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►**B** **COUNCIL REGULATION (EC, EURATOM) No 1995/2006**

of 13 December 2006

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

(OJ L 390, 30.12.2006, p. 1)

Corrected by:

►**C1** Corrigendum, OJ L 48, 22.2.2008, p. 88 (1995/2006)

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COUNCIL REGULATION (EC, EURATOM) No 1995/2006

of 13 December 2006

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

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community, and in particular Article 279 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 183 thereof,

Having regard to the proposal from the Commission,

Having regard to the opinion of the European Parliament ([1]),

Having regard to the opinion of the Court of Auditors ([2]),

Having regard to the opinion of the European Economic and Social Committee ([3]),

Whereas:

(1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ([4]) (hereinafter the Financial Regulation), lays down the legal foundations of the financial management reform. As such, its essential elements should be maintained and strengthened. Transparency, in particular, should be reinforced by providing for information on beneficiaries of Community funds. Moreover, the budgetary principles established by the Financial Regulation should be respected in all legislative acts and derogations should be kept to a strict minimum.

(2) In the light of practical experience, certain amendments should be made to the Financial Regulation in order to facilitate budget implementation and the attainment of the underlying policy objectives and to adjust certain procedural and documentary requirements so as to make them more proportionate to the risks and cost involved, in accordance with the principle of proportionality as set out in the third subparagraph of Article 5 of the EC Treaty.

(3) All amendments should contribute to achieving the objectives of the Commission's reforms and help improve or ensure sound financial management, thus contributing to obtaining a reasonable assurance of the legality and regularity of financial operations.

(4) Account should be taken of provisions implementing the revenue and expenditure of the budget, contained in the basic legal acts adopted for the period 2007 to 2013, in order to ensure coherence between those acts and the Financial Regulation.

(5) It should be clarified that sound financial management requires effective and efficient internal control, and the main features and objectives of internal control systems should be defined.

(6) In order to ensure the transparency of the use of funds deriving from the budget, it is necessary to make available information on

([1]) Opinion delivered on 6 July 2006 (not yet published in the Official Journal).
([2]) OJ C 13, 18.1.2006, p. 1.
([3]) OJ C 28, 3.2.2006, p. 83.
([4]) OJ L 248, 16.9.2002, p. 1.

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the beneficiaries of these funds within certain limits necessary to protect legitimate public and private interests and taking into account the particular accounting period for the European Agricultural Guarantee Fund.

(7) As regards the principle of unity of the budget, the rule governing interest generated by pre-financing should be simplified. The administrative burden involved in the recovery of that interest is disproportionate to the objective pursued and it would be more efficient to allow interest to be set off against the final payment to the beneficiary.

(8) With regard to the principle of annuality, more flexibility and transparency should be introduced to respond to functional needs. The carry-over of appropriations should exceptionally be permitted in the case of expenditure on direct payments to farmers under the European Agricultural Guarantee Fund (EAGF) set up by Council Regulation (EC) No 1290/2005 of 21 June 2005, on the financing of the common agricultural policy ([1]).

(9) Payment requests from the Member States under the new agricultural regulations will be concentrated overwhelmingly at the beginning of the budget year *n*. Therefore, the maximum threshold for advance commitments against the EAGF (from 15 November of year *n-1*) to cover routine management expenditure (charged to the budget of year *n*) should be increased to three quarters of corresponding appropriations in the last adopted agricultural budget. As regards the limit on advance commitment of administrative expenditure, the text should be amended so that it refers to appropriations decided by the budgetary authority, therefore excluding transfers of appropriations.

(10) The use of non-differentiated appropriations for veterinary measures, charged against the EAGF, unduly hampers the implementation of such measures, especially in respect of the limits placed on the possibilities for carry-overs. The use of differentiated appropriations for such expenditure should therefore be permitted, as this is more in keeping with the multi-annual nature of the actions.

(11) As regards the principle of universality, two points should be added to the list of assigned revenue. First, as is currently possible under specific research programmes, it should be possible for the Member States to make ad hoc contributions, as assigned revenue, for projects under external relations programmes managed by the Commission. Second, proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are being replaced or scrapped should be treated as assigned revenue, as an encouragement to authorising officers to obtain the best prices for their disposal.

(12) At present, the Commission must be authorised by the budgetary authority before accepting any donations, such as gifts or bequests, which involve a charge. To avoid unnecessary and cumbersome procedures, authorisations should be made compulsory only in the case of donations exceeding a certain value and involving significant charges.

(13) The rules governing transfers of appropriations should be simplified and clarified on certain points because they have proved cumbersome or unclear in practice.

(14) For reasons of efficiency, the Commission should be allowed to decide autonomously on transfers from the reserve in cases where no basic act exists for the action concerned at the time when the

([1]) OJ L 209, 11.8.2005, p. 1.

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budget is established, but where the basic act is adopted in the course of the year.

(15) The rules on the Commission's administrative transfers should be adapted to the new Activity-Based Budgeting (ABB) structure. Thus, provision should be made for an exemption from the 'notification procedure'. During the last month of the financial year, the Commission should be allowed to decide autonomously on transfers of appropriations concerning staff expenditure, within certain limits.

(16) A number of articles of the Financial Regulation should be amended because of the abolition of the reserve relating to Community loans and loan guarantees to third countries, and because of the adoption of a new provisioning mechanism for the Guarantee Fund for external actions.

(17) In order to accelerate the mobilisation of funds in exceptional cases of international humanitarian disasters and crises occurring at the end of the budgetary year, the Commission should be allowed to autonomously transfer unused budgetary appropriations available under the relevant heading of the multi-annual financial framework to the budget titles concerned.

(18) As regards the budget procedure, the requirement laid down in the Financial Regulation that the budget be published within two months of adoption has proven unrealistic, and three months would be more practicable. The concept of an 'Activity Statement' should be inserted into Financial Regulation in order to render official one of the key elements of ABB, and the content of such statements should be defined more precisely in order to make them operational. Payment schedules should be included in the working documents accompanying the preliminary draft budget listed in the Financial Regulation instead of in the budget itself, as they are not relevant to the budgetary procedure and are unnecessarily burdensome.

(19) As regards the implementation of the budget, some adjustments are necessary in order to better reflect the specific features of the Common Foreign and Security Policy (CFSP). For reasons of legal clarity, the forms basic acts can take under the EC Treaty and under Title V and VI of the Treaty on European Union should be identified in the Financial Regulation instead of in the implementing rules. In addition, a specific provision should be added in order to properly reflect the types of preparatory measures that may be undertaken in the field of the CFSP.

(20) As regards methods of management, the relevant Article of the Financial Regulation should be restructured for the purpose of clarity. It is also necessary to remove the limitation of shared management to the European Agricultural Guidance and Guarantee Fund (EAGGF) and Structural Funds, because additional programmes will now operate under shared management. The requirements for joint management need to be made clearer. The relevant provisions of the Financial Regulation should be completed to include in particular the European Investment Bank and the European Investment Fund as Community bodies to which tasks can be delegated by the Commission. The criteria set out in the Financial Regulation for using national public-sector bodies should be simplified in order to facilitate their use and to respond to growing operational needs, and the scope of the provision should be extended to international public bodies. The Financial Regulation should also clarify the position of special advisors or heads of mission appointed by the Council to manage certain actions in the context of the CFSP.

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(21) The responsibilities of the Member States under shared management should be set out in more detail, to take account of the ongoing discussions between the institutions concerning the discharge procedure and the appropriate control systems to put in place, reflecting the mutual responsibilities of the Member States and the Commission. Following the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ([1]), Member States should be obliged to produce an annual summary of the available audits and declarations in relation to the funds under shared management.

(22) The prohibition on delegating implementation tasks to private bodies should be modified in the Financial Regulation because the terms of that prohibition have turned out to be unnecessarily strict. It should be possible, for example, for the Commission to engage the services of a travel agency or a conference organiser to take charge of reimbursing the costs of participants at conferences, provided that no discretionary powers are exercised by the private company.

(23) The establishment by several institutions of joint financial irregularities panels should be made possible.

(24) Accounting officers' responsibility for certifying the accounts on the basis of the financial information supplied to them by the authorising officers should be clarified. To this end, the accounting officer should be empowered to check the information received by the authorising officer by delegation and to enter reservations, if necessary.

(25) The relationship between the Commission's internal auditor and bodies set up by the Communities should be clarified. Those bodies should have their own internal audit function reporting to their own management boards, whereas the Commission's internal auditor reports to the College of Commissioners on the procedures and systems of the Commission. It should be necessary for the Commission's internal auditor only to confirm that the bodies' internal audit functions meet international standards, and for that purpose he should be able to conduct assessments of the quality of the internal audit activity.

(26) A period of limitation on the validity of claims should be introduced. The Community, unlike many of its Member States, is not subject to a period of limitation under which financial claims are extinguished after a certain period of time. Nor is the Community restricted by a period of limitation in the pursuit of its claims against third persons. The introduction of such a period of limitation corresponds to sound financial management.

(27) The Financial Regulation should reflect the importance of framework contracts in the management of public procurement. It should encourage the use of interinstitutional procurement procedures and allow for the possibility of joint procurement procedures between an institution and a contracting authority from a Member State.

(28) Certain technical adjustments should be made to ensure that the terminology of the Financial Regulation is fully in line with that of Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ([2]). The possibility, open to Member

([1]) OJ C 139, 14.6.2006, p. 1.
([2]) OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 2083/2005 (OJ L 333, 20.12.2005, p. 28).

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States under that Directive, to determine specific procedures for contracts declared secret when their performance must be accompanied by special security measures or when the protection of the Member State so requires, should be made available to the Community institutions.

(29) In line with Directive 2004/18/EC, the rules on exclusion from a procurement procedure need to be clarified. In addition, for reasons of legal certainty and proportionality, a maximum period of exclusion should be specified in the Financial Regulation. In the light of Directive 2004/18/EC, an exception to the rules on exclusion should be made for the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, from the receivers or liquidators of a bankruptcy, through an arrangement with creditors, or through a similar procedure under national law.

(30) It should be made obligatory under the Financial Regulation for candidates or tenderers in procurement procedures to certify, if so requested, the ownership or the management, control and power of representation of the legal entity submitting a tender or that their subcontractors are not in one of the situations referred to in Article 93 of the Financial Regulation. Tenderers should not be required to certify that they are not in one of the situations giving rise to exclusion when they participate in a procurement procedure for the award of very low-value contracts.

(31) In order to enhance the effectiveness of procurement procedures, the database of candidates or tenderers in situations of exclusion should be common to the institutions, executive agencies and bodies referred to in the Financial Regulation.

(32) In order to take account of the interests of unsuccessful tenderers, it is appropriate to provide that a contract covered by Directive 2004/18/EC cannot be signed before the end of a reasonable standstill period.

(33) The obligations of the institutions to suspend a procurement procedure or a contract under the Financial Regulation in cases of fraud and irregularities should be clarified in order to enhance the operation of the relevant provisions of that Regulation.

(34) As regards grants, simplification of the rules is needed. The requirements for checks and guarantees should be more proportionate to the financial risks involved. The definition of grants needs to be clarified, in particular as regards financing related to loan activities or shareholdings and expenditure relating to fisheries markets. To improve the management of grants and to simplify procedures, it should be possible to award grants either by a decision of the institution or by a written agreement with the beneficiary.

(35) For reasons of clarity and transparency, the use of lump-sum and flat-rate payments should be authorised alongside the more traditional method of reimbursing costs actually incurred.

(36) For reasons of legal clarity, the exceptions to the non-profit rule which are currently provided for in the implementing rules should be included in the Financial Regulation. Furthermore, it should be made clear that the purpose of awarding grants to certain actions is to help reinforce financial capacity or generate an income.

(37) The rule that grants should be awarded on the basis of calls for proposals has proved its worth. Experience has shown, however, that in certain cases the nature of the action leaves no choice in the selection of beneficiaries; such cases should thus be exempted from this rule.

(38) The rule that the same action should not give rise to more than one grant to any one beneficiary should be adjusted. Some basic

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legal acts do permit Community funding from different sources to be combined, and such cases may increase in future in order to ensure the effectiveness of expenditure. However, it should be made clear in the Financial Regulation that the same costs cannot be financed twice by the Community budget.

(39) The rule that the agreement on an operating grant may not be signed more than four months after the start of the beneficiary's financial year has proven unnecessarily rigid. This deadline should thus be extended to six months.

(40) For reasons of simplification, in the case of operating grants taking the form of lump-sums or flat-rate payments, the rule that grants shall gradually decrease should be removed.

(41) Certain restrictions on the eligibility of beneficiaries should be removed in order to allow for grants to natural persons and certain types of entity which lack legal personality. In line with the principle of proportionality, for very low-value grants, the authorising officer may refrain from requesting applicants to certify that they are not in one of the situations of exclusion under the relevant provisions of the Financial Regulation.

(42) While grants will continue to be awarded on the basis of selection and award criteria, there is no need in practice to have those criteria evaluated by a committee specifically set up for that purpose, and that requirement should therefore be removed.

(43) As regards the procurement standards to be applied by beneficiaries of grants, the current rule in the Financial Regulation is unclear and should be simplified. Moreover, express provision should be made for the case in which the implementation of an action necessitates financial support to third parties.

(44) As regards the rules on accounting and the accounts, the Financial Regulation should make it possible for the Commission's accounting officer to determine, in compliance with international standards, which other bodies in addition to those receiving Community subsidies fall within the scope of the consolidation of the accounts, it being understood that the consolidation of accounts neither entails any transfer of funds from self-financed bodies to the general budget of the European Union nor influences their financial and operational autonomy and the discharge procedures for their accounts.

(45) In view of the coming into existence of the EAGF, which is to replace the European Agricultural Guidance and Guarantee Fund (EAGGF) with respect to financing of market measures from 1 January 2007, certain terminology in the Financial Regulation should be adjusted. Clarification is also required in the effect that provisional commitments may be made after the normal two-month deadline following receipt of the Member States' statements of expenditure in cases where a decision on a transfer of appropriations is expected. The special provisions of the Financial Regulation concerning transfers should be clarified.

(46) The terminology should also be adjusted so that reference is made only to the Structural Funds, the Cohesion Fund, the Fisheries Fund and the Rural Development Fund. References to pre-accession structural measures (ISPA) and agricultural measures (Sapard) should be removed, since they involve management by third countries on a decentralised basis in accordance with the Financial Regulation and will continue to be implemented largely in the same way as at present. As regards the making available again of decommitted appropriations, in line with the new basic acts for structural actions in the period 2007 to 2013 which cover the case of *force majeure*, provision should be maintained in the Financial Regu-

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lation only for cases where a manifest error is attributable to the Commission.

(47) A provision should be added to the Financial Regulation to cover the assigned revenue generated by the winding-up of the European Coal and Steel Community and the making available of the corresponding appropriations.

(48) It is necessary to allow appropriations, which have been decommitted as a result of total or partial non-implementation of the projects for which they were earmarked, to be made available again. However, that should be possible only under strict conditions, and only in the area of research, since research projects present a higher financial risk than those in other policy areas.

(49) As regards external actions, it should be clarified that, in line with existing practice, the grant procedures to be applied by third countries in the case of decentralised management have to be specified in the financing agreements concluded with those countries. The '*n+3* rule', according to which individual contracts and agreements which implement such financing agreements have to be concluded no later than three years following the date of conclusion of the financing agreement, should apply. Specific rules should be foreseen for the case of decentralised management of multi-annual programmes under Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance ([1]) and Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument ([2]).

(50) In order to facilitate management, it should be made possible for the institutions to delegate the powers of authorising officers to Directors of inter-institutional European Offices for the management of appropriations entered in their respective sections of the budget. While their content should remain unchanged, the relevant Articles of the Financial Regulation should be slightly re-structured in order to clarify the sub-delegation of authorising powers by the Directors of Offices.

(51) The procedure under which the budgetary authority may issue an opinion on a building project should be clarified.

(52) Successive framework research programmes have facilitated the work of the Commission by laying down simplified rules for the selection of external experts for evaluation of proposals or grant applications and technical assistance for the follow-up and evaluation of projects funded. This procedure should be made available in respect of all other programmes.

(53) Transitional provisions should be added. First, as regards the making available again of decommitted appropriations corresponding to commitments made during the 2000 to 2006 Structural Funds programming period, the case of *force majeure* should continue to be applied as provided currently in the Financial Regulation until the closure of the assistance. This is in order to avoid disruption of the current system since *force majeure* is treated differently in Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund ([3]). Second, a transitional provision should be added to the Financial Regulation to deal with the implementation of the provisions on the central database for exclusion

([1]) OJ L 210, 31.7.2006, p. 82.
([2]) OJ L 310, 9.11.2006, p. 1.
([3]) OJ L 210, 31.7.2006, p. 25.

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from participation in procurement and grant procedures. Finally, a similar provision should be added to permit the outstanding Community commitments to be financially settled in order to close the assistance provided for in the Regulations governing the Structural Funds and the Cohesion Fund for the 2000 to 2006 programming period. For the appropriations concerning operational expenditure, the possibility for the Commission to make transfers from one title to another must be retained, provided that the appropriations in question are for the same objective. Similarly, the Commission should be able to continue to make transfers from one title to another when the appropriations in question relate to Community initiatives or technical assistance and innovative measures, provided that they are transferred to measures of the same nature. This means, for instance, transferring appropriations relating to one Community initiative to another in a different title.

(54) Regulation (EC, Euratom) No 1605/2002 should therefore be amended accordingly,

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC, Euratom) No 1605/2002 is hereby amended as follows:

1. in Article 1, the first paragraph shall be replaced by the following:

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

2. Article 3 shall be replaced by the following:

   'Article 3

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

3. in Article 5, paragraph 4 shall be replaced by the following:

   '4. Subject to Articles 5a, 18 and 74, interest yielded by the funds which are the property of the Communities shall be entered in the budget as miscellaneous revenue.';

4. the following Article shall be added in Chapter 1 of Title II of Part One:

   'Article 5a

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

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

   2. Interest shall not be due to the Communities in the following cases:

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(a) pre-financing which does not represent a significant amount, as determined in the implementing rules;

(b) pre-financing paid under a procurement contract within the meaning of Article 88;

(c) pre-financing paid to Member States;

(d) pre-financing paid under the pre-accession aid;

(e) advances paid to members of the institutions and to staff in accordance with the Staff Regulations of officials of the European Communities and the Conditions of employment of other servants of the European Communities, hereinafter "the Staff Regulations";

(f) pre-financing paid in the framework of joint management as referred to in point (c) of Article 53(1).';

5. Article 9 is hereby amended as follows:

(a) in the introductory phrase of paragraph 2, the words 'Appropriations for commitment of differentiated appropriations' shall be replaced by the words 'Commitment appropriations';

(b) in the first sentence of paragraph 3, the words 'Appropriations for payment of differentiated appropriations' shall be replaced by the words 'Payment appropriations';

6. in Article 11, the words 'Article 157' shall be replaced by the words 'Articles 157 and 160a';

7. in Article 16, the second paragraph shall be replaced by the following:

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

8. Article 18(1) is hereby amended as follows:

(a) the introductory phrase shall be replaced by the following:

'Without prejudice to Article 160(1a) and Article 161(2), the following items of revenue shall be used to finance specific items of expenditure:';

(b) the following point shall be inserted:

'(aa) financial contributions from Member States and other donor countries, including in both cases their public and parastatal agencies, or from international organisations to certain external aid projects or programmes financed by the Community and managed by the Commission on their behalf, pursuant to the relevant basic act;';

(c) the following point shall be inserted:

'(ea) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are being replaced or scrapped when the book value is fully depreciated;';

9. in Article 19(2), the first sentence shall be replaced by the following:

'Acceptance of donations of a value of EUR 50 000 or more which involve a financial charge, including follow-up costs, exceeding 10 % of the value of the donation made, shall be subject to the authorisation of the European Parliament and of

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the Council, both of which shall act on the matter within two months of the date of receipt of the request from the Commission.';

10. Article 22 shall be replaced by the following:

'Article 22

1. Any institution other than the Commission may, within its own section of the budget, transfer appropriations:

(a) from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made;

(b) from one chapter to another and from one article to another without limit.

2. Three weeks before making the transfers referred to in paragraph 1, the institutions shall inform the budgetary authority of their intentions. In the event of duly substantiated reasons being raised within this period by either branch of the budgetary authority, the procedure laid down in Article 24 shall apply.

3. Any institution other than the Commission may propose to the budgetary authority, within its own section of the budget, transfers from one title to another exceeding the limit of 10 % of the appropriations for the financial year on the line from which the transfer is to be made. Those transfers shall be subject to the procedure laid down in Article 24.

4. Any institution other than the Commission may, within its own section of the budget, make transfers within articles without informing the budgetary authority beforehand.';

11. Article 23 is hereby amended as follows:

(a) paragraph 1 is hereby amended as follows:

(i) point (b) shall be replaced by the following:

'(b) as regards expenditure on staff and administration, transfer appropriations from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made, and up to a maximum of 30 % of the appropriations for the year shown on the line to which the transfer is made;';

(ii) the following point shall be added:

'(d) transfer appropriations, as soon as the basic act is adopted pursuant to the procedure laid down in Article 251 of the Treaty, from the "provisions" title referred to in Article 43 for the cases where no basic act existed for the action concerned when the budget was established.';

(iii) the second subparagraph shall be replaced by the following:

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

(iv) the following subparagraphs shall be added:

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

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

(b) in paragraph 2, the words 'paragraph 1(c)' shall be replaced by the words 'paragraph 1';

12. Article 26 is hereby amended as follows:

(a) paragraph 1 shall be replaced by the following:

'1. Transfers within the titles of the budget devoted to the European Agricultural Guarantee Fund (EAGF), the Structural Funds, the Cohesion Fund, the European Fisheries Fund, the European Agricultural Fund for Rural Development (EAFRD) and Research shall be the subject of special provisions under Titles I, II and III of Part Two.';

(b) in paragraph 2, the first subparagraph shall be replaced by the following:

'Decisions on transfers to allow the utilisation of the reserve for emergency aid shall be taken by the budgetary authority on a proposal from the Commission. A separate proposal must be submitted for each individual operation.';

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(ba) in paragraph 2, the second subparagraph shall be replaced by the following:

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

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(c) the following paragraph shall be added:

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

13. Article 28 is hereby amended as follows:

(a) paragraph 1 shall be replaced by the following:

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

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

(b) paragraph 3 shall be replaced by the following:

'3. In order to prevent the risk of fraud and irregularities, the financial statement referred to in paragraph 1 shall record any information regarding existing and planned fraud prevention and protection measures.';

14. the following Article shall be inserted:

'Article 28a

1. The budget shall be implemented in compliance with effective and efficient internal control as appropriate in each management mode, and in accordance with the relevant sector-specific regulations.

2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance of achieving the following objectives:

(a) effectiveness, efficiency and economy of operations;

(b) reliability of reporting;

(c) safeguarding of assets and information;

(d) prevention and detection of fraud and irregularities;

(e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multi-annual character of programmes as well as the nature of the payments concerned.';

15. in Article 29, paragraph 2 shall be replaced by the following:

'2. The President of the European Parliament shall have the budget and amending budgets, as finally adopted, published in the Official Journal of the European Union.

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

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

16. in Article 30, the following paragraph 3 shall be added:

'3. The Commission shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from the budget held by it when the budget is implemented on a centralised basis and directly by its departments, and information on the beneficiaries of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management.

This information shall be made available with due observance of the requirements of confidentiality, in particular the protection of personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data (*) and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2001 on the protection of individuals

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with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data (**), and of the requirements of security, taking into account the specificities of each management mode referred to in Article 53 and where applicable in conformity with the relevant sector-specific rules.

17. Article 33(2) is hereby amended as follows:

(a) point (d) shall be replaced by the following:

'(d) the activity statements containing the following:

— information on the achievement of all previously set specific, measurable, achievable, relevant and timed objectives for the various activities as well as new objectives measured by indicators,

— full justification and cost-benefit approach for proposed changes in the level of appropriations,

— clear rationale for intervention at the EU level in keeping, inter alia, with the principle of subsidiarity,

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

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

(b) the following point shall be added:

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

18. in Article 37(1), the following subparagraph shall be added:

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

19. in Article 40, point (a) shall be replaced by the following:

'(a) a general statement of revenue and expenditure;';

20. in Article 43(1), the second subparagraph shall be replaced by the following:

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

21. in the second paragraph of Article 44, the words 'Articles 22, 23 and 25' shall be replaced by the words 'Articles 23 and 25';

22. Article 45 shall be replaced by the following:

'Article 45

1. The Commission section of the budget shall include a reserve for emergency aid for third countries.

2. The reserve referred to in paragraph 1 shall be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 24 and 26.';

23. Article 46(1) is hereby amended as follows:

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(a) point (1) is hereby amended as follows:

(i) the introductory phrase shall be replaced by the following:

'in the general statement of revenue and expenditure:';

(ii) point (f) shall be deleted;

(iii) point (g) shall be replaced by the following:

'(g) appropriate remarks on each subdivision, as set out in Article 41(1)';

(b) point (2) shall be replaced by the following:

'(2) in the section for each institution, the revenue and expenditure shall be shown in the same structure as in point (1)';

(c) in point (3), point (c) shall be replaced by the following:

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

(d) point (5) shall be replaced by the following:

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

24. in the second subparagraph of Article 47(1), the words 'grades A1, A2 and A3' shall be replaced by the words 'grades AD 16, AD 15 and AD 14';

25. Article 49 shall be replaced by the following:

'Article 49

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

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

2. In application of the EC Treaty and the Euratom Treaty, a basic act is an act adopted by the legislative authority and may take the form of a regulation, a directive, a decision within the meaning of Article 249 of the EC Treaty or a decision *sui generis*.

3. In application of Title V of the Treaty on European Union (concerning Common Foreign and Security Policy — CFSP), a basic act may take one of the forms specified in Articles 13(2) and (3), 14, 18(5), 23(1) and (2) and 24 of the Treaty on European Union.

4. In application of Title VI of the Treaty on European Union (concerning Police and Judicial Cooperation in Criminal Matters), a basic act may take one of the forms referred to in Article 34(2) of the Treaty on European Union.

5. Recommendations and opinions do not constitute basic acts within the meaning of this Article, nor do resolutions, conclusions, declarations or other acts which have no legal effects.

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6. By way of derogation from paragraphs 1 to 4, the following may be implemented without a basic act provided the actions which they are intended to finance fall within the powers of the Communities or the European Union:

(a) appropriations for pilot schemes of an experimental nature designed to test the feasibility of an action and its usefulness. The relevant commitment appropriations may be entered in the budget for not more than two successive financial years;

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

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

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

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

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

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

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

26. in Article 50, the following paragraph shall be added:

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

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27. Article 52 shall be replaced by the following:

'Article 52

1. All financial actors and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Communities. Should such a case arise, the person in question must refrain from such actions and refer the matter to the competent authority.

2. There is a conflict of interests where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with the beneficiary.';

28. Article 53 shall be replaced by the following:

'Article 53

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

(a) on a centralised basis;

(b) by shared or decentralised management;

(c) by joint management with international organisations.';

29. the following Articles shall be inserted:

'Article 53a

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

Article 53b

1. Where the Commission implements the budget by shared management, implementation tasks shall be delegated to Member States. That method shall apply in particular to the actions referred to in Titles I and II of Part Two.

2. Without prejudice to complementary provisions included in relevant sector-specific regulations, and in order to ensure in shared management that the funds are used in accordance with the applicable rules and principles, the Member States shall take all the legislative, regulatory and administrative or other measures necessary for protecting the Communities' financial interests. To this effect they shall in particular:

(a) satisfy themselves that actions financed from the budget are actually carried out and to ensure that they are implemented correctly;

(b) prevent and deal with irregularities and fraud;

(c) recover funds wrongly paid or incorrectly used or funds lost as a result of irregularities or errors;

(d) ensure, by means of relevant sector-specific regulations and in conformity with Article 30(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget.

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

3. Member States shall produce an annual summary at the appropriate national level of the available audits and declarations.

4. In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.

Article 53c

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

2. In order to ensure that the funds are used in accordance with the applicable rules, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to assume final responsibility for the implementation of the budget.

3. Third countries to which implementation tasks are delegated shall ensure, in conformity with Article 30(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget.

Article 53d

1. Where the Commission implements the budget by joint management, certain implementation tasks shall be delegated to international organisations, in accordance with the implementing rules, in the following cases:

(a) wherever the Commission and the international organisation are bound by a long-term framework agreement laying down the administrative and financial arrangements for their cooperation;

(b) wherever the Commission and the international organisation elaborate a joint project or programme;

(c) where the funds of several donors are pooled and are not earmarked for specific items or categories of expenditure, that is to say, in the case of multi-donor actions.

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

2. Individual agreements concluded with international organisations for the award of financing shall contain detailed provisions for the implementation of the tasks entrusted to such international organisations.

3. International organisations to which implementation tasks are delegated shall ensure, in conformity with Article 30(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the budget.';

30. Article 54 is hereby amended as follows:

(a) paragraph 1 shall be replaced by the following:

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

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

(b) paragraph 2 is hereby amended as follows:

(i) the first sentence shall be replaced by the following:

‘Within the limits laid down in paragraph 1, the Commission may, when implementing the budget by indirect centralised management or by decentralised management under Articles 53a or 53c, delegate tasks of public authority and in particular budget implementation tasks to: […]’;

(ii) point (b) shall be replaced by the following:

‘(b) bodies set up by the Communities as referred to in Article 185 and other specialised Community bodies, such as the European Investment Bank or the European Investment Fund, provided that to do so is compatible with the tasks of each body as defined in the basic act.’;

(iii) point (c) shall be replaced by the following:

‘(c) national or international public-sector bodies or bodies governed by private law with a public-service mission providing adequate financial guarantees and complying with the conditions provided for in the implementing rules.’;

(iv) the following point shall be added:

‘(d) persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on European Union, and identified in the relevant basic act within the meaning of Article 49 of this Regulation.’;

(c) in paragraph 3, the second subparagraph shall be replaced by the following:

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

31. Articles 55 and 56 shall be replaced by the following:

‘Article 55

1. The executive agencies shall be legal persons under Community law created by Commission Decision to which powers may be delegated to implement all or part of a Community programme or project on behalf of the Commission and under its responsibility in accordance with Council Regulation (EC) No 58/2003 of 19 December 2002 laying down the statute for executive

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agencies to be entrusted with certain tasks in the management of Community programmes (*).

2. Implementation of the corresponding operational appropriations shall be carried out by the director of the agency.

Article 56

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

(a) transparent procurement and grant-award procedures which are non-discriminatory and exclude any conflict of interest and which are in accordance with the provisions of Titles V and VI respectively;

(b) an effective and efficient internal control system for the management of operations, which includes effective segregation of the duties of authorising officer and accounting officer or of the equivalent functions;

(c) an accounting system that enables the correct use of Community funds to be verified and the use of funds to be reflected in Community accounts;

(d) an independent external audit;

(e) public access to information at the level provided for in Community Regulations;

(f) adequate annual *ex post* publication of beneficiaries of funds deriving from the budget in conformity with Article 30(3).

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

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

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

— in the case of pooling of funds, and

— under the conditions provided in the basic act,

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

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

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

(*) OJ L 11, 16.1.2003, p. 1.';

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

(b) to ensure that the audit referred to in point (d) of paragraph 1 is exercised by a national institution for independent external auditing;

(c) to conduct regular checks to ensure that the actions to be financed from the budget have been implemented correctly;

(d) to take appropriate measures to prevent irregularities and fraud and, if necessary, to bring legal proceedings to recover funds wrongly paid.

3. The Commission shall ensure supervision, evaluation and control of the implementation of the tasks entrusted. It shall take the equivalence of control systems into account when it carries out controls using its own control systems.

32. in Article 57, paragraph 1 shall be replaced by the following:

'1. The Commission may not entrust measures of implementation of funds deriving from the budget, including payment and recovery, to external private-sector entities or bodies, except in the case referred to in Article 54(2)(c) or in specific cases where the payments involved are to be made to beneficiaries determined by the Commission, are subject to conditions and amounts fixed by the Commission and do not involve the exercise of discretion by the entity or body making the payments.';

33. Article 59 is hereby amended as follows:

(a) the following paragraph shall be inserted:

'1a. For the purposes of this Title, the term "staff" refers to persons covered by the Staff Regulations.';

(b) paragraph 2 shall be replaced by the following:

'2. Each institution shall lay down in its internal administrative rules the staff of an appropriate level to whom it delegates in compliance with the conditions in its rules of procedure the duties of the authorising officer, the scope of the powers delegated and the possibility for the persons to whom these powers are delegated to subdelegate them.';

(c) paragraph 3 shall be replaced by the following:

'3. The powers of authorising officer shall be delegated or subdelegated only to staff.';

34. in Article 60, paragraph 7 shall be replaced by the following:

'7. The authorising officer by delegation shall report to his institution on the performance of his duties in the form of an annual activity report together with financial and management information confirming that the information contained in the report presents a true and fair view except as otherwise specified in any reservations related to defined areas of revenue and expenditure.

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

35. Article 61 is hereby amended as follows:

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(a) in paragraph 1, point (e), the following sentence shall be added:

'the accounting officer shall be empowered to verify the respect of validation criteria;';

(b) the following paragraphs shall be inserted:

'2a. Before the adoption of the accounts by the institution, the accounting officer shall sign them off, thereby certifying that he has a reasonable assurance that the accounts present a true and fair view of the financial situation of the institution.

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

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

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

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

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

2c. The accounting officers of the other institutions and agencies shall sign off their annual accounts and send them to the Commission's accounting officer.';

(c) paragraph 3 shall be replaced by the following:

'3. Save as otherwise provided in this Regulation, only the accounting officer is empowered to manage cash and cash equivalents. He shall be responsible for their safekeeping.';

36. in Article 62, the first paragraph shall be replaced by the following:

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

37. Article 63 shall be replaced by the following:

'Article 63

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

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

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

38. in Article 65, paragraph 1 shall be replaced by the following:

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‘1. The provisions of this Chapter are without prejudice to any liability under criminal law which the financial actors referred to in Article 64 may incur as provided in the applicable national law and in the provisions in force on the protection of the Communities' financial interests and on the fight against corruption involving officials of the Communities or officials of Member States.’;

39. Article 66 is hereby amended as follows:

(a) paragraph 1 shall be replaced by the following:

‘1. The authorising officer shall be liable for payment of compensation as laid down in the Staff Regulations.’;

(b) the following paragraph shall be inserted:

‘1a. The obligation to pay compensation shall apply in particular if:

(a) the authorising officer, whether intentionally or through gross negligence on his part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and the implementing rules;

(b) the authorising officer, whether intentionally or through gross negligence on his part, omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the institution liable to civil action by third parties.’;

(c) paragraph 3 shall be replaced by the following:

‘3. In the event of subdelegation within his services, the authorising officer by delegation continues to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by subdelegation.’;

(d) in paragraph 4, the first subparagraph shall be replaced by the following:

‘4. Each institution shall set up a specialised financial irregularities panel or participate in a joint panel established by several institutions. The panels shall function independently and determine whether a financial irregularity has occurred and what the consequences, if any, should be.’;

40. Article 73(2) shall be replaced by the following:

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

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

41. the following Article shall be inserted:

‘Article 73a

Without prejudice to the provisions of specific regulations and the application of the Council Decision relating to the Communities'

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own resources system, entitlements of the Communities in respect of third parties and entitlements of third parties in respect of the Communities shall be subject to a limitation period of five years.

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

42. in Article 75(2), the words 'Article 49(2)' shall be replaced by the words 'Article 49(6)(e)';

43. in Article 77(3), the third subparagraph shall be replaced by the following:

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

44. in Article 80, the following paragraph shall be added:

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

45. in Article 86(1), point (b) shall be replaced by the following:

'(b) for assessing the efficiency and effectiveness of the internal control and audit systems applicable to every budgetary implementation operation.';

46. in Article 87, the second paragraph shall be replaced by the following:

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

47. Article 88 shall be replaced by the following:

'Article 88

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

These contracts comprise:

(a) contracts for the purchase or rental of a building;

(b) supply contracts;

(c) works contracts;

(d) service contracts.

2. Framework contracts are contracts concluded between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. They shall be governed by the provisions of this Title concerning the award procedure, including advertising.

3. This Title does not relate to grants, without prejudice to Articles 93 to 96.';

48. in Article 89(2), the following subparagraph shall be added:

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

49. Article 90 is hereby amended as follows:

(a) paragraph 1 is hereby amended as follows:

(i) the first subparagraph shall be replaced by the following:

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

(ii) the second subparagraph shall be replaced by the following:

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

(b) paragraph 2 shall be replaced by the following:

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

50. Article 91 is hereby amended as follows:

(a) paragraph 1 shall be replaced by the following:

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

(a) the open procedure;

(b) the restricted procedure;

(c) contests;

(d) the negotiated procedure;

(e) the competitive dialogue.

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

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

(b) in paragraph 2, the second subparagraph shall be deleted;

(c) the following paragraph 4 shall be added:

'4. The implementing rules shall define the procurement procedure, referred to in paragraph 1, applicable to service

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

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contracts covered by Annex IIB to Directive 2004/18/EC and to contracts which are declared to be secret, whose performance must be accompanied by special security measures, or when the protection of essential interests of the Communities or the European Union so requires.';

51. Article 92 shall be replaced by the following:

'Article 92

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

52. Article 93 is hereby amended as follows:

(a) paragraph 1 is hereby amended as follows:

(i) the introductory words shall be replaced by the following:

'Candidates or tenderers shall be excluded from participation in procurement procedures if:';

(ii) point (f) shall be replaced by the following:

'(f) they are currently subject to an administrative penalty referred to in Article 96(1).';

(iii) the following subparagraph shall be added:

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

(b) paragraph 2 shall be replaced by the following:

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

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

(a) where the candidate or tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity;

(b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.';

(c) the following paragraph shall be added:

'3. The implementing rules shall determine the maximum period during which the situations referred to in paragraph 1 give rise to the exclusion of candidates or tenderers from participation in a procurement procedure. The maximum period shall not exceed 10 years.';

53. Articles 94, 95 and 96 shall be replaced by the following:

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'Article 94

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

(a) are subject to a conflict of interest;

(b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;

(c) find themselves in one of the situations of exclusion, referred to in Article 93(1), for this procurement procedure.

Article 95

1. A central database shall be set up and operated by the Commission in compliance with Community rules on the protection of personal data. The database shall contain details of candidates and tenderers which is in one of the situations referred to in Articles 93, 94, 96(1)(b) and (2)(a). It shall be common to the institutions, executive agencies and the bodies referred to in Article 185.

2. The authorities of the Member States and third countries as well as the bodies, other than those referred to in paragraph 1, participating in the implementation of the budget in accordance with Articles 53 and 54, shall communicate to the competent authorising officer information on candidates and tenderers which are in one of the situations referred to in Article 93 (1) (e), where the conduct of the operator concerned was detrimental to the Communities' financial interest. The authorising officer shall receive this information and request the accounting officer to enter it into the database.

The authorities and bodies mentioned in the first subparagraph shall have access to the information contained in the database and may take it into account, as appropriate and on their own responsibility for the award of contracts associated with the implementation of the budget.

3. Transparent and coherent criteria to ensure proportionate application of the exclusion criteria shall be laid down in the implementing rules. The Commission shall define standardised procedures and technical specifications for the operation of the database.

Article 96

1. The contracting authority may impose administrative or financial penalties on the following:

(a) candidates or tenderers in the cases referred to in point (b) of Article 94;

(b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

In all cases, however, the contracting authority must first give the person concerned an opportunity to present his observations.

2. The penalties referred to in paragraph 1 shall be proportionate to the importance of the contract and the seriousness of the misconduct, and may consist in:

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(a) the exclusion of the candidate or tenderer or contractor concerned from the contracts and grants financed by the budget, for a maximum period of ten years; and/or

(b) the payment of financial penalties by the candidate or tenderer or contractor up to the value of the contract in question.';

54. Article 97 shall be replaced by the following:

'Article 97

1. Contracts shall be awarded on the basis of award criteria applicable to the content of the tender after the capability of economic operators not excluded under Articles 93, 94 and 96 (2)(a) has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders.

2. Contracts shall be awarded by the automatic award procedure or by the best-value-for-money procedure.';

55. Article 98 is hereby amended as follows:

(a) paragraphs 1 and 2 shall be replaced by the following:

'1. The arrangements for submitting tenders shall be such as to ensure that there is genuine competition and that the contents of tenders remain confidential until they are all opened simultaneously.

2. If deemed appropriate and proportionate, the contracting authority may require tenderers, as provided in the implementing rules, to lodge a security in advance as a guarantee that the bids made will not be withdrawn.';

(b) paragraph 4 shall be replaced by the following:

'4. All requests to participate or tenders declared by the opening board as satisfying the conditions laid down shall be evaluated, on the basis of the criteria provided in the documents relating to the call for tenders, in order to propose to the contracting authority the award of the contract or to proceed with an electronic auction.';

56. Articles 102 and 103 shall be replaced by the following:

'Article 102

1. The contracting authority shall require contractors to lodge a guarantee in advance in the cases specified in the implementing rules.

2. The contracting authority may, if it deems it appropriate and proportionate, require contractors to lodge such a guarantee in order to:

(a) ensure full performance of the contract;

(b) limit the financial risks connected with payment of pre-financing.

Article 103

Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the institutions shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure.

Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to

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substantial errors, irregularities or fraud, the institutions may, depending on the stage reached in the procedure, refrain from concluding the contract or suspend performance of the contract or, where appropriate, terminate the contract.

Where such errors, irregularities or fraud are attributable to the contractor, the institutions may in addition refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor, in proportion to the seriousness of the errors, irregularities or fraud.';

57. in Article 104, the following sentence shall be added:

'They shall delegate, in accordance with Article 59, the necessary powers for the exercise of the function of contracting authority.';

58. Article 105 shall be replaced by the following:

'Article 105

1. Subject to Title IV of Part Two of this Regulation, Directive 2004/18/EC lays down the thresholds which determine:

(a) the publication arrangements referred to in Article 90;

(b) the choice of procedures referred to in Article 91(1);

(c) the corresponding time limits.

2. Subject to exceptions and conditions specified in the implementing rules, the contracting authority shall not, in the case of contracts covered by Directive 2004/18/EC, sign the contract or framework contract with the successful tenderer until a period of standstill has elapsed.';

59. the title of Chapter 1 of Title VI of Part One shall be replaced by the following:

'CHAPTER 1

Scope and form of grants';

60) Article 108 is hereby amended as follows:

(a) in paragraph 1, the second subparagraph shall be replaced by the following:

'They shall be covered either by a written agreement or by a Commission decision notified to the successful applicant.';

(b) paragraph 2 shall be replaced by the following:

'2. The following shall not constitute grants within the meaning of this Title:

(a) expenditure on the members and staff of the institutions and contributions to the European schools;

(b) loans, risk-bearing instruments of the Community or Community financial contributions to such instruments, the public contracts referred to in Article 88 and aid paid as macro financial assistance and budgetary support;

(c) equity investments on the basis of the private investor principle, quasi-equity financing and shareholdings or equity participations in international financial institutions such as the European Bank for Reconstruction and Development (EBRD) or specialised Community bodies such as the European Investment Fund (EIF);

(d) contributions paid by the Communities as subscriptions to bodies of which they are members;

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(e) expenditure implemented as part of shared, decentralised or joint management within the meaning of Articles 53 to 53d;

(f) payments made to bodies to which implementation tasks are delegated in accordance with Article 54(2) and contributions made by virtue of their constitutive basic act to bodies set up by the legislative authority;

(g) expenditure relating to fisheries markets referred to in Article 3(2) (f) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy (*);

(h) repayment of travel and subsistence expenses incurred by, or where appropriate any other indemnities paid to, persons invited or mandated by the institutions.

(c) the following paragraphs shall be added:

'3. The following shall be assimilated to grants and shall be governed, as appropriate, by this Title:

(a) the benefit deriving from an interest subsidy on certain loans;

(b) equity investments or participations other than those referred to in point (c) of paragraph 2.

4. Each institution may award grants for communication activities where, for duly justified reasons, the use of public procurement procedures is not appropriate';

61. the following Article shall be inserted:

'Article 108a

1. Grants may take any of the following forms:

(a) reimbursement of a specified proportion of the eligible costs actually incurred;

(b) lump sums;

(c) flat-rate financing;

(d) a combination of the forms referred to in points (a), (b) and (c).

2. Grants shall not exceed an overall ceiling expressed in terms of absolute value.';

62. the title of Chapter 2 of Title VI of Part One shall be replaced by the following:

'CHAPTER 2

Principles';

63. Article 109 shall be replaced by the following:

'Article 109

1. Grants shall be subject to the principles of transparency and equal treatment.

(*) OJ L 209, 11.08.2005, p. 1. Regulation as amended by Regulation (EC) No 320/2006 (OJ L 58, 28.2.2006, p. 42).';

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They may not be cumulative or awarded retrospectively and they must involve co-financing.

On no account may the combined total costs eligible, as specified in the implementing rules, for financing be exceeded.

2. Grants may not have the purpose or effect of producing a profit for the beneficiary.

3. Paragraph 2 shall not apply to the following:

(a) study, research or training scholarships paid to natural persons;

(b) prizes awarded following contests;

(c) actions the objective of which is the reinforcement of the financial capacity of a beneficiary or the generation of an income in the framework of external actions.';

64. in Article 110, paragraph 1 shall be replaced by the following:

'1. Grants shall be subject to an annual work programme, to be published at the start of the year.

That annual work programme shall be implemented through the publication of calls for proposals, save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary or of the action leave no other choice for a given action, or where the beneficiary is identified in a basic act as recipient of a grant.

The first subparagraph shall not apply to crisis management aid and humanitarian aid operations.';

65. Articles 111 and 112 are replaced by the following:

'Article 111

Each action may give rise to the award of only one grant from the budget to any one beneficiary, except where the relevant basic acts authorise otherwise.

A beneficiary may be awarded only one operating grant from the budget per financial year.

The applicant shall immediately inform the authorising officers of any multiple applications and multiple grants relating to the same action or to the same work programme.

In no circumstances shall the same costs be financed twice by the budget.

Article 112

1. A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the grant is awarded.

In such cases, costs eligible for financing may not have been incurred prior to the date of submission of the grant application, save in duly substantiated exceptional cases as provided for in the basic act or in the case of expenditure necessary for the proper implementation of crisis management aid or humanitarian aid operations as provided for in the implementing rules.

No grant may be awarded retrospectively for actions already completed.

2. An operating grant shall be awarded within six months after the start of the beneficiary's budgetary year. Costs eligible for financing may neither have been incurred before the grant appli-

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cation was lodged nor before the start of the beneficiary's budgetary year.';

66. in Article 113, paragraph 2 shall be replaced by the following:

'2. Unless otherwise specified in the basic act with regard to bodies pursuing an objective of general European interest, when operating grants are renewed, they shall be gradually decreased. This provision shall not apply to grants taking one of the form referred to in points (b) and (c) of Article 108a(1).';

67. Article 114 shall be replaced by the following:

'Article 114

1. Grant applications shall be submitted in writing.

2. Grant applications shall be eligible if submitted by the following:

(a) legal persons; grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on their behalf and assume financial liability;

(b) natural persons in so far as this is required by the nature or characteristics of the action or the objective pursued by the applicant.

3. Grants may not be awarded to applicants who are, at the time of a grant award procedure, in one of the situations referred to in Articles 93(1), 94 and 96(2)(a).

Applicants must certify that they are not in one of the situations referred to in the first subparagraph. However, the authorising officer may refrain from requiring such certification for very low value grants, as specified in the implementing rules.

4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 96.

Such penalties may also be imposed on beneficiaries who at the moment of the submission of the application or during the implementation of the grant, have made false declarations in supplying the information required by the authorising officer or fail to supply this information.';

68. in Article 116, paragraph 1 shall be replaced by the following:

'1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, with a view to determining which proposals may be financed.';

69. Article 118 shall be replaced by the following:

'Article 118

1. The authorising officer responsible may, if he deems it appropriate and proportionate, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.

2. The authorising officer shall require the beneficiary to lodge such a guarantee in advance in the cases specified in the implementing rules.';

70. in Article 119, paragraph 2 shall be replaced by the following:

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‘2. Should the beneficiary fail to comply with his obligations, the grant shall be suspended or reduced or terminated in the cases provided for by the implementing rules after the beneficiary has been given the opportunity to make his observations.’;

71. Article 120 shall be replaced by the following:

‘Article 120

1. Where implementation of the action requires the award of procurement contracts by the beneficiary, the relevant procedures shall be as set out in the implementing rules.

2. Where implementation of the action requires financial support to be given to third parties, the beneficiary of a Community grant may give such financial support provided that the following conditions are met:

(a) the financial support is not the primary aim of the action;

(b) the conditions for the giving of such support are strictly defined in the grant decision or agreement between the beneficiary and the Commission, with no margin for discretion;

(c) the amounts concerned are small.

For the purpose of point (c), the maximum amount of financial support that can be paid to a third party by a beneficiary shall be determined in the implementing rules.

3. Each grant decision or agreement shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises, over all contractors and subcontractors who have received Community funds.’;

72. Article 121 is hereby amended as follows:

(a) point (a) shall be replaced by the following:

‘(a) the financial statements of the institutions as set out in Article 126, those of the bodies referred to in Article 185 and of other bodies whose accounts must be consolidated in accordance with Community accounting rules;’;

(b) point (d) shall be replaced by the following:

‘(d) the aggregated reports on implementation of the budget which present the information contained in the reports referred to in point (c).’;

73. Article 122 shall be replaced by the following:

‘Article 122

1. The accounts of the institutions and bodies referred to in Article 121 shall be accompanied by a report on budgetary and financial management of the financial year.

2. The report referred to in paragraph 1 shall give an account, inter alia, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.’;

74. Article 128 shall be replaced by the following:

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'Article 128

The accounting officers of the other institutions and bodies referred to in Article 121 shall send to the Commission's accounting officer and to the Court of Auditors by 1 March of the following year at the latest their provisional accounts together with the report on budgetary and financial management during the year.

The Commission's accounting officer shall consolidate these provisional accounts with the Commission's provisional accounts and shall send to the Court of Auditors, by 31 March of the following year at the latest, the Commission's provisional accounts accompanied by its report on budgetary and financial management during the year together with the provisional consolidated accounts.

The accounting officer of each institution and body referred to in Article 121 shall also send the report on budgetary and financial management to the European Parliament and the Council by the date specified in the second paragraph.';

75. Article 129 is hereby amended as follows:

(a) in paragraph 1, the words 'Article 185' shall be replaced by the words 'Article 121';

(b) paragraph 2 shall be replaced by the following:

'2. The institutions other than the Commission, and each of the bodies referred to in Article 121, shall draw up their final accounts in accordance with Article 61 and send them to the Commission's accounting officer and the Court of Auditors by 1 July of the following year at the latest with a view to drawing up the final consolidated accounts.';

(c) the following paragraph shall be inserted:

'2a. The Commission's accounting officer shall prepare the final consolidated accounts on the basis of the information presented by the other institutions under paragraph 2. The final consolidated accounts shall be accompanied by a note established by the Commission's accounting officer, by which he/she declares that they were prepared in accordance with Title VII and with the accounting principles, rules and methods set out in annex to the financial statements.';

(d) paragraph 3 shall be replaced by the following:

'3. After approving the final consolidated accounts and its own final accounts, the Commission shall send them both to the European Parliament, the Council and the Court of Auditors before 31 July of the following financial year.';

(e) in paragraph 4, the date '31 October' shall be replaced by the date '15 November';

76. Article 131 is hereby amended as follows:

(a) in paragraph 1, the words 'the Commission' shall be replaced by the words 'the Commission's accounting officer';

(b) in paragraph 2, the words 'the Commission' shall be replaced by the words 'the Commission's accounting officer';

77. in Article 133(1), the words 'Article 185' shall be replaced by the words 'Article 121';

78. in Article 134, the words 'Article 185' shall be replaced by the words 'Article 121';

79. in Article 138(1), the words 'Article 185' shall be replaced by the words 'Article 121';

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80. in Article 139, paragraph 2 shall be replaced by the following:

‘2. Each institution shall inform the Court of Auditors and the budgetary authority of any internal rules it adopts in respect of financial matters.’;

81. Article 143 is hereby amended as follows:

(a) in paragraph 2, the dates ‘15 June’ and ‘30 September’ shall be replaced by the dates ‘30 June’, and ‘15 October’, respectively;

(b) paragraph 5 shall be replaced by the following:

‘5. The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the other institutions, by 15 November at the latest, its annual report accompanied by the replies of the institutions and shall ensure publication thereof in the Official Journal of the European Union.’;

(c) in paragraph 6, the date ‘15 February’ shall be replaced by the date ‘28 February’;

82. Article 144 is hereby amended as follows:

(a) in paragraph 1, the fifth subparagraph shall be replaced by the following:

‘Should the Court of Auditors decide to have any such special reports published in the Official Journal of the European Union, they shall be accompanied by the replies of the institutions concerned.’;

(b) in paragraph 2, the first sentence shall be replaced by the following:

‘The opinions referred to in Article 248(4) of the EC Treaty and Article 160c(4) of the Euratom Treaty which do not relate to proposals or drafts covered by the legislative consultation procedure may be published by the Court of Auditors in the Official Journal of the European Union.’;

83. in Article 145(1), ‘30 April’ shall be replaced by ‘15 May’;

84. in Title I of Part Two, the title shall be replaced by the following:

‘TITLE I

EUROPEAN AGRICULTURAL GUARANTEE FUND’;

85. in Article 148, paragraph 1 shall be replaced by the following:

‘1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the rules relating to the European Agricultural Guarantee Fund (EAGF), and to revenue, save as otherwise provided in this Title.’;

86. Article 149 is hereby amended as follows:

(a) paragraph 1 shall be replaced by the following:

‘1. For each financial year, the EAGF shall include non-differentiated appropriations, with the exception of the expenditure related to the measures referred to in Article 3(2) of Regulation (EC) No 1290/2005, which shall be covered by differentiated appropriations.’;

(b) paragraph 3 shall be replaced by the following:

‘3. Non-committed appropriations relating to the actions referred to in Article 3(1) of Regulation (EC) No 1290/2005 may be carried over to the next financial year only.

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Such carryover shall not exceed, within a limit of 2 % of the initial appropriations referred to in the first subparagraph, the amount of the adjustment of direct payments referred to in Article 11 of Council Regulation (EC) No 1782/2003 of 29 September 2003 establishing common rules for direct support schemes under the common agricultural policy and establishing certain support schemes for farmers (*) and which was applied during the last financial year.

Appropriations which are carried over shall be returned exclusively to the budgetary lines which cover the actions referred to in Article 3(1)(c) of Regulation (EC) No 1290/2005.

Such carryover may lead to an additional payment only to the final beneficiaries who have been subject, in the last financial year, to the adjustment of direct payments in accordance with Article 11 of Regulation (EC) No 1782/2003.

The carryover decision shall be taken, at the latest on 15 February of the year to which the carryover is being made, by the Commission, which shall inform the budgetary authority.

87. in Article 150, paragraphs 2 and 3 shall be replaced by the following:

'2. The Commission decisions fixing the amounts of these payments shall constitute global provisional commitments, which may not exceed the total appropriations entered for the EAGF.

3. As from 15 November, routine management expenditure for the EAGF may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed three quarters of the total corresponding appropriations for the current financial year. They may apply only to expenditure for which the principle is laid down in an existing basic act.';

88. in Article 151(1), the first subparagraph shall be replaced by the following:

'Expenditure effected by the authorities and bodies referred to in the rules relating to the EAGF shall, within two months following receipt of the statements sent in by Member States, be the subject of a commitment by chapter, article and item. Such commitment may be made after the elapse of that two-month period whenever a procedure for a transfer of appropriations concerning the budget lines in question is necessary. Save where payment has not yet been made by the Member States or where eligibility is in doubt, the amounts shall be charged as payments within the same two-month period.';

89. Article 152 shall be replaced by the following:

'Article 152

In budgetary accounting, expenditure shall be booked to the accounts for a financial year on the basis of the repayments made by the Commission to the Member States by 31 December of the year concerned at the latest, provided that the payment order has reached the accounting officer by 31 January of the following financial year at the latest.';

90. in Article 153, paragraph 1 shall be replaced by the following:

(*) OJ L 270, 21.10.2003, p. 1. Regulation as last amended by Regulation (EC) No 1405/2006 (OJ L 265, 26.9.2006, p. 1).';

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‘1. Where the Commission may transfer appropriations pursuant to Article 23(1), it shall take its decision by 31 January of the following financial year at the latest and shall inform the budgetary authority as provided for in Article 23(1).’;

91. Article 154 shall be replaced by the following:

‘Article 154

1. Assigned revenue under this Title shall be assigned according to origin in accordance with Article 18(2).

2. The result of decisions on clearance of accounts, as referred to in Article 30 of Regulation (EC) No 1290/2005 shall be entered in a single Article.’;

92. the title of Title II of Part Two shall be replaced by the following:

‘TITLE II

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

93. Article 155 is hereby amended as follows:

(a) paragraph 1 shall be replaced by the following:

‘1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the Regulations governing the European Agricultural Fund for Rural Development (EAFRD) (*), the European Regional Development Fund (ERDF) (**), the European Social Fund (ESF) (***), the Cohesion Fund (****), and the European Fisheries Fund (EFF) (*****), hereinafter “the Funds”, and to their revenue, save as otherwise provided in this Title.

(b) paragraph 3 shall be deleted.

94. in Article 157, the second paragraph shall be replaced by the following:

‘The decommitted appropriations may be made available again in the event of a manifest error attributable solely to the Commission.’;

95. Article 158 shall be replaced by the following:

‘Article 158

With regard to the operational expenditure referred to in this Title, the Commission may, except in the case of the EAFRD, make transfers from one title to another, provided that the appropriations in question are for the same objective within the meaning of the Regulations governing the Funds referred to in Article 155, or are Technical Assistance expenditure.’;

(*) Regulation (EC) No 1290/2005.

(**) Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund (OJ L 210, 31.7.2006, p. 1).

(***) Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund (OJ L 210, 31.7.2006, p. 12).

(****) Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund (OJ L 210, 31.7.2006, p. 79).

(*****) Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund (OJ L 223, 15.8.2006, p. 1)’

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96. in Article 160, the following paragraph shall be inserted:

‘1a. The appropriations relating to the revenue generated by the Research Fund for Coal and Steel established by the Protocol annexed to the EC Treaty on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel shall be treated as assigned revenue within the meaning of Article 18. The commitment appropriations generated by this revenue shall be made available as soon as the amount receivable has been estimated and the payment appropriations as soon as the revenue has been received.’;

97. the following Article shall be inserted:

‘Article 160a

1. The commitment appropriations corresponding to the amount of the commitment decommitted as a result of total or partial non-implementation of the projects relating to research for which they were earmarked may, exceptionally and in duly substantiated cases, be made available again where it is essential to carry out the programme originally planned, unless the budget for the current financial year contains funds for this purpose.

2. For the purposes of paragraph 1, the Commission shall, at the beginning of each financial year, examine decommitments made during the previous financial year and assess, in the light of the requirements, the need for making the appropriations available again.

On the basis of this assessment, the Commission may submit appropriate proposals to the budgetary authority, by 15 February of each financial year, stating for each budget item the reasons for making these appropriations available again.

3. The budgetary authority shall decide on the Commission's proposals within six weeks. Where no decision is taken within this time limit, the proposals shall be deemed to be approved.

The amount of commitment appropriations to be made available again in year *n* shall in no case exceed 25 % of the total amount decommitted on the same budget line in year *n-1*.

4. Commitment appropriations made available again shall not be carried over.

Legal commitments relating to the commitment appropriations which have been made available again shall be concluded by 31 December of year *n*.

At the end of year *n*, the unused balance of the commitment appropriations made available again shall be definitively decommitted by the authorising officer responsible.’;

98. in Article 163, the first sentence shall be replaced by the following:

‘The actions referred to in this Title may be implemented on a centralised basis by the Commission, by shared management, on a decentralised basis by the beneficiary third country or countries, or jointly with international organisations in compliance with the relevant provisions of Articles 53 to 57.’;

99. Article 164 shall be deleted.

100. Article 166 is hereby amended as follows:

(a) points (a) and (b) of the first subparagraph shall be replaced by the following:

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‘(a) a financing agreement drawn up between the Commission, acting for the Communities, and the beneficiary third country or countries or the bodies they have designated, hereinafter: “the beneficiaries”;

(b) a contract or a grant agreement between the Commission and national or international public-sector bodies or between the Commission and natural or legal persons responsible for carrying out the actions.’;

(b) the second subparagraph shall be replaced by the following:

‘The terms on which the external aid is given shall be laid down in the instrument by which the financing agreements or the contracts or the grants provided for in points (a) and (b) shall be managed.’;

(c) paragraph 2 shall be replaced by the following:

‘2. Financing agreements with the beneficiary third countries referred to in paragraph 1(a) shall be concluded by 31 December of year *n+1* at the latest, year *n* being the one in which the budgetary commitment was made.

The individual contracts, grant decisions and agreements which implement such financing agreements shall be concluded or adopted no later than three years following the date of conclusion of the financing agreement.

Individual contracts and agreements relating to audit and evaluation may be concluded later.’;

(d) the following paragraph 3 shall be added:

‘3. The provision under paragraph 2 shall not apply to the multi-annual programmes in the following cases:

— the cross-border cooperation, regional development, human resources development and rural development components of Council Regulation (EC) No 1085/2006 of 17 July 2006 establishing an Instrument for Pre-Accession Assistance (IPA) (*),

— the cross-border cooperation component of Regulation (EC) No 1638/2006 of the European Parliament and of the Council of 24 October 2006 laying down general provisions establishing a European Neighbourhood and Partnership Instrument (**).

In these cases, the following rules shall apply:

(a) any portion of a budget commitment for such a multi-annual programme shall be automatically decommited where, by 31 December of the third year following year *n* being the one in which the budget commitment was made:

(i) it has not been used for the purpose of pre-financing; or

(ii) it has not been used for making intermediate payments; or

(iii) no declaration of expenditure has been presented in relation to it;

(b) that part of budget commitments still open on 31 December 2017 for which a declaration of expenditure has not been made by 31 December 2018 shall be automatically decommitted.

(*) OJ L 210, 31.7.2006, p. 82.
(**) OJ L 310, 9.11.2006, p. 1.’;

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101. Article 167 is hereby amended as follows:

(a) in paragraph 1, point (c) shall be replaced by the following:

'(c) a national or international public-sector body or natural or legal persons who are beneficiaries of a grant for the implementation of an external action.';

(b) paragraph 2 shall be replaced by the following:

'2. The procurement procedures must be laid down in the financing agreements or in the grant decision or grant agreement provided for in Article 166.';

102. in Title IV of Part Two, the title of Chapter 4 shall be replaced by the following:

'CHAPTER 4

Grants';

103. the following Article shall be inserted:

'Article 169a

Grant procedures to be applied in decentralised management by beneficiary third countries shall be laid down in the financing agreements referred to in Article 166. They shall be based on the rules laid down in Title VI of Part One.';

104. Article 170 shall be replaced by the following:

'Article 170

Each financing agreement or grant agreement or grant decision must expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received Community funds.';

105. in Article 171, paragraph 2 shall be replaced by the following:

'2. This Title shall apply to the operation of the European Anti-fraud Office (OLAF), with the exception of Articles 174, 174a and 175(2).';

106. Article 173 shall be replaced by the following:

'Article 173

The Commission shall, in respect of the appropriations entered in the Annex for each European office, delegate the powers of authorising officer to the Director of the European office concerned, in accordance with Article 59.';

107. in Article 174(1), the second sentence shall be replaced by the following:

'The Director of the European office concerned shall adopt, after approval by its Management Committee, the criteria on which the accounting system shall be based.';

108. the following Article shall be inserted:

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'Article 174a

1. Each institution may delegate authorising officer powers to the director of an interinstitutional European office for the management of appropriations entered in its section and shall set the limits and conditions for this delegation of powers.

2. The internal auditor of the Commission shall exercise all responsibilities laid down in Title IV, Chapter 8 of Part One.';

109. Article 175 shall be replaced as follows:

'Article 175

Should the remit of a European office involve supplies to third parties for pecuniary interest, its Director shall, after approval of the Management Committee, lay down the specific provisions governing how these supplies are to be made and the keeping of the corresponding accounts.';

110. Article 176 shall be deleted;

111. Article 178 is hereby amended as follows:

(a) in paragraph 1, the second sentence shall be replaced by the following:

'Such commitments may not, however, exceed one quarter of the appropriations decided by the budgetary authority on the corresponding budget line for the current financial year.';

(b) in paragraph 2, the following sentence shall be added:

'In this case, the limit referred to in paragraph 1 shall not apply.';

112. in Article 179(3), the second and third subparagraphs shall be replaced by the following:

'If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify the institution concerned of its intention to issue such an opinion. Failing a reply, the institution concerned may proceed with the planned operation under its administrative autonomy, subject to Article 282 of the EC Treaty and Article 185 of the Euratom Treaty with regard to Community representation.

This opinion shall be forwarded to the institution concerned within two weeks of such notification.';

113. the following Title VII shall be inserted:

'TITLE VII

EXPERTS

Article 179a

The implementing rules shall include a specific procedure for the selection of experts, to be paid on the basis of a fixed amount, for assisting the institutions, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical assistance in the follow-up to, and final evaluation of, projects financed by the budget.';

114. Article 180 shall be deleted;

115. Article 181 shall be replaced by the following:

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'Article 181

1. As regards the Funds mentioned in Article 155(1) for which the basic acts were repealed before the date of application of this Regulation, appropriations which were decommitted in application of Article 157(1) may be made available again in the event of a manifest error attributable solely to the Commission or in the case of *force majeure* which has serious repercussions for the implementation of operations supported by these Funds.

2. The central database referred to in Article 95 shall be set up by 1 January 2009.

3. For transfers of appropriations concerning operational expenditure referred to in the Regulations governing the Structural Funds and the Cohesion Fund for the 2000 to 2006 programming period, for which Community payments still have to be made for the financial settlement of outstanding Community commitments until the closure of the assistance, the Commission may make transfers from one title to another, provided that the appropriations in question:

— are for the same objective, or

— relate to Community initiatives or to technical assistance and innovative measures and are transferred to measures of the same nature.

4. Article 30(3) shall apply for the fund mentioned in Article 148(1) for the first time in respect of the payments charged to the 2008 budget.';

116. Article 185 is hereby amended as follows:

(a) in paragraph 1, the first sentence shall be replaced by the following:

'The Commission shall adopt a framework financial regulation for the bodies set up by the Communities and having legal personality which actually receive contributions charged to the budget.';

(b) paragraph 4 shall be deleted.

Article 2

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

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

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

This Regulation shall be binding in its entirety and directly applicable in all Member States.