

***Management Board decision***

***laying down detailed rules for the implementation of the Financial Rules  
applicable to the budget of the European Union Agency for Fundamental Rights***

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**THE MANAGEMENT BOARD OF THE EUROPEAN UNION AGENCY FOR FUNDAMENTAL RIGHTS,**

Having regard to Financial Rules applicable to the European Union Agency for Fundamental Rights,

Whereas:

1. As regards the budgetary principles, in particular the principle of unity, the requirement that interest on pre-financing to be repaid to the budget be identified means that any pre-financing which remains the property of the Communities must be identified. Such pre-financing remains the property of the Agency unless the basic act provides otherwise and unless it is paid under a procurement contract, or to staff or members of the Agency. This rule should be spelled out according to the type of management (direct or indirect centralised management and shared management). It does not apply to joint management since in such cases the Community funds are merged with the funds of the international organisation. Where pre-financing which remains the property of the Communities yields interest, this interest should be paid to the budget as miscellaneous revenue.
2. For the principle of annuality, it is important to clarify the meaning of annual appropriations and the preparatory stages of the commitment procedure which, if completed by 31 December, may allow the carryover of commitment appropriations which will then have to be used by 31 March of the following financial year.
3. As regards the principle of the unit of account, the rates to be used for conversion between the euro and the other currencies for the requirements of the management of the cash flow and the accounts should be specified.
4. As regards the derogations from the principle of universality, the budget treatment to be given to assigned revenue, in particular to contributions by Member States or third countries to certain Agency programmes, should be specified, as must the limits on the netting of expenditure and revenue.
5. As regards the principle of specification, a precise definition should be given of the calculation of the percentage of appropriations

which the Director is authorised to transfer by virtue of the autonomy it enjoys and provision should be made for the Management Board to be given full information through a detailed explanation of the requests for transfers which have to be submitted to it.

6. As for sound financial management, it is necessary to specify the objectives of the *ex ante*, interim and *ex post* evaluations of the programmes and activities, the minimum frequency with which they are to be carried out and the information to be given in the legislative financial statement.
7. As for the establishment and presentation of the budget, it is necessary to determine the contents of the general introduction to the budget, the working documents backing up the budget and the budget remarks for ensuring that the Management Board is fully informed. In the new activity-based budgeting (ABB) presentation, the definition and classification of administrative appropriations should also be set out.
8. Acts likely to constitute a conflict of interests should also be defined, together with the procedure to be followed in such cases.
9. As regards the role of the financial actors, the reform of financial management, together with the dropping of centralised *ex ante* controls, increases the responsibilities of the authorising officers in all revenue and expenditure operations, including in terms of internal control systems. The Management Board should in future be informed of the appointment or termination of duties of an authorising officer by delegation. Consequently, the tasks, responsibilities and principles of the procedures to be observed should also be laid down. The internalisation of *ex ante* controls requires, in particular, a clear distinction between tasks relating to the initiation of operations in implementation of the budget and tasks relating to the verification of such operations. Moreover, the Director should adopt a code of professional standards applicable to the staff responsible for *ex ante* and *ex post* verifications. Provision should then be made for the responsibilities assumed to be accounted for in an annual report to the institution which must, *inter alia*, give the results of the *ex post* verifications; arrangements should also be

made for keeping the supporting documents relating to the operations carried out. Finally, all the various forms of negotiated procedure for the award of public contracts should, since they represent derogations, be the subject of a special report to the Director and of a communication to the Management Board.

10. In order to clarify responsibilities, a precise definition should also be given of the tasks and responsibilities of the accounting officer in connection with the accounting systems, treasury management, the management of bank accounts and third-party files. The arrangements for the termination of the accounting officer's duties should also be spelled out.
11. The conditions for the use of imprest accounts, a system of management which forms an exception to normal budgetary procedures, should also be laid down, and the tasks and responsibilities of the imprest administrators, as well as those of the authorising officer and accounting officer in connection with the control of imprest accounts, should be set out. The Management Board should be informed of any appointment or termination of duties.
12. Once the tasks and responsibilities of each financial actor have been defined, they may be held liable only under the conditions laid down in the Staff Regulations of Officials of the European Communities and the Conditions of Employment of Other Servants. However, a new specialised financial irregularities panel should be set up in appropriate manner in the Agency to determine whether irregularities of a financial nature have occurred. The procedure by which an authorising officer may seek confirmation of an instruction and thus be released from any liability should also be laid down.
13. As regards revenue, except for the special case of own resources covered by Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 94/728/EC, Euratom on the system of the Communities' own resources<sup>1</sup>, it is necessary to specify the tasks and controls falling within the responsibility of the authorising officers at the different stages of the procedure: establishment of the estimate of amounts receivable and then

the recovery order; dispatch of the debit note informing the debtor that the amount receivable has been established; calculation of any default interest due; and, finally, the decision, where necessary, to waive an entitlement subject to criteria guaranteeing compliance with sound financial management. The accounting officer's role in the collection of revenue and in allowing any additional time for payment should also be specified.

14. As regards expenditure, the relationship between financing decisions, global commitments and individual commitments should be defined, as should the characteristics of those different stages. The distinction between a global commitment and an individual commitment depends on the extent to which the beneficiaries are identified and the amounts involved. Provisional commitments are limited to routine administrative expenditure. To restrict the volume of dormant commitments, appropriations corresponding to commitments for which no payment has been made for three years should be decommitted.
15. It is then necessary to clarify the relationship between validation, authorisation and payment operations and the controls to be carried out by the authorising officer when validating expenditure, with the endorsement 'passed for payment', and when authorising payment by checking the validity of the release from all liability, for which the authorising officer now has sole responsibility. The documents to be produced in support of payments should be specified and rules laid down for the clearing of pre-financing and interim payments. Finally, the time-limits applicable to validation and payment operations should be laid down, account being taken of Directive 2000/35/EC of the European Parliament and of the Council of 29 June 2000 on combating late payment in commercial transactions<sup>2</sup>.
16. For the internal audit, it is necessary to lay down the procedure for appointing the auditor and to guarantee his independence within the Agency and to which he must report on his activities; the Management Board should be informed of any appointment or termination of duties.

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<sup>1</sup> OJ L 130, 31.5.2000, p. 1.

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<sup>2</sup> OJ L 200, 8.8.2000, p. 35.

17. As regards the keeping and presentation of the accounts, each of the generally accepted accounting principles on which the financial statements must be based should be defined. It is also necessary to specify the conditions for entering a transaction in the accounts and the rules for valuing assets and liabilities and for the constitution of provisions.
18. It should be specified that the Agency's accounts must be accompanied by a report on budgetary and financial management and details should be given of the content and presentation of the elements making up the financial statements (balance sheet, economic outturn account, cash-flow table and annex) and the budget implementation statements (budget outturn account and annex).
19. On accounting matters, it should be specified that the accounting officer of the Agency must produce documents describing the organisation of the accounts and the accounting procedures of the Agency and define the conditions to be respected by the computerised accounting systems, in particular as regards security of access and the audit trail for any changes made to the systems.
20. As regards the keeping of the accounts, it is necessary to specify the principles applicable to the accounting ledgers, the trial balance, the periodical reconciliation of the totals in that balance and the inventory, and to specify the components of the chart of accounts adopted by the Commission's accounting officer. The rules applicable to the registration of operations, in particular the double-entry method, the rules for the conversion of operations which are not denominated in euro and the supporting documents for accounting entries, should be laid down. The content of the accounting records should also be specified.
21. Finally, it is necessary to lay down the rules relating to the property inventory and to clarify the respective responsibilities in this field of the accounting officers and authorising officers, as well as the rules applicable to the resale of property entered in the inventory.
22. As regards administrative appropriations, the Agency should inform the Management Board and the Budgetary Authority of significant building projects which are under way, that is to say, of those increasing the building stock,

HAS ADOPTED THESE RULES:

## **PART ONE - COMMON PROVISIONS**

### **TITLE I - SUBJECT**

#### *Article 1*

#### **Subject**

(Article 1 of the Financial Rules)

This Decision set out the rules for implementing the provisions of the Financial Rules applicable to the budget of the European Union Agency for Fundamental Rights (hereinafter 'the Financial Rules).

#### *Article 2*

#### **Legislative acts concerning the implementation of the budget**

(Articles 3 and 33 of the Financial Rules)

Any proposal or amendment to a proposal submitted to the Management Board shall clearly indicate the provisions containing derogations from the Financial Rules or from this Decision and state the specific reasons justifying such derogations in the relevant introductory note.

### **TITLE II - BUDGETARY PRINCIPLES**

**CHAPTER 1 - Principles of unity and budget accuracy**

Nihil

**CHAPTER 2 - Principle of annuality**

*Article 3*

**Appropriations for the financial year**

(Article 9(3) of the Financial Rules)

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

- (a) appropriations provided in the budget, including by amending budgets;
- (b) appropriations carried over;
- (c) appropriations provided following the receipt of revenue assigned during the financial year or during previous financial years and not used.

*Article 4*

**Carryover of appropriations**

(Article 10(4) of the Financial Rules)

1. The commitment appropriations referred to in Article 10(4) of the Financial Rules may be carried over only if the commitments could not be made before 31 December of the financial year for reasons not attributable to the authorising officer and if the preparatory stages are sufficiently advanced to make it reasonable to surmise that the commitment will be made by no later than 31 March of the following year.
2. The preparatory stages referred to in Article 10(4) of the Financial Rules, which should be completed by 31 December of the financial year in order to allow a carryover to the following year, are in particular:
  - (a) for global commitments within the meaning of Article 61 of the Financial Rules, the adoption of a financing decision or the closing by that date of the consultation of

the departments concerned for the adoption of the decision;

- (b) for individual commitments within the meaning of Article 61 of the Financial Rules, 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(4) of the Financial Rules which have not been committed by 31 March of the following financial year shall be automatically cancelled.

The Director shall inform the Management Board by 30 April of the appropriations cancelled in this way.

4. Appropriations carried over in accordance with Article 10(4) of the Financial Rules may be used until 31 December of the following financial year.
5. The accounts shall identify appropriations carried over in this way.
6. The appropriations for staff expenditure referred to in Article 10(2) of the Financial Rules are those for remuneration and allowances for members and staff of the Agency.

*Article 5*

**Provisional twelfths**

(Article 14(2) of the Financial Rules)

The total allotted appropriations of the previous financial year, as specified in Article 14(2) of the Financial Rules, shall be understood to refer to the appropriations for the financial year referred to in Article 3 of these Rules, after adjustment for the transfers made during that financial year.

## **CHAPTER 3 - Principle of unit of account**

### *Article 6*

#### **Rate of conversion between the euro and other currencies**

(Article 17 of the Financial Rules)

1. Without prejudice to specific provisions arising from the application of sector-specific regulations, conversion between the euro and another currency by the responsible authorising officer shall be made using the daily euro exchange rate published in the C series of the *Official Journal of the European Union*.

Where conversion between the euro and another currency is to be made by the contractors or beneficiaries, the specific arrangements for conversion contained in procurement contracts, grant agreements or financing agreements shall apply.

2. In order to avoid that currency conversion operations have a significant impact on the level of Agency co-financing or a detrimental impact on the Agency budget, the specific arrangements for conversion referred to in paragraph 1 shall provide, if appropriate, for a rate of conversion between the euro and other currencies to be calculated using the average of the daily exchange rate in a given period.
3. If no daily euro exchange rate is published in the *Official Journal of the European Union* for the currency in question, the responsible authorising officer shall use the accounting rate referred to in paragraph 4.
4. For the purposes of the accounts provided for in Articles 84 to 89 of the Financial Rules and subject to Article 122 of these Rules, conversion between the euro and another currency shall be made using the monthly accounting exchange rate of the euro.

### *Article 7*

#### **Rate to be used for conversion between the euro and other currencies**

(Article 17 of the Financial Rules)

1. Without prejudice to specific provisions deriving from the application of sector-specific regulations, or from specific procurement contracts, grant agreements and financing

agreements, the rate to be used for conversion between the euro and other currencies shall, in cases where the conversion is carried out by the responsible authorising officer, be that of the day on which the payment order or recovery order is drawn up by the authorising department.

2. In the case of euro imprest accounts, the rate to be used for the conversion between the euro and other currencies shall be determined by the date of payment by the bank.
3. For the regularisation of imprest accounts in national currencies, as referred to in Article 17 of the Financial Rules, the rate to be used for the conversion between the euro and other currencies shall be that of the month of the expenditure from the imprest account concerned.
4. For the reimbursement of flatrate expenditure, or expenditure arising from the Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter: Staff Regulations) which is fixed at a ceiling, and which is paid in a currency other than the euro, the rate to be used shall be that which is in force when the entitlement arises.

## **CHAPTER 4 - Principle of universality**

### *Article 8*

#### **Structure to accommodate assigned revenue and provision of corresponding appropriations**

(Article 19 of the Financial Rules)

1. The structure to accommodate assigned revenue in the budget shall comprise:
  - (a) in the statement of revenue of the Agency's section, a budget line to receive the revenue;
  - (b) in the statement of expenditure, the budget remarks, including general remarks, shall show which lines may receive the appropriations corresponding to the assigned revenue which are made available.

In the case referred to in point (a) of the first subparagraph, a token entry (p.m.) shall be



made and the estimated revenue shall be shown for information in the remarks.

2. The appropriations corresponding to assigned revenue may be made available, both as commitment appropriations and as payment appropriations, when the revenue has been received by the Agency. They shall be made available automatically.

#### *Article 9*

#### **Contributions to the Agency's activities from candidate countries and countries with which a Stabilisation and Association Agreement has been concluded**

(Article 19.1.b of the Financial Rules)

1. The budget structure to accommodate the participation of the candidate countries and countries with which a Stabilisation and Association Agreement has been concluded to the Agency's activities 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 this contribution for the financial year in question. The estimated amount shall be shown in the budget remarks;

- b. in the statement of expenditure:

- i. the remarks for each line relating to the Agency's activities in which the countries 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 Agency activities in which these countries participate.

The annex referred to in point (b)(ii) of the first subparagraph reflects and is part of the structure to accommodate the appropriations corresponding to such participation and to allow the expenditure to be implemented.

#### *Article 10*

#### **Charges entailed by acceptance of donations to the Agency**

(Article 20(2) of the Financial Rules)

For the purposes of the authorisation of the Management Board referred to in Article 20(2) of the Financial Rules, the Agency shall estimate and duly explain the financial charges, including follow-up costs, entailed by the acceptance of donations made to the Agency.

#### *Article 11*

#### **Passing for payment of the net amount**

(Article 21(1) of the Financial Rules)

Pursuant to Article 21(1) of the Financial Rules, 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.

#### *Article 12*

#### **Scope of pre-financing**

Nihil

#### *Article 13*

#### **Recovery of interest yielded by pre-financing**

(Article 21 of the Financial Rules)

1. The authorising officer responsible shall recover for each reporting period following the implementation of the decision or agreement the amount of interest generated by pre-financing payments which exceed EUR 750 000 per agreement at the end of each financial year.
2. The authorising officer responsible may recover at least once a year the amount of interest generated by pre-financing payments lower than those referred to in paragraph 1, taking account of the risks associated with his management environment and the nature of the actions financed.
3. The authorising officer responsible shall recover the amount of interest generated by

pre-financing payments which exceeds the balance of the amounts due.

*Article 14*

**Accounting for interest yielded on pre-financing**

(Article 21 of the Financial Rules)

1. Authorising officers shall ensure that, in grant agreements with beneficiaries and intermediaries, pre-financing is paid to bank accounts or sub-accounts which allow the funds and related interest to be identified. Otherwise, the accounting methods of the beneficiaries or intermediaries must make it possible to identify the funds paid by the Agency and the interest or other benefits yielded by these funds.
2. The authorising officer responsible shall draw up before the end of each financial year estimates of the amount of any interest or equivalent benefit yielded by these funds and shall establish a provision for that amount. That provision shall be entered in the accounts and cleared by effective recovery, following the implementation of the decision or agreement.

Where pre-financing is paid from the same budget line, under the same basic act and to beneficiaries covered by the same award procedure, the authorising officer may draw up a single estimate of amounts receivable for a number of debtors.

3. Articles 12 and 13 and paragraphs 1 and 2 of this Article shall be without prejudice to the entry of pre-financing on the assets side of financial statements, as laid down in the accounting rules referred to in Article 85 of the Financial Rules.

*Article 15*

**Accounts for recoverable taxes**

(Article 21(2) of the Financial Rules)

Any taxes borne by the Agency under Article 21(2) of the Financial Rules shall be entered in a suspense account until they are refunded by the States concerned.

**CHAPTER 5 - Principle of specification**

*Article 16*

**Rules concerning the calculation of percentages of transfers**

(Article 23 of the Financial Rules)

1. The percentage referred to in Article 23 of the Financial Rules shall be calculated at the time the request for transfer is made and with reference to the appropriations provided in the budget, including amending budgets.
2. The amount to be taken into consideration shall be the sum of the transfers to be made on the line from which transfers are being made, after adjustment for earlier transfers made.

The amount corresponding to the transfers which can be carried out autonomously by the institution concerned without a decision of the Management Board shall not be taken into consideration.

*Article 17*

**Grounds for requests for transfers of appropriations**

(Article 22 and 23 of the Financial Rules)

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

**CHAPTER 6 - Principle of sound financial management**

*Article 18*

**Evaluation**

(Article 25 of the Financial Rules)

1. Proposals for multi-annual programmes or other significant activities where the resources mobilised exceed EUR 25 000 shall be the subject of an ex ante evaluation, which shall address:

- (a) the need to be met in the short- or long-term;
  - (b) the added value of the Agency involvement;
  - (c) the objectives to be achieved;
  - (d) the options available, including the risks associated with them;
  - (e) external coherence with activities of relevant actors;
  - (f) the results and impacts expected, for instance economic, social and environmental impacts, and the indicators and evaluation arrangement needed to measure them;
  - (g) the internal coherence of the proposed measures;
  - (h) the volume of appropriations, human resources and other administrative expenditure to be allocated with due regard for the cost effectiveness principle;
  - (i) the lessons learned from similar experiences in the past.
2. The proposal shall set out the arrangements for monitoring, reporting and evaluation.
  3. The activities under Paragraph 1 shall be the subject of an interim and/or ex post evaluation at least every six years or at least once in the case of multi-annual programmes.
  4. The evaluations referred to in paragraphs 1 and 2 shall be proportionate to the resources mobilised for and the impact of the programme or activity concerned.

*Article 19*

**Effective and efficient internal control**

(Article 25a(1) of the Financial Rules)

1. Effective internal control shall be based on best international practices and include in particular the following:
  - (a) segregation of tasks;

- (b) an appropriate risk management and control strategy including controls at beneficiary level;
- (c) avoidance of conflicts of interests;
- (d) adequate audit trails and data integrity in data systems;
- (e) procedures for monitoring of performance and for follow-up of identified internal control weaknesses and exceptions;
- (f) periodic assessment of the sound functioning of the control system.

2. Efficient internal control shall be based on the following elements:
  - (a) the implementation of an appropriate risk management and control strategy coordinated among appropriate actors involved in the control chain;
  - (b) the accessibility of control results to all appropriate actors involved in the control chain;
  - (c) the timely application of corrective measures including, where appropriate, dissuasive penalties;
  - (d) clear and unambiguous legislation underlying the policies;
  - (e) the elimination of multiple controls;
  - (f) the principle of improving the cost-benefit ratio of controls.

**CHAPTER 7 - Principle of transparency**

*Article 20*

**Provisional publication of the budget**

(Article 26 of the Financial Rules)

As soon as possible and no later than four weeks after the final adoption of the budget, the final detailed budget figures shall be published on the internet site of the Agency, pending official publication in the *Official Journal of the European Union*.

### **TITLE III - ESTABLISHMENT AND STRUCTURE OF THE BUDGET**

#### **CHAPTER 1 - Establishment of the budget**

##### *Article 21*

*Nihil*

##### *Article 22*

#### **Working documents in support of the preliminary draft budget**

(Article 27(3) of the Financial Rules)

In support of the preliminary draft budget, the following working documents shall be provided:

- (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 at the beginning of the year in which the preliminary draft budget is presented, indicating their distribution by grade and administrative unit;
  - (iii) where a change in the number of persons in post is proposed, a statement of the reasons justifying such change;
  - (iv) a list of posts broken down by area of activity;
- (b) an estimate of revenue and expenditure prefaced by an introductory note.

##### *Article 23*

*Nihil*

#### **CHAPTER 2 - Structure and presentation of the budget**

##### *Article 24*

#### **Administrative appropriations**

(Article 30 of the Financial Rules)

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 employment posts corresponding to this expenditure;
- (b) expenditure on external staff (including auxiliary staff and agency staff) and other management expenditure (including representation expenses and meeting expenses);
- (c) expenditure on buildings and other related expenditure, including cleaning and maintenance, rental and hiring, telecommunications, water, gas and electricity;
- (d) support expenditure.

##### *Article 25*

#### **Actual expenditure in the last financial year for which the accounts have been closed**

(Articles 31(1)(b) and 31(2)(b) of the Financial Rules)

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 3;

- (b) in payments: payments made during the financial year, that is to say, for which a payment order has been sent to the bank, against appropriations for that financial year as defined in the same article.

*Article 26*

**Budget remarks**

(Article 31 of the Financial Rules)

The budget remarks shall include:

- (a) the references of the basic act, where one exists;
- (b) all appropriate explanations concerning the nature and purpose of the appropriations.

**TITLE IV - IMPLEMENTATION OF THE BUDGET**

**CHAPTER 1 - General provisions**

*Article 27*

**Definition of a conflict of interests**

(Article 35(2) of the Financial Rules)

1. Acts likely to be vitiated by a conflict of interests within the meaning of Article 35(2) of the Financial Rules may, inter alia, take one of the following forms:
  - (a) granting oneself or others unjustified direct or indirect advantages;
  - (b) refusing to grant a beneficiary the rights or advantages to which that beneficiary is entitled;
  - (c) committing undue or wrongful acts or failing to carry out acts that are mandatory.
2. The competent authority referred to in Article 35(1) of the Financial Rules shall be the hierarchical superior of the member of staff concerned. The hierarchical superior shall confirm in writing whether or not there is a conflict of interests. If there is, the hierarchical superior shall personally take any appropriate decision.
3. A conflict of interests shall be presumed to exist if an applicant, candidate or tenderer is a member of staff covered by the Staff Regulations, unless his participation in the procedure has been authorised in advance by his superior.

**CHAPTER 2 – Method of implementation**

**Section 1**

**Special provisions**

*Article 28*

**Direct centralised management**

(Article 36 of the Financial Rules)

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 49 of the Financial Rules and in compliance with the conditions laid down in these Rules.

*Article 29*

**Information on transfers of personal data for audit purposes**

(Article 33 of the Financial Rules)

In any call made in the context of grants or procurements implemented in direct centralised management, potential beneficiaries, candidates and tenderers shall, in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council<sup>3</sup> be informed that, for the purposes of safeguarding the financial interests of the Agency, their personal data may be transferred to internal audit services, to the European Court of Auditors, to the Financial Irregularities Panel or to the European Anti-Fraud Office (hereinafter 'OLAF').

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<sup>3</sup> OJ L 8, 12.1.2001, p. 1.

## **CHAPTER 3 - 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 Rules)

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 sub-delegation**

(Article 38 of the Financial Rules)

1. The authorising officer responsible may be assisted in his duties by persons covered by the Staff Regulations (hereinafter: staff) entrusted, under his responsibility, with certain operations required for the implementation of the budget and production of the financial and management information. In order to prevent any conflict of interests, staff assisting authorising officers by delegation or sub-delegation shall be subject to the obligations referred to in Article 35 of the Financial Rules.
2. The Director shall inform the Management Board whenever an authorising officer by delegation takes up his duties, changes duties or terminates his duties.

##### *Article 32*

#### **Internal provisions governing delegations**

(Article 38 of the Financial Rules)

In accordance with the Financial Rules and these Rules, the Agency shall lay down in its internal rules such measures for the management of

appropriations as it considers necessary for proper implementation of its section of the budget.

##### *Article 33*

#### **Segregation of duties of initiation and verification of an operation**

(Article 38.4 of the Financial Rules)

1. Initiation of an operation shall be understood to mean all the operations which are normally carried out by the staff referred to in Article 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 subdelegation.
2. *Ex ante* verification of an operation shall be understood to mean all the *ex ante* checks put in place by the authorising officer responsible in order to verify its operational and financial aspects.
3. Each operation shall be subject at least to an *ex ante* verification. The purpose of that verification shall be to ascertain that:
  - (a) the expenditure and revenue are in order and comply with the provisions applicable, in particular those of the budget and the relevant regulations and of any acts adopted in implementation of the Treaties or regulations and, where appropriate, the terms of contracts;
  - (b) the principle of sound financial management referred to in Chapter 7 of Title II of the Financial Rules is applied.

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 authorizing officer responsible shall, depending on his risk assessment, carry out an appropriate *ex post* verification, in accordance with paragraph 4.

4. The *ex post* verifications on documents and, where appropriate, on the spot shall check that operations financed by the budget are correctly

implemented and in particular that the criteria referred to in paragraph 3 are complied with. These verifications may be organised on a sample basis using risk analysis.

5. The members of staff responsible for the verifications referred to in paragraphs 2 and 4 shall be different from those members of staff performing the tasks of initiation referred to in paragraph 1 and they shall not be subordinate to the latter.

#### *Article 34*

#### **Management and internal control procedures**

(Article 38.4 of the Financial Rules)

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

- (a) achieve the objectives of the areas of activities, programmes and actions of the Agency in accordance with the principle of sound financial management;
- (b) comply with the rules of Community law and minimum control standards established by the Management Board;
- (c) safeguard the Agency's assets and information;
- (d) prevent and detect irregularities, errors and fraud;
- (e) identify and prevent management risks and manage them effectively;
- (f) ensure reliable production of financial and management information;
- (g) keep supporting documents relating to and subsequent to budget implementation and budget implementation measures;
- (h) keep documents relating to advance guarantees for the Agency and keep a log to enable such guarantees to be adequately monitored.

#### *Article 35*

#### **Keeping of supporting documents by authorising officers**

(Article 38.6 of the Financial Rules)

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

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

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

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.

#### *Article 36*

#### **Code of professional standards**

(Article 39.6 of the Financial Rules)

1. The staff designated by the authorising officer responsible to verify financial operations shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.
2. The Director shall draw up a code of professional standards which determine, on matters of internal control:
  - (a) the level of technical and financial competence required of the staff referred to in paragraph 1;
  - (b) the obligation for such staff to undergo continuing training;
  - (c) the mission, role and tasks allocated to them;

(d) the rules of conduct, in particular the standards of ethics and integrity that they must comply with and the rights they enjoy.

3. The Director shall put in place the appropriate structures to distribute to authorising departments and update periodically appropriate information concerning the control standards and the methods and techniques available for that purpose.

*Article 37*

**Failure of the authorising officer by delegation to take action**

(Article 41 of the Financial Rules)

Failure by the authorising officer by delegation to take action, as referred to in Article 41 of the Financial Rules, 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 activity report**

(Article 40.1 of the Financial Rules)

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 the Management Board.

*Article 39*

**Report on negotiated procedures**

(Article 38 of the Financial Rules)

Authorising officers by delegation shall record, for each financial year, contracts concluded under the negotiated procedures referred to in Articles 126(1)(a) to (g), 127(1)(a) to (d), 242, 244 and 246 of the Implementing Rules of the general Financial Regulation applicable to the general budget of the European Communities<sup>4</sup>. If the proportion of negotiated procedures in relation to the number of contracts awarded by the same authorising officer by delegation increases appreciably in relation to earlier years or if that proportion is distinctly higher than the average recorded for the Agency, the authorising officer responsible shall report to the

Director setting out any measures taken to reverse that trend. The Director shall send a report on negotiated procedures to the Management Board and to the Budgetary Authority, preferably as an annex to the annual activity report.

**Section 3**

**Accounting officer**

*Article 40*

**Appointment of the accounting officer**

(Article 43 of the Financial Rules)

The Management Board shall appoint an accounting officer who is covered by the Staff Regulations of Officials of the European Communities. The accounting officer shall, obligatorily, be chosen by the Management Board on the grounds of his particular competence as evidenced by diplomas or by equivalent professional experience.

*Article 41*

**Termination of duties of the accounting officer**

(Article 43 of the Financial Rules)

1. A trial balance shall be drawn up without delay in the event of termination of the duties of the accounting officer.
2. The trial balance accompanied by a handing-over report shall be transmitted by the accounting officer who is terminating his duties or, if this is not possible, by an official in his department to the new accounting officer.

The new accounting officer shall sign the trial balance in acceptance within one month from the date of transmission and he may make reservations.

The handing-over report shall also contain the result of the trial balance and any reservations made.

3. The Director shall inform the Management Board and the Budgetary Authority of the termination of duties of the accounting officer.

<sup>4</sup> OJ L 357, 31.12.2002, p.1 and L 248, 16.9.2002, p.1, as subsequently modified



*Article 42*

**Opinion on accounting and inventory systems**

(Article 43 of the Financial Rules)

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

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

*Article 43*

**Treasury management**

(Article 43 of the Financial Rules)

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 44*

**Management of bank accounts**

(Article 43 of the Financial Rules)

1. For the requirements of treasury management, the accounting officer may open accounts in the name of the Agency with financial institutions or national central banks or cause such accounts to be opened. In duly warranted circumstances, he/she may open accounts in currencies other than the euro.
2. The accounting officer shall negotiate the operating terms for accounts with financial institutions, in accordance with the principles of sound financial management, efficiency and competitive tendering.
3. At least every five years the accounting officer shall relaunch competitive tendering between financial institutions with which accounts have been opened.

4. The accounting officer shall ensure strict compliance with the operating terms for accounts opened with financial institutions.

*Article 45*

**Signatures on accounts**

(Article 43 of the Financial Rules)

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

To that end, the accounting officer of the Agency shall communicate to all financial institutions with which the Agency has opened accounts the names and specimen signatures of the authorised members of staff.

*Article 46*

**Management of account balances**

(Article 43 of the Financial Rules)

1. The accounting officer shall ensure that the balance on the bank accounts provided for in Article 44 does not deviate significantly from the cash-flow forecasts referred to in Article 43 (2) and in any event:
  - (a) that none of those accounts is in debit;
  - (b) that the balance of accounts held in other currencies is periodically converted into euro.
2. The accounting officer may not maintain balances in foreign currency accounts which might cause excessive losses to the Agency as a result of exchange rate fluctuations.

*Article 47*

**Transfers and conversion operations**

(Article 43 of the Financial Rules)

Without prejudice to Article 54, the accounting officer shall conduct transfers between accounts opened in the name of the Agency with financial institutions, and conduct currency conversion operations.

*Article 48*

**Methods of payment**

(Article 43 of the Financial Rules)

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

*Article 49*

**Legal Entities File**

(Article 43 of the Financial Rules)

1. The accounting officer may make payments by bank credit transfer only if the payee's bank account details and information confirming the payee's identity, or any modification, have first been entered in a common file by the European Commission.

Any such entry in the file of the payee's legal and bank account details or modification of those details shall be based on a supporting document, the form of which shall be defined by the Commission's accounting officer.

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

Authorising officers shall inform the accounting officer of any change in the legal and bank account details communicated to them by the payee and shall check that these details are valid before a payment is made.

*Article 50*

**Keeping of supporting documents by the accounting officer**

(Article 43 of the Financial Rules)

Supporting documents for the accounting system and for the preparation of the accounts referred to in Article 76 of the Financial Rules shall be kept for at least five years from the date on which the European Parliament grants discharge for the budgetary year to which the documents relate.

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

The Director shall decide in which department the supporting documents are to be kept.

**Section 4**

**Imprest administrator**

*Article 51*

**Conditions of use of imprest accounts**

(Article 44 of the Financial Rules)

1. Where, owing to the limited amounts involved, it is materially impossible or inefficient to carry out payment operations by budgetary procedures, imprest accounts may be set up for the payment of such expenditure.
2. The imprest administrator may provisionally validate and pay expenditure, on the basis of a detailed framework set out in the instructions from the authorising officer responsible. Those instructions shall specify the rules and conditions under which the provisional validation and payments shall be carried out and, where appropriate, the terms for signing legal commitments within the meaning of Article 79(1)(e).
3. The creation of an imprest account and the appointment of an imprest administrator shall be the subject of a decision by the accounting officer, on a duly substantiated proposal from the authorising officer responsible. That decision shall set out the respective responsibilities and obligations of the imprest administrator and the authorising officer.

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

*Article 52*

**Conditions governing creation and payment**

(Article 44 of the Financial Rules)

1. The decision setting up an imprest account and appointing an imprest administrator and the decision amending the operating terms for an imprest account shall specify in particular:

- (a) the maximum amount which may be initially provided as an imprest, and its purpose;
  - (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 will be settled by the authorising officer by no later than the end of the following month, so that the accounting balance and the bank balance can be reconciled;
  - (g) the period of validity of the authorisation given to the imprest administrator by the accounting officer;
  - (h) the identity of the appointed imprest administrator.
2. In proposals for decisions setting up imprest accounts the authorising officer responsible shall ensure that:
- (a) priority is given to the use of budgetary procedures where there is access to the central computerised accounting system;
  - (b) imprest accounts are used only in substantiated cases.

The maximum amount which may be paid by the imprest administrator where it is materially impossible or inefficient to carry out payment operations by budgetary procedures shall not exceed EUR 300 for each item of expenditure.

3. The imprest administrator may make payments to third parties on the basis and within the limits of:

- (a) prior budget and legal commitments signed by the authorizing officer responsible;
  - (b) the positive residual balance of the imprest account, in cash or at the bank.
4. Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 66 of the Financial Rules, cheque or other means of payment, in accordance with the instructions laid down by the accounting officer.
5. Payments made shall be followed by formal final validation decisions and/or payment orders signed by the authorising officer responsible.

#### *Article 53*

#### **Choice of imprest administrators**

(Article 44 of the Financial Rules)

Imprest administrators shall be chosen from officials or, should the need arise and only in duly substantiated cases, from other members of staff. Imprest administrators shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.

#### *Article 54*

#### **Endowment of imprest accounts**

(Article 44 of the Financial Rules)

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

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

- (a) sales of equipment;
- (b) publications;
- (c) miscellaneous repayments;

(d) interest.

The imprest shall be settled, in terms of expenditure or miscellaneous or assigned revenue, in accordance with the decision setting up the imprest account referred to in Article 52 and the provisions of the Financial Rules. 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 55*

#### **Checks by authorising officers and accounting officers**

(Article 44 of the Financial Rules)

1. The imprest administrator shall keep an account of the funds at his disposal, in cash and at the bank, and of payments made and amounts received, in accordance with the rules and on the instructions given by the accounting officer. Statements of that account shall be accessible at all times to the authorising officer responsible and a list of transactions shall be established at least once a month and be sent the following month together with supporting documents by the imprest administrator to the authorising officer responsible for settlement of the imprest operations.
2. The accounting officer shall carry out, or have carried out by a staff member in his own department or in the authorising department specially empowered for that purpose, checks, which must as a general rule be effected on the spot and without warning, to verify the existence of the funds allocated to the imprest administrators and the bookkeeping and to check that imprest transactions are settled within the time-limit set. The accounting officer shall communicate the findings of those checks to the authorising officer responsible.

#### *Article 56*

#### **Procurement procedure**

(Article 44 of the Financial Rules)

Payments made from imprest accounts may, within the limits laid down in Article 129(4) of the Implementing Rules of the general Financial Regulation, consist simply in the payment of costs against invoices, without prior acceptance of a tender.

### **CHAPTER 4 - Liability of the financial actors**

#### **Section 1**

#### **General rules**

##### *Article 57*

#### **Bodies responsible in matters of fraud**

(Articles 41 and 46(2) of the Financial Rules)

The authorities and bodies referred to in Articles 41 and 46(2) of the financial rules shall be understood to mean the bodies designated by 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 Agency' interests.

#### **Section 2**

#### **Rules applicable to authorising officers by delegation and sub-delegation**

##### *Article 58*

#### **Confirmation of instructions**

(Article 47(2) of the Financial Rules)

1. An authorising officer by delegation or sub-delegation who receives a binding instruction which he considers to be irregular or contrary to the principle of sound financial management, in particular because the instruction cannot be carried out with the resources allocated to him, shall, in writing, so inform the authority from which he received the delegation or sub-delegation. If that instruction is confirmed in writing and that confirmation is received in good time and is sufficiently clear, in that it refers explicitly to the points which the authorising officer by delegation or sub-delegation has

challenged, the authorising officer may not be held liable; he shall carry out the instruction, unless it is manifestly illegal or constitutes a breach of the relevant safety standards.

2. Paragraph 1 shall also apply in cases where an authorising officer learns, in the course of acting on a binding instruction, that the circumstances of the case may give rise to an irregular situation.
3. Any instructions confirmed in the circumstances described in Article 47(2) of the Financial Rules shall be recorded by the authorising officer by delegation responsible and mentioned in his annual activity report.

#### *Article 59*

#### **Financial irregularities**

(Article 41 and 47(4) of the Financial Rules)

Without prejudice to the powers of OLAF, the financial irregularities panel referred to in Article 29 (hereinafter 'the Panel') shall be competent in respect of any infringement of a provision of the financial rules or of a provision relating to financial management or the checking of operations resulting from an act or omission of a member of staff.

#### *Article 60*

#### **Financial irregularities panel**

(Article 41 and 47(4) of the Financial Rules)

1. Cases of financial irregularities as referred to in Article 59 of these Rules shall be referred to the Panel by the appointing authority for an opinion referred to in the second subparagraph of Article 47(4) of the Financial Rules.

An authorising officer by delegation may refer a matter to the panel if he considers that a financial irregularity has occurred. The Panel shall deliver an opinion evaluating whether irregularities within the meaning of Article 59 have occurred, how serious they are and what their consequences might be. Where the Panel's analysis suggests that the case referred to it is a matter for OLAF, it shall transmit the file to the appointing authority without delay and shall inform OLAF at once.

When the panel is directly informed of a matter by a member of staff in accordance with Article 41 of the Financial Rules, it shall transmit the

file to the appointing authority and shall inform the member of staff accordingly. The appointing authority may request the panel's opinion on the case.

2. In the case of a joint panel established by several Community bodies, the participating bodies shall, depending on its or their own internal organisation, specify the operating arrangements of the panel and its composition, which shall include an external participant with the required qualifications and expertise.

### ***CHAPTER 5 - Revenue operations***

#### **Section 1**

#### **Estimate of amounts receivable**

*Article 61*

#### **Estimate of amounts receivable**

(Article 52 of the Financial Rules)

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

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

- (a) the revenue is booked to the correct budget item;
  - (b) the estimate is in order and complies with the provisions applicable and the principle of sound financial management.
2. In the cases referred to in Article 19 of the Financial Rules, appropriations may be made available only after the sums due have actually been recovered by the Agency.

### Section 3

#### Establishment of amounts receivable

##### Article 62

##### Procedure

(Article 53 of the Financial Rules)

1. The establishment by the authorising officer responsible of an amount receivable shall constitute recognition of the right of the Agency in respect of a debtor and establishment of entitlement to demand that the debtor pay the debt.
2. The recovery order shall be the operation by which the authorising officer responsible instructs the accounting officer to recover the amount established.
3. The debit note shall be to inform the debtor that:
  - (a) the Agency have established the amount receivable;
  - (b) if payment of the debt is made before the deadline specified, no default interest will be due;
  - (c) failing payment by the deadline referred to in point (b) the debt shall bear interest at the rate referred to in Article 72, without any prejudice to any specific regulations applicable;
  - (d) failing payment by the deadline referred to in point (b) the Agency shall effect recovery either by offsetting or by enforcement of any guarantee lodged in advance;
  - (e) the accounting officer may effect recovery by offsetting before the deadline referred to in point (b), where it is necessary to protect the Agency's financial interests when he has justified reasons for believing that the amount due to the Agency would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting.
  - (f) if, after all those steps have been taken, the amount has not been recovered in full,

the Agency shall effect recovery by legal action.

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

##### Article 63

##### Establishment of amounts receivable

(Article 53 of the Financial Rules)

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

- (a) the receivable is certain and not subject to any condition;
- (b) the receivable is of fixed amount, expressed precisely in cash terms;
- (c) the receivable is due and is not subject to any payment time;
- (d) the particulars of the debtor are correct;
- (e) the amount to be recovered is booked to the correct budget item;
- (f) the supporting documents are in order; and
- (g) the principle of sound financial management is complied with, in particular with regard to the criteria referred to in point (a) of Article 73(1).

##### Article 64

##### Supporting documents for the establishment of amounts receivable

(Article 53 of the Financial Rules)

1. The establishment of an amount receivable shall be based on supporting documents certifying the Agency' entitlement.
2. Before establishing an amount receivable the authorising officer responsible shall personally check the supporting documents or, on his own responsibility, shall ascertain that this has been done.
3. The supporting documents shall be kept by the authorising officer in accordance with Articles 34 and 35.

## Section 4

### Authorisation of recovery

#### Article 65

##### Establishment of the recovery order

(Article 54 of the Financial Rules)

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 deadline referred to in Article 62(3)(b); 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 authorizing officer responsible, then sent to the accounting officer.
3. The accounting officer of the Agency shall keep a list of amounts due to be recovered. Agency entitlements shall be grouped in the list according to the date of issue of the recovery order. He shall transfer this list to the accounting officer of the Commission.

The accounting officer of the Commission shall prepare a consolidated list showing the amount due per institution and per date of issue of the recovery order. The list shall be added to the Commission's Report on budgetary and financial management.

## Section 5

### Recovery

#### Article 66

##### Collection formalities

(Article 55 of the Financial Rules)

1. Upon the recovery of an amount receivable, the accounting officer shall make an entry in the accounts and shall inform the authorising officer responsible.
2. A receipt shall be issued in respect of any cash payments made to the accounting officer or imprest administrator.

#### Article 67

##### Recovery by offsetting

(Article 55 of the Financial Rules)

1. Where the debtor has a claim on the Agency that is certain, of a fixed amount and due, relating to a sum established by a payment order, the accounting officer shall, once the deadline referred to in Article 62(3)(b) has passed, recover established amounts receivable by offsetting.

In exceptional circumstances, where it is necessary to safeguard the financial interests of the Agency, when the accounting officer has justified reasons for believing that the amount due to the Agency would be lost, the accounting officer shall recover by offsetting before the deadline referred to in Article 62(3)(b).

2. Before proceeding with any recovery in accordance with paragraph 1, the accounting officer shall consult the authorising officer responsible and inform the debtors concerned.

Where the debtor is a national authority or one of its administrative entities, the accounting officer shall also inform the Member State concerned at least 10 working days in advance of his intention to resort to recovery by offsetting. However, in agreement with the Member State or administrative entity concerned, the accounting officer may proceed with the recovery by offsetting before that deadline has passed.

3. The offsetting referred to in paragraph 1 shall have the same effect as a payment and discharge the Agency for the amount of the debt and, where appropriate, of the interest due.

#### *Article 68*

##### **Recovery procedure failing voluntary payment**

(Article 54 and 55 of the Financial Rules)

1. Without prejudice to Article 67, if the full amount has not been recovered by the deadline referred to in Article 62(3)(b) and specified in the debit note, the accounting officer shall inform the authorising officer responsible and shall without delay launch the procedure for effecting recovery by any means offered by the law, including, where appropriate, by enforcement of any guarantee lodged in advance.
2. Without prejudice to Article 67, 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 54 of the Financial Rules or by legal action.

#### *Article 69*

##### **Additional time for payment**

(Article 55 of the Financial Rules)

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

- (a) the debtor undertakes to pay interest at the rate specified in Article 72 for the entire additional period allowed, starting from the deadline referred to in Article 62(3)(b).
- (b) in order to safeguard the Agency's rights, the debtor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the Agency's accounting officer.

The guarantee referred to in point (b) of the first paragraph may be replaced by a joint and several

guarantee by a third party approved by the Agency's accounting officer.

#### *Article 70*

##### **Recovery of fines, periodic penalty payments and other penalties**

(Article 55 of the Financial Rules)

1. Where an action is brought before a Community court against an Agency decision imposing a fine, periodic penalty payment or other penalty under the EC Treaty or Euratom Treaty and until such time as all legal remedies have been exhausted, the accounting officer shall provisionally collect the amounts concerned from the debtor or request him to provide a financial guarantee. The guarantee requested shall be independent of the obligation to pay the fine, periodic penalty payment or other penalty and shall be enforceable upon first call. It shall cover the claim as to principal and the interest due as specified in Article 72(5).
2. After all legal remedies have been exhausted, the provisionally collected amounts and the interest they have yielded shall be entered into the budget or repaid to the debtor. In the event of a financial guarantee, the latter shall be enforced or released.

#### *Article 71*

##### **Rules for limitation periods**

(Article 58b of the Financial Rules)

1. The limitation period for entitlements of the Communities in respect of third parties shall begin to run on the expiry of the deadline communicated to the debtor in the debit note as specified in Article 62(3)(b).

The limitation period for entitlements of third parties in respect of the Communities shall begin to run on the date on which the payment of the third party's entitlement is due according to the corresponding legal commitment.

2. The limitation period for entitlements of the Communities in respect of third parties shall be interrupted by any act of an institution, or a Member State acting at the request of an institution, notified to the third party and aiming at recovering the debt.



The limitation period for entitlements of third parties in respect of the Communities shall be interrupted by any act notified to the Communities by their creditors or on behalf of their creditors aiming at recovering the debt.

3. A new limitation period of five years shall begin to run on the day following the interruptions referred to in paragraph 2.
4. Any legal action relating to an amount receivable as referred to in paragraph 1, including actions brought before a court which later declares itself not to have jurisdiction, shall interrupt the limitation period. The new limitation period of five years shall not begin until a judgment having the force of res judicata is given or there is an extrajudicial settlement between the same parties on the same action.
5. Where the accounting officer allows the debtor additional time for payment in accordance with Article 69, this shall be considered as an interruption of the limitation period. The new limitation period of five years shall begin to run on the day following the expiry of the extended time for payment.
6. Entitlements shall not be recovered after the expiry of the limitation period, as established in paragraphs 1 to 5.

#### *Article 72*

##### **Default interest**

(Article 53 of the Financial Rules)

1. Without prejudice to any specific provisions deriving from the application of sector-specific regulations, any amount receivable not repaid on the deadline referred to in Article 62(3)(b) shall bear interest in accordance with paragraphs 2 and 3 of this Article.
2. The interest rate for amounts receivable not repaid on the deadline referred to in Article 62(3)(b) shall be the rate applied by the European Central Bank to its principal refinancing operations, as published in the C series of the *Official Journal of the European Union*, in force on the first calendar day of the month in which the deadline falls, increased by:

- (a) seven percentage points where the obligating event is a public supply and service contract referred to in Title V;
- (b) three and a half percentage points in all other cases.

3. Interest shall be calculated from the calendar day following the deadline referred to in Article 62(3)(b) and specified in the debit note up to the calendar day 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.
5. In the case of fines, where the debtor provides a financial guarantee which is accepted by the accounting officer in lieu of a provisional payment, the interest rate applicable from the deadline referred to in Article 62(3)(b) shall be the rate referred to in paragraph 2 of this Article increased by only one and a half percentage points.

#### *Article 73*

##### **Waiving of recovery of an established amount receivable**

(Article 55 of the Financial Rules)

1. The authorising officer responsible may waive recovery of all or part of an established amount receivable only in the following cases:
  - (a) where the foreseeable cost of recovery would exceed the amount to be recovered and the waiver would not harm the Agency's image;
  - (b) where the amount receivable cannot be recovered in view of its age or the insolvency of the debtor;
  - (c) where recovery is inconsistent with the principle of proportionality.
2. In the case referred to in point (c) of paragraph 1, the authorizing officer responsible shall act in accordance with predetermined procedures established within each institution and shall apply the following criteria which are compulsory and applicable in all circumstances:

- (a) the facts, having regard to the gravity of the irregularity giving rise to the establishment of the amount receivable (fraud, repeat offence, intent, diligence, good faith, manifest error);
- (b) the impact that waiving recovery would have on the operation of the Communities and their financial interests (amount involved, risk of setting a precedent, undermining of the authority of the law).

Depending on the circumstances of the case, the authorising officer responsible may also have to take the following additional criteria into account:

- (a) any distortion of competition that would be caused by the waiving of recovery;
  - (b) the economic and social damage that would be caused were the debt to be recovered in full.
3. The waiver decision referred to in Article 55(3) of the Financial Rules shall be substantiated and shall refer to the diligence exercised to secure recovery and the points of law and fact on which the waiver is based. The authorising officer responsible shall waive recovery in accordance with Article 65.
  4. The waiving of recovery of an established amount receivable may not be delegated by the Director where the amount to be waived is EUR 5 000 or more.
  5. The Director shall send to the Management Board each year a report on the waivers. This report shall be annexed to the annual activity report.

#### *Article 74*

#### **Cancellation of an established amount receivable**

(Article 55 of the Financial Rules)

In the event of a mistake as to a point of law, the authorizing officer responsible shall cancel the established amount receivable in accordance with Article 64 and Article 65; cancellation shall be suitably substantiated.

#### *Article 75*

#### **Technical and accounting adjustment of an established amount receivable**

(Article 55 of the Financial Rules)

The authorising officer responsible shall adjust the established amount receivable upwards or downwards if the discovery of an error of fact necessitates the alteration of the amount, provided that the correction does not imply relinquishment of the Communities' established entitlement. Such adjustment shall be made in accordance with Article 64 and Article 65, and shall be suitably substantiated.

### **CHAPTER 6 - Expenditure operations**

#### *Article 76*

#### **Financing decision**

(Article 60 of the Financial Rules)

1. The financing decision shall set out the essential elements of an action involving expenditure from the budget.
2. For grants, the decision adopting the annual work programme shall be considered to be the financing decision within the meaning of Article 60 of the Financial Rules, provided that it constitutes a sufficiently detailed framework.

As regards procurement, where the implementation of the corresponding appropriations is provided for by an annual work programme constituting a sufficiently detailed framework, this work programme shall also be considered to be the financing decision for the procurement contracts involved.

3. In order to be considered a sufficiently detailed framework, the work programme adopted by the Agency shall set out the following:

- (a) For grants:
  - (i) the reference to the basic act and the budgetary line;
  - (ii) the priorities of the year, the objectives to be fulfilled and the foreseen results with the appropriations authorised for the financial year;

- (iii) the essential selection and award criteria to be used to select the proposals;
  - (iv) the maximum possible rate of co-financing and if different rates are envisaged the criteria to be followed for each rate;
  - (v) the timetable and the indicative amount of the calls for proposals.
- (b) For procurement:
- (i) the global budgetary envelope reserved for the procurements during the year;
  - (ii) the indicative number and type of contracts envisaged and if possible their subject in generic terms;
  - (iii) the indicative time frame for launching the procurement procedures.

If the annual work programme does not provide this detailed framework for one or more actions, it must be modified accordingly or a specific financing decision must be adopted containing the information referred to in points (a) and (b) of the first subparagraph for the actions concerned.

4. Without prejudice to any specific provision of a basic act, any substantial change in a financing decision already adopted shall follow the same procedure as the initial decision.

## **Section 1**

### **Commitment of expenditure**

#### *Article 77*

#### **Global and provisional commitments**

(Article 61 of the Financial Rules)

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

Financing agreements in the field of financial assistance and budgetary support which constitute legal commitments may give rise to payments without the conclusion of other legal commitments.

2. The provisional budget commitment shall be implemented either by the conclusion of one or more legal commitments giving rise to an entitlement to subsequent payments or, in cases relating to expenditure on staff management or on communications activities engaged in by the Agency for the coverage of Community events, directly by payments.

#### *Article 78*

#### **Adoption of a global commitment**

(Article 61 of the Financial Rules)

1. A global commitment shall be made on the basis of a financing decision.

The global commitment shall be made at the latest before the decision on the selection of beneficiaries is taken and, where implementation of the appropriations concerned involves the adoption of a work programme within the meaning of Article 166 of the Implementing Rules of the general Financial Regulation, at the earliest after that programme has been adopted.

2. Where the global commitment is implemented by the conclusion of a financing agreement, the second subparagraph of paragraph 1 shall not apply.

#### *Article 79*

#### **Single signature**

(Article 61 of the Financial Rules)

1. The rule that there be a single signatory for the budget commitment and the corresponding legal commitment may be departed from in the following cases alone:

- (a) where the commitments are provisional;
- (b) where the Agency's decision constitutes the legal commitment;
- (c) where the global commitment is implemented by a number of legal

commitments, for which different authorising officers are responsible;

2. If the authorising officer responsible who signed the budget commitment is not available and remains unavailable for a period incompatible with the time-limits for concluding the legal commitment, that legal commitment shall be concluded by the person designated under the deputation rules adopted by each institution, provided that that person has the status of authorising officer in accordance with Article 38 of the Financial Rules.

#### *Article 80*

#### **Registration of individual legal commitments**

(Article 62 of the Financial Rules)

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 Rules)

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

- (a) expenditure on staff, whether or not covered by the Staff Regulations, on other human resources and pensions and on the remuneration of experts;
- (b) training expenditure;
- (c) expenditure on competitions, selection and recruitment;

- (d) mission expenses;
- (e) representation expenses;
- (f) meeting expenses;
- (g) freelance interpreters and/or translators;
- (h) exchanges of officials;
- (i) recurring rentals of movable and immovable property;
- (j) miscellaneous insurance;
- (k) cleaning and maintenance;
- (l) welfare expenditure;
- (m) the use of telecommunications services;
- (n) financial charges;
- (o) legal expenses;
- (p) damages, including interest;
- (q) work equipment;
- (r) water, gas and electricity;
- (s) periodical publications on paper or in electronic versions.

## **Section 2**

### **Validation of expenditure**

*Article 82*

#### **Validation and 'passing for payment'**

(Article 64 and 65 of the Financial Rules)

1. Validation of any expenditure shall be based on supporting documents attesting the creditor's entitlement, on the basis of a statement of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment.
2. The authorising officer responsible shall personally check the supporting documents or shall, on his own responsibility, ascertain that

this has been done, before taking the decision validating the expenditure.

#### *Article 84*

##### **Passing for payment of grants**

(Article 64 and 65 of the Financial Rules)

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

- (a) the Agency has received and formally registered a payment request drawn up by the beneficiary;
- (b) the payment request itself, or an internal document accompanying the payment request received, has been endorsed 'certified correct' and signed by an official or other servant technically competent, empowered by the authorising officer responsible; by such endorsement, he certifies that the action or work programme carried out by the beneficiary is in all respects in compliance with the grant agreement;
- (c) all aspects of the payment request have been checked by the authorising officer responsible or on his responsibility with a view to determining in particular the amount to be paid and the validity of the payment as discharge of the debt.

#### *Article 83*

##### **Passing for payment of procurement contracts**

(Article 64 and 65 of the Financial Rules)

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

- (a) the Agency has received and formally registered an invoice drawn up by the contractor;
- (b) the invoice itself, or an internal document accompanying the invoice received, has been endorsed 'certified correct' and signed by an official or other servant technically competent and duly empowered by the authorising officer responsible;
- (c) all aspects of the invoice have been checked by the authorising officer responsible or on his responsibility with a view to 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) of the first paragraph shall certify that the services provided for in the contract have been properly provided, or that the supplies provided for in the contract have been properly delivered, or that the work provided for in the contract has been properly carried out. For supplies and work, the official or other servant technically competent shall draw up a provisional acceptance certificate, then a final acceptance certificate at the end of the guarantee period laid down in the contract. Those two certificates shall count as the 'certified correct' endorsement.

#### *Article 85*

##### **Passing for payment of staff expenditure**

(Article 64 and 65 of the Financial Rules)

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

- (a) in respect of monthly salary:
  - (i) the complete list of staff, giving all the components of remuneration;
  - (ii) a form (personal information sheet) based on decisions taken in each individual case, showing, whenever such change occurs, any change in any component of remuneration;
  - (iii) in the case of recruitments or appointments, a certified true copy of the recruitment or appointment decision which accompanies the validation of the first salary payment;

- (b) in respect of other remunerations such as staff paid on an hourly or daily basis: a statement signed by the authorised member of staff showing the days and hours worked;
- (c) in respect of overtime: a statement signed by the authorised member of staff certifying the amount of overtime worked;
- (d) in respect of mission expenses:
  - (i) the travel order signed by the competent authority;
  - (ii) the statement of mission expenses, signed by the member of staff on mission and by the administrative superior to whom the appropriate powers have been delegated, and showing, in particular, the place of mission, the dates and times of departure and arrival at the place of mission, travel expenses, subsistence expenses, and other expenses duly authorised on production of supporting documents;
- (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 64 and 65 of the Financial Rules)

In a non-computerised system, ‘passed for payment’ shall take the form of a stamp incorporating the signature of the authorising officer responsible or of a technically competent member of staff, empowered by the authorising officer responsible in accordance with Article 82. In a computerised system, ‘passed for payment’ shall take the form of an electronically secured validation by the authorising officer responsible or by a technically competent member of staff, empowered by the authorising officer responsible.

## Section 3

### Authorisation of payments

*Article 87*

**Checks on payments by the authorising officer**

(Article 66 of the Financial Rules)

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

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

*Article 88*

**Mandatory details on payment orders and transmission to the accounting officer**

(Article 66 of the Financial Rules)

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 items in the inventory in accordance with Article 131.

2. The payment order shall be dated and signed by the authorizing officer responsible, then sent to the accounting officer.

## **Section 4**

### **Payment of expenditure**

#### *Article 89*

##### **Supporting documents**

(Article 67 of the Financial Rules)

1. Pre-financing, including cases where it is split into a number of payments, shall be paid either on the basis of the contract, the decision, the agreement or the basic act, or on the basis of supporting documents which make it possible to check the conformity of the actions financed with the terms of the contract, decision or agreement in question. If a date of payment for pre-financing is determined in those instruments, payment of the due amount shall not be dependent upon further demand.

Interim payments and payments of balances shall be based on supporting documents which make it possible to check that the action financed has been carried out in accordance with the basic act or the decision in favour of the beneficiary, or in accordance with the terms of the contract or agreement concluded with the beneficiary.

2. The authorising officer responsible shall lay down, in compliance with the principle of sound financial management, the nature of the supporting documents referred to in paragraph 1 in accordance with the basic act and the contracts and agreements concluded with the beneficiary. Interim and final technical and financial implementation reports, shall constitute supporting documents for the purposes of paragraph 1.
3. The supporting documents shall be kept by the authorising officer responsible in accordance with Article 34 and Article 35.

#### *Article 90*

### **Booking of pre-financing and interim payments**

(Article 67 of the Financial Rules)

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 time limits and default interest**

(Article 69 of the Financial Rules)

1. Sums due shall be paid within no more than forty-five calendar days from the date on which an admissible payment request is registered by the authorised department of the authorising officer responsible; the date of payment shall be understood to mean the date on which the institution's account is debited.

The payment request is not admissible if at least one essential requirement is not met.

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

2. The payment period referred to in paragraph 1 shall be thirty calendar days for payments relating to service or supply contracts, save where the contract provides otherwise.

3. For contracts, grant agreements under which payment depends on the approval of a report or a certificate, the time-limit for the purposes of the payment periods referred to in paragraphs 1 and 2 shall not begin to run until the report or certificate in question has been approved. The beneficiary shall be informed without delay.

The time allowed for approval may not exceed:

- (a) 20 calendar days for straightforward contracts relating to the supply of goods and services;
- (b) 45 calendar days for other contracts and grant agreements;
- (c) 60 calendar days for contracts and grant agreements involving technical services or actions which are particularly complex to evaluate.

In any case, the contractor or beneficiary shall be informed in advance of the possibility that payments might be delayed for the purpose of approval of a report.

The authorising officer responsible shall inform the beneficiary by means of a formal document of any suspension of the period allowed for approval of the report or certificate.

The authorising officer responsible may decide that a single time limit for the approval of the report or the certificate, and for payment shall apply. This single time limit may not exceed the aggregated maximum applicable periods for approval of the report or certificate and for payment.

4. The authorising officer responsible may suspend the time limit for payment by informing creditors, at any time during the period referred to in paragraph 1, that the payment request cannot be met, either because the amount is not due or because the appropriate supporting documents have not been produced. If information comes to the notice of the authorising officer responsible which puts in doubt the eligibility of expenditure appearing in a payment request, the authorising officer may suspend the time limit for payment for the purpose of further verification, including an on-the-spot check, in order to ascertain, prior to payment, that the expenditure is indeed eligible. The authorising officer shall inform the

contractor or beneficiary in question as soon as possible and set out the reasons for the suspension.

Time for the purposes of the remainder of the payment period shall begin to run again from the date on which the properly formulated payment request is first registered.

5. On expiry of the time limits laid down in paragraphs 1, 2 and 3, the creditor shall be entitled to interest in accordance with the following provisions:

- (a) the interest rates shall be those referred to in the first subparagraph of Article 72(2);
- (b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment up to the day of payment.

The first subparagraph shall not apply to Member States.

6. The Director shall submit to the Management Board a report on the compliance with the time limits and on the suspension of the time limits laid down in paragraphs 1 to 5. The report shall be annexed to the summary of the annual activity reports referred to in Article 40(1) of the Financial Rules.

## **CHAPTER 7 - IT Systems**

### *Article 92*

#### **Description of IT systems**

(Article 70 of the Financial Rules)

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

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

### *Article 93*

#### **Periodical save**

(Article 70 of the Financial Rules)



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

## **CHAPTER 8 – Internal auditor**

### *Article 94*

#### **Appointment of the internal auditor**

(Article 71 of the Financial Rules)

1. The Commission's internal auditor shall be the internal auditor of the Agency as per article 71(2) of the Financial Rules.

### *Article 95*

#### **Operating resources**

(Article 72 of the Financial Rules)

The Agency shall provide the internal auditor with the means required for the proper performance of his audit function and a mission charter detailing his tasks, duties and obligations.

### *Article 96*

#### **Work programme**

(Article 72 of the Financial Rules)

1. The internal auditor shall adopt his work programme and shall submit it to the Director.
2. The Director 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 of the Financial Rules)

1. The internal auditor shall submit to the Management Board and the Director the annual internal audit report provided for in Article 72(3) of the Financial Rules, indicating the number and type of internal audits carried out, the principal recommendations made and the action taken on those recommendations.

That annual report shall also mention any systemic problems detected by the specialised panel set up pursuant to Article 47(4) of the Financial Rules.

2. The internal auditor shall, during the elaboration of his report, particularly focus on the overall compliance with the principle of sound financial management and shall ensure that appropriate measures have been taken in order to steadily improve and enhance its application.

### *Article 98*

#### **Action before the Court of Justice of the European Communities**

(Article 73 of the Financial Rules)

Without prejudice to the remedies allowed by the Staff Regulations, the internal auditor may bring an action directly before the Court of Justice of the European Communities in respect of any act relating to the performance of his duties as internal auditor. Such an action must be lodged within three months running from the calendar day on which the act in question is notified.

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

## **TITLE V – Procurement**

### *Article 99*

As regards procurement, the relevant provisions of the general Financial Regulation and the detailed rules for implementing that Regulation shall apply.

## **TITLE VI – GRANTS**

### *Article 100*

Where the Agency may award grants in accordance with its constituent instrument, the relevant provisions of the general Financial Regulation and the detailed rules for implementing that Regulation shall apply.

## **TITLE VII - PRESENTATION OF THE ACCOUNTS AND ACCOUNTING**

### **CHAPTER 1 - Presentation of the accounts**

#### *Article 101*

#### **Report on budgetary and financial management during the year**

(Article 76 of the Financial Rules)

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.

The report on budgetary and financial management shall be separate from the reports on implementation of the budget referred to in Article 76 of the Financial Rules.

#### *Article 102*

#### **Exception to the accounting principles**

(Article 78 of the Financial Rules)

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 103 to 110, that exception shall be duly substantiated and reported in the annex to the financial statements referred to in Article 113.

#### *Article 103*

#### **Going-concern principle**

(Article 78 of the Financial Rules)

1. The going-concern principle means that for the purposes of preparing the financial statements, the Agency shall be deemed to be established for an indefinite duration.
2. Where there are objective indications that the Agency is to cease its activities, the accounting officer shall present that information in the annex, indicating the reasons. The accounting officer shall apply the accounting rules with a view to determining the liquidation value of the Agency.

#### *Article 104*

#### **Principle of prudence**

(Article 78 of the Financial Rules)

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 105*

#### **Principle of consistent accounting methods**

(Article 78 of the Financial Rules)

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 106*

### **Principle of comparability of information**

(Article 78 of the Financial Rules)

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

Where it is impossible to reclassify items, this shall be explained in the annex referred to in Article 113.

#### *Article 107*

### **Materiality principle**

(Article 78 of the Financial Rules)

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 108*

### **No-netting principle**

(Article 78 of the Financial Rules)

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 109*

### **Principle of reality over appearance**

(Article 78 of the Financial Rules)

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 110*

### **Accrual-based accounting principle**

(Article 79 of the Financial Rules)

1. The accrual-based accounting principle means that transactions and events shall be entered in the accounts when they occur and not when amounts are actually paid or recovered. They shall be booked to the financial years to which they relate.
2. The accounting methods provided for in Article 85 of the Financial Rules shall specify the obligating event for the entry of each transaction in the accounts.

#### *Article 111*

### **Economic outturn account**

(Article 80 of the Financial Rules)

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

#### *Article 112*

### **Cash flow table**

(Article 80 of the Financial Rules)

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 113*

**Annex to the financial statements**

(Article 80 of the Financial Rules)

The annex referred to in Article 80 of the Financial Rules 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 114*

**Explanatory notes**

(Article 80 of the Financial Rules)

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 115*

**Budgetary outturn account**

(Article 81 of the Financial Rules)

1. The budgetary outturn account shall contain:
  - (a) information on revenue comprising:
    - (i) changes in the revenue estimates in the budget;
    - (ii) the revenue outturn;

(iii) entitlements established;

- (b) information showing changes in the total commitment and payment appropriations available;
- (c) information showing the use made of the total commitment and payment appropriations available;
- (d) information showing commitments outstanding, those carried over from the previous year and those made during the year.

*Article 116*

**Annex to the budgetary outturn account**

(Article 81 of the Financial Rules)

The annex to the budgetary outturn account referred to in Article 81 of the Financial Rules shall contain at least:

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

**CHAPTER 2 - Accounting**

**Section 1**

**Organisation of the accounts**

*Article 117*

**Organisation of the accounts**

(Article 84 of the Financial Rules)

1. The accounting officer of the Agency shall draw up and keep updated documents describing the organisation of the accounts and accounting procedures of his Agency.
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 computerized system referred

to in Article 118, according to the economic nature of the operation, as current revenue or expenditure or as capital.

#### *Article 118*

### **Computerised systems**

(Article 84 of the Financial Rules)

1. The accounts shall be kept with the help of an integrated computerized system.
2. Where accounts are kept using computerised systems and subsystems, such systems and subsystems shall be described in full.

That description shall define the content of all data fields and specify how the system treats individual operations. It shall state how the system guarantees the existence of a complete audit trail for each operation and for any change made to the computerised systems and subsystems so that it is possible at any time to identify the nature of the change and the person who made it.

The description of computerised accounting systems and subsystems shall indicate any links between those systems and the central accounting system, particularly as regards the transfer of data and the reconciliation of balances.

3. Access to the computerised systems and subsystems shall be confined to persons included on a list of authorised users which is kept and updated by the Agency.

## **Section 2**

### **Accounting ledgers**

#### *Article 119*

### **Accounting ledgers**

(Article 87 of the Financial Rules)

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.
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 120*

### **Trial balance**

(Article 87 of the Financial Rules)

The Agency shall establish a trial balance covering all the accounts of the general accounts, including the accounts cleared during the year, with, in each case:

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

#### *Article 121*

### **Accounting reconciliations**

(Article 87 of the Financial Rules)

1. The data in the general ledger shall be kept and organised in such a way as to justify the content of each of the accounts included in the trial balance.
2. As regards the inventory of fixed assets, the provisions of Articles 129 to 136 shall apply.

## **Section 3**

*Article 124*

### **Chart of accounts**

## **Section 4**

### **Registration**

*Article 122*

#### **Entries in the accounts**

(Article 87 of the Financial Rules)

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

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

That revaluation shall be based on the rates laid down in accordance with Article 7.

The rate to be used for conversion between the euro and another currency to draw up the balance sheet at 31 December of year N shall be that of the last working day of year N.

3. The accounting rules adopted under Article 85 of the Financial Rules shall specify the conversion and re-evaluation rules to be provided for the purposes of accrual accounting.

*Article 123*

#### **Accounting records**

(Article 87 of the Financial Rules)

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

### **Supporting documents**

(Article 87 of the Financial Rules)

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 125*

### **Recording in the journal**

(Article 87 of the Financial Rules)

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

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

*Article 126*

### **Validation of entries**

(Article 87 of the Financial Rules)

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

## Section 5

### Reconciliation and verification

#### Article 127

##### Reconciliation of accounts

(Article 87 of the Financial Rules)

1. The balance of accounts in the trial balance shall be reconciled periodically, and at least at the annual closure, with the data from the management systems used by authorising officers for the management of assets and liabilities and for the daily input into the accounting system.
2. Periodically, and at least whenever the accounts are closed, the accounting officer shall check that the data in the inventory ledger referred to in Article 119 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 133.

3. The suspense accounts shall be reviewed annually by the accounting officer so that they can be cleared as soon as possible.

## Section 6

### Budget accounts

#### Article 128

##### Content and keeping of budget accounts

(Article 89 of the Financial Rules)

1. The budget accounts shall show, for each subdivision of the budget:
  - (a) in the case of expenditure:
    - (i) the appropriations authorised in the initial budget, the appropriations entered in amending budgets, the

appropriations carried over, the appropriations available following collection of assigned revenue, transfers of appropriations and the total appropriations thus available;

- (ii) the commitments and payments in respect of the financial year;
  - (b) in the case of revenue:
    - (i) the estimates entered in the initial budget, the estimates entered in amending budgets, assigned revenue and the total amount of estimates thus determined;
    - (ii) the entitlements established and the amounts recovered in respect of the financial year in question;
  - (c) the commitments still to be paid and revenue still to be recovered carried forward from previous financial years.

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

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 129

##### Property inventories

(Article 90 of the Financial Rules)

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

#### *Article 130*

##### **Safeguarding property**

(Article 90 of the Financial Rules)

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 131*

##### **Entry of items in the inventory**

(Article 90 of the Financial Rules)

All items acquired with a period of use greater than one year, which are not consumables, and whose purchase price or production cost is higher than that indicated in the accounting rules adopted under Article 88 of the Financial Rules shall be entered in the inventory and recorded in the fixed assets accounts.

#### *Article 132*

##### **Content of the inventory for each item**

(Article 90 of the Financial Rules)

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

#### *Article 133*

##### **Inventory checks**

(Article 90 of the Financial Rules)

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 an annual verification programme, save for tangible and intangible fixed assets, which shall be checked at least on a three-year basis.

#### *Article 134*

##### **Resale of property**

(Article 90 of the Financial Rules)

Members, officials or other servants and any other staff of the Agency may not acquire items that are resold by the Agency, save where those items are resold by public tender procedure.

#### *Article 135*

##### **Procedure for sale of fixed assets**

(Article 90 of the Financial Rules)

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

Those sales shall be the subject of a notice of sale published in the *Official Journal of the European Communities*, if the unit purchase value is EUR 391 100 or more. Appropriate advertising may also be placed in the Member States' press. The period between the date of publication of the notice in the *Official Journal of the European Communities* and conclusion of the sales contract shall be no less than one month.

2. The 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 136*

##### **Procedure for disposing of fixed assets**

(Article 90 of the Financial Rules)

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 Agency 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 Management Board when the preliminary draft budget is presented.

## **PART TWO - SPECIAL PROVISIONS**

### **TITLE I - ADMINISTRATIVE APPROPRIATIONS**

#### *Article 137*

##### **Scope**

(Article 13 of the Financial Rules)

The administrative appropriations covered by this Title shall be those defined in Article 24.

Budgetary commitments corresponding to administrative appropriations of a type common to all titles and which are managed globally may be recorded globally in the budgetary accounting following the summary classification by type as set out in Article 24.

The corresponding expenditure shall be booked to the budget lines of each title according to the same distribution as for appropriations.

#### *Article 138*

##### **Buildings**

(Article 179(3) of the general Financial Regulation)

Before concluding the contracts referred to in Article 179(3) of the general Financial Regulation, the Agency shall submit a communication to the Management Board presenting all relevant information on the operation planned, the cost to the budget for the current financial year and for future years, its justification as regards the principle of sound financial management and its impact on the financial perspective.

The Agency shall at the same time inform the Management Board and the Budgetary Authority of its schedule for building projects.

#### *Article 139*

##### **Rent guarantees**

(Article 177 of the general Financial Regulation)

Rent guarantees provided by the Agency shall take the form of a bank guarantee or a deposit on a blocked bank account in the name of the Agency and of the lessor, denominated in euro, save in duly substantiated cases.

However, where, for transactions in third countries, it is not possible to use any of those forms of rent guarantees, the authorising officer responsible may accept other forms provided that those forms ensure equivalent protection of the Agency' financial interests.

#### *Article 140*

##### **Advances to staff and members of the Agency**

(Article 8.3 of the Financial Rules)

Advances may be paid, in accordance with the conditions laid down in the Staff Regulations, to staff and to the members of the Agency.

### **TITLE II - EXPERTS**

#### *Article 141*

##### **Scope**

(Article 13 of the Financial Rules)

1. For values below the thresholds laid down in Article 158(1)(a) of the general Financial Regulation, external experts may be selected on the basis of the procedure laid down in paragraph 2 of this Article for tasks involving in particular the evaluation of proposals and technical assistance.
2. A call for expressions of interest shall be published in particular in the Official Journal of the European Union or the internet site of the institution concerned in order to ensure maximum publicity among potential candidates and with a view to establishing a list of experts. The list drawn up following the call for expressions of interest shall be valid for no more than the duration of a multi-annual programme. Any interested person may submit an application at any time during the period of validity of the list, with the exception of the last three months of that period.
3. External experts shall not appear on the list referred to in paragraph 2 if they are in one of the situations of exclusion referred to in Article 93 of the general Financial Regulation.
4. External experts appearing on the list referred to in paragraph 2 shall be selected on the basis of their ability to perform the tasks referred to in paragraph 1 and in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interests.

## **PART THREE - FINAL PROVISIONS**

### **TITLE I - FINAL PROVISIONS**

#### *Article 142*

This decision shall be binding in its entirety.

#### **Updating of thresholds and amounts**

1. The thresholds and amounts laid down in Articles 39, 52 and 135 shall be updated every three years in line with movements in the consumer price index in the Community.

#### *Article 143*

#### **Repeal**

Regulation of the European Monitoring Centre on Racism and Xenophobia of 20 November 2002 laying down detailed rules for the implementation of the Financial Regulation of 20 November 2002 applicable to the Budget of the European Monitoring Centre on Racism and Xenophobia is repealed.

#### *Article 144*

#### **Entry into force**

These Rules shall enter into force on the day of their signature by the Chairman of the Management Board.