



**Regulation of the European Railway Agency
adopted on 30.10.2007**

**laying down detailed rules for the implementation of the Financial
Regulation of 15 July 2004 applicable to the Budget of the European
Railway Agency**

TABLE OF CONTENTS

REGULATION of the European Railway Agency laying down detailed rules for the implementation of the Financial Regulation of 15 July 2004 applicable to the budget of the European Railway Agency.....	4
--	---

Contents

TITLE I	SUBJECT	7
TITLE II	BUDGETARY PRINCIPLES	8
CHAPTER 1	PRINCIPLE OF ANNUALITY.....	8
CHAPTER 2	PRINCIPLE OF UNIT OF ACCOUNT.....	9
CHAPTER 3	PRINCIPLE OF UNIVERSALITY	9
CHAPTER 4	PRINCIPLE OF SPECIFICATION.....	11
CHAPTER 5	PRINCIPLE OF SOUND FINANCIAL MANAGEMENT.....	11
CHAPTER 6	PRINCIPLE OF TRANSPARENCY	12
TITLE III	ESTABLISHMENT AND STRUCTURE OF THE BUDGET	13
CHAPTER 1	ESTABLISHMENT OF THE BUDGET	13
CHAPTER 2	STRUCTURE AND PRESENTATION OF THE BUDGET	14
TITLE IV IMPLEMENTATION OF THE BUDGET		16
CHAPTER 1	GENERAL PROVISIONS	16
CHAPTER 2	FINANCIAL ACTORS	20
	Section 1 Rights and obligations of the financial actors.....	20
	Section 2 Authorising officer.....	20
	Section 3 Accounting officer	23
	Section 4 Imprest administrator.....	26
CHAPTER 3	LIABILITY OF THE FINANCIAL ACTORS	28
	Section 1 Rules applicable to authorising officers by delegation and subdelegation	28
CHAPTER 4	REVENUE OPERATIONS.....	29
	Section 1 Estimate of amounts receivable	29
	Section 2 Establishment of amounts receivable	30
	Section 3 Authorisation of recovery	31
	Section 4 Recovery	31
CHAPTER 6	EXPENDITURE OPERATIONS.....	35
	section 1 Commitment of expenditure	35

	Section 2	Validation of expenditure	37
	Section 3	Authorisation of expenditure	39
	Section 4	Payment of expenditure	40
	Section 5	Time limits for expenditure operations.....	41
CHAPTER 7	IT SYSTEMS		42
CHAPTER 8	INTERNAL AUDITOR		42
TITLE V	PROCUREMENT.....		45
CHAPTER 1	GENERAL PROVISIONS		45
	Section 1	Scope and award principles	45
	Section 2	Publication	47
	Section 3	Procurement procedures	50
	Section 4	Guarantees and control	77
CHAPTER 2	SPECIFIC PROVISIONS APPLICABLE TO CONTRACTS AWARDED BY THE AGENCY ON ITS OWN ACCOUNT		78
TITLE VI	GRANTS.....		81
CHAPTER 1	SCOPE.....		81
CHAPTER 2	AWARD PRINCIPLES		84
CHAPTER 3	AWARD PROCEDURE		86
CHAPTER 4	PAYMENT AND CONTROL		90
CHAPTER 5	IMPLEMENTATION.....		92
TITLE VII	KEEPING AND PRESENTATION OF THE ACCOUNTS		93
CHAPTER 1	PRESENTATION OF THE ACCOUNTS		93
CHAPTER 2	ACCOUNTING.....		98
	Section 1	Common provisions	98
	Section 2	General accounts.....	99
	Section 3	Budget accounts	102
CHAPTER 3	PROPERTY INVENTORIES		103
TITLE VIII	FINAL PROVISIONS		105

REGULATION OF THE EUROPEAN RAILWAY AGENCY

of 30 October 2007

laying down detailed rules for the implementation of the Financial Regulation applicable to the budget of the European Railway Agency

THE ADMINISTRATIVE BOARD OF THE EUROPEAN RAILWAY AGENCY,

Having regard to Regulation N° 881/2004 of the European Parliament and of the Council of 29 April 2004,

Having regard to Council Regulation (EC, Euratom) N° 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities¹,

Having regard to Regulation (EC, Euratom) 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation N° 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities²,

Having regard to the Financial Regulation of 15 July 2004 applicable to the Budget of the European Railway Agency and in particular article 99 thereof,

Having consulted the Commission,

Whereas:

- (1) The provisions of the Regulation of the Agency of 15 July 2004 have been simplified to confine the Regulation to the basic principles and definitions relating to the establishment, execution and control of the budget of the Agency (hereinafter "the budget").
- (2) These implementing rules must therefore not only supplement the Financial Regulation of the Agency in respect of the provisions for which it expressly refers to the implementing rules but also in respect of the provisions whose application requires the implementing measures to be determined in advance.
- (3) These implementing rules constitute a recasting of all existing rules for the application of the Financial Regulation of the Agency and are mainly inspired of the provisions of the implementing rules of the General Financial Regulation (the Financial Regulation of the European Communities) , with minor adaptations taking into account the specificities of the Agency.
- (4) As for the establishment and presentation of the budget, it is necessary to determine the contents of the general introduction to the budget, the working documents backing up the budget and the budget remarks to ensure that the budgetary authority is fully informed.
- (5) As regards the role of the financial actors, the reform of financial management, together with the dropping of centralised *ex ante* controls, increases the responsibilities of the

¹
OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) N° 1995/2006 (OJ L 390, 30.12.2006, p. 1).

²
OJ L 357, 31.12.2002, p.1. Regulation as last amended by Regulation (EC, Euratom) N° 478/2007 (OJ L 111, 28.04.2007, p. 13).

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

- (6) As regards internal control and taking into account the specificities of the Agency, a function of audit capability is created to assist and support the financial actors of the Agency, in the daily management of revenue and expenditure.
- (7) In order to clarify responsibilities, a precise definition must also be given of the tasks and responsibilities of the accounting officer in connection with the accounting systems, treasury management, the management of bank accounts and third-party files. The arrangements for the termination of the accounting officer's duties are also spelled out.
- (8) Once the tasks and responsibilities of each actor are laid down, they may be held liable only under the conditions set out in the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants. However, a new Financial Irregularities Panel has to be set up in appropriate manner in each institution to determine whether irregularities of a financial nature may have occurred. The procedure by which an authorising officer may seek confirmation of an instruction and thus be released from any liability is also set out.
- (9) In the case of procurement, the option taken is to transpose the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts. The Directive requires definition of the various types of contract, the advertising and publication measures applicable, appeals and the main features of existing procedures, the specification of selection criteria and the possible award arrangements, rules for access to tender documents, communication with tenderers and candidates and, when the Agency awards contracts on its own account, the various thresholds applicable and the rules for estimating the value of the contracts to be awarded. For the sake of transparency of procedures and equal treatment of candidates, as well as the full responsibility of authorising officers in the final choice, the procedure for opening and then evaluating tenders and requests to participate is then described, from the appointment of a committee up to the substantiated and documented award decision, which ultimately falls to the contracting authority. The financial guarantees needed to protect the Communities' financial interests are also described. Finally, rules are provided for the contracting authorities' powers to impose administrative penalties in order to ensure their proportionate and dissuasive nature.
- (10) The scope of the title on grants must also be clarified, particularly with regard to the different methods for implementing the budget, but also with regard to the type of action or body of general European interest eligible for a grant. The characteristics of the annual work programme and the calls for proposals are set out. Again with regard to the requirements of transparency, equal treatment for applicants and the liability of authorising officers, the award procedure is described from the application for the grant to its evaluation, by a committee, in the light of previously specified selection and award criteria,

before the authorising officer takes his final, appropriately documented decision. Sound financial management then requires that the Agency demands guarantees at the application stage, through the provision of financial audits for the larger amounts, and then on payment of the pre-financing, through the demand for advance financial guarantees, and finally on final payment, through the provision of financial audits for the requests which present most risk. Sound management and control of the no-profit and co-financing principles also require rules to be laid down for the possible use of flat-rate payments. Finally, the sound management of Community funds means that the grant beneficiaries themselves must comply with the principles of transparency and the equal treatment of potential contractors and the award of the contract to the tender offering best value for money when the action is partly sub-contracted. Finally, penalties in this matter are based on what exists for procurement.

- (11) As regards the keeping and presentation of the accounts, each of the generally accepted accounting principles on which the financial statements have to be based must be defined, with the exception of the principle of accrual accounting which, in view of its importance and its innovatory nature, is defined in the General Financial Regulation. It is also necessary to specify the conditions for entering a transaction in the accounts and the rules for valuing assets and liabilities and the constitution of provisions. It should be specified that the accounts must be accompanied by a report on budgetary and financial management and details should be given of the content and presentation of the elements making up the financial statements (balance sheet, economic outturn account, cash-flow table) and their annex and the budget implementation statements (budget outturn account plus annex).
- (12) On accounting matters, it should be specified that the Agency's accounting officer should produce documents describing the organisation of the accounts and the accounting procedures of his institution and set out the conditions to be respected by the computerised accounting systems. As for the keeping of the accounts, it is necessary to specify the principles applicable to the accounting ledgers, the trial balance, the periodical reconciliation of the totals in this balance and the inventory and to specify the components of the chart of accounts adopted by the Commission's accounting officer. The rules applicable to the registration of operations, in particular the double entry method, the rules for the conversion of operations which are not denominated in euro and the supporting documents for accounting entries, must be laid down. The content of the accounting records must also be specified.
- (13) Finally, the rules relating to the property inventory are laid down and the respective responsibilities of the accounting officers and authorising officers in this field are clarified, together with the rules applicable to the resale of property entered in the inventory.
- (14) The various thresholds and amounts referred to in this Regulation must be regularly updated by linking them with the inflation recorded in the European Union, with the exception of the thresholds applicable to procurement.

TITLE I

SUBJECT

Article 1

Subject

(Article 1 of the Financial Regulation)

This Regulation sets out the rules for implementing certain provisions of the Financial Regulation of 15 July 2004 (hereinafter "Financial Regulation") which lays down the rules for the establishment and implementation of the budget of the European Railway Agency, hereinafter "budget".

TITLE II

BUDGETARY PRINCIPLES

CHAPTER 1

PRINCIPLE OF ANNUALITY

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

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

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

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

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

CHAPTER 2

PRINCIPLE OF UNIT OF ACCOUNT

Article 4

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

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

Article 5

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

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

Article 6

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

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

CHAPTER 3

PRINCIPLE OF UNIVERSALITY

Article 7

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

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

4. Payments made shall be entered in the account provided for in Regulation (EC) N° 1150/2000 and shall be subject to the conditions laid down by that Regulation.

Article 8

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

(Article 19 of the Financial Regulation)

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

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

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

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

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

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

Article 9

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

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

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

CHAPTER 4

PRINCIPLE OF SPECIFICATION

Article 10

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

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

CHAPTER 5

PRINCIPLE OF SOUND FINANCIAL MANAGEMENT

Article 11

Evaluation

(Article 25 of the Financial Regulation)

1. Proposals for all programmes and actions occasioning additional expenditure or a reduction in revenue for the budget shall be the subject of an *ex ante* evaluation, which shall identify:
- (a) the need to be met in the short or long term;
 - (b) the objectives to be achieved;
 - (c) the results expected and the indicators needed to measure them;
 - (d) the added value of Community involvement;
 - (e) the risks, including fraud, linked with the proposals and the alternative options available;

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

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

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

CHAPTER 6
PRINCIPLE OF TRANSPARENCY

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

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

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

ESTABLISHMENT OF THE BUDGET

Article 14

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

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

The general introduction shall comprise:

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

Article 15

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

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

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

Article 16

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

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

CHAPTER 2

STRUCTURE AND PRESENTATION OF THE BUDGET

Article 17

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

1. The Agency may decide to have a presentation of statement of expenditure according to one of the following
 - a) Presentation based on the nature of activities:
 1. Staff expenditure
 2. Buildings, equipment and miscellaneous operating expenditure
 3. Operating expenditure
 - b) Presentation according to activity based budgeting management:
2. Where the Agency may decide to change the presentation of statement of expenditure, the budget presentation during the transitional period should follow the two options as mentioned under paragraph 1 a) and b)

Article 18

Administrative appropriations (Article 31 of the Financial Regulation)

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

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

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

Article 19

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

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

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

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

The budget remarks shall include:

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

TITLE IV IMPLEMENTATION OF THE BUDGET

CHAPTER 1 GENERAL PROVISIONS

*Article 21
Delegation by the Director of
his powers of authorising officer
(Article 34 of the Financial Regulation)*

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

*Article 22
Definition of a conflict of interests
(Article 35 of the Financial Regulation)*

1. Acts that may be tainted by a conflict of interests may include one of the following forms:
 - (a) granting oneself or others unjustified direct or indirect benefits;
 - (b) refusing to grant a beneficiary the rights or benefits to which he is entitled;
 - (c) committing undue or wrongful acts or failing to carry out acts that are mandatory.
2. The competent authority referred to in Article 35 of the Financial Regulation shall be the hierarchical superior of the member of staff concerned. He shall confirm in writing whether or not there is a conflict of interests. If there is, he shall himself take any appropriate decision.

Article 23
Prior checks carried out by the Agency
(Article 36 of the Financial Regulation)

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

Article 24
Direct centralised management
(Article 36 of the Financial Regulation)

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

Article 25
Eligibility of national public-sector bodies or private-law entities with a public-service mission and conditions for delegation of powers to them
(Article 36 of the Financial Regulation)

1. The Agency may delegate tasks involving the exercise of public authority to national public-sector bodies or private-law entities with a public-service mission only if they are governed by the law of the Member States of the European Union, the EEA or countries that have applied to join the European Union save where the basic act provides otherwise.
2. The Agency shall ensure that these bodies or entities offer adequate financial guarantees, issued preferably by a public authority, in particular as regards full recovery of amounts due to the Agency.

3. Where the Agency is planning to entrust tasks involving the exercise of public authority, and in particular tasks of budget implementation to a body referred to in Article 36 of the Financial Regulation, it shall analyse compliance with the principles of economy, effectiveness and efficiency. If this analysis shows that delegation best satisfies the requirements of sound financial management, it shall, before proceeding to implement the delegation, request the opinion of the competent committee provided for in the basic act, which may also give its opinion on the planned application of the selection criteria.

Article 25

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

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

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

Article 26

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

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

Article 27

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

1. Where the Agency entrusts implementing tasks to agencies, bodies or entities under Article 36 of the Financial Regulation, it shall conclude an agreement with them.
2. Such agreement shall include the following provisions:
 - (a) a description of the tasks entrusted;
 - (b) the conditions and detailed arrangements for performing the tasks, including the control arrangements;
 - (c) the rules on reporting to the Agency on how the tasks are performed;
 - (d) the conditions under which performance of the tasks is terminated;
 - (e) the detailed arrangements for the Agency's control;
 - (f) the conditions governing the use of separate bank accounts, the beneficiary of the interest yielded and the use made of it;

- (g) the provisions guaranteeing the visibility of Community action in relation to the other activities of the body;
 - (h) an undertaking to refrain from any act which may give rise to a conflict of interests within the meaning of Article 22.
3. The agencies, bodies or entities referred to in paragraph 1 shall not have the status of authorising officers by delegation.

Article 28

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

1. The purpose of the clearance of accounts procedure referred to in Article 36 of the Financial Regulation shall be to ensure that expenditure by the Member States in the context of shared management or by third countries in the context of decentralised management and which may be chargeable to the Community budget is in order and consistent with the applicable Community rules.
2. Without prejudice to specific provisions contained in sectoral rules, the clearance of accounts procedure shall consist of:
- (a) the declaration of expenditure by the Member States or non-member countries in the form of accounts certified by a technically competent department or body functionally independent of the spending agency;
 - (b) document and, where appropriate, on-the-spot checks by the Agency, subject to no limitations or restrictions, on the content of these accounts and on the underlying transactions, including checks on beneficiaries;
 - (c) establishment by the Agency of the amount of expenditure recognised as chargeable to the budget, following an adversarial procedure and after the Member States or third countries have been notified;
 - (d) calculation of the financial correction arising from the difference between declared expenditure and expenditure recognised as chargeable to the budget;
 - (e) recovery or repayment of the balance arising from the difference between recognised expenditure and the sums already paid to the Member States or third countries. Recovery shall be by offsetting as specified in Article 80.
3. The clearance of accounts procedure described in paragraphs 1 and 2 shall apply depending on the degree of decentralisation agreed.

Article 29

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

1. The appropriations used in joint management with international organisations within the meaning of Articles 53 and 165 of the General Financial Regulation shall finance actions, performance of which requires the pooling of resources from a number of donors, where it is not reasonably possible or appropriate to assign the share contributed by each donor to each type of expenditure.

2. The international organisations referred to in paragraph 1 are as follows:
- (a) international public-sector organisations set up by intergovernmental agreements and specialised agencies set up by such organisations;
 - (b) the International Committee of the Red Cross (ICRC);
 - (c) the International Federation of National Red Cross and Red Crescent Societies.

CHAPTER 2 FINANCIAL ACTORS

SECTION 1 RIGHTS AND OBLIGATIONS OF THE FINANCIAL ACTORS

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

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

SECTION 2 AUTHORISING OFFICER

*Article 31
Assistance for authorising officers by delegation and subdelegation
(Article 37 of the Financial Regulation)*

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

*Article 32
Segregation of duties of initiation and verification of an operation
(Articles 37 and 39 of the Financial Regulation)*

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

*Article 33
Management and internal control procedures
(Article 38(4) of the Financial Regulation)*

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

- (a) achieve the objectives of the policies, programmes and action of the institution in accordance with the principle of sound financial management;
- (b) comply with the rules of Community law and minimum control standards established by the institution;

- (c) safeguard assets and information;
- (d) prevent and detect irregularities, errors and fraud;
- (e) identify and prevent management risks;
- (f) ensure reliable production of financial and management information;
- (g) keep supporting documents relating to and subsequent to budget implementation and to budget implementation measures;
- (h) keep documents relating to advance guarantees for the institution and keep a log to provide suitable monitoring of such guarantees.

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

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

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

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

- (a) such documents to be numbered;
- (b) such documents to be dated;

- (c) registers to be kept identifying the exact location of such documents;
- (d) such documents to be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate.

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

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

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

Article 37
Failure of the authorising officer by delegation to take action
(Article 41 of the Financial Regulation)

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

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

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

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

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

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

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

SECTION 3
ACCOUNTING OFFICER

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

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

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

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

1. An interim statement of account shall be drawn up without delay in the event of termination of the duties of the accounting officer.
2. This statement shall be made up of the accounts provided for in Title VII of the Financial Regulation, closed on the last day of the month in which the accounting officer terminates his duties.
3. No interim statement of account shall be required where the accounting officer terminates his duties at the end of a financial year.
4. The interim statement or, in the circumstances referred to in paragraph 3, the provisional accounts referred to in Article 128 of the General Financial Regulation shall be transmitted by the accounting officer who is terminating his duties or, if this is not possible, by an official or agent in his department to the new accounting officer, who, within no more than one month from the date of transmission, must sign in acceptance and may make reservations.

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

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

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

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

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

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

1. For the requirements of treasury management, the accounting officer may open accounts in the name of the institution with financial institutions or national central banks or cause such accounts to be opened. In duly warranted circumstances, he may open accounts in currencies other than the euro.
2. The accounting officer shall negotiate the operating terms for accounts with financial institutions, in accordance with the principles of sound financial management, efficiency and competitive tendering.
3. At least every five years the accounting officer shall relaunch competitive tendering between financial institutions with which accounts are opened.
4. The accounting officer shall ensure strict compliance with the operating terms for accounts opened with financial institutions.
5. The Commission's accounting officer shall be responsible for harmonising the operating terms for accounts opened by the various institutions and bodies referred to in Article 185 of the General Financial Regulation after consulting the accounting officers of the institutions and bodies concerned.

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

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

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

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

1. The accounting officer shall ensure that the balance on the bank accounts provided for in Article 45 does not deviate significantly from the cash-flow forecasts referred to in Article 44(2) and in any event,
 - (a) that none of these accounts is in debit;
 - (b) that the balance of accounts held in foreign currencies is periodically converted into euro.

2. The accounting officer may not maintain balances in foreign currency accounts which might cause excessive losses to the institution as a result of exchange rate fluctuations.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 4

IMPREST ADMINISTRATOR

Article 52

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

1. Where the small sums involved make it materially impossible or inefficient to carry out payment operations by budgetary procedures, imprest accounts may be set up to pay such expenditure.
2. The imprest administrator shall be authorised to provisionally validate and pay expenditure, on the instructions of the authorising officer responsible.
3. The creation of an imprest account and the appointment of an imprest administrator shall be the subject of a decision by the accounting officer, on a duly substantiated proposal from the accounting officer responsible. The decision shall stipulate the responsibilities and obligations of the imprest administrator and the authorising officer.

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

Article 53

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

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

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

2. The imprest administrator may make payments to third parties on the basis and within the limits of:
 - (a) prior budget and legal commitments signed by the authorising officer responsible;

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

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

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

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

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

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

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

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

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

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

- 1. The imprest administrator shall keep an account of the funds he has at his disposal, in cash and at the bank, and of payments made and amounts received, in accordance with the rules and on the instructions given by the accounting officer. Statements of this account shall be accessible at all times to the authorising officer responsible and a monthly list of transactions together with supporting documents shall be sent in the following month by the imprest administrator to the authorising officer for settlement of the imprest operations.
- 2. The accounting officer shall himself, or through an official or other servant in his own department or in the authorising department specially empowered for this purpose, carry

out checks, which should normally be effected on the spot and without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time limit set. The accounting officer shall communicate the findings of these checks to the authorising officer responsible.

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

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

CHAPTER 3

LIABILITY OF THE FINANCIAL ACTORS

SECTION 1

RULES APPLICABLE TO AUTHORISING OFFICERS BY DELEGATION AND SUBDELEGATION

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

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

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

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

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

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

Article 61
Financial irregularities panel
(Article 47 and 48 of the Financial Regulation)

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

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

When the panel referred to in the first subparagraph is informed of a matter by a member of staff in accordance with Article 60(6) of the General Financial Regulation, it shall transmit the file to the appointing authority or, where appropriate, to the authority authorised to conclude contracts of employment and shall inform the reporting member of staff of that transmittal.

CHAPTER 4 **REVENUE OPERATIONS**

SECTION 1 **ESTIMATE OF AMOUNTS RECEIVABLE**

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

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

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

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

SECTION 2

ESTABLISHMENT OF AMOUNTS RECEIVABLE

Article 63

Procedure

(Article 53 of the Financial Regulation)

1. In establishing the amount receivable the authorising officer shall acknowledge that the Agency have a claim on the debtor and shall draw up an instrument demanding that the debtor pay the debt.
2. The recovery order is the operation by which the authorising officer responsible instructs the accounting officer to recover the amount established.
3. The debit note is to inform the debtor that:
 - (a) the Agency have established the amount receivable;
 - (b) payment of the debt to the Agency is due on a certain date (hereinafter "due date");
 - (c) failing payment by the due date the debt shall bear interest at the rate referred to in Article 71, without prejudice to any specific regulations applicable;
 - (d) wherever possible the institution shall effect recovery by offsetting after the debtor has been informed;
 - (e) failing payment by the due date the institution shall effect recovery by enforcement of any guarantee lodged in advance;
 - (f) if, after all the above steps, the amount has not been recovered in full, the institution shall effect recovery by enforcement of a decision secured either in accordance with Article 72(2) of the General Financial Regulation or by legal action.

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

Article 64

Establishment of amounts receivable

(Article 53 of the Financial Regulation)

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

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

Article 65

Supporting documents for the establishment of amounts receivable

(Article 53 of the Financial Regulation)

1. The establishment of any amount receivable shall be based on supporting documents certifying the Agency's entitlement.

2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or shall, on his own responsibility, ascertain that this has been done.
3. The supporting documents shall be kept by the authorising officer in accordance with Articles 33 and 35.

SECTION 3

AUTHORISATION OF RECOVERY

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

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

SECTION 4

RECOVERY

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

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

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

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

Article 69

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

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

Article 70

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

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

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

Article 71

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

1. Without prejudice to any specific provisions deriving from the application of sectoral rules, any debt not repaid on the due date shall bear interest in accordance with paragraphs 2 and 3.
2. The interest rate for debts not repaid on the due date shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Communities* on the first working day of the month in which the debt is due, increased by:
 - (a) seven percentage points where the source of the debt is the award of public supply and service contracts referred to in Title V;
 - (b) three and a half percentage points in all other cases;
3. Interest shall be calculated from the day following the due date specified in the debit note up to the date on which the debt is repaid in full,
4. Any partial payments shall first cover the interest determined in accordance with paragraphs 2 and 3.

Article 72
Waiving of recovery of an established debt
(Article 55 of the Financial Regulation)

1. The authorising officer responsible may waive recovery of all or part of an established debt only:
 - (a) where the foreseeable cost of recovery would exceed the debt to be recovered and the waiver would not harm the Agency image;
 - (b) where the debt cannot be recovered in view of its age or the insolvency of the debtor;
 - (c) pursuant to the principle of proportionality in accordance with predetermined procedures within the Agency and subject to the following criteria:
 - (i) compulsory criteria, applicable in all circumstances:
 - the facts, in the light of the gravity of the irregularity giving rise to the establishment of the amount receivable (fraud, repeat offence, intent, diligence, good faith, manifest error);
 - the impact that waiving recovery of the debt would have on the operation of the Agency and its financial interests (amount involved, risk of setting a precedent, undermining of the authority of the law);
 - (ii) in addition to the above criteria, which are mandatory in all circumstances, the authorising officer may also have to take the following criteria into account depending on the circumstances of the case:
 - any distortion of competition that would be caused by the waiving of recovery of the debt;
 - the economic and social damage that would be caused were the debt to be recovered in full.
2. The waiving of recovery referred to in Article 73(2) of the General Financial Regulation shall be substantiated and reference made to the action taken to secure recovery and the points of law and fact on which the waiver is based. The authorising officer responsible shall waive recovery in accordance with the procedure provided for in Article 66.
3. The waiving of recovery of an established debt may not be delegated where the amount to be waived:
 - (a) is EUR one million or more; or
 - (b) is EUR 100,000 or more, where this represents 25% or more of the established debt.

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

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

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

Article 74

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

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

CHAPTER 6

EXPENDITURE OPERATIONS

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

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

SECTION 1

COMMITMENT OF EXPENDITURE

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

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

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

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

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

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

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

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 68 of the General Financial Regulation has been made in a period of three years following the signing of the legal commitment shall be decommitted.

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

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

- (a) where the commitments are provisional;

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

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

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

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

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

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

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

- (a) expenditure on staff, whether or not covered by the Staff Regulations, and on other human resources and pensions;
- (b) expenditure relating to Members of the Agency such as Members of the Board;
- (c) training expenditure;
- (d) expenditure on competitions, selection and recruitment;
- (e) mission expenses;
- (f) representation expenses;
- (g) meeting expenses;
- (h) freelance interpreters and/or translators;
- (i) exchanges of officials;
- (j) recurring rentals of movable and immovable property;
- (k) miscellaneous insurance;
- (l) cleaning and maintenance;
- (m) welfare expenditure;
- (n) the use of telecommunications services;
- (o) financial charges;
- (p) legal expenses;
- (q) damages;
- (r) working clothes;

- (s) water, gas and electricity;
- (t) periodical publications on paper or in electronic versions.

SECTION 2

VALIDATION OF EXPENDITURE

Article 82

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

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

Article 83

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

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

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

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

Article 84

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

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

- (a) the institution has received and formally registered a payment request drawn up by the beneficiary;
- (b) the payment request itself, or an internal document accompanying the payment request received, has been endorsed "certified correct" and signed by an official or other servant

technically competent and empowered by the authorising officer responsible, thereby certifying that the action or work programme carried out by the beneficiary is in all respects in compliance with the grant agreement;

- (c) all aspects of the payment request have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

Article 85

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

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

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

Article 86

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

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

SECTION 3

AUTHORISATION OF EXPENDITURE

Article 87

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

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

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

Article 88

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

1. The payment order shall state:
 - (a) the financial year to which the expenditure is to be booked,
 - (b) the budget article and any other subdivision that may apply,
 - (c) the references of the legal commitment giving rise to an entitlement to payment,
 - (d) the references of the budget commitment against which it is to be booked,
 - (e) the amount to be paid, expressed in euro,
 - (f) the name, address and bank account details of the payee,
 - (g) the object of the expenditure,
 - (h) the means of payment
 - (i) the entry of the goods in the inventory in accordance with Article 210.
2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.

SECTION 4

PAYMENT OF EXPENDITURE

Article 89

Supporting documents

(Article 67 of the Financial Regulation)

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

Article 90

Booking of pre-financing and interim payments

(Article 67 of the Financial Regulation)

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

SECTION 5

TIME LIMITS FOR EXPENDITURE OPERATIONS

Article 91

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

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

The time allowed for approval may not exceed:

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

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

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

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

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

CHAPTER 7 IT SYSTEMS

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

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

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

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

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

CHAPTER 8 INTERNAL AUDITOR

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

Article 100
Action before the Court of Justice of the European Communities
(Article 73 of the Financial Regulation)

Without prejudice to the remedies allowed by the Staff Regulations, the internal auditor may bring an action directly before the Court of Justice of the European Communities for any act relating to

the performance of his duties as internal auditor. Such an action must be lodged within three months of the date of notification of the act in question.

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

TITLE V PROCUREMENT

CHAPTER 1 GENERAL PROVISIONS

Article 101

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

1. The provisions of Title V of part one of the General Financial Regulation are applicable to procurement of the Agency and form part of the Financial Regulation of the Agency.
2. According to Article 74 of the Financial Regulation, the detailed rules for implementing the provisions referred to in paragraph 1 are also applicable to the Agency, as stipulated in Articles 102 to 145 of the present Regulation.
3. By analogy and for the application of the present Regulation, the term institution designates the Agency.
4. For this title, headings of the articles of the detailed rules refer to the provisions of the General Financial Regulation.

SECTION 1 SCOPE AND AWARD PRINCIPLES

Article 102

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

1. Building contracts cover the purchase, long lease, usufruct, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate.
2. Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for sitting and installation shall be considered a supply contract.
3. Works contracts cover either the execution, or both the execution and design, of works or a work related to one of the activities referred to in Annex I to Directive 2004/18/EC of the European Parliament and of the Council or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' means the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.
4. Service contracts cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts. Those services are listed in Annexes IIA and IIB to Directive 2004/18/EC.

5. A contract covering both products and services shall be considered a service contract where the value of the services in question exceeds that of the products included in the contract,
- A contract having as its object services and involving works that are only incidental in relation to the principal object of the contract shall be considered a service contract.
- A contract having as its object services covered by Annex IIA to Directive 2004/18/EC and services covered by Annex IIB thereto shall be considered as covered by Annex IIA if the value of the services listed in that Annex exceeds that of the services listed in Annex IIB.
- 5a. The description of the various types of contract is based on the reference nomenclature constituted by the common procurement vocabulary (CPV) within the meaning of Regulation (EC) No 2195/2002 of the European Parliament and of the Council,
- In the event of differences between the CPV and the statistical classification of economic activities in the European Community (NACE), listed in Annex I to Directive 2004/18/EC, or between the CPV and the Central Product Classification (CPC) (provisional version), listed in Annex II to that Directive, the NACE nomenclature or the CPC nomenclature respectively shall take precedence.
6. The terms «contractor», «supplier» and «service provider» refer to any natural or legal person or public entity or consortium of such persons and/or bodies which offers to execute works, supply products and provide services respectively. The terms «economic operator» covers «contractors», «suppliers» and «service providers». Economic operators who have submitted a tender are referred to as «tenderers». Those who have asked to be allowed to take part in a restricted procedure, including a competitive dialogue, or in a negotiated procedure are referred to as «candidates».
- Consortia of economic operators shall be authorised to submit tenders or to be candidates. Contracting authorities may not demand that consortia must have a given legal form in order to be allowed to submit a tender or request to take part, but the consortium selected may be required to adopt a given legal form after It has been awarded the contract if this change is necessary for proper performance of the contract.
7. Departments of the Community institutions shall be considered to be contracting authorities, save where they conclude between themselves administrative arrangements for the provision of services, the supply of products or the execution of works.

Article 103

Framework contracts

(Article 88 of the General Financial Regulation)

1. A framework contract is an agreement between one or more contracting authorities and one or more economic operators the purpose of which is to establish the terms governing contracts which may be awarded during a given period, in particular with regard to price and, where appropriate, the quantities envisaged. Where a framework contract is concluded with several economic operators, the latter must be at least three in number, insofar as there is a sufficient number of economic operators who satisfy the selection criteria and/or of admissible tenders which meet the award criteria.
- A framework contract with a number of economic operators may take the form of separate contracts but concluded in identical terms.
- The term of a framework contract may not exceed four years, save in exceptional cases

duly justified in particular by the subject of the framework contract.

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

Framework contracts shall be treated as procurement contracts for the purposes of the award procedure, including advertising.

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

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

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

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

4. Specific contracts based on framework contracts concluded with a number of economic operators shall be awarded in accordance with the following arrangements:

- (a) by application of the terms laid down in the framework contract without reopening competition;

- (b) where not all the terms are laid down in the framework contract, after the parties have again competed on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, on the basis of other terms referred to in the specification for the framework contract.

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

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

SECTION 2 PUBLICATION

Article 104

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

1. Publication for contracts with a value equal to or above the thresholds laid down in Articles 143 and 144 shall consist in a pre-information notice, a contract notice or simplified contract notice and an award notice.
2. The pre-Information notice is the notice by which the contracting authorities make known,

by way of indication, the estimated total value of contracts and framework contracts, by category of service or groups of products, and the essential characteristics of works contracts which they intend to award during a budgetary year, but excluding contracts under the negotiated procedure without prior publication of a contract notice. The pre-information notice shall be compulsory only where the estimated total value of the contracts is equal to or above the thresholds laid down in Article 143 and the contracting authority intends to make use of the possibility of shortening time limits for receipt of tenders in accordance with Article 126(4).

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

The pre-information notice shall be sent to OPOCE or published on the buyer profile as soon as possible and in any event by no later than 31 March of each budgetary year in the case of supply and service contracts and, in the case of works contracts, as soon as possible after the decision approving the programme for those contracts. Contracting authorities which publish the pre-information notice on their buyer profile shall send to OPOCE, electronically and using the format and transmission procedures specified in point (3) of Annex VIII to Directive 2004/18/EC, a notice announcing the publication of a pre-information notice on a buyer profile.

3. The contract notice is the means by which the contracting authorities make known their intention to launch a procedure for the award of a contract or framework contract or to set up a dynamic purchasing system in accordance with Article 111a. Without prejudice to contracts concluded after a negotiated procedure as referred to in Article 112, the contract notice shall be compulsory for the following contracts:
 - (a) contracts with an estimated value equal to or above the thresholds laid down in points (a) and (c) of Article 144(1);
 - (b) research and development contracts listed in category 8 of Annex II A with an estimated value of equal to or above the threshold laid down in point (b) of Article 144(1) for research and development contracts listed.

It shall not be compulsory for specific contracts based on framework contracts.

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

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

Contracting authorities shall state whether or not they authorise variants and shall specify the minimum capacity levels they demand if they make use of the possibility provided for in the second subparagraph of Article 121(2). They shall set out the selection criteria referred to in Article 121 that they intend to use, the minimum number of candidates they plan to invite to tender and, where appropriate, the maximum number, and the objective and non-discriminatory criteria they intend to apply in order to limit the number, in accordance with the second subparagraph of Article 109(1).

Where there is unrestricted, direct and full access to the call for tenders by electronic means, in particular in the dynamic purchasing systems referred to in Article 111a, the Internet address at which these documents can be consulted shall appear in the contract

notice.

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

4. The award notice shall give the outcome of the procedure for the award of contracts, framework contracts or contracts based on a dynamic purchasing system. In the case of contracts with a value equal to or above the thresholds laid down in Article 144, the award notice shall be compulsory. It shall not be compulsory for specific contracts based on framework contracts.

The award notice shall be sent to the OPOCE no later than 48 calendar days after the procedure is closed, that is "to say, from the date on which the contract or framework contract is signed. However, notices relating to contracts based on a dynamic purchasing system may be grouped together on a quarterly basis. In such cases, they shall be sent to the OPOCE no later than 48 days after the end of each quarter.

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

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

Article 105

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

1. Contracts with a value below the thresholds laid down in Article 144 and the service contracts referred to in Annex IIB to Directive 2004/18/EC shall be advertised by appropriate means in order to ensure competitive tendering and impartiality of the procurement procedure. Such advertising shall involve:

- (a) if no contract notice as referred to in Article 104(3) has been published, notice of a call for expressions of interest for contracts covering a similar subject with a value equal to or greater than the amount referred to in Article 114(1);
- (b) the annual publication of a list of contractors, specifying the subject and the value of the contract awarded, for contracts with a value equal to or greater than EUR 25,000.

The publication provided for in point (b) of the first subparagraph shall not be compulsory for specific contracts based on a framework contract.

2. A list of contractors to whom building contracts and contracts declared secret in accordance with Article 112(1)(j) are awarded shall be published only once a year, with an indication of the subject and value of the contracts awarded. That list shall be sent to the budgetary authority.
3. Information relating to contracts with a value equal to or greater than the amount referred to in Article 114(1) shall be sent to the Office for Official Publications of the European Communities; the annual lists of contractors shall be sent by no later than 31 March following the end of the financial year.

Ex ante advertising and the annual publication of the list of contractors for the other contracts shall be on the Internet site of the institutions; ex post publication shall take place by no later than 31 March of the following financial year. Publication may also be in the Official Journal of the European Communities.

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

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

This period shall be reduced to five calendar days in the case of the fast track procedures referred to in Article 128 and if the notices have been prepared and sent electronically.
2. The contracting authorities must be able to provide evidence of the date of dispatch.

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

In addition to the advertising provided for in Articles 104, 105 and 106, contracts may be advertised in any other way, notably in electronic form. Any such advertising shall refer to the notice published in the Official Journal of the European Communities, as provided for in Article 106, if one has been published, and may not precede the publication of that notice, which alone is authentic.

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

SECTION 3
PROCUREMENT PROCEDURES

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

1. Contracts shall be awarded by call for tender, using the open, restricted or negotiated procedure after publication of a contract notice or by negotiated procedure without prior publication of a contract notice, where appropriate following a contest.

2. Calls for tenders are open where all interested economic operators may submit a tender. That applies also in the case of the dynamic purchasing systems referred to in Article 111a.
Calls for tenders are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria referred to in Article 121 and invited simultaneously and in writing by the contracting authorities may submit a tender or a solution under the competitive dialogue procedure referred to in Article 111b.
The selection phase may be repeated for each individual contract, also in the case of a competitive dialogue, or may involve drawing up a list of potential candidates under the restricted procedure referred to in Article 114.
3. In a negotiated procedure, the contracting authorities shall consult tenderers of their choice who satisfy the selection criteria laid down in Article 121 and negotiate the terms of the contract with one or more of them.
In negotiated procedures where a contract notice is published, as referred to in Article 113, the contracting authorities shall simultaneously and in writing invite the selected candidates to negotiate.
4. Contests are procedures which enable the contracting authority to acquire, mainly in the fields of architecture and civil engineering or data processing, a plan or design proposed by a selection board after being put out to competition with or without the award of prizes.

Article 109

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

1. In a restricted procedure, including the procedure referred to in Article 114, the number of candidates invited to submit a tender may not be less than five, provided that a sufficient number of candidates satisfy the selection criteria.
The contracting authority may also provide for a maximum number of twenty candidates, depending on the subject of the contract and on the basis of objective and non-discriminatory selection criteria. In such cases, the range and criteria shall be indicated in the contract notice or the call for expressions of interest referred to in Articles 104 and 105.
In any event, the number of candidates invited to tender must be sufficient to ensure genuine competition.
2. In negotiated procedures and in restricted procedures after a competitive dialogue, the number of candidates invited to negotiate or to tender may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria.
The number of candidates invited to tender must be sufficient to ensure genuine competition.
The first and second subparagraphs shall not apply to the following:
 - (a) contracts involving very small amounts, as referred to in Article 115(3);
 - (b) contracts for legal services within the meaning of Annex IIB of Directive 2004/18/EC;
 - (c) contracts declared secret, as referred to in Article 112(1)(j).
3. Where the number of candidates meeting the selection criteria and the minimum levels is below the minimum number specified in paragraphs 1 and 2, the contracting authority may continue the procedure by inviting the candidate or candidates with the required capacities.

However, the contracting authority may not include other economic operators who did not ask to take part, or candidates who do not have the required capacities.

Article 110
Arrangements for negotiated procedures
(Article 91 of the General Financial Regulation)

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

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

Where contracting authorities may, in accordance with Article 113, award contracts using a negotiated procedure after publishing a contract notice, they may arrange for the negotiated procedure to be conducted in stages so as to reduce the number of tenders to be negotiated, while applying the award criteria set out in the contract notice or specification. The contract notice or specification shall state that use is to be made of this possibility.

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

1. The rules for the organisation of a contest shall be communicated to those interested in taking part.
The number of candidates invited to take part must be enough to ensure genuine competition.
2. The selection board shall be appointed by the authorising officer responsible. It shall be made up exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required for participation in a contest, at least one third of its members must have the same or an equivalent qualification.
The selection board shall be autonomous in its opinions. Its opinions shall be adopted on the basis of projects submitted to it anonymously by the candidates and solely in the light of the criteria set out in the contest notice.
3. The proposals of the selection board, based on the merits of each project, and its observations, shall be recorded in a report signed by its members.
Candidates shall remain anonymous until the selection board has given its opinion.
Candidates may be asked by the selection board to answer the questions recorded in the report in order to clarify a project. A full report of the resulting dialogue shall be drawn up.
4. The contracting authority shall then take a decision giving the name and address of the candidate selected and the reasons for the choice by reference to the criteria announced in the contest notice, especially if it departs from the proposals made in the selection board's opinion.

Article 111a
Dynamic purchasing system
(Article 91 of the General Financial Regulation)

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

They shall indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, and all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.
3. Contracting authorities shall give any economic operator, throughout the duration of the dynamic purchasing system, the possibility of submitting an indicative tender with a view to being admitted to the system under the conditions referred to in paragraph 1. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform tenderers at the earliest possible opportunity that they have been admitted to the dynamic purchasing system or that their tender has been rejected.
4. Each specific contract shall be the subject of an invitation to tender. Before issuing this invitation, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, within a time limit that may not be less than 15 days from the date on which the simplified notice is sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

Contracting authorities shall invite all tenderers admitted to the system to submit a tender within a reasonable time. They shall award the contract to the tenderer who has submitted the tender offering best value for money on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation to tender.
5. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

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

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

Article 111 b
Competitive dialogue
(Article 91 of the General Financial Regulation)

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

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

2. Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document.
3. Contracting authorities shall open a dialogue with the candidates satisfying the selection criteria set out in Article 121 in order to identify and define the means best suited to satisfying their needs.

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

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

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

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

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

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

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

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

- (a) where no tenders or no suitable tenders have been submitted in response to an open procedure or restricted procedure after the initial procedure has been completed, provided that the original terms of the contract as specified in the documents relating to the invitation to tender referred to in Article 116 are not substantially altered;
- (b) where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator;
- (c) insofar as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events not attributable to the contracting authorities it is impossible to comply with the time limits set for the other procedures and laid down in Articles 126, 127 and 128 cannot be kept;
- (d) where a service contract follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates: in the latter case, all successful candidates shall be invited to participate in the negotiations;
- (e) for additional services and works not included in the project initially envisaged or in the initial contract but which, through unforeseen circumstances, have become necessary for the performance of the services or works, subject to the conditions set out in paragraph 2;
- (f) for new services or works consisting in the repetition of similar services or works entrusted to the economic operator awarded the initial contract by the same contracting authority, provided that these services or works conform to a basic project and that this project was the subject of an initial contract awarded under the open or restricted procedure, subject to the conditions set out in paragraph 3;
- (g) for supply contracts:
 - (i) in the case of additional deliveries which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations where a change of supplier would oblige the contracting authority to acquire equipment having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the length of such contracts may not exceed three years;
 - (ii) where the products involved are manufactured purely for the purpose of research, experiment, study or development, with the exception of commercial viability tests and large scale production aimed at recovering research and development costs;
 - (iii) in respect of supplies quoted and purchased on a commodity market;
 - (iv) in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;
- (h) for building contracts, after prospecting the local market;
- (i) for contracts for legal services within the meaning of Annex IIB to Directive 2004/18/EC, provided that such contracts are appropriately advertised);
- (j) for contracts declared to be secret by the institution or by the authorities delegated by the institution, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when

the protection of the essential interests of the Communities or of the Union so requires.

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

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

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

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

3. In the cases referred to in point (f) of the first subparagraph of paragraph 1, the option of using the negotiated procedure shall be pointed out as soon as the first operation is put out to competitive tender, and the total estimated amount for the subsequent services or work shall be taken into consideration in calculating the thresholds referred to in Article 144. That procedure may be used only during the three years following conclusion of the original contract

Article 113

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

1. Contracting authorities may use the negotiated procedure after having published a contract notice, whatever the estimated value of the contract, in the following cases:
 - (a) where tenders which are irregular or unacceptable, by reference in particular to the selection or award criteria, are submitted in response to an open or restricted procedure, or a competitive dialogue, which has been completed, provided that the original terms of the contract as specified in the call for tenders referred to in Article 116 are not substantially altered, without prejudice to the application of paragraph 2;
 - (b) in exceptional cases involving work, supplies or services where the nature or the risks do not permit prior overall pricing by the tenderer;
 - (c) where the nature of the service to be procured, in particular in the case of financial services and intellectual services, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender in accordance with the rules governing open or restricted procedures;
 - (d) for works contracts, where the works are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs;
 - (e) for the service contracts referred to in Annex I1B to Directive 2004/18/EC, subject to points (i) and (j) of the first subparagraph of Article 112(1) of this Regulation and the second subparagraph thereof.
 - (f) for research and development services other than those where the benefits accrue

exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;

- (g) for service contracts for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time.
2. In the cases referred to in point (a) of paragraph 1, contracting authorities may refrain from publishing a contract notice if they include in the negotiated procedure all the tenderers and only the tenderers satisfying the selection criteria who, during the previous procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

Article 114

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

1. A call for expressions of interest shall constitute a means of pre-selecting candidates who will be invited to submit tenders in response to future restricted invitations to tender for contracts with a value of more than EUR 60,000, subject to Articles 112 and 113.
2. The list drawn up following a call for expressions of interest shall be valid for no more than three years from the date on which the notice referred to in point (a) of Article 105(1) is sent to the Office for Official Publications of the European Communities.

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

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

Article 115

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

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

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

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

Article 116

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

1. The documents relating to the invitation to tender shall include at least:

- (a) the invitation to tender or to negotiate or to take part in the dialogue under the procedure referred to in Article 111b;
- (b) the attached specifications or, in the case of a competitive dialogue as referred to in Article 111b, a document describing the needs and requirements of the contracting authority, or the reference for the Internet address at which such specification or document can be consulted;
- (c) the model contract.

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

2. The invitation to tender or to negotiate or to take part in the dialogue shall at least:

- (a) specify the rules governing the lodging and presentation of tenders, including in particular the closing date and time for submission, any requirement as to the use of a standard reply form, the documents to be attached, including those in evidence of financial, economic, technical and professional capacity referred to in Article 121 if they are not specified in the contract notice, and the address to which they must be sent;
- (b) state that submission of a tender implies acceptance of the specification referred to in paragraph 1 to which the tender relates and that this submission binds the contractor to whom the contract is awarded during performance of the contract;
- (c) specify the period during which a tender will remain valid and may not be varied in any respect;
- (d) forbid any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid down in Article 134, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit;
- (e) specify , in the case of a competitive dialogue, the date set and the address for the start of the consultation phase.

3. The specifications shall at least:
 - (a) specify the exclusion and selection criteria applying to the contract, save in the restricted procedure, including after a competitive dialogue, and in the negotiated procedures following publication of a notice, referred to in Article 113; in such cases those criteria shall appear solely in the contract notice or the call for expressions of interest;
 - (b) specify the award criteria and their relative weighting or, where appropriate, the decreasing order of importance, if this is not specified in the contract notice;
 - (c) set out the technical specifications referred to in Article 117;
 - (d) state the minimum requirements which variants must meet in the procedures referred to in Article 124(2) under which the contract is awarded to the tender offering best value for money, where the contracting authority has stated in the contract notice that such variants are permitted;
 - (e) state that the Protocol on Privileges and Immunities or, where appropriate, the Vienna Convention on Diplomatic Relations or Consular Relations applies;
 - (f) specify the evidence of access to contracts, as set out in Article 145;
 - (g) specify, in the dynamic purchasing systems referred to in Article 111a, the nature of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.
4. The model contract shall in particular:
 - (a) specify the penalties for failure to comply with its clauses;
 - (b) specify the details which must be contained in invoices or in the relevant supporting documents in accordance with the provisions of Article 83;
 - (c) specify the law applicable to the contract and the competent court for hearing disputes.
5. The contracting authorities may demand information from the tenderer on any part of the contract that the tenderer may intend to subcontract to third parties and on the identity of any subcontractors.

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

1. Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering.
2. They shall define the characteristics required of a product, service or material or work with regard to the purpose for which they are intended by the contracting authority.

These characteristics shall include:

- (a) the quality levels;
- (b) environmental performance;
- (c) design for all requirements (including accessibility for disabled people);
- (d) the levels and procedures of conformity assessment;
- (e) fitness for use;

- (f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;
 - (g) for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the contracting authority may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve.
3. The technical specifications shall be formulated as follows:
- (a) either with reference to European standards, or to European technical approvals or common technical specifications, where such exist, to international standards or to other technical reference material produced by European standards institutions or, failing this, their national equivalents. Every reference shall be accompanied by "or equivalent".
 - (b) or in terms of performances or functional requirements; they shall be sufficiently detailed to enable tenderers to determine the purpose of the contract and the contracting authorities to award the contract;
 - (c) or by a mixture of the two processes.
4. Where the contracting authorities make use of the possibility of referring to the specifications referred to in paragraph 3(a), they may not reject a tender on the grounds that it does not comply with the said specification provided that the tenderer or candidate proves, to the satisfaction of the contracting authority, by any appropriate means, that it is the equivalent of the requirements set.
5. Where the contracting authorities make use of the possibility provided for in paragraph 3(b) of prescribing specifications in terms of performances or functional requirements, they may not reject a tender which complies with a national standard transposing a European standard, a European technical approval or common technical specifications, an international standard or technical reference material produced by European standards institutions, if these specifications relate to the necessary performances or functional requirements.
- 5a. Where contracting authorities lay down environmental characteristics in terms of performance or of functional requirements, they may use the detailed specifications, or, if necessary, parts thereof, as defined by European, multinational or national eco-labels, or by any other eco-label, provided that the following conditions are satisfied:
- (a) the specifications used are appropriate to define the characteristics of the supplies or services that are the object of the contract;
 - (b) the requirements for the label are drawn up on the basis of scientific information;
 - (c) the eco-labels are adopted using a procedure in which all the parties concerned, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate;
 - (d) the eco-labels are accessible to all interested parties.

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

- 5b. A recognised body for the purposes of paragraphs 4, 5 and 5a is a test and calibration laboratory or a certification and inspection body which complies with applicable European standards.
6. Save in exceptional cases, which must be duly justified, these specifications shall not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production which would have the effect of favouring or eliminating certain products or competitors.

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

Article 118

Price revision

(Article 92 of the General Financial Regulation)

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

Article 119

Administrative and financial penalties

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

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

This period may be extended to three years in the event of a repeat offence within five years of the first infringement.
- (b) Tenderers or candidates who have been guilty of making false declarations shall also be subject to financial penalties representing 2 to 10% of the total value of the contract being awarded.

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

This rate may be increased to 4 to 20% in the event of a repeat offence within five years of the first infringement.
2. In the cases referred to in Article 93(a), (c), and (d) of the General Financial Regulation, the candidates or tenderers shall be excluded from the award of contracts and grants for a maximum of two years from the time when the infringement is established, to be confirmed after an adversarial procedure with the contractor.

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

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

3. The cases referred to in Article 93(1)(e) of the General Financial Regulation shall be the following:
 - (a) cases of fraud referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995,³
 - (b) cases of corruption referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997,⁴
 - (c) cases of participation in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council,⁵
 - (d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC.⁶

Article 120

Evidence

(Article 93 and 94 of the General Financial Regulation)

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

However, in case of restricted procedure, competitive dialogue and negotiated procedure after publication of a contract notice, whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender, all the candidates shall provide the certificates referred to in paragraph 3.
2. The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph 3, confirming the declaration referred to in paragraph 1 in the following case:

for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 144;

For contracts with a value less than the threshold referred above, the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3.
3. The contracting authority shall accept as satisfactory evidence that the candidate or

³ OJ C 316, 27.11 1995, p. 48.

⁴ OJ C 195, 25.6.1997, p. 1.

⁵ OJ L 351, 29 12 1998, p. 1. Joint Action of 21 December 1998 on making it a criminal offence to participate in a criminal organisation in the Member States of the European Union.

⁶ OJ L 166, 28.6.1991, p.77. Directive of 10 June 1991 as amended by Directive 2001/97/EC of the European Parliament and of the Council of 4 December 2001 (OJ L 344, 28.12.2001, p. 76).

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

Where the document or certificate referred to in paragraph 1 is not issued in the country concerned and for the other cases of exclusion referred to in Article 93 of the General Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

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

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

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

1. The contracting authorities shall draw up clear and non-discriminatory selection criteria.
2. The selection criteria shall be applied in every procurement procedure for the purposes of assessing the financial, economic, technical and professional capacity of the candidate or the tenderer.

The contracting authority may lay down minimum capacity levels below which candidates may not be selected.

3. Any tenderer or candidate may be asked to prove that he is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the VAT register.
4. The contracting authorities shall specify in the contract notice or in the call for expressions of interest or the invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates.
5. The information requested by the contracting authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer and the minimum capacity levels required in accordance with paragraph 2 may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.
6. The contracting authority may, depending on his assessment of risks, decide not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers in the case of the following contract:

contracts awarded by the institutions on their own account, with a value of less than or equal to EUR 60,000,

Where the contracting authority decides not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers, no pre-financing shall be made unless a financial guarantee of an equivalent amount is provided.

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

1. Proof of economic and financial capacity may be furnished by one or more of the following documents:
 - (a) appropriate statements from banks or evidence of relevant professional risk indemnity insurance;
 - (b) the presentation of balance sheets or extracts from balance sheets for at least the last two years for which accounts have been closed, where publication of the balance sheet is required under the company law of the country in which the economic operator is established;
 - (c) a statement of overall turnover and turnover concerning the works, supplies or services covered by the contract during a period which may be no more than the last three financial years.

2. If, for some exceptional reason which the contracting authority considers justified, the tenderer or candidate is unable to provide the references requested by the contracting authority, he may prove his economic and financial capacity by any other means which the contracting authority judges appropriate.
3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links .which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Under the same conditions, a consortium of economic operators as referred to in Article 102(6) may rely on the capacities of members of the consortium or of other entities.

Article 123

Technical and professional capacity

(Article 97(1) of the General Financial Regulation)

1. Technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraphs 2 and 3. In procurement procedures for supplies requiring sitting or installation operations, services and/or works, such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.
2. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of one or more of the following documents:
 - (a) the educational and professional qualifications of the service provider or contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;
 - (b) a list:
 - (i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private.
 - (ii) of the works carried out in the last five years, with the sums, dates and place. The list of the most important works shall be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed;
 - (c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;
 - (d) a description of the technical equipment and the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
 - (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
 - (f) in respect of supplies, samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
 - (g) a statement of average annual manpower and the number of managerial staff of the service provider or contractor in the last three years;

- (h) an indication of the proportion of the contract which the service provider may intend to subcontract
- (i) for public works contracts and public service contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

Where the services or supplies referred to in point (b)(i) of the first subparagraph are provided to contracting authorities, evidence of performance shall be in the form of certificates issued or countersigned by the competent authority.

- 3. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.
 - 3a. Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards series certified by bodies conforming to the European standards series concerning certification.
 - 3b. Where contracting authorities require the production of certificates drawn up by Independent bodies attesting the compliance of the economic operator with certain environmental management standards, they shall refer to the Community Eco-Management and Audit Scheme (EMAS) provided for in Regulation (EC) No 761/2001 of the European Parliament and of the Council³ or to environmental management standards based on the relevant European or international standards certified by bodies conforming to Community law or the relevant European or international standards concerning certification. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.
- 4. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Under the same conditions, a consortium of economic operators as referred to in Article 104(6) may rely on the capacities of members of the consortium or of other entities.

Article 124

Award arrangements and criteria (Article 97(2) of the General Financial Regulation)

- 1. Contracts shall be awarded in one of the following two ways:
 - (a) under the automatic award procedure, in which case the contract is awarded to the lowest price submitted that is in order and satisfies the conditions laid down;
 - (b) under the best-value-for-money procedure.

2. The tender offering the best value for money shall be the one with the best price-quality ratio, taking into account criteria justified by the purpose of the contract such as the price offered, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, profitability completion or delivery times, after-sales service and technical assistance.
3. The contracting authority shall specify, in the contract notice or in the specification or in the descriptive document, the weighting it will apply to each of the criteria for determining best value for money. That weighting may be expressed as a range with an appropriate maximum spread.

The weighting applied to price in relation to the other criteria must not result in the neutralisation of price in the choice of contractor, without prejudice to the scales laid down by the institution for the remuneration of certain services, such as those provided by experts for evaluation purposes.

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

Article 124a

Use of electronic auctions

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

1. In open, restricted or negotiated procedures in the case referred to in Article 113 (1)(a), the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction, as referred to in Article 54 of Directive 2004/18/EC, when the contract specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework contract as referred to in Article 103(4)(b) of this Regulation and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 111a.

The electronic auction shall be based either solely on prices, in which case the contract is awarded to the lowest price, or on the prices and/or the values of the features of the tenders indicated in the specification, in which case the contract is awarded to the tender offering best value for money .

2. Contracting authorities which decide to hold an electronic auction shall state that fact in the contract notice.

The specification shall include the following details:

- (a) the features, the values for which will be the subject of electronic auction, provided that those features are quantifiable and can be expressed in figures or percentages;
- (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
- (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
- (d) the relevant information concerning the electronic auction process;
- (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
- (f) the relevant information concerning the electronic equipment used and the

arrangements and technical specifications for connection.

3. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them.

All tenderers who have submitted admissible tenders shall be invited simultaneously by electronic means to submit new prices and/or new values; the invitation shall contain all relevant information concerning individual connection to the electronic equipment being used and shall state the date and time of the start of the electronic auction. The electronic auction may take place in a number of successive phases. The electronic auction may not start sooner than two working days after the date on which invitations are sent out.

4. When the contract is to be awarded on the basis of the tender offering best value for money, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in the first subparagraph of Article 124(3).

The invitation shall also state the mathematical formula to be used in the electronic auction to determine automatic re-rankings on the basis of the new prices and/or new values submitted. That formula shall incorporate the weighting of all the criteria fixed to determine the tender offering best value for money, as indicated in the contract notice or in the specification; for that purpose, any ranges shall, however/ be reduced beforehand to a specified value.

Where variants are authorised/ a separate formula shall be provided for each variant.

5. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specification. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.

6. Contracting authorities shall close an electronic auction in one or more of the following ways:
 - (a) in the invitation to take part in the auction, they shall indicate the date and time fixed in advance;
 - (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences. In that event, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction;
 - (c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

When the contracting authorities have decided to close an electronic auction in accordance with point (c)/ possibly in combination with the arrangements laid down in point (b), the invitation to take part in the auction shall indicate the timetable for each phase of the auction.

7. After closing an electronic auction, contracting authorities shall award the contract in accordance with Article 124 on the basis of the results of the electronic auction.

Contracting authorities may not have improper recourse to electronic auctions nor may they use them in such a way as to prevent, restrict or distort competition or to change the subject-matter of the contract, as put up for tender in the published contract notice and defined in the specification.

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

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

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

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

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

1. The time limits for the receipt of tenders and requests to participate, laid down in calendar days by the contracting authorities, shall be long enough to allow interested parties a

reasonable and appropriate period to prepare and submit their tenders, taking particular account of the complexity of the contract or the need to visit the site or consult on the spot the documents annexed to the specifications.

2. In open procedures for contracts with a value equal to or above the thresholds set in Article 144, the time limit for receipt of tenders shall be no less than 52 days from the date on which the contract notice is dispatched.
3. In restricted procedures, including cases of use of the competitive dialogue referred to in Article 111b, and in negotiated procedures with publication of a contract notice for contracts with a value equal to or above the thresholds set in Article 144, the time limit for receipt of requests to participate shall be no less than 37 days from the date on which the contract notice is dispatched.

In restricted procedures for contracts with a value equal to or above the thresholds set in Article 144, the time limit for receipt of tenders shall be no less than 40 days from the date on which the invitation to tender is dispatched.

However, in the restricted procedures after a call for expressions of interest referred to in Article 114, the time limit for receipt of tenders shall be no less than 21 days from the date on which the invitation to tender is dispatched.

4. Where the contracting authorities, in accordance with Article 104(2), have sent a pre-information notice for publication or have themselves published a pre-information notice on their buyer profile, the time limit for the receipt of tenders may generally be reduced to 36 days but shall in no circumstances be less than 22 days from the date of dispatch of the contract notice or the invitation to tender.

The shortened time limits referred to in the first subparagraph shall be permitted only if the pre-information notice satisfies the following conditions:

- (a) it contains all the information required for the contract notice, insofar as that information is available at the time the notice is published;
 - (b) it was sent for publication between 52 days and 12 months before the date on which the contract notice was sent.
5. The time limits for receipt of tenders may be shortened by five days if unrestricted and direct access is available by electronic means to all documents constituting the call for tenders from the date of publication of the contract notice or the call for expressions of interest.

Article 127

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

1. Provided that the request was made in good time before the deadline for submission of tenders, the specification or descriptive documents' in the procedure referred to in Article 111b and additional documents shall be sent, within six calendar days of the receipt of the request, to all economic operators who have requested the specification or expressed interest in taking part in a dialogue or submitting a tender, subject to the provisions of paragraph 4. Contracting authorities are not bound to reply to requests for documents made less than five working days before the deadline for submission of tenders.
2. Provided that the request was made in good time before the deadline for submission of tenders, additional information relating to the specification or the descriptive documents or additional documents shall be supplied simultaneously to all economic operators who have requested the specification or expressed interest in taking part in a dialogue or submitting a

tender no later than six days before the deadline for the receipt of tenders or, in the case of requests for Information received less than eight calendar days before the deadline for receipt of tenders, as soon as possible after receipt of the request. Contracting authorities are not bound to reply to requests for additional information made less than five working days before the deadline for submission of tenders.

3. If, for whatever reason, the specifications and the additional documents or information cannot be supplied within the time-limits set in paragraphs 1 and 2, or where tenders can be made only after a visit to the site or after on-the spot consultation of the documents annexed to the specifications, the time limits for receipt of tenders referred to in Article 126 shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders. That extension shall be advertised in appropriate manner, in accordance with the arrangements set out in Articles 104 to 107.
4. In the open procedure, including the dynamic purchasing systems referred to in Article 125a, if there is unrestricted and full direct access by electronic means to the entire call for tenders and any additional documents, paragraph 1 shall not apply. The contract notice referred to in Article 104(3) shall give the Internet address at which those documents can be consulted.

Article 128

Time limits in urgent cases

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

1. Where duly substantiated urgency renders impracticable the minimum time limits laid down in Article 126(3) for restricted procedures and negotiated procedures where a contract notice is published, contracting authorities may set the following time limits, expressed in calendar days:
 - (a) a time limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice is dispatched or 10 days if the notice is sent to OPOCE electronically;
 - (b) a time limit for the receipt of tenders which may not be less than 10 days from the date of dispatch of the invitation to tender.
2. In restricted procedures and fast-track negotiated procedures, additional information on the specifications shall, provided it has been requested In good time, be communicated to all candidates or tenderers no later than four calendar days before the deadline for receipt of tenders.

Article 129

Methods of communication

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

1. The arrangements for the submission of tenders and requests to participate shall be determined by the contracting authority, which may choose an exclusive method of submission. Tenders and requests to participate may be submitted by letter or by electronic means. Requests to participate may also be submitted by fax.

The means of communication chosen shall be non-discriminatory in nature and shall not have the effect of restricting the access of economic operators to the award procedure.

The means of communication chosen shall be such as to ensure that the following conditions are satisfied:

- (a) each submission contains all the information required for its evaluation;

(b) the integrity of data is preserved;

(c) the confidentiality of tenders is preserved and the contracting authorities examine the content of tenders only after the time limit set for submitting them has expired.

Where necessary for the purposes of legal proof, the appointing authorities may decide that requests to participate submitted by fax must be confirmed by letter or electronically as soon as possible and at all events before the final date set in Articles 136.

Contracting authorities may require that electronic tenders be accompanied by an advanced electronic signature within the meaning of Directive 1999/93/EC of the European Parliament and of the Council.

- 1a. Where the contracting authority authorises submission of tenders and requests to participate by electronic means, the tools used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use. The information relating to the specifications required for presentation of tenders and requests to participate, including encryption, shall be made available to the tenderers or candidates.

Moreover, the devices for the electronic receipt of tenders and requests to participate shall conform to the requirements of Annex X to Directive 2004/18/EC.

2. Where submission is by letter, tenderers may choose to submit tenders:
- (a) either by post or by courier service, in which case the call for tenders shall specify that the evidence shall be constituted by the date of dispatch, the postmark or the date of the deposit slip;
 - (b) or by hand-delivery to the premises of the institution by the tenderer in person or by an agent; for which purposes the call for tenders shall specify, in addition to the information referred to in Article 116(2)(a), the department to which tenders are to be delivered against a signed and dated receipt.
3. In order to maintain secrecy and to avoid any difficulties where tenders are sent by letter, the invitation to tender must include the following provision:

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

Article 130

Tender guarantees

(Article 98(2) of the General Financial Regulation)

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

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

Article 131

Opening of tenders and requests to participate

(Article 98(3) of the General Financial Regulation)

1. All requests to participate and tenders that satisfy the requirements of Article 129 shall be opened.

2. Where the value of a contract exceeds the threshold laid down in Article 115(1), the authorising officer responsible shall appoint a committee to open the tenders.

The opening committee shall be made up of at least three persons representing at least two organisational entities of the institution concerned with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 52 of the General Financial Regulation. In the representations or local units referred to in Article 254 or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

3. Where tenders are submitted by post, one or more members of the opening committee shall initial the documents proving the date and time of dispatch of each tender.

They shall also initial:

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

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

The members of the committee shall sign the written record of the opening of the tenders received, which shall identify those tenders which satisfy the requirements and those which do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 129.

Article 132

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

1. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee set up for each of the two stages on the basis of the pre-announced exclusion and selection criteria and the award criteria respectively.

That committee shall be appointed by the authorising officer responsible to give an advisory opinion on contracts with a value above the threshold referred to in Article 115 (1).

2. The evaluation committee shall be made up of at least three persons representing at least two organisational entities of the institution concerned with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 52 of the General Financial Regulation.

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

Outside experts may assist the committee by decision of the authorising officer responsible. The authorising officer responsible shall ensure that these experts satisfy the obligations laid down in Article 52 of the General Financial Regulation.

3. Requests to participate and tenders which do not satisfy all the essential requirements set out in the supporting documentation for invitations to tender or the specific requirements

laid down therein shall be eliminated.

However, the evaluation committee or the contracting authority may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion and selection criteria, within the time limit it specifies.

Requests to participate and tenders which are not excluded and which meet the selection criteria shall be considered admissible.

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

Article 133
Results of the evaluation
(Articles 99 of the General Financial Regulation)

1. A written record of the evaluation and ranking of requests to participate and tenders declared to satisfy the requirements shall be drawn up and dated. It shall be signed by all the members of the evaluation committee. It shall be kept for future reference.
2. The written record referred to in paragraph 1 shall contain at least the following:
 - (a) the name and address of the contracting authority, and the subject and value of the contract, the framework contract or the dynamic purchasing system;
 - (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
 - (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
 - (d) the reasons for the rejection of tenders found to be abnormally low;
 - (e) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.
3. The contracting authority shall then take its decision giving at least the following:
 - (a) the name and address of the contracting authority, and the subject and value of the contract, the framework contract or the dynamic purchasing system;
 - (b) the names of the candidates or rejected and the reasons for their rejection;
 - (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
 - (d) the reasons for the rejection of tenders found to be abnormally low;
 - (e) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
 - (f) in the case of negotiated procedures and competitive dialogue, the circumstances referred to in Articles 111b, 112, 113, which justify their use;
 - (g) where appropriate, the reasons why the contracting authority has decided not to award a contract.

Article 134
Contacts between contracting authorities and tenderers
(Article 99 of the General Financial Regulation)

1. Contact between the contracting authority and tenderers during the contract award procedure may take place, by way of exception, under the conditions set out in paragraphs 2 and 3.
2. Before the closing date for the submission of tenders in respect of the additional documents and information referred to in Article 127, the contracting authority may:
 - (a) at the instance of tenderers, communicate additional information solely for the purpose of clarifying the nature of the contract; such information shall be communicated on the same date to all tenderers who have asked for the specifications;
 - (b) at its own instance, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the contract notice, invitation to tender or specifications inform the persons concerned on the same date and in a manner identical with that applicable in respect of the original invitation to tender.
3. If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the tender must be corrected, the contracting authority may contact the tenderer, although such contact may not lead to any alteration of the terms of the tender.
4. In every case where contact has been made, a “note for the file” shall be drawn up.
5. In the case of contracts for legal services within the meaning of Annex IIB to Directive 2004/18/EC, the contracting authority may enter into the necessary contacts with tenderers to check the selection and/or award criteria

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

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract or framework contract or admission to a dynamic purchasing system, including the grounds for any decision not to award a contract or framework contract or set up a dynamic purchasing system, for which there has been competitive tendering or to recommence the procedure.
2. The contracting authority shall within not more than fifteen calendar days from the date on which a written request is received communicate the information provided for in Article 100(2) of the General Financial Regulation.
3. In the case of contracts awarded by the Community institutions on their own account, under Article 105 of the General Financial Regulation, the contracting authority shall inform all unsuccessful tenderers or candidates simultaneously and individually, as soon as possible after the award decision and within the following week at the latest, by mail and fax or email that their application or tender has not been accepted; specifying in each case the reasons why the tender or application has not been accepted.

The contracting authority shall, at the same time as the unsuccessful candidates or tenderers are informed that their tenders or applications have not been accepted, inform the successful tenderer of the award decision, specifying that the decision notified does not constitute a commitment on the part of the contracting authority.

Unsuccessful tenderers or candidates may request additional information about the reasons for their rejection in writing by mail, fax or email, and all tenderers who have put in an admissible tender may obtain information about the characteristics and relative merits of the tender accepted and the name of the successful tenderer, without prejudice to the second subparagraph of Article 100(2) of the General Financial Regulation. The contracting authority shall reply within no more than fifteen calendar days from receipt of the request.

The contracting authority may not sign the contract or framework contract with the successful tenderer until two calendar weeks have elapsed from the day after the simultaneous dispatch of the rejection and award decisions. If necessary it may suspend signing of the contract for additional examination if justified by the requests or comments made by unsuccessful tenderers or candidates during the two calendar weeks following the rejection or award decisions or any other relevant information received during that period. In that event all the candidates or tenderers shall be informed within three working days following the suspension decision.

SECTION 4

GUARANTEES AND CONTROL

Article 136

Advance guarantee

(Article 102 of the General Financial Regulation)

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

The guarantee shall be denominated in euro.

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

Article 137

Performance guarantee

(Article 102 of the General Financial Regulation)

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

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

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

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

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

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

A guarantee shall be required in return for the payment of pre-financing exceeding EUR 150,000 or in the case referred to in Article 121(6) second subparagraph.

However, where the contractor is a public body, the authorising officer responsible may, depending on his risk assessment, waive that obligation.

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

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

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

CHAPTER 2
SPECIFIC PROVISIONS APPLICABLE TO CONTRACTS AWARDED BY
THE AGENCY ON ITS OWN ACCOUNT

Article 140
Identification of contracting authorities for the calculation of thresholds
(Article 104 of the General Financial Regulation)

It shall be for each authorising officer by delegation or subdelegation within each institution to assess whether the thresholds laid down in Article 105 of the General Financial Regulation have been reached.

Article 141
Separate contracts and contracts with lots
(Article 105 of the General Financial Regulation)

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

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

3. Where the planned purchase of standard supplies may give rise to simultaneous contracts in separate lots, the estimated value of all those lots shall be taken as the basis for determining the applicable threshold.

Article 142

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

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

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

This estimate shall be made when the contract notice is sent or, where there is no such publicity, when the contracting authority initiates the award procedure.

- 1a. For framework contracts and dynamic purchasing systems the value to be taken into account shall be the maximum value of all the contracts envisaged during the total lifetime of the framework contract or dynamic purchasing system.

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

- (a) in the case of insurance services, the premium payable and other forms of remuneration;
- (b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;
- (c) in the case of design contracts, the fees, commissions payable and other forms of remuneration.

3. In the case of service contracts which do not specify a total price or supply contracts for leasing, rental or hire purchase of products, the value to be taken as the basis for calculating the estimated value shall be:

- (a) in the case of fixed-term contracts:
 - (i) where their term is forty-eight months or less in the case of services or twelve months or less in the case of supplies, the total contract value for their duration;
 - (ii) where their term is more than twelve months in the case of supplies, the total value including the estimated residual value;
- (b) in the case of contracts for an indefinite period or, in the case of services, for a period exceeding forty-eight months, the monthly value multiplied by forty-eight.

4. In the case of service or supply contracts which are awarded regularly or are to be renewed within a given time, the contract value shall be established on the basis of:

- (a) the actual aggregate cost of similar contracts for the same categories of services or products awarded over the previous financial year or twelve months, adjusted, where possible, for anticipated changes in quantity or value over the twelve months following the initial contract;
- (b) or the estimated aggregate cost of successive contracts during the twelve months following the first service performed or first delivery or during the term of the contract, where this is greater than twelve months.

5. In the case of works contracts, account shall be taken not only of the value of the works but also of the estimated total value of the supplies needed to carry out the works and made available to the contractor by the contracting authority.

Article 143

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

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

- (a) EUR 750,000 for the supply and service contracts listed in Annex IIA to Directive 2004/18/EC;
- (b) EUR 5,278,000 for works contracts.

Article 144

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

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

- (a) EUR 137,000 for the supply and service contracts listed in Annex IIA to Directive 2004/18/EC, with the exception of the research and development contracts listed in category 8 of that annex;
 - (b) EUR 211,000 for the service contracts listed in Annex IIB to Directive 2004/18/EC and for the research and development service contracts listed in category 8 of Annex IIA to Directive 2004/18/EC;
 - (c) EUR 5,278,000 for works contracts.
2. The time limits referred to in Article 105 of the General Financial Regulation shall be those specified in Articles 136, 137 and 138.

Article 145

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

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

TITLE VI GRANTS

CHAPTER 1 SCOPE

Article 146

Grants awarded by the Agency

(Article 75 of the General Financial Regulation)

The Agency may award grants if the European Parliament and the Council amend the provisions of the Regulation n° 881/2004.

Article 147

Provisions and rules applicable to grants awarded by the Agency

(Article 75 of the Financial Regulation)

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

Article 148

Scope

(Article 108 of the General Financial Regulation)

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

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

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

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

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

A body pursuing an aim of general European interest is:

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

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

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

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

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

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

3. Partnership framework agreements shall be treated as grants for the purposes of the award procedure; they shall be subject to the *ex ante* advertising procedures referred to in Article 155.
4. Specific grants based on such framework agreements shall be awarded in accordance with the procedures set out in the agreements, in compliance with the principles of this Title.
They shall be subject to the *ex post* publication procedures laid down in Article 157.
5. Only the specific agreements based on these framework agreements shall be preceded by a budget commitment.

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

1. The agreement shall in particular lay down:
 - (a) the subject;
 - (b) the beneficiary;
 - (c) the duration, namely
 - (i) the date of its entry into force and its termination,
 - (ii) the starting date and the duration of the action or financial year being funded,
 - (d) the maximum possible funding, in the form of:
 - (i) the maximum amount of the grant and
 - (ii) the maximum rate of funding of the eligible costs of the action or approved work programme, save in the case of the flat-rate amounts referred to in Article 169(1);
 - (e) a detailed description of the action or, for an operating grant, of the work programme approved for that year approved by the authorising officer;
 - (f) the general terms and conditions applicable to all agreements of this type; these shall include determination of the applicable law, the court competent to hear disputes and acceptance by the beneficiary of audits by the Commission, the Agency, OLAF and the Court of Auditors and of the *ex post* publication rules referred to in Article 157, in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council.⁷ The agreement may lay down the arrangements and time limits for suspension in accordance with Article 171;
 - (g) the estimated overall budget and details of the eligible costs of the action or approved work programme, save in the case of the flat-rate amounts referred to in Article 169(1);
 - (h) where implementation of the action involves procurement, the principles referred to in Article 172 or the procurement rules which the beneficiary must comply with;
 - (i) the responsibilities of the beneficiary, in particular in terms of sound financial management and submission of activity and financial reports;
 - (j) the arrangements and time limits for approving these reports and for payment by the Agency.
2. In the cases referred to in Article 151, the framework agreement shall specify the information referred to in paragraph 1(a),(b), (c)(i), (d)(ii), (f), (h), (i) and (j).

The specific agreement shall contain the information referred to in paragraph 1(a), (b) (c), (d), (e), (g) and, where necessary, (i).
3. Grant agreements may be amended only by written additional agreements. Such additional agreements shall not have the purpose or the effect of making changes to the agreements which might call into question the grant award decision or result in unequal treatment of beneficiaries.

⁷ OJ L 8, 12.1.2001, p. 1.

CHAPTER 2

AWARD PRINCIPLES

Article 153

No-profit rule

(Article 109(2) of the General Financial Regulation)

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

Article 154

Annual programming

(Article 110(1) of the General Financial Regulation)

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

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

Article 155

Content of calls for proposals

(Article 110(1) of the General Financial Regulation)

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

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

1. Grants may be awarded without a call for proposals only in the following cases:
 - (a) for the purposes of humanitarian aid, within the meaning of Council Regulation No 1257/96⁸ and aid for crisis situations within the meaning of paragraph 2;
 - (b) in other exceptional and duly substantiated emergencies;
 - (c) to bodies with a *de jure* or *de facto* monopoly, duly substantiated in the Agency award decision, or to bodies identified in the basic act mentioned in Article 146.
2. Crisis situations shall be understood to mean, for third countries, situations:
 - (a) posing a threat to law and order, the security and safety of individuals, threatening to escalate into armed conflict or to destabilise the country, and
 - (b) which could seriously harm:
 - (i) the safeguarding of the common values, fundamental interests, independence and integrity of the European Union,
 - (ii) the security of the European Union, peace-keeping and international security, promotion of international cooperation or development and strengthening of democracy, the rule of law, respect for human rights and fundamental freedoms, in accordance with Article 11 of the Treaty on European Union and Article 3 of Council Regulation (EC) No 381/2001.⁹

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

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

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

The information may also be published by any other appropriate medium, including the *Official Journal of the European Communities*.
2. The following shall be published with the agreement of the beneficiary in accordance with Article 152(1)(f):
 - (a) the name and address of the beneficiaries;
 - (b) the subject of the grant;
 - (c) the amount awarded and, save in the case of the flat-rate amounts referred to in Article 169(1), the rate of funding of the costs of the action or approved work programme.

⁸ OJ L 163, 2.7.1996. Council Regulation of 20 June 1996.

⁹ OJ L 57, 27.2.2001, p. 5. Regulation of 26 February 2001 creating a rapid-reaction mechanism.

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

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

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

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

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

- (a) where the expenditure relates to the constitution of stocks by the applicant for use in connection with the action for which the grant is awarded;
- (b) by way of exception and for properly justified reasons, where the financing decision and the grant application explicitly provide for this by setting an eligibility date earlier than the date for submission of applications.

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

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

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

CHAPTER 3 **AWARD PROCEDURE**

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

1. Applications shall be made on the form distributed by the authorising officers responsible and in accordance with the criteria laid down in the legal basis and the call for proposals.
2. They shall show that the applicant exists as a legal person and has the financial and operational capacity to complete the proposed action or work programme, subject to Article 164(4). For this purpose the authorising officer shall request a declaration from potential beneficiaries on their honour; the profit and loss account, the balance sheet for the

last financial year for which the accounts have been closed and any other supporting document requested in the call for proposals shall, depending on the analysis of management risks conducted by the authorising officer responsible on his own responsibility, also be attached to the application.

3. The budget for the action or the operating budget attached to the application must have revenue and expenditure in balance and show clearly the costs which are eligible for financing from the Community budget, save in the case of the flat-rate amounts referred to in Article 169(1).
4. For actions where the cost to be financed exceeds EUR 500,000 and for operating grants of over EUR 100,000, the application shall be accompanied by an external audit report produced by an approved auditor. This report shall certify the accounts for the last year available, give an assessment of the viability of the body within the meaning of Article 164(2) and identify the grants received during the year.

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

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

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

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

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

Article 162

Proof of applicants' eligibility

(Article 114 of the General Financial Regulation)

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

Article 163

Financial penalties

(Article 114 of the General Financial Regulation)

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

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

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

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

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

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

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

These criteria shall be applied in such a way as to select the planned actions or work programmes which give the Agency an assurance of compliance with its objectives and priorities and guarantee the visibility of the Community financing.
3. The award criteria shall be defined in such a way that it will be possible subsequently to carry out an evaluation.

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

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

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

Outside experts may assist this committee by decision of the authorising officer responsible.
2. The evaluation committee may ask an applicant, within a time limit which it sets, to provide additional proof or to clarify the supporting documents establishing financial and operational capacity.

3. Upon completion of its work, the members of the committee shall sign a record of all the proposals examined, containing an assessment of their quality and identifying those which may receive funding. Where necessary this record shall rank the proposals examined.
The record shall be kept for future reference.
4. The authorising officer responsible shall then take his decision giving at least:
 - (a) the subject and the overall amount of the decision;
 - (b) the name of the beneficiaries, the title of the actions, the amounts accepted and the reasons for this choice, including where he departs from the opinion of the committee;
 - (c) the names of any applicants excluded and the reasons for this choice.
5. The provisions of paragraphs 1 to 4 shall not apply to beneficiaries of grants who are identified in the basic act.

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

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

CHAPTER 4

PAYMENT AND CONTROL

Article 168

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

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

The authorising officer responsible shall give reasons for not requesting an external audit where payment of pre-financing and interim payments exceed EUR 750,000 per year and per agreement, for payments of balances exceeding EUR 325,000 and for operating grants of more than EUR 100,000.

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

Article 169

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

1. In addition to cases of scholarships and prizes, the basic act may authorise flat-rate financing for contributions of less than EUR 25,000 or the use of scales of unit costs.

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

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

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

Article 170

Advance guarantee (Article 118 of the General Financial Regulation)

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

For NGOs operating in the field of external action, this guarantee shall be demanded in respect of pre-financing exceeding EUR 1,000,000 or representing over 90% of the total amount of the grant.

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

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

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

The guarantee shall be denominated in euro.

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

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

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

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

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

CHAPTER 5 IMPLEMENTATION

Article 172

Implementation contracts

(Article 120 of the General Financial Regulation)

1. Where implementation of the assisted actions requires the award of procurement contracts, beneficiaries of grants shall award the contract to the tender offering best value for money, i.e. the one offering the best price-quality ratio, in compliance with the principles of transparency and equal treatment for potential contractors, care being taken to avoid any conflict of interests.
2. For the purposes of paragraph 1 the authorising officer responsible may require beneficiaries to abide by special rules, determined with due respect for the value of the contracts concerned. the relative size of the Community contribution in relation to the total cost of the action and the management risk.

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

TITLE VII

KEEPING AND PRESENTATION OF THE ACCOUNTS

CHAPTER 1

PRESENTATION OF THE ACCOUNTS

Article 173

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

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

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

Article 174

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

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

Article 175

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

1. The going-concern principle means that for the purposes of preparing the financial statements, the institutions and the bodies referred to in Article 185 of the General Financial Regulation shall be deemed to be established for an indefinite duration.
2. Where there are objective indications that an institution or a body referred to in Article 185 of the General Financial Regulation is to cease its activities, the accounting officer shall present this information in the annex, indicating the reasons. He shall apply the accounting rules with a view to determining the liquidation value of the institution or body concerned.

Article 176

Principle of prudence (Article 78 of the Financial Regulation)

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

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

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

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

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

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

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

1. The materiality principle means that all operations which are of significance for the information sought shall be taken into account in the financial statements. Materiality shall be assessed in particular by reference to the nature of the transaction or the amount.
2. Transactions may be aggregated where:
 - (a) the transactions are identical in nature, even if the amounts are large;
 - (b) the amounts are negligible;
 - (c) aggregation makes for clarity in the financial statements.

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

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

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

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

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

1. Every transaction shall be entered in the accounts where:
 - (a) the economic impact is such as to increase or reduce the assets or liabilities of the Agency;
 - (b) a reliable estimate can be given of its cost or value.
2. The accounting methods provided for in Article 133 of the General Financial Regulation shall specify the event giving rise to the entry of each transaction in the accounts.

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

1. Assets and liabilities shall be valued at purchase price or production cost. However, the value of non-financial fixed assets shall be written down for depreciation. In addition a write-down may be applied where the value of an asset decreases and an increase in the value of a liability may be covered by a provision.
2. The accounting rules and methods referred to in Article 132 of the General Financial Regulation may lay down that all items or only some of them shall be valued at a value other than their purchase price.

Article 184
Provisions
(Article 79 of the Financial Regulation)

A provision shall be made if, and only if:

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

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

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

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

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

Assets

Formation expenses

Intangible fixed assets

Tangible fixed assets
Financial fixed assets
Debtors: due in over one year
Stocks
Debtors: due in one year or less
Cash and cash equivalents
Prepayments and accrued income

Liabilities

Capital (made up of the economic result for the year, the result brought forward from earlier years and reserves)
Provisions
Creditors: due in over one year
Creditors: due in one year or less
Accruals and deferred income

Article 187
Economic outturn account
(Article 80 of the Financial Regulation)

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

Article 188
Presentation of the economic outturn account
(Article 80 of the Financial Regulation)

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

Operating revenue
- Operating expenditure
= Operating result
+/- Financial result

+/- Result from ordinary activities
+/- Exceptional result
= Result for the year

Article 189
Cash flow table
(Article 80 of the Financial Regulation)

The cash flow table shall show treasury movements.

The treasury shall be made up of the following:

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

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

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

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

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

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

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

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

Article 193
Budgetary outturn account
(Article 81 of the Financial Regulation)

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

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

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

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

CHAPTER 2 **ACCOUNTING**

SECTION 1 **COMMON PROVISIONS**

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

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

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

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

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

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

SECTION 2
GENERAL ACCOUNTS

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

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

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

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

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

Article 199
Inventory
(Article 86 of the Financial Regulation)

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

Article 200
Chart of accounts
(Article 85 of the Financial Regulation)

1. The chart of accounts shall be adopted by the Commission's accounting officer.
2. The chart of accounts shall divide the accounts into classes.
Each class may be subdivided into groups or subgroups, as required.
3. The chart of accounts must contain at least the following classes:
 - (a) for the balance-sheet accounts:
 - (i) class 1: accounts for capital, provisions and creditors due in over one year,
 - (ii) class 2: accounts for formation expenses, fixed assets and debtors due in over one year,
 - (iii) class 3: stock accounts,
 - (iv) class 4: accounts for debtors and creditors due in one year or less,
 - (v) class 5: financial accounts,
 - (b) for the revenue and expenditure accounts:
 - (i) class 6: charges accounts,
 - (ii) class 7: income accounts,
 - (c) for the special accounts:
classes 8 and 9: special accounts,
 - (d) for off-balance-sheet transactions:
class 0: off-balance-sheet transactions.
4. The chart of accounts shall be detailed enough to allow operations to be recorded in accordance with accounting standards.
5. The contents of each account and class and its operation shall be laid down in the chart of accounts.

Article 201
Entries in the accounts
(Article 87 of the Financial Regulation)

1. Entries shall be made using the double entry method, whereby any movement or variation recorded in the accounts shall be represented by an entry establishing an equivalence between the amount debited and the amount credited in the various accounts affected by that entry.
2. The euro counterpart of a transaction denominated in a currency other than the euro shall be calculated and entered in the accounts.

Transactions in foreign currencies in accounts which can be revalued shall be revalued at least each time the accounts are closed.

This revaluation shall be based on the rates laid down in accordance with Article 5.

Article 202
Accounting records
(Article 87 of the Financial Regulation)

All accounting records shall specify the origin, content and booking reference of each data item and the references of the relevant supporting documents.

Article 203
Supporting documents
(Article 87 of the Financial Regulation)

1. Each entry shall be based on a dated and numbered supporting document, produced on paper or on a medium which guarantees the reliability and safeguarding of its content for the periods laid down in Article 35.
2. Operations of the same type, carried out in the same place and on the same day may be summarised in a single supporting document.

Article 204
Recording in the journal
(Article 87 of the Financial Regulation)

Accounting operations shall be recorded in the journal by one of the following methods, which are not mutually exclusive:

- (a) either day by day, operation by operation,
- (b) or in the form of a periodic summary of the total amounts involved in operations, provided that all documents allowing verification of individual operations day by day are kept.

Article 205
Validation of entries
(Article 87 of the Financial Regulation)

1. Entries in the journal and in an inventory ledger shall be made final by means of a validation procedure prohibiting any change to or deletion of the entry.
2. A closure procedure designed to freeze the chronology of records and guarantee their inviolability shall be implemented before the final financial statements are presented.

Article 206
Reconciliation of accounts
(Article 87 of the Financial Regulation)

1. The balance shown on each account in the trial balance shall be reconciled periodically, and at least whenever the accounts are closed.
2. Periodically, and at least whenever the accounts are closed, the accounting officer shall check that the data in the inventory ledger correspond to the actual situation, in particular as regards:
 - (a) cash at bank - by reconciliation of the statements of account from financial institutions,
 - (b) cash in cash offices - by reconciliation with the data in the cash book.The fixed assets accounts shall be reviewed in accordance with Article 212.
3. The suspense accounts shall be reviewed periodically by the accounting officer so that they can be cleared as soon as possible.

SECTION 3
BUDGET ACCOUNTS

Article 207
Content and keeping of budget accounts
(Article 89 of the Financial Regulation)

1. The budget accounts shall show, for each subdivision of the budget:
 - (a) in the case of expenditure:
 - (i) the appropriations authorised in the initial budget, the appropriations entered in amending budgets, the appropriations carried over, the appropriations available in respect of participation by third parties, transfers of appropriations and the total appropriations thus available;
 - (ii) the commitments and payments in respect of the financial year;
 - (b) in the case of revenue:
 - (i) the estimates entered in the initial budget, the estimates entered in amending budgets, revenue from contributions by third parties and the total amount of estimates thus determined,
 - (ii) the entitlements established and the amounts recovered in respect of the financial year in question;
 - (c) the commitments still to be paid and revenue still to be recovered carried forward from previous financial years.

The commitment appropriations and payment appropriations referred to in point (a) of the first paragraph shall be entered and shown separately,

2. The budget accounts shall show separately:
 - (a) the use of appropriations carried over and the appropriations for the year;
 - (b) the clearance of outstanding commitments.

On the revenue side, amounts still to be recovered from previous financial years shall be shown separately.

3. The budget accounts may be organised in such a way as to develop a cost accounting system.
4. The budget accounts shall be kept using computer systems, in books or on file cards.

CHAPTER 3

PROPERTY INVENTORIES

Article 208

Property inventories

(Article 90 of the Financial Regulation)

The system of property inventories shall be established by the authorising officer with technical assistance from the accounting officer. This inventory system must supply all the information required for keeping the accounts.

Article 209

Safeguarding property

(Article 90 of the Financial Regulation)

The Agency shall adopt provisions on safeguarding the property included in their respective balance sheets and decide which administrative departments are responsible for the inventory system.

Article 210

Entries in the inventory

(Article 90 of the Financial Regulation)

All items acquired whose purchase price or production cost is EUR 420 or more, with a period of use greater than one year, and which are not consumables shall be entered in the inventory and recorded in the fixed assets accounts.

Article 211

Content of the inventory

(Article 90 of the Financial Regulation)

The inventory shall contain an appropriate description of each item and specify its location, the date of acquisition and its unit cost.

Article 212

Inventory checks

(Article 90 of the Financial Regulation)

Inventory checks carried out by the Agency shall be performed in such a way as to ensure that each item physically exists and matches the relevant entry in the inventory. Such checks shall be carried out under a three-year verification programme.

Article 213

Resale of property

(Article 90 of the Financial Regulation)

Officials and other servants of the Agency may not acquire items that are resold by the Agency or other institutions and bodies, save where those items are resold by public tender procedure.

Article 214
Procedure for sale of fixed assets
(Article 90 of the Financial Regulation)

1. Sales of fixed assets shall be advertised locally in appropriate fashion, if the unit purchase value is EUR 8,100 or more. The period between publication of the last announcement and conclusion of the sales contract shall be no less than fourteen days.

They shall be the subject of a notice of sale published in the Official Journal of the European Communities, if the unit purchase value is EUR 391,100 or more. Appropriate advertising may also be placed in the Member States' press. The period between publication of the notice in the Official Journal of the European Communities and conclusion of the sales contract shall be no less than one month.
2. The Agency may forgo advertising where the cost of advertising exceeds the expected return from the operation.
3. The Agency shall always endeavour to obtain the best price for sales of fixed assets.

Article 215
Procedure for disposing of fixed assets
(Article 90 of the Financial Regulation)

A statement or record shall be drawn up by the authorising officer whenever any property in the inventory is sold, given away free of charge, scrapped, hired out or missing on account of loss, theft or any other reason.

The statement or record shall indicate in particular whether the item must be replaced at the expense of an official or other servant of the Communities or any other person.

Where immovable property or major installations are made available free of charge, a contract must be drawn up and the case notified in an annual report sent to the European Parliament and the Council when the preliminary draft budget is presented.

TITLE VIII FINAL PROVISIONS

Article 216

Bodies referred to in Article 185 of the General Financial Regulation

(Article 100 of the Financial Regulation)

1. The bodies which may receive subsidies from the budget are as follows:
 - (1) the European Agency for the Development of Vocational Training,
 - (2) the European Foundation for the Improvement of Living and Working Conditions,
 - (3) the European Training Foundation,
 - (4) the European Environment Agency,
 - (5) the European Monitoring Agency for Drugs and Drug Addiction,
 - (6) the European Agency for the Evaluation of Medicinal Products,
 - (7) the Office for Harmonisation in the Internal Market,
 - (8) the European Agency for Safety and Health at Work,
 - (9) the Community Plant Variety Office,
 - (10) the Translation Agency for Bodies of the European Union,
 - (11) the European Maritime Safety Agency,
 - (12) the European Agency for Reconstruction,
 - (13) Eurojust,
 - (14) the European Food Safety Authority,
 - (15) European Aviation Safety Agency,
2. The obligations referred to in Articles 44(3)(d) and 185 of the General Financial Regulation shall apply only to bodies actually receiving a subsidy from the budget. The Agency is one of these bodies.

Article 217

Updating of thresholds and amounts

1. The thresholds and amounts stipulated in Articles 53, 114, 115, 137, 138, 161, 168, 169, 210 and 214 shall be updated every three years in line with movements in the consumer price index in the European Union.
2. The thresholds for contracts referred to in Article 143(b) and Article 144(1)(a) and (c) shall be adjusted every two years in accordance with Articles 7(1)(b) of Directive 92/50/EEC, 6(2)(a) of Directive 93/37/EEC and 5(1)(c) of Directive 93/36/EEC.
3. The Commission, which shall establish the new amounts and thresholds in accordance with the timetable and criteria set out in paragraphs 1 and 2, shall inform the Agency and have them published in the *Official Journal of the European Communities*.

Article 218

This Regulation shall enter into force upon adoption by the ERA Administrative Board.

Done at Valenciennes, on 30-10-2007

For the Administrative Board
The Chairman
Michael Harting