contracts;

(b) thirty days for supply contracts.

However, in certain exceptional cases and with the prior authorisation of the Commission, other time limits may be authorised.

6. For the competitive negotiated procedures referred to in point (b) of Article 241(1), point (c) of Article 243(1) and point (c) of Article 245(1), candidates shall be allowed at least thirty days from the date of dispatch of the letter of invitation to tender in which to submit their tenders.
7. For service contracts, the period of validity of the tenders shall be ninety calendar days from the final date for submission of tenders. In exceptional cases, before the period of validity expires, the contracting authority may ask the tenderers to extend the period for a specific number of days up to no more than forty calendar days. The tenderer whose tender is selected must maintain the validity of the tender for a further sixty calendar days from the date of notification of the award of the contract.
8. For supply contracts, the period of validity of the tenders shall be ninety calendar days from the final date for submission of tenders. In exceptional cases, before the period of validity expires, the contracting authority may ask the tenderers to extend the period for a specific number of days up to no more than forty calendar days. The tenderer whose tender is selected must maintain the validity of the tender for a further sixty calendar days from the date of notification of the award of the contract.
9. For works contracts, the period of validity of the tenders shall be ninety calendar days from the final date for submission of tenders. In exceptional cases, before the period of validity expires, the contracting authority may ask the tenderers to extend the period for a specific number of days up to no more than forty calendar days. The tenderer whose tender is selected must maintain the validity of the tender for a further sixty calendar days from the date of notification of the award of the contract.
10. The time limits specified in paragraphs 1 to 9 are expressed in calendar days.

Article 252

Evaluation committee

(Article 167 of the 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. This committee shall have an odd number of members, at least three, with all the necessary technical and administrative expertise to assess the tenders.

2. If the Commission is not the contracting authority, it must be kept systematically informed. It shall always be invited as an observer to the opening and assessment of tenders and shall receive a copy of each of them. The contracting authority shall send to the Commission, for its agreement, the results of evaluation of the tenders and a proposal for the award of the contract. Once it has received this agreement, it shall sign the contracts and send them to the Commission.

3. Tenders which do not contain all the essential items demanded in the tender documents or which do not correspond to the specific requirements laid down shall be eliminated.

However, the evaluation committee or the contracting authority may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time limit they specify and having respect to the principle of equal treatment.

4. In the case of abnormally low tenders as referred to in Article 139, the committee shall ask for the necessary clarifications concerning the composition of the tender.

FR *Article 168*

1. Participation in tendering procedures shall be open on equal terms to all persons coming within the scope of the Treaties and, in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned, to all such natural and legal persons who are nationals of the beneficiary third countries or of any other third country as are expressly mentioned in those instruments.
2. In duly substantiated exceptional cases, it may be decided, on the basis of the specific conditions laid down in the basic acts governing cooperation, to allow third-country nationals other than those referred to in paragraph 1 to tender for contracts.
3. Where an agreement on widening the market for procurement of goods or services to which the Community is party applies, the contracts for procurement financed by the budget shall also be open to third-country nationals other than those referred to in paragraphs 1 and 2, under the conditions laid down in this agreement.

IR Article 239

Advertising and non-discrimination

(Articles 167 and 168 of the Financial Regulation)

The Commission shall take the necessary implementing measures to guarantee as wide a participation as possible, on equal terms, in competitive tendering for the award of contracts financed by the Community. To that end, care shall be taken in particular to:

- (a) ensure adequate advance publication, in reasonable time, of the pre-information notices, contract notices and award notices;
- (b) eliminate any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons referred to in Article 168 of the Financial Regulation.

CHAPTER 4

GRANTS

FR Article 169

An action may be financed in full by the budget only if this proves essential for it to be carried out.

IR Article 253

Financing in full

(Article 169 of the Financial Regulation)

1. By way of derogation from the co-financing requirement in connection with grants, referred to in Article 109 of the Financial Regulation, the financing of an action in full may be authorised in the following cases, save where prohibited by the basic act:
 - (a) humanitarian aid, including assistance for refugees, uprooted persons, rehabilitation and mine disposal;
 - (b) aid in crisis situations within the meaning of Article 168(2);
 - (c) actions for the protection of the health or fundamental rights of peoples;
 - (d) actions resulting from the implementation of financing agreements with third countries or actions with international organisations within the meaning of Article 43;

(e) where it is in the interests of the Community to be the sole donor to an action, and in particular to ensure visibility of a Community action.

2. Grounds shall be provided in the award decision relating to the action in question in the case of any derogation from the co-financing requirement, as provided for in paragraph 1.

The authorising officer must be in a position to show that financing in full is essential to carry out the action in question.

However, in the case of point (e) of paragraph 1, grounds shall be provided in the financing decision of the Commission.

FR Article 169a

Grant procedures to be applied in decentralised management by beneficiary third countries shall be laid down in the financing agreements referred to in Article 166. They shall be based on the rules laid down in Title VI of Part One.

IR *Nihil*

CHAPTER 5

AUDITING OF ACCOUNTS

FR Article 170

Each financing agreement or grant agreement or grant decision must expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received Community funds.

IR *Nihil*

TITLE V

EUROPEAN OFFICES

FR Article 171

1. 'European offices' for the purposes of applying this Title are the administrative structures set up by one or more institutions to perform specific cross-cutting tasks.
2. This Title shall apply to the operation of the European Anti-Fraud Office (OLAF), with the exception of Articles 174, 174a and 175(2).
3. Parts One and Three shall apply to the operation of the European offices, save as otherwise provided in this Title.

IR Article 257

Scope

(Article 171 of the Financial Regulation)

The offices referred to in Article 171 of the Financial Regulation are as follows:

- (a) the Office for Official Publications;
- (b) the European Anti-Fraud Office;
- (c) the European Communities Personnel Selection Office and the European Administrative School administratively attached to it;
- (d) the Office for the Administration and Payment of Individual Entitlements;
- (e) the Office for Infrastructure and Logistics in Brussels and the Office for Infrastructure and Logistics in Luxembourg.

One or more institutions may set up additional offices provided that this can be justified by a cost-benefit study and guarantees the visibility of the Community action.

Article 258

Delegations by the institutions to interinstitutional European offices

(Articles 171 and 174a of the Financial Regulation)

Each institution shall be responsible for budgetary commitments. The institutions may delegate to the Director of the interinstitutional European office concerned all subsequent acts, in particular legal commitments,

validation of expenditure, authorisation of payments and implementation of revenue, and shall set the limits and conditions for such delegation of powers.

Article 258a

Specific rules for the Office for Official Publications
(Articles 171 and 174a of the Financial Regulation)

With regard to the Office for Official Publications (Publications Office), each institution shall decide on its publication policy.

The net proceeds from the sale of publications shall be re-used as assigned revenue by the institution which is the author of those publications, in accordance with Article 18 of the Financial Regulation.

FR *Article 172*

1. The appropriations for each European office, the total amount of which shall be entered in a specific budget line within the section of the budget relating to the Commission, shall be set out in detail in an Annex to that section.

The Annex shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.

The appropriations entered in that Annex shall cover all the financial requirements of each European office in the performance of its duties on behalf of the institutions.

2. Each European office's establishment plan shall be annexed to that of the Commission.
3. The Director of each European office shall take decisions on transfers within the Annex provided for in paragraph 1. The Commission shall inform the budgetary authority of such transfers.
4. Each European office's accounts shall form an integral part of the Communities' accounts referred to in Article 121.

IR *Article 259*

Delegation of certain tasks by the accounting officer
(Article 172 of the Financial Regulation)

The Commission accounting officer, acting on a proposal from the management committee of the Office in question, may delegate to a member

of the staff of the office certain of his tasks relating to the collection of revenue and the payment of expenditure effected directly by the office in question.

Article 260

Treasury — bank accounts
(Article 172 of the Financial Regulation)

To meet the cash requirements of an interinstitutional office, bank accounts or post office giro accounts may be opened in its name by the Commission, acting on a proposal from the management committee.

The final cash position for each year shall be reconciled and adjusted between the office in question and the Commission at the end of the financial year.

FR Article 173

The Commission shall, in respect of the appropriations entered in the Annex for each European office, delegate the powers of authorising officer to the Director of the European office concerned, in accordance with Article 59.

IR *Nihil*

FR Article 174

1. Each interinstitutional European office shall draw up analytical accounts of its expenditure, enabling the proportion of its services supplied to each of the institutions to be determined. The Director of the European office concerned shall adopt, after approval by its Management Committee, the criteria on which the accounting system shall be based.
2. The remarks concerning the specific budget line in which is entered the total appropriation for each interinstitutional European office shall show an estimate of the cost of services supplied by the office to each of the institutions. This shall be based on the analytical accounts provided for in paragraph 1.
3. Each interinstitutional European office shall notify the institutions concerned of the results of the analytical accounts.

IR *Nihil*

FR Article 174a

1. Each institution may delegate authorising officer powers to the Director of an interinstitutional European office for the management of appropriations entered in its section and shall set the limits and conditions for this delegation of powers.
2. The internal auditor of the Commission shall exercise all responsibilities laid down in Title IV, Chapter 8 of Part One.

IR Article 258

Delegations by the institutions to interinstitutional European offices
(Articles 171 and 174a of the Financial Regulation)

Each institution shall be responsible for budgetary commitments. The institutions may delegate to the Director of the interinstitutional European office concerned all subsequent acts, in particular legal commitments, validation of expenditure, authorisation of payments and implementation of revenue, and shall set the limits and conditions for such delegation of powers.

Article 258a

Specific rules for the Office for Official Publications
(Articles 171 and 174a of the Financial Regulation)

With regard to the Office for Official Publications (Publications Office), each institution shall decide on its publication policy.

The net proceeds from the sale of publications shall be re-used as assigned revenue by the institution which is the author of those publications, in accordance with Article 18 of the Financial Regulation.

FR Article 175

Should the remit of a European office involve supplies to third parties for pecuniary interest, its Director shall, after approval of the Management Committee, lay down the specific provisions governing how these supplies are to be made and the keeping of the corresponding accounts.

IR *Nihil*

FR Article 176

Repealed

TITLE VI

ADMINISTRATIVE APPROPRIATIONS

FR Article 177

Parts One and Three shall apply to administrative appropriations, save as otherwise provided in this Title.

IR Article 262

Scope

(Article 177 of the Financial Regulation)

The administrative appropriations covered by this Title shall be those defined in Article 27.

Budgetary commitments corresponding to administrative appropriations of a type common to all titles and which are managed globally may be recorded globally in the budgetary accounting following the summary classification by type as set out in Article 27.

The corresponding expenditure shall be booked to the budget lines of each title according to the same distribution as for appropriations.

Article 264

Rent guarantees

(Article 177 of the Financial Regulation)

Rent guarantees provided by the Commission shall take the form of a bank guarantee or a deposit on a blocked bank account in the name of the Commission and of the lessor, denominated in euro, save in duly substantiated cases.

However, where, for transactions in third countries, it is not possible to use any of those forms of rent guarantees, the authorising officer responsible may accept other forms provided that those forms ensure equivalent protection of the Communities' financial interests.

Article 265

Advances to staff and members of the institutions
(Article 177 of the Financial Regulation)

Advances may be paid, in accordance with the conditions laid down in the Staff Regulations, to staff and to the members of the institutions.

FR *Article 178*

1. As from 15 November of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one quarter of the appropriations decided by the budgetary authority on the corresponding budget line for the current financial year. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.
2. Expenditure which must be paid in advance pursuant to legal or contractual provisions, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year. In this case, the limit referred to in paragraph 1 shall not apply.

IR *Nihil*

FR *Article 179*

1. Administrative appropriations shall be non-differentiated appropriations.
2. Operating expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.
3. The institutions shall inform the two branches of the budgetary authority as soon as possible of any building project likely to have significant financial implications for the budget.

If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify the institution concerned of its intention to issue such an opinion. Failing a reply, the institution concerned may proceed with the planned operation under its administrative autonomy, subject to Article 282 of the EC Treaty and Article 185 of the Euratom Treaty with regard to Community representation.

This opinion shall be forwarded to the institution concerned within two weeks of such notification.

IR *Article 263*

Buildings

(Article 179(3) of the Financial Regulation)

Before concluding the contracts referred to in Article 179(3) of the Financial Regulation, each institution shall submit a communication to the budgetary authority presenting all relevant information on the operation planned, the cost to the budget for the current financial year and for future years, its justification as regards the principle of sound financial management and its impact on the financial perspective.

The institution concerned shall at the same time inform the budgetary authority of its schedule for building projects.

TITLE VII

EXPERTS

FR *Article 179a*

The implementing rules shall include a specific procedure for the selection of experts, to be paid on the basis of a fixed amount, for assisting the institutions, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical assistance in the follow-up to, and final evaluation of, projects financed by the budget.

IR *Article 265a*

External experts

(Article 179a of the Financial Regulation)

1. For values below the thresholds laid down in Article 158(1)(a), external experts may be selected on the basis of the procedure laid down in paragraph 2 of this Article for tasks involving in particular the evaluation of proposals and technical assistance.
2. A call for expressions of interest shall be published in particular in the *Official Journal of the European Union* or the Internet site of the institution

concerned in order to ensure maximum publicity among potential candidates and with a view to establishing a list of experts.

The list drawn up following the call for expressions of interest shall be valid for no more than the duration of a multiannual programme.

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 that period.

3. External experts shall not appear on the list referred to in paragraph 2 if they are in one of the situations of exclusion referred to in Article 93 of the Financial Regulation.
4. External experts appearing on the list referred to in paragraph 2 shall be selected on the basis of their ability to perform the tasks referred to in paragraph 1 and in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests.

PART THREE

TRANSITIONAL AND FINAL PROVISIONS

TITLE I

TRANSITIONAL PROVISIONS

FR Article 180

Repealed

FR Article 181

1. As regards the Funds mentioned in Article 155(1) for which the basic acts were repealed before the date of application of this Regulation, appropriations which were decommitted in application of Article 157(1) may be made available again in the event of a manifest error attributable solely to the Commission or in the case of *force majeure* which has serious repercussions for the implementation of operations supported by these Funds.
2. The central database referred to in Article 95 shall be set up by 1 January 2009.
3. For transfers of appropriations concerning operational expenditure referred to in the Regulations governing the Structural Funds and the Cohesion Fund for the 2000 to 2006 programming period, for which Community payments still have to be made for the financial settlement

of outstanding Community commitments until the closure of the assistance, the Commission may make transfers from one title to another, provided that the appropriations in question:

- are for the same objective, or
- relate to Community initiatives or to technical assistance and innovative measures and are transferred to measures of the same nature.

4. Article 30(3) shall apply for the fund mentioned in Article 148(1) for the first time in respect of the payments charged to the 2008 budget.

IR *Nihil*

IR *Article 267*

Liquidation of the guarantee account

1. The credit balance of the guarantee account kept in the general accounts in the name of each accounting officer or assistant accounting officer and credited with the special allowances granted pursuant to Article 75 of the Financial Regulation of 21 December 1977 shall be paid to the persons concerned or to those entitled under them by decision of the institutions, after they have been granted discharge in respect of the financial years 2001 and 2002 in accordance with the opinion of the accounting officer where he is not personally concerned.
2. The credit balance of the guarantee account kept in the general accounts in the name of each imprest administrator and credited with the special allowances granted pursuant to Article 75 of the Financial Regulation of 21 December 1977 shall be paid to the persons concerned or those entitled under them with the agreement of, and after verification by, the accounting officer and the authorising officer concerned.
3. The guarantee account shall be credited with interest corresponding to the annual average of the monthly rates applied by the European Central Bank to its principal refinancing operations, in euro, as published in the C series of the *Official Journal of the European Communities*, up to the date of liquidation.

TITLE II

FINAL PROVISIONS

FR Article 182

The European Parliament and the Council shall be empowered to obtain any information or explanations regarding budgetary matters within their fields of competence.

IR *Nihil*

FR Article 183

The Commission shall adopt rules for implementing this Regulation.

IR *Nihil*

FR Article 184

Every three years, or whenever it proves necessary to do so, this Regulation shall be the subject of a review in accordance with the procedure laid down by Article 279 of the EC Treaty and Article 183 of the Euratom Treaty, after recourse to the conciliation procedure, if the European Parliament so requests.

IR *Nihil*

FR Article 185

1. The Commission shall adopt a framework Financial Regulation for the bodies set up by the Communities and having legal personality which actually receive contributions charged to the budget. The financial rules of these bodies may not depart from the framework Regulation except where their specific operating needs so require and with the Commission's prior consent.
2. Discharge for the implementation of the budgets of the bodies referred to in paragraph 1, shall be given by the European Parliament on the recommendation of the Council.

3. The Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1 as he/she does in respect of Commission departments.

IR *Article 270*

Bodies referred to in Article 185 of the Financial Regulation
(Article 185 of the Financial Regulation)

Bodies which actually receive a grant charged to the Community budget and which are included in a list drawn up by the Commission and attached to the preliminary draft budget for each financial year shall be subject to the obligations referred to in Articles 14(2), point (3)(d) of Article 46(1) and Article 185 of the Financial Regulation.

FR *Article 186*

The Financial Regulation of 21 December 1977 is hereby repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

IR *Nihil*

FR *Article 187*

This Regulation shall enter into force on the 20th day following its publication in the *Official Journal of the European Union*.

It shall apply from 1 January 2003.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

IR *Nihil*

Updating of thresholds and amounts

1. The thresholds and amounts laid down in Articles 54, 67, 119, 126, 128, 129, 130, 135, 151, 152, 164, 172, 173, 175b, 180, 181, 182, 226, 241, 243, 245 and 250 shall be updated every three years in line with movements in the consumer price index in the Community.
2. The thresholds referred to in point (b) of Article 157 and in Article 158(1) in respect of procurement contracts shall be adjusted every two years pursuant to Article 78(1) of Directive 2004/18/EC.

*Article 272***Repeal**

Regulation (Euratom, ECSC, EC) No 3418/93 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation.

*Article 273***Entry into force**

This Regulation shall enter into force on 1 January 2003.

This Regulation shall be binding in its entirety and directly applicable in all Member States.

2. SELECTION OF LEGAL TEXTS ON THE ESTABLISHMENT AND IMPLEMENTATION OF THE BUDGET OF THE EUROPEAN UNION

2.1. TREATY ON EUROPEAN UNION

Common foreign and security policy

Article 28

1. Articles 189, 190, 196 to 199, 203, 204, 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.

2. Administrative expenditure which the provisions relating to the areas referred to in this title entail for the institutions shall be charged to the budget of the European Communities.

3. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise.

In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 23(1), second subparagraph, shall not be obliged to contribute to the financing thereof.

4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.

Police and judicial cooperation in criminal matters

Article 41

1. Articles 189, 190, 195, 196 to 199, 203, 204, 205(3), 206 to 209, 213 to 219, 255 and 290 of the Treaty establishing the European Community shall apply to the provisions relating to the areas referred to in this title.

2. Administrative expenditure which the provisions relating to the areas referred to in this title entail for the institutions shall be charged to the budget of the European Communities.

3. Operating expenditure to which the implementation of those provisions gives rise shall also be charged to the budget of the European Communities, except where the Council acting unanimously decides otherwise. In cases where expenditure is not charged to the budget of the European Communities, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise.

4. The budgetary procedure laid down in the Treaty establishing the European Community shall apply to the expenditure charged to the budget of the European Communities.

Closer cooperation

Article 44 A

Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.

2.2. TREATY ESTABLISHING THE EUROPEAN COMMUNITY

Court of Auditors

Article 248

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Community. It shall also examine the accounts of all revenue and expenditure of all bodies set up by the Community in so far as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the *Official Journal of the European Union*. This statement may be supplemented by specific assessments for each major area of Community activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Community.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Community, on the premises of any body which manages revenue or expenditure on behalf of the Community and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States, the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the Community, any bodies managing revenue or expenditure on behalf of the Community, any natural or legal person in receipt of payments from

the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Community expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an agreement, the Court shall nevertheless have access to information necessary for the audit of Community expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an annual report after the close of each financial year. It shall be forwarded to the other institutions of the Community and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the *Official Journal of the European Union*.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Community.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

It shall assist the European Parliament and the Council in exercising their powers of control over the implementation of the budget.

The Court of Auditors shall draw up its Rules of Procedure. Those rules shall require the approval of the Council, acting by a qualified majority.

Enforcement

Article 256

Decisions of the Council or of the Commission which impose a pecuniary obligation on persons other than States, shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may be suspended only by a decision of the Court of Justice. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.

Financial provisions

Article 268

All items of revenue and expenditure of the Community, including those relating to the European Social Fund, shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.

Administrative expenditure occasioned for the institutions by the provisions of the Treaty on European Union relating to common foreign and security policy and to cooperation in the fields of justice and home affairs shall be charged to the budget. The operational expenditure occasioned by the implementation of the said provisions may, under the conditions referred to therein, be charged to the budget.

The revenue and expenditure shown in the budget shall be in balance.

Article 269

Without prejudice to other revenue, the budget shall be financed wholly from own resources.

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the system of own resources of the Community, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

Article 270

With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limit of the Community's own resources arising under provisions laid down by the Council pursuant to Article 269.

Article 271

The expenditure shown in the budget shall be authorised for one financial year, unless the Regulations made pursuant to Article 279 provide otherwise.

In accordance with conditions to be laid down pursuant to Article 279, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the Regulations made pursuant to Article 279.

The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

Article 272

1. The financial year shall run from 1 January to 31 December.

2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates.

The preliminary draft budget shall contain an estimate of revenue and an estimate of expenditure.

3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget.

The Council, acting by a qualified majority, shall establish the draft budget and forward it to the European Parliament.

4. The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented.

The European Parliament shall have the right to amend the draft budget, acting by a majority of its Members, and to propose to the Council, acting by an absolute major-

ity of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith.

If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted. If, within this period, the European Parliament has not amended the draft budget nor proposed any modifications thereto, the budget shall be deemed to be finally adopted.

If, within this period, the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:

(a) the Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;

(b) with regard to the proposed modifications:

— where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted,

— where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected,

— where, pursuant to one of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.

The draft budget shall be modified on the basis of the proposed modifications accepted by the Council.

If, within 15 days of the draft being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally

adopted. The Council shall inform the European Parliament that it has not modified any of the amendments and that the proposed modifications have been accepted.

If, within this period, the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The Council shall inform the European Parliament of the results of its deliberations.

6. Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications, may, acting by a majority of its Members and three fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If, within this period, the European Parliament has not acted, the budget shall be deemed to be finally adopted.

7. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted.

8. However, the European Parliament, acting by a majority of its Members and two thirds of the votes cast, may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.

9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.

— The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is as it results from:

— the trend, in terms of volume, of the gross national product within the Community,

— the average variation in the budgets of the Member States, and

— the trend of the cost of living during the preceding financial year.

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph.

If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the European Parlia-

ment may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate.

Where the European Parliament, the Council or the Commission consider that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its Members and three fifths of the votes cast.

10. Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.

Article 273

If, at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the Regulations made pursuant to Article 279; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one twelfth of those provided for in the draft budget in course of preparation.

The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorise expenditure in excess of one twelfth.

If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its Members and three fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the European Parliament has taken its decision. If, within the said period, the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted.

The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.

Article 274

The Commission shall implement the budget, in accordance with the provisions of the Regulations made pursuant to Article 279, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

The Regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the Regulations made pursuant to Article 279, transfer appropriations from one chapter to another or from one subdivision to another.

Article 275

The Commission shall submit annually to the Council and to the European Parliament the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Community.

Article 276

1. The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in Article 275, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 248(1), second subparagraph and any relevant special reports by the Court of Auditors.

2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.

3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament

relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.

Article 277

The budget shall be drawn up in the unit of account determined in accordance with the provisions of the Regulations made pursuant to Article 279.

Article 278

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of this Treaty. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.

Article 279

1. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall:

- (a) make Financial Regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- (b) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, and concerning appropriate arrangements for inspection.

From 1 January 2007, the Council shall act by a qualified majority on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors.

2. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Community's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements.

Article 280

1. The Community and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Community through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States.

2. Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests.

3. Without prejudice to other provisions of this Treaty, the Member States shall coordinate their action aimed at protecting the financial interests of the Community against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.

4. The Council, acting in accordance with the procedure referred to in Article 251, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Community with a view to affording effective and equivalent protection in the Member States. These measures shall not concern the application of national criminal law or the national administration of justice.

5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this Article.

General and final provisions

Article 282

In each of the Member States, the Community shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Community shall be represented by the Commission.

General and final provisions

Article 288

The contractual liability of the Community shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The preceding paragraph shall apply under the same conditions to damage caused by the ECB or by its servants in the performance of their duties.

The personal liability of its servants towards the Community shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.

2.3. TREATY ESTABLISHING THE EUROPEAN ATOMIC ENERGY COMMUNITY

Financial provisions

Article 171

1. Estimates shall be drawn up for each financial year of all revenue and expenditure of the Community, other than those of the Agency and the Joint Undertakings, and such revenue and expenditure shall be shown either in the operating budget or in the research and investment budget. The revenue and expenditure shown in each budget shall be in balance.

2. The revenue and expenditure of the Agency, which shall operate in accordance with commercial principles, shall be budgeted for in a special account. The manner of estimating, implementing and auditing such revenue and expenditure shall be laid down, with due regard to the statutes of the Agency, in Financial Regulations made pursuant to Article 183.

3. The estimates of revenue and expenditure, together with the operating accounts and the balance sheets of the Joint Undertakings for each financial year, shall be placed before the Commission, the Council and the European Parliament in accordance with the statutes of those undertakings.

Article 172

(Paragraphs 1, 2 and 3 repealed)

4. Loans for the financing of research or investment shall be raised on terms fixed by the Council in the manner provided for in Article 177(5). The Community may borrow on the capital market of a Member State, either in accordance with the legal provisions applying to internal issues, or, if there are no such provisions in a Member State, after the Member State concerned and the Commission have conferred together and have reached agreement upon the proposed loan. The competent authorities of the Member State concerned may refuse to give their assent only if there is reason to fear serious disturbances on the capital market of that State.

Article 173

Without prejudice to other revenue, the budget shall be financed wholly from own resources. The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament, shall lay down provisions relating to the sys-

tem of own resources of the Community, which it shall recommend to the Member States for adoption in accordance with their respective constitutional requirements.

Article 173a

With a view to maintaining budgetary discipline, the Commission shall not make any proposal for a Community act, or alter its proposals, or adopt any implementing measure which is likely to have appreciable implications for the budget without providing the assurance that that proposal or that measure is capable of being financed within the limit of the Community's own resources arising under provisions laid down by the Council pursuant to Article 173.

Article 174

1. The expenditure shown in the operating budget shall include in particular:
 - (a) administrative expenditure;
 - (b) expenditure relating to safeguards and to health and safety.
2. The expenditure shown in the research and investment budget shall include in particular:
 - (a) expenditure relating to the implementation of the Community research programme;
 - (b) any participation in the capital of the Agency and in its investment expenditure;
 - (c) expenditure relating to the equipment of training establishments;
 - (d) any participation in Joint Undertakings or in certain joint operations.

Article 175

The expenditure shown in the operating budget shall be authorised for one financial year, unless the Regulations made pursuant to Article 183 provide otherwise. In accordance with conditions to be laid down pursuant to Article 183, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only. Appropria-

tions to cover expenditure shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the Regulations made pursuant to Article 183. The expenditure of the European Parliament, the Council, the Commission and the Court of Justice shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.

Article 176

1. Subject to the limits resulting from programmes or decisions involving expenditure which, in pursuance of this Treaty, require the unanimous approval of the Council, allocations for research and investment expenditure shall include:

- (a) commitment appropriations, covering a series of items which constitute a separate unit and form a coherent whole;
- (b) payment appropriations which represent the maximum amount payable each year in respect of the commitments entered into under subparagraph (a).

2. The schedule of due dates for commitments and payments shall be annexed to the corresponding draft budget proposed by the Commission.

3. Appropriations for research and investment shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the Regulations made pursuant to Article 183.

4. Unused payment authorisations shall be carried forward to the next financial year by decision of the Commission, unless the Council decides otherwise.

Article 177

1. The financial year shall run from 1 January to 31 December. Within the meaning of this Article, 'budget' shall include the operating budget and the research and investment budget.

2. Each institution of the Community shall, before 1 July, draw up estimates of its expenditure. The Commission shall consolidate these estimates in a preliminary draft budget. It shall attach thereto an opinion which may contain different estimates. The preliminary draft budget shall include an estimate of revenue and an estimate of expenditure.

3. The Commission shall place the preliminary draft budget before the Council not later than 1 September of the year preceding that in which the budget is to be implemented. The Council shall consult the Commission and, where appropriate, the other institutions concerned whenever it intends to depart from the preliminary draft budget. The Council shall, acting by a qualified majority, establish the draft budget and forward it to the European Parliament.

4. The draft budget shall be placed before the European Parliament not later than 5 October of the year preceding that in which the budget is to be implemented. The European Parliament shall have the right to amend the draft budget acting by a majority of its Members, and to propose to the Council, acting by an absolute majority of the votes cast, modifications to the draft budget relating to expenditure necessarily resulting from this Treaty or from acts adopted in accordance therewith. If, within 45 days of the draft budget being placed before it, the European Parliament has given its approval, the budget shall stand as finally adopted. If, within this period, the European Parliament has not amended the draft budget or proposed any modifications thereto, the budget shall be deemed to be finally adopted. If, within this period, the European Parliament has adopted amendments or proposed modifications, the draft budget together with the amendments or proposed modifications shall be forwarded to the Council.

5. After discussing the draft budget with the Commission and, where appropriate, with the other institutions concerned, the Council shall act under the following conditions:

(a) the Council may, acting by a qualified majority, modify any of the amendments adopted by the European Parliament;

(b) with regard to the proposed modifications:

- where a modification proposed by the European Parliament does not have the effect of increasing the total amount of the expenditure of an institution, owing in particular to the fact that the increase in expenditure which it would involve would be expressly compensated by one or more proposed modifications correspondingly reducing expenditure, the Council may, acting by a qualified majority, reject the proposed modification. In the absence of a decision to reject it, the proposed modification shall stand as accepted;
- where a modification proposed by the European Parliament has the effect of increasing the total amount of the expenditure of an institution, the Council may, acting by a qualified majority, accept this proposed modification. In the absence of a decision to accept it, the proposed modification shall stand as rejected;
- where, in pursuance of the two preceding subparagraphs, the Council has rejected a proposed modification, it may, acting by a qualified majority, either retain the amount shown in the draft budget or fix another amount.

The draft shall be modified on the basis of the proposed modifications accepted by the Council. If, within 15 days of the draft budget being placed before it, the Council has not modified any of the amendments adopted by the European Parliament and if the modifications proposed by the latter have been accepted, the budget shall be deemed to be finally adopted. The Council shall inform the European Parliament that it has not modified any of the amendments and that the proposed modifications have been accepted. If within this period the Council has modified one or more of the amendments adopted by the European Parliament or if the modifications proposed by the latter have been rejected or modified, the modified draft budget shall again be forwarded to the European Parliament. The Council shall inform the European Parliament of the results of its deliberations.

6. Within 15 days of the draft budget being placed before it, the European Parliament, which shall have been notified of the action taken on its proposed modifications may, acting by a majority of its Members and three fifths of the votes cast, amend or reject the modifications to its amendments made by the Council and shall adopt the budget accordingly. If, within this period, the European Parliament has not acted, the budget shall be deemed to be finally adopted.

7. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been finally adopted.

8. However, the European Parliament, acting by a majority of its Members and two thirds of the votes cast may, if there are important reasons, reject the draft budget and ask for a new draft to be submitted to it.

9. A maximum rate of increase in relation to the expenditure of the same type to be incurred during the current year shall be fixed annually for the total expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith.

The Commission shall, after consulting the Economic Policy Committee, declare what this maximum rate is, as it results from:

- the trend, in terms of volume, of the gross national product within the Community;
- the average variation in the budgets of the Member States; and
- the trend of the cost of living during the preceding financial year.

The maximum rate shall be communicated, before 1 May, to all the institutions of the Community. The latter shall be required to conform to this during the budgetary procedure, subject to the provisions of the fourth and fifth subparagraphs of this paragraph. If, in respect of expenditure other than that necessarily resulting from this Treaty or from acts adopted in accordance therewith, the actual rate of increase in the draft budget established by the Council is over half the maximum rate, the European Parliament may, exercising its right of amendment, further increase the total amount of that expenditure to a limit not exceeding half the maximum rate. Where the European Parliament, the Council or the Commission considers that the activities of the Communities require that the rate determined according to the procedure laid down in this paragraph should be exceeded, another rate may be fixed by agreement between the Council, acting by a qualified majority, and the European Parliament, acting by a majority of its members and three fifths of the votes cast.

10. Each institution shall exercise the powers conferred upon it by this Article, with due regard for the provisions of the Treaty and for acts adopted in accordance therewith, in particular those relating to the Communities' own resources and to the balance between revenue and expenditure.

Article 178

If, at the beginning of a financial year, the budget has not yet been voted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter or other subdivision of the budget in accordance with the provisions of the Regulations made pursuant to Article 183; this arrangement shall not, however, have the effect of placing at the disposal of the Commission appropriations in excess of one twelfth of those provided for in the draft budget in the course of preparation. The Council may, acting by a qualified majority, provided that the other conditions laid down in the first subparagraph are observed, authorize expenditure in excess of one twelfth. If the decision relates to expenditure which does not necessarily result from this Treaty or from acts adopted in accordance therewith, the Council shall forward it immediately to the European Parliament; within 30 days the European Parliament, acting by a majority of its Members and three fifths of the votes cast, may adopt a different decision on the expenditure in excess of the one twelfth referred to in the first subparagraph. This part of the decision of the Council shall be suspended until the European Parliament has taken its decision. If, within this period, the European Parliament has not taken a decision which differs from the decision of the Council, the latter shall be deemed to be finally adopted. The decisions referred to in the second and third subparagraphs shall lay down the necessary measures relating to resources to ensure application of this Article.

Article 179

The Commission shall implement the budgets, in accordance with the provisions of the Regulations made pursuant to Article 183, on its own responsibility and within the limits of the appropriations. The Regulations shall lay down detailed rules for each institution concerning its part in effecting its own expenditure. Within the budgets, the Commission may, subject to the limits and conditions laid down in the Regulations made pursuant to Article 183, transfer appropriations from one chapter to another or from one subdivision to another.

Article 179a

The Commission shall submit annually to the Council and to the European Parliament the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Community.

Article 180 *(Repealed)*

Article 180a *(Repealed)*

Article 180b

1. The European Parliament, acting on a recommendation from the Council which shall act by a qualified majority, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts and the financial statement referred to in Article 179a, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, and any relevant special reports by the Court of Auditors.

2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.

3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council. At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budgets. These reports shall also be forwarded to the Court of Auditors.

Article 181

The budgets and the account provided for in Article 171(1) and (2) shall be drawn up in the unit of account determined in accordance with the provisions of the Financial Regulations made pursuant to Article 183. The financial contributions provided for in Article 172 shall be placed at the disposal of the Community by the Member States in their national currencies. The available balances of these contributions shall be deposited with the Treasuries of Member States or with bodies designated by them. While on deposit, such funds shall retain the value corresponding to the parity, at the date of deposit, in relation to the unit of account referred to in the first paragraph. The balances may be invested on terms to be agreed between the Commission and the Member State concerned.

Article 182

1. The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings of currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of this Treaty. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

2. The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or any other financial institutions approved by that State.

3. As regards expenditure which the Community has to incur in the currencies of third countries, the Commission shall, before the budgets are finally adopted, submit to the Council a programme indicating anticipated revenue and expenditure in the different currencies. This programme shall be approved by the Council, acting by a qualified majority. It may be modified in the course of the financial year in accordance with the same procedure.

4. Member States shall provide the Commission with the currency of third countries needed for the expenditure shown in the programme provided for in paragraph 3 according to the scales laid down in Article 172. Amounts collected by the Commission in the currency of third countries shall be transferred to Member States in accordance with the same scales.

5. The Commission may freely make use of any amounts in the currency of third countries derived from loans it has raised in such countries.

6. The Council may, acting unanimously on a proposal from the Commission apply, in whole or in part, to the Agency and to Joint Undertakings the exchange arrangements provided for in the preceding paragraphs, and, where appropriate, adapt these arrangements to their operational requirements.

Article 183

The Council, acting unanimously on a proposal from the Commission and after consulting the European Parliament and obtaining the opinion of the Court of Auditors, shall:

- (a) make Financial Regulations specifying in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
- (b) determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Community's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements;
- (c) lay down rules concerning the responsibility of financial controllers, authorising officers and accounting officers, and concerning appropriate arrangements for inspection.

Article 183a

Member States shall take the same measures to counter fraud affecting the financial interests of the Community as they take to counter fraud affecting their own financial interests. Without prejudice to other provisions of this Treaty, Member States shall coordinate their actions aimed at protecting the financial interests of the Community against fraud. To this end they shall organise, with the help of the Commission, close and regular cooperation between the competent departments of their administrations.

General provisions

Article 185

In each of the Member States, the Community shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Community shall be represented by the Commission

General provisions

Article 188

The contractual liability of the Community shall be governed by the law applicable to the contract in question. In the case of non-contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties. The personal liability of its servants towards the Community shall be governed by the provisions laid down in the Staff Regulations or in the Conditions of Employment applicable to them.

2.4. JOINT DECLARATION OF THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION CONCERNING THE INSTITUTION OF A CONCILIATION PROCEDURE BETWEEN THE EUROPEAN PARLIAMENT AND THE COUNCIL

(OJ C 89 of 22.4.1975, p.1)

THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION,

Whereas from 1 January 1975, the budget of the Communities will be financed entirely from the Communities' own resources;

Whereas in order to implement this system the European Parliament will be given increased budgetary powers;

Whereas the increase in the budgetary powers of the European Parliament must be accompanied by effective participation by the latter in the procedure for preparing and adopting decisions which give rise to important expenditure or revenue to be charged or credited to the budget of the European Communities,

HAVE AGREED AS FOLLOWS:

1. A conciliation procedure between the European Parliament and the Council with the active assistance of the Commission is hereby instituted.
2. This procedure may be followed for Community acts of general application which have appreciable financial implications, and of which the adoption is not required by virtue of acts already in existence.
3. When submitting its proposal the Commission shall indicate whether the act in question is, in its opinion, capable of being the subject of the conciliation procedure. The European Parliament, when giving its Opinion, and the Council may request that this procedure be initiated.
4. The procedure shall be initiated if the criteria laid down in paragraph 2 are met and if the Council intends to depart from the Opinion adopted by the European Parliament.
5. The conciliation shall take place in a 'Conciliation Committee' consisting of the Council and representatives of the European Parliament. The Commission shall participate in the work of the Conciliation Committee.

6. The aim of the procedure shall be to seek an agreement between the European Parliament and the Council.

The procedure should normally take place during a period not exceeding three months, unless the act in question has to be adopted before a specific date or if the matter is urgent, in which case the Council may fix an appropriate time limit.

7. When the positions of the two institutions are sufficiently close, the European Parliament may give a new Opinion, after which the Council shall take definitive action.

Done at Brussels, 4 March 1975.

For the European Parliament
C. BERKHOUWER

For the Council
G. FITZGERALD

For the Commission
François-Xavier ORTOLI

2.5. COUNCIL DECISION (EC, EURATOM) NO 597/2000 OF 29 SEPTEMBER 2000 ON THE SYSTEM OF THE EUROPEAN COMMUNITIES' OWN RESOURCES

(OJ L 253 of 7.10.2000, p.42)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 269 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 173 thereof,

Having regard to the proposal from the Commission ⁽¹⁾,

Having regard to the opinion of the European Parliament ⁽²⁾,

Having regard to the opinion of the Court of Auditors ⁽³⁾,

Having regard to the opinion of the Economic and Social Committee ⁽⁴⁾,

Whereas:

- (1) The European Council meeting in Berlin on 24 and 25 March 1999 concluded, inter alia, that the system of the Communities' own resources should be equitable, transparent, cost-effective, simple and based on criteria which best express each Member State's ability to contribute.
- (2) The Communities' own resources system must ensure adequate resources for the orderly development of the Communities' policies, subject to the need for strict budgetary discipline.

⁽¹⁾ Opinion delivered on 17 November 1999 (OJ C 189, 7.7.2000, p. 79).

⁽²⁾ OJ C 310, 28.10.1999, p. 1.

⁽³⁾ OJ C 368, 20.12.1999, p. 16.

⁽⁴⁾ OJ L 310, 30.11.1996, p. 1. Regulation as amended by Regulation (EC) No 448/98 (OJ L 58, 27.2.1998, p. 1).

- (3) It is appropriate that the best quality data be used for the purposes of the budget of the European Union and the Communities' own resources. The application of the European system of integrated economic accounts (hereinafter referred to as the 'ESA 95') in accordance with Council Regulation (EC) No 2223/96 ⁽⁵⁾ will improve the quality of measurement of national accounts data.
- (4) It is appropriate to use the most recent statistical concepts for the purposes of own resources and accordingly to define gross national product (GNP) as being equal for these purposes to gross national income (GNI) as provided by the Commission in application of the ESA 95 in accordance with Regulation (EC) No 2223/96.
- (5) It is, moreover, appropriate, should modifications to the ESA 95 result in significant changes in GNI as provided by the Commission in accordance with Regulation (EC) No 2223/96, that the Council decide whether these modifications apply for the purposes of own resources.
- (6) According to Council Decision 94/728/EC, Euratom of 31 October 1994 on the system of the European Communities' own resources ⁽⁶⁾, the maximum ceiling of own resources for 1999 was set equal to 1.27 % of the Communities' GNP at market prices and an overall ceiling of 1.335 % of the Communities' GNP was set for appropriations for commitments.
- (7) It is appropriate to adapt these ceilings expressed as a percent of GNP in order to maintain unchanged the amount of financial resources put at the disposal of the Communities by establishing a formula for the determination of the new ceilings, in relation to GNP as defined for the present purposes, to be applied after the entry into force of this Decision.
- (8) It is appropriate that the same method be used in the future on the occasion of changes in the ESA 95 which may have effects on the level of GNP.
- (9) In order further to continue the process of making allowance for each Member State's ability to contribute to the system of own resources and of correcting the regressive aspects of the current system for the least prosperous Member States, the European Council meeting in Berlin of 24 and 25 March 1999 concluded that the Union's financing rules would be amended as follows: the maximum rate of call of the VAT resource would be reduced from 1 % to 0.75 % in 2002 and 2003 and to 0.50 % from 2004 onwards, the value added tax base of the Member States would continue to be restricted to 50 % of their GNP.

⁽⁵⁾ OJ L 293, 12.11.1994, p. 9.

⁽⁶⁾ OJ L 185, 15.7.1988, p. 24.

- (10) The European Council of 24 and 25 March 1999 concluded that it is appropriate to adapt the amount retained by Member States to cover the costs related to collection in connection with the so-called traditional own resources paid to the budget of the European Union.
- (11) Budgetary imbalances should be corrected in such a way as not to affect the own resources available for the Communities' policies and be resolved, to the extent possible, by means of expenditure policy.
- (12) The European Council of 24 and 25 March 1999 concluded that the manner for calculating the correction of budgetary imbalances in favour of the United Kingdom as defined in Decision 88/376/EEC, Euratom and confirmed by Decision 94/728/EC, Euratom, should not include the windfall gains resulting from changes in the financing systems and from future enlargement. Accordingly, at the time of enlargement, an adjustment will reduce 'total allocated expenditure' by an amount equivalent to the annual pre-accession expenditure in the acceding countries, thereby ensuring that expenditure which is unabated remains so.
- (13) For reasons of clarity, the description of the calculation of the correction in respect of budgetary imbalances granted to the United Kingdom has been simplified. This simplification has no impact on the determination of the amount of this correction granted to the United Kingdom.
- (14) The European Council of 24 and 25 March 1999 concluded that the financing of the correction of budgetary imbalances in favour of the United Kingdom should be modified to allow Austria, Germany, the Netherlands and Sweden to see a reduction in their financing share to 25 % of the normal share.
- (15) The monetary reserve, hereinafter referred to as 'the EAGGF monetary reserve', the reserve for the financing of the Loan Guarantee Fund and the reserve for emergency aid in non-member countries are covered by specific provisions.
- (16) The Commission should undertake, before 1 January 2006, a general review of the operation of the own resources system, accompanied, if necessary, by appropriate proposals, in the light of all relevant factors including the effects of enlargement on the financing of the budget of the European Union, the possibility of modifying the own resources structure by creating new autonomous own resources and the correction of budgetary imbalances granted to the United Kingdom as well as the granting to Austria, Germany, the Netherlands and Sweden of the reduction in the financing of the budgetary imbalances in favour of the United Kingdom.
- (17) Provisions must be laid down to cover the changeover from the system introduced by Decision 94/728/EC, Euratom to that arising from this Decision.

(18) The European Council of 24 and 25 March 1999 concluded that this Decision should take effect on 1 January 2002,

HAS LAID DOWN THESE PROVISIONS, WHICH IT RECOMMENDS TO THE MEMBER STATES FOR ADOPTION:

Article 1

The Communities shall be allocated own resources in accordance with the rules laid down in the following Articles in order to ensure, in accordance with Article 269 of the Treaty establishing the European Community (hereinafter referred to as the 'EC Treaty') and Article 173 of the Treaty establishing the European Atomic Energy Community (hereinafter referred to as the 'Euratom Treaty'), the financing of the budget of the European Union.

The budget of the European Union shall, without prejudice to other revenue, be financed wholly from the Communities' own resources.

Article 2

1. Revenue from the following shall constitute own resources entered in the budget of the European Union:

- (a) levies, premiums, additional or compensatory amounts, additional amounts or factors and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries within the framework of the common agricultural policy, and also contributions and other duties provided for within the framework of the common organisation of the markets in sugar;
- (b) Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries and customs duties on products coming under the Treaty establishing the European Coal and Steel Community;
- (c) the application of a uniform rate valid for all Member States to the harmonised VAT assessment bases determined according to Community rules. The assessment base to be taken into account for this purpose shall not exceed 50 % of GNP for each Member State, as defined in paragraph 7;

(d) the application of a rate — to be determined pursuant to the budgetary procedure in the light of the total of all other revenue — to the sum of all the Member States' GNPs.

2. Revenue deriving from any new charges introduced within the framework of a common policy, in accordance with the EC Treaty or the Euratom Treaty, provided that the procedure laid down in Article 269 of the EC Treaty or in Article 173 of the Euratom Treaty has been followed, shall also constitute own resources entered in the budget of the European Union.

3. Member States shall retain, by way of collection costs, 25 % of the amounts referred to in paragraph 1(a) and (b), which shall be established after 31 December 2000.

4. The uniform rate referred to in paragraph 1(c) shall correspond to the rate resulting from the difference between:

(a) the maximum rate of call of the VAT resource, which is fixed at:

0.75 % in 2002 and 2003,

0.50 % from 2004 onwards,

and

(b) a rate ('frozen rate') equivalent to the ratio between the amount of the compensation referred to in Article 4 and the sum of the VAT assessment bases (established in accordance with paragraph (1)(c) of all Member States, taking into account the fact that the United Kingdom is excluded from the financing of its correction and that the share of Austria, Germany, the Netherlands and Sweden in the financing of the United Kingdom correction is reduced to one fourth of its normal value.

5. The rate fixed under paragraph 1(d) shall apply to the GNP of each Member State.

6. If, at the beginning of the financial year, the budget has not been adopted, the previous uniform VAT rate and rate applicable to Member States' GNPs, without prejudice to the provisions adopted in accordance with Article 8(2) as regards the EAGGF monetary reserve, the reserve for financing the Loan Guarantee Fund and the reserve for emergency aid in third countries, shall remain applicable until the entry into force of the new rates.

7. For the purposes of applying this Decision, GNP shall mean GNI for the year at market prices as provided by the Commission in application of the ESA 95 in accordance with Regulation (EC) No 2223/96.

Should modifications to the ESA 95 result in significant changes in the GNI as provided by the Commission, the Council, acting unanimously on a proposal of the Commission and after consulting the European Parliament, shall decide whether these modifications shall apply for the purposes of this Decision.

Article 3

1. The total amount of own resources assigned to the Communities to cover appropriations for payments may not exceed a certain percentage of the total GNPs of the Member States. This percentage, expressed in two decimal places, will be calculated by the Commission in December 2001 on the basis of the following formula:

Maximum own resources =

$$1.27 \% \times \frac{1998 + 1999 + 2000 \text{ GNP ESA second edition}}{1998 + 1999 + 2000 \text{ GNP ESA 95}}$$

2. Appropriations for commitments entered in the general budget of the European Union must follow an orderly progression resulting in a total amount, which does not exceed a certain percentage of the total GNPs of the Member States. This percentage, expressed in two decimal places, shall be calculated by the Commission in December 2001 on the basis of the following formula:

Maximum appropriations for commitments =

$$1.335 \% \times \frac{1998 + 1999 + 2000 \text{ GNP ESA second edition}}{1998 + 1999 + 2000 \text{ GNP ESA 95}}$$

An orderly ratio between appropriations for commitments and appropriations for payments shall be maintained to guarantee their compatibility and to enable the ceilings pursuant to paragraph 1 to be respected in subsequent years.

3. The Commission shall communicate to the budgetary authority the new ceilings for own resources before 31 December 2001.

4. The method described in paragraphs 1 and 2 will be followed in the case of modifications to the ESA 95 which result in changes in the level of GNP.

Article 4

The United Kingdom shall be granted a correction in respect of budgetary imbalances.

This correction shall be established by:

(a) calculating the difference, in the preceding financial year, between:

the percentage share of the United Kingdom in the sum of uncapped VAT assessment bases, and

the percentage share of the United Kingdom in total allocated expenditure;

(b) multiplying the difference thus obtained by total allocated expenditure;

(c) multiplying the result under (b) by 0.66;

(d) subtracting from the result under (c) the effects arising for the United Kingdom from the changeover to capped VAT and the payments referred to in Article 2(1) (d), namely the difference between:

what the United Kingdom would have had to pay for the amounts financed by the resources referred to in Article 2(1)(c) and (d), if the uniform rate had been applied to non-capped VAT bases, and

the payments of the United Kingdom pursuant to Article 2(1)(c) and (d);

(e) from the year 2001 onwards, subtracting from the result under (d) the net gains of the United Kingdom resulting from the increase in the percentage of resources referred to in Article 2(1)(a) and (b) retained by Member States to cover collection and related costs;

(f) calculating, at the time of each enlargement of the European Union, an adjustment to the result under (e) so as to reduce the compensation, thereby ensuring that expenditure which is unabated before enlargement remains so after enlargement. This adjustment shall be made by reducing total allocated expenditure by an amount equivalent to the annual pre-accession expenditure in the acceding countries. All amounts so calculated shall be carried forward to subsequent years and shall be adjusted annually by applying the euro GNP deflator used for the adaptation of the Financial Perspective.

Article 5

1. The cost of the correction shall be borne by the other Member States in accordance with the following arrangements.

The distribution of the cost shall first be calculated by reference to each Member State's share of the payments referred to in Article 2(1)(d), the United Kingdom being excluded; it shall then be adjusted in such a way as to restrict the financing share of Austria, Germany, the Netherlands and Sweden to one fourth of their normal share resulting from this calculation.

2. The correction shall be granted to the United Kingdom by a reduction in its payments resulting from the application of Article 2(1)(c) and (d). The costs borne by the other Member States shall be added to their payments resulting from the application for each Member State of Article 2(1)(c) and (d).

3. The Commission shall perform the calculations required for the application of Article 4 and this Article.

4. If, at the beginning of the financial year, the budget has not been adopted, the correction granted to the United Kingdom and the costs borne by the other Member States as entered in the last budget finally adopted shall remain applicable.

Article 6

The revenue referred to in Article 2 shall be used without distinction to finance all expenditure entered in the budget. The revenue needed to cover in full or in part the EAGGF monetary reserve, the reserve for the financing of the Loan Guarantee Fund and the reserve for emergency aid in third countries, entered in the budget shall not be called up from the Member States until the reserves are implemented. Provisions for the operation of those reserves shall be adopted as necessary in accordance with Article 8(2).

Article 7

Any surplus of the Communities' revenue over total actual expenditure during a financial year shall be carried over to the following financial year.

Any surpluses generated by a transfer from EAGGF Guarantee Section chapters, or surplus from the Guarantee Fund arising from external measures, transferred to the revenue account in the budget, shall be regarded as constituting own resources.

Article 8

1. The Communities' own resources referred to in Article 2(1)(a) and (b) shall be collected by the Member States in accordance with the national provisions imposed by law, Regulation or administrative action, which shall, where appropriate, be adapted to meet the requirements of Community rules.

The Commission shall examine at regular intervals the national provisions communicated to it by the Member States, transmit to the Member States the adjustments it deems necessary in order to ensure that they comply with Community rules and report to the budget authority.

Member States shall make the resources provided for in Article 2(1)(a) to (d) available to the Commission.

2. Without prejudice to the auditing of the accounts and to checks that they are lawful and regular as laid down in Article 248 of the EC Treaty and Article 160C of the Euratom Treaty, such auditing and checks being mainly concerned with the reliability and effectiveness of national systems and procedures for determining the base for own resources accruing from VAT and GNP and without prejudice to the inspection arrangements made pursuant to Article 279(c) of the EC Treaty and Article 183 point (c) of the Euratom Treaty, the Council shall, acting unanimously on a proposal from the Commission and after consulting the European Parliament, adopt the provisions necessary to apply this Decision and to make possible the inspection of the collection, the making available to the Commission and payment of the revenue referred to in Articles 2 and 5.

Article 9

The Commission shall undertake, before 1 January 2006, a general review of the own resources system, accompanied, if necessary, by appropriate proposals, in the light of all relevant factors, including the effects of enlargement on the financing of the budget, the possibility of modifying the structure of the own resources by creating new autonomous own resources and the correction of budgetary imbalances granted to the United Kingdom as well as the granting to Austria, Germany, the Netherlands and Sweden of the reduction pursuant to Article 5(1).

Article 10

1. Member States shall be notified of this Decision by the Secretary-General of the Council and the Decision shall be published in the *Official Journal of the European Communities*.

Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the adoption of this Decision in accordance with their respective constitutional requirements.

This Decision shall enter into force on the first day of the month following receipt of the last of the notifications referred to in the second subparagraph. It shall take effect on 1 January 2002 except for Article 2(3) and Article 4, which shall take effect on 1 January 2001.

2. (a) Subject to (b), Decision 94/728/EC, Euratom shall be repealed as of 1 January 2002. Any references to the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources⁽⁷⁾, to Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources,⁽⁸⁾ to Decision 88/376/EEC, Euratom, or to Decision 94/728/EC, Euratom shall be construed as references to this decision.

(b) Articles 2, 4 and 5 of Decisions 88/376/EEC, Euratom and 94/728/EC, Euratom shall continue to apply to the calculation and adjustment of revenue accruing from the application of a uniform rate valid for all Member States to the VAT base determined in a uniform manner and limited between 50–55 % of the GNP of each Member State, depending on the relevant year, and to the calculation of the correction of budgetary imbalances granted to the United Kingdom for the years 1988 to 2000.

(c) For amounts referred to in Article 2(1)(a) and (b) which should have been made available by the Member States before 28 February 2001 in accordance with the applicable Community rules, Member States shall continue to retain 10 % of these amounts by way of collection costs.

Done at Brussels, 29 September 2000.

For the Council

The President
L. FABIUS

⁽⁷⁾ OJ L 94, 28.4.1970, p. 19

⁽⁸⁾ OJ L 128, 14.5.1985, p. 15. Decision repealed by Decision 88/376/EEC, Euratom.

2.6. COUNCIL DECISION (EC, EURATOM) NO 436/2007 OF 7 JUNE 2007 ON THE SYSTEM OF THE EUROPEAN COMMUNITIES' OWN RESOURCES

(OJ L 163 of 23.6.2007, p.17)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 269 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 173 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ⁽¹⁾,

Having regard to the opinion of the Court of Auditors ⁽²⁾,

Having regard to the opinion of the European Economic and Social Committee ⁽³⁾,

Whereas:

(1) The European Council meeting in Brussels on 15 and 16 December 2005 concluded, inter alia, that the own resources arrangements should be guided by the overall objective of equity. Those arrangements should therefore ensure, in line with the relevant conclusions of the 1984 Fontainebleau European Council, that no Member State sustains a budgetary burden which is excessive in relation to its relative prosperity. It is therefore appropriate to introduce provisions covering specific Member States.

(2) The Communities' own resources system must ensure adequate resources for the orderly development of the Communities' policies, subject to the need for strict budgetary discipline.

(3) For the purposes of this Decision, gross national income (GNI) should be defined as annual GNI at market prices as provided by the Commission in application of the Euro-

⁽¹⁾ Opinion delivered on 4 July 2006 (not yet published in the Official Journal).

⁽²⁾ OJ C 203, 25.8.2006, p. 50.

⁽³⁾ OJ C 309, 16.12.2006, p. 103.

pean system of national and regional accounts in the Community (hereinafter referred to as the ESA 95) in accordance with Council Regulation (EC) No 2223/96⁽⁴⁾.

(4) In view of the changeover from ESA 79 to ESA 95 for budgetary and own resources purposes, and in order to maintain unchanged the amount of financial resources put at the disposal of the Communities the Commission recalculated, in accordance with Article 3(1) and 3(2) of Council Decision 2000/597/EC, Euratom of 29 September 2000 on the system of the European Communities' own resources⁽⁵⁾, the ceiling of own resources and the ceiling for appropriations for commitments, expressed to two decimal places, on the basis of the formula in that Article. The Commission communicated the new ceilings to the Council and the European Parliament on 28 December 2001. The ceiling of own resources was set at 1.24 % of the total GNIs of the Member States at market prices and a ceiling of 1.31 % of the total GNIs of the Member States was set for appropriations for commitments. The European Council of 15 and 16 December 2005 concluded that these ceilings should be maintained at their current levels.

(5) In order to maintain unchanged the amount of financial resources put at the disposal of the Communities, it is appropriate to adapt those ceilings expressed in per cent of GNI in case of modifications to the ESA 95 which entail a significant change in the level of GNI.

(6) Following the implementation in European Union law of the agreements concluded during the Uruguay round of multilateral trade negotiations there is no longer any material difference between agricultural duties and customs duties. It is therefore appropriate to remove this distinction from the field of the general budget of the European Union.

(7) In the interests of transparency and simplicity, the European Council of 15 and 16 December 2005 concluded that the uniform rate of call of the value added tax (VAT) resource shall be fixed at 0.30 %.

(8) The European Council of 15 and 16 December 2005 concluded that Austria, Germany, the Netherlands and Sweden shall benefit from reduced VAT rates of call during the period 2007–13 and that the Netherlands and Sweden shall benefit from gross reductions in their annual GNI-based contributions during the same period.

(9) The European Council of 15 and 16 December 2005 concluded that the correction mechanism in favour of the United Kingdom shall remain, along with the reduced financing of the correction benefiting Germany, Austria, Sweden and the Netherlands. However, after a phasing-in period between 2009 and 2011, the United Kingdom shall participate fully in the financing of the costs of enlargement, except for agricultural direct payments and market-related expenditure, and that part of rural development

⁽⁴⁾ OJ L 310, 30.11.1996, p. 1. Regulation as last amended by Regulation (EC) No 1267/2003 of the European Parliament and of the Council (OJ L 180, 18.7.2003, p. 1).

⁽⁵⁾ OJ L 253, 7.10.2000, p. 42.

expenditure originating from the European Agricultural Guidance and Guarantee Fund (EAGGF), Guarantee Section. The calculation of the correction in favour of the United Kingdom shall therefore be adjusted by progressively excluding expenditure allocated to Member States which have acceded to the EU after 30 April 2004, except for the agricultural and rural development expenditure mentioned above. The additional contribution of the United Kingdom resulting from the reduction in allocated expenditure shall not exceed EUR 10.5 billion in 2004 prices during the period 2007–13. In the event of further enlargement before 2013, except for the accession of Bulgaria and Romania, the amount will be adjusted accordingly.

(10) The European Council of 15 and 16 December 2005 concluded that point (f) of the second paragraph of Article 4 of Decision 2000/597/EC, Euratom regarding the exclusion of the annual pre-accession expenditure in acceding countries from the calculation of the correction in favour of the United Kingdom shall cease to apply at the end of 2013.

(11) The European Council of 15 and 16 December 2005 invited the Commission to undertake a full, wide-ranging review covering all aspects of EU spending, including the common agricultural policy (CAP), and of resources, including the United Kingdom rebate, and to report in 2008/09.

(12) Provisions should be laid down to cover the changeover from the system laid down by Decision 2000/597/EC, Euratom to that introduced by this Decision.

(13) The European Council of 15 and 16 December 2005 concluded that this Decision shall take effect on 1 January 2007,

HAS LAID DOWN THESE PROVISIONS, WHICH IT RECOMMENDS
TO THE MEMBER STATES FOR ADOPTION:

Article 1

The Communities shall be allocated own resources in accordance with the rules laid down in the following Articles in order to ensure, in accordance with Article 269 of the Treaty establishing the European Community (hereinafter referred to as the EC Treaty) and Article 173 of the Treaty establishing the European Atomic Energy Community (hereinafter referred to as the Euratom Treaty), the financing of the general budget of the European Union.

The general budget of the European Union shall, without prejudice to other revenue, be financed wholly from the Communities' own resources.

Article 2

1. Revenue from the following shall constitute own resources entered in the general budget of the European Union:

- (a) levies, premiums, additional or compensatory amounts, additional amounts or factors, Common Customs Tariff duties and other duties established or to be established by the institutions of the Communities in respect of trade with non-member countries, customs duties on products under the expired Treaty establishing the European Coal and Steel Community as well as contributions and other duties provided for within the framework of the common organisation of the markets in sugar;
- (b) without prejudice to the second subparagraph of paragraph 4, the application of a uniform rate valid for all Member States to the harmonised VAT assessment bases determined according to Community rules. The assessment base to be taken into account for this purpose shall not exceed 50 % of GNI for each Member State, as defined in paragraph 7;
- (c) without prejudice to the second subparagraph of paragraph 5, the application of a uniform rate — to be determined pursuant to the budgetary procedure in the light of the total of all other revenue — to the sum of all the Member States' GNIs.

2. Revenue deriving from any new charges introduced within the framework of a common policy, in accordance with the EC Treaty or the Euratom Treaty, provided that the procedure laid down in Article 269 of the EC Treaty or in Article 173 of the Euratom Treaty has been followed, shall also constitute own resources entered in the general budget of the European Union.

3. Member States shall retain, by way of collection costs, 25 % of the amounts referred to in paragraph 1(a).

4. The uniform rate referred to in paragraph 1(b) shall be fixed at 0.30 %.

For the period 2007–13 only, the rate of call of the VAT resource for Austria shall be fixed at 0.225 %, for Germany at 0.15 % and for the Netherlands and Sweden at 0.10 %.

5. The uniform rate referred to in paragraph 1(c) shall apply to the GNI of each Member State.

For the period 2007–13 only, the Netherlands shall benefit from a gross reduction in its annual GNI contribution of EUR 605 million and Sweden from a gross reduction

in its annual GNI contribution of EUR 150 million, measured in 2004 prices. These amounts shall be adjusted to current prices by applying the most recent GDP deflator for the EU expressed in euro, as provided by the Commission, which is available when the preliminary draft budget is drawn up. These gross reductions shall be granted after the calculation of the correction in favour of the United Kingdom and its financing referred to in Articles 4 and 5 of this Decision and shall have no impact thereupon.

6. If, at the beginning of the financial year, the budget has not been adopted, the existing VAT and GNI rates of call shall remain applicable until the entry into force of the new rates.

7. For the purposes of this Decision, GNI shall mean GNI for the year at market prices as provided by the Commission in application of the ESA 95 in accordance with Regulation (EC) No 2223/96.

Should modifications to the ESA 95 result in significant changes in the GNI as provided by the Commission, the Council, acting unanimously on a proposal of the Commission and after consulting the European Parliament, shall decide whether these modifications shall apply for the purposes of this Decision.

Article 3

1. The total amount of own resources allocated to the Communities to cover annual appropriations for payments shall not exceed 1.24 % of the sum of all the Member States' GNIs.

2. The total annual amount of appropriations for commitments entered in the general budget of the European Union shall not exceed 1.31 % of the sum of all the Member States' GNIs.

An orderly ratio between appropriations for commitments and appropriations for payments shall be maintained to guarantee their compatibility and to enable the ceiling pursuant to paragraph 1 to be respected in subsequent years.

3. Should modifications to the ESA 95 result in significant changes in the GNI that apply for the purposes of this Decision, the ceilings for payments and commitments as determined in paragraphs 1 and 2 shall be recalculated by the Commission on the basis of the following formula:

$$1.24 \% (1.31 \%) \times ((\text{GNI}_{t-2} + \text{GNI}_{t-1} + \text{GNI}_{t \text{ ESA current}})/(\text{GNI}_{t-2} + \text{GNI}_{t-1} + \text{GNI}_{t \text{ ESA modified}}))$$

where *t* is the latest full year for which data according to Council Regulation (EC, Euratom) No 1287/2003 of 15 July 2003 on the harmonisation of gross national income at market prices (GNI Regulation) ⁽⁶⁾ is available.

Article 4

1. The United Kingdom shall be granted a correction in respect of budgetary imbalances.

This correction shall be established by:

- (a) calculating the difference, in the preceding financial year, between:
 - the percentage share of the United Kingdom in the sum of uncapped VAT assessment bases, and
 - the percentage share of the United Kingdom in total allocated expenditure;
- (b) multiplying the difference thus obtained by total allocated expenditure;
- (c) multiplying the result under (b) by 0.66;
- (d) subtracting from the result under (c) the effects arising for the United Kingdom from the changeover to capped VAT and the payments referred to in Article 2(1)(c), namely the difference between:
 - what the United Kingdom would have had to pay for the amounts financed by the resources referred to in Article 2(1)(b) and (c), if the uniform rate had been applied to non-capped VAT bases, and
 - the payments of the United Kingdom pursuant to Article 2(1)(b) and (c);
- (e) subtracting from the result under (d) the net gains of the United Kingdom resulting from the increase in the percentage of resources referred to in Article 2(1)(a) retained by Member States to cover collection and related costs;
- (f) calculating, at the time of each enlargement of the EU, an adjustment to the result under (e) so as to reduce the compensation, thereby ensuring that expenditure which is unabated before enlargement remains so after enlargement. This adjustment shall be made by reducing total allocated expenditure by an amount equiva-

⁽⁶⁾ OJ L 181, 19.7.2003, p. 1.

lent to the annual pre-accession expenditure in the acceding countries. All amounts so calculated shall be carried forward to subsequent years and shall be adjusted annually by applying the latest available GDP deflator for the EU expressed in euro, as provided by the Commission. This point shall cease to apply as from the correction to be budgeted for the first time in 2014;

- (g) adjusting the calculation, by reducing total allocated expenditure by total allocated expenditure in Member States that have acceded to the EU after 30 April 2004, except for agricultural direct payments and market-related expenditure as well as that part of rural development expenditure originating from the EAGGF, Guarantee Section.

This reduction shall be phased in progressively according to the schedule below:

United Kingdom correction to be budgeted for the first time in the year	Percentage of enlargement-related expenditure (as defined above) to be excluded from the calculation of the correction in favour of the United Kingdom
2009	20
2010	70
2011	100

2. During the period 2007–13 the additional contribution of the United Kingdom resulting from the reduction of allocated expenditure referred to in paragraph (1)(g) shall not exceed EUR 10.5 billion, measured in 2004 prices. Each year, the Commission services shall verify whether the cumulated adjustment of the correction exceeds this amount. For the purpose of this calculation, amounts in current prices shall be converted into 2004 prices by applying the latest available GDP deflator for the EU expressed in euro, as provided by the Commission. If the ceiling of EUR 10.5 billion is exceeded, the United Kingdom's contribution shall be reduced accordingly.

In the event of further enlargement before 2013, the ceiling of EUR 10.5 billion shall be adjusted upwards accordingly.

Article 5

1. The cost of the correction shall be borne by the other Member States in accordance with the following arrangements:

- (a) the distribution of the cost shall first be calculated by reference to each Member State's share of the payments referred to in Article 2(1)(c), the United Kingdom

being excluded and without taking account of the gross reductions in the GNI-based contributions of the Netherlands and Sweden referred to in Article 2(5);

(b) it shall then be adjusted in such a way as to restrict the financing share of Austria, Germany, the Netherlands and Sweden to one fourth of their normal share resulting from this calculation.

2. The correction shall be granted to the United Kingdom by a reduction in its payments resulting from the application of Article 2(1)(c). The costs borne by the other Member States shall be added to their payments resulting from the application for each Member State of Article 2(1)(c).

3. The Commission shall perform the calculations required for the application of Article 2(5), Article 4 and this Article.

4. If, at the beginning of the financial year, the budget has not been adopted, the correction granted to the United Kingdom and the costs borne by the other Member States as entered in the last budget finally adopted shall remain applicable.

Article 6

The revenue referred to in Article 2 shall be used without distinction to finance all expenditure entered in the general budget of the European Union.

Article 7

Any surplus of the Communities' revenue over total actual expenditure during a financial year shall be carried over to the following financial year.

Article 8

1. The Communities' own resources referred to in Article 2(1)(a) shall be collected by the Member States in accordance with the national provisions imposed by law, Regulation or administrative action, which shall, where appropriate, be adapted to meet the requirements of Community rules.

The Commission shall examine at regular intervals the national provisions communicated to it by the Member States, transmit to the Member States the adjustments it deems necessary in order to ensure that they comply with Community rules and report to the budgetary authority.

Member States shall make the resources provided for in Article 2(1)(a), (b) and (c) available to the Commission.

2. The Council shall, in accordance with the procedures laid down in Article 279(2) of the EC Treaty and Article 183 of the Euratom Treaty, adopt the provisions necessary to apply this Decision and to make possible the inspection of the collection, the making available to the Commission and payment of the revenue referred to in Articles 2 and 5.

Article 9

In the framework of the full, wide-ranging review covering all aspects of EU spending, including the CAP, and of resources, including the United Kingdom rebate, on which it shall report in 2008/09, the Commission shall undertake a general review of the own resources system.

Article 10

1. Subject to paragraph 2, Decision 2000/597/EC, Euratom shall be repealed as of 1 January 2007. Any references to the Council Decision of 21 April 1970 on the replacement of financial contributions from Member States by the Communities' own resources⁽⁷⁾, to Council Decision 85/257/EEC, Euratom of 7 May 1985 on the Communities' system of own resources⁽⁸⁾, to Council Decision 88/376/EEC, Euratom of 24 June 1988 on the system of the Communities' own resources⁽⁹⁾, to Council Decision 94/728/EC, Euratom of 31 October 1994 on the system of the European Communities' own resources⁽¹⁰⁾ or to Decision 2000/597/EC, Euratom shall be construed as references to this Decision.

2. Articles 2, 4 and 5 of Decisions 88/376/EEC, Euratom, 94/728/EC, Euratom and 2000/597/EC, Euratom shall continue to apply to the calculation and adjustment of revenue accruing from the application of a uniform rate valid for all Member States to the VAT base determined in a uniform manner and limited between 50 % and 55 % of the GNP or GNI of each Member State, depending on the relevant year, and to the calculation of the correction of budgetary imbalances granted to the United Kingdom for the years 1988 to 2006.

3. Member States shall continue to retain, by way of collection costs, 10 % of the amounts referred to in Article 2(1)(a) which should have been made available by the

⁽⁷⁾ OJ L 94, 28.4.1970, p. 19.

⁽⁸⁾ OJ L 128, 14.5.1985, p. 15.

⁽⁹⁾ OJ L 185, 15.7.1988, p. 24.

⁽¹⁰⁾ OJ L 293, 12.11.1994, p. 9.

Member States before 28 February 2001 in accordance with the applicable Community rules.

Article 11

Member States shall be notified of this Decision by the Secretary-General of the Council.

Member States shall notify the Secretary-General of the Council without delay of the completion of the procedures for the adoption of this Decision in accordance with their respective constitutional requirements.

This Decision shall enter into force on the first day of the month following receipt of the last of the notifications referred to in the second subparagraph.

It shall take effect on 1 January 2007.

Article 12

This Decision shall be published in the *Official Journal of the European Union*.

Done at Luxembourg, 7 June 2007.

For the Council

The President
M. GLOS

2.7. INTERINSTITUTIONAL AGREEMENT BETWEEN THE EUROPEAN PARLIAMENT, THE COUNCIL AND THE COMMISSION ON BUDGETARY DISCIPLINE AND SOUND FINANCIAL MANAGEMENT

(OJ C 139 of 14.6.2006, p.1)

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION
AND THE COMMISSION OF THE EUROPEAN COMMUNITIES,

hereinafter referred to as the ‘institutions’,

HAVE AGREED AS FOLLOWS:

1. The purpose of this Agreement is to implement budgetary discipline and to improve the functioning of the annual budgetary procedure and cooperation between the institutions on budgetary matters as well as to ensure sound financial management.
2. Budgetary discipline under this Agreement covers all expenditure. It is binding on all the institutions for as long as this Agreement is in force.
3. This Agreement does not alter the respective budgetary powers of the institutions, as laid down in the Treaties. Where reference is made to this Point, the Council will act by a qualified majority and the European Parliament by a majority of its members and three fifths of the votes cast, in compliance with the voting rules laid down in the fifth subparagraph of Article 272(9) of the Treaty establishing the European Community (hereinafter referred to as the ‘EC Treaty’).
4. Should a Treaty revision with budgetary implications occur during the multiannual financial framework 2007–13 (hereinafter referred to as ‘the financial framework’), the necessary adjustments will be made accordingly.
5. Any amendment of this Agreement requires the consent of all the institutions. Changes to the financial framework must be made in accordance with the procedures laid down for that purpose in this Agreement.
6. This Agreement is in three parts:
 - Part I contains a definition and implementing provisions for the financial framework and applies for the duration of that financial framework.

— Part II relates to improvement of interinstitutional collaboration during the budgetary procedure.

— Part III contains provisions related to sound financial management of EU funds.

7. The Commission will, whenever it considers it necessary and in any event at the same time as it presents a proposal for a new financial framework pursuant to Point 30, submit a report on the application of this Agreement, accompanied where necessary by a proposal for amendments.

8. This Agreement enters into force on 1 January 2007 and replaces:

the Interinstitutional Agreement of 6 May 1999 between the European Parliament, the Council and the Commission on budgetary discipline and improvement of the budgetary procedure⁽¹⁾,

the Interinstitutional Agreement of 7 November 2002 between the European Parliament, the Council and the Commission on the financing of the European Union Solidarity Fund supplementing the Interinstitutional Agreement of 6 May 1999 on budgetary discipline and improvement of the budgetary procedure⁽²⁾.

PART I — FINANCIAL FRAMEWORK

DEFINITION AND IMPLEMENTING PROVISIONS

A. Contents and scope of the financial framework

9. The financial framework is set out in Annex I. It constitutes the reference framework for interinstitutional budgetary discipline.

10. The financial framework is intended to ensure that, in the medium term, European Union expenditure, broken down by broad category, develops in an orderly manner and within the limits of own resources.

11. The financial framework establishes, for each of the years 2007–13 and for each heading or subheading, amounts of expenditure in terms of appropriations for commitments. Overall annual totals of expenditure are also shown in terms of both appropriations for commitments and appropriations for payments.

All those amounts are expressed in 2004 prices.

⁽¹⁾ OJ C 172, 18.6.1999, p. 1.

⁽²⁾ OJ C 283, 20.11.2002, p. 1.

The financial framework does not take account of budget items financed by revenue earmarked within the meaning of Article 18 of the Financial Regulation of 25 June 2002 applicable to the general budget of the European Communities ⁽³⁾, hereinafter referred to as the 'Financial Regulation'

Information relating to operations not included in the general budget of the European Union and the foreseeable development of the various categories of Community own resources is set out, by way of indication, in separate tables. This information will be updated annually when the technical adjustment is made to the financial framework.

12. The institutions acknowledge that each of the absolute amounts shown in the financial framework represents an annual ceiling on expenditure under the general budget of the European Union. Without prejudice to any changes in those ceilings in accordance with the provisions of this Agreement, the institutions undertake to use their respective powers in such a way as to comply with the various annual expenditure ceilings during each budgetary procedure and when implementing the budget for the year concerned.

13. By concluding this Agreement, the two arms of the budgetary authority agree to accept the rates of increase for non-compulsory expenditure deriving from the budgets established within the ceilings set by the financial framework for its entire duration.

Except in sub-heading 1B 'Cohesion for growth and employment' of the financial framework, for the purposes of sound financial management, the institutions will ensure as far as possible during the budgetary procedure and at the time of the budget's adoption that sufficient margins are left available beneath the ceilings for the various headings.

14. No act adopted under the codecision procedure by the European Parliament and the Council nor any act adopted by the Council which involves exceeding the appropriations available in the budget or the allocations available in the financial framework in accordance with Point 12 may be implemented in financial terms until the budget has been amended and, if necessary, the financial framework has been appropriately revised in accordance with the relevant procedure for each of these cases.

15. For each of the years covered by the financial framework, the total appropriations for payments required, after annual adjustment and taking account of any other adjustments or revisions, must not be such as to produce a call-in rate for own resources that exceeds the own resources ceiling.

If need be, the two arms of the budgetary authority will decide, in accordance with Point 3, to lower the ceilings set in the financial framework in order to ensure compliance with the own resources ceiling.

⁽³⁾ OJ L 248, 16.9.2002, p. 1.

B. Annual adjustments of the financial framework

Technical adjustments

16. Each year the Commission, acting ahead of the budgetary procedure for year $n+1$, will make the following technical adjustments to the financial framework:

- (a) revaluation, at year $n+1$ prices, of the ceilings and of the overall figures for appropriations for commitments and appropriations for payments;
- (b) calculation of the margin available under the own resources ceiling.

The Commission will make those technical adjustments on the basis of a fixed deflator of 2 % a year.

The results of those technical adjustments and the underlying economic forecasts will be communicated to the two arms of the budgetary authority.

No further technical adjustments will be made in respect of the year concerned, either during the year or as ex-post corrections during subsequent years.

17. In its technical adjustment for the year 2011, if it is established that any Member State's cumulated GDP for the years 2007–09 has diverged by more than $\pm 5\%$ from the cumulated GDP estimated when drawing up this Agreement, the Commission will adjust the amounts allocated from funds supporting cohesion to the Member State concerned for that period. The total net effect, whether positive or negative, of those adjustments may not exceed EUR 3 billion. If the net effect is positive, total additional resources shall be limited to the level of under-spending against the ceilings for sub-heading 1B for the years 2007–10. The required adjustments will be spread in equal proportions over the years 2011–13 and the corresponding ceilings will be modified accordingly.

Adjustments connected with implementation

18. When notifying the two arms of the budgetary authority of the technical adjustments to the financial framework, the Commission will present any proposals for adjustments to the total appropriations for payments which it considers necessary, in the light of implementation, to ensure an orderly progression in relation to the appropriations for commitments. The European Parliament and the Council will take decisions on those proposals before 1 May of year n , in accordance with Point 3.

Updating of forecasts for payment appropriations after 2013

19. In 2010, the Commission will update the forecasts for payment appropriations after 2013. That update will take into account the real implementation of budget appropriations for commitments and budget appropriations for payments, as well as the implementation forecasts. It will also consider the rules defined to ensure that payment appropriations develop in an orderly manner compared to commitment appropriations and the growth forecasts of the European Union gross national income (GNI).

Adjustments connected with excessive government deficit

20. In the case of the lifting of a suspension of budgetary commitments concerning the Cohesion Fund in the context of an excessive government deficit procedure, the Council, on a proposal from the Commission and in compliance with the relevant basic act, will decide on a transfer of suspended commitments to the following years. Suspended commitments of year n cannot be re-budgeted beyond year $n+2$.

C. Revision of the financial framework

21. In addition to the regular technical adjustments and adjustments in line with the conditions of implementation, in the event of unforeseen circumstances the financial framework may, on a proposal from the Commission, be revised in compliance with the own resources ceiling.

22. As a general rule, any proposal for revision under Point 21 must be presented and adopted before the start of the budgetary procedure for the year or the first of the years concerned.

Any decision to revise the financial framework by up to 0.03 % of the European Union GNI within the margin for unforeseen expenditure will be taken jointly by the two arms of the budgetary authority acting in accordance with Point 3.

Any revision of the financial framework above 0.03 % of the European Union GNI within the margin for unforeseen expenditure will be taken jointly by the two arms of the budgetary authority, with the Council acting unanimously.

23. Without prejudice to Point 40, the institutions will examine the scope for reallocating expenditure between the programmes covered by the heading concerned by the revision, with particular reference to any expected under-utilisation of appropriations. The objective should be that a significant amount, in absolute terms and as a percentage of the new expenditure planned, should be within the existing ceiling for the heading.

The institutions will examine the scope for offsetting any raising of the ceiling for one heading by the lowering of the ceiling for another.

Any revision of the compulsory expenditure in the financial framework must not lead to a reduction in the amount available for non-compulsory expenditure.

Any revision must maintain an appropriate relationship between commitments and payments.

D. Consequences of the absence of a joint decision on the adjustment or revision of the financial framework

24. If the European Parliament and the Council fail to agree on any adjustment or revision of the financial framework proposed by the Commission, the amounts set previously will, after the annual technical adjustment, continue to apply as the expenditure ceilings for the year in question.

E. Emergency Aid Reserve

25. The Emergency Aid Reserve is intended to allow a rapid response to the specific aid requirements of third countries following events which could not be foreseen when the budget was established, first and foremost for humanitarian operations, but also for civil crisis management and protection where circumstances so require. The annual amount of the Reserve is fixed at EUR 221 million for the duration of the financial framework, in constant prices.

The Reserve is entered in the general budget of the European Union as a provision. The corresponding commitment appropriations will be entered in the budget, if necessary, over and above the ceilings laid down in Annex I.

When the Commission considers that the Reserve needs to be called on, it will present to the two arms of the budgetary authority a proposal for a transfer from the Reserve to the corresponding budgetary lines.

Any Commission proposal for a transfer to draw on the Reserve must, however, be preceded by an examination of the scope for reallocating appropriations.

At the same time as it presents its proposal for a transfer, the Commission will initiate a trilogue procedure, if necessary in a simplified form, to secure agreement of the two arms of the budgetary authority on the need to use the Reserve and on the amount required. The transfers will be made in accordance with Article 26 of the Financial Regulation.

F. European Union Solidarity Fund

26. The European Union Solidarity Fund is intended to allow rapid financial assistance in the event of major disasters occurring on the territory of a Member State or of a candidate country, as defined in the relevant basic act. There will be a ceiling on the annual amount available for the Fund of EUR 1 billion (current prices). On 1 October each year, at least one quarter of the annual amount will remain available in order to cover needs arising until the end of the year. The portion of the annual amount not entered in the budget may not be rolled over in the following years.

In exceptional cases and if the remaining financial resources available in the Fund in the year of occurrence of the disaster, as defined in the relevant basic act, are not sufficient to cover the amount of assistance considered necessary by the budgetary authority, the Commission may propose that the difference be financed through the annual amounts available for the following year. The annual amount of the Fund to be budgeted in each year may not, under any circumstances, exceed EUR 1 billion.

When the conditions for mobilising the Fund as set out in the relevant basic act are met, the Commission will make a proposal to deploy it. Where there is scope for reallocating appropriations under the heading requiring additional expenditure, the Commission shall take this into account when making the necessary proposal, in accordance with the Financial Regulation, by means of the appropriate budgetary instrument. The decision to deploy the Fund will be taken jointly by the two arms of the budgetary authority in accordance with Point 3.

The corresponding commitment appropriations will be entered in the budget, if necessary, over and above the ceilings of the relevant headings laid down in Annex I.

At the same time as it presents its proposal for a decision to deploy the Fund, the Commission will initiate a trilogue procedure, if necessary in a simplified form, to secure agreement of the two arms of the budgetary authority on the need to use the Fund and on the amount required.

G. Flexibility Instrument

27. The Flexibility Instrument with an annual ceiling of EUR 200 million (current prices) is intended to allow the financing, for a given financial year and up to the amount indicated, of clearly identified expenditure which could not be financed within the limits of the ceilings available for one or more other headings.

The portion of the annual amount which is not used may be carried over up to year $n+2$. If the Flexibility Instrument is mobilised, any carryovers will be drawn on first, in order of age. The portion of the annual amount from year n which is not used in year $n+2$ will lapse.

The Commission will make a proposal for the Flexibility Instrument to be used after it has examined all possibilities for re-allocating appropriations under the heading requiring additional expenditure.

The proposal will concern the principle of making use of the Flexibility Instrument and will identify the needs to be covered and the amount. It may be presented, for any given financial year, during the budgetary procedure. The Commission proposal will be included in the preliminary draft budget or accompanied, in accordance with the Financial Regulation, by the appropriate budgetary instrument.

The decision to deploy the Flexibility Instrument will be taken jointly by the two arms of the budgetary authority in accordance with Point 3. Agreement will be reached by means of the conciliation procedure provided for in Annex II, Part C.

H. European Globalisation Adjustment Fund

28. The European Globalisation Adjustment Fund is intended to provide additional support for workers who suffer from the consequences of major structural changes in world trade patterns, to assist them with their reintegration into the labour market.

The Fund may not exceed a maximum annual amount of EUR 500 million (current prices) which can be drawn from any margin existing under the global expenditure ceiling of the previous year, and/or from cancelled commitment appropriations from the previous two years, excluding those related to heading 1B of the financial framework.

The appropriations will be entered in the general budget of the European Union as a provision through the normal budgetary procedure as soon as the Commission has identified the sufficient margins and/or cancelled commitments, in accordance with the second paragraph.

When the conditions for mobilising the Fund, as set out in the relevant basic act, are met, the Commission will make a proposal to deploy it. The decision to deploy the Fund will be taken jointly by the two arms of the budgetary authority in accordance with Point 3.

At the same time as it presents its proposal for a decision to deploy the Fund, the Commission will initiate a trilogue procedure, if necessary in a simplified form, to secure agreement of the two arms of the budgetary authority on the need to use the Fund and on the amount required, and will present to the two arms of the budgetary authority a proposal for a transfer to the relevant budgetary lines.

Transfers related to the Fund will be made in accordance with Article 24(4) of the Financial Regulation.

The corresponding commitment appropriations will be entered in the budget under the relevant heading, if necessary over and above the ceilings laid down in Annex I.

I. Adjustment of the financial framework to cater for enlargement

29. If new Member States accede to the European Union during the period covered by the financial framework, the European Parliament and the Council, acting on a proposal from the Commission and in accordance with Point 3, will jointly adjust the financial framework to take account of the expenditure requirements resulting from the outcome of the accession negotiations.

J. Duration of the financial framework and consequences of the absence of a financial framework

30. Before 1 July 2011, the Commission will present proposals for a new medium-term financial framework.

Should the two arms of the budgetary authority fail to agree on a new financial framework, and unless the existing financial framework is expressly terminated by one of the institutions, the ceilings for the last year covered by the existing financial framework will be adjusted in accordance with Point 16 so that the 2013 ceilings are maintained in constant prices. If new Member States accede to the European Union after 2013, and if deemed necessary, the extended financial framework will be adjusted in order to take into account the results of accession negotiations.

PART II

IMPROVEMENT OF INTERINSTITUTIONAL COLLABORATION DURING THE BUDGETARY PROCEDURE

A. The interinstitutional collaboration procedure

31. The institutions agree to set up a procedure for interinstitutional collaboration in budgetary matters. The details of this collaboration are set out in Annex II.

B. Establishment of the budget

32. The Commission will present each year a preliminary draft budget showing the Community's actual financing requirements.

It will take into account:

- (a) forecasts in relation to the Structural Funds provided by the Member States;
- (b) the capacity for utilising appropriations, endeavouring to maintain a strict relationship between appropriations for commitments and appropriations for payments;
- (c) the possibilities for starting up new policies through pilot projects and/or new preparatory actions or continuing multiannual actions which are coming to an end, after assessing whether it will be possible to secure a basic act, within the meaning of Article 49 of the Financial Regulation (definition of a basic act, necessity of a basic act for implementation and exceptions);
- (d) the need to ensure that any change in expenditure in relation to the previous year is in accordance with the constraints of budgetary discipline.

The preliminary draft budget will be accompanied by activity statements including such information as required under Article 27(3) and Article 33(2)(d) of the Financial Regulation (objectives, indicators and evaluation information).

33. The institutions will, as far as possible, avoid entering items in the budget involving insignificant amounts of expenditure on operations.

The two arms of the budgetary authority also undertake to bear in mind the assessment of the possibilities for implementing the budget made by the Commission in its preliminary drafts and in connection with implementation of the current budget.

Before the Council's second reading, the Commission will send a letter to the chairman of the European Parliament's Committee on Budgets, with a copy to the other arm of the budgetary authority, containing its comments on the executability of the amendments to the draft budget adopted by the European Parliament at first reading.

The two arms of the budgetary authority will take those comments into account in the context of the conciliation procedure provided for in Annex II, Part C.

In the interest of sound financial management and owing to the effect of major changes in the budget nomenclature in the titles and chapters on the management reporting responsibilities of Commission departments, the two arms of the budgetary authority undertake to discuss any such major changes with the Commission during the conciliation procedure.

C. Classification of expenditure

34. The institutions consider compulsory expenditure to be expenditure necessarily resulting from the Treaties or from acts adopted in accordance therewith.

35. The preliminary draft budget is to contain a proposal for the classification of each new budget item and of each budget item with an amended legal base.

If they do not accept the classification proposed in the preliminary draft budget, the European Parliament and the Council will examine the classification of the budget item concerned on the basis of Annex III. Agreement will be sought by means of the conciliation procedure provided for in Annex II, Part C.

D. Maximum rate of increase of non-compulsory expenditure in the absence of a financial framework

36. Without prejudice to the first paragraph of Point 13, the institutions agree on the following provisions:

- (a) the European Parliament's autonomous margin for manoeuvre for the purposes of the fourth subparagraph of Article 272(9) of the EC Treaty — which is to be half the maximum rate — applies as from the establishment of the draft budget by the Council at first reading, including any letters of amendment.

The maximum rate is to be observed in respect of the annual budget, including amending budgets. Without prejudice to the setting of a new rate, any portion of the maximum rate which has not been utilised will remain available for use and may be used when draft amending budgets are considered;

- (b) without prejudice to paragraph (a), if it appears in the course of the budgetary procedure that completion of the procedure might require agreement on the setting of a new rate of increase for non-compulsory expenditure to apply to appropriations for payments and/or a new rate to apply to appropriations for commitments (the latter rate may be at a level different from the former), the institutions will endeavour to secure agreement between the two arms of the budgetary authority by means of the conciliation procedure provided for in Annex II, Part C.

E. Incorporation of financial provisions in legislative acts

37. Each legislative act concerning a multiannual programme adopted under the codecision procedure will contain a provision in which the legislative authority lays down the financial envelope for the programme.

That amount will constitute the prime reference for the budgetary authority during the annual budgetary procedure.

The budgetary authority and the Commission, when it draws up the preliminary draft budget, undertake not to depart by more than 5 % from that amount for the entire duration of the programme concerned, unless new, objective, long-term circumstances arise for which explicit and precise reasons are given, with account being taken of the results obtained from implementing the programme, in particular on the basis of assessments. Any increase resulting from such variation must remain within the existing ceiling for the heading concerned, without prejudice to the use of instruments mentioned in this Agreement.

This Point does not apply to appropriations for cohesion adopted under the codecision procedure and pre-allocated by Member States which contain a financial envelope for the entire duration of the programme.

38. Legislative acts concerning multiannual programmes not subject to the codecision procedure will not contain an 'amount deemed necessary'.

Should the Council wish to include a financial reference, this will be taken as illustrating the will of the legislative authority and will not affect the powers of the budgetary authority as defined by the EC Treaty. This provision will be mentioned in all legislative acts which include such a financial reference.

If the amount concerned has been the subject of an agreement pursuant to the conciliation procedure provided for in the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975⁽⁴⁾, it will be considered a reference amount within the meaning of Point 37 of this Agreement.

39. The financial statement provided for in Article 28 of the Financial Regulation will reflect in financial terms the objectives of the proposed programme and include a schedule covering the duration of the programme. It will be revised, where necessary, when the preliminary draft budget is drawn up, taking account of the extent of implementation of the programme. The revised statement will be forwarded to the budgetary authority when the preliminary draft budget is presented and after the budget is adopted.

40. Within the maximum rates of increase for non-compulsory expenditure specified in the first paragraph of Point 13, the two arms of the budgetary authority undertake to respect the allocations of commitment appropriations provided for in the relevant basic acts for structural operations, rural development and the European Fisheries Fund.

F. Expenditure relating to fisheries agreements

41. The institutions agree to finance expenditure on fisheries agreements in accordance with the arrangements set out in Annex IV.

⁽⁴⁾ OJ C 89, 22.4.1975, p. 1.

G. Financing of the common foreign and security policy (CFSP)

42. As regards CFSP expenditure which is charged to the general budget of the European Communities in accordance with Article 28 of the Treaty on European Union, the institutions will endeavour, in the conciliation procedure provided for in Annex II, Part C, and on the basis of the preliminary draft budget established by the Commission, to secure agreement each year on the amount of the operating expenditure to be charged to the Community budget and on the distribution of this amount between the articles of the CFSP budget chapter suggested in the fourth paragraph of this Point. In the absence of agreement, it is understood that the European Parliament and the Council will enter in the budget the amount contained in the previous budget or the amount proposed in the preliminary draft budget, whichever is the lower.

The total amount of operating CFSP expenditure will be entered entirely in one budget chapter (CFSP) and distributed between the articles of that chapter as suggested in the fourth paragraph of this Point. That amount is to cover the real predictable needs, assessed in the framework of the establishment of the preliminary draft budget, on the basis of forecasts drawn up annually by the Council, and a reasonable margin for unforeseen actions. No funds will be entered in a reserve. Each article will cover instruments already adopted, instruments which are foreseen but not yet adopted and all future — that is unforeseen — instruments to be adopted by the Council during the financial year concerned.

Since, under the Financial Regulation, the Commission has the authority to transfer appropriations autonomously between articles within the CFSP budget chapter, the flexibility deemed necessary for speedy implementation of CFSP actions will accordingly be assured. In the event of the amount of the CFSP budget chapter during the financial year being insufficient to cover the necessary expenses, the European Parliament and the Council will seek a solution as a matter of urgency, on a proposal from the Commission, taking into account Point 25.

Within the CFSP budget chapter, the articles into which the CFSP actions are to be entered could read along the following lines:

- crisis management operations, conflict prevention, resolution and stabilisation, monitoring and implementation of peace and security processes;
- non-proliferation and disarmament;
- emergency measures;
- preparatory and follow-up measures;
- European Union Special Representatives.

The institutions agree that at least EUR 1 740 million will be available for the CFSP over the period 2007–13 and that the amount for measures entered under the article mentioned in the third indent may not exceed 20 % of the overall amount of the CFSP budget chapter.

43. Each year, the Council Presidency will consult the European Parliament on a forward-looking Council document, which will be transmitted by June 15 for the year in question, setting out the main aspects and basic choices of the CFSP, including the financial implications for the general budget of the European Union and an evaluation of the measures launched in the year $n-1$. Furthermore, the Council Presidency will keep the European Parliament informed by holding joint consultation meetings at least five times a year, in the framework of the regular political dialogue on the CFSP, to be agreed at the latest at the conciliation meeting to be held before the Council's second reading. Participation in these meetings shall be as follows:

- European Parliament: the bureaux of the two Committees concerned;
- Council: Ambassador (Chairman of the Political and Security Committee);
- the Commission will be associated and participate at these meetings.

Whenever it adopts a decision in the field of the CFSP entailing expenditure, the Council will immediately, and in any event no later than five working days following the final decision, send the European Parliament an estimate of the costs envisaged ('financial statement'), in particular those regarding time-frame, staff employed, use of premises and other infrastructure, transport facilities, training requirements and security arrangements.

Once a quarter the Commission will inform the budgetary authority about the implementation of CFSP actions and the financial forecasts for the remaining period of the year.

PART III

SOUND FINANCIAL MANAGEMENT OF EU FUNDS

A. Ensuring effective and integrated internal control of Community funds

44. The institutions agree on the importance of strengthening internal control without adding to the administrative burden for which the simplification of the underlying legislation is a prerequisite. In this context, priority will be given to sound financial management aiming at a positive statement of assurance, for funds under shared management. Provisions to this end could be laid down, as appropriate, in the basic legisla-

tive acts concerned. As part of their enhanced responsibilities for Structural Funds and in accordance with national constitutional requirements, the relevant audit authorities in Member States will produce an assessment concerning the compliance of management and control systems with the Regulations of the Community.

Member States therefore undertake to produce an annual summary at the appropriate national level of the available audits and declarations.

B. Financial Regulation

45. The institutions agree that this Agreement and the budget will be implemented in a context of sound financial management based on the principles of economy, efficiency, effectiveness, protection of financial interests, proportionality of administrative costs, and user-friendly procedures. The institutions will take appropriate measures, in particular in the Financial Regulation, that should be adopted in accordance with the conciliation procedure established by the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975, in the spirit which enabled agreement in 2002.

C. Financial programming

46. The Commission will submit twice a year, the first time in May/June (together with the documents accompanying the preliminary draft budget) and the second time in December/January (after the adoption of the budget), a complete financial programming for Headings 1A, 2 (for environment and fisheries), 3A, 3B and 4 of the financial framework. This document, structured by heading, policy area and budget line, should identify:

- (a) the legislation in force, with a distinction being drawn between multiannual programmes and annual actions:
 - for multiannual programmes the Commission should indicate the procedure under which they were adopted (codecision and consultation), their duration, the reference amounts, the share allocated to administrative expenditure,
 - for annual actions (pilot projects, preparatory actions, agencies) and actions financed under the prerogatives of the Commission, the Commission should provide multiannual estimates and (for pilot projects and preparatory actions) the margins left under the authorised ceilings fixed in Annex II, Part D;
- (b) pending legislative proposals: ongoing Commission proposals referenced by budget line (lower level), chapter and policy area. A mechanism should be found to update the tables each time a new proposal is adopted in order to evaluate the financial consequences.

The Commission should consider ways of cross-referencing the financial programming with its legislative programming to provide more precise and reliable forecasts. For each legislative proposal, the Commission should indicate whether or not it is included in the May–December programme. The budgetary authority should in particular be informed of:

- (a) all new legislative acts adopted but not included in the May–December document (with the corresponding amounts);
- (b) all pending legislative proposals presented but not included in the May–December document (with the corresponding amounts);
- (c) legislation foreseen in the Commission's annual legislative work programme with an indication of actions likely to have a financial impact (yes/no).

Whenever necessary, the Commission should indicate the reprogramming entailed by new legislative proposals.

On the basis of the data supplied by the Commission, stocktaking should be carried out at each trilogue as provided for in this Agreement.

D. Agencies and European Schools

47. When drawing up its proposal for the creation of any new agency, the Commission will assess the budgetary implications for the expenditure heading concerned. On the basis of that information and without prejudice to the legislative procedures governing the setting up of the agency, the two arms of the budgetary authority commit themselves, in the framework of budgetary cooperation, to arrive at a timely agreement on the financing of the agency.

A similar procedure is to be applied when the creation of a new European School is envisaged.

E. Adjustment of Structural Funds, Cohesion Fund, Rural Development and the European Fund for Fisheries in the light of the circumstances of their implementation

48. In the event of the adoption after 1 January 2007 of new rules or programmes governing the Structural Funds, the Cohesion Fund, Rural Development and the European Fund for Fisheries, the two arms of the budgetary authority undertake to authorise, on a proposal from the Commission, the transfer to subsequent years, in excess of the corresponding expenditure ceilings, of allocations not used in 2007.

The European Parliament and the Council will take decisions on Commission proposals concerning the transfer of unused allocations for the year 2007 before 1 May 2008, in accordance with Point 3.

F. New financial instruments

49. The institutions agree that the introduction of co-financing mechanisms is necessary to reinforce the leverage effect of the European Union budget by increasing the funding incentive.

They agree to encourage the development of appropriate multiannual financial instruments acting as catalysts for public and private investors.

When presenting the preliminary draft budget, the Commission will report to the budgetary authority on the activities financed by the European Investment Bank, the European Investment Fund and the European Bank for Reconstruction and Development to support investment in research and development, trans-European networks and small and medium-sized enterprises.

Done at Strasbourg, 17 May 2006.

For the European Parliament
The President
J. BORRELL FONTELLES

For the Council
The President
W. SCHÜSSEL

For the Commission
D. GRYBAUSKAITĖ

Member of the Commission

ANNEX I

Financial framework 2007–13 (revised)

(EUR million, 2004 prices)								
Commitment appropriations	2007	2008	2009	2010	2011	2012	2013	Total 2007–13
1. <i>Sustainable growth</i>	51 267	52 913	54 071	54 860	55 379	56 845	58 256	383 591
1a Competitiveness for growth and employment	8 404	9 595	10 209	11 000	11 306	12 122	12 914	75 550
1b Cohesion for growth and employment	42 863	43 318	43 862	43 860	44 073	44 723	45 342	308 041
2. <i>Preservation and management of natural resources of which: market related expenditure and direct payments</i>	53 478	54 322	53 666	53 035	52 400	51 775	51 161	369 837
	43 120	42 697	42 279	41 864	41 453	41 047	40 645	293 105
3. <i>Citizenship, freedom, security and justice</i>	1 199	1 258	1 380	1 503	1 645	1 797	1 988	10 770
3a. Freedom, security and justice	600	690	790	910	1 050	1 200	1 390	6 630
3b. Citizenship	599	568	590	593	595	597	598	4 140
4. <i>EU as a global player</i>	6 199	6 469	6 739	7 009	7 339	7 679	8 029	49 463
5. <i>Administration⁽¹⁾</i>	6 633	6 818	6 973	7 111	7 255	7 400	7 610	49 800
6. <i>Compensations</i>	419	191	190					800
Total commitment appropriations as a percentage of GNI	119 195	121 971	123 019	123 518	124 018	125 496	127 044	864 261
	1.10 %	1.08 %	1.07 %	1.04 %	1.03 %	1.02 %	1.01 %	1.048 %
Total payment appropriations as a percentage of GNI	115 142	119 805	112 182	118 549	116 178	119 659	119 161	820 676
	1.06 %	1.06 %	0.97 %	1.00 %	0.97 %	0.97 %	0.95 %	1.00 %
Margin available	0.18 %	0.18 %	0.27 %	0.24 %	0.27 %	0.27 %	0.29 %	0.24 %
Own resources ceiling as a percentage of GNI	1.24 %	1.24 %	1.24 %	1.24 %	1.24 %	1.24 %	1.24 %	1.24 %

⁽¹⁾ The expenditure on pensions included under the ceiling for this heading is calculated net of the staff contributions to the relevant scheme, within the limit of EUR 500 million at 2004 prices for the period 2007–13.

ANNEX II

Interinstitutional collaboration in the budgetary sector

A. After the technical adjustment of the financial framework for the forthcoming financial year, taking into account the annual policy strategy presented by the Commission and prior to its decision on the preliminary draft budget, a meeting of the trilogue will be convened to discuss the possible priorities for the budget of that year. Due account will be taken of the institutions' powers as well as the foreseeable development of the needs for the financial year to come and for the following years covered by the financial framework. Account will also be taken of new elements which have arisen since the establishment of the initial financial framework and which are likely to have a significant and lasting financial impact on the budget of the European Union.

B. As regards compulsory expenditure, the Commission, in presenting its preliminary draft budget, will identify:

- (a) appropriations connected with new or planned legislation;
- (b) appropriations arising from the application of legislation existing when the previous budget was adopted.

The Commission will make a careful estimate of the financial implications of the Community's obligations based on the rules. If necessary, it will update its estimates in the course of the budgetary procedure. It will supply the budgetary authority with all the duly justified reasons it may require.

If it considers it necessary, the Commission may present to the two arms of the budgetary authority an ad hoc letter of amendment to update the figures underlying the estimate of agricultural expenditure in the preliminary draft budget and/or to correct, on the basis of the most recent information available concerning fisheries agreements in force on 1 January of the financial year concerned, the amounts and their breakdown between the appropriations entered in the operational items for international fisheries agreements and those entered in reserve.

That letter of amendment must be sent to the budgetary authority before the end of October.

If it is presented to the Council less than one month before the European Parliament's first reading, the Council will, as a rule, consider the ad hoc letter of amendment when giving the draft budget its second reading.

As a consequence, before the Council's second reading of the budget, the two arms of the budgetary authority will try to meet the conditions necessary for the letter of amendment to be adopted on a single reading by each of the institutions concerned.

C. 1. A conciliation procedure is set up for all expenditure.

2. The purpose of the conciliation procedure is to:

(a) continue discussions on the general trend of expenditure and, in this framework, on the broad lines of the budget for the coming year in the light of the Commission's preliminary draft budget;

(b) secure agreement between the two arms of the budgetary authority on:

– the appropriations referred to in Points (a) and (b) of Part B, including those proposed in the ad hoc letter of amendment referred to that Part,

– the amounts to be entered in the budget for non-compulsory expenditure, in accordance with Point 40 of this Agreement, and

– in particular, matters for which reference to this procedure is made in this Agreement.

3. The procedure will begin with a trilogue meeting convened in time to allow the institutions to seek an agreement by no later than the date set by the Council for establishing its draft budget.

There will be conciliation on the results of this trilogue between the Council and a European Parliament delegation, with the Commission also taking part.

Unless decided otherwise during the trilogue, the conciliation meeting will be held at the traditional meeting between the same participants on the date set by the Council for establishing the draft budget.

4. If necessary, a new trilogue meeting could be held before the European Parliament's first reading on a written proposal by the Commission or a written request by either the chairman of the European Parliament's Committee on Budgets or the President of the Council (Budgets). The decision whether to hold this trilogue will be agreed between the institutions after the adoption of the Council draft budget and prior to the vote on the amendments at first reading by the European Parliament's Committee on Budgets.

5. The institutions will continue the conciliation after the first reading of the budget by each of the two arms of the budgetary authority in order to secure agreement on compulsory and non-compulsory expenditure and, in particular, to discuss the ad hoc letter of amendment referred to in Part B.

A trilogue meeting will be held for this purpose after the European Parliament's first reading.

The results of the trilogue will be discussed at a second conciliation meeting to be held on the day of the Council's second reading.

If necessary, the institutions will continue their discussions on non-compulsory expenditure after the Council's second reading.

6. At those trilogue meetings, the institutions' delegations will be led by the President of the Council (Budgets), the Chairman of the European Parliament Committee's on Budgets and the Member of the Commission responsible for the budget.
- 7 Each arm of the budgetary authority will take whatever steps are required to ensure that the results which may be secured in the conciliation process are respected throughout the budgetary procedure.

D. In order for the Commission to be able to assess in due time the implementability of amendments envisaged by the budgetary authority which create new preparatory actions/pilot projects or prolong existing ones, both arms of the budgetary authority will inform the Commission by mid-June of their intentions in this regard, so that a first discussion may already take place at the conciliation meeting of the Council's first reading. The next steps of the conciliation procedure provided for in Part C will also apply, as well as the provisions on implementability mentioned in Point 36 of this Agreement.

Furthermore, the institutions agree to limit the total amount of appropriations for pilot schemes to EUR 40 million in any budget year. They also agree to limit to EUR 50 million the total amount of appropriations for new preparatory actions in any budget year, and to EUR 100 million the total amount of appropriations actually committed for preparatory actions.

ANNEX III

Classification of expenditure

Heading 1	Sustainable growth	
1A	Competitiveness for growth and employment	Non-compulsory expenditure (NCE)
1B	Cohesion for growth and employment	NCE
Heading 2	Preservation and management of natural resources	NCE
	Except: — Expenditure of the common agricultural policy concerning market measures and direct aids, including market measures for fisheries and fisheries agreements concluded with third parties	Compulsory expenditure (CE)
Heading 3	Citizenship, freedom, security and justice	NCE
3A	Freedom, security and justice	NCE
3B	Citizenship	NCE
Heading 4	EU as a global player	NCE
	Except: — Expenditure resulting from international agreements which the European Union concluded with third parties — Contributions to international organisations or institutions — Contributions provisioning the Loan Guarantee Fund	CE CE CE
Heading 5	Administration	NCE
	Except: — Pensions and severance grants — Allowances and miscellaneous contributions on termination of service — Legal expenses — Damages	CE CE CE CE
Heading 6	Compensations	CE

ANNEX IV

Financing of expenditure deriving from fisheries agreements

A. Expenditure relating to fisheries agreements is financed by two items belonging to the 'fisheries' policy area (by reference to the activity based budget nomenclature):

(a) international fisheries agreements (11 03 01);

(b) contributions to international organisations (11 03 02).

All the amounts relating to agreements and protocols which are in force on 1 January of the year in question will be entered under heading 11 03 01. Amounts relating to all new or renewable agreements which come into force after 1 January of the year in question will be assigned to heading 40 02 41 02 — Reserves/differentiated appropriations (compulsory expenditure).

B. In the conciliation procedure provided for in Annex II, Part C, the European Parliament and the Council will seek to agree on the amount to be entered in the budget headings and in the reserve on the basis of the proposal made by the Commission.

C. The Commission undertakes to keep the European Parliament regularly informed about the preparation and conduct of the negotiations, including the budgetary implications.

In the course of the legislative process relating to fisheries agreements, the institutions undertake to make every effort to ensure that all procedures are carried out as quickly as possible.

If appropriations relating to fisheries agreements (including the reserve) prove insufficient, the Commission will provide the budgetary authority with the necessary information for an exchange of views in the form of a trilogue, possibly simplified, on the causes of the situation, and on the measures which might be adopted under established procedures. Where necessary, the Commission will propose appropriate measures.

Each quarter the Commission will present to the budgetary authority detailed information about the implementation of agreements in force and financial forecasts for the remainder of the year.

DECLARATIONS

1. Declaration of the Commission on the assessment of the functioning of the interinstitutional agreement

In relation to Point 7 of the Interinstitutional Agreement, the Commission will prepare a report on the functioning of the Interinstitutional Agreement by the end of 2009 accompanied, if necessary, by relevant proposals.

2. Declaration on Point 27 of the Interinstitutional Agreement

Within the framework of the annual budgetary procedure, the Commission will inform the budgetary authority of the amount available for the Flexibility Instrument referred to in Point 27 of the Interinstitutional Agreement.

Any decision to mobilise the Flexibility Instrument for an amount exceeding EUR 200 million will imply a carry-forward decision.

3. Declaration on the review of the financial framework

1. In accordance with the conclusions of the European Council, the Commission has been invited to undertake a full, wide-ranging review covering all aspects of EU spending, including the common agricultural policy, and of resources, including the United Kingdom rebate, and to report in 2008/09. That review should be accompanied by an assessment of the functioning of the Interinstitutional Agreement. The European Parliament will be associated with the review at all stages of the procedure on the basis of the following provisions:

- during the examination phase following the presentation of the review by the Commission, it will be ensured that appropriate discussions take place with the European Parliament on the basis of the normal political dialogue between the institutions and that the positions of the European Parliament are duly taken into account,
- in accordance with its conclusions of December 2005, the European Council ‘can take decisions on all the subjects covered by the review’. The European Parliament will be part of any formal follow-up steps, in accordance with the relevant procedures and in full respect of its established rights.

2. The Commission undertakes, as part of the process of consultation and reflection leading up to the establishment of the review, to draw on the in-depth exchange of views it will conduct with European Parliament when analysing the situation. The Commission also takes note of the European Parliament’s intention to call for a conference involving the European Parliament and the national parliaments to review the own-resources system. It will consider the outcome of any such conference as a contribution in the framework of that consultation process. It is understood that the Commission’s proposals will be put forward entirely under its own responsibility.

4. Declaration on democratic scrutiny and coherence of external actions

The European Parliament, the Council and the Commission acknowledge the need for rationalisation of the various instruments for external actions. They agree that such rationalisation of instruments, while enhancing the coherence and the responsiveness of European Union action, should not affect the powers of either the legislative authority — notably in its political control of strategic choices — or the budgetary authority. The text of the relevant Regulations should reflect those principles and include where appropriate the necessary policy content and an indicative breakdown of resources and, where necessary, a review clause aiming at evaluating the implementation of the Regulation, after three years at the latest.

Under the basic legislative acts adopted under the codecision procedure, the Commission will systematically inform and consult the European Parliament and the Council by sending draft country, regional and thematic strategy papers.

Where the Council decides on the transition of potential candidates to pre-accession status during the period covered by the Interinstitutional Agreement, the Commission will revise and communicate to the European Parliament and the Council an indicative multiannual framework according to Article 4 of the Regulation establishing an Instrument for Pre-Accession Assistance (IPA) to take account of the expenditure requirements resulting from such a transition.

The Commission will provide in the preliminary draft budget a nomenclature which ensures the prerogatives of the budgetary authority for external actions.

5. Declaration of the Commission on the democratic scrutiny and coherence of external actions

The Commission undertakes to enter into a regular dialogue with the European Parliament on the content of the draft country, regional and thematic strategy papers and to take due account of the position of the European Parliament when implementing the strategies.

That dialogue will include a discussion on the transition of potential candidates to pre-accession status during the period covered by the Interinstitutional Agreement.

6. Declaration on the revision of the Financial Regulation

Within the framework of the revision of the Financial Regulation the institutions commit themselves to improve implementation of the budget and increase the visibility and the benefit of Community funding towards the citizens without calling in question the progress achieved in the 2002 recasting of the Financial Regulation. They will also seek, as far as possible, during the final stage of the negotiations on the revision of the Financial Regulation and its implementing rules, the right balance between the protection of financial interests, the principle of proportionality of administrative costs, and user-friendly procedures.

The revision of the Financial Regulation will be carried out on the basis of a modified proposal from the Commission in accordance with the conciliation procedure established by the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975, in

the spirit which enabled agreement in 2002. The institutions will also seek close and constructive interinstitutional cooperation for the swift adoption of the implementing rules in order to simplify procedures for funding whilst ensuring a high level of protection of the Community's financial interests.

The European Parliament and the Council are firmly committed to concluding the negotiations on the Financial Regulation so as to allow its entry into force, if possible, on 1 January 2007.

7. Declaration of the Commission on the revision of the Financial Regulation

Within the framework of revision of the Financial Regulation, the Commission commits itself:

- to inform the European Parliament and the Council if, in a proposal for a legal act, it considers it necessary to depart from the provisions of the Financial Regulation, and to state the specific reasons for it;
- to ensure that regular legislative impact assessments, having due regard to the principles of subsidiarity and proportionality, are conducted on important legislative proposals and any substantive amendments thereof.

8. Declaration on new financial instruments

The European Parliament and the Council invite the Commission and the European Investment Bank (EIB), in their respective spheres of competence, to make proposals:

- in accordance with the conclusions of the European Council of December 2005, to increase the EIB's capacity for research and development loans and guarantees up to EUR 10 billion in the period 2007–13, with an EIB contribution of up to EUR 1 billion from reserves for risk-sharing financing;
- to reinforce the instruments in favour of trans-European networks (TENs) and small and medium-sized enterprises up to an approximate amount of loans and guarantees of EUR 20 billion and EUR 30 billion, respectively, with an EIB contribution of up to EUR 0.5 billion from reserves (TENs) and up to EUR 1 billion (competitiveness and innovation) respectively.

9. Declaration of the European Parliament on voluntary modulation

The European Parliament takes note of the conclusions of the European Council of December 2005 concerning voluntary modulation from market-related expenditure and direct payments of the common agricultural policy to rural development up to a maximum of 20 % and the reductions for market-related expenditure. When the modalities of this modulation are laid down in the relevant legal acts, the European Parliament will evaluate the feasibility of these provisions in respect of EU principles, such as competition rules and others; the European Parliament currently reserves its position on the outcome of the procedure. It considers it would be useful to assess the issue of co-financing of agriculture in the context of the 2008–09 review.

10. Declaration of the Commission on voluntary modulation

The Commission takes note of Point 62 of the conclusions of the European Council of December 2005 whereby Member States may transfer additional sums from market-related expenditure and direct payments of the common agricultural policy to rural development up to a maximum of 20 % of the amounts that accrue to them from market-related expenditure and direct payments.

When laying down the modalities of this modulation in the relevant legal acts, the Commission will endeavour to make voluntary modulation possible whilst making all efforts to ensure that such a mechanism reflects as closely as possible the basic rules governing the rural development policy.

11. Declaration of the European Parliament on Natura 2000

The European Parliament expresses its concern about the conclusions of the European Council of December 2005 relating to the reduction of the market-related expenditure and direct payments of the common agricultural policy and its consequences on Community co-financing of Natura 2000. It invites the Commission to evaluate the consequences of these provisions before making new proposals. It considers that appropriate priority should be given to the integration of Natura 2000 in Structural Funds and rural development. As part of the legislative authority, it currently reserves its position on the outcome of the procedure.

12. Declaration of the European Parliament on private co-financing and VAT for cohesion for growth and employment

The European Parliament takes note of the conclusion of the European Council of December 2005 on the application of the n+3 automatic decommitment rule on a transitional basis; the European Parliament invites the Commission, when the latter lays down in the relevant legal acts the modalities for the application of this rule, to ensure common rules for private co-financing and VAT for cohesion for growth and employment.

13. Declaration of the European Parliament on financing the area of freedom, security and justice

The European Parliament considers that when presenting the preliminary draft budget the Commission should give a careful estimate of planned activities for freedom, security and justice, and that the financing of these activities should be discussed in the framework of the procedures provided for in Annex II to the Interinstitutional Agreement.

2.8. COUNCIL DECISION OF 28 JUNE 1999 LAYING DOWN THE PROCEDURES FOR THE EXERCISE OF IMPLEMENTING POWERS CONFERRED ON THE COMMISSION (1999/468/EC)

[OJ L 184, 17.7.1999, p. 23, Decision as amended
by Decision 2006/512/EC (OJ L 200, 22.7.2006, p. 11)]
(Consolidated version)
(2006/C 255/02)

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular the third indent of Article 202 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament,

Whereas:

- (1) In the instruments which it adopts, the Council has to confer on the Commission powers for the implementation of the rules which the Council lays down; the Council may impose certain requirements in respect of the exercise of these powers; it may also reserve to itself the right, in specific and substantiated cases, to exercise directly implementing powers.
- (2) The Council adopted Decision 87/373/EEC of 13 July 1987 laying down the procedures for the exercise of implementing powers conferred on the Commission; that Decision has provided for a limited number of procedures for the exercise of such powers.
- (3) Declaration No 31 annexed to the Final Act of the Intergovernmental Conference which adopted the Amsterdam Treaty calls on the Commission to submit to the Council a proposal amending Decision 87/373/EEC.
- (4) For reasons of clarity, rather than amending Decision 87/373/EEC, it has been considered more appropriate to replace that Decision by a new Decision and, therefore, to repeal Decision 87/373/EEC.
- (5) The first purpose of this Decision is, with a view to achieving greater consistency and predictability in the choice of type of committee, to provide for criteria relating to the choice of committee procedure, it being understood that such criteria are of a non-binding nature, with the exception of those governing the regulatory procedure with scrutiny.

- (6) In this regard, the management procedure should be followed as regards management measures such as those relating to the application of the common agricultural and common fisheries policies or to the implementation of programmes with substantial budgetary implications; such management measures should be taken by the Commission by a procedure ensuring decision-making within suitable periods; however, where non-urgent measures are referred to the Council, the Commission should exercise its discretion to defer application of the measures.
- (7) The regulatory procedure should be followed as regards measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants, as well as measures designed to adapt or update certain non-essential provisions of a basic instrument; such implementing measures should be adopted by an effective procedure which complies in full with the Commission's right of initiative in legislative matters.
- (7a) It is necessary to follow the regulatory procedure with scrutiny as regards measures of general scope which seek to amend non-essential elements of a basic instrument adopted in accordance with the procedure referred to in Article 251 of the Treaty, *inter alia*, by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements. This procedure should enable the two arms of the legislative authority to scrutinise such measures before they are adopted. The essential elements of a legislative act may only be amended by the legislator on the basis of the Treaty.
- (8) The advisory procedure should be followed in any case in which it is considered to be the most appropriate; the advisory procedure will continue to be used in those cases where it currently applies.
- (9) The second purpose of this Decision is to simplify the requirements for the exercise of implementing powers conferred on the Commission as well as to improve the involvement of the European Parliament in those cases where the basic instrument conferring implementation powers on the Commission was adopted in accordance with the procedure laid down in Article 251 of the Treaty; it has been accordingly considered appropriate to reduce the number of procedures as well as to adjust them in line with the respective powers of the institutions involved and notably to give the European Parliament an opportunity to have its views taken into consideration by, respectively, the Commission or the Council in cases where it considers that, respectively, a draft measure submitted to a committee or a proposal submitted to the Council under the regulatory procedure exceeds the implementing powers provided for in the basic instrument.
- (10) The third purpose of this Decision is to improve information to the European Parliament by providing that the Commission should inform it on a regular basis of committee proceedings, that the Commission should transmit to it documents related to activities of committees and inform it whenever the Commission transmits to the Council measures or proposals for measures to be taken; particular attention will be paid to the provision of information to the European Parliament on the proceedings of committees in the framework of the regulatory procedure with scrutiny, so as to ensure that the European Parliament takes a decision within the stipulated deadline.

- (11) The fourth purpose of this Decision is to improve information to the public concerning committee procedures and therefore to make applicable to committees the principles and conditions on public access to documents applicable to the Commission, to provide for a list of all committees which assist the Commission in the exercise of implementing powers and for an annual report on the working of committees to be published as well as to provide for all references to documents related to committees which have been transmitted to the European Parliament to be made public in a register.
- (12) The specific committee procedures created for the implementation of the common commercial policy and the competition rules laid down by the Treaties that are not currently based upon Decision 87/373/EEC are not in any way affected by this Decision,

HAS DECIDED AS FOLLOWS:

Article 1

Other than in specific and substantiated cases where the basic instrument reserves to the Council the right to exercise directly certain implementing powers itself, such powers shall be conferred on the Commission in accordance with the relevant provisions in the basic instrument. These provisions shall stipulate the essential elements of the powers thus conferred.

Where the basic instrument imposes specific procedural requirements for the adoption of implementing measures, such requirements shall be in conformity with the procedures provided for by Articles 3, 4, 5, 5a and 6.

Article 2

1. Without prejudice to paragraph 2, the choice of procedural methods for the adoption of implementing measures shall be guided by the following criteria:

- (a) management measures, such as those relating to the application of the common agricultural and common fisheries policies, or to the implementation of programmes with substantial budgetary implications, should be adopted by use of the management procedure;
- (b) measures of general scope designed to apply essential provisions of basic instruments, including measures concerning the protection of the health or safety of humans, animals or plants, should be adopted by use of the regulatory procedure;

where a basic instrument stipulates that certain non-essential provisions of the instrument may be adapted or updated by way of implementing procedures, such measures should be adopted by use of the regulatory procedure;

- (c) without prejudice to points (a) and (b), the advisory procedure shall be used in any case in which it is considered to be the most appropriate.

2. Where a basic instrument, adopted in accordance with the procedure referred to in Article 251 of the Treaty, provides for the adoption of measures of general scope designed to amend non-essential elements of that instrument, inter alia, by deleting some of those elements or by supplementing the instrument by the addition of new non-essential elements, those measures shall be adopted in accordance with the regulatory procedure with scrutiny.

Article 3

Advisory procedure

1. The Commission shall be assisted by an advisory committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft, within a time-limit which the chairman may lay down according to the urgency of the matter, if necessary by taking a vote.
3. The opinion shall be recorded in the minutes; in addition, each Member State shall have the right to ask to have its position recorded in the minutes.
4. The Commission shall take the utmost account of the opinion delivered by the committee. It shall inform the committee of the manner in which the opinion has been taken into account.

Article 4

Management procedure

1. The Commission shall be assisted by a management committee composed of the representatives of the Member States and chaired by the representative of the Commission.
2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) and (4) of the Treaty, in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in that Article. The chairman shall not vote.
3. The Commission shall, without prejudice to Article 8, adopt measures which shall apply immediately. However, if these measures are not in accordance with the opinion of the committee, they shall be communicated by the Commission to the Council forthwith. In that event, the Commission may defer application of the measures which it has decided on for a period to be laid down in each basic instrument but which shall in no case exceed three months from the date of such communication.

4. The Council, acting by qualified majority, may take a different decision within the period provided for by paragraph 3.

Article 5

Regulatory procedure

1. The Commission shall be assisted by a regulatory committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the committee a draft of the measures to be taken. The committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) and (4) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. The Commission shall, without prejudice to Article 8, adopt the measures envisaged if they are in accordance with the opinion of the committee.

4. If the measures envisaged are not in accordance with the opinion of the committee, or if no opinion is delivered, the Commission shall, without delay, submit to the Council a proposal relating to the measures to be taken and shall inform the European Parliament.

5. If the European Parliament considers that a proposal submitted by the Commission pursuant to a basic instrument adopted in accordance with the procedure laid down in Article 251 of the Treaty exceeds the implementing powers provided for in that basic instrument, it shall inform the Council of its position.

6. The Council may, where appropriate in view of any such position, act by qualified majority on the proposal, within a period to be laid down in each basic instrument but which shall in no case exceed three months from the date of referral to the Council.

If within that period the Council has indicated by qualified majority that it opposes the proposal, the Commission shall reexamine it. It may submit an amended proposal to the Council, re-submit its proposal or present a legislative proposal on the basis of the Treaty.

If on the expiry of that period the Council has neither adopted the proposed implementing act nor indicated its opposition to the proposal for implementing measures, the proposed implementing act shall be adopted by the Commission.

Article 5a

Regulatory procedure with scrutiny

1. The Commission shall be assisted by a Regulatory Procedure with Scrutiny Committee composed of the representatives of the Member States and chaired by the representative of the Commission.

2. The representative of the Commission shall submit to the Committee a draft of the measures to be taken. The Committee shall deliver its opinion on the draft within a time-limit which the chairman may lay down according to the urgency of the matter. The opinion shall be delivered by the majority laid down in Article 205(2) and (4) of the Treaty in the case of decisions which the Council is required to adopt on a proposal from the Commission. The votes of the representatives of the Member States within the Committee shall be weighted in the manner set out in that Article. The chairman shall not vote.

3. If the measures envisaged by the Commission are in accordance with the opinion of the Committee, the following procedure shall apply:

(a) the Commission shall without delay submit the draft measures for scrutiny by the European Parliament and the Council;

(b) the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the adoption of the said draft by the Commission, justifying their opposition by indicating that the draft measures proposed by the Commission exceed the implementing powers provided for in the basic instrument or that the draft is not compatible with the aim or the content of the basic instrument or does not respect the principles of subsidiarity or proportionality;

(c) if, within three months from the date of referral to them, the European Parliament or the Council opposes the draft measures, the latter shall not be adopted by the Commission. In that event, the Commission may submit to the Committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;

(d) if, on expiry of that period, neither the European Parliament nor the Council has opposed the draft measures, the latter shall be adopted by the Commission.

4. If the measures envisaged by the Commission are not in accordance with the opinion of the Committee, or if no opinion is delivered, the following procedure shall apply:

(a) the Commission shall without delay submit a proposal relating to the measures to be taken to the Council and shall forward it to the European Parliament at the same time;

(b) the Council shall act on the proposal by a qualified majority within two months from the date of referral to it;

- (c) if, within that period, the Council opposes the proposed measures by a qualified majority, the measures shall not be adopted. In that event, the Commission may submit to the Council an amended proposal or present a legislative proposal on the basis of the Treaty;
- (d) if the Council envisages adopting the proposed measures, it shall without delay submit them to the European Parliament. If the Council does not act within the two-month period, the Commission shall without delay submit the measures by the European Parliament;
- (e) the European Parliament, acting by a majority of its component members within four months from the forwarding of the proposal in accordance with point (a), may oppose the adoption of the measures in question, justifying its opposition by indicating that the proposed measures exceed the implementing powers provided for in the basic instrument or are not compatible with the aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality;
- (f) if, within that period, the European Parliament opposes the proposed measures, the latter shall not be adopted. In that event, the Commission may submit to the Committee an amended draft of the measures or present a legislative proposal on the basis of the Treaty;
- (g) if, on expiry of that period, the European Parliament has not opposed the proposed measures, the latter shall be adopted by the Council or by the Commission, as the case may be.

5. By way of derogation from paragraphs 3 and 4, a basic instrument may in duly substantiated exceptional cases provide:

- (a) that the time-limits laid down in paragraphs 3(c), 4(b) and 4(e) shall be extended by an additional month, when justified by the complexity of the measures; or
- (b) that the time-limits laid down in paragraphs 3(c), 4(b) and 4(e) shall be curtailed where justified on the grounds of efficiency.

6. A basic instrument may provide that if, on imperative grounds of urgency, the time limits for the regulatory procedure with scrutiny referred to in paragraphs 3, 4 and 5 cannot be complied with, the following procedure shall apply:

- (a) if the measures envisaged by the Commission are in accordance with the opinion of the Committee, the Commission shall adopt the measures, which shall immediately be implemented. The Commission shall without delay communicate them to the European Parliament and to the Council;
- (b) within a time-limit of one month following that communication, the European Parliament, acting by a majority of its component members, or the Council, acting by a qualified majority, may oppose the measures adopted by the Commission, on the grounds that the measures exceed the implementing powers provided for in the basic instrument or are not compatible with the aim or the content of the basic instrument or do not respect the principles of subsidiarity or proportionality;

- (c) in the event of opposition by the European Parliament or the Council, the Commission shall repeal the measures. It may, however, provisionally maintain the measures in force if warranted on health protection, safety or environmental grounds. In that event, it shall without delay submit to the Committee an amended draft of the measures or a legislative proposal on the basis of the Treaty. The provisional measures shall remain in force until they are replaced by a definitive instrument.

Article 6

Safeguard procedure

The following procedure may be applied where the basic instrument confers on the Commission the power to decide on safeguard measures:

- (a) the Commission shall notify the Council and the Member States of any decision regarding safeguard measures. It may be stipulated that before adopting its decision, the Commission shall consult the Member States in accordance with procedures to be determined in each case;
- (b) any Member State may refer the Commission's decision to the Council within a time-limit to be determined within the basic instrument in question;
- (c) the Council, acting by a qualified majority, may take a different decision within a time-limit to be determined in the basic instrument in question. Alternatively, it may be stipulated in the basic instrument that the Council, acting by qualified majority, may confirm, amend or repeal the decision adopted by the Commission and that, if the Council has not taken a decision within the abovementioned time-limit, the decision of the Commission is deemed to be revoked.

Article 7

1. Each committee shall adopt its own rules of procedure on the proposal of its chairman, on the basis of standard rules which shall be published in the *Official Journal of the European Communities*.

In so far as necessary existing committees shall adapt their rules of procedure to the standard rules.

2. The principles and conditions on public access to documents applicable to the Commission shall apply to the committees.

3. The European Parliament shall be regularly kept informed by the Commission of committee proceedings following arrangements which ensure that the transmission system is transparent and that the information forwarded and the various stages of the procedure are identified. To that end, it shall receive agendas for committee meetings, draft measures submitted to the committees for the implementation of instruments adopted by the procedure provided for by Article 251 of the Treaty,

and the results of voting and summary records of the meetings and lists of the authorities and organisations to which the persons designated by the Member States to represent them belong.

The European Parliament shall also be kept informed whenever the Commission transmits to the Council measures or proposals for measures to be taken.

4. The Commission shall, within six months of the date on which this Decision takes effect, publish in the *Official Journal of the European Communities*, a list of all committees which assist the Commission in the exercise of implementing powers. This list shall specify, in relation to each committee, the basic instrument(s) under which the committee is established. From 2000 onwards, the Commission shall also publish an annual report on the working of committees.

5. The references of all documents sent to the European Parliament pursuant to paragraph 3 shall be made public in a register to be set up by the Commission in 2001.

Article 8

If the European Parliament indicates, in a resolution setting out the grounds on which it is based, that draft implementing measures, the adoption of which is contemplated and which have been submitted to a committee pursuant to a basic instrument adopted under Article 251 of the Treaty, would exceed the implementing powers provided for in the basic instrument, the Commission shall review the draft measures. Taking the resolution into account and within the time-limits of the procedure under way, the Commission may submit new draft measures to the committee, continue with the procedure or submit a proposal to the European Parliament and the Council on the basis of the Treaty.

The Commission shall inform the European Parliament and the committee of the action which it intends to take on the Resolution of the European Parliament and of its reasons for doing so.

Article 9

Decision 87/373/EEC shall be repealed.

Article 10

This Decision shall take effect on the day following that of its publication in the *Official Journal of the European Communities*.

NB:

Readers are informed that statements in the Council minutes relating to these two Decisions are set out in OJ C 203, 17.7.1999, p. 1, and in OJ C 171, 22.7.2006, p. 21.

A statement by the European Parliament, the Council and the Commission concerning the Decision of 17 July 2006 is set out on page 1 of this Official Journal.

European Commission

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