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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)

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COMMISSION REGULATION (EC, EURATOM) No 2342/2002

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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

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THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ([1]), and in particular Article 183 thereof,

Having consulted the European Parliament, the Council, the Court of Justice of the European Communities, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the Ombudsman and the European Data Protection Supervisor,

Whereas:

(1) The provisions of Regulation (EC, Euratom) No 1605/2002 (hereinafter 'the Financial Regulation') have been simplified to confine the Regulation to the basic principles and definitions relating to the establishment, execution and control of the general budget of the European Communities (hereinafter 'the budget').

(2) These implementing rules should therefore not only supplement the Financial Regulation in respect of the provisions thereof for which it expressly refers to the implementing rules but also in respect of the provisions whose application requires the implementing measures to be determined in advance. In the interests of clarity, it is necessary to replace Commission Regulation (Euratom, ECSC, EC) No 3418/93 of 9 December 1993 laying down detailed rules for the implementation of the Financial Regulation of 21 December 1977 ([2]), as last amended by Regulation (EC) No 1687/2001 ([3]).

(3) To ensure that sectoral rules are consistent with the budgetary principles set out in the Financial Regulation, an inventory should be produced of all regulatory instruments relating to budget execution and provision made for this inventory to be drawn up by the Commission and submitted to the budgetary authority.

([1]) OJ L 248, 16.9.2002, p. 1.
([2]) OJ L 315, 16.12.1993, p. 1.
([3]) OJ L 228, 24.8.2001, p. 8.

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(4) As regards the budgetary principles, in particular the principle of unity, the requirement that interest on pre-financing to be repaid to the budget be identified means that any pre-financing which remains the property of the Communities must be identified. Such pre-financing remains the property of the institution unless the basic act, within the meaning of Article 49 of the Financial Regulation, provides otherwise and unless it is paid under a procurement contract, or to staff or members of the institutions, or to the Member States. This rule should be spelled out according to the type of management (direct or indirect centralised management and shared management). It does not apply to joint management since in such cases the Community funds are merged with the funds of the international organisation. Where pre-financing which remains the property of the Communities yields interest, this interest should be paid to the budget as miscellaneous revenue.

(5) For the principle of annuality, it is important to clarify the meaning of annual appropriations and the preparatory stages of the commitment procedure which, if completed by 31 December, may allow the carryover of commitment appropriations which will then have to be used by 31 March of the following financial year.

(6) As regards the principle of the unit of account, the rates to be used for conversion between the euro and the other currencies for the requirements of the management of the cash flow and the accounts should be specified.

(7) As regards the derogations from the principle of universality, the budget treatment to be given to assigned revenue, in particular to contributions by Member States or third countries to certain Community programmes, should be specified, as must the limits on the netting of expenditure and revenue.

(8) As regards the principle of specification, a precise definition should be given of the calculation of the percentage of appropriations which the institutions are authorised to transfer by virtue of the autonomy they enjoy and provision should be made for the budgetary authority to be given full information through a detailed explanation of the requests for transfers which have to be submitted to it.

(9) As for sound financial management, it is necessary to specify the objectives of the *ex ante*, interim and ex post evaluations of the programmes and activities, the minimum frequency with which they are to be carried out and the information to be given in the legislative financial statement.

(10) As for the establishment and presentation of the budget, it is necessary to determine the contents of the general introduction to the budget, the working documents backing up the budget and the budget remarks for ensuring that the budgetary authority is fully informed. In the new activity-based budgeting (ABB) presentation, the definition and classification of administrative appropriations should also be set out.

(11) As regards implementation of the budget, it is appropriate first to clarify the forms which may be taken by basic acts in the Community field and in the fields covered by the Treaty on European Union. The maximum amounts of appropriations which may be implemented for preparatory actions and pilot schemes without the existence of a basic act should be determined and the provisions of the Treaties conferring specific powers directly on the Commission should be listed.

(12) Acts likely to constitute a conflict of interests should also be defined, together with the procedure to be followed in such cases.

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(13) As for the different methods of implementing the budget, it should be laid down that, when the Commission does not implement the budget directly in its departments, it must first ascertain that the entities to which it plans to entrust implementing tasks have management procedures and control and accounting systems which are adequate and appropriate with regard to the requirements of sound financial management.

(14) In respect of indirect centralised management, that is to say, of management delegated by the Commission to executive agencies or to bodies governed by Community law or national public-sector bodies or bodies with a public-service mission, it is also necessary to lay down the framework for such delegation of powers and the arrangements for its implementation by act of delegation or agreement. The executive agencies, which remain under Commission control, should be recognised as authorising officers by delegation of that institution for implementation of the Community budget. Where national bodies have to carry out acts of budget implementation, they should offer adequate financial guarantees and be chosen in a transparent manner following a cost-effectiveness analysis showing the reasons for delegating management to such a body. The Commission should seek the opinion of the relevant committee, in accordance with the basic act for implementing the appropriations concerned, before delegating powers to national bodies. Private-law entities performing preparatory or ancillary tasks on the Commission's behalf should be selected in accordance with procurement procedures.

(15) For shared management with the Member States or decentralised management with third countries, the stages and objectives of the procedure for the clearance of accounts should be laid down without prejudice to the specific provisions contained in the relevant sectoral regulations.

(16) Finally, for joint management, it should be made clear that the share contributed by each donor to each type of expenditure need not be identified but that the subsidised actions must none the less be subject to comprehensive controls; the international organisations eligible for this type of management should be identified.

(17) As regards the role of the financial actors, the reform of financial management, together with the dropping of centralised *ex ante* controls, increases the responsibilities of the authorising officers in all revenue and expenditure operations, including in terms of internal control systems. The budgetary authority should in future be informed of the appointment or termination of duties of an authorising officer by delegation. Consequently, the tasks, responsibilities and principles of the procedures to be observed should also be laid down. The internalisation of *ex ante* controls requires, in particular, a clear distinction between tasks relating to the initiation of operations in implementation of the budget and tasks relating to the verification of such operations. Moreover, each institution should adopt a code of professional standards applicable to the staff responsible for *ex ante* and ex post verifications. Provision should then be made for the responsibilities assumed to be accounted for in an annual report to the institution which must, *inter alia*, give the results of the ex post verifications; arrangements should also be made for keeping the supporting documents relating to the operations carried out. Finally, all the various forms of negotiated procedure for the award of public contracts should, since they represent derogations, be the subject of a special report to the institution and of a communication to the budgetary authority.

(18) In order to clarify responsibilities, a precise definition should also be given of the tasks and responsibilities of the accounting officer in connection with the accounting systems, treasury management,

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the management of bank accounts and third-party files. The arrangements for the termination of the accounting officer's duties should also be spelled out.

(19) The conditions for the use of imprest accounts, a system of management which forms an exception to normal budgetary procedures, should also be laid down, and the tasks and responsibilities of the imprest administrators, as well as those of the authorising officer and accounting officer in connection with the control of imprest accounts, should be set out. The budgetary authority should be informed of any appointment or termination of duties.

(20) Once the tasks and responsibilities of each financial actor have been defined, they may be held liable only under the conditions laid down in the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants. However, a new specialised financial irregularities panel should be set up in appropriate manner in each institution to determine whether irregularities of a financial nature have occurred. The procedure by which an authorising officer may seek confirmation of an instruction and thus be released from any liability should also be laid down.

(21) As regards revenue, except for the special case of own resources covered by Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources ([1]), it is necessary to specify the tasks and controls falling within the responsibility of the authorising officers at the different stages of the procedure: establishment of the estimate of amounts receivable and then the recovery order; dispatch of the debit note informing the debtor that the amount receivable has been established; calculation of any default interest due; and, finally, the decision, where necessary, to waive an entitlement subject to criteria guaranteeing compliance with sound financial management. The accounting officer's role in the collection of revenue and in allowing any additional time for payment should also be specified.

(22) As regards expenditure, the relationship between financing decisions, global commitments and individual commitments should be defined, as should the characteristics of those different stages. The distinction between a global commitment and an individual commitment depends on the extent to which the beneficiaries are identified and the amounts involved. Provisional commitments are limited to routine administrative expenditure and expenditure in connection with the European Agricultural Guidance and Guarantee Fund (EAGGF). To restrict the volume of dormant commitments, appropriations corresponding to commitments for which no payment has been made for three years should be decommitted.

(23) It is then necessary to clarify the relationship between validation, authorisation and payment operations and the controls to be carried out by the authorising officer when validating expenditure, with the endorsement ‘passed for payment’, and when authorising payment by checking the validity of the release from all liability, for which the authorising officer now has sole responsibility. The documents to be produced in support of payments should be specified and rules laid down for the clearing of pre-financing and interim payments. Finally, the time-limits applicable to validation and payment operations should be laid down, account being taken of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions ([2]).

([1]) OJ L 130, 31.5.2000, p. 1.
([2]) OJ L 200, 8.8.2000, p. 35.

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(24) For the internal audit, it is necessary to lay down the procedure for appointing the auditor and to guarantee his independence within the institution which has appointed him and to which he must report on his activities; the budgetary authority should be informed of any appointment or termination of duties.

(25) With regard to procurement, the option taken is to insert in the present Regulation the provisions of Council Directives 92/50/EEC ([1]), 93/36/EEC ([2]) and 93/37/EEC ([3]), as last amended by Commission Directive 2001/78/EC ([4]), relating to the procedures for the award of public service, supply and works contracts respectively. Consequently, it is first necessary to define the various types of procurement contract; the advertising and publication measures applicable; the conditions in which use may be made of a particular form of procedure and the main features of the existing procedures; the specification of selection criteria and the possible award arrangements; rules for access to tender documents and for communication with tenderers or candidates; and, for cases where the Commission awards contracts on its own account, the various thresholds applicable and the rules for estimating the value of the contracts to be awarded.

(26) The purpose of the procedures for the award of contracts is to satisfy the needs of the institutions on the best possible terms while guaranteeing equal access to public contracts and complying with the principles of transparency and non-discrimination. With a view to ensuring transparency and the equal treatment of candidates, as well as the full responsibility of authorising officers in the final choice, it is necessary to lay down the procedure for opening and then evaluating tenders and requests to participate, from the appointment of a committee up to the substantiated and documented award decision, which ultimately rests with the contracting authority. The financial guarantees needed to protect the Communities' financial interests should also be specified.

(27) Finally, it is necessary to delimit the contracting authorities' powers to impose administrative penalties, in order to ensure that penalties are proportionate and dissuasive and to secure equal treatment as between the various institutions and as between departments.

(28) The scope of the Title on grants should also be clarified, particularly with regard to the different methods for implementing the budget, but also with regard to the type of action or body of general European interest eligible for a grant. The characteristics of the annual work programme and of calls for proposals should be specified, as should the possible exceptions in this context and the possibility of retroactive effect, particularly in the context of humanitarian aid and the management of crisis situations, for which the constraints are very specific.

(29) Again with regard to the requirements of transparency, equal treatment for applicants and the enhancement of the accountability of authorising officers, the award procedure should be laid down, from the application for the grant to its evaluation, by a committee, in the light of previously specified selection and award criteria, before the authorising officer takes his final, appropriately documented decision.

(30) Sound financial management then requires that the Commission protect itself with guarantees: at the stage of grant applications, by arranging financial audits for applications involving larger amounts; then, at the time of paying pre-financing, by requiring

([1]) OJ L 209, 24.7.1992, p. 1.
([2]) OJ L 199, 9.8.1993, p. 1.
([3]) OJ L 199, 9.8.1993, p. 54.
([4]) OJ L 285, 29.10.2001, p. 1.

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advance financial guarantees; and, finally, at the stage of final payment, by arranging financial audits for the requests which involve the largest amounts and which present most risk. Sound management and compliance with the no-profit and co-financing principles also require rules to be laid down delimiting the possible use of flat-rate payments. Finally, the sound management of Community funds means that the grant beneficiaries themselves must comply with the principles of transparency and equal treatment of potential contractors, as well as with the principle that the contract must be awarded to the tender offering best value for money when the action is partly sub-contracted.

(31) Finally, powers for imposing penalties in that context should be aligned with those conferred in the context of procurement.

(32) As regards the keeping and presentation of the accounts, each of the generally accepted accounting principles on which the financial statements must be based should be defined. It is also necessary to specify the conditions for entering a transaction in the accounts and the rules for valuing assets and liabilities and for the constitution of provisions.

(33) It should be specified that the institutions' accounts must be accompanied by a report on budgetary and financial management and details should be given of the content and presentation of the elements making up the financial statements (balance sheet, economic outturn account, cash-flow table and annex) and the budget implementation statements (budget outturn account and annex).

(34) On accounting matters, it should be specified that the accounting officer of each institution must produce documents describing the organisation of the accounts and the accounting procedures of that institution and define the conditions to be respected by the computerised accounting systems, in particular as regards security of access and the audit trail for any changes made to the systems.

(35) As regards the keeping of the accounts, it is necessary to specify the principles applicable to the accounting ledgers, the trial balance, the periodical reconciliation of the totals in that balance and the inventory, and to specify the components of the chart of accounts adopted by the Commission's accounting officer. The rules applicable to the registration of operations, in particular the double-entry method, the rules for the conversion of operations which are not denominated in euro and the supporting documents for accounting entries, should be laid down. The content of the accounting records should also be specified.

(36) Finally, it is necessary to lay down the rules relating to the property inventory and to clarify the respective responsibilities in this field of the accounting officers and authorising officers, as well as the rules applicable to the resale of property entered in the inventory.

(37) As regards the Structural Funds, it should be specified that the repayment of payments on account in respect of a given operation does not have the effect of reducing the contribution from the Fund to that operation.

(38) The types of action, direct and indirect, which may be financed in the research sector should be specified.

(39) For external actions, the implementing rules, like the Financial Regulation itself, aim to make provision for exceptions which reflect the specific operational features of that sector, mainly as regards procurement and the award of grants.

(40) As regards procurement, these implementing rules take over the substance of the provisions of the Commission Decision of 10

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November 1999 on the simplification of the management systems for the award of contracts in the framework of the cooperation programmes implemented by the Directorates-General for external relations, ([1]) resulting in procurement rules which differ from the standard rules by virtue of the different thresholds set and the management procedures, which have been adapted to external actions.

(41) As for grants, it is necessary to list the types of action for which derogation is possible from the principle of co-financing referred to in Article 109 of the Financial Regulation. This applies in particular to humanitarian aid and aid in crisis situations and actions for the protection of the health or fundamental rights of peoples.

(42) To guarantee the sound management of Community appropriations, it is also necessary to specify the pre-conditions and the rules to be contained in the agreements when the management of appropriations is decentralised or if use is made of imprest accounts.

(43) ►C1 The provisions of the Financial Regulation relating to European Offices should be supplemented by specific rules for the Office for Official Publications of the European Communities and by provisions authorising the Commission's accounting officer to delegate some of his tasks to staff in those Offices. Operating procedures should also be laid down for the bank accounts which the European Offices may be authorised to open in the Commission's name. ◄

(44) As regards administrative appropriations, each institution should inform the budgetary authority of significant building projects which are under way, that is to say, of those increasing the building stock.

(45) It is necessary to identify the bodies which may receive grants charged to the budget and which have to be given a set of rules in accordance with the conditions laid down in Article 185 of the Financial Regulation.

(46) The various thresholds and amounts referred to in this Regulation should be regularly updated by linking them with the inflation recorded in the Community, with the exception of the thresholds applicable to procurement,

HAS ADOPTED THIS REGULATION:

PART ONE

COMMON PROVISIONS

TITLE I

SUBJECT

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’).

([1]) SEC(1999) 1801.

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

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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.

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TITLE II

BUDGETARY PRINCIPLES

CHAPTER 1

Principles of unity and budget accuracy

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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

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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.

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CHAPTER 2

Principle of annuality

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 ►M3 Articles 157 and 160a of the Financial Regulation; ◄

(d) appropriations arising from payments on account which have been repaid in accordance with Article 228;

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(e) appropriations provided following the receipt of revenue assigned during the financial year or during previous financial years and not used.

Article 6

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 ►M2 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.

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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.

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CHAPTER 3

(Chapter 4 of the Financial Regulation)

Principle of unit of account

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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.

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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.

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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.

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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 flatrate 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.

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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.

CHAPTER 4

(Chapter 5 of the Financial Regulation)

Principle of universality

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;

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(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.

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2. The appropriations corresponding to assigned revenue may be made available, both as commitment appropriations and as payment appropriations, when the revenue has been received by the institution, save in the case provided for in ►M3 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.

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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

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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 [1] 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.

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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.

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;

[1] OJ L 209, 2.8.1997, p. 6.

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(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.

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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 5

(Chapter 6 of the Financial Regulation)

Principle of specification

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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 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 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.

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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.

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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.

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 ►M3 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.

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CHAPTER 6

(Chapter 7 of the Financial Regulation)

Principle of sound financial management

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Article 21

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 5 000 000 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.

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Article 22

Financial statement

(Article 28 of the Financial Regulation)

1. ►M3 ——————— ◄

The financial statement shall contain the financial and economic data for the assessment by the legislative authority of the need for Community action. It shall provide appropriate 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.

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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.

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CHAPTER 7

(Chapter 8 of the Financial Regulation)

Principle of transparency

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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*.

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TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

Establishment of the budget

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;

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(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;

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(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.

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.

CHAPTER 2

Structure and presentation of the budget

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.

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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.

TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 1

General provisions

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Article 32

Maximum amounts for pilot schemes and preparatory actions

(►M3 Article 49(6)(a) and (b) ◄ of the Financial Regulation)

1. The total amount of appropriations for the pilot schemes referred to in ►M3 Article 49(6)(a) ◄ of the Financial Regulation may not exceed ►M3 EUR 40 million ◄ in any budget year.

2. The total amount of appropriations for new preparatory actions referred to in Article Article ►M3 49(6)(b) ◄ of the Financial Regulation may not exceed ►M3 EUR 50 million ◄ in any budget year,

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and the total amount of appropriations actually committed for preparatory actions may not exceed ►M3 EUR 100 million. ◄

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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.

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Article 33

Specific powers of the Commission under the Treaties

(►M3 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.

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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.

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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.

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CHAPTER 2

Methods of implementation

Section 1

General provisions

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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

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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 35a

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.

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Section 2

Special provisions

Article 36

Direct centralised management

(►M3 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.

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.

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3. ►C1 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.

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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 privatelaw 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)

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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. ►M3 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.

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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.

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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.

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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.

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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.

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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.

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

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Article 42

Clearance-of-accounts procedures in decentralised or shared management

(Articles ►M3 53b and 53c ◄ of the Financial Regulation)

1. The purpose of the clearance-of-accounts procedure referred to in ►M3 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.

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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.

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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.

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;

▼M3

(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 43a

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.

▼B

CHAPTER 3

Financial actors

Section 1

Rights and obligations of the financial actors

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

Article 45

Assistance for authorising officers by delegation and subdelegation

(Article 59 of the Financial Regulation)

1. ►M2 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.

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2. Each institution shall inform the budgetary authority whenever an authorising officer by delegation takes up his duties, changes duties or terminates his duties.

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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.

Article 47

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 imple-

▼B

menting 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.

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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.

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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.

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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.

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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;

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(e) identify and prevent management risks and manage them effectively;

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(f) ensure reliable production of financial and management information;

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(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.

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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.

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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.

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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)

►M2 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.

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Section 3

Accounting officer

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.

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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.

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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.

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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.

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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.

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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.

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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.

▼M2

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.

▼B

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.

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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.

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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.

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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.

Section 4

Imprest administrator

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.

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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).

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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;

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(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.

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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.

▼B

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.

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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.

▼B

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)

►M2 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.

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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. ►M2 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. ►M2 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 bookkeeping 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.

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CHAPTER 4

Liability of the financial actors

Section 1

General rules

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 ►M3 '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

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. ►M2 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.

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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

▼M3

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.

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CHAPTER 5

Revenue operations

Section 1

Own resources

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.

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Section 2

Estimate of amounts receivable

Article 77

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. ►M3 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

Article 78

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;

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(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.

▼B

(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.

Section 4

Authorisation of recovery

Article 81

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;

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(e) the name and address of the debtor;

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(f) the deadline referred to in Article 78(3)(b); and

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(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.

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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.

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Section 5

Recovery

Article 82

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.

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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).

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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 10 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.

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Article 84

Recovery procedure failing voluntary payment

(Articles 72 and 73 of the Financial Regulation)

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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.

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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:

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(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).

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(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.

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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.

▼M3

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 extra-judicial 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.

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Article 86

Default interest

(Article 71(4) of the Financial Regulation)

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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.

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4. Any partial payments shall first cover the interest determined in accordance with paragraphs 2 and 3.

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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.

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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).

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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. ►M3 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 1 000 000 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 accordance 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.

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CHAPTER 6

Expenditure operations

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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.

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Section 1

Commitment of expenditure

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. ►C1 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.

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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;

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(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;

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(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.

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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 deputisation 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 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.

Article 96

Administrative expenditure covered by provisional commitments

(Article 76 of the Financial Regulation)

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

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(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;

▼B

(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.

Section 2

Validation of expenditure

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. ►C1 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 deter-

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mining 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;

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(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;

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(d) in respect of mission expenses:

(i) the travel order signed by the competent authority;

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(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;

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(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.

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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.

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Section 3

Authorisation of payments

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:

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(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

Article 104

Supporting documents

(Article 81 of the Financial Regulation)

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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.

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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.

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2. An interim payment, which may be repeated, is intended to reimburse expenditure incurred by the beneficiary on the basis of a statement of expenditure when the action is in progress. It may clear pre-financing in whole or in part, without prejudice to the provisions of the basic act.

3. The closure of the expenditure shall take the form of the payment of the balance, which may not be repeated and clears all preceding payments, or a recovery order.

Section 5

Time limits for expenditure operations

Article 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.

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Where the payment request is not admissible, the authorising officer shall inform the contractor or beneficiary within 30 calendar days from the date on which the payment request was initially received. That information shall include a description of all deficiencies.

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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.

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3. For contracts, grant agreements and decisions under which payment depends on the approval of a report or a certificate, the timelimit 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) 20 calendar days for straightforward contracts relating to the supply of goods and services;

(b) 45 calendar days for other contracts and grant agreements and decisions;

(c) 60 calendar days for contracts and grant agreements and decisions 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 for payment shall

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apply. This single time limit may not exceed the aggregated maximum applicable periods for approval of the report or certificate and for payment.

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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. ►M3 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.

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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.

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CHAPTER 7

IT Systems

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.

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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

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.

Article 110

►C1 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.

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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.

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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.

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Article 113

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.

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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.

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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 ►M3 Staff Regulations of Officials of the European Communities. ◄

TITLE V

PROCUREMENT

CHAPTER 1

General provisions

Section 1

Scope and award principles

Article 116

Definitions and scope

(Article 88 of the Financial Regulation)

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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.

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2. Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. ►M1 A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract. ◄

3. ►M1 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. ►M1 Those services are listed in Annexes IIA and IIB to Directive 2004/18/EC. ◄

[1] OJ L 134, 30.4.2004, p. 114.

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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.

▼M1

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 [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'. ►M3 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)

▼M3

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.

[1] OJ L 340, 16.12.2002, p. 1.

▼M3

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.

▼M1

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.

▼B

Section 2

Publication

▼M1

Article 118

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-

▼M1

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. ►M2 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.

▼M3

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.

▼M1

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.

▼M3

The award notice shall be sent to the Publications Office no later than 48 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 48 days after the end of each quarter.

▼M1

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

▼M3

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.

▼M1

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)

▼B

1. ►M1 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 ►M3 ——————— ◄ greater than the amount referred to in Article 128(1);

▼M2

(b) the annual publication of a list of contractors, specifying the subject and the value of the contract awarded, for contracts with a value ►M3 ——————— ◄ greater than EUR 25 000.

▼M3

_____

▼M1

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.

▼B

3. Information relating to contracts with a value ►M3 ——————— ◄ 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.

▼M1

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.

▼B

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.

▼B

Section 3

Procurement procedures

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.

▼M1

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.

▼B

3. ►C1 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.

Article 123

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.

▼M1

2. ►M3 In negotiated procedures and after a competitive dialogue, the number of candidates invited to negotiate or to tender may not be

▼M1

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.

▼B

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.

▼M1

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.

▼B

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.

▼B

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.

▼M1

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.

▼B

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.

▼M1

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 15 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

▼M1

not be less than 15 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.

▼M1

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.

▼M3

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.

▼B

Article 126

Use of a negotiated procedure without prior publication of a contract notice

(Article 91 of the Financial Regulation)

1. ►M1 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;

▼M1

(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;

▼B

(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;

▼M1

(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;

▼B

(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;

▼M1

(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;

▼B

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

▼M1

(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.

▼M2

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.

▼B

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

(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. ►M1 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. ►M1 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;

▼M1

(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;

▼M2

(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.

▼M1

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,

▼M1

submitted tenders in accordance with the formal requirements of the procurement procedure.

▼B

Article 128

Restricted procedure involving a call for expressions of interest

(Article 91 of the Financial Regulation)

▼M2

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.

▼B

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.

▼M2

Article 129

Lowvalue 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.

▼M3

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.

▼B

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:

▼M1

(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;

▼B

(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. ►M1 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;

▼M1

(e) specify, in the case of a competitive dialogue, the date set and the address for the start of the consultation phase.

▼B

3. The specifications shall at least:

▼M3

(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;

▼M1

(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;

▼B

(c) set out the technical specifications referred to in Article 131;

▼M1

(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;

▼B

(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;

▼M1

(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.

▼B

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;

▼M3

(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.

▼B

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. ►M3 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;

▼M1

(c) wherever possible, the accessibility criteria for people with disabilities or the design for all users;

▼B

(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,

▼B

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

▼M1

(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

▼B

(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.

▼M1

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

▼B

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.

▼M1

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;

▼M1

(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.

▼B

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 trade marks, 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 during 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.

▼M3

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]);

([1]) OJ C 316, 27.11.1995, p. 48.
([2]) OJ C 195, 25.6.1997, p. 1.

▼M3

(c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council [1];

(d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC [2].

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.

▼M2

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.

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[1] OJ L 351, 29.12.1998, p. 1.
[2] OJ L 166, 28.6.1991, p. 77.

▼M3

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.

▼M2

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.

▼M3

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.

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 10 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).

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Article 135

Selection criteria

(Article 97(1) of the Financial Regulation)

1. The contracting authorities shall draw up clear and non-discriminatory selection criteria.

▼M2

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.

▼B

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.

▼B

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.

▼M1

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.

▼M2

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.

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Article 136

Economic and financial capacity

(Article 97(1) of the Financial Regulation)

1. ►M1 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.

▼M1

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.

▼B

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 operations, services and/or works, such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.

2. ►M1 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;

▼M1

(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;

▼B

(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;

▼M1

(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.

▼B

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.

▼M1

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.

▼B

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.

▼M1

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.

▼B

Article 138

Award arrangements and criteria

(Article 97(2) of the Financial Regulation)

1. ►M2 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.

[1] OJ L 114, 24.4.2001, p. 1.

▼B

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. ►M1 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.

▼M1

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;

▼M1

(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

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put up for tender in the published contract notice and defined in the specification.

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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.►M1 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.

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.

▼M1

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 52 days from the date on which the contract notice is dispatched.

3. ►M3 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 37 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 40 days from the date on which the invitation to tender is dispatched.

▼M1

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 21 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 36 days but shall in no circumstances be less than 22 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 52 days and 12 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.

▼B

Article 141

Time allowed for access to invitation to tender documents

(Article 98(1) of the Financial Regulation)

▼M1

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 specification 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.

▼B

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

▼B

extension shall be advertised in appropriate manner, in accordance with the arrangements set out in Articles 118 to 121.

▼M1

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 15 days from the date on which the contract notice is dispatched or 10 days if the notice is sent to OPOCE electronically;

(b) a time limit for the receipt of tenders which may not be less than 10 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.

▼B

Article 143

Methods of communication

(Article 98(1) of the Financial Regulation)

▼M1

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.

▼M1

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]).

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.

▼B

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.

Article 145

Opening of tenders and requests to participate

(Article 98(3) of the Financial Regulation)

▼M1

1. All requests to participate and tenders that satisfy the requirements of Article 143 shall be opened.

([1]) OJ L 13, 19.1.2000, p. 12.

▼B

2. ►M2 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. ◄

▼M1

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.

▼M3

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.

▼M1

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.

▼B

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. ►M1 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. ◄

▼M2

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).

▼M3

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

▼M3

are to be evaluated by other appropriate means guaranteeing the absence of conflicts of interests.

▼B

2. ►M1 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.

▼M1

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.

▼M3

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.

▼B

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.

▼M1

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.

▼B

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.

▼M1

Article 147

Results of the evaluation

(Article 99 of the Financial Regulation)

▼M3

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

▼M3

persons who were given that responsibility by the authorising officer responsible. The written record shall be kept for future reference.

▼B

2. ►M1 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:

▼M1

(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

(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;

▼M1

(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;

▼B

(g) where appropriate, the reasons why the contracting authority has decided not to award a contract.

▼M3

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.

▼B

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.

▼B

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.

▼M1

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.

▼M3

Article 149

Information for candidates and tenderers

(Articles 100(2), 101 and 105 of the Financial Regulation)

▼M1

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.

▼B

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.

▼M1

3. ►M3 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.

▼M1

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.

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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.

▼B

Section 4

Guarantees and control

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.

▼B

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.

▼M2

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.

▼B

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

▼M1

Article 154

Identification of the appropriate level for the calculation of thresholds

(Articles 104 and 105 of the Financial Regulation)

▼B

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.

▼M2

Article 155

Separate contracts and contracts with lots

(Articles 91 and 105 of the Financial Regulation)

▼B

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.

▼M3

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.

▼M1

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 one million euro 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.

▼B

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.

▼M3

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.

▼B

Article 156

Arrangements for estimating the value of certain contracts

(Article 105 of the Financial Regulation)

▼M1

1. For the purposes of calculating the estimated amount of a contract, the contracting authority shall include the contractors 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.

▼B

2. For service contracts, account shall be taken of:

▼M1

(a) in the case of insurance services, the premium payable and other forms of remuneration;

▼B

(b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;

▼M1

(c) in the case of design contracts, the fees, commissions payable and other forms of remuneration.

▼B

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.

▼M1

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;

▼M2

(b) EUR 5 278 000 for works contracts.

▼M1

▼M1

Article 158

Thresholds for application of the procedures under Directive 2004/18/EC

(Article 105 of the Financial Regulation)

▼M2

1. The thresholds referred to in Article 105 of the Financial Regulation shall be:

(a) EUR 137 000 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 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 for works contracts.

▼B

2. The time limits referred to in Article 105 of the Financial Regulation shall be those specified in Articles 140, 141 and 142.

▼M3

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 subparagraph. 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

▼M3

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).

▼B

Article 159

►C1 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

Article 160

Scope

(Article 108 of the Financial Regulation)

1. ►C1 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. ◄

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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;

▼M3

(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 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 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.

▼B

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:

▼M2

(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

(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.

▼M3

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.

▼B

Article 164

Content of grant agreements

(Article 108 of the Financial Regulation)

1. ►M3 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;

▼M3

(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.

▼B

(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;

▼M3

(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;

▼B

(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;

▼M3

(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;

▼B

(j) the arrangements and time-limits for approving those reports and for payment by the Commission;

▼M3

(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.

▼M2

1a. The grant agreement may lay down the arrangements and time-limits for suspension in accordance with Article 183.

▼M3

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.

▼B

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.

▼M3

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.

▼B

CHAPTER 2

Award principles

Article 165

No-profit rule

(Article 109(2) of the Financial Regulation)

▼M3

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

▼M3

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.

▼M2

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.

▼M3

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.

▼M1

Article 166

Annual programming

(Article 110(1) of the Financial Regulation)

1. ►M3 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.

▼B

Article 167

Content of calls for proposals

(Article 110(1) of the Financial Regulation)

1. Calls for proposals shall specify:

(a) the objectives pursued;

▼M3

(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;

▼B

(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.

▼M3

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.

▼B

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 No 1257/96 [1] and aid for crisis situations within the meaning of paragraph 2;

(b) in other exceptional and duly substantiated emergencies;

▼M2

(c) to bodies with a *de jure* or de facto monopoly, duly substantiated in the award decision;

▼M3

(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.

The cases referred to in point (f) of the first subparagraph shall be duly substantiated in the award decision.

▼B

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, peace-keeping and international security, promotion of international cooperation or development and

[1] OJ L 163, 2.7.1996, p. 1.

▼B

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)

▼M3

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*.

▼B

2. The following shall be published with the agreement of the beneficiary in accordance with point (f) of Article 164(1):

(a) the name and address of the beneficiaries;

(b) the subject of the grant;

▼M3

(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.

▼B

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.

▼M3

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.

([1]) OJ L 57, 27.2.2001, p. 5.

▼M3

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.

▼B

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.

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.

Article 172

External co-financing

(Article 113 of the Financial Regulation)

▼M1

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).

▼B

2. ►M2 The authorising officer responsible may accept co-financing in kind, if considered necessary or appropriate. ◄

(a) either the costs actually borne and duly supported by accounting documents;

▼B

(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.

▼M2

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.

▼M3

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 costaccounting 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

▼M3

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.

Article 172c

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.

▼B

CHAPTER 3

Award procedure

Article 173

Financing applications

(Article 114 of the Financial Regulation)

▼M3

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.

▼M2

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.

▼M3

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.

▼B

4. ►M2 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.

▼M2

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).

▼B

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.

▼M3

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.

▼B

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.

▼M2

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.

▼M3

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.

▼B

4. ►M2 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.

▼B

Article 178

Evaluation of applications and award

(Article 116 of the Financial Regulation)

1. ►M3 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.

▼M3

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.

▼B

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

(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.

▼M2

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.

▼B

CHAPTER 4

Payment and control

Article 180

Supporting documents for requests for payments

(Article 117 of the Financial Regulation)

▼M2

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.

▼M1

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.

▼B

2. ►M2 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. ◄

▼M2

Except in the case of lump sums and flat rate financing, the certificate on the financial statements and underlying accounts shall be compulsory

▼M2

for interim payments per financial year and for payments of balances in the following cases:

▼M3

(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.

▼M1

(b) operating grants of EUR 100 000 or more.

———————

▼M2

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:

▼M1

(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.

▼M3

(d) Beneficiaries of multiple grants who have provided independent certification offering equivalent guarantees on the control systems and methodology used to prepare their claims.

▼B

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.

▼M3

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:

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(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.

▼B

Article 182

Advance guarantee

(Article 118 of the Financial Regulation)

▼M2

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.

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2. ►M2 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 1 000 000 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. ►M1 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

▼B

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.

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In the cases referred to in the second subparagraph of paragraph 1, it shall be released only upon payment of the balance.

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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.

▼M1

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.

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CHAPTER 5

Implementation

▼M3

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.

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TITLE VII

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1

Presentation of the accounts

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.

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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.

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Article 186

Exception to the accounting principles

(Article 124 of the Financial Regulation)

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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.

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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 ►M3 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 ►M3 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.

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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.

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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.

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.

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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.

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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

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(c) other disposable assets which can quickly be converted to cash and whose value is stable.

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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.

Article 205

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.

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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.

CHAPTER 2

(Chapter 3 of the Financial Regulation)

Accounting

Section 1

Organisation of the accounts

Article 207

Organisation of the accounts

(Article 132 of the Financial Regulation)

1. The accounting officer of each institution and body referred to in ►M3 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.

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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.

Section 2

Accounting ledgers

Article 209

Accounting ledgers

(Article 135 of the Financial Regulation)

1. Each institution and each body referred to in ►M3 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 ►M3 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.

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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.

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Section 3

Chart of accounts

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Section 4

Registration

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.

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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.

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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.

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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.

Section 5

Reconciliation and verification

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.

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Section 6

Budget accounts

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 ►M3 EAGF ◄ and the corresponding payments shall also be recorded in the budget accounts.

Those commitments shall be presented in respect of total ►M3 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.

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CHAPTER 3

(Chapter 4 of the Financial Regulation)

Property inventories

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.

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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.

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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.

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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 ►M3 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.

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PART TWO

SPECIAL PROVISIONS

▼M3

TITLE I

(TITLE II OF PART II OF THE FINANCIAL REGULATION)

STRUCTURAL FUNDS, COHESION FUND, EUROPEAN FISHERIES FUND AND EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENT

▼B

Article 228

Repayment of payments on account

(Article 157 of the Financial Regulation)

In accordance with the regulations on ►M3 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.

TITLE II

(TITLE III OF THE FINANCIAL REGULATION)

RESEARCH

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.

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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.

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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.

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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 III

(TITLE IV OF THE FINANCIAL REGULATION)

EXTERNAL ACTIONS

CHAPTER I

GENERAL PROVISIONS

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.

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CHAPTER 2

Implementation of actions

Article 232

►C1 Financing agreement in decentralised management ◄

(Article 166 of the Financial Regulation)

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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.

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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:

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(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;

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(c) defining the adversarial clearance of accounts procedure, as provided for in Article ►M3 53c ◄ of the Financial Regulation, which may be used to identify the liability of the third country;

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(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 offsetting 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.

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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.

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Article 233a

Automatic decommitment of split commitments used in multi-annual 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 decommited. 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.

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Article 234

Bank accounts

(Article 166 of the Financial Regulation)

1. ►M1 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.

▼B

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

Article 235

Renting of buildings

(Article 167 of the Financial Regulation)

▼C1

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.

▼B

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. ►M3 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.

▼M3

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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)

▼M2

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.

▼B

2. For the purposes of this Chapter, the contract notice shall be published:

▼B

(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.

▼M3

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.

▼B

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:

▼M2

(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

(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.

▼M3

Contracts with a value of less than or equal to EUR 10 000 may be awarded on the basis of a single tender.

▼B

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.

▼M2

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.

▼M2

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.

▼B

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.

▼C1

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.

▼B

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. ►M2 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 insti-

▼B

tutional 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;

▼M2

(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;

▼M3

(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.

▼B

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.

▼M2

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.

▼B

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;

▼M2

(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

▼M2

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.

▼B

Article 243

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:

▼M2

(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 ►M3 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);

▼M3

(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.

▼M2

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.

▼B

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.

▼B

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. ►M2 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;

▼M2

(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;

▼M3

(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.

▼M2

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.

▼B

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:

▼M2

(a) for contracts with a value of EUR 5 000 000 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 5 000 000: a local open invitation to tender within the meaning of Article 122(2) and point (b) of Article 240(2);

▼B

(c) for contracts with a value of less than EUR 300 000: a competitive negotiated procedure within the meaning of paragraph 2.

▼M3

Contracts with a value of less than or equal to EUR 10 000 may be awarded on the basis of a single tender.

▼M2

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.

▼B

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;

▼B

(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. ►M2 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.

▼M2

(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.

▼M3

(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.

▼B

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.

▼M2

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.

▼B

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.

Article 249

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;

▼B

(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) ►C1 payment of pre-financing, ◄ and

(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; and

(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) ►C1 payment of pre-financing; ◄

▼B

(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.

▼M2

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.

▼B

Article 251

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

▼B

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) 90 days for works contracts,

(b) 60 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) 60 days for works contracts;

(b) 30 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.

▼B

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.

▼M2

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.

▼B

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.

CHAPTER 4

Grants

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;

▼M3

(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.

▼B

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.

▼M3

However, in the case of point (e) of paragraph 1, grounds shall be provided in the financing decision of the Commission.

▼B

CHAPTER 5

Imprest accounts and inventories

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.

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.

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.

▼B

TITLE IV

(TITLE V OF THE FINANCIAL REGULATION)

EUROPEAN OFFICES

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;

▼M2

(c) The European Communities Personnel Selection Office and the European Administrative School administratively attached to it;

▼B

(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.

▼M3

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.

▼B

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.

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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.

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▼B

TITLE V

(TITLE VI OF THE FINANCIAL REGULATION)

ADMINISTRATIVE APPROPRIATIONS

Article 262

Scope

(Article 177 of the Financial Regulation)

The administrative appropriations covered by this Title shall be those defined in Article 27.

▼M2

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.

▼B

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

▼B

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.

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.

▼M2

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.

▼B

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.

▼M3

TITLE VI

(TITLE VII OF PART II OF THE FINANCIAL REGULATION)

EXPERTS

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 multi-annual 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.

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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.

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PART THREE

TRANSITIONAL AND FINAL PROVISIONS

TITLE I

TRANSITIONAL PROVISIONS

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.

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.

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.

▼M3

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.

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TITLE II

FINAL PROVISIONS

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.

Article 271

Updating of thresholds and amounts

▼M3

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.

▼M2

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.

▼B

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.

([1]) OJ L 375, 23.12.1989, p. 11.
([2]) OJ L 68, 16.3.2000, p. 3.