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COUNCIL REGULATION (EC) No 215/2008

of 18 February 2008

on the Financial Regulation applicable to the 10th European Development Fund

(OJ L 78, 19.3.2008, p. 1)

Amended by:

		Official Journal		
		No	page	date
►**M1**	Council Regulation (EU) No 370/2011 of 11 April 2011	L 102	1	16.4.2011

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COUNCIL REGULATION (EC) No 215/2008

of 18 February 2008

on the Financial Regulation applicable to the 10th European Development Fund

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty establishing the European Community,

Having regard to the Partnership Agreement between the members of the African, Caribbean and Pacific Group of States of the one part, and the European Community and its Member States, of the other part, signed in Cotonou on 23 June 2000 [1] and revised in Luxembourg on 25 June 2005 [2] (the ACP-EC Agreement),

Having regard to Council Decision 2001/822/EC of 27 November 2001 on the association of the overseas countries and territories with the European Community (the Overseas Association Decision) [3], and in particular the fourth paragraph of Article 23 thereof,

Having regard to Decision No 1/2006 of the ACP-EC Council of Ministers of 2 June 2006 specifying the multiannual financial framework for the period 2008 to 2013 and modifying the revised ACP-EC Agreement [4],

Having regard to the Internal Agreement between the Representatives of the Governments of the Member States, meeting within the Council, on the financing of Community aid under the multiannual financial framework for the period 2008 to 2013 in accordance with the ACP-EC Agreement and on the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies [5] (the Internal Agreement) and in particular Article 10(2) thereof,

Having regard to Council Regulation (EC) No 617/2007 of 14 May 2007 on the implementation of the 10th European Development Fund under the ACP-EC Partnership Agreement [6],

Having regard to the proposal from the Commission,

Having regard to the opinion of the Court of Auditors [7],

Having regard to the opinion of the European Investment Bank,

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[1] OJ L 317, 15.12.2000, p. 3.
[2] OJ L 287, 28.10.2005, p. 4.
[3] OJ L 314, 30.11.2001, p. 1. Decision amended by Council Decision 2007/249/EC (OJ L 109, 26.4.2007, p. 33).
[4] OJ L 247, 9.9.2006, p. 22.
[5] OJ L 247, 9.9.2006, p. 32.
[6] OJ L 152, 13.6.2007, p. 1.
[7] OJ C 23, 28.1.2008, p. 2.

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Whereas:

(1) It is necessary to determine the detailed rules for the payment of contributions by the Member States to the 10th European Development Fund (the EDF), set up by the Internal Agreement, and for the allocation of financial assistance for the Overseas Countries and Territories to which Part Four of the EC Treaty applies (OCTs).

(2) Rules should be laid down for the treatment of the balances remaining from the previous EDFs, in particular as regards the detailed arrangements for their transfer to the 10th EDF and the rules applicable for their implementation, or the consequences of their decommitment in relation with Member States contributions.

(3) It is necessary to lay down the conditions in accordance with which the Court of Auditors must exercise its powers in respect of the EDF.

(4) It is necessary to lay down the conditions in accordance with which the European Investment Bank (EIB) manages EDF resources.

(5) The provisions concerning scrutiny by the Court of Auditors of the EDF resources managed by the EIB should comply with the Tripartite Agreement concluded between the Court of Auditors, the EIB and the Commission provided for in Article 248(4) of the Treaty.

(6) It is appropriate to ensure the proper, prompt and efficient execution of programmes and projects financed under the ACP-EC Agreement and to establish management procedures which are transparent and easy to apply, and which facilitate the decentralisation of tasks and responsibilities.

(7) The parties to the ACP-EC Agreement have reaffirmed their commitment to the social and ethic clauses as defined by the relevant International Labour Organisation (ILO) Conventions,

(8) It is necessary to establish the detailed rules in accordance with which the authorising officer by delegation establishes the necessary arrangements to ensure the proper execution of operations, in close cooperation with the National Authorising Officer.

(9) As far as possible, Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities [1] should, as the cornerstone of the reform of the Commission's internal management, be taken into account in this Regulation, for reasons of efficiency and simplification. If appropriate Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities [2] should be applied *mutatis mutandis* in certain cases.

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

[2] OJ L 357, 31.12.2002, p. 1. Regulation as last amended by Regulation (EC, Euratom) No 478/2007 (OJ L 111, 28.4.2007, p. 13).

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(10) All changes in comparison with the Financial Regulation of 27 March 2003 applicable to the Ninth European Development Fund [1] should contribute to achieving the objectives of the Commission's reforms, should improve or ensure sound financial management, and should enhance the protection of the financial interests of the Community against fraud and other illegal activities, and thus enhance legality and regularity of financial operations.

(11) Some changes in comparison with the Financial Regulation for the Ninth EDF are necessary in the light of practical experience in order to facilitate EDF implementation and the realisation of the underlying policy objectives and to adjust some procedural and documentary requirements. Transparency, in particular, has to be reinforced by providing for information on beneficiaries of Community funds.

(12) The principle of sound financial management should imply effective and efficient internal control for the implementation of EDF resources.

(13) As regards EDF resources, it should be made possible for Member States to make voluntary financial contributions to help achieve the objectives of the ACP-EC Partnership Agreement outside co-financing arrangements, as provided for in Regulation (EC) No 617/2007.

(14) The principle of specification should apply to the EDF.

(15) As regards the methods of implementation of the EDF resources, the provisions on centralised, decentralised and joint management as laid down in the Financial Regulation for the Ninth EDF should be restructured for the purpose of clarity and some requirements should be made clearer. In particular, the requirements for joint management, the conditions for the delegation of tasks and the criteria for using national public-sector bodies should be simplified in order to facilitate their use and to respond to growing operational needs.

(16) The prohibition on delegating implementation tasks to private bodies should be adjusted in respect to centralised management because the terms of that prohibition have turned out to be unnecessarily strict. It should be possible 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 care is taken to ensure that no discretionary powers are exercised by the private company.

(17) As regards the accounting officer, his responsibility for certifying the accounts on the basis of the financial information supplied to him by the authorising officers has to be made clearer. 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.

(18) The conditions and limitations regarding financial liability of all financial actors and any other person involved in EDF implementation should be clarified.

[1] OJ L 83, 1.4.2003, p. 1.

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(19) The rules on recovery of amounts receivable should be clarified and strengthened in order to better safeguard the financial interests of the Communities. In particular, the conditions in which interest on late payments is due to the EDF should be specified.

(20) Provision should be made for periods of limitation on the validity of claims. 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 periods of limitation should correspond to the principle of sound financial management.

(21) In line with the general Financial Regulation and Directive 2004/18/EC of the European Parliament and the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts [1], the rules on exclusion from a procurement procedure need to be clarified. A clear distinction should be made between mandatory exclusion and exclusion on the basis of an administrative penalty. In addition, for reasons of legal certainty and proportionality, a maximum period of exclusion should be laid down. An exception to the rules on exclusion may be provided for as regards the purchase of supplies on particularly advantageous terms from either a supplier which is definitively winding up its business activities, or the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law.

(22) It is appropriate to allow the use of the central database concerning candidates or tenderers in situations of exclusion set up under Regulation (EC, Euratom) No 1605/2002 in the context of the EDF.

(23) As regards grants, some clarifications need to be made in Article 103, in particular as regards their scope. To improve the management of grants and to simplify procedures, it should be possible to award grants either by decisions of the institution or by written agreements with beneficiaries, and to authorise the use of lump sum and flat-rate payments alongside the more traditional method of reimbursing costs actually incurred. Finally, requirements for checks and guarantees should be more proportionate to the financial risks involved.

(24) 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 situations the nature of the action leaves no choice in the selection of beneficiaries. It should therefore be expressly recognised that such exceptional cases arise.

(25) Where grants are given for running costs, the rule that the necessary agreement may not be signed more than four months after the start of the beneficiary's financial year has proven unnecessarily rigid. That deadline should therefore be fixed at six months.

[1] OJ L 134, 30.4.2004, p. 114. Directive as last amended by Commission Regulation (EC) No 1422/2007 (OJ L 317, 5.12.2007, p. 34).

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(26) As grants should continue to be awarded on the basis of selection and award criteria, there is no need to have those criteria evaluated in all cases by a committee. Other more flexible means should be allowed for the evaluation of the selection criteria.

(27) For the sake of clarity, the rule concerning the procurement requirements to be applied by beneficiaries of grants should be simplified. Moreover, it should be expressly provided for the case in which the implementation of an action necessitates financial support to third parties,

HAS ADOPTED THIS REGULATION:

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PART ONE

MAIN PROVISIONS

TITLE I

SUBJECT MATTER AND SCOPE

Article 1

This Regulation lays down the rules for the establishment and financial implementation of the resources of the 10th European Development Fund (EDF), and the presentation and auditing of the accounts.

Article 2

1. The Commission shall assume the responsibilities of the Community defined in Article 57 of the ACP-EC Agreement and in the Overseas Association Decision.

To that end, it shall undertake the financial implementation of operations carried out with EDF resources allocated in the form of non-repayable aid, excluding interest rate subsidies, and make payments in accordance with this Regulation.

2. For the purposes of the application of this Regulation, the Commission shall act on its own responsibility and within the limits of the resources allocated.

Article 3

The European Investment Bank (EIB), acting on behalf of the Community, shall manage the Investment Facility, as well as interest rate subsidies, and shall conduct operations there under, in accordance with the rules set out in Part Two. In that context, the EIB shall act on behalf of and at the risk of the Community.

The EIB shall undertake the financial implementation of operations carried out by means of loans from its own resources, where applicable combined with interest rate subsidies drawn from the EDF's grant resources.

Article 4

The provisions of this Part and Part Three shall apply exclusively to the financial implementation of the EDF resources managed by the Commission. Those provisions may not be interpreted as giving rise to any obligations on the Commission's part in respect of the financial implementation of EDF resources managed by the EIB.

Article 5

1. Unless otherwise specified, references in this Regulation to the ACP States shall be deemed to refer also to the bodies or representatives defined in Articles 13 and 14 of Annex IV to the ACP-AC Agreement, which they may duly mandate to exercise their responsibilities under that Agreement.

2. The financial year shall begin on 1 January and end on 31 December.

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TITLE II

FINANCIAL PRINCIPLES

Article 6

EDF resources shall be established and implemented in compliance with the following principles as set out in this Regulation:

(a) financial accuracy;

(b) unit of account;

(c) specification;

(d) sound financial management;

(e) transparency.

CHAPTER 1

Principle of financial accuracy

Article 7

1. No revenue shall be collected and no expenditure effected unless booked to an allocation of the EDF.

2. No expenditure may be committed or authorised in excess of the allocations.

3. Interest yielded by the funds which are the property of the EDF shall be entered as EDF revenue.

Article 8

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.

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

(a) pre-financing which does not represent a significant amount;

(b) pre-financing paid under a procurement contract within the meaning of Article 91;

(c) 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 (the Staff Regulations);

(d) pre-financing paid in the framework of joint management as referred to in Article 20(1)(c).

3. Articles 3, 4 and 4a of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation of paragraphs 1 and 2.

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CHAPTER 2

Principle of the unit of account

Article 9

1. EDF resources shall be drawn up and implemented in euro and the accounts shall be presented in euro.

However, for the treasury management purposes referred to in Article 39, the accounting officer may carry out operations in euro or in other currencies.

2. Articles 7 and 8 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation of paragraph 1.

CHAPTER 3

Principle of specification

Article 10

EDF resources shall be earmarked for specific purposes according to the main instruments of cooperation, as described in the Financial Protocol of the ACP-EC Agreement and in the Overseas Association Decision.

In respect of the ACP States, those instruments are laid down by the Financial Protocol set out in Annex Ib to the ACP-EC Agreement. Earmarking of resources shall also be based on the provisions of the Internal Agreement and shall take account of the resources reserved for support expenditure linked to programming and implementation under Article 6 thereof.

In respect of the OCTs, those instruments are laid down in Annex IIA bis to the Overseas Association Decision. Earmarking of those resources shall also take account of the non-allocated reserve provided for in Article 3(4) of that Annex and of the resources reserved for studies or technical assistance measures under Article 1(1)(c) thereof.

CHAPTER 4

Principle of sound financial management

Article 11

1. EDF resources shall be used in accordance with the principles of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.

2. The principle of economy requires that the resources used for the pursuit of activities shall be made available in due time, in appropriate quantity and quality and at the best price.

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

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

3. Specific, measurable, achievable, relevant and timed objectives shall be set. The achievement of those objectives shall be monitored by performance indicators.

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Article 12

In order to improve decision-making, in particular to justify and specify the determination of the contributions to be paid by Member States referred to in Article 57, the following evaluations are required:

(a) the use of EDF resources shall be preceded by an *ex ante* evaluation of the operation to be undertaken;

(b) the operation shall be submitted to an *ex post* evaluation with a view to ensuring that the intended results justify the means deployed.

Article 13

1. The principle of sound financial management required that EDF resources shall be implemented in compliance with effective and efficient internal control as appropriate in each management mode.

2. For the purposes of the implementation of EDF resources, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance on the achievement of 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.

CHAPTER 5

Principle of transparency

Article 14

1. EDF resources shall be established and implemented and the accounts presented in compliance with the principle of transparency.

2. The annual estimates of commitments and payments under Article 7 of the Internal Agreement, together with the EDF accounts referred to in Article 118 of this Regulation, shall be published in the *Official Journal of the European Union*.

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3. The Commission shall make available, in an appropriate manner, information on the beneficiaries of funds deriving from the EDF held by it when EDF resources are implemented on a centralised basis and directly by its departments or by Union Delegations in accordance with the second paragraph of Article 17, and information on the beneficiaries of funds as provided by the entities to which financial implementation tasks are delegated under other modes of management.

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This information shall be made available with due observance of the requirements of confidentiality, in particular the protection of personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data [1] and Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2001 on the protection of individuals with regard to the processing of personal data [2] 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 20.

TITLE III

RESOURCES AND MEMBER STATES CONTRIBUTIONS

CHAPTER 1

Composition of EDF resources

Article 15

The EDF resources shall consist of the amounts laid down in Article 1 of the Internal Agreement.

Article 16

1. The Commission may manage financial contributions from Member States and other donor countries on their behalf, including in both cases their public and parastatal agencies, or from international organisations to certain projects or programmes financed by the EDF, in accordance with Article 9(1) and (2) of Regulation (EC) No 617/2007.

2. The Commission may also manage voluntary financial contributions from Member States in accordance with Article 9(4) and (5) of Regulation (EC) No 617/2007 and any specific arrangements laid down in relevant bilateral contribution agreements.

3. The additional resources as defined in paragraphs 1 and 2 shall be managed according to the same rules as the EDF resources.

TITLE IV

IMPLEMENTATION OF EDF RESOURCES

CHAPTER 1

General provisions

Article 17

The Commission may, within its own departments, delegate its powers to implement EDF resources, in accordance with the conditions laid down by this Regulation and by its internal rules and within the limits set by the Commission in the instrument of delegation. Those so empowered may act only within the limits of the powers expressly conferred upon them.

[1] OJ L 281, 23.11.1995, p. 31.
[2] OJ L 8, 12.1.2001, p. 1.

▼**M1**

However, the Commission may delegate its powers to implement EDF resources to the Heads of Union Delegations. It shall, at the same time, inform the High Representative of the Union for Foreign Affairs and Security Policy (High Representative) thereof. When Heads of Union Delegations act as authorising officers by sub-delegation, they shall apply the Commission rules for the implementation of EDF resources and shall be submitted to the same duties, obligations and accountability as any other authorising officer by sub-delegation.

The Commission may withdraw that delegation in accordance with its own rules.

For the purposes of the second paragraph, the High Representative shall take the measures necessary to facilitate the cooperation between Union Delegations and Commission departments.

Detailed arrangements may be agreed between the Commission and the European External Action Service (EEAS) in order to facilitate the implementation by Union Delegations of the resources foreseen for support expenditure linked to the EDF under Article 6 of the Internal Agreement. Those arrangements shall not contain any derogation from the provisions of this Regulation.

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Article 18

1. All financial actors and any other person involved in the implementation, management, audit or control of EDF resources shall be prohibited from taking any action which may bring their own interests into conflict with those of the Community. Should a conflict of interests arise, the person in question shall refrain from such an action 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.

3. Article 34 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation of paragraphs 1 and 2.

Article 19

For the purposes of this Title, the term ‘staff’ refers to persons covered by the Staff Regulations.

CHAPTER 2

Methods of implementation

Section 1

General provisions

Article 20

1. The Commission shall implement EDF resources in accordance with the provisions set out in Articles 21 to 29 in any of the following ways:

(a) by decentralised management;

(b) by centralised management;

(c) by joint management with international organisations.

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2. Chapter 2 ‘methods of implementation’ of Part I, Title IV of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation the present Chapter.

Section 2

Decentralised management

Article 21

As a general rule, the Commission shall undertake the financial implementation of EDF resources by one of the following:

(a) by means of decentralised management with the ACP States in accordance with the conditions set out in the ACP-EC Agreement and applying the breakdown of responsibilities provided for in Article 57 of that Agreement and Articles 34, 35 and 36 of Annex IV thereto;

(b) by means of decentralised management with the OCTs in accordance with the conditions set out in the Overseas Association Decision and in the measures implementing that Decision.

Article 22

1. In the context of decentralised management, the Commission shall undertake the financial implementation of EDF resources in accordance with the detailed rules laid down in paragraphs 2, 3 and 4. As provided for in the case of centralised management, the Commission may delegate residual tasks to bodies referred to in Article 25(2) to (5).

2. The beneficiary ACP States or OCTs shall:

(a) conduct regular checks to ensure that the actions to be financed by EDF resources have been implemented correctly;

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

3. In order to ensure that funds are used in accordance with the applicable rules and within the limits of powers thereby conferred upon it, the Commission shall apply clearance-of-accounts procedures or financial correction mechanisms which enable it to discharge its obligations under the ACP-EC Agreement, in particular under Article 34-(1) of Annex IV thereto, and under the Overseas Association Decision, in particular under Articles 20 and 32 thereof.

4. cPartner countries and territories to which implementation tasks are delegated shall ensure, in conformity with Article 14(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the EDF.

Article 23

The implementation by ACP States and OCTs of operations financed from EDF resources shall be subject to Commission scrutiny.

That scrutiny may be exercised by prior approval, by *ex post* checks or by a combined procedure, in accordance with the provisions of the ACP-EC Agreement, the Overseas Association Decision and the measures implementing that Decision.

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Article 24

Depending on the degree of decentralisation provided for in the ACP-EC Agreement, the Overseas Association Decision and the measures implementing that Decision, the Commission shall strive to encourage the beneficiary ACP States and the OCTs to adhere, when exercising the powers entrusted to them under the ACP-EC Agreement and under the Overseas Association Decision, to the principle of sound financial management set out in Article 11, in particular the progressive application of the following criteria:

(a) transparent procurement and grant-awarded procedures, which are non-discriminatory and exclude any conflict of interests;

(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 EDF resources to be verified and the use of funds to be reflected in the EDF accounts;

(d) an independent external audit exercised by a national institution for independent external auditing;

(e) in the case of the direct-labour operations referred to in Article 101-(1), adequate provisions for the management and scrutiny of local imprest accounts and for the definition of the responsibilities of the local imprest manager and the local accounting officer.

For the purposes of applying the first subparagraph, the Commission shall, in agreement with the beneficiary ACP States and OCTs, incorporate appropriate provisions in the financing agreements referred to in Article 70(3).

Section 3

Centralised management

Article 25

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1. Where the Commission implements EDF resources on a centralised basis, implementation tasks shall be performed either directly, by its departments or by Union Delegations in accordance with the second paragraph of Article 17, or indirectly, in accordance with paragraphs 2, 3 and 4 of this Article and with Articles 26 to 29.

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Indirect implementation, in accordance with paragraphs 2 to 4 of this Article and with Article 27 to 29 also applies in the case of delegation of residual tasks to bodies referred to in paragraph 3 of this Article in the case of decentralised management.

2. The Commission may not delegate to third parties the executive powers it enjoys under the ACP-EC Agreement or the Overseas Association Decision where those powers involve a large measure of discretion implying political choices. The implementing tasks delegated shall be clearly defined and fully supervised as to the use made of them.

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The delegation of financial implementation tasks shall comply with the principle of sound financial management and shall ensure compliance with the visibility of Community action. No implementation tasks delegated in this way may give rise to conflicts of interests.

3. Within the limits laid down in paragraph 2, the Commission may delegate tasks of public authority, and in particular financial implementation tasks, to the following:

(a) the executive agencies established in accordance with Council Regulation (EC) No 58/2003 ([1]);

(b) national public-sector bodies or bodies governed by private law with a public-service mission and providing adequate financial guarantees for the implementation of the tasks assigned to them.

The Commission may draw on the EDF resources in order to pay financial compensation to these bodies for the administrative costs incurred.

The Commission shall inform annually the Council of the cases, agencies and bodies concerned. It shall provide commensurate motivation of the use of national agencies.

4. Implementation of the corresponding EDF resources by an agency referred to in paragraph 3(a) shall be carried out by the director of that agency.

5. Where the agencies and bodies referred to in paragraph 3 perform implementation tasks, they shall conduct regular checks to ensure that the actions to be financed from EDF resources have been implemented correctly.

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

Article 26

Where the Commission implements EDF resources 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-awarded procedures which are non-discriminatory and exclude any conflict of interest and which are in accordance with Titles V and VII;

(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 EDF resources to be verified and the use of funds to be reflected in the EDF 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 EDF in conformity with Article 14(3).

([1]) OJ L 11, 16.1.2003, p. 1.

▼B

The Commission may accept that the audit, accounting, procurement and grant-awarded systems of the agencies and bodies referred to in Article 25(3) are equivalent to its own, with due account for internationally accepted standards.

Article 27

1. 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.

2. The European Anti-Fraud Office (OLAF) shall enjoy the same powers with regard to bodies to which tasks are delegated as it does with regard to Commission departments. The bodies in question shall adopt the necessary measures to help OLAF carry out internal investigations. Any act undertaken by such bodies for the implementation of EDF resources, and in particular any decision or any contract concluded by them, must specifically provide for the same controls as those provided for in Article 70(4).

Article 28

The Commission may not entrust measures of implementation of funds deriving from EDF resources, such as payment and recovery, to external private-sector entities or bodies except to those referred to in point (b) of the first subparagraph of Article 25(3) 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.

The tasks which may be entrusted by contract to external private-sector entities or bodies other than those referred to in point (b) of the first subparagraph of Article 25(3) are technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgment.

Section 4

Joint management with international organisations

Article 29

1. Where the Commission implements EDF resources by joint management, certain implementation tasks shall be delegated to international organisations 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.

▼B

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

2. The implementation by international organisations of operations financed from EDF resources shall be subject to scrutiny by the Commission. Such scrutiny shall be exercised by prior approval, by *ex post* checks or by a combined procedure.

3. 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.

4. ccInternational organisations to which implementation tasks are delegated shall ensure, in conformity with Article 14(3), adequate annual *ex post* publication of beneficiaries of funds deriving from the EDF.

CHAPTER 3

Financial actors

Article 30

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

Section 1

Principle of segregation of duties

Article 31

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

Section 2

Authorising officer

Article 32

1. In the context of the financial implementation of the operations referred to in Article 2, the Commission shall perform the duties of authorising officer.

2. The Commission shall determine the staff of an appropriate level to whom it delegates the duties of authorising officer, the scope of the powers delegated and the possibility for the persons to whom these powers are delegated to sub-delegate them.

3. The powers of authorising officer shall be delegated or sub-delegated only to staff.

4. Authorising officers by delegation or sub-delegation may act only within the limits set by the instrument of delegation or sub-delegation. The responsible authorising officer by delegation or sub-delegation may be assisted in his task by one or more members of staff entrusted, under his responsibility, to carry out certain operations necessary for the implementation of EDF resources and presentation of the accounts.

▼M1

5. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 17, they shall be subject to the Commission as the institution responsible for the definition, exercise, control and appraisal of their duties and responsibilities as authorising officers by sub-delegation. The Commission shall, at the same time, inform the High Representative thereof.

▼B

Article 33

The authorising officer shall be responsible for the following:

(a) implementing revenue and expenditure in accordance with the principle of sound financial management;

(b) ensuring that the requirements of legality and regularity are complied with.

Article 34

1. To implement expenditure, the authorising officers by delegation and by sub-delegation shall make financial commitments and, where appropriate, legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminaries for the implementation of EDF resources.

2. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements where appropriate.

Article 35

Save in cases where management is centralised or joint with international organisations, operations relating to the implementation of programmes or projects shall be carried out by the national or regional authorising officer, as defined in Article 35 of Annex IV to the ACP-EC Agreement and in the measures implementing the Overseas Association Decision, in close cooperation with the Commission in accordance with Articles 34, 35 and 36 of Annex IV to the ACP-EC Agreement.

Article 36

1. Where the authorising officer by delegation becomes aware of problems in carrying out procedures relating to management of EDF resources, he shall, in conjunction with the national or regional authorising officer, make all contacts necessary to remedy the situation and take any steps that are necessary.

In cases where the national or regional authorising officer does not or is unable to perform the duties incumbent on him under the ACP-EC Agreement, the authorising officer by delegation may temporarily take his place, in which case, the Commission may receive, from the resources allocated to the ACP State in question, financial compensation for the extra administrative workload incurred.

2. Any measure taken by the authorising officer by delegation pursuant to paragraph 1 shall be taken in the name of and on behalf of the national or regional authorising officer concerned.

▼B

Article 37

1. The authorising officer by delegation shall put in place, in compliance with the minimum standards adopted by the Commission and having due regard to the risks associated with the management environment and the nature of the actions financed, the organisational structure and the internal management and control procedures suited to the performance of his duties, including where appropriate *ex post* verifications.

2. Before an operation is authorised, the operational and financial aspects shall be verified by members of staff other than the one who initiated the operation. The initiation and the *ex ante* and *ex post* verification of that operation shall be separate functions.

3. All staff responsible for controlling the management of financial operations shall have the necessary professional skills. They shall respect a specific code of professional standards established by the Commission.

4. Any member of staff involved in the financial management and control of transactions who considers that a decision he is required by his superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he is required to observe shall inform the authorising officer by delegation in writing and, if the latter fails to take action, the panel referred to in Article 54(3).

In the event of fraud, corruption or any other illegal activity which may harm the interests of the Community, he shall inform the authorities and bodies designated by the applicable legislation.

Article 38

The authorising officer by delegation shall report to the Commission 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 the 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 provided. No later than 15 June each year, the Commission shall send to the European Parliament and the Council a summary of the annual activity report for the previous year. ►M1 The annual activity reports of the authorising officers by delegation shall also be made available to the European Parliament and the Council. ◄

▼M1

Article 38a

1. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 17, they shall cooperate closely with the Commission for the proper implementation of the funds, in order to ensure, in particular, the legality and regularity of financial transactions, the respect of the principle of sound financial management in the management of the funds and the effective protection of the financial interests of the Union.

▼M1

To this effect, they shall take the measures necessary to prevent any situation susceptible to put at stake the responsibility of the Commission for the implementation of EDF resources sub-delegated to them as well as any conflict of priorities which is likely to have an impact on the implementation of the financial management tasks sub-delegated to them.

Where a situation or conflict of the type referred to in the second subparagraph arises, the Heads of Union Delegations shall inform the responsible Directors-General of the Commission and of the EEAS thereof without delay. Those Directors-General shall take appropriate steps to remedy the situation.

2. If Heads of Union Delegations find themselves in a situation referred to in Article 37(4), they shall refer the matter to the specialised financial irregularities panel set up pursuant to Article 54(3). In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, they shall inform the authorities and bodies designated by the applicable legislation.

3. Heads of Union Delegations acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 17 shall report to their authorising officer by delegation so that the latter can integrate their reports in his annual activity report referred to in Article 38. The reports of the Heads of Union Delegations shall include information on the efficiency and effectiveness of internal management and control systems put in place in their Delegation, as well as on the management of operations sub-delegated to them, and provide the assurance pursuant to Article 54(2a). These reports shall be annexed to the annual activity report of the authorising officer by delegation, and shall be made available to the European Parliament and the Council taking into account, where appropriate, their confidentiality.

The Heads of Union Delegations shall fully cooperate with institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information. In this context, they may be requested to attend meetings of the relevant bodies and assist the responsible authorising officer by delegation.

4. Heads of Union Delegations acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 17 shall reply to any request by the authorising officer by delegation at its own request or, in the context of discharge, at the request of the European Parliament.

5. The Commission shall ensure that sub-delegating powers are not detrimental to the discharge procedure, in accordance with Articles 142, 143 and 144.

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Section 3

Accounting officer

Article 39

1. The Commission shall appoint an accounting officer who shall be responsible for:

(a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;

(b) preparing and presenting the accounts in accordance with Title VIII;

▼B

(c) keeping the accounts for:

(i) the allocations referred to in Article 15, except those for the Investment Facility, and interest rate subsidies;

(ii) the commitments referred to in Article 70;

(iii) payments, revenue and debts;

(d) laying down, in accordance with Title VIII, the accounting rules and methods and the chart of accounts;

(e) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer by delegation to supply or justify accounting information;

(f) treasury management.

The accounting officer shall be empowered to verify the respect of criteria for the validating referred to in point (e) of the first subparagraph.

▼M1

The accounting officer of the Commission shall remain responsible for the entire implementation of EDF resources, including accounting operations relating to EDF resources sub-delegated to Heads of Union Delegations.

▼B

2. The accounting officer shall obtain from the authorising officer by delegation and from the EIB, who shall, each for their own part, guarantee its reliability, all the information necessary for the production of accounts giving a true image of the financial implementation of EDF resources.

Article 40

1. Before the adoption of the accounts by the Commission, 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 EDF.

For that purpose the accounting officer shall satisfy himself that:

(a) 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 EDF accounts;

(b) all revenue and expenditure is entered in the accounts.

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

The authorising officer shall remain fully responsible for the proper use of the funds he/she manages as well as the legality and regularity of the expenditure under his control.

Article 41

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.

▼B

Article 42

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.

Article 43

Save as otherwise provided in this Regulation, only the accounting officer may, in the performance of his duties, delegate certain tasks to subordinate staff.

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

Section 4

Paying agent

Article 44

1. In order to make the payments provided for in Article 37(1) and (4) of Annex IV to the ACP-EC Agreement or in the measures implementing the Overseas Association Decision, the accounting officer shall open accounts, where appropriate, with financial institutions in the ACP States and the OCTs, for payments in the national currencies of the ACP States or in the local currencies of the OCTs, and with financial institutions in the Member States, for payments in euro and other currencies.

2. These financial institutions, which act as paying agents, execute payments on the instructions of the accounting officer.

3. In accordance with Article 37(2) of Annex IV to the ACP-EC Agreement, deposits in accounts with financial institutions in the ACP States and the OCTs shall bear no interest and the latter shall receive no remuneration for their services.

In accordance with Article 1(6) of the Internal Agreement, deposits in accounts with financial institutions in the Member States shall bear interest. Such interest shall be credited to the one of the accounts provided for in that Article.

Article 45

The relations between the Commission and the paying agents provided for in Article 37 of Annex IV to the ACP-EC Agreement or in the measures implementing the Overseas Association Decision shall be the subject of contracts. Once signed, copies of those contracts shall be sent to the Court of Auditors for information purposes.

Article 46

1. The Commission shall transfer from the special accounts opened pursuant to Article 59(3) the amounts needed to replenish the accounts opened in its name in accordance with Article 44. Such transfers shall be made on the basis of the cash needs of the projects and programmes.

2. The Commission shall endeavour to make any withdrawals from the special accounts referred to in the first subparagraph of Article 59(3) in such a way as to maintain a distribution of its assets in those accounts corresponding to the proportions in which the various Member States contribute to the EDF.

▼B

Article 47

The signatures of the Commission staff who are empowered to carry out operations on the EDF's accounts shall be lodged with the banks concerned when the accounts are opened or, in the case of staff who are authorised subsequently, when they are designated.

Section 5

Paying manager

Article 48

1. In order to make the payments provided for in Article 44, the accounting officer shall appoint a paying manager to execute local payments through the paying agent account.

2. Paying managers shall be chosen from officials or, should the need arise and only in duly substantiated cases, from other members of staff.

Article 49

1. The appointment of the paying manager shall be the subject of a decision by the accounting officer, on a duly substantiated proposal from the authorising officer responsible. That decision shall set out the respective responsibilities and obligations of the paying manager and the authorising officer.

It shall specify at least:

(a) the frequency with which supporting documents are to be produced and the procedure for producing them;

(b) the procedure to be followed for replenishing the paying agent account;

(c) the period of validity of the authorisation given to the paying manager by the accounting officer;

(d) the identity of the appointed paying manager.

The amendment of the decision referred to in the first subparagraph shall also be the subject of a decision by the accounting officer on a duly substantiated proposal from the authorising officer responsible.

2. The paying manager may, after the instruction from the accounting officer, execute duly authorised payments to third parties within the limits of the positive residual balance of the paying agent account at the bank.

Article 50

Replenishment of local bank accounts

The accounting officer shall replenish paying agent accounts and shall monitor those accounts as regards the opening of bank accounts, the delegation of signatures and the controls on the spot and in the centralised accounts.

Paying agent accounts may be endowed directly by miscellaneous local revenue that arise from:

(a) miscellaneous repayments;

(b) recovery orders.

▼B

CHAPTER 4

Liability of the financial actors

Section 1

General rules

Article 51

1. Without prejudice to any disciplinary action, the authorising officers by delegation and by sub-delegation may at any time have their delegation or sub-delegation withdrawn temporarily or definitively by the authority which appointed them.

2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his duties by the Commission.

3. Without prejudice to any disciplinary action, the paying managers may at any time be suspended temporarily or definitively from their duties by the authority which appointed them.

Article 52

1. The provisions of this Chapter are without prejudice to any liability under criminal law which the financial actors referred to in Article 51 may incur as provided in the applicable national law and in the provisions in force on the protection of the financial interests of the Communities and on the fight against corruption involving staff or officials of Member States.

2. Each authorising officer, accounting officer or paying manager shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, without prejudice to Articles 53 to 56 of this Regulation.

In the event of fraud, corruption or any other illegal activity which may harm the interests of the Community, the matter shall be submitted to the competent authorities or bodies.

Section 2

Rules applicable to authorising officers

Article 53

The obligation for the authorising officer to pay compensation as referred to in Article 52(2) 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;

(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 Commission liable to civil action by third parties.

▼B

Article 54

1. Where an authorising officer by delegation or by sub-delegation considers that a decision which it is his responsibility to take is irregular or contrary to the principles of sound financial management, he shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or by sub-delegation to take the decision in question, the latter may not be held liable.

2. In the event of sub-delegation 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 sub-delegation.

▼M1

2a. In the event of sub-delegation to the Heads of Union Delegations, the authorising officer by delegation shall be responsible for the definition of the internal management and control systems put in place, their efficiency and effectiveness. The Heads of Union Delegations shall be responsible for the adequate setting up and functioning of those systems, in accordance with the instructions of the authorising officer by delegation, and for the management of the funds and the operations they carry out within the Union Delegation under their responsibility. Before taking up their duties, they must complete specific training courses on the tasks and responsibilities of authorising officers and the implementation of EDF resources, in accordance with Article 37(3).

Heads of Union Delegations shall report on their responsibilities pursuant to the first subparagraph of this paragraph in accordance with Article 38a(3).

Each year, Heads of Union Delegations provide to the authorising officer by delegation the assurance on the internal management and control systems put in place in their Delegation, as well as on the management of operations sub-delegated to them and the results thereof, in order to allow the authorising officer to establish his statement of assurance, as provided for in Article 38.

▼B

3. The specialised financial irregularities panel set up by the Commission pursuant to Regulation (EC, Euratom) No 1605/2002 shall have competence to determine, in relation to the EDF, whether a financial irregularity has occurred and what the consequences, if any, should be. In respect of the management of EDF resources by the Commission, cases shall be referred to that panel as provided for in Article 75 of Regulation (EC, Euratom) No 2342/2002.

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

▼M1

4. Where Heads of Union Delegations act as authorising officers by sub-delegation in accordance with the second paragraph of Article 17, the specialised financial irregularities panel set up by the Commission pursuant to paragraph 3 of this Article shall be competent for cases referred to in that paragraph 3.

▼M1

If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer, the High Representative and to the authorising officer by delegation, provided the latter is not the person involved, as well as to the internal auditor.

On the basis of the opinion of the panel, the Commission may request the High Representative to initiate, in the High Representative's capacity as appointing authority, proceedings entailing liability to disciplinary action or to payment of compensation against authorising officers by sub-delegation if irregularities concern the competencies of the Commission sub-delegated to them. In such a case the High Representative will take appropriate action in accordance with the Staff Regulations in order to enforce decisions on disciplinary action and/or the payment of compensation, as recommended by the Commission.

The Member States shall fully support the Union in the enforcement of any liability under Article 22 of the Staff Regulations of temporary staff to whom Article 2, point (e), of the Conditions of Employment of other servants of the Communities applies.

▼B

Section 3

Rules applicable to accounting officers and paying managers

Article 55

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

(a) he loses or damages monies, assets and documents in his keeping;

(b) he wrongly alters bank accounts or postal giro accounts;

(c) he recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;

(d) he fails to collect revenue due.

Article 56

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

(a) he loses or damages monies, assets and documents in his keeping;

(b) he cannot provide proper supporting documents for the payments he/she has made;

(c) he makes payments to persons other than those entitled;

(d) he fails to collect revenue due.

▼B

CHAPTER 5

Revenue operations

Section 1

Making available of EDF resources

Article 57

1. In accordance with Article 7 of the Internal Agreement, the ceiling for the annual amount of the contributions for the year n + 2 and the annual amount of the contribution for the year n + 1 shall be determined according to the procedure set out in the paragraphs 2 to 7. The annual contributions shall be paid in three instalments. These shall be determined according to the procedure set out in the paragraphs 2 to 7.

2. The Commission shall present a proposal by 15 October of the year n, containing:

— the ceiling for the annual amount of the contribution for the year n + 2;

— the annual amount of the contribution for the year n + 1;

— the amount of the first instalment of the contribution for the year n + 1.

The Council shall decide on this proposal by 15 November of the year n.

The Member States shall pay the first instalment of the contribution for the year n + 1 at the latest by 21 January of the year n + 1.

3. The Commission shall present a proposal by 15 June of the year n + 1, containing:

— the amount of the second instalment of the contribution for the year n + 1;

— a revised annual amount of the contribution for the year n + 1 in line with actual needs, in case where, in accordance with Article 7(3) of the Internal Agreement, the annual amount deviate from actual needs.

The Council shall decide on the proposal at the latest 21 calendar days following the presentation by the Commission of its proposal.

Member States shall pay the second instalment at the latest 21 calendar days following the date on which the Council decision was notified to them.

4. By 15 June of the year n + 1, the Commission, taking into account the EIB's forecasts concerning the management and operation of the Investment Facility, including interest rates subsidies, shall establish and communicate to the Council a statement of the commitments, payments and the annual amount of the calls for contributions made in the year n and to be made in the year n + 1 and n + 2. These amounts for the years n + 1 and n + 2 shall be based on the capacity to deliver effectively the proposed level of resources.

5. The Commission shall present a proposal by 10 October of the year n + 1, containing:

— the third instalment of the annual contribution for the year n + 1;

— a revised annual amount of the contribution for the year n + 1 in line with actual needs, in case where in accordance with Article 7(3) of the Internal Agreement the annual amount deviate from actual needs.

▼B

The Council shall decide on the proposal at the latest 21 calendar days following the presentation by the Commission of its proposal.

Member States shall pay the third instalment at the latest 21 calendar days following the date on which the Council decision was notified to them.

6. The sum of the instalments relating to a certain year cannot exceed the annual amount of the contribution determined for that year. The annual amount of the contribution cannot exceed the ceiling determined for that year. The ceiling cannot be increased except in accordance with Article 7(4) of the Internal Agreement. A possible increase of the ceiling shall be made part of the proposals referred to under paragraphs 2 to 5 above.

7. The ceiling for the annual amount of the contribution for the year n + 2, the annual amount of the contribution for the year n + 1 and the instalments of the contributions shall specify, in accordance with Articles 1 to 5:

(a) the amount managed by the Commission and

(b) the amount managed by the EIB, including interest rates subsidies.

Article 58

1. The instalments to be paid by each Member State and referred to in Article 57 shall be set in such a way as to be in proportion to that State's contributions to the EDF as fixed in Article 1(2) of the Internal Agreement.

2. Calls for contributions shall first use up the amounts laid down for previous EDFs, one after the other.

Article 59

1. The financial contributions of the Member States shall be expressed in euro.

2. Each Member State shall pay the amount of its contribution in euro.

3. In respect of the amount due to the Commission under Article 57(7)(a), financial contributions shall be credited by each Member State to a special account entitled ‘Commission of the European Communities — European Development Fund’ opened with the bank of issue of that Member State or the financial institution designated by it. The amount of such contributions shall remain in those special accounts until the payments provided for in Article 37 of Annex IV to the ACP-EC Agreement or in the measures implementing the Overseas Association Decision need to be made.

In respect of the amount due to the EIB under Article 57(7)(b), financial contributions shall be credited by each Member State, in accordance with Article 146.

Where necessary, the Commission shall provide appropriate technical assistance in the implementation of the Council decisions referred to in Article 57.

▼B

Article 60

1. Where an instalment of contributions payable under this Article is not paid by the concerned deadline fixed by paragraphs 2 to 5 of Article 57, the Member State concerned shall be required to pay interest in respect of the unpaid amount.

2. The interest for unpaid amounts shall be charged at a rate of two percentage points above the interest rate applied by the European Central Bank to its main refinancing operations on the first working day of the month in which the amount falls due, as published in the C series of the *Official Journal of the European Union*. That rate shall be increased by a quarter of a percentage point for each month of delay.

The interest shall be payable for the entire period of delay and shall be calculated from the first calendar day following the deadline for payment of the concerned instalment.

3. In respect of the amount due to the Commission under Article 57(7)(a), late payment interest shall be credited to one of the accounts provided for in Article 1(6) of the Internal Agreement.

In respect of the amount due to the EIB under Article 57(7)(b), late payment interest shall be credited to the Investment Facility.

Article 61

Upon expiry of the financial protocol set out in Annex Ib to the ACP-EC Agreement, that part of the contributions which the Member States remain obliged to pay in accordance with Article 57 shall be called up by the Commission, as required, in accordance with the conditions laid down in this Regulation.

Section 2

Estimates of amounts receivable

Article 62

1. An estimate of the amount receivable shall first be made by the authorising officer responsible in respect of any measure or situation which may give rise to or modify an amount owing to the EDF.

2. By way of derogation from paragraph 1, no estimate of the amount receivable shall be made before Member States make available to the Commission the amounts of their contributions to the EDF, as defined in Articles 57 and 58. The authorising officer responsible shall issue a recovery order in respect of these amounts.

3. Article 77 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation of paragraph 1.

Section 3

Establishment of amounts receivable

Article 63

1. Establishment of an amount receivable is the act by which the authorising officer by delegation or sub-delegation:

(a) verifies that the debt exists;

(b) determines or verifies the reality and the amount of the debt;

(c) verifies the conditions in which the debt is due.

▼B

2. The EDF resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due shall be established by a recovery order to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible.

3. Amounts wrongly paid shall be recovered.

4. Article 86 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* as regards the conditions in which interest on late payment is due to the EDF.

Section 4

Authorisation of recovery

Article 64

1. The authorisation of recovery is the act whereby the authorising officer by delegation or sub-delegation responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which he has established.

2. Without prejudice to the responsibilities of the ACP States or the OCTs, the Commission may formally establish an amount as being receivable from persons other than States by means of a decision which shall be enforceable under the same conditions as laid down in Article 256 of the Treaty.

3. Articles 81 and 84 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation of paragraphs 1 and 2.

Section 5

Recovery

Article 65

1. The accounting officer shall act on recovery orders for amounts receivable duly established by the authorising officer responsible. He shall exercise due diligence to ensure that the EDF receives its revenue and shall ensure that its rights are safeguarded.

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

3. >As regards the direct labour and indirect decentralised operations referred to in Title VI, where claims from the EDF on the National Authorising Officer are not recovered within the prescribed time-limits, the authorising officer responsible shall take all the necessary measures to obtain actual repayment of the sums due, including, where appropriate, suspension of the use of that type of arrangement for that State or OCTs.

4. Where the 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 principles of sound financial management and proportionality. The waiver decision shall be substantiated. The authorising officer may delegate the decision only in accordance with Regulation (EC, Euratom) No 2342/2002.

5. The authorising officer may cancel or adjust an established amount receivable.

▼B

6. Entitlements of the EDF in respect of third parties and entitlements of third parties in respect of the EDF shall be subject to a limitation period of five years.

7. Articles 82 to 85 and 87 to 89 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation of paragraphs 1 to 6.

CHAPTER 6

Expenditure operations

Section 1

General provisions

Article 66

Every item of expenditure shall be committed, validated, authorised and paid.

Section 2

Commitment of expenditure

Article 67

The commitment of expenditure shall be preceded by a financing decision adopted by the Commission or by the authorities to which the Commission has delegated powers.

Article 68

1. The financial commitment by the Commission is the operation reserving the funds necessary to cover subsequent payments to honour a legal commitment.

2. The legal commitment by the Commission is the act whereby the authorising officer responsible enters into or establishes an obligation with regard to third parties which results in a charge to the EDF.

3. The financial commitment and the legal commitment shall be adopted by the same authorising officer. That rule may be waived in the following cases:

(a) administrative expenditure incurred by the Commission within the meaning of Article 69(3) in respect of which the financial commitments have been divided in accordance with Article 69(2);

(b) global commitments relating to financing agreements under Article 70(3).

Article 69

1. The Commission's financial commitment is individual when the beneficiary and the amount of the expenditure are known.

The Commission's financial commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.

2. Financial commitments for administrative expenditure of the Commission may be divided over several years into annual instalments. The corresponding legal commitments shall provide for that division.

▼B

3. The following shall be regarded as administrative expenditure for the purposes of point (a) of the third paragraph of Article 68 and paragraph 2 of this Article:

(a) expenditure on human resources other than regular staff;

(b) training expenditure;

(c) mission expenses;

(d) representation expenses;

(e) meeting expenses;

(f) expenses relating to freelance interpreters and/or translators;

(g) expenses relating to exchanges of officials;

(h) cost of recurring rentals of movable and immovable property;

(i) cost of miscellaneous insurance;

(j) cost of cleaning and maintenance;

(k) costs related to the use of telecommunications services;

(l) cost of water, gas and electricity;

(m) outlay for periodical publications.

Article 70

1. The authorising officer responsible shall make a financial commitment before entering into a legal commitment, binding upon the Commission, with third parties.

2. Financing decisions taken by the Commission, in accordance with the ACP-EC Agreement or the Overseas Association Decision, which authorise it to grant financial aid from the EDF, shall give rise to financial commitments by the Commission.

3. The following shall constitute legal commitments by the Commission:

(a) a financing agreement between the Commission, acting on behalf of the Community, and the beneficiary ACP States or the beneficiary OCTs or the bodies they have designated;

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

4. Each financing agreement, contract or grant agreement shall provide expressly for the Commission, OLAF and the Court of Auditors, to exercise their powers of control, on documents and on the spot, over all contractors and subcontractors who have received financing from EDF resources.

Article 71

When adopting a financial commitment, the authorising officer responsible shall ensure that the following:

(a) the expenditure has been charged to the correct accounting item;

(b) the funds are available;

(c) the expenditure is in accordance with the relevant provisions, in particular of the ACP-EC Agreement, the Overseas Association Decision, the Internal Agreement, this Regulation, and all acts adopted in implementation of those provisions;

(d) the principle of sound financial management is complied with.

▼B

Article 72

When registering a legal commitment, the authorising officer shall ensure the following:

(a) the commitment is covered by the corresponding financial commitment;

(b) the expenditure is regular and in accordance with the relevant provisions, in particular of the ACP-EC Agreement, the Overseas Association Decision, the Internal Agreement, this Regulation, and all acts adopted in implementation of those provisions;

(c) the principle of sound financial management is respected.

Section 3

Commitment of expenditure under centralised or joint management

Article 73

Where EDF resources are managed by the Commission on a centralised basis or jointly, the commitment of expenditure shall be subject to the provisions of this Section.

Article 74

1. Legal commitments relating to individual financial commitments shall be concluded by the Commission by 31 December of year N at the latest, year N being the year in which the Commission's individual financial commitment was adopted, subject to Article 68(3).

2. As a general rule, global financial commitments shall cover the total cost of the corresponding individual legal commitments concluded by the Commission up to 31 December of year N + 1, year N being the year in which the Commission's global financial commitment was adopted, subject to Article 68(3).

However, where the global commitments referred to in Article 70(3)(a) are implemented, the Commission shall conclude the corresponding individual contracts and agreements 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. Riders to contracts already concluded may also be concluded later.

At the end of the periods referred to in paragraph 1 and the first and second subparagraphs of this paragraph, the authorising officer responsible shall decommit the unused balance of those financial commitments.

Article 75

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

▼B

2. The legal commitments entered into for actions extending over more than one financial year and the corresponding financial commitments shall have a final date for implementation set in accordance with the principle of sound financial management, save in the case of the administrative expenditure referred to in Article 69(3).

Any parts of such commitments which have not been executed six months after that date shall be decommitted and the corresponding appropriations cancelled.

The amount of a financial commitment corresponding to a legal commitment for which no payment has been made in a period of three years following the signing of the legal commitment shall be decommitted and the corresponding appropriations cancelled.

3. Paragraph 2 shall apply without prejudice to the decisions that the Council may adopt under Articles 96 and 97 of theœ ACP-EC Agreement.

Article 76

The termination of a project and the decommitment of the funds committed in accordance with Articles 73, 74 and 75 shall be carried out when the legal commitments entered into by the Commission in connection with that project with respect to third parties are concluded and the related payments and collections have been recorded in the EDF accounts.

Section 4

Commitment of expenditure under decentralised management

Article 77

Where EDF resources are managed on a decentralised basis, the commitment of expenditure by the Commission shall be subject to the provisions of this Section.

Article 78

1. Financing agreements with the beneficiary ACP States or OCTs shall be concluded by 31 December of year N + 1 at the latest, N being the year in which the Commission's global financial commitment was adopted.

Where financing agreements are not concluded by the deadline laid down in the first subparagraph, the corresponding appropriations shall be cancelled.

2. The Commission shall be under an obligation to effect payment from EDF resources whenever the authorising officer responsible endorses contracts, grant agreements and programme estimates, as provided for in Article 101(3).

The authorising officer responsible shall register in the EDF accounts, prior to signature for endorsement, the amount of each individual legal commitment which he/she has endorsed following a global commitment. He shall book this amount to the global financial commitment.

3. Paragraph 1 shall apply without prejudice to the decisions that the Council may adopt under Articles 96 and 97 of the ACP-EC Agreement.

▼B

Article 79

In accordance with the principle of sound financial management referred to in Article 11 and acting within its powers, the Commission shall endeavour to ensure that:

(a) the legal commitments implementing the financing agreements referred to in Article 78(1) are concluded no later than three years following the date of conclusion of the corresponding financing agreement. Individual contracts and agreements relating to audit and evaluation, and riders to contracts already concluded, may be concluded later;

(b) the amount of an individual financing commitment corresponding to a legal commitment implementing a financing agreement referred to in Article 78(1) and for which no payment has been made in a period of three years following the signing of the legal commitment shall be decommitted.

At the end of any deadline fixed in the financing agreements for conclusion of the legal commitments referred to in point (a) of the first subparagraph, the authorising officer responsible shall decommit the unused balance of the corresponding financial commitments.

Legal commitments as referred to in point (b) of the first subparagraph shall be contracts, grant agreements or programme estimates concluded by the ACP State or OCTs or its authorities or contracts and grant agreements concluded by the Commission acting in their name and on their behalf. For the purposes of application of this subparagraph, the Commission shall, in agreement with the beneficiary ACP States and OCTs, incorporate relevant provisions in the financing agreements referred to in Article 78(1).

Article 80

The termination of a project and the decommitment of the funds committed in accordance with Articles 78 and 79 shall be carried out by the ACP State or OCTs or its authorities, and/or by the Commission acting in their name and on their behalf in connection with that project with respect to third parties, after conclusion of the legal commitments entered into and after the related payments and collections have been recorded in the EDF accounts.

Section 5

Validation of expenditure

Article 81

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

(a) verifies the existence of the creditor's entitlement;

(b) determines or verifies the reality and the amount of the claim;

(c) verifies the conditions in which payment is due.

2. Articles 97 to 101 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the validation of expenditure.

▼B

Section 6

Authorisation of expenditure

Article 82

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

2. 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.

3. Articles 102 and 103 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation of this Article.

Section 7

Payment of expenditure

Article 83

1. Payment shall be made on production of proof that the relevant action is in accordance with the basic act or the contract. Payment shall cover one or more of the following operations:

(a) payment of the entire amount due;

(b) payment of the amounts due in any of the following ways:

(i) pre-financing, which may be divided into a number of payments;

(ii) one or more interim payments;

(iii) payment of the balance of the amounts due.

2. A distinction shall be made in the accounts between the different types of payment referred to in paragraph 1 at the time they are made.

3. Articles 104 and 105 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis*.

Article 84

The accounting officer shall make the payment of expenditure within the limits of the funds available.

Article 85

Payments shall be effected through the bank accounts referred to in Article 44. The detailed rules for opening, administering and using such accounts shall be determined by the accounting officer.

Those rules shall in particular require the joint signatures on transfer orders and all bank payments of two members of staff duly authorised by the accounting officer.

▼B

Article 86

For payments made by the paying manager, the authorising officer responsible shall ensure that checks are carried out before their execution.

Section 8

Time limits for expenditure operations

Article 87

1. The validation, authorisation and payment of expenditure shall be completed within a period of no more than 90 days from the date on which payment is due. The national or regional authorising officer shall authorise the expenditure and notify the Commission's authorising officer responsible accordingly no later than 45 days before that time limit expires.

2. Creditors paid late are entitled to receive default interest in accordance with Article 106 of Regulation (EC, Euratom) No 2342/2002.

3. Claims for delayed payments for which the Commission is responsible in accordance with Article 37 of Annex IV to the ACP-EC Agreement shall be borne by the Commission from the account or accounts provided for in Article 1(6) of the Internal Agreement.

CHAPTER 7

IT systems

Article 88

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

2. Articles 107 and 108 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation of this Article.

CHAPTER 8

Internal auditor

Article 89

The internal auditor of the EDF shall be the internal auditor of the Commission. He shall perform his duties in accordance with the relevant international standards. He shall be answerable to the Commission for verifying the proper operation of systems and procedures for implementing EDF resources managed by the Commission under Article 2. The internal auditor may not be either authorising officer or accounting officer.

▼M1

For the purposes of the internal auditing of the EEAS, Heads of Union Delegations, acting as authorising officers by sub-delegation in accordance with the second paragraph of Article 17 shall be subject to the verifying powers of the internal auditor of the Commission for the financial management sub-delegated to them.

▼B

Article 90

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

He shall be responsible in particular for the following:

(a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them;

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

2. The internal auditor shall enjoy full and unlimited access to all the information required to perform his duties, if necessary on the spot, including in the Member States and in third countries.

3. The internal auditor shall report to the Commission on his findings and recommendations. The Commission shall ensure that action is taken on recommendations resulting from audits. The internal auditor shall also submit to the Commission an annual internal audit report indicating the number and type of audits carried out, the recommendations made and the action taken on those recommendations.

4. Each year the Commission shall forward a report to the discharge authority summarising the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.

5. Articles 109 to 115 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation of this Article.

TITLE V

PROCUREMENT

CHAPTER 1

General provisions

Section 1

Scope and award principles

Article 91

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 Article 92 in order to obtain, against payment of a price paid in whole or in part from EDF resources, the supply of movable or immovable assets, the execution of works or the provision of services.

▼B

Those contracts comprise:

(a) supply contracts;

(b) works contracts;

(c) 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.

Article 92

1. The following shall be contracting authorities for the purposes of this Title:

(a) the beneficiary ACP States or bodies duly mandated by them in so included official regional bodies, or their representatives;

(b) the Commission, in the case of contracts awarded on its own account;

(c) the Commission, on behalf of and for the account of one or more beneficiary ACP States;

(d) a national or international public sector body or natural or legal persons who have signed a financing agreement or grant agreement with one or more ACP countries or with the Commission for the implementation of a programme or project.

2. The procurement procedures shall be laid down in the financing agreements referred to in Article 70(3).

Section 2

Publication

Article 93

Within the limits of the powers conferred on it by the ACP-EC Agreement and in accordance with the conditions laid down in Annex IV thereto, the Commission shall take the necessary steps to have international tendering procedures published in the *Official Journal of the European Union* and on the Internet.

CHAPTER 2

Procurement procedures

Article 94

1. The conditions for participation and the procedures for the award of contracts relating to operations financed by the EDF to assist ACP States shall be those defined in Annex IV to the ACP-EC Agreement.

The procedures for the award of contracts relating to operations financed by the EDF to assist OCTs shall be defined in the measures implementing the Overseas Association Decision.

2. Where the Commission acts as contracting authority for the implementation of humanitarian aid or emergency aid within the framework of the ACP-EC Agreement or the Overseas Association Decision, it shall be required to comply with the relevant Community rules on procurement.

▼B

Article 95

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.

Article 96

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

(a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;

(b) they have been convicted of an offence concerning their professional conduct by a judgment which has the force of *res judicata*;

(c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify;

(d) they have not fulfilled obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;

(e) they have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation or any other illegal activity detrimental to the Communities' financial interests;

(f) they are currently subject to an administrative penalty referred to in Article 99.

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

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

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

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

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

3. Article 133 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to the implementation of this Article.

▼B

Article 97

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 96(1), for this procurement procedure.

Article 98

Within the limits of the powers conferred on it by the ACP-EC Agreement the Commission shall take steps to use the central database set up pursuant to Regulation (EC, Euratom) No 1605/2002 and containing details of candidates and tenderers who are, according to the rules defined in Annex IV to the ACP-EC Agreement, in a situation that excludes them from participation in procedures for the award of contracts relating to operations financed by the EDF.

Article 99

1. Subject to Annex IV to the ACP-EC Agreement, the contracting authority may impose administrative or financial penalties on the following:

(a) candidates or tenderers in the cases referred to in Article 97(b);

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

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

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

(a) the exclusion of the candidate or tenderer or contractor concerned from the contracts and grants financed by the EDF, 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.

3. Article 134b of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to contracts financed from EDF resources.

TITLE VI

DIRECT LABOUR AND INDIRECT DECENTRALISED OPERATIONS

Article 100

This Title shall govern the direct labour and indirect decentralised operations provided for in Article 24 of Annex IV to the ACP-EC Agreement. It shall apply *mutatis mutandis* to financial cooperation with the OCTs.

▼B

Article 101

1. In the case of direct labour operations, projects and programmes shall be implemented directly through public departments of the ACP States concerned.

The Community shall contribute to the costs of those departments by providing the equipment and/or materials that they lack and/or the resources to acquire any additional staff required, such as experts from within the ACP States concerned or other ACP States. The Community's participation shall cover only costs incurred by supplementary measures and temporary expenditure relating to execution that are strictly confined to the requirements of the project in question.

The financial management of a project implemented by direct labour in accordance with the first and second subparagraphs shall be carried out by local imprest accounts administered by a local imprest manager and a local accounting officer, appointed by the national or regional authorising officer with the prior approval of the Commission's authorising officer responsible.

2. In the case of indirect decentralised operations, the contracting authority within the meaning of Article 92(1)(a) shall entrust tasks relating to the implementation of projects or programmes to bodies governed by public laws of the ACP States concerned or bodies governed by private law that are legally distinct from the ACP States concerned.

In such cases, the body concerned shall assume responsibility for the management and implementation of the programme or project in place of the national or regional authorising officer. Tasks so delegated may include the power to conclude contracts and manage contracts and the supervision of works on behalf of or for the account of the ACP States concerned.

3. Direct labour and indirect decentralised operations shall be implemented on the basis of a programme of measures to be carried out and an estimate of their cost (the programme estimate). The programme estimate is a document laying down the programme of measures to be carried out and the human and material resources required, the corresponding budget and the detailed technical and administrative implementing arrangements for decentralised execution of a project over a specified period by direct labour and, possibly, by means of public procurement and the award of specific grants.

Each programme estimate shall be prepared by the local imprest manager and the local accounting officer referred to in the third subparagraph of paragraph 1, in the case of direct labour operations, or by the body referred to in paragraph 2, in the case of indirect decentralised operations. It shall then be approved by the national or regional authorising officer and the Commission's authorising officer responsible before the activities it provides for commence.

4. In the context of the implementation of the programme estimates referred to in paragraph 3, the procurement and grant award procedures shall comply with those referred to in Titles V and VII respectively.

5. The financing agreements referred to in Article 70(3) must make provision for the implementation of direct labour operations or indirect decentralised operations.

▼B

Article 102

In the case of indirect decentralised operations the contracting authority referred to in Article 92(1)(a) shall conclude a delegation agreement when entrusting implementation tasks to a body governed by public laws of the ACP States concerned or by private law with a public service mission. It shall conclude a service contract when entrusting those tasks to a body governed by private law. The Commission shall ensure that the delegation agreement or service contract sets out:

(a) adequate provisions for scrutiny of the use of EDF resources by the Commission, OLAF, the national or regional authorising officer, the Court of Auditors and the national audit bodies of the ACP States concerned;

(b) a clear definition and precise delimitation of the powers delegated to the body concerned and the powers retained by the national or regional authorising officer;

(c) the procedures to be followed in exercising the powers so delegated, such as the selection of actions to be financed, the award of contracts or the supervision of works;

(d) the possibility of *ex post* review and financial penalties where the granting of funds or award of contracts by the body concerned does not correspond to the procedures laid down in point (c);

(e) 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;

(f) an accounting system that enables the correct use of EDF resources to be verified and the use of funds to be reflected in the EDF accounts.

TITLE VII

GRANTS

CHAPTER 1

Scope and form of grants

Article 103

1. Grants are direct financial contributions, by way of donation, from EDF resources in order to finance:

(a) either an action intended to help achieve an objective of the ACP-EC Agreement or the Overseas Association Decision, or of a programme or project adopted in accordance with that Agreement or in accordance with that Decision;

(b) or the functioning of a body which pursues such an objective.

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

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2. The following shall not constitute grants for the purposes of this Title:

(a) financing agreements as referred to in Article 70(3)(a);

(b) public contracts as referred to in Title V or direct labour operations as referred to in Title VI;

(c) loans, guarantees, contributions, contracts, interest rate subsidies or any other financial operation managed by the EIB;

(d) direct or indirect budgetary assistance, or aid to help relieve debt or support export earnings in the event of short-term fluctuations;

(e) payments made to bodies to which implementation tasks are delegated by the Commission as provided for in Articles 25 to 28 or within the framework of joint management referred to in Article 29.

3. Articles 160 to 184a (Title VI 'Grants') and Article 253 of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* to this title.

Article 104

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.

CHAPTER 2

Principles

Article 105

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

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

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

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

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.

▼B

Article 106

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 the ACP-EC Agreement and the Overseas Association Decision as recipient of a grant.

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

2. All grants awarded in the course of a financial year shall be published annually with due observance of the requirements of confidentiality and security.

Article 107

1. Each action may give rise to the award of only one grant from EDF resources to any one beneficiary.

2. A beneficiary may be awarded only one operating grant per financial year from EDF resources.

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 EDF resources.

Article 108

1. A grant may be awarded for an action which has already begun only if 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 or in the case of expenditure necessary for the proper implementation of crisis management aid or humanitarian aid operations, as provided for in the ACP-EC Agreement or the Overseas Association Decision.

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 budget year. Costs eligible for financing may neither have been incurred before the grant application was lodged nor before the start of the beneficiary's budget year.

▼B

Article 109

The grant may not finance the entire costs of the action, except if this proves essential for it to be carried out.

The grant may not finance the entire operating expenditure of the beneficiary body.

CHAPTER 3

Award procedure

Article 110

1. Grant applications shall be submitted in writing.

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

(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 of exclusion referred to in Articles 96(1) and 97, and in Article 99(2)(a).

Applicants shall 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 valued grants.

4. The authorising officer may impose administrative and financial penalties which shall be effective, proportionate and dissuasive on the applicant.

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.

Article 99 shall apply *mutatis mutandis*.

Article 111

1. The selection criteria shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work programme.

2. The award criteria announced in advance in the call for proposals shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.

▼B

Article 112

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

2. The authorising officer responsible shall then, on the basis of the evaluation provided for in paragraph 1, draw up the list of beneficiaries and the amounts approved.

3. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, he shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria already announced.

CHAPTER 4

Payment and control

Article 113

The pace of payments shall be determined by the financial risks involved, the duration and progress of the action, or the costs incurred by the beneficiary.

Article 114

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.

Article 115

1. The amount of the grant shall not become final before the Commission has accepted the final reports and accounts, without prejudice to subsequent checks by the Commission.

2. Should the beneficiary fail to comply with his obligations, the grant shall be suspended or reduced or terminated after the beneficiary has been given the opportunity to make his observations.

CHAPTER 5

Implementation

Article 116

1. Where implementation of the action requires the award of procurement contracts by the beneficiary, the grant agreements referred to in Article 103(1) shall make provision for procedures that comply with the Community rules on procurement applicable to cooperation with non-member countries.

▼B

2. Where implementation of the action requires financial support to be given to third parties, the beneficiary of a 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.

3. Each grant decision or agreement shall provide expressly for the Commission, OLAF 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 financial assistance from EDF resources.

Article 117

In the context of decentralised management, referred to in Articles 21 to 24, the Commission shall strive to encourage management by the beneficiary ACP States and OCTs that is aimed at applying provisions equivalent to those laid down in this Title.

TITLE VIII

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1

Presentation of the accounts

Article 118

1. The Commission shall draw up, by 31 July each year at the latest, the accounts of the EDF describing the financial situation of the Fund as at 31 December of the preceding year. The EDF accounts shall comprise:

(a) the financial statements referred to in Article 122;

(b) the reports on financial implementation referred to in Article 123;

(c) the financial statements and the information supplied by the EIB in accordance with Article 149(2).

2. The EDF accounts shall be accompanied by a report on financial management of the year containing an accurate description of:

(a) the achievement of the objectives for the financial year, in accordance with the principle of sound financial management;

(b) the financial situation and the events that had a significant influence on the activities carried out during the financial year.

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Article 119

The accounts shall comply with the rules and shall be accurate and comprehensive. They shall present a true and fair view as regards the following:

(a) the financial statements, of the assets and liabilities, charges and income, entitlements and obligations not shown as assets or liabilities, and cash flow;

(b) the reports on financial implementation, of the revenue and expenditure operations from EDF resources.

Article 120

The financial statements referred to in Article 122 shall be drawn up in accordance with the generally accepted accounting principles, namely:

(a) going concern basis;

(b) prudence;

(c) consistent accounting methods;

(d) comparability of information;

(e) materiality;

(f) no netting;

(g) reality over appearance;

(h) accrual-based accounting.

Article 121

1. In accordance with the principle of accrual-based accounting, the financial statements referred to in Article 122 shall show the charges and income for the financial year, regardless of the date of payment or collection.

2. The value of assets and liabilities shall be determined in accordance with the valuation rules provided for in Article 129.

Article 122

1. The financial statements shall be prepared by the accounting officer and presented in millions of euro. They shall comprise:

(a) the balance sheet, which represents the assets and liabilities and financial situation and the economic outturn of the EDF at 31 December of the previous year; it shall be presented in accordance with the structure laid down by the Directives of the European Parliament and Council on the annual accounts of certain types of companies, but with account being taken of the specific nature of the EDF's activities;

(b) the cash-flow table showing amounts collected and disbursed during the year, the final treasury position and a statement of changes in capital covering the preceding financial year;

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(c) a table of items payable to the EDF showing:

(i) amounts still to be recovered at the beginning of the financial year;

(ii) entitlements established in the course of the financial year;

(iii) amounts recovered in the course of the financial year;

(iv) cancellation of established entitlements;

(v) amounts still to be recovered at the end of the financial year.

2. The annex to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the EDF's activities.

Article 123

1. The reports on financial implementation shall be prepared by the authorising officer responsible in conjunction with the accounting officer and presented in millions of euro. They shall comprise:

(a) the financial outturn account, which sets out all financial operations for the year in terms of revenue and expenditure.

(b) the annex to the financial outturn account, which shall supplement and comment on the information given in that account.

2. The financial outturn account shall contain the following tables:

(a) a table describing changes over the preceding financial year in the allocations indicated in the Annex;

(b) a table showing by allocation the total commitments, assigned funds and payments effected during the financial year and aggregate totals since the opening of the EDF;

(c) tables showing by allocation, country, territory, region or sub-region, the total commitments, assigned funds and payments effected during the financial year and aggregate totals since the opening of the EDF.

Article 124

The accounting officer shall send the provisional accounts to the Court of Auditors by 31 March of the following financial year at the latest.

By 30 April of the following financial year at the latest the accounting officer shall send to the European Parliament, the Council and the Court of Auditors the report, referred to in Article 118(2), concerning financial management during the year.

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Article 125

1. The Court of Auditors shall, by 15 June, make its observations on the provisional accounts as regards the part of the EDF resources for which the Commission is responsible for financial management under Article 2, so that the Commission can make the corrections deemed necessary for drawing up the final accounts.

2. The accounting officer shall prepare the final accounts accompanied by a note established by himself, by which he declares that they were prepared in accordance with Title VIII and with the accounting principles, rules and methods set out in annex to the financial statements.

3. The Commission shall approve the final accounts and send them to the European Parliament, the Council and the Court of Auditors by 31 July of the following financial year at the latest.

4. The final accounts shall be published in the *Official Journal of the European Union* together with the statement of assurance given by the Court of Auditors in respect of the part of the EDF resources for which the Commission is responsible for financial management under Article 2 by 15 November of the following financial year.

CHAPTER 2

Information on implementation of EDF resources

Article 126

1. The Commission and the EIB shall monitor, each to the extent to which it is concerned, the use of EDF assistance by the ACP States, the OCTs or any other beneficiary, and the implementation of projects financed by the EDF, having particular regard to the objectives referred to in Articles 55 and 56 of the ACP-EC Agreement and in the corresponding provisions of the Overseas Association Decision.

2. The EIB shall periodically inform the Commission regarding the implementation of projects financed by the EDF resources it administers, following the procedures set out in the operational guidelines of the Investment Facility.

3. The Commission and the EIB shall provide the EDF Committee with information on the operational implementation of EDF resources through the national and regional allocations set out in the Annex. Such information shall also cover projects and programmes financed from the Investment Facility. The Commission shall send that information to the Court of Auditors in accordance with paragraphs 5 and 7 of Article 11 of the Internal Agreement.

CHAPTER 3

Accounting

Article 127

1. The accounting system is the system serving to organise the financial information in such a way that figures can be input, filed and registered.

2. The accounts shall consist of general accounts and financial accounts. Those accounts shall be kept in euro on the basis of the calendar year.

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3. The figures in the general accounts and the financial accounts shall be established at the close of the financial year so that the accounts referred to in Chapter 1 can be drawn up.

4. Notwithstanding paragraphs 2 and 3, the authorising officer by delegation may keep analytical accounts.

Article 128

The accounting officer shall be responsible for the monitoring and entry in the accounts of payments by the Member States and other revenue.

Article 129

1. The accounting officer shall adopt the applicable accounting rules and methods. He shall prepare and, after consulting the authorising officer by delegation, adopt the chart of accounts to be applied to the EDF's operations.

In so doing the accounting officer shall be guided by the internationally accepted accounting standards for the public sector. However, he may depart from them where justified by the specific nature of the EDF's activities.

2. Entries in the accounts shall be made on the basis of the chart of accounts using a nomenclature which makes a clear distinction between the general accounts and the financial accounts. The chart of accounts shall be sent to the Court of Auditors.

Article 130

The general accounts shall record, in chronological order using the double entry method, all events and operations affecting the economic and financial situation and the assets and liabilities of the EDF, and which make up the EDF balance sheet.

Article 131

1. Movements on the accounts and the balances shall be entered in the accounting ledgers.

2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.

3. The accounting system shall be such as to leave a trail for all accounting entries.

Article 132

The accounting officer shall, after the close of the financial year and up to the date of presentation of the accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of the accounts which complies with the rules.

Article 133

1. The financial accounts shall provide a detailed record of the financial implementation of EDF resources.

They shall show all:

(a) allocations;

(b) commitments;

(c) payments, and established debts and collection operations for the financial year, in full and without any adjustment against each other.

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2. When commitments, payments and debts are expressed in national currencies, the accounting system shall make it possible, where necessary, for them to be recorded in national currencies as well as in euro.

3. The commitments defined in Article 70 shall be recorded in euro for the value of the financing decisions taken by the Commission.

The commitments defined in Article 78(2) shall be recorded in euro at the equivalent of the value of the contracts, grant agreements and programme estimates. That value shall include where appropriate:

(a) provision for the payment of reimbursable expenses on presentation of supporting documents;

(b) provision for the revision of prices and contingencies as defined in EDF-funded contracts;

(c) financial provision for exchange rate fluctuations.

4. All accounting records referring to the fulfilment of a commitment shall be kept for a period of five years from the date of the decision giving discharge in respect of the financial implementation of EDF resources, referred to in Article 142, concerning the financial year during which the commitment was closed for accounting purposes.

TITLE IX

EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1

General provisions

Article 134

The operations financed from EDF resources managed by the EIB in accordance with Article 3 shall be subject to the audit and discharge procedures laid down in the Statutes of the EIB for all of its operations. Detailed rules for auditing by the Court of Auditors are set out in the Tripartite Agreement. They shall be agreed upon by the EIB, the Commission and the Court of Auditors in the Agreement currently in force or possibly by a new Agreement or any other agreement that may replace it.

As regards the operations financed from EDF resources managed by the Commission in accordance with Article 2, the Court of Auditors shall exercise its powers in accordance with this Title.

CHAPTER 2

External audit

Article 135

1. The Commission shall inform the Court of Auditors, as soon as possible, of all decisions and rules adopted pursuant to this Regulation.

2. The Court of Auditors shall be informed of the appointment of authorising officers, internal auditors, accounting officers and paying managers and of delegation decisions under Articles 17, 39, 43, 48 and 89.

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Article 136

1. In respect of cooperation with the ACP States, the Court of Auditors, when examining whether all revenue has been received and all expenditure incurred in a lawful and proper manner, shall have regard to the provisions of the Treaty, the ACP-EC Agreement, the Internal Agreement, this Regulation and all other acts adopted pursuant to those instruments.

In respect of cooperation with the OCTs, the Court of Auditors, when examining whether all revenue has been received and all expenditure incurred in a lawful and proper manner, shall have regard to the provisions of the Treaty, the Overseas Association Decision, the Internal Agreement, this Regulation and all other applicable acts.

2. In the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 138(4) and (5), all documents and information relating to the financial management of departments or bodies with regard to operations financed or co-financed from EDF resources. It shall have the power to make enquiries of any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to the aforementioned departments or bodies.

In order to obtain all the necessary information for the performance of its task, the Court of Auditors may be present, at its request, during the audit operations carried out within the framework of financial implementation by, or on behalf of, the Commission.

At the request of the Court of Auditors, the Commission shall authorise financial institutions holding EDF deposits to enable the Court of Auditors to ensure that the external data tally with the accounts.

In the performance of its task, the Court of Auditors shall notify the Commission and the authorities to which this Regulation applies of the names of the members of its staff who are empowered to audit them.

Article 137

The Court of Auditors shall ensure that all securities and cash on deposit or in hand are checked against vouchers signed by the depositories or against official memoranda of cash and securities held. It may carry out such checks itself.

Article 138

1. The Commission, the bodies administering revenue or expenditure on the EDF behalf and the final beneficiaries of payments from EDF resources shall afford the Court of Auditors all the facilities and give it all the information which the Court of Auditors considers necessary for the performance of its task. They shall place at the disposal of the Court of Auditors all documents concerning the award and performance of contracts and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents relating thereto, all documents relating to revenue and expenditure, all inventories, all organisation charts of departments, which the Court of Auditors considers necessary for auditing the financial outturn report on the basis of records or on the spot and, for the same purposes, all documents and data created or stored on a magnetic medium.

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The first subparagraph shall also apply to natural or legal persons receiving payments from EDF resources.

2. The officials whose operations are checked by the Court of Auditors shall:

(a) show their records of cash in hand, any other cash, securities and materials of all kinds, and also the supporting documents in respect of their stewardship of the funds with which they are entrusted, and also any books, registers and other documents relating thereto;

(b) present the correspondence or any other document required for the full implementation of the audit referred to in paragraph 1. The information supplied pursuant to the first sentence of this point may be requested only by the Court of Auditors.

3. The Court of Auditors shall be empowered to audit the documents in respect of the EDF revenue and expenditure which are held by the Commission departments responsible.

4. The task of establishing that the revenue has been received and the expenditure incurred in a lawful and proper manner and that the financial management has been sound shall extend to the utilisation, by bodies outside the Commission, of EDF resources received by way of grants.

5. Financing from EDF resources paid to beneficiaries outside the Commission shall be subject to the agreement in writing by the beneficiaries or, failing agreement on their part, by the contractors or subcontractors, to an audit by the Court of Auditors of the use made of the financing granted.

6. Use of integrated computer systems may not have the effect of reducing the access of the Court of Auditors to the supporting documents.

7. The national audit authorities of the ACP States shall be encouraged to participate in the work of the Court of Auditors.

Article 139

1. The annual report of the Court of Auditors shall be governed by this Article.

2. The Court of Auditors shall transmit to the Commission, by 15 June at the latest, any observations which are, in its opinion, such that they should appear in the annual report. Those observations must remain confidential. The Commission shall address its replies to the Court of Auditors by 15 October at the latest.

3. The annual report shall contain an assessment of the soundness of financial management.

4. The Court of Auditors may add any summary report or general observations which it sees fit to make.

5. The Court of Auditors shall take all necessary steps to ensure that the Commission's replies to its observations are published immediately after the observations to which they relate.

6. The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the Commission, by 15 November at the latest, its annual report accompanied with the replies of the Commission and shall ensure publication thereof in the *Official Journal of the European Union*.

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Article 140

1. The Court of Auditors shall notify the Commission of all observations which are, in its opinion, such that they should appear in a special report. Those observations must remain confidential.

The Commission shall have two-and-a half months within which to inform the Court of Auditors of any comments it wishes to make on the observations in question.

The Court of Auditors shall adopt the definitive version of the special report in question the following month.

2. The special reports referred to in paragraph 1, together with the Commission's replies, shall be transmitted without delay to the European Parliament and the Council, each of which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.

Should the Court of Auditors decide to have any such special reports published in the *Official Journal of the European Union*, they shall be accompanied by the Commission's replies.

3. The Court of Auditors may, at the request of one of the other institutions, issue opinions on matters relating to the EDF.

Article 141

At the same time as the annual report referred to in Article 139, the Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

CHAPTER 3

Discharge

Article 142

1. Before 15 May of year N + 2, the European Parliament, upon a recommendation from the Council acting by a qualified majority, shall give a discharge to the Commission in respect of the financial implementation for year N of the EDF resources, which it manages in accordance with Article 2.

2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Commission of the reasons for the postponement.

3. If the European Parliament postpones the decision giving a discharge, the Commission shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.

Article 143

1. The discharge decision shall cover the accounts referred to in Article 118, except the part thereof provided by the EIB in accordance with Article 149(2).

2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts referred to in Article 118. It shall also examine the annual report made by the Court of Auditors together with the Commission's replies, any relevant special reports by the Court of Auditors in respect of the financial year in question and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

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3. The Commission shall submit to the European Parliament, at the latter's request, any information required for the control of implementation of the EDF resources managed by the Commission in accordance with Article 2 for the year in question.

Access to confidential information and the arrangements for handling it shall comply with fundamental rights, the protection of business secrecy, the provisions governing judicial and disciplinary proceedings and the interests of the Community.

Article 144

1. The Commission shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.

2. At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of those observations and comments, and, in particular, on the instructions given to those of its departments which are responsible for the financial implementation of EDF resources. That report shall also be transmitted to the Court of Auditors.

3. The decision giving the discharge shall be published in the *Official Journal of the European Union*.

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Article 144a

The EEAS shall be fully subject to the procedures provided for in Articles 142, 143 and 144. The EEAS shall fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies.

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PART TWO

SPECIFIC PROVISIONS CONCERNING EDF RESOURCES MANAGED BY THE EIB

Article 145

Each year, before 1 September, the EIB shall send the Commission its estimates of commitments and payments, which are necessary for drawing up the communication referred to in Article 7(1) of the Internal Agreement, in respect of the operations of the Investment Facility, including interest rate subsidies, in accordance with the Internal Agreement.

The EIB shall send the Commission updated estimates of commitments and payments when deemed necessary. Modalities shall be defined in the management agreement referred to in Article 152.

Article 146

1. The contributions referred to in Article 58 and adopted by the Council shall be paid without cost for the beneficiary by the Member States to the EIB via a special account opened by the EIB in the name of the Investment Facility in accordance with detailed rules laid down in the management agreement provided for in Article 152.

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2. Save where the Council decides otherwise regarding the remuneration of the EIB in accordance with Article 5 of the Internal Agreement, proceeds received by the Bank via the credit balance of the special accounts referred to in paragraph 1 of this Article shall supplement the Investment Facility and shall be taken into consideration for the calls for contribution referred to in Article 57.

3. Any rights resulting from operations carried out by the EIB using EDF resources, and particularly rights as creditor or owner, shall be vested in the Member States.

4. The EIB shall undertake the treasury management of the amounts referred to in paragraph 1 in accordance with the detailed rules laid down in the management agreement provided for in Article 152.

5. The Investment Facility shall be managed in accordance with the conditions laid down in the ACP-EC Agreement, the Overseas Association Decision and the Internal Agreement.

Article 147

The EIB shall be remunerated on a full indemnity basis for the management of the Investment Facility operations. The Council shall decide on the resources and mechanisms for remuneration of the Bank in accordance with Article 5(2) of the Internal Agreement. The measures implementing that decision shall be incorporated in the management agreement provided for in Article 152.

Article 148

The EIB shall regularly inform the Commission of the operations carried out under the Investment Facility, including interest rate subsidies, of the use made of each call for contributions paid to the EIB and, in particular, of the total quarterly amounts of commitments, contracts and payments, in accordance with the detailed rules laid down in the management agreement provided for in Article 152.

Article 149

1. The EIB shall keep the accounts of the Investment Facility, including interest rate subsidies, financed by the EDF to provide a trail for the full circuit of the funds, from receipt to disbursement and then to the revenue to which they give rise and any subsequent recoveries. The EIB shall draw up the relevant accounting rules and methods according to international accounting standards and inform the Commission and the Member States accordingly.

2. Each year the EIB shall send the Council and the Commission a report on the implementation of operations financed from EDF resources under its management, including the financial statements drawn up in accordance with the rules and methods referred to in paragraph 1 and the information referred to in Article 123(2).

Those documents shall be submitted in draft form no later than 28 February and in their final version no later than 30 June of the following financial year, so that they can be used by the Commission in preparing the accounts referred to in Article 118 of this Regulation in accordance with Article 11(6) of the Internal Agreement. The report on the financial management of the resources managed by the EIB shall be submitted by the latter to the Commission no later than 31 March of the following financial year.

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Article 150

The EIB's own rules shall apply to contracts financed by the EDF resources which it manages.

Article 151

Where programmes or projects are co-financed by the Member States or their implementing bodies and correspond to the priorities laid down in the Country Cooperation Strategies provided for in the implementation Regulation foreseen in the second subparagraph of Article 10(1) of the Internal Agreement and in Article 20 of the Overseas Association Decision, the EIB may entrust responsibility for managing Community aid to Member States or their implementing bodies.

Article 152

The detailed rules for implementing this Part shall be the subject of a management agreement between the Commission, acting on behalf of the Community, and the EIB.

PART THREE

TRANSITIONAL AND FINAL PROVISIONS

TITLE I

TRANSITIONAL PROVISIONS

CHAPTER 1

Transfer of balances remaining from previous EDFs

Article 153

Transfers to the 10th EDF of the balances remaining from resources constituted under the Internal Agreements relating to the seventh [1], eighth [2] and Ninth [3] EDFs (hereinafter previous EDFs) shall be made in accordance with Article 1(2)(b), (3) and (4) of the Internal Agreement.

Article 154

The balance of revenue accruing from interest on the resources of previous EDFs shall be transferred to the 10th EDF and allocated for the same purposes as the revenue provided for in Article 1(6) of the Internal Agreement. The same shall apply to miscellaneous revenue of previous EDFs comprising, for example, default interest received in the event of late payment of contributions to those EDFs by Member States and the interest generated by the EDF resources managed by the EIB.

[1] OJ L 229, 17.8.1991, p. 288.
[2] OJ L 156, 29.5.1998, p. 108.
[3] OJ L 83, 1.4.2003, p. 1.

▼B

CHAPTER 2

Balances remaining from previous EDFs

Article 155

The amounts from projects under the Ninth EDF or from previous EDFs not committed according to Article 1(3) of the Internal Agreement, or decommitted unless decided otherwise by the Council unanimously according to Article 1(4) of the Internal Agreement, shall reduce the part of Member States contributions stated in Article 1(2)(a) of the Internal Agreement.

The impact on the contribution of each Member State shall be calculated in proportion to the contribution of each Member State to the Ninth EDF. The impact will be calculated annually and for the first time in the year following the performance review of 2010 foreseen in Annex 1b of the ACP-EC Agreement.

CHAPTER 3

Rules applicable for the implementation of previous EDFs

Article 156

The provisions of the 10th EDF concerning the financial actors, revenue operations, validation, authorisation and payment of expenditure, IT systems, the presentation of accounts and accounting, as well as external audit and discharge also apply to operations financed from previous EDFs.

CHAPTER 4

Transitional period

Article 157

The procedure concerning Member States' contributions laid down in Articles 57 to 61 shall apply for the first time for the contributions of the year N + 2, under condition that the 10th EDF enters into force between 1 October of year N and 30th September of year N + 1.

Article 158

The central database referred to in Article 98 shall be set up by 1 January 2009.

TITLE II

FINAL PROVISIONS

Article 159

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

It shall be applicable for the same period as the Internal Agreement.