

REGULATION OF

THE EUROPEAN RAILWAY AGENCY

AMENDING THE FINANCIAL REGULATION OF 5 JULY 2004

FOLLOWING COMMISSION REGULATION (EC, EURATOM)
N 652/2008 OF 9 JULY 2008

ADOPTED BY THE ADMINISTRATIVE BOARD

ON

28 October 2008

THE ADMINISTRATIVE BOARD OF THE RAILWAY AGENCY,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities, and in particular Article 185(1) thereof¹

Having regard to Commission Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities²,

Having regard to Commission Regulation (EC, Euratom) No 652/2008 of 9 July 2008 amending Regulation (EC, Euratom) No 2343/2002 of 23 December 2002 on the framework Financial Regulation for the bodies referred to in Article 185 of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities³,

Having regard to Regulation No 881/2004 of the European Parliament and of the Council of 29 April 2004 establishing a European Railway Agency (Agency Regulation)⁴

Whereas:

- (1) Following the amendment of Commission Regulation (EC, Euratom) No 2343/2002 (hereinafter: 'framework Financial Regulation') by Commission Regulation (EC, Euratom) No 652/2008, it is necessary to adapt the Agency's Financial Regulation of 15 July 2004 in order to align it with the framework Financial Regulation.
- (2) It should be made clear that sound financial management requires effective and efficient internal control. The main features and objectives of internal control systems should be defined.
- (3) Accrued transparency vis-à-vis the budgetary authority should be ensured through new information requirements incumbent on the European Railway Agency in the budget procedure particularly as regards estimations of the number of contract staff, surpluses, assigned revenue and waivers to recovery of established amounts receivable.
- (4) In order to ensure that personal data is kept for no longer than is necessary for the purposes for which the data were collected or for which they are further processed, specific requirements should be laid down as regards supporting documents.

¹ O.J. L 248 from 15.09.2002, p.1

² O.J. L 357 from 31.12.2002, p.72

³ O.J. L 181 from 10.07.2008, p.23

⁴ O.J. L 164 from 30.04.2004, p.1

- (5) In order to strengthen the protection of the financial interests of the Communities, the European Railway Agency should establish a list of amounts receivable, stating the names of the debtors and the amount of the debt where the debtor has been ordered to pay by a Court decision that has the force of *res judicata* and where no or no significant payment has been made for one year after its pronouncement. This list should be published, taking into account the legislation applicable to data protection.
- (6) The list of assigned items of revenue proved to be incomplete and should therefore be completed in accordance with Article 18(1) of the general Financial Regulation.
- (7) The publication of the budget of the European Railway Agency should be simplified, while preserving the prerogatives of the budgetary authority and of the Court of Auditors.
- (8) The procedure regarding transfers to be adopted by the Executive Director of the European Railway Agency should be clarified. In particular, the budgetary authority should be kept informed of important transfers.
- (9) Payment requests to the Commission should be substantiated and based on rigorous cash management in order to avoid surpluses at the end of the year.
- (10) The effects of part-time work on the establishment plan should be specified to facilitate its use.
- (11) In order to strengthen the protection of the financial interest of the Communities, the European Railway Agency should participate in fraud prevention activities of the European Anti-fraud Office.
- (12) In order to cover all persons involved in procurement and grant procedures, it is appropriate to provide for particulars regarding conflict of interest situations.
- (13) Treatment of similar individual transactions relating to certain routine expenditure items should be simplified with regard to ex ante verification obligations.
- (14) Financial liability of authorising officers should be expressly limited to cases of gross negligence and intentional misconduct.
- (15) In order to facilitate transactions in certain cases, the European Railway Agency should be enabled to use a direct debit system.
- (16) Given that the Executive Director of the European Railway Agency, who is authorising officer, is the hierarchical superior of the accounting officer, the functional independence of the accounting officer in the performance of his duties should be explicitly referred to.
- (17) Accounting officers' responsibility for certifying the accounts on the basis of the financial information supplied to them by authorising officers should be clarified. To this end, the accounting officer should be empowered to check the information

received from the authorising officer by delegation and to enter reservations, if necessary.

- (18) It is necessary to define a set of rules for fees and charges collected by the Community bodies in order to meet the needs of certain Community bodies financed from such revenue.
- (19) The European Railway Agency should be able to draw on the expertise of the specialised Financial Irregularities Panel of the Commission established pursuant to Article 66(4) of the general Financial Regulation, which should become, by default, competent for the European Railway Agency unless the latter decide to set up a panel or to participate in a joint panel established by several Community bodies.
- (20) The conditions for the use, by the European Railway Agency, of Commission services and offices, interinstitutional European offices and the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/94 of 28 November 1994 setting up a Translation Centre for bodies of the European Union⁵ and joint procurement procedures with host Member States should be specified in order to reinforce interinstitutional cooperation and cooperation between the European Railway Agency and with the host Member State.
- (21) In order to strengthen the protection of the financial interests of the Communities and given that the European Railway Agency cannot exercise certain prerogatives exclusively assigned to the Community institutions, they should be required to insert specific contractual clauses in their contracts and grant agreements concluded with third parties enabling them to exercise certain rights, including the suspension and termination of contracts and tender procedures and the establishment of a limitation period.
- (22) For reasons of transparency vis-à-vis the budgetary authority, an information procedure for projects with significant impact on the administrative budget of the Agency should be introduced.
- (23) It is necessary to provide for a specific procedure for the selection of experts, corresponding to that laid down in the general Financial Regulation.
- (24) Communication and cooperation between the Executive Director of the European Railway Agency and the Administrative Board in the framework of the discharge procedure should be enhanced.
- (25) In line with Article 185(1) of the general Financial Regulation, it should be provided that where the Agency will adopt rules to implement its financial regulation, the adoption of these rules is subject to the prior agreement of the Commission.
- (26) The Agency's Financial Regulation adopted by the Administrative Board on 15 July 2004 should therefore be amended accordingly,

⁵ O.J. L 314 from 07.12.1994, p.1

HAS ADOPTED THIS REGULATION:

Article 1

The Financial Regulation of the European Railway Agency adopted by the Administrative Board on 15 July 2004 is amended as follows:

1. Article 3 is replaced by the following:

‘Article 3

The establishment and implementation of the budget of the Agency (hereinafter referred to as “the budget”) shall comply with the principles of unity and budget accuracy, annuality, equilibrium, unit of account, universality, specification, and sound financial management, which requires effective and efficient internal control and transparency as provided for in this Regulation.’

2. In Article 8, paragraph 1 is replaced by the following:

‘1. The budget shall contain non-differentiated appropriations and, where justified by operational needs, differentiated appropriations. The latter shall consist of commitment appropriations and payment appropriations.’;

3. Article 10 is amended as follows:

(a) In the second subparagraph of paragraph 1, the words ‘paragraphs 2 to 8’ are replaced by ‘paragraphs 2 to 7’;

(b) Paragraph 3 is replaced by the following:

‘3. Commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure, defined in the rules implementing the financial regulation of the Agency, have been completed by 31 December; these amounts may then be committed up to 31 March of the following year.’

(c) In paragraph 4, the first sentence is replaced by the following:

‘Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, when the appropriations provided for the relevant lines in the budget for the following financial year do not cover requirements.’;

(d) In paragraph 7, the following subparagraph is added:

‘By 1 June of the year N+1 at the latest, the Agency shall inform the Commission about the implementation of the assigned revenue carried over.’;

4. Article 13 is replaced by the following:

‘Article 13

1. As from 15 November of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed one quarter of the appropriations decided by the Administrative board on the corresponding budget line for the current financial year. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.

2. Expenditure which must be paid in advance, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year. In this case, the limit referred to in paragraph 1 shall not apply.’;

5. Article 15 is amended as follows:

(a) Paragraph 4 is replaced by the following:

‘4. Community funds paid to the Agency shall constitute for its budget a balancing subsidy which shall count as pre-financing within the meaning of Article 81(1)(b)(i) of the general Financial Regulation.’

(b) The following paragraph 5 is added:

‘5. The Agency shall implement rigorous cash management, taking due account of assigned revenue, in order to ensure that its cash balances are limited to duly justified requirements. With its payment requests it shall submit detailed and updated forecasts on its real cash requirements throughout the year, including information on assigned revenue.’;

6. In Article 16(1), the following subparagraph is added:

‘The Agency shall provide, by 31 March of the year N at the latest, an estimate of the operating surplus from the year N-1, which is to be returned to the Community budget later in year N, in order to complete the information already available concerning the surplus of the year N-2. This information shall be duly taken into account by the Commission when assessing the financial needs of Agency for the year N+1.’;

7. Article 19 is replaced by the following:

‘Article 19

1. The following items of revenue shall be used to finance specific items of expenditure:

- (a) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests;

- (b) contributions to the Agency's activities from Member States, non-member countries or miscellaneous bodies, insofar as this is provided for in the agreement concluded between the Agency and the Member States, non-member countries or bodies in question;
 - (c) revenue from third parties in respect of goods, services or work supplied at their request, with the exception of fees and charges referred to in Article 5(a);
 - (d) proceeds from the supply of goods, services and works for Community institutions or other Community body;
 - (e) revenue arising from the repayment of amounts wrongly paid;
 - (f) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus, which are being replaced or scrapped when the book value is fully depreciated;
 - (g) insurance payments received;
 - (h) revenue from payments connected with lettings;
 - (i) revenue from the sale of publications and films, including those on an electronic medium.
- 1a. The basic act applicable may also assign the revenue for which it provides to specific items of expenditure.
2. All items of revenue within the meaning of points (a) to (d) of paragraph 1 shall cover all direct or indirect expenditure incurred by the activity or purpose in question.
3. The budget shall carry lines to accommodate the categories of assigned revenue referred to in paragraphs 1 and 1a and wherever possible shall indicate the amount.';

8. Article 21(1) is replaced by the following:

'1. The following deductions may be made from payment requests, invoices or statements, which shall then be passed for payment of the net amount:

- (a) penalties imposed on parties to procurement contracts or beneficiaries of a grant;
- (b) discounts, refunds and rebates on individual invoices and payment requests;
- (c) interest generated by pre-financing payments.';

9. Article 23 is replaced by the following:

‘Article 23

1. The Executive Director may make transfers from one chapter to another and from one article to another without limit and from one title to another up to a maximum of 10 % of the appropriations for the financial year shown on the line from which the transfer is made.
2. Beyond the limit referred in paragraph 1, the Executive Director may propose to the Administrative board transfers of appropriations from one title to another. The Administrative board shall have three weeks in which to oppose such transfers. After this time-limit they shall be deemed to be adopted.
3. Proposals for transfers and transfers carried out under paragraphs 1 and 2 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 headings to be credited and for those from which the appropriations are drawn.
4. The Executive Director shall inform the Administrative board as soon as possible of all transfers made. He shall inform the budgetary authority of all transfers carried out under paragraph 2.’;

10. In Title II, Chapter 7, the following Article 25a is inserted:

‘Article 25a

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

11. Article 26 is amended as follows:

(a) Paragraph 2 is replaced by the following:

- ‘2. A summary of the budget and amending budgets, as finally adopted, shall be published in the Official Journal of the European Union within three months of their adoption.

The summary shall show the five main revenue budget lines, the five main expenditure budget lines for the administrative and operational budget, the establishment plan and an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts. It shall also indicate the figures for the previous year.’

(b) The following paragraphs 3 and 4 are added:

‘3. The budget including the establishment plan and amending budgets, as finally adopted, as well as an indication of the number of contract staff expressed in full-time equivalents for which appropriations are budgeted, and seconded national experts, shall be transmitted for information to the budgetary authority, the Court of Auditors and the Commission, and shall be published on the Internet site of the Agency concerned within four weeks of their adoption.

4. The Agency shall make available on its Internet site information on the beneficiaries of funds deriving from its budget, including experts contracted pursuant to Article 74b. The published information shall be easily accessible, transparent and comprehensive. The information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data laid down in Regulation (EC) No 45/2001 of the European Parliament and of the Council⁶.

Where information is published only in anonymous form, the Agency shall, upon request, provide information on the beneficiaries concerned to the European Parliament in an appropriate manner.

12. Article 27 is replaced by the following:

‘Article 27

1. The budget shall be established in accordance with the provisions of the constituent instrument of the Agency.

2. The Agency shall send the Commission a provisional draft estimate of its revenue and expenditure and the general guidelines underlying that estimate by 10 February each year and the final draft estimate by the date specified in the constituent instrument.

3. The estimate of revenue and expenditure of the Agency shall include:

(a) an establishment plan setting the number of permanent and temporary posts authorised within the limits of the budget appropriations, by grade and by category;

(b) where there is a change in the number of persons in post, a statement justifying the request for new posts;

⁶ O.J. L 8 from 12.01.2001, p.1

- (c) a quarterly estimate of cash payments and receipts;
- (d) information on the achievement of all previously set objectives for the various activities as well as new objectives measured by indicators.

Evaluation results shall be consulted and referred to as evidence of the likely merits of an increase or decrease of the Agency's proposed budget in comparison with its budget for year N.

4. The Agency shall send to the Commission and the budgetary authority by 31 March each year at the latest the following:

- (a) its draft work programme;
- (b) its updated multi-annual staff policy plan, established in line with the guidelines set by the Commission;
- (c) information on the number of officials, temporary and contract staff as defined in the Staff Regulations and the Conditions of Employment of Other Servants (hereinafter "the Staff Regulations") for the years N-1 and n as well as an estimate for the year N+1;
- (d) information on contributions in kind granted by the host Member State to the Agency;
- (e) an estimate of the balance of the outturn account within the meaning of Article 81 for the year N-1.

5. As part of the procedure for adoption of the general budget, the Commission shall send the Agency's statement of estimates to the budgetary authority and propose the amount of the subsidy for the Agency and the number of staff it considers that the body needs. The Commission shall provide the draft establishment plan of the Agency and for an estimate of the number of contract staff expressed in full-time equivalents for which appropriations are proposed.

6. The budgetary authority shall adopt the establishment plan of the Agency and any subsequent amendment thereto in accordance with Article 32(1). The establishment plan shall be published in an Annex to Section III – Commission – of the general budget.

7. The budget and the establishment plan shall be adopted by the Administrative board. They become definitive after final adoption of the general budget setting the amount of the subsidy and the establishment plan and if necessary the budget and the establishment plan shall be adjusted accordingly.';

13. Article 32 is amended as follows:

- (a) In the third subparagraph of paragraph 1, the words 'A1 and A2 and A3' are replaced by 'AD 16, AD 15, AD 14 and AD 13';

(b) In paragraph 2, the following sentence is added:

‘Where a staff member requests the withdrawal of the authorisation before expiry of the granted period, the Agency shall take appropriate measures to respect the limit referred to in point (b) of paragraph 1 as soon as possible.’;

14. In Article 33, the following subparagraph is added:

‘Without prejudice to the responsibilities of the authorising officer as regards prevention and detection of fraud and irregularities, the Agency shall participate in fraud prevention activities of the European Anti-fraud Office.’;

15. In Article 34(1), the words ‘the regulations and rules applicable to officials and other servants of the European Communities’ (hereinafter referred to as the ‘Staff Regulations’) are replaced by ‘the Staff Regulations’;

16. In Article 35, paragraphs 1 and 2 are replaced by the following:

‘1. All financial actors within the meaning of Chapter 2 of this Title and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any measures which may bring their own interests into conflict with those of the Agency. Should such a case arise, the person in question must refrain from such measures and refer the matter to the competent authority.

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

17. In Article 38(6), the following sentences are added:

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

18. In Article 39(3), the following subparagraphs are added:

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

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

19. In Article 40, paragraph 1 is replaced by the following:

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

The annual activity report shall indicate the results of his operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. The internal auditor within the meaning of Article 71 shall take note of the annual activity report and any other pieces of information identified.’;

20. Article 43 is replaced by the following:

‘Article 43

1. The Administrative Board shall appoint an accounting officer, covered by the Staff Regulations, who shall be functionally independent in the performance of his duties. He shall be responsible in the Agency for:

- (a) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
- (b) preparing and presenting the accounts in accordance with Title VII;
- (c) keeping the accounts in accordance with Title VII;
- (d) implementing, in accordance with Title VII, the accounting rules and methods and the chart of accounts in accordance with the provisions adopted by the Commission's accounting officer;
- (e) laying down and validating the accounting systems and, where appropriate, validating systems laid down by the authorising officer to supply or justify accounting information; the accounting officer shall be empowered to verify the respect of validation criteria;
- (f) treasury management.

2. The accounting officer shall obtain from the authorising officer, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of the Agency's assets and of budget implementation.

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

For that purpose the accounting officer shall satisfy himself that the accounts have been prepared in accordance with the accounting rules, methods and accounting systems established, and that all revenue and expenditure is entered in the accounts.

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

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

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

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

2c. The accounting officer of the Agency shall sign off its annual accounts and send them to the Commission's accounting officer.

3. Subject to paragraph 4 of this Article and Article 44, only the accounting officer shall be empowered to manage cash and cash equivalents. He shall be responsible for their safekeeping.

4. The accounting officer may, in the performance of his duties, delegate certain tasks to subordinate staff subject to the Staff Regulations, where this is indispensable for the performance of his duties.

5. The instrument of delegation shall lay down the tasks entrusted to the delegates and their rights and obligations.'

21. In Article 44, the following paragraph is added:

'Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 66(1a), cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.'

22. In title IV, Chapter 3, the title of Section 2 is replaced by the following:

'S e c t i o n 2

Rules applicable to the authorising officer and authorising officers by delegation or subdelegation'

23. Article 47 is replaced by the following:

'Article 47

1. The authorising officer shall be liable to payment of compensation as laid down in the Staff Regulations.

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

- (a) the authorising officer, whether intentionally or through gross negligence on his part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and its implementing rules;
- (b) the authorising officer, whether intentionally or through gross negligence on his part, omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it, or is late in issuing a payment order, thereby rendering the Agency liable to civil action by third parties.

2. An authorising officer by delegation or subdelegation who considers that a decision falling under his responsibility is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to implement the decision in question, the latter must implement it and may not be held liable.

3. In the event of delegation, the authorising officer shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by delegation.

4. The specialised financial irregularities panel set up by the Commission in accordance with Article 66(4) of the general Financial Regulation, shall exercise the same powers in respect of the Agency as it does in respect of Commission departments, unless the Administrative board decides to set up a functionally independent panel, or to participate in a joint panel established by several Community bodies. For cases submitted by Community bodies, the specialised financial irregularities panel set up by the Commission shall include one staff member of a Community body.

On the basis of the opinion of this panel, the Executive Director shall decide whether to initiate disciplinary proceedings or proceedings for the payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the Commission's internal auditor. If the opinion implicates the Executive Director, the panel shall send it to the Administrative board and the Commission's internal auditor. The Executive Director shall refer, in anonymous form, to opinions of the panel in his annual activity report and indicate the follow-up measures taken.

5. Any member of staff may be required to compensate, in whole or in part, any damage suffered by the Agency as a result of serious misconduct on his part in the course of or in connection with the performance of his duties.

The appointing authority shall take a reasoned decision, after completing the formalities laid down by the Staff Regulations with regard to disciplinary matters.';

24. Article 50 is replaced by the following:

‘Article 50

The Agency shall present to the Commission requests for payment of all or part of the Community subsidy pursuant to Article 15(5) under terms and at intervals agreed with the Commission.’;

25. In Article 53, paragraph 3 is replaced by the following:

‘3. The contracts and grant agreements concluded by the Agency shall provide that any debt not repaid on the due date laid down in the debit note shall bear interest in accordance with Commission Regulation (EC, Euratom) No 2342/2002⁷. The condition whereby interest on late payment is due to the Agency, including the rate for default interest, shall be explicitly referred to in the contracts and grant agreements.

26. In Article 55(3), the first and second subparagraphs are replaced by the following:

‘Where the authorising officer responsible is planning to waive or partially waive recovery of an established amount receivable, he shall ensure that the waiver is in order and complies with the principle of sound financial management and proportionality.

Such a waiver shall be made by a duly substantiated decision of the authorising officer. The authorising officer may delegate such a decision only for amounts receivable of less than EUR 5 000.’;

27. In Article 58, point (a) is replaced by the following:

‘(a) the debtor undertakes to pay interest at the rate specified in Article 86 of Regulation (EC, Euratom) No 2342/2002 for the entire additional period allowed, starting from the date set in the debit note.’;

28. In Title IV, Chapter 4, Section 5, the following Articles 58a and 58b are inserted:

‘Article 58a

The accounting officer shall keep a list of amounts due to be recovered, in which the Agency's entitlements are grouped according to the date of issue of the recovery order. He shall also indicate decisions to waive or partially waive recovery of established amounts. The list shall be added to the Agency’s report on budgetary and financial management.

The Agency shall establish a list of the Agency’s entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to pay by a Court decision that has the force of *res judicata* and where no or no significant payment has been made for one year following its pronouncement. The list shall be published, taking account of the relevant legislation on data protection.

Article 58b

⁷ OJ L 357, 31.12.2002, p. 1

Entitlements of the Agency in respect of third parties and entitlements of third parties in respect of the Agency shall be subject to a limitation period of five years, which shall be laid down in the contracts and grant agreements concluded by the Agency.’;

29. Article 59 is replaced by the following:

‘Article 59

Where the Agency collects fees and charges referred to in Article 5(a), an overall provisional estimate of such fees and charges shall be made at the beginning of each financial year.

Where fees and charges are entirely determined by legislation or decisions of the Administrative board, the authorising officer may abstain from issuing recovery orders and directly draw up debit notes after having established the amount receivable. In this case all details of the Agency’s entitlement shall be registered. The accounting officer shall keep a list of all debit notes and provide the number of the debit notes and the global amount in the Agency’s report on budgetary and financial management.

Where the Agency uses a separate invoicing system, the accounting officer shall regularly, and at least on a monthly basis, enter the accumulated sum of fees and charges received into the accounts.

As a general rule the Agency shall provide services by virtue of the tasks entrusted to it only after the corresponding fee or charge has been paid in its entirety. If by way of exception, a service has been provided without prior payment of the corresponding charge or fee, Sections 3, 4, and 5 of this Chapter shall apply.’;

30. In Article 60(3), the following sentence is added:

‘The work programme shall comprise detailed objectives and performance indicators.’

31. Article 62 is replaced by the following:

‘Article 62

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budget commitment before entering into a legal obligation with third parties.

2. Global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year N+1.

Individual legal commitments relating to individual or provisional budget commitments shall be concluded by 31 December of year N.

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

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

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

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 67 has been made in a period of three years following the signing of the legal commitment shall be decommitted.’;

32. In Article 66, the following paragraph 1a is inserted:

‘1a. Where periodic payments are made with regard to services rendered, including rental services, or goods delivered, and subject to his risk analysis, the authorising officer may order the application of a direct debit system.’;

33. In Article 72(1), point (b) is replaced by the following:

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

34. Article 74 is replaced by the following:

‘Article 74

1. As regards procurement, the relevant provisions of the general Financial Regulation and Regulation (EC, Euratom) No 2342/2002 shall apply subject to paragraphs 4 to 7 of this Article.

2. The Agency may be associated, at its request, as contracting authority, in the award of Commission or interinstitutional contracts and with the award of contracts of other Community bodies.

3. The Agency shall participate in the common central database set up and operated by the Commission pursuant to Article 95 of the general Financial Regulation.

4. The Agency may conclude a contract, without having recourse to a public procurement procedure, with the Commission, the interinstitutional offices and the Translation Centre for bodies of the European Union established by Council Regulation (EC) No 2965/94⁸ for the supply of goods, provision of services or performance of work that the latter provide.

5. The Agency may use joint procurement procedures with contracting authorities of the host Member State to cover its administrative needs. In such case, Article 125c of Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis*.

⁸ OJ L 314, 7.12.1994, p.1

6. For the application of Article 101 of the general Financial Regulation, the call for tender shall provide that the Agency may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.

7. For the application of Article 103 of the general Financial Regulation, calls for tender launched by the Agency shall provide that it may suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure under the conditions laid down in that Article.

For the application of Article 103 of the general Financial Regulation, the contracts concluded by the Agency with economic operators shall stipulate that it may take the measures specified in that Article under the conditions laid down therein.

35. The following Titles VA and VB are inserted:

‘TITLE VA

PROJECTS WITH SIGNIFICANT BUDGET IMPLICATIONS

Article 74a

The Administrative Board shall, as soon as possible, notify the budgetary authority of its intention to implement any project, which may have significant financial implications for the funding of its administrative budget, in particular any projects relating to property such as the rental or purchase of buildings. It shall inform the Commission thereof.

If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the project notify the Agency concerned of its intention to issue such an opinion. Failing a reply, the Agency may proceed with the planned operation.

This opinion shall be forwarded to the Agency within four weeks of the notification pursuant to the second paragraph.

TITLE VB

EXPERTS

Article 74b

Article 265a of the Regulation (EC, Euratom) No 2342/2002 shall apply *mutatis mutandis* for the selection of experts. Such experts shall be paid on the basis of a fixed amount, for assisting the Agency, in particular in evaluating proposals and grant applications or tenders for procurement, and for providing technical assistance in the follow-up to, and final evaluation of projects. The Agency may use the lists drawn up by the Commission or other Community bodies.’;

36. Article 75 is replaced by the following:

‘Article 75

1. Where the Agency may award grants in accordance with its constituent instrument or by delegation of the Commission pursuant to Article 54(2)(b) of the general Financial Regulation, the relevant provisions of the general Financial Regulation and Regulation (EC, Euratom) No 2342/2002 shall apply subject to paragraphs 2 and 3 of this Article.

2. Grants shall be covered by written agreements between the Agency and the beneficiary.

3. For the application of Article 119(2) of the general Financial Regulation, grant agreements concluded by the Agency shall stipulate that it may suspend, reduce or terminate the grant in the cases provided for by Article 183 of Regulation (EC, Euratom) No 2342/2002 after the beneficiary has been given the opportunity to make his observations.’

37. In Article 76, the second paragraph is replaced by the following:

‘The accounts of the Agency shall be accompanied by a report on budgetary and financial management during the year. The report shall give an account, inter alia, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.’;

38. Articles 82 and 83 are replaced by the following:

‘Article 82

The accounting officer shall send to the Commission's accounting officer and the Court of Auditors by no later than 1 March of the following year its provisional accounts, together with the report on budgetary and financial management during the year, referred to in Article 76 of this Regulation, so that the Commission's accounting officer can consolidate the accounts as provided for in Article 128 of the general Financial Regulation.

The accounting officer shall also send the report on budgetary and financial management to the European Parliament and the Council by 31 March of the following year at the latest.

Article 83

1. In accordance with Article 129(1) of the general Financial Regulation, the Court of Auditors shall, by 15 June of the following year at the latest, make its observations on the provisional accounts of the Agency.

2. On receiving the Court of Auditors’ observations on the provisional accounts of the Agency, the Executive Director shall draw up the final accounts of the Agency

in accordance with Article 43, under his own responsibility, and send them to the Administrative Board, which shall give an opinion on these accounts.

3. The Executive Director shall send the final accounts, together with the opinion of the Administrative Board, to the Commission's accounting officer, the Court of Auditors, the European Parliament and the Council, by 1 July of the following year at the latest.

4. The final accounts of the Agency, consolidated with those of the Commission, shall be published in the Official Journal of the European Union by 15 November of the following year.

5. The Executive Director shall send the Court of Auditors a reply to the observations made in its annual report by 30 September of the following year at the latest. The replies of the Agency shall be sent to the Commission at the same time.';

39. Article 94 is replaced by the following:

‘Article 94

1. The European Parliament, upon a recommendation from the Council, shall, before 15 May of year N+2 save where otherwise provided in the constituent instrument, give a discharge to the Executive Director in respect of the implementation of the budget for year N. The Executive Director shall inform the Administrative Board of the observations of the European Parliament contained in the resolution accompanying the discharge decision.

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

3. If the European Parliament postpones the decision giving a discharge, the Executive Director, in cooperation with the Administrative Board, shall make every effort to take measures as soon as possible to remove or facilitate removal of the obstacles to that decision.’

40. Article 97 is deleted;

41. Article 99 is replaced by the following:

‘Article 99

The Administrative Board shall, as far as is necessary and with the Commission’s prior consent, adopt detailed rules for implementing the financial regulation of the Agency, on a proposal from its Executive Director.’

Article 2

This Regulation shall enter into force on the day following its adoption by the Administrative Board.

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