



European
Commission

Financial Regulation

applicable to the general
budget of the Union
and its rules of application

March 2014

Synoptic presentation

*And a selection
of legal texts
relevant
to the budget*

Budget

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PREFACE

This publication is a compilation of recently updated EU financial rules. With the new Financial Regulation as its backbone, it also contains its detailed rules of application, which are presented synoptically, i.e. alongside the Financial Regulation articles they refer to. A selection of the most relevant basic legal texts completes this practical tool for anyone dealing with the management of EU funds. In this respect this booklet follows the tradition of previous similar comprehensible handbooks appreciated by many experts for compiling all relevant information in a practical way, both for those who will need an occasional reference and for those who will use it on a daily basis.

Both the Financial Regulation and its Rules of Application were adopted in 2012 after a legislative procedure initiated by the Commission in 2010 as part of a revision of the financial rules for EU-funded programmes, and which was preceded by a public consultation in 2009.

The revised Financial Regulation and its Rules of Application presented in this publication have addressed the major concerns expressed in the public consultation and have brought changes in terms of:

- simplification: cutting red tape, speeding up procedures, in particular the time-to-grant, and shifting the focus from paperwork to performance,
- accountability: ensuring enhanced sound financial management and the protection of the EU's financial interests, and
- leverage: introducing financial mechanisms which will enable the mobilisation of third-party funds as leverage on EU funds.

The main body of the publication follows the structure of the Financial Regulation. In its introductory part it offers the relevant legal references. Part one focuses on the common provisions, while part two describes the special provisions. Part three introduces the transitional as well as final provisions. The annexes provide a set of basic legal texts relevant to the EU budget.

In the preparation of this publication, its authors took into account the positive feedback from the users of previous editions. While offering its traditional paper version, the e-version should enable not only enhanced search possibilities, but also to keep track of any future updates of the EU financial rules in the shortest possible time. The web version adapted for tablet and mobile applications should offer an experienced user practically continuous availability of this indispensable reference book.

1. FINANCIAL REGULATION AND ITS RULES OF APPLICATION

1.1.References

Regulation (EU, Euratom) No 966/2012
of the European Parliament and of the Council
of 25 October 2012

**on the financial rules applicable to the general budget
of the Union and repealing Council Regulation
(EC, Euratom) No 1605/2002**

(OJ L 298, 26.10.2012, p. 1)

Commission Delegated Regulation (EU) No 1268/2012
of 29 October 2012

**on the rules of application of Regulation
(EU, Euratom) No 966/2012 of the European Parliament
and of the Council on the financial rules applicable
to the general budget of the Union**

(OJ L 362, 31.12.2012, p. 1)

1.2. Entry into force and application

Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002

(OJ L 298, 26.10.2012, p. 1)

'Article 214

Entry into force

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

It shall apply from 1 January 2013, with the exception of:

- (a) Articles 58 to 63, which shall apply only to commitments made as of 1 January 2014;
- (b) point (c) of the second subparagraph of Article 50(1) and Articles 82, 139 and 140, which shall apply from 1 January 2014;
- (c) Articles 177, 179 and 210, which shall apply from 27 October 2012.'

Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union

(OJ L 362, 31.12.2012, p. 1)

'Article 290

Entry into force

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

It shall apply as of 1 January 2013.

However, Articles 216 to 226 shall apply as of 1 January 2014.'

1.3. Recitals of the Financial Regulation and rules of application

Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002

(OJ L 298, 26.10.2012, p. 1)

Recitals

'Whereas:

- (1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ has been substantially amended several times. Since further amendments are to be made, including changes to take account of the entry into force of the Treaty of Lisbon, Regulation (EC, Euratom) No 1605/2002 should be repealed and replaced by this Regulation, in the interests of clarity.
- (2) Regulation (EC, Euratom) No 1605/2002 laid down the budgetary principles and financial rules governing the establishment and implementation of the general budget of the Union (the 'budget'), ensuring sound and effective management, control and protection of the Union's financial interests and increasing transparency, that are to be respected in all legal acts and by all institutions. The fundamental principles, the concept and the structure of that Regulation and the basic rules of budgetary and financial management should be maintained. Derogations to those fundamental principles should be reviewed and simplified as far as possible, taking into account their continuing relevance, their added-value for the budget, and the burden they impose on stakeholders. It is necessary to maintain and strengthen the key elements of the financial rules: the role of the financial actors, the integration of controls in operational services, the internal auditors, activity-based budgeting, the modernisation of accounting principles and rules, and the basic principles for grants.
- (3) Due to the specific nature and tasks of the European Central Bank (ECB), in particular its independence as regards the management of its finances, it should be excluded from the scope of this Regulation, except where otherwise provided for in this Regulation.
- (4) In the light of practical experience, rules should be included in this Regulation in order to follow evolving requirements of budget implementation such as co-financing with other donors, to increase the efficiency of external aid, to facilitate the use of specific financial instruments including those concluded with the European Investment Bank (EIB) and to facilitate budget implementation through public-private partnerships ('PPPs').

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

- (5) Regulation (EC, Euratom) No 1605/2002 was confined to stating broad budgetary principles and financial rules in line with the Treaties while the implementing provisions were laid down in Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 ⁽¹⁾ in order to produce a better hierarchy of rules and make Regulation (EC, Euratom) No 1605/2002 easier to read. Under Article 290 TFEU a legislative act may delegate to the Commission the power to adopt non-legislative acts only to supplement or amend certain non-essential elements of that legislative act. As a consequence, some provisions laid down in Regulation (EC, Euratom) No 2342/2002, should be incorporated into this Regulation.
- (6) Police and judicial cooperation in criminal matters have become an integral part of other Union policies and internal actions. The specific financial provisions applicable to that policy area are thus no longer justified and should therefore not be included in this Regulation.
- (7) In order to ensure transparency, the budget should record guarantees for borrowing-and-lending operations entered into by the Union, including the European Financial Stability Mechanism and Balance of Payment Facility operations.
- (8) The existing rules governing interest generated by pre-financing payments should be simplified as they generate an excessive administrative burden both for recipients and Commission services and create misunderstandings between Commission services and recipients. In the interests of simplification, in particular with regard to beneficiaries, and in accordance with the principle of sound financial management, there should no longer be an obligation to generate interest on pre-financing payments and to recover such interest. However, it should be possible to include such an obligation in a delegation agreement in order to allow the reuse of interest generated by pre-financing payments for the programmes, the deduction of such interest from the payment requests or its recovery.
- (9) Carry-over rules for assigned revenue should take into account the distinction between external and internal assigned revenue. In order to comply with the purpose assigned by the donor, external assigned revenue should be carried over automatically and used until all the operations relating to the programme or action to which it is assigned have been carried out. Where the external assigned revenue is received during the last year of the programme or action, it should also be possible to use it in the first year of the succeeding programme or action. It should be possible to carry over internal assigned revenue for one year only, except where this Regulation provides otherwise.
- (10) The rules regarding provisional twelfths should be clarified with regard to both the number of additional twelfths that may be requested, and the cases where the European Parliament decides to reduce the amount of the additional expenditure in excess of the provisional twelfths adopted by the Council.
- (11) The derogation from the principle of universality concerning assigned revenue should be modified to take into account the specificities of, on the one hand, internal assigned revenue which arises from appropriations authorised by the European Parliament and the Council, and, on the

⁽¹⁾ OJ L 357, 31.12.2002, p. 1.

other hand, external assigned revenue which is collected from and assigned by various donors to a specific programme or action. Furthermore, external donors should be allowed to co-finance external action, in particular humanitarian operations, even in cases where the basic act does not expressly provide for such co-financing.

- (12) The presentation of assigned revenue in the draft budget should be made more transparent by providing that amounts of assigned revenue are to be included in the draft budget for the amounts which are certain at the date of the establishment of the draft budget.
- (13) As regards the principle of specification, since no distinction is now made between compulsory and non-compulsory expenditure, the rules governing transfers of appropriations should be adapted accordingly.
- (14) The rules governing transfers of appropriations should also be adapted to the changes resulting from the entry into force of the Treaty of Lisbon. In addition, recent experience has shown the importance of increasing flexibility for end-of-the-year transfer of payment appropriations, in particular for Structural Funds. It is necessary to ensure better budget implementation, especially in relation to payment appropriations, assigned revenue and administrative appropriations that are common to several titles. To that end, the typology of transfers should be simplified and the adoption procedure of some transfers should be more flexible. In particular, it has proven to be relevant and efficient for the Commission to have the possibility of deciding on transfers of unused appropriations in cases of international humanitarian disasters and crises. That possibility should therefore be extended to similar events occurring after 1 December of a financial year. In such cases, for reasons of transparency, the Commission should inform the European Parliament and the Council immediately of its decision to transfer unused appropriations.
- (15) Concerning provisions on sound financial management, the authorising officer by delegation should take account of the expected level of risk of error and cost and benefits of controls when preparing legislative proposals and when setting up the respective management and control systems. The authorising officer by delegation should report on the results of controls, and their costs and benefits in the annual activity report. Management declarations on such systems submitted by the bodies designated by the Member States to be responsible for the management and control of Union funds, are integral to the effectiveness of national management and control systems.
- (16) The principle of transparency, enshrined in Article 15 TFEU which requires the institutions to work as openly as possible, implies, in the area of the implementation of the budget, that citizens are able to know where, and for what purpose, funds are spent by the Union. Such information fosters democratic debate, contributes to the participation of citizens in the Union's decision-making process and reinforces institutional control and scrutiny over Union expenditure. Such objectives should be achieved by the publication, preferably using modern communication tools, of relevant information concerning final contractors and beneficiaries of Union funds which takes into account such contractors' and beneficiaries' legitimate interests of confidentiality and security and, as far as natural persons are concerned, their right to privacy and the protection of their personal data. Institutions should therefore adopt a selective approach in the publication of information, in accordance with

the principle of proportionality. Decisions to publish should be based on relevant criteria in order to provide meaningful information.

- (17) In accordance with Article 316 TFEU, the European Council and the Council should share the same section in the budget.
- (18) The annual budgetary procedure under the TFEU should be reflected in this Regulation.
- (19) With regard to the establishment of the budget, it is important to clearly define the structure and the presentation of the draft budget drawn up by the Commission. The content of the general introduction preceding the draft budget should be described more precisely. It is also necessary to include a provision on financial programming for future years as well as a provision on the possibility for the Commission to submit working documents to support budget requests.
- (20) With regard to the specific features of the common foreign and security policy, the forms which basic acts can take under the TFEU and under Title V and VI of the TEU should be updated. In addition, the adoption procedure for preparatory measures in the area of external action should be adapted to the TFEU.
- (21) The rules on methods of implementation of the budget, which govern in particular the conditions of externalisation of implementing powers to third parties, have become too complex over the years and should be simplified. At the same time, the initial objective of externalisation, namely that whatever the method of implementation, expenditure is implemented with a level of control and transparency equivalent to that expected from the Commission services, should be maintained.
- (22) A clear distinction should be made between situations in which the budget is implemented directly, by the Commission or its executive agencies, situations in which the budget is implemented by Member States under shared management and situations in which the budget is implemented indirectly through third parties. This should allow for the establishment of a harmonised regime for shared and indirect management which can be adapted in accordance with sector-specific rules, in particular where the budget is implemented by Member States under shared management. Such a harmonised regime should include in particular the basic principles to be respected by the Commission when it decides to implement the budget under shared management or indirectly and the basic principles to be respected by parties entrusted with budget implementation tasks. The Commission should be able to apply Union rules and procedures or to accept the application of the rules and procedures of the entrusted party, provided the latter guarantees an equivalent protection of the Union's financial interests. As part of the supervision tasks of the Commission, it is also necessary to provide for a set of control and audit obligations, including the examination and acceptance of accounts, for all methods of implementation.
- (23) Rules on *ex ante* assessment of entities and persons entrusted with budget implementation tasks under indirect management, should be adapted to ensure that all entrusted entities and persons provide a level of protection of the Union's financial interests equivalent to that required under this Regulation.

- (24) The experience of having PPPs institutionalised as Union bodies under Article 185 of Regulation (EC, Euratom) No 1605/2002 demonstrates that additional categories of PPPs should be provided for in order to increase the choice of instruments and include bodies whose rules are more flexible and accessible for private partners than those applicable to the Union institutions. Those additional categories should cover bodies governed by the private law of a Member State and bodies that are established by a basic act and which have financial rules that respect the principles necessary to ensure sound financial management of Union funds.
- (25) For the purposes of Article 317 TFEU, this Regulation should strengthen Member States' basic control and audit obligations where they implement the budget under shared management, since such obligations currently exist only in sector-specific rules. It is necessary, therefore, to include provisions, setting out a coherent framework for all policy areas concerned, on harmonised administrative structures at national level. That framework should not create any additional control structures but should allow the Member States to designate bodies entrusted with the management and control of Union funds. Furthermore, this Regulation should contain provisions on common management and control obligations for those structures, the annual management declaration by which managers assume the responsibility for the management of Union funds they are entrusted with, examination and acceptance of the accounts, and suspension and correction mechanisms operated by the Commission in order to create a coherent legislative framework which also improves the overall legal certainty and efficiency of controls and remedial action, as well as the protection of the Union's financial interests. Detailed provisions should remain in sector-specific Regulations. Within the context of the single audit approach and with the objective of reducing additional administrative burden stemming from multiple controls, Member States may provide the Commission with declarations, signed at the appropriate national or regional level in accordance with their respective constitutional requirements.
- (26) Some provisions regarding the duties of the authorising officer by delegation should be clarified, in particular those concerning the *ex ante* and *ex post* controls that the authorising officer by delegation puts in place as well as the latter's reporting duties. In this respect, the content of the authorising officer by delegation's annual activity report should be updated in line with practice which consists of including therein the required financial and management information to support the authorising officer by delegation's declaration of assurance on the performance of his or her duties.
- (27) The responsibilities of the accounting officer of the Commission should be clarified. In particular, it should be specified that the accounting officer of the Commission is the only person who is entitled to define the accounting rules and harmonised charts of accounts, while accounting officers of all other institutions define accounting procedures applicable in their institutions.
- (28) In order to facilitate the implementation of certain programmes or actions entrusted, in particular, to financial institutions, the possibility of opening fiduciary accounts should be provided for in this Regulation. Such bank accounts should be opened in the name, or on behalf, of the Commission in the books of a financial institution. They should be managed by that financial institution under the responsibility of the authorising officer and it should be possible to open them in currencies other than euro.

- (29) Concerning revenue operations, it is necessary to streamline the rules on estimates of amounts receivable in order to take into account budgetary needs. Registration should be required when an expectation of revenue has a certain degree of probability and can be translated into figures with a reasonable degree of approximation. In the interests of simplification, some specific provisions on procedures of adjustment or cancellation of an estimate of amount receivable should be introduced.
- (30) The rules on recovery should be both clarified and strengthened. In particular, it should be specified that the cancellation of an established amount receivable does not imply a waiver of an established Union entitlement. Moreover, in order to reinforce the safeguarding of the Union's financial interests, Union funds claimed for reimbursement should be treated by Member States no less favourably than claims of public bodies on their territory.
- (31) Taking into account the need to reduce the risk associated with the management of amounts received on a temporary basis by way of fines, penalties and sanctions, as well as any income generated by them, those amounts should be recorded as budget revenue as soon as possible and at the latest in the financial year following the exhaustion of all remedies against the decisions imposing them.
- (32) Clarification of the various types of payments should, in accordance with the principle of sound financial management, be provided. Moreover, pre-financing payments should be cleared regularly by the authorising officer responsible in accordance with the accounting rules defined by the accounting officer of the Commission. To this effect, appropriate provisions should be included in contracts, grant decisions, grant agreements as well as in delegation agreements.
- (33) This Regulation should foster the objective of e-Government, and in particular the use of electronic data in the exchange of information between the institutions and third parties.
- (34) The possibility of conducting joint procurement procedures with the European Free Trade Association (EFTA) States or Union candidate countries should be allowed under certain conditions.
- (35) The rules for exclusion from, in particular, participation in procurement procedures should be improved in order to strengthen the protection of the Union's financial interests.
- (36) Given that the use of the ECB and the EIB own resources is of financial interest to the Union, they should be given access to the information contained in the central exclusion database, which was created to protect the Union's financial interests.
- (37) A sound legal basis for the publication of decisions applying administrative and financial penalties, in particular relating to public procurement, should be introduced, in line with data protection requirements. Such publication should remain optional for reasons of data protection and security.
- (38) The requirement for contractors to lodge guarantees should no longer be automatic, but should be based on a risk analysis.
- (39) For reasons of legal certainty, the scope of grants and financial instruments should be clarified. A more detailed definition of the specific conditions applicable to grants, on the one hand, and to financial instruments, on the other, should also contribute to maximising the impact of those two types of financial support.

- (40) The grant rules applicable to entities specifically established for the purpose of an action should be adjusted so as to facilitate access to Union funding and management of grants by applicants and beneficiaries having decided to work together within a partnership or grouping constituted in accordance with relevant national law, in particular where the legal form chosen offers a solid and reliable cooperation environment. In addition, in the light of the limited financial risks for the Union and the need to avoid adding a layer of contractual requirements to existing structural arrangements, entities affiliated to a beneficiary through permanent capital or legal links should be entitled to declare eligible costs without having to comply with all the obligations of a beneficiary.
- (41) Experience gained in the use of lump sums or flat-rate financing has shown that, such forms of financing significantly simplified administrative procedures and reduced the risk of error substantially. In addition, output-based funding has proved appropriate for certain types of actions. In this context, the conditions for using simplified forms of grants determined on the basis of lump sums, unit costs and flat rates should be made more flexible. In particular, amounts determined by the application of a beneficiary-by-beneficiary approach should be allowed, including where such amounts are declared by the beneficiary in accordance with its usual cost accounting practices, in order to alleviate the administrative burden and the costs borne by that beneficiary specifically for the purpose of financial reporting to the Union.
- (42) In order to remove the barriers to participation in Union grant programmes by persons having the necessary expertise but who are not paid in the form of a salary, as may be the case for those working in small structures, grant rules should take account of the specific remuneration schemes applied by small and medium-sized enterprises ('SMEs'), as defined in Commission Recommendation 2003/361/EC of 6 May 2003 concerning the definition of micro, small and medium-sized enterprises ⁽¹⁾.
- (43) The principles of no-profit and co-financing should be adjusted in the light of practical experience and of the diverging interpretations and application of such principles, which results in errors and occasionally in counterproductive effects. In particular, the definition of profit should focus on eligible costs and the receipts specifically financing those costs, in order to simplify reporting by beneficiaries and to encourage them to diversify their sources of funding. Moreover, the Commission should not presume that other donors will not recover any surplus generated by their own contributions, and should, therefore, only recover profit in proportion to its grant. Finally, the degressivity principle has not proved to be an effective tool in limiting the risk of dependence of beneficiaries of operating grants on Union funds. In addition, the applicability of the principle of degressivity has been considerably reduced following the necessary introduction of exceptions in a number of basic acts and in the case of simplified forms of grants. In view of these drawbacks, the degressivity requirement applicable to operating grants should be removed.

⁽¹⁾ OJ L 124, 20.5.2003, p. 36.

- (44) Access to Union funding for entities with limited administrative resources, which can represent a priority target population for certain grant schemes and be indispensable to achieving Union policy objectives, should be facilitated by further simplifying procedures applicable to low value grants.
- (45) In order to ensure legal certainty and establish a single set of basic financial rules which beneficiaries can refer to throughout Union programmes, this Regulation should lay down the cost eligibility criteria and specific conditions governing certain categories of costs and should provide for their consistent application.
- (46) The conditions for accepting contributions in kind from third parties as co-financing and for determining the value of those contributions should be harmonised so as to reduce the risks of error and litigation.
- (47) For the sake of transparency and in order to take account of the planning constraints specific to them, grant applicants should be informed in the call for proposals of the expected time it will take for grant agreements to be signed or grant decisions to be notified to them. For the same purpose, this Regulation should lay down a reference time, based on experience and on the anticipated effects of the simplification measures introduced.
- (48) Where systemic or recurrent errors, having a material impact on a number of grants, are detected, extension of audit findings to the non-audited grants that are impacted should be authorised under strict conditions, so as to alleviate the financial and administrative burden created by on-the-spot controls and audits. The Commission should only resort to extrapolation of the reduction or recovery rate applied to grants for which systemic or recurrent errors have been demonstrated, where it is not possible or practicable with proportionate effort to quantify precisely the amount of ineligible costs for each grant concerned.
- (49) This Regulation should establish standard periods for which documents relating to Union grants should be kept by beneficiaries so as to avoid divergent or disproportionate contractual requirements while still providing for sufficient time for the Commission and the Court of Auditors to obtain access to such data and documents and perform the *ex post* checks and audits necessary to protect the Union's financial interests.
- (50) The possibility for a beneficiary to award financial support to third parties should be extended under certain conditions in order to facilitate the correct implementation of programmes targeting, inter alia, numerous natural persons who can only be reached through cascading grants. Nevertheless, the principle according to which a beneficiary may not exercise discretion when awarding financial support to third parties should be maintained, in particular to avoid any confusion between the possibility offered to beneficiaries to design and implement, under their responsibility, actions which involve financial support as an eligible activity and the possibility to entrust budget implementation tasks under shared or indirect management to certain bodies, entities or persons.
- (51) As a valuable type of financial support, the use of prizes should be facilitated and the applicable rules clarified by separating prizes from the grant regime and removing any reference to predictable costs. Nevertheless, prizes are not well-suited to all Union policy objectives and should, therefore, be seen as complementing, not substituting, other funding instruments such as grants.

- (52) Financial instruments can be valuable in multiplying the effect of Union funds when those funds are pooled with other funds and include a leverage effect. Since such financial instruments cannot be assimilated to services or grants, a new type of financial support should be established. Financial instruments should only be implemented under strict conditions, so that there are no budgetary risks for the budget and no risk of market distortion which is inconsistent with state aid rules.
- (53) Within the framework of the annual appropriations authorised by the European Parliament and the Council for a given programme, financial instruments should be used on a complementary basis, on the basis of an *ex ante* evaluation demonstrating that they are more effective for the achievement of the Union's policy objectives than other forms of Union funding, including grants.
- (54) Financial instruments should be authorised by means of a basic act, defining in particular their objectives and duration. Where financial instruments are established without a basic act in duly justified cases, they should be authorised by the European Parliament and the Council in the budget.
- (55) The instruments that potentially fall under Title VIII of Part One, such as loans, guarantees, equity investments, quasi-equity investment and risk-sharing instruments should be defined. The definition of risk-sharing instruments should allow for the inclusion of credit enhancements for project bonds, covering the debt service risk of a project and mitigating the credit risk of bond holders through credit enhancements in the form of a loan or a guarantee.
- (56) Annual repayments, including capital repayments, guarantees released and repayments of the principal of loans should constitute internal assigned revenue. Revenue including dividends, capital gains, guarantee fees and interest on loans and on amounts on fiduciary accounts should be entered in the budget after deduction of management costs and fees. This Regulation should lay down the principles and conditions for financial instruments and rules on the limitation of the financial liability of the Union, the fight against fraud and money laundering, the winding down of financial instruments and reporting.
- (57) The presentation of accounts should be simplified by providing that the Union's accounts comprise only the consolidated financial statements and the aggregated budgetary accounts. It should also be clarified that the consolidation process only concerns the institutions, bodies which are set up under the TFEU and the Euratom Treaty and which have legal personality and receive contributions charged to the budget, and other bodies whose accounts are required to be consolidated in accordance with the accounting rules adopted by the accounting officer.
- (58) As required by the internationally accepted accounting standards on which Union accounting rules are based, pension liability, together with other employee benefits liabilities, should be recorded in the Union accounts, separately disclosed on the face of the Union balance sheet and explained further in the notes to the financial statements.
- (59) In order to clearly separate the duties and responsibilities of the Commission's accounting officer from those of the accounting officers of institutions or bodies which are set up under the TFEU and the Euratom Treaty and which have legal personality and receive

contributions charged to the budget, and other bodies whose accounts are required to be consolidated in accordance with the accounting rules adopted by the accounting officer, the report on budgetary and financial management of the financial year should be prepared by each institution or body and then sent to the European Parliament, the Council and the Court of Auditors by 31 March of the following financial year.

- (60) It is necessary to update the Union rules and principles on accounting in order to ensure their consistency with the rules of the International Public Sector Accounting Standard Board.
- (61) The Court of Auditors should ensure that any of its findings that could have an impact on the final accounts of auditees or the legality or regularity of their underlying transactions, are transmitted to the institution or body concerned in good time in order to allow such auditees sufficient time to address those findings.
- (62) The provisions concerning provisional and final accounts should be updated, in particular, in order to specify the reporting information that should accompany the accounts sent to the Commission's accounting officer for the purpose of consolidation.
- (63) As regards the information which is to be submitted by the Commission in the context of discharge, the Commission should, in particular, submit to the European Parliament and to the Council an evaluation report on the Union's finances, in accordance with Article 318 TFEU.
- (64) As regards the specific provisions of this Regulation concerning the structural funds, cohesion funds, the European Fisheries Fund, the European Agricultural Fund for Rural Development and funds in the area of Freedom, Security and Justice managed in shared management, the provision for repayment of pre-financing payments, and making appropriations available again, contained in the Commission declaration annexed to Council Regulation (EC) No 1260/1999 of 21 June 1999 laying down general provisions on the Structural Funds ⁽¹⁾ should be retained. Moreover, by way of derogation from the carry-over rule, the Commission should be allowed to carry over commitment appropriations available at the end of the financial year, arising from repayments of pre-financing payments, until the closure of the programme, and to use those commitment appropriations when other commitment appropriations are no longer available.
- (65) The participation of the Joint Research Centre (JRC) in procurement and grant procedures should be clarified. Moreover, in order to carry out the related activities effectively, revenue stemming from participation in such procedures should exceptionally be considered external assigned revenue.
- (66) The specific provisions relating to the implementation of external actions should be adapted to the changes in the methods of implementation and a differentiated approach should be provided for when the Union is required to respond to humanitarian emergencies, international crises or the needs of third countries undergoing a process of democratic transition.
- (67) This Regulation should establish general conditions under which budget support may be used as an instrument in external action. Such conditions should relate to ensuring a sufficiently transparent, reliable and effective management of public finances. Furthermore, the Commis-

⁽¹⁾ OJ L 161, 26.6.1999, p. 1.

sion should decide in a financing decision on the objectives and expected results to which the payment of budget support should be linked. Such elements, as well as the conditions under which budget support is to be reimbursed, should be contained in the financing agreement concluded with the beneficiary country.

- (68) In order to strengthen the international role of the Union in external actions and development and to increase its visibility and efficiency, the Commission should be authorised to create and manage Union trust funds for emergency, post-emergency or thematic actions. Although not integrated in the budget, those trust funds should be managed in accordance with this Regulation to the extent necessary for the security and transparency of the use of Union funds. For that purpose, the Commission should chair the governing board established for each trust fund to ensure the representation of donors and to decide upon the use of the funds. Moreover, the accounting officer of each trust fund should be the accounting officer of the Commission.
- (69) The period for the conclusion of contracts and grant agreements by entities entrusted, under indirect management, with implementing external actions should be limited to three years following the signature of the delegation agreement, unless specific exceptional and external circumstances exist. However, that deadline should not apply to multiannual programmes implemented under the Structural Funds procedures. Detailed rules for decommitment of appropriations in the case of such multiannual programmes should be laid down in sector-specific rules.
- (70) With regard to specific rules on procurement applicable to external actions, third country nationals established in beneficiary countries should be allowed to participate in tendering procedures, also in the case of implementation of a programme without a basic act and where there are duly justified exceptional circumstances.
- (71) The manner in which the institutions currently report on building projects to the European Parliament and the Council should be improved. Institutions should inform the European Parliament and the Council in advance of their future building projects and at the different stages of those projects. The approval rather than just the opinion of the European Parliament and the Council should be required for building projects which have a significant impact on the budget.
- (72) Institutions should be allowed to develop a long-term real estate policy and profit from lower interest rates resulting from the favourable credit rating of the Union on the financial market. To this end, they should be authorised to raise loans to acquire real estate assets. This would allow the possibility of addressing the complexity of the current system, while saving costs and introducing more transparency.
- (73) In the light of experience, this Regulation should clarify the scope of activities, the selection procedure and the payment conditions of natural persons selected as experts.
- (74) In order to supplement and amend certain aspects of this Regulation the power to adopt acts in accordance with Article 290 TFEU should be delegated to the Commission. The content and scope of each delegation is set out in detail in the relevant Articles. It is of particular importance that the Commission carry out appropriate consultations during its

preparatory work for delegated acts, including at expert level. The Commission, when preparing and drawing up delegated acts, should ensure the simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.

- (75) This Regulation should be revised only when necessary, and at the latest two years before the end of the first post-2013 multiannual financial framework. Excessively frequent revisions generate a disproportionate cost in adjusting administrative structures and procedures to the new rules. Furthermore, time may be too short to allow for valid conclusions to be drawn from the application of the rules in force.
- (76) Transitional provisions should be set out. This Regulation should only apply following the adoption of the delegated acts, containing the rules of application, which are expected to enter into force in December 2012. In order to avoid the application of this Regulation in the last month of the year, it is appropriate to defer its application to 1 January 2013. Moreover, in order to ensure coherence with the sector-specific rules, it is appropriate to defer application of the provisions on the methods of implementation and financial instruments to 1 January 2014. Finally, in order to allow for their application already to the 2012 budget, it is appropriate that the provisions on the transfer of payment appropriations for Structural Funds for the end of the year apply from the date of entry into force of this Regulation.
- (77) This Regulation should enter into force on the day following that of its publication in the *Official Journal of the European Union* in order to allow for the timely adoption of the delegated acts under this Regulation. The timely entry into force of this Regulation is necessary for the application of the rules set out in the delegated acts from 1 January 2013, in order to avoid the difficulties linked to a modification of financial rules during the financial year.
- (78) The European Data Protection Supervisor was consulted in accordance with Article 28(2) of Regulation (EC) No 45/2001 of the European Parliament and of the Council of 18 December 2000 on the protection of individuals with regard to the processing of personal data by the Community institutions and bodies and on the free movement of such data ⁽¹⁾ and delivered an opinion on 15 April 2011 ⁽²⁾,

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

⁽²⁾ OJ C 215, 21.7.2011, p. 13.

**Commission Delegated Regulation (EU) No 1268/2012
of 29 October 2012 on the rules of application of Regulation
(EU, Euratom) No 966/2012 of the European Parliament
and of the Council on the financial rules applicable
to the general budget of the Union**

(OJ L 362, 31.12.2012, p. 1)

Recitals

‘Whereas:

- (1) Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽¹⁾ has been substantially amended and replaced by Regulation (EU, Euratom) No 966/2012 (hereinafter ‘Financial Regulation’). It is therefore necessary to align Commission Regulation (EC, Euratom) No 2342/2002 of 23 December 2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities ⁽²⁾ to the Financial Regulation. In the interests of clarity, it is necessary to replace Regulation (EC, Euratom) No 2342/2002.
- (2) Under Article 290 of the Treaty on the Functioning of the European Union (hereinafter “TFEU”) a legislative act may delegate to the Commission the power to adopt non-legislative acts only to supplement or amend certain non-essential elements of the legislative act. Therefore, some provisions laid down in Regulation (EC, Euratom) No 2342/2002 have been incorporated in the Financial Regulation. Thus those provisions should not be included in this Regulation.
- (3) During its preparatory work, the Commission has carried out appropriate consultations, including at expert level and ensured a simultaneous, timely and appropriate transmission of relevant documents to the European Parliament and the Council.
- (4) As regards the budgetary principles, in particular the principle of unity, the simplification of the rules governing the generation and recovery of interest yielded on pre-financing, and in particular the waiver of the obligation for grant recipients to generate such interest, render obsolete the provisions on the scope and conditions for the recovery of the interest. Where such obligation would still be imposed on entities entrusted with budget implementation tasks, the rules governing the identification, use and accounting for the interest generated should be included in the delegation agreements with those entities. In those cases where the interest yielded on pre-financing is due to the Union on the basis of those agreements that interest should be paid to the budget as assigned revenue.
- (5) 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.

⁽¹⁾ OJ L 248, 16.9.2002, p. 1.

⁽²⁾ OJ L 357, 31.12.2002, p. 1.

- (6) 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. In addition, the transparency in the accounting for the results of such currency conversion operations should be further enhanced. Following the introduction of the euro, the obligation on the Commission to provide information to the Member States on cash transfers carried out between different currencies should be removed.
- (7) 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 Union programmes, should be specified, as well as the limits on the netting of expenditure and revenue. In particular, having regard to the current practice, for reasons of legal certainty, it is necessary to clarify that as a general rule assigned revenue should generate commitment and payments appropriations automatically, as soon as the revenue has been received by the institution. It is also necessary to specify the cases where, by way of exception, assigned revenue can be made available before the revenue has actually been received by the institution.
- (8) As regards the principle of specification, a precise definition should be given of the calculation of the percentage of appropriations which the institutions are authorised to transfer by virtue of their autonomy. The European Parliament and the Council should receive full information through a detailed explanation of the requests for transfers which have to be submitted to them.
- (9) 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.
- (10) As for the principle of transparency, publication of data by name relating to the recipients concerned and the precise amounts received by them increases transparency with respect to the use of the funds concerned. Such information made available to citizens reinforces public control of the use to which that money is put and contributes to the best use of public funds. At the same time, where recipients are natural persons, such publication is subject to the rules on protection of personal data. Therefore personal data should be published only if it is necessary and proportionate with respect to the legitimate aim pursued.
- (11) The information on the use of Union funds should be published on an Internet website of the institutions and should include at least the name, the locality, the amount and the purpose of the funds. That information should take into account the criteria laid down in Article 35(3) of the Financial Regulation, in particular the type and the importance of the award.
- (12) The name and locality of the recipients of Union funds should be published for prizes, grants and contracts awarded following the opening-up of a public procedure to competition, as it is the case in particular for contests, call for proposals and call for tenders, in the respect the principles of the TFEU and in particular the principles of transparency, proportionality, equal treatment and non-discrimination. Moreover such publication should contribute to the control of the public selection procedures by the rejected applicants of the competition.

- (13) The publication of personal data referring to natural persons should not exceed the duration during which the funds are being used by the recipient and should therefore be removed after two years. The same should apply to personal data referring to legal persons for whom the official title identifies one or more natural persons.
- (14) In most of the cases covered by this Regulation, the publication concerns legal persons.
- (15) When natural persons are concerned, such publication should only be envisaged respecting the principle of proportionality between the importance of the amount granted and the need to control the best use of the funds. Where natural persons are concerned, the publication of the region on NUTS 2 level is consistent with the objective of publication of recipients, ensures equal treatment between Member States of different sizes while respecting the 'recipients' right to private life and in particular the protection of their personal data.
- (16) Information on scholarships, and other direct support paid to natural persons in most need should remain exempt from publication.
- (17) In order to ensure the respect of the principle of equal treatment between recipients, the publication of information related to natural persons should also be ensured in line with the obligation for the Member States to establish a large transparency of the contracts above the amount laid down in Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽¹⁾.
- (18) The name and the locality of the recipient and the amount and the purpose of the funds should not be published if it risks endangering the integrity of the recipient as protected by the Charter of Fundamental Rights of the European Union or would harm the legitimate commercial interests of the recipient.
- (19) The budgetary nomenclature should provide clarity and transparency necessary for the budgetary process.
- (20) Acts likely to constitute a conflict of interests should also be defined.
- (21) In respect of indirect management, it is necessary to lay down the framework of such delegation of powers and the content of the delegation agreement. Any entity or person entrusted with budget implementation tasks should guarantee a level of protection of the financial interests of the Union which is equivalent to that required under the Financial Regulation. The conditions under which the Commission may accept that the systems, rules and procedures of these entities or persons are equivalent to its own should be laid down in order to ensure sound financial management of Union funds by the entrusted entities.
- (22) The executive agencies, which remain under Commission control, should be recognised as authorising officers by delegation of that institution for implementation of the Union budget.

⁽¹⁾ OJ L 134, 30.4.2004, p. 114.

- (23) In the case of indirect management with international organisations, the organisations eligible for this kind of management should be identified.
- (24) Where budget implementation tasks are entrusted to public bodies or bodies governed by private law with a public service mission, the conditions of their designation should be set out.
- (25) For indirect management it is necessary to establish detailed rules for the procedures for the examination and acceptance of accounts and for the exclusion from Union financing of expenditure for which disbursements have been made in breach of applicable rules.
- (26) Private-law entities performing preparatory or ancillary tasks on the Commission's behalf should be selected in accordance with procurement procedures.
- (27) As regards the role of the financial actors, the reform of financial management, together with the abolition 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 European Parliament and Council 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, each institution should adopt a code of professional standards applicable to the staff responsible for *ex ante* and *ex post* verifications. It is also necessary to provide that the responsibilities assumed are accounted for in an annual report to the institution which is in charge of, inter alia, the *ex post* verifications. The supporting documents relating to the operations carried out should be kept. Finally, all the various forms of negotiated procedure for the award of public contracts should, since those contracts represent derogations from the usual award procedures, be the subject of a special report to the institution and of a communication to the European Parliament and Council.
- (28) Regulation (EC, Euratom) No 2342/2002 should be adapted to take into account the double role of the head of delegation as authorising officer by subdelegation for the European External Action Service (hereinafter "EEAS") and, as regards operational appropriations, for the Commission.
- (29) 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 established.
- (30) The conditions for the use of imprest accounts, a system of management which constitutes 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 European Parliament and Council should be informed of any appointment or termination of duties. For reasons of efficiency, only one imprest account should be set up in delegations, for appropriations from both the Commission and EEAS sections of the Budget. It has proven necessary to introduce the possibility to use debit cards linked to imprest accounts in order to

facilitate payments in particular in the Union delegations and representations, and avoid the risks associated with handling cash.

- (31) 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 Union and the Conditions of Employment of Other Servants of the European Union. The specialised financial irregularities panel set up in each institution have proven to be an efficient mechanism to determine whether irregularities of a financial nature have occurred and should therefore be maintained. It is necessary to lay down the procedure by which an authorising officer may seek confirmation of an instruction which that officer considers to be irregular or contrary to the principle of sound financial management, and thus be released from any liability.
- (32) As regards revenue, except for the special case of own resources covered by Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the 'Communities' own resources ⁽¹⁾ 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, recovery order, dispatch of the debit note informing the debtor that the amount receivable has been established, calculation of any default interest due, and the decision, where necessary, to waive an entitlement subject to criteria guaranteeing compliance with sound financial management in order to ensure a efficient collection of revenues.
- (33) It is necessary to specify the role of the accounting officer in the collection of revenue and in allowing any additional time for payment of expenditures. The accounting officer should also have a flexibility in the recovery of payments such as the possibility to offset debts directly, or in exceptional circumstances to waive the requirement of lodging a guarantee to repay a debt, when the debtor is willing and able to make the payment in the additional time period but is not able to lodge such guarantee taking due account of the principle of proportionality.
- (34) In order to secure the management of assets whilst also yielding financial remuneration, it is necessary to have the amounts provisionally cashed, such as competitions fines which are being contested, invested in financial assets, and to determine the assignment of the interests yielded by those investments.
- (35) In order to ensure that the Commission has all the necessary information for the adoption of the financing decisions, it is necessary to lay down the minimum requirements for the contents of financing decisions on grants, procurement, trust funds, prizes and financial instruments.
- (36) As regards expenditure, the relationship between financing decisions, global commitments and individual commitments as well as characteristics of those different stages should be defined in order to establish a clear framework for the different stages of budget implementation.

⁽¹⁾ OJ L 163, 23.6.2007, p. 17.

- (37) It is 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'. 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.
- (38) Detailed rules for the application of time limits applicable for validation and payment operations should be laid down, taking into account Directive 2011/7/EU of the European Parliament and of the Council of 16 February 2011 on combating late payment in commercial transactions ⁽¹⁾ in order to ensure there is no undue delay for payments to recipients.
- (39) For the internal audit, it is necessary to lay down the procedure for appointing the auditor and to guarantee his independence within the institution which has appointed him and to which he must report on his activities. The European Parliament and Council should be informed of any appointment or termination of duties in order to ensure transparency towards the European Parliament and the Council.
- (40) Rules on procurement should be based on Directive 2004/18/EC. It is necessary to define the various types of procurement procedures, the advertising and publication measures applicable, the conditions in which use may be made of a particular type of procedure and the main features of the existing procedures, the specification of selection and award criteria, rules for access to tender documents and for communication with tenderers or candidates and, for cases where the Commission awards contracts on its own account, the thresholds applicable and the rules for estimating the value of the contracts to be awarded.
- (41) The purpose of the procedures for the award of contracts is to satisfy the needs of the institutions on the best possible terms while guaranteeing equal access to public contracts and complying with the principles of transparency and non-discrimination. With a view to ensuring transparency and the equal treatment of candidates and tenderers, as well as the full responsibility of authorising officers in the final choice, it is necessary to lay down the procedure for opening and then evaluating tenders and requests to participate, from the appointment of a committee up to the substantiated and documented award decision, which ultimately rests with the contracting authority.
- (42) On the basis of past experience, it is necessary to establish a new procurement procedure for middle value contracts. It is necessary to allow the use of the 'vendors' list' under the same conditions as the existing 'call for expression of interest' as that list provides for less administrative burden for potential tenderers.
- (43) In order to protect the Union financial interests during contract execution, it is necessary to provide for a possibility to require the entities providing financial capacity in procurement to be jointly liable for the execution of the corresponding contract.
- (44) In order to protect the Union financial interests and to guarantee control over the contract execution, it is necessary to provide for a possibility to require the contractor to perform himself directly certain critical tasks.

⁽¹⁾ OJ L 48, 23.2.2011, p. 1.

- (45) In order to guarantee execution of a contract to the highest professional standard, it is necessary to provide for a possibility to reject the tenderers who have potential conflicts of interest.
- (46) Given that the request for financial guarantees is no longer automatic, it is necessary to lay down the criteria according to which they may be requested.
- (47) It is necessary to clarify the scope of the Title on grants, particularly with regard to the type of action or body of general European interest eligible for a grant as well as with regard to the types of legal commitments that may be used to cover grants. For those legal commitments, the criteria for choosing between agreements and decisions, their minimum content and the possibility to conclude specific grant agreement or decision under framework partnerships should be specified, so as to ensure equal treatment and avoid restricting access to Union funding.
- (48) The scope of the Title on grants should also take account of the introduction in the Financial Regulation of, on the one hand, specific titles on prizes and financial instruments and, on the other hand, of the key rules applicable to grants, eligible costs, deletion of the degressivity principle, use of simplified forms of grants (lump sums, unit costs and flat rates) and removal of compulsory submission of pre-financing guarantees.
- (49) Progress towards electronic exchange of information and electronic submission of documents, which constitute a major simplification measure, should be accompanied by clear conditions for the acceptance of the systems to be used, so as to establish a legally sound environment.
- (50) The no-profit and co-financing principles should be revised in line with the clarifications and simplification measures introduced in the Financial Regulation. In particular, for the sake of clarity, it is necessary to establish detailed rules on the types of receipts to be retained for the no-profit principle as well as the forms of external co-financing and in kind contributions.
- (51) With regard to the transparency principle, adoption and publication of multiannual work programmes should be authorised, since they have an added value for applicants, which can more easily anticipate and better prepare for calls for proposals. In this context, the conditions under which work programmes may be considered as the financing decisions should be specified. To ensure transparency, it is also necessary to publish calls for proposals, except in cases of urgency or where the action may only be implemented by one entity. It is necessary to specify the minimum content of such publication.
- (52) As the eligibility conditions for value added tax (VAT) paid by beneficiaries is prone to errors and discrepancies, there is a need to ensure that the notions of non-recoverable VAT and non-taxable persons within the meaning of Article 13(1) of the Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾ are consistently understood and applied, by reference to the activities that those notions encompass.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

- (53) In order to ensure transparency, equal treatment for applicants and the enhancement of the accountability of authorising officers, it is necessary to lay down the award procedure, from the application for the grant, for which the Commission should have provided minimum information for applicants, to its evaluation in the light of previously specified eligibility, selection and award criteria before the authorising officer responsible takes his final, appropriately documented decision. It is necessary to establish detailed rules on the composition and tasks of the committee in charge of assessing the proposals against the selection and award criteria, as well as the possibilities to contact applicants during the award procedure or to invite them to adjust their proposals. Those possibilities should properly reflect the requirements in terms of good administration introduced in the Financial Regulation and should include the conditions under which proposals may be adjusted before signature of the grant agreements or notification of the grant decisions, while ensuring equal treatment of applicants and compliance with the principle according to which initiative for the actions lies solely with the applicants.
- (54) The use of lump sums, unit costs and flat rates being facilitated and broadened under the Financial Regulation, the definitions of those simplified forms of grants should be clarified. It is in particular necessary to clarify that they are meant, as any form of grant, to cover categories of eligible costs and indicate that their amounts should not necessarily be fixed *ex ante*, which is particularly relevant where they are determined on the basis of the 'beneficiary's usual cost accounting practices. There is also a need to ensure stability in the rules of funding under a specific programme. For that purpose, it should be allowed to use the simplified forms of grants for its full duration. For statistical, methodological or fraud-prevention and detection purposes, it is necessary to have access to general accounting information from a beneficiary, even where those are financed by way of lump sums, unit costs or flat rates. Those verifications, however, should not be used for questioning the unit values of the lump sums, unit costs or flat rates already agreed on.
- (55) Sound financial management requires that the Commission protect itself with guarantees. At the stage of grant applications, by arranging financial audits for applications involving larger amounts, at the time of paying pre-financing, where the risks as assessed by the authorising officer justify, by requiring advance financial guarantees and at the stage of interim payment or payment of the balance, by arranging submission of certificates established by auditors for the payment requests which involve the largest amounts and which present most risk.
- (56) The conditions and procedures for suspending and reducing grants should be clarified, so as to better define the grounds for such suspension or reduction, provide adequate information to beneficiaries and ensure that the beneficiaries have the possibility to exercise their right of defence at any stage.
- (57) Sound management of Union funds also means that the grant beneficiaries themselves use Union grants with economy and efficiency. In particular, the costs of contracts awarded by beneficiaries to implement the action should be eligible provided those implementation contracts are awarded to the tender offering best value for money.
- (58) As the restrictions on recourse to financial support to third parties are softened in the Financial Regulation, it is necessary to lay down the minimum provisions to be agreed on at the level of the grant agreement or to be inserted in the grant decision in order to clearly differentiate

the award of financial support to third parties by a beneficiary from the implementation of budget tasks by a delegatee under indirect management.

- (59) Powers for imposing penalties on grant beneficiaries should be aligned with those conferred in the context of procurement considering that they are of the same nature and should be subject to the same rules in terms of effectiveness and proportionality.
- (60) Prizes should be subject to the principles of transparency and equal treatment, in the same way as grants. In that context, the minimum characteristics of work programmes and of contests should also be laid down, taking account of the corresponding requirements for grants. In particular, the conditions under which the work programmes may be considered as financing decisions, as well as the minimum content of rules of contest, notably the conditions for paying the prize to the winners in case of award, and the appropriate publication means should be specified.
- (61) Compliance with the transparency and equal treatment principles also requires the establishment of a clearly defined award procedure, from submission of the entries to information of applicants and notification to the winning participant. That procedure should include evaluation of the entries by a panel of experts appointed by the authorising officer responsible, using the award criteria announced in the rules of the contest in order to ensure competence and neutrality in the assessment of entries. Based on their recommendations, the authorising officer responsible should take the final decision on the award of the prize since the responsibility for budget implementation always lies with the Commission.
- (62) In order to ensure a harmonised implementation of the various financial instruments within the Commission, the general framework included in Title VIII of the Financial Regulation should be complemented by detailed rules for the management of financial instruments, including provisions for the selection of entrusted entities, content of delegation agreements, management costs and fees and for fiduciary accounts.
- (63) Rules for the selection of financial intermediaries and final recipients should be defined in particular where financial instruments are managed directly in exceptional cases, either through dedicated investment vehicles or other delivery mechanisms, thereby ensuring efficient spending of Union funds.
- (64) It is necessary to determine the conditions for the use of financial instruments, including the leverage effect, and the monitoring framework. It is also necessary to ensure that financial instruments are implemented on the basis of a robust *ex ante* evaluation, which allows the Commission to design them specifically to respond to market failures and sub-optimal investment situations.
- (65) As regards the keeping and presentation of the accounts, the generally accepted accounting principles on which the financial statements must be based are defined in the Union accounting rules. These accounting rules also specify the conditions for entering a transaction in the accounts and the rules for valuing assets and liabilities and for the constitution of provisions in order to ensure that information is properly presented, complete and accurate.

- (66) On accounting matters, it should be specified that the accounting officer of each institution must produce documents describing the organisation of the accounts and the accounting procedures of that institution and define the conditions to be respected by the computerised accounting systems, in particular in order to ensure security of access and the audit trail for any changes made to the systems.
- (67) 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.
- (68) 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 with the view to an efficient asset management.
- (69) For external actions, this Regulation, in line with the Financial Regulation, should provide for exceptions which reflect the specific operational features of that sector, mainly as regards procurement and the award of grants, notably because these procedures are carried out by the authorities of third countries receiving Union financial support. As regards procurement, such differences should mainly pertain to types of procedures and thresholds from which they apply. As regards grants, full financing should be allowed in certain cases, mainly to take the reduced co-financing capacity of the beneficiaries into account.
- (70) It is necessary to establish detailed provisions concerning the use of budget support, specifying the conditions under which budget support may be used and the obligation of the partner to provide the Commission with timely and reliable information to evaluate the fulfilment of those conditions.
- (71) In regard to Union Trust Funds, it is necessary to specify the principles applicable to the Union contribution to Union Trust Funds as well as to the contributions of the other donors, to lay down the accounting and reporting rules of the Union Trust Fund, in particular for the interest matured in the bank account of the trust fund, to clarify the respective responsibilities of the financial actors and of the Board of the Trust Fund, as well as to define external audit obligations. It is also necessary to ensure a fair representation of the participating donors in the Board of the Trust Fund and to ensure a mandatory positive vote of the Commission for the use of the funds.
- (72) In order to simplify procurement procedures under external actions, some thresholds have been modified and other thresholds and management procedures coming from the common provisions have been added and adapted.
- (73) As for grants, the conditions for derogating from the principle of co-financing should be streamlined in line with the Financial Regulation.

- (74) To guarantee the sound management of Union appropriations, it is also necessary to specify the pre-conditions and the rules to be included in the agreements when the management of appropriations is decentralised or if imprest accounts are used.
- (75) It is appropriate to define the European Offices and to set out specific rules for the Publications Office and provisions authorising the 'Commission's accounting officer to delegate some of his tasks to staff in those Offices. Operating procedures should also be laid down for the bank accounts which the European Offices may be authorised to open in the 'Commission's name.
- (76) By analogy with the publication of information on recipients of 'Union's funds, the list of experts referred to in Article 204 of the Financial Regulation selected through a call for expressions of interest and the subject of their tasks should be published. Their remuneration should also be published when it exceeds EUR 15 000.
- (77) The new procedure introduced in Article 203 of the Financial Regulation should be complemented, in particular regarding the type of costs to be included in the thresholds established therein. It is necessary to establish detailed rules on the building projects in Union delegations given their specificities, in particular in cases of urgency. It is appropriate to provide that residential buildings, namely in delegations, which need to be rented or purchased within a short period of time, should be excluded from the procedure laid down in Article 203 of the Financial Regulation. The acquisition of land for free or for a symbolic amount should not fall within the procedure laid down in Article 203 of the Financial Regulation as it does not impose in itself an additional burden to the budget.
- (78) To ensure the coherence with the provisions of the Financial Regulation it is necessary to establish transitional provisions. Moreover, in order to ensure coherence with the sectorial legal basis, it is appropriate to defer application of the provisions on the management modes and financial instruments to 1 January 2014,'

1.4. Financial Regulation and rules of application

Synoptic presentation

PART ONE COMMON PROVISIONS FINANCIAL REGULATION

TITLE I SUBJECT MATTER, SCOPE AND DEFINITIONS

FR Article 1 Subject matter

1. This Regulation lays down the rules for the establishment and the implementation of the general budget of the European Union and the presentation and auditing of the accounts.
2. This Regulation shall apply to the implementation of the budget for the Euratom Supply Agency.

RAP *Article 1* *Subject matter*

This Regulation lays down the rules of application for Regulation (EU, Euratom) No 966/2012 (hereinafter ‘the Financial Regulation’).

FR Article 2 Definitions

For the purposes of this Regulation:

- (a) ‘Union’ means the European Union, the European Atomic Energy Community, or both, as the context may require;
- (b) ‘institution’ means the European Parliament, the European Council, the Council, the European Commission, the Court of Justice of the European Union, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the European Ombudsman, the European Data Protection Supervisor and the European External Action Service (the ‘EEAS’); the European Central Bank shall not be considered as an institution of the Union;
- (c) ‘budget’ means the instrument which, for each financial year, forecasts and authorises all revenue and expenditure considered necessary for the Union;
- (d) ‘basic act’ means a legal act which provides a legal basis for an action and for the implementation of the corresponding expenditure entered in the budget.

A basic act may take any of the following forms:

- (i) in implementation of the Treaty on the Functioning of the European Union (TFEU) and the Treaty establishing the European Atomic Energy Community (the Euratom Treaty), the form of a regulation, a directive or a decision within the meaning of Article 288 TFEU; or
- (ii) in implementation of Title V of the Treaty on European Union (TEU), one of the forms specified in Articles 26(2), 28(1), 29, 31(2), 33 and 37 TEU.

Recommendations and opinions shall not constitute basic acts;

- (e) 'method of implementation' means the method of budget implementation described in Articles 58, 59 or 60;
- (f) 'delegation agreement' means an agreement concluded with entities and persons entrusted with budget implementation tasks pursuant to points (i) to (viii) of Article 58(1)(c);
- (g) 'beneficiary' means a natural or legal person with whom a grant agreement has been signed or to whom a grant decision has been notified;
- (h) 'contractor' means a natural or legal person with whom a procurement contract has been concluded;
- (i) 'recipient' means a beneficiary, contractor, or any natural or legal person that receives prizes or funds under a financial instrument;
- (j) 'prize' means a financial contribution given as a reward following a contest;
- (k) 'loan' means an agreement which obliges the lender to make available to the borrower an agreed sum of money for an agreed period of time and under which the borrower is obliged to repay that amount within the agreed time;
- (l) 'guarantee' means a written commitment to assume responsibility for all or part of a third party's debt or obligation or for the successful performance by that third party of its obligations if an event occurs which triggers such guarantee, such as a loan default;
- (m) 'equity investment' means the provision of capital to a firm, invested directly or indirectly in return for total or partial ownership of that firm and where the equity investor may assume some management control of the firm and may share the firm's profits;
- (n) 'quasi-equity investment' means a type of financing that ranks between equity and debt, having a higher risk than senior debt and a lower risk than common equity. Quasi-equity investments can be structured as debt, typically unsecured and subordinated and in some cases convertible into equity, or as preferred equity;
- (o) 'risk-sharing instrument' means a financial instrument which allows for the sharing of a defined risk between two or more entities, where appropriate in exchange for an agreed remuneration;

- (p) 'financial instruments' means Union measures of financial support provided on a complementary basis from the budget in order to address one or more specific policy objectives of the Union. Such instruments may take the form of equity or quasi-equity investments, loans or guarantees, or other risk-sharing instruments, and may, where appropriate, be combined with grants;
- (q) 'Staff Regulations' means the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union laid down in Council Regulation (EEC, Euratom, ECSC) No 259/68 ⁽¹⁾;
- (r) 'control' means any measure taken to provide reasonable assurance regarding the effectiveness, efficiency and economy of operations, the reliability of reporting, the safeguarding of assets and information, the prevention and detection and correction of fraud and irregularities and their follow-up, and the adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned. Controls may involve various checks, as well as the implementation of any policies and procedures to achieve the objectives described in the first sentence;
- (s) 'check' means the verification of a specific aspect of a revenue or expenditure operation.

FR Article 3 **Compliance of secondary legislation with this Regulation**

1. Provisions concerning the implementation of the revenue and expenditure of the budget, and contained in a basic act, shall respect the budgetary principles set out in Title II of Part One.
2. Without prejudice to paragraph 1, any proposal or amendment to a proposal submitted to the legislative authority containing derogations from provisions other than those in Title II of Part One or from delegated acts adopted pursuant to this Regulation shall clearly indicate such derogations and shall state the specific reasons justifying them in the recitals and in the explanatory memorandum of such proposals.

FR Article 4 **Periods, dates and time limits**

Unless otherwise provided, Council Regulation (EEC, Euratom) No 1182/71 of 3 June 1971 determining the rules applicable to periods, dates and time limits ⁽²⁾ shall apply to deadlines set by this Regulation.

⁽¹⁾ OJ L 56, 4.3.1968, p. 1.

⁽²⁾ OJ L 124, 8.6.1971, p. 1.

FR Article 5
Protection of personal data

This Regulation is without prejudice to the requirements of Directive 95/46/EC of the European Parliament and of the Council of 24 October 1995 on the protection of individuals with regard to the processing of personal data and on the free movement of such data ⁽¹⁾ and of Regulation (EC) No 45/2001.

TITLE II
BUDGETARY PRINCIPLES

FR Article 6
Respect for budgetary principles

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

CHAPTER 1
Principles of unity and of budgetary accuracy

FR Article 7
Scope of the budget

1. The budget shall comprise:
 - (a) the revenue and expenditure of the Union, including administrative expenditure occasioned for the institutions by the provisions of the TEU relating to the common foreign and security policy, and the operational expenditure occasioned by implementation of those provisions where this is charged to the budget;
 - (b) the revenue and expenditure of the European Atomic Energy Community.
2. The budget shall record the guarantees for borrowing-and-lending operations entered into by the Union, including the European Financial Stability Mechanism and Balance of Payment Facility operations, in accordance with point (d) of Article 49(1).

FR Article 8
Specific rules on the principles of unity and budgetary accuracy

1. Without prejudice to Article 83, no revenue shall be collected and no expenditure effected unless booked to a line in the budget.

⁽¹⁾ OJ L 281, 23.11.1995, p. 31.

2. No expenditure may be committed or authorised in excess of the authorised appropriations.
3. An appropriation may be entered in the budget only if it is for an item of expenditure considered necessary.
4. Interest generated by pre-financing payments made from the budget shall not be due to the Union except as otherwise provided for in the delegation agreements, with the exception of those agreements concluded with third countries or the bodies they have designated. In cases in which it is provided for, such interest shall either be re-used for the corresponding action, deducted from payment requests in accordance with point (c) of the first subparagraph of Article 23(1) or recovered.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the accounting of interest generated by pre-financing payments.

RAP *Article 2*
Accounting for interest yielded on pre-financing
(Article 8(4) of the Financial Regulation)

Where interest is due to the budget, the agreement concluded with the entities or persons listed in points (ii) to (viii) of Article 58(1)(c) of the Financial Regulation shall stipulate that 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 recipients or intermediaries must make it possible to identify the funds paid by the Union and the interest or other benefits yielded by those funds.

Provisions of this Regulation concerning interest on pre-financing 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 143 of the Financial Regulation.

CHAPTER 2
Principle of annuality

FR **Article 9**
Definition

The appropriations entered in the budget shall be authorised for a financial year which shall run from 1 January to 31 December.

FR **Article 10**
Type of appropriations

1. The budget shall contain differentiated appropriations, which consist of commitment appropriations and payment appropriations, and non-differentiated appropriations.

2. Commitment appropriations shall cover the total cost of the legal commitments entered into during the financial year, subject to Article 86(4) and Article 189(2).
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the financial year or preceding financial years.
4. Paragraphs 1 and 2 of this Article are without prejudice to the special provisions of Titles I, IV and VI of Part Two and shall not prevent appropriations being committed globally or budgetary commitments being made in annual instalments.

FR Article 11
Accounting for revenue and appropriations

1. The revenue of a financial year shall be entered in the accounts for the financial year on the basis of the amounts collected during that financial year. However, the own resources for the month of January of the following financial year may be made available in advance pursuant to Council Regulation (EC, Euratom) No 1150/2000 of 22 May 2000 implementing Decision 2007/436/EC, Euratom, on the system of the European Communities' own resources⁽¹⁾.
2. The entries in respect of value-added-tax own resources, of the additional resource based on gross national income and of any financial contributions may be adjusted in accordance with Regulation (EC, Euratom) No 1150/2000.
3. The appropriations authorised for a financial year shall be used solely to cover expenditure committed and paid in that financial year and to cover amounts due against commitments from preceding financial years.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules for appropriations for the financial year.

4. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December. By way of exception, the global budgetary commitments referred to in Article 86(4) and the financing agreements referred to in Article 189(2) and concluded with third countries shall be entered in the accounts on the basis of the budgetary commitments up to 31 December.
5. Payments shall be entered in the accounts for a financial year on the basis of the payments effected by the accounting officer by 31 December of that year.
6. By way of derogation from paragraphs 3, 4 and 5, the expenditure of the European Agricultural Guarantee Fund shall be entered in the accounts for a financial year in accordance with the rules laid down in Title I of Part Two.

⁽¹⁾ OJ L 130, 31.5.2000, p. 1.

RAP *Article 3*
Appropriations for the financial year
(Article 11(3) of the Financial Regulation)

The commitment appropriations and payment appropriations authorised for the financial year shall consist of:

- (a) appropriations provided in the budget, including by amending budgets;
- (b) appropriations carried over;
- (c) appropriations made available again in accordance with Articles 178 and 182 of the Financial Regulation;
- (d) appropriations arising from pre-financing payments which have been repaid in accordance with Article 177(3) of the Financial Regulation;
- (e) appropriations provided following the receipt of revenue assigned during the financial year or during previous financial years and not used.

FR **Article 12**
Commitment of appropriations

The appropriations entered in the budget may be committed with effect from 1 January, once the budget has been definitively adopted, except as otherwise provided for in Title I and Title VI of Part Two.

FR **Article 13**
Cancellation and carry-over of appropriations

1. Appropriations which have not been used by the end of the financial year for which they were entered shall be cancelled.

However, they may be carried over, but only to the following financial year, by a decision taken by 15 February by the institution concerned, in accordance with paragraphs 2 and 3, or they may be carried over automatically in accordance with paragraph 4.

2. Differentiated commitment appropriations and non-differentiated appropriations not yet committed at the end of the financial year may be carried over in respect of:
 - (a) amounts corresponding to commitment appropriations, or to non-differentiated appropriations relating to building projects, for which most of the preparatory stages of the commitment procedure have been completed by 31 December. Such amounts may then be committed up to 31 March of the following year, or up to 31 December of the following year for amounts relating to building projects;
 - (b) amounts which are necessary when the legislative authority has adopted a basic act in the final quarter of the financial year and the Commission has been unable to commit the appropriations provided for this purpose by 31 December.

3. Payment appropriations may be carried over in respect of amounts needed to cover existing commitments or commitments linked to commitment appropriations carried over, where the payment appropriations provided for in the relevant budget lines for the following financial year are not sufficient to cover requirements.

The institution concerned shall first use the appropriations authorised for the current financial year and shall not use the appropriations carried over until the former are exhausted.

4. Non-differentiated appropriations corresponding to obligations duly contracted at the end of the financial year shall be carried over automatically to the following financial year only.
5. The institution concerned shall inform the European Parliament and the Council by 15 March of the carry-over decision it has taken and shall state, for each budget line, how the criteria in paragraphs 2 and 3 have been applied to each carry-over.
6. Without prejudice to Article 14, appropriations placed in reserve and appropriations for staff expenditure shall not be carried over. For the purpose of this Article, staff expenditure comprises the remuneration and allowances for members and staff of the institutions to which the Staff Regulations apply.
7. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules for the cancellation and carry-over of appropriations.

RAP *Article 4*

Cancellation and carryover of appropriations (Article 13(2) of the Financial Regulation)

1. The commitment appropriations and the non-differentiated appropriations relating to building projects referred to in Article 13(2)(a) of the Financial Regulation 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, or 31 December for building projects.
2. The preparatory stages referred to in Article 13(2)(a) of the Financial Regulation, which should be completed by 31 December of the financial year in order to allow a carryover to the following year, are in particular:
 - (a) for global commitments within the meaning of Article 85 of the Financial Regulation, the adoption of a financing decision or the closing by that date of the consultation of the departments concerned within each institution for the adoption of the decision;
 - (b) for individual commitments within the meaning of Article 85 of the Financial Regulation, the completion of the selection of potential contractors, beneficiaries, prize winners or delegates.

3. Appropriations carried over in accordance with Article 13(2)(a) of the Financial Regulation which have not been committed by 31 March of the following financial year or up to 31 December of the following year for amounts relating to building projects shall be automatically cancelled.

The Commission shall inform the European Parliament and Council of the appropriations cancelled in this way within one month following the cancellation in accordance with the first subparagraph.

4. Appropriations carried over in accordance with Article 13(2)(b) of the Financial Regulation may be used until 31 December of the following financial year.
5. The accounts shall identify appropriations carried over in accordance with paragraphs 1 to 4.

FR Article 14 **Carry-over rules for assigned revenue**

Carry-over of assigned revenue referred to in Article 21, and of appropriations not used and available at 31 December arising from such revenue, shall comply with the following rules:

- (a) external assigned revenue shall be carried over automatically and shall be fully used by the time all the operations relating to the programme or action to which it is assigned have been carried out. External assigned revenue received during the last year of the programme or action may be used in the first year of the succeeding programme or action;
- (b) internal assigned revenue shall be carried over for one year only, with the exception of internal assigned revenue defined in point (g) of Article 21(3), which shall be carried over automatically.

FR Article 15 **Decommitment of appropriations**

Without prejudice to Articles 178 and 182, where appropriations are decommitted in any financial year after that in which the appropriations were entered in the budget as a result of total or partial non-implementation of the actions for which they were earmarked, the appropriations concerned shall be cancelled.

FR Article 16 **Rules applicable in the event of late adoption of the budget**

1. If the budget has not been definitively adopted at the beginning of the financial year, the procedure set out in the first paragraph of Article 315 TFEU (the provisional twelfth regime) shall apply. Commitments and payments may be made within the limits laid down in paragraph 2 of this Article.

2. Commitments may be made per chapter up to a maximum of one quarter of the total appropriations authorised in the relevant chapter of the previous financial year plus one twelfth for each month which has elapsed.

The limit of the appropriations provided for in the draft budget shall not be exceeded.

Payments may be made monthly per chapter up to a maximum of one twelfth of the appropriations authorised in the relevant chapter of the preceding financial year. That sum shall not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget.

3. The appropriations authorised in the relevant chapter of the preceding financial year, as specified in paragraphs 1 and 2, shall be understood as referring to the appropriations voted in the budget, including by amending budgets, and after adjustment for the transfers made during that financial year.
4. If the continuity of action by the Union and management needs so require, the Council, acting by qualified majority on a proposal of the Commission, may authorise expenditure in excess of one provisional twelfth but not exceeding the total of four provisional twelfths, except in duly justified cases, both for commitments and for payments over and above those automatically made available in accordance with paragraphs 1 and 2. It shall forward the decision on authorisation without delay to the European Parliament.

The decision shall enter into force 30 days following its adoption unless the European Parliament:

- (a) acting by a majority of its component Members, decides to reduce that expenditure within that time limit, in which case the Commission shall submit a new proposal; or
- (b) informs the Council and the Commission that it does not wish to reduce that expenditure, in which case the decision shall enter into force before the expiry of the 30 days.

The additional twelfths shall be authorised in full and shall not be divisible.

5. If, for a given chapter, the authorisation of four provisional twelfths granted in accordance with paragraph 4 is not sufficient to cover the expenditure necessary to avoid a break in continuity of action by the Union in the area covered by the chapter in question, authorisation may exceptionally be given to exceed the amount of the appropriations entered in the corresponding chapter of the budget of the preceding financial year. The European Parliament and the Council shall act in accordance with the procedures provided for in paragraph 4. However, the overall total of the appropriations available in the budget of the preceding financial year or in the draft budget, as proposed, may in no circumstances be exceeded.

CHAPTER 3

Principle of equilibrium**FR Article 17**
Definition and scope

1. Revenue and payment appropriations shall be in balance.
2. The Union and the bodies referred to in Article 208, may not raise loans within the framework of the budget.

FR Article 18
Balance from financial year

1. The balance from each financial year shall be entered in the budget for the following financial year as revenue in the case of a surplus or as a payment appropriation in the case of a deficit.
2. The estimates of such revenue or payment appropriations shall be entered in the budget during the budgetary procedure and in a letter of amendment presented pursuant to Article 39. The estimates shall be drawn up in accordance with Regulation (EC, Euratom) No 1150/2000.
3. After the presentation of the provisional accounts for each financial year, any discrepancy between those accounts and the estimates shall be entered in the budget for the following financial year through an amending budget devoted solely to that discrepancy. In such a case, the Commission shall submit the draft amending budget simultaneously to the European Parliament and the Council within 15 days of submission of the provisional accounts.

CHAPTER 4

Principle of unit of account**FR Article 19**
Use of euro

1. The multiannual financial framework and the budget shall be drawn up and implemented in euro and the accounts shall be presented in euro. However, for the cash-flow purposes referred to in Article 68(1), the accounting officer and, in the case of imprest accounts, the imprest administrators, and, for the needs of the administrative management of the Commission and the EEAS, the authorising officer responsible, shall be authorised to carry out operations in other currencies as laid down in the delegated acts adopted pursuant to this Regulation.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the rate of conversion between euro and other currencies.

RAP *Article 5**Rate of conversion between the euro and other currencies
(Article 19 of the Financial Regulation)*

1. Without prejudice to specific provisions arising from the application of sector-specific regulations, conversion 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 the Union co-financing or a detrimental impact on the Union 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 151 to 156 of the Financial Regulation and subject to Article 240 of this Regulation, conversion between the euro and another currency shall be made using the monthly accounting rate of the euro. That accounting exchange rate shall be established by the Commission's accounting officer by means of any source of information he regards as reliable, on the basis of the exchange rate on the penultimate working day of the month preceding that for which the rate is established.
5. The results of the currency operations referred to in paragraph 4 of this Article shall be shown under a separate heading in the respective institution's accounts.

The first subparagraph of this paragraph shall apply *mutatis mutandis* to bodies referred to in Article 208 of the Financial Regulation.

*Article 6**Rate to be used for conversion between the euro and other currencies
(Article 19 of the Financial Regulation)*

1. Without prejudice to specific provisions deriving from the application of sector-specific regulations, or from specific procurement contracts, grant agreements or grant decisions 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 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 the payment by the bank.
3. For the regularisation of imprest accounts in national currencies, as referred to in Article 19 of the Financial Regulation, 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 flat-rate expenditure, or expenditure arising from the Staff Regulations of Officials of the European Union and the Conditions of Employment of Other Servants of the European Union (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 5

Principle of universality

FR Article 20 Definition and scope

Without prejudice to Article 21, total revenue shall cover total payment appropriations. Without prejudice to Article 23, all revenue and expenditure shall be entered in full without any adjustment against each other.

FR Article 21 Assigned revenue

1. External assigned revenue and internal assigned revenue shall be used to finance specific items of expenditure.
2. The following shall constitute external assigned revenue:
 - (a) financial contributions from Member States to certain research programmes pursuant to Regulation (EC, Euratom) No 1150/2000;
 - (b) financial contributions from Member States and third countries, including in both cases their public agencies, entities or natural persons, to certain external aid projects or programmes financed by the Union and managed by the Commission on their behalf;
 - (c) interest on deposits and the fines provided for in Council Regulation (EC) No 1467/97 of 7 July 1997 on speeding up and clarifying the implementation of the excessive deficit procedure ⁽¹⁾;

⁽¹⁾ OJ L 209, 2.8.1997, p. 6.

- (d) revenue earmarked for a specific purpose, such as income from foundations, subsidies, gifts and bequests, including the earmarked revenue specific to each institution;
 - (e) financial contributions, not covered by point (b), to Union activities from third countries or from non-Union bodies;
 - (f) assigned revenue referred to in Articles 181(2) and 183(2);
 - (g) internal assigned revenue referred to in paragraph 3, to the extent that it is ancillary to the other revenue under this paragraph.
3. The following shall constitute internal assigned revenue:
- (a) revenue from third parties in respect of goods, services or work supplied at their request;
 - (b) proceeds from the sale of vehicles, equipment, installations, materials, and scientific and technical apparatus which are replaced or scrapped when the book value is fully depreciated;
 - (c) revenue arising from the repayment, in accordance with Article 80, of amounts wrongly paid;
 - (d) revenue arising from interest on pre-financing payments, subject to Article 8(4);
 - (e) proceeds from the supply of goods, services and works for other departments within an institution, institutions or bodies, including refunds by other institutions or bodies of mission allowances paid on their behalf;
 - (f) insurance payments received;
 - (g) revenue from lettings;
 - (h) revenue from the sale of publications and films, including those on an electronic medium;
 - (i) repayments to financial instruments pursuant to Article 140(6);
 - (j) revenue arising from subsequent reimbursement of taxes pursuant to point (b) of Article 23(3).
4. A basic act may also assign the revenue for which it provides to specific items of expenditure. Unless specified otherwise in the basic act, such revenue shall constitute internal assigned revenue.
5. The budget shall include lines to accommodate external assigned revenue and internal assigned revenue and wherever possible shall indicate the amount.
- Assigned revenue may be included in the draft budget only for the amounts which are certain at the date of the establishment of the draft budget.
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the establishment of the structure to accommodate external and internal assigned revenue and the provision of the corresponding appropriations, and concerning rules for the contribution from Member States to research programmes. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the proceeds of sanctions imposed pursuant to Article 126(11) TFEU, and concerning assigned revenue resulting from the participation of EFTA states in certain Union programmes.

RAP

Article 7***Structure to accommodate assigned revenue and provision of corresponding appropriations******(Article 21 of the Financial Regulation)***

1. Without prejudice to Articles 9 and 10, the structure to accommodate assigned revenue in the budget shall comprise:
 - (a) in the statement of revenue of each institution'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 '*pro memoria*' shall be made and the estimated revenue shall be shown for information in the remarks.

2. The appropriations corresponding to assigned revenue shall be made available automatically, both as commitment appropriations and as payment appropriations, when the revenue has been received by the institution, save in any of the following cases:
 - (a) in cases provided for in Article 181(2) and 183(2) of the Financial Regulation;
 - (b) in the case provided for in Article 21(2)(b) of the Financial Regulation for Member States where the contribution agreement is expressed in euro.

In the case referred to in point (b) of the first subparagraph, commitment appropriations may be made available upon signature by the Member State of the contribution agreement.

Article 8***Contributions from Member States to research programmes******(Article 21(2)(a) of the Financial Regulation)***

1. The Member States' contributions to the financing of certain supplementary research programmes, provided for in Article 5 of Council Regulation (EC, Euratom) No 1150/2000 ⁽¹⁾ shall be paid as follows:
 - (a) seven twelfths of the sum entered in the budget shall be paid by no later than 31 January of the current financial year;

⁽¹⁾ OJ L 130, 31.5.2000, p. 1.

- (b) the remaining five twelfths shall be paid by no later than 15 July of the current financial year.
2. Where the budget has not been finally adopted before the start of a financial year, the contributions provided for in paragraph 1 shall be based on the sum entered in the budget for the previous financial year.
3. Any contribution or additional payment owed by the Member States to the budget shall be entered in the Commission's account or accounts within 30 calendar days of the call for funds.
4. Payments made shall be entered in the account provided for in Regulation (EC, Euratom) No 1150/2000 and shall be subject to the conditions laid down by that Regulation.

Article 9

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

(Article 21(2)(e) of the Financial Regulation)

1. The budget structure to accommodate the participation of the Member States of the European Free Trade Association (hereinafter 'EFTA States') in certain Union programmes shall be as follows:
 - (a) in the statement of revenue, a line with a token entry '*pro memoria*' shall be entered to accommodate the full amount of the EFTA States' contribution for the financial year in question.
 - (b) in the statement of expenditure:
 - (i) the remarks for each line relating to the Union activities in which the EFTA States participate shall show 'for information' the estimated amount of the participation;
 - (ii) an annex, forming an integral part of the budget, shall set out all the lines covering the Union activities in which the EFTA States participate.

For the purposes of point (a) of the first subparagraph the estimated amount shall be shown in the budget remarks.

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, as provided for in paragraph 2, and to allow the expenditure to be implemented.

2. Under Article 82 of the Agreement on the European Economic Area (hereinafter 'EEA Agreement') the amounts of the annual participation of the EFTA States, as confirmed to the Commission by the Joint Committee of the European Economic Area in accordance with Article 1(5) of Protocol 32 annexed to the EEA

Agreement, shall give rise to the provision, at the start of the financial year, of the full amounts of the corresponding commitment appropriations and payment appropriations.

3. If, in the course of the financial year, additional appropriations are provided on the budget lines with EFTA State participation without the EFTA States being able, during that year, to adjust their contributions accordingly in order to comply with the 'proportionality factor' provided for in Article 82 of the EEA Agreement, the Commission may, as a provisional and exceptional measure, use its cash resources to pre-finance the share of the EFTA States. Whenever such additional appropriations are provided, the Commission shall, as soon as possible, call in the corresponding contributions from the EFTA States. The Commission shall inform the European Parliament and Council each year of any such decisions taken.

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

4. In accordance with Article 21(2)(e) of the Financial Regulation, the financial contributions of the EFTA States shall constitute external assigned revenue. The accounting officer shall adopt appropriate measures to ensure that use of the revenue arising from those contributions and of the corresponding appropriations is monitored separately.

In the report provided for in Article 150(2) of the Financial Regulation, the Commission shall show separately the stage of implementation, in both revenue and expenditure, corresponding to EFTA State participation.

Article 10

Proceeds of sanctions imposed on Member States declared to have an excessive deficit (Article 21(2)(c) of the Financial Regulation)

The budget structure to accommodate the proceeds of the sanctions referred to in Section 4 of Council Regulation (EC) No 1467/97 ⁽¹⁾ shall be as follows:

- (a) in the statement of revenue, a line carrying a token entry 'pro memoria' shall be entered to accommodate the interest on such amounts;
- (b) at the same time, and without prejudice to Article 77 of the Financial Regulation, entry of those amounts in the statement of revenue shall give rise to the provision, in the statement of expenditure, of commitment appropriations and payment appropriations.

The appropriations referred to in point (b) of the first subparagraph shall be implemented in accordance with Article 20 of the Financial Regulation.

⁽¹⁾ OJ L 209, 2.8.1997, p. 6.

FR Article 22
Donations

1. The Commission may accept any donation made to the Union, such as foundations, subsidies, gifts and bequests.
2. Acceptance of a donation of a value of EUR 50 000 or more which involves a financial charge, including follow-up costs, exceeding 10 % of the value of the donation made, shall be subject to the authorisation of the European Parliament and of the Council, both of which shall act on the matter within two months of receiving the request from the Commission. If no objection is made within that period, the Commission shall take a final decision regarding the acceptance of the donation.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the acceptance of donations made to the Union.

RAP Article 11
Charges entailed by acceptance of donations to the Union
(Article 22 of the Financial Regulation)

For the purposes of the authorisation of the European Parliament and of the Council referred to in Article 22(2) of the Financial Regulation, the Commission shall estimate and duly explain the financial charges, including follow-up costs, entailed by the acceptance of donations made to the Union.

FR Article 23
Rules on deductions and exchange rate adjustments

1. The following deductions may be made from payment requests which shall then be passed for payment of the net amount:
 - (a) penalties imposed on parties to procurement contracts or beneficiaries;
 - (b) discounts, refunds and rebates on individual invoices and cost statements;
 - (c) interest generated by pre-financing payments;
 - (d) adjustments for amounts unduly paid.

The adjustments referred to in point (d) of the first subparagraph may be made, by means of direct deduction, against a new interim payment or payment of a balance to the same payee under the chapter, article and financial year in respect of which the excess payment was made.

Union accounting rules shall apply to the deductions referred to in points (c) and (d) of the first subparagraph.

2. The cost of products or services, provided to the Union, incorporating taxes refunded by the Member States pursuant to the Protocol on the Privileges and Immunities of the European Union, shall be charged to the budget for the ex-tax amount.

3. The cost of products or services, provided to the Union, incorporating taxes refunded by third countries on the basis of relevant agreements, may be charged to the budget for:
 - (a) the ex-tax amount; or
 - (b) the tax-inclusive amount. In such a case, subsequently reimbursed taxes shall be treated as internal assigned revenue.
4. Adjustments may be made in respect of exchange differences occurring in the implementation of the budget. The final gain or loss shall be included in the balance for the year.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the accounts for recoverable taxes.

RAP *Article 12*
Accounts for recoverable taxes
(Article 23(3) of the Financial Regulation)

Any taxes borne by the Union under Article 23(2) and 23(3)(a) of the Financial Regulation shall be entered in a suspense account until they are refunded by the States concerned.

CHAPTER 6
 Principle of specification

FR **Article 24**
General provisions

Appropriations shall be earmarked for specific purposes by title and chapter. The chapters shall be further subdivided into articles and items.

FR **Article 25**
Transfers by institutions other than the Commission

1. Any institution other than the Commission may, within its own section of the budget, transfer appropriations:
 - (a) from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made;
 - (b) from one chapter to another and from one article to another without limit.
2. Three weeks before making a transfer, as referred to in paragraph 1, the institution shall inform the European Parliament and the Council of its intention to do so. In the event that duly justified reasons are raised within that period by either the European Parliament or the Council, the procedure laid down in Article 27 shall apply.

3. Any institution other than the Commission may propose to the European Parliament and the Council, within its own section of the budget, transfers from one title to another exceeding the limit of 10 % of the appropriations for the year shown on the line from which the transfer is to be made. Those transfers shall be subject to the procedure laid down in Article 27.
4. Any institution other than the Commission may, within its own section of the budget, make transfers within articles without informing the European Parliament and the Council beforehand.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the calculation of percentages of transfers by institutions other than the Commission.

RAP *Article 13*

Rules concerning the calculation of percentages of transfers of the institutions other than the Commission

(Article 25 of the Financial Regulation)

1. The percentages referred to in Article 25 of the Financial Regulation 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 European Parliament and Council shall not be taken into consideration.

Article 16

Grounds for requests for transfers of appropriations

(Articles 25 and 26 of the Financial Regulation)

Proposals for transfers and all information for the European Parliament and Council concerning transfers made under Articles 25 and 26 of the Financial Regulation shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the lines to which the appropriations are to be transferred and for those from which they are to be taken.

FR

Article 26

Transfers by the Commission

1. The Commission may, within its own section of the budget, autonomously:
 - (a) transfer appropriations within each chapter;

- (b) with regard to expenditure on staff and administration which is common to several titles, transfer appropriations from one title to another up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made, and up to a maximum of 30 % of the appropriations for the year shown on the line to which the transfer is made;
- (c) with regard to operational expenditure, transfer appropriations between chapters within the same title, up to a maximum of 10 % of the appropriations for the year shown on the line from which the transfer is made.

Three weeks before making the transfers referred to in point (b) of the first subparagraph, the Commission shall inform the European Parliament and the Council of its intention to do so. In the event that duly justified reasons are raised within that period by the European Parliament or the Council, the procedure laid down in Article 27 shall apply.

By way of exception from the second subparagraph, the Commission may, during the last two months of the financial year, autonomously transfer appropriations concerning expenditure on staff, external staff and other agents from one title to another within the total limit of 5 % of the appropriations for the year. The Commission shall inform the European Parliament and the Council within two weeks after its decision on those transfers.

2. The Commission may, within its own section of the budget, decide on the following transfer of appropriations from one title to another, provided it immediately informs the European Parliament and the Council of its decision:
 - (a) transfer of appropriations from the 'provisions' title referred to in Article 46, where the only condition for lifting the reserve is the adoption of a basic act pursuant to Article 294 TFEU;
 - (b) in duly justified exceptional cases such as international humanitarian disasters and crises occurring after 1 December of the financial year, transfer unused appropriations for that financial year still available in the budget titles falling under heading 4 of the multiannual financial framework to the budget titles concerning crisis management aid and humanitarian aid operations.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the calculation of percentages of internal transfers by the Commission, and grounds for transfer requests.

RAP *Article 14*

Rules concerning the calculation of percentages of transfers of the Commission (Article 26 of the Financial Regulation)

1. The percentages referred to in Article 26(1) of the Financial Regulation 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 or to 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 Commission without a decision of the European Parliament and the Council shall not be taken into consideration.

Article 15

Administrative expenditure

(Article 26 of the Financial Regulation)

The expenditure referred to in point (b) of the first subparagraph of Article 26(1) of the Financial Regulation shall cover, for each policy area, the items referred to in Article 44(3) of the Financial Regulation.

Article 16

Grounds for requests for transfers of appropriations

(Articles 25 and 26 of the Financial Regulation)

Proposals for transfers and all information for the European Parliament and Council concerning transfers made under Articles 25 and 26 of the Financial Regulation shall be accompanied by appropriate and detailed supporting documents showing the implementation of appropriations and estimates of requirements up to the end of the financial year, both for the lines to which the appropriations are to be transferred and for those from which they are to be taken.

FR

Article 27

Transfer proposals submitted to the European Parliament and the Council by the institutions

1. Each institution shall submit its transfer proposals simultaneously to the European Parliament and the Council.
2. The European Parliament and the Council shall take decisions on transfers of appropriations as provided for in paragraphs 3 to 6 of this Article, except as otherwise provided for in Title I of Part Two.
3. Except in urgent circumstances, the European Parliament and the Council, the latter acting by qualified majority, shall deliberate upon each transfer proposal within six weeks of its receipt by both institutions.
4. The transfer proposal shall be approved, if, within the six-week period, any of the following occurs:
 - (a) the European Parliament and the Council approve it;
 - (b) either the European Parliament or the Council approves it and the other institution refrains from acting;
 - (c) the European Parliament and the Council refrain from acting or do not take a decision to amend or refuse the transfer proposal.

5. The six-week period referred to in paragraph 3 shall be reduced to three weeks, unless either the European Parliament or the Council requests otherwise, in the following cases:
 - (a) the transfer represents less than 10 % of the appropriations of the line from which the transfer is made and does not exceed EUR 5 000 000;
 - (b) the transfer concerns only payment appropriations and the overall amount of the transfer does not exceed EUR 100 000 000.
6. If either the European Parliament or the Council has amended the amount of the transfer while the other institution has approved it or refrains from acting, or if the European Parliament and the Council have both amended the amount of the transfer, the lesser of the two amounts shall be deemed approved, unless the institution concerned withdraws its transfer proposal.

FR**Article 28****Specific rules on transfers**

1. Appropriations may only be transferred to budget lines for which the budget has authorised appropriations or which carry a token entry '*pro memoria*'.
2. Appropriations corresponding to assigned revenue may be transferred only if such revenue is used for the purpose for which it is assigned.

FR**Article 29****Transfers subject to special provisions**

1. Transfers within the titles of the budget devoted to the European Agricultural Guarantee Fund, the Structural Funds, the Cohesion Fund, the European Fisheries Fund, the European Agricultural Fund for Rural Development and Research shall be the subject of special provisions under Titles I, II and III of Part Two.
2. Decisions on transfers to allow the use of the emergency aid reserve shall be taken by the European Parliament and the Council on a proposal from the Commission. A separate proposal shall be submitted for each emergency action.

For the purposes of this paragraph, the procedure provided for in Article 27(3) and 27(4) shall apply. If the European Parliament and the Council do not agree to the Commission proposal and cannot reach a common position on the use of this reserve, they shall refrain from acting on the Commission's transfer proposal.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on requests for transfers from the Emergency Aid Reserve.

RAP**Article 17*****Grounds for requests for transfers from the emergency aid reserve
(Article 29 of the Financial Regulation)***

Proposals for transfers to allow the utilisation of the emergency aid reserve, referred to in Article 29 of the Financial Regulation, shall be accompanied by appropriate and detailed supporting documents showing:

- (a) for the line to which the transfer is to be made, the most recent information available for the implementation of appropriations and the estimate of requirements up to the end of the financial year;
- (b) for all lines relating to external action, the implementation of appropriations up to the end of the month preceding the request for transfer and an estimate of requirements up to the end of the financial year, including a comparison with the initial estimate;
- (c) an analysis of the possibilities of reallocating appropriations.

CHAPTER 7

Principle of sound financial management**FR****Article 30****Principles of economy, efficiency and effectiveness**

1. Appropriations shall be used in accordance with the principle of sound financial management, namely in accordance with the principles of economy, efficiency and effectiveness.
2. The principle of economy requires that the resources used by the institution in the pursuit of its activities shall be made available in due time, in appropriate quantity and quality and at the best price.

The principle of efficiency concerns the best relationship between resources employed and results achieved.

The principle of effectiveness concerns the attainment of the specific objectives set and the achievement of the intended results.

3. Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget. The achievement of those objectives shall be monitored by performance indicators for each activity, and the information referred to in point (e) of Article 38(3) shall be provided by the spending authorities to the European Parliament and the Council. That information shall be provided annually and at the latest in the documents accompanying the draft budget.
4. In order to improve decision-making, institutions shall undertake both *ex ante* and *ex post* evaluations in line with guidance provided by the Commission. Such evaluations shall be applied to all programmes and activities which entail significant spending and evaluation results shall be disseminated to the European Parliament, the Council and spending administrative authorities.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on *ex ante*, mid-term and *ex post* evaluations.

Article 18**Evaluation****(Article 30 of the Financial Regulation)**

1. All proposals for programmes or activities occasioning budget expenditure 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 Union involvement;
 - (c) the policy and management objectives to be achieved, which include measures necessary to safeguard the financial interests of the Union in the field of fraud prevention, detection, investigation, reparation and sanctions;
 - (d) the policy options available, including the risks associated with them;
 - (e) the results and impacts expected, in particular economic, social and environmental impacts, and the indicators and evaluation arrangement needed to measure them;
 - (f) the most appropriate method of implementation for the preferred option(s);
 - (g) the internal coherence of the proposed programme or activity and its relations with other relevant instruments;
 - (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, taking due account of the respective responsibilities of all levels of government that will be involved in the implementation of the proposed programme or activity.
3. All programmes or activities, including pilot projects and preparatory actions, where the resources mobilised exceed EUR 5 000 000 shall be the subject of an interim and/or *ex post* evaluation in terms of the human and financial resources allocated and the results obtained in order to verify that they were consistent with the objectives set, as follows:
 - (a) the results obtained in carrying out a multiannual programme shall be periodically evaluated in accordance with a timetable which enables the findings of that evaluation to be taken into account for any decision on the renewal, modification or suspension of the programme;
 - (b) activities financed on an annual basis shall have their results evaluated at least every six years.

Points (a) and (b) of the first subparagraph shall not apply to each of the projects or actions conducted within those activities, for which the requirement may be met by the final reports sent by the bodies which carried out the action.

4. The evaluations referred to in paragraphs 1 and 3 shall be proportionate to the resources mobilised for and the impact of the programme and activity concerned.

FR**Article 31****Compulsory financial statement**

1. Any proposal or initiative submitted to the legislative authority by the Commission, the High Representative of the Union for Foreign Affairs and Security Policy (the ‘High Representative’) or by a Member State, which may have an impact on the budget, including changes in the number of posts, shall be accompanied by a financial statement and by an *ex ante* evaluation as provided for in Article 30(4).

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

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the requirements of the financial statement.

2. During the budgetary procedure, the Commission shall provide the necessary information for a comparison between changes in the appropriations required and the initial forecasts made in the financial statement in the light of the progress of deliberations on the proposal or initiative submitted to the legislative authority.
3. In order to reduce the risk of fraud and irregularities, the financial statement referred to in paragraph 1 shall provide information on the internal control system set up, an estimate of the costs and benefits of the controls implied by such system and an assessment of the expected level of risk of error, as well as existing and planned fraud prevention and protection measures.

Such analysis shall take into account the likely scale and type of errors, as well as the specific conditions of the policy area concerned and the rules applicable thereto.

RAP**Article 19****Financial statement****(Article 31 of the Financial Regulation)**

The financial statement shall contain the financial and economic data for the assessment by the legislative authority of the need for Union action. It shall provide appropriate information as regards coherence with other activities of the Union and any possible synergy.

In the case of multiannual operations, the financial statement shall contain the foreseeable schedule of annual requirements in terms of appropriations and posts, including for external staff, and an evaluation of their medium-term financial impact.

Internal control of budget implementation

1. The budget shall be implemented in compliance with effective and efficient internal control as appropriate in each method of implementation, and in accordance with the relevant sector-specific rules.
2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of management and designed to provide reasonable assurance of achieving the following objectives:
 - (a) effectiveness, efficiency and economy of operations;
 - (b) reliability of reporting;
 - (c) safeguarding of assets and information;
 - (d) prevention, detection, correction and follow-up of fraud and irregularities;
 - (e) adequate management of the risks relating to the legality and regularity of the underlying transactions, taking into account the multiannual character of programmes as well as the nature of the payments concerned.
3. 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 control at recipient 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 internal control system.
4. 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 for all appropriate actors in the control chain of the results of controls carried out;
 - (c) reliance, where appropriate, on management declarations of implementation partners and independent audit opinions, provided that the quality of the underlying work is adequate and acceptable and that it was performed in accordance with agreed standards;
 - (d) the timely application of corrective measures including, where appropriate, dissuasive penalties;

- (e) clear and unambiguous legislation underlying the policies;
 - (f) the elimination of multiple controls;
 - (g) improving the cost-benefit ratio of controls.
5. If, during implementation, the level of error is persistently high, the Commission shall identify the weaknesses in the control systems, analyse the costs and benefits of possible corrective measures and take or propose appropriate action, such as simplification of the applicable provisions, improvement of the control systems and redesign of the programme or delivery systems.

FR**Article 33****Cost-effective control systems**

When presenting revised or new spending proposals, the Commission shall estimate the costs and benefits of control systems, as well as the level of risk of error as referred to in Article 31(3).

CHAPTER 8

Principle of transparency**FR****Article 34****Publication of accounts, budgets and reports**

1. The budget shall be established and implemented and the accounts presented in accordance with the principle of transparency.
2. The President of the European Parliament shall have the budget and any amending budget, as definitively adopted, published in the *Official Journal of the European Union*.

The budgets shall be published within three months of the date on which they are declared definitively adopted.

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

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the provisional publication of the budget.

RAP**Article 20*****Provisional publication of the budget
(Article 34 of the Financial Regulation)***

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 in all languages on the internet site of the institutions, on the Commission's initiative, pending official publication in the *Official Journal of the European Union*.

FR

Article 35**Publication of information on recipients and other information**

1. Information on borrowing-and-lending operations contracted by the Union for third parties shall appear in an Annex to the budget.
2. The Commission shall make available, in an appropriate and timely manner, information on recipients, as well as the nature and purpose of the measure financed from the budget, where the latter is implemented directly in accordance with point (a) of Article 58(1), and information on recipients as provided by the entities, persons and Member States to which budget implementation tasks are entrusted under other methods of implementation.

The obligation set out in the first subparagraph shall also apply to the other institutions with regard to their recipients.

3. This information shall be made available with due observance of the requirements of confidentiality and security, in particular the protection of personal data.

Where natural persons are concerned, the publication shall be limited to the name and locality of the recipient, the amount awarded and the purpose of the award. The disclosure of those data shall be based on relevant criteria such as the periodicity of award, or the type or importance of the award. The criteria for disclosure and the level of detail published shall take into account the specificities of the sector and of each method of implementation.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the establishment of detailed rules on the publication of information on recipients. Where applicable, the level of detail and criteria shall be defined in the relevant sector-specific rules.

RAP Article 21***Publication of information on value and recipients of Union funds
(Article 35 of the Financial Regulation)***

1. The information on recipients of Union's funds awarded under direct management shall be published on an internet site of the Union institutions, no later than 30 June of the year following the financial year in which the funds were awarded.

In addition to the publication referred to in the first subparagraph the information may also be published, according to a standard presentation, by other appropriate means.

2. The following information shall be published unless otherwise provided in this Regulation and in the sector specific rules, taking into account the criteria set out in Article 35(3) of the Financial Regulation:

(a) the name of the recipient;

- (b) the locality of the recipient;
- (c) the amount awarded;
- (d) the nature and purpose of the measure.

For the purpose of point (b) the term ‘locality’ shall mean:

- (i) the address of the recipient when the latter is a legal person;
- (ii) the Region on NUTS 2 level when the recipient is a natural person.

As far as personal data referring to natural persons are concerned, the information published shall be removed two years after the end of the financial year in which the funds were awarded. The same shall apply to personal data referring to legal persons for whom the official title identifies one or more natural persons.

3. The information referred to in paragraph 2 shall only be published for prizes, grants and contracts which have been awarded as a result of contests or grant award procedures or public procurement procedures. The information shall not be published for:
 - (a) scholarships paid to natural persons and other direct support paid to natural persons in most need, referred to in Article 125(4)(c) of the Financial Regulation;
 - (b) contracts below the amount referred to in Article 137(2) of this Regulation.
4. The publication shall be waived if such disclosure risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of the recipients.

Article 22

*Link to the publication of information on recipients of Union funds awarded under indirect management
(Article 35 of the Financial Regulation)*

Where the management of Union funds is delegated to the authorities and bodies referred to in Article 58(1)(c) of the Financial Regulation, the delegation agreements shall require that information referred to in paragraphs 2 and 3 of Article 21 is published according to a standard presentation, by those entrusted authorities and bodies on their website.

The internet site of the Union institutions shall contain a reference at least of the address of the website where the information can be found if it is not published directly in the dedicated place of the internet site of the Union institutions.

In addition to the publication referred to in the first subparagraph the information may also be published, according to a standard presentation, by any other appropriate means.

Paragraphs 2 to 4 of Article 21 shall apply to the publication referred to in the first paragraph of this Article.

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

Establishment of the budget

FR Article 36

Estimates of revenue and expenditure

1. Each institution other than the Commission shall draw up an estimate of its revenue and expenditure, which it shall send to the Commission, and in parallel, for information, to the European Parliament and the Council, before 1 July each year.
2. The High Representative shall hold consultations with the Members of the Commission responsible for development policy, neighbourhood policy and international cooperation, humanitarian aid and crisis response, regarding their respective responsibilities.
3. The Commission shall draw up its own estimates, which it shall also send, directly after their adoption, to the European Parliament and the Council.

In preparing its estimates, the Commission shall use the information referred to in Article 37.

FR Article 37

Estimated budget of the bodies referred to in Article 208

By 31 March each year, each body referred to in Article 208 shall, in accordance with the instrument establishing it, send the Commission, the European Parliament and the Council an estimate of its revenue and expenditure, including its establishment plan, and its draft work programme.

FR Article 38

Draft budget

1. The Commission shall submit a proposal containing the draft budget to the European Parliament and the Council by 1 September of the year preceding that in which the budget is to be implemented. It shall transmit that proposal, for information, also to the national parliaments.

The draft budget shall contain a summary general statement of the revenue and expenditure of the Union and shall consolidate the estimates referred to in Article 36. It may also contain different estimates from those drawn up by the institutions.

The draft budget shall follow the structure and presentation set out in Articles 44 to 49.

Each section of the draft budget shall be preceded by an introduction drawn up by the institution concerned.

The Commission shall draw up the general introduction to the draft budget. The general introduction shall comprise financial tables covering the main data by titles and justifications for the changes in the appropriations from one financial year to the next by categories of expenditure of the multiannual financial framework.

2. In order to provide more precise and reliable forecasts of the budgetary implications of legislation in force and of pending legislative proposals, the Commission shall attach to the draft budget a financial programming for the following years.

The financial programming shall be updated after the adoption of the budget, to incorporate the results of the budgetary procedure and any other relevant decisions.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on financial programming.

3. The Commission shall attach to the draft budget:
 - (a) where appropriate, the reasons for which the draft budget contains different estimates from those drawn up by other institutions;
 - (b) any working document it considers useful in connection with the establishment plans of the institutions and the contributions which the Commission awards to the bodies referred to in Article 208 and to the European Schools. Any such working document, showing the latest authorised establishment plan, shall present:
 - (i) all staff employed by the Union, including its legally separate entities, displayed by type of contract;
 - (ii) a statement of the policy on posts and external personnel and on gender balance;
 - (iii) the number of posts actually filled at the beginning of the year in which the draft budget is presented, indicating their distribution by grade and administrative unit;
 - (iv) a list of posts broken down per policy area;
 - (v) for each category of external staff, the initial estimated number of full-time equivalents on the basis of the authorised appropriations, as well as the number of persons actually in place at the beginning of the year in which the draft budget is presented, indicating their distribution by function group and, as appropriate, by grade;
 - (c) a working document on the planned implementation of appropriations for the financial year and on commitments outstanding, on the bodies referred to in Article 208 and the European Schools, and on the pilot projects and preparatory actions;
 - (d) as regards funding to international organisations, a working document containing:
 - (i) a summary of all contributions, with a breakdown per Union programme or fund and per international organisation;
 - (ii) a statement of reasons explaining why it was more efficient for the Union to fund those international organisations rather than to act directly;
 - (e) activity statements or any other relevant document containing the following:

- (i) information on the achievement of all previously set specific, measurable, achievable, relevant and timed objectives for the various activities, as well as new objectives measured by indicators;
 - (ii) a full justification, including a cost-benefit analysis for proposed changes in the level of appropriations;
 - (iii) a clear rationale for intervention at Union level in accordance, inter alia, with the principle of subsidiarity;
 - (iv) information on the implementation rates of the preceding year's activity and implementation rates for the current year;
 - (v) a summary of evaluation results when relevant to budget changes;
 - (vi) information on prizes with a unit value of EUR 1 000 000 or more;
- (f) a summary statement of the schedule of payments due in subsequent financial years to meet budgetary commitments entered into in previous financial years.
4. Where the Commission entrusts budget implementation to public-private partnerships (PPPs), it shall attach to the draft budget a working document presenting:
- (a) an annual report on the performance of existing PPPs in the preceding financial year, including information on the legal form and the shareholders of entities entrusted pursuant to point (vii) of Article 58(1)(c);
 - (b) the targets set for the financial year to which the draft budget relates, indicating any specific budgetary needs dedicated to achieving this target;
 - (c) the administrative costs and the implemented budget in total and per body referred to in Article 209 and per PPP in the preceding financial year;
 - (d) the amount of financial contributions made from the budget, the amount of financial contributions and the value of contributions in kind made by the other partners for each PPP.

However, where PPPs make use of financial instruments, the information relating to those instruments shall be included in the working document referred to in paragraph 5.

5. Where the Commission makes use of financial instruments, it shall attach to the draft budget a working document presenting the following:
- (a) the aggregate budgetary commitments and payments from the budget for each financial instrument;
 - (b) revenues and repayments under Article 140(6), and accrual for additional resources for the financial year;
 - (c) the total amount of provisions for risks and liabilities, as well as any information on the financial risk exposure of the Union;

- (d) impairments of assets of equity or risk-sharing instruments, and called guarantees for guarantee instruments, both for the preceding year and the respective accumulated figures;
 - (e) the average duration between the budgetary commitment to the financial instruments and the legal commitments for individual projects in the form of equity or debt, where their duration exceeds three years. The Commission shall, in the report provided for under Article 140(8), explain the reasons and provide, where appropriate, an action plan for the reduction of the duration in the framework of the annual discharge procedure;
 - (f) the administrative expenditure arising from management fees and other financial and operating charges paid for the management of financial instruments, where that management has been entrusted to third parties, in total and per managing party and per financial instrument managed.
6. The Commission shall also attach to the draft budget any further working document it considers useful to support its budget requests.
7. In accordance with Article 8(5) of Council Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service ⁽¹⁾ and in order to ensure budgetary transparency in the area of external action of the Union, the Commission shall transmit to the European Parliament and the Council, together with the draft budget, a working document presenting, in a comprehensive way:
- (a) all administrative and operational expenditure relating to the external actions of the Union, including Common Foreign and Security Policy (CFSP) and Common Security and Defence Policy tasks, and financed from the budget;
 - (b) the EEAS' overall administrative expenditure for the preceding year, broken down into expenditure per Union Delegation and expenditure for the EEAS' central administration; together with operational expenditure, broken down by geographic area (regions, countries), thematic areas, Union Delegation and mission.
8. The working document referred to in paragraph 7 shall also:
- (a) show the number of posts for each grade in each category and the number of permanent and temporary posts, including contractual and local staff authorised within the limits of the appropriations in each Union Delegation, as well as in the central administration of the EEAS;
 - (b) show any increase or reduction of posts by grade and category in the central administration of the EEAS, and in all Union Delegations based on the preceding financial year;
 - (c) show the number of posts authorised for the financial year, the number of posts authorised for the preceding year, as well as the number of posts occupied by diplomats seconded from the Member States, and Council and Commission staff;
 - (d) provide a detailed picture of all staff in place in Union Delegations at the time of presenting the draft budget, including a breakdown by geographic area, gender, individual country

(¹) OJ L 201, 3.8.2010, p. 30.

and mission, distinguishing establishment plan posts, contract agents, local agents and seconded national experts and appropriations requested in the draft budget for such other types of personnel with corresponding estimates of the equivalent full-time staff that may be employed within the limits of the appropriations requested.

RAP *Article 23*
Financial programming
(Article 38 of the Financial Regulation)

The financial programming referred to in Article 38 of the Financial Regulation shall be structured by category of expenditure, policy area and budget line. The complete financial programming shall cover all categories of expenditure with the exception of agriculture, cohesion policy and administration for which only summary data shall be provided.

FR **Article 39**
Letter of amendment to the draft budget

On the basis of any new information which was not available at the time the draft budget was established, the Commission may, on its own initiative or if requested by one of the other institutions in respect of its respective section, submit simultaneously to the European Parliament and the Council letters of amendment to the draft budget before the Conciliation Committee referred to in Article 314 TFEU is convened. The letters may include a letter of amendment updating, in particular, expenditure estimates for agriculture.

FR **Article 40**
Obligations of the Member States stemming from the adoption of the budget

1. The President of the European Parliament shall declare the budget definitively adopted in accordance with the procedure provided for in Article 314(9) TFEU and Article 106a of the Euratom Treaty.
2. Once the budget has been declared definitively adopted, each Member State shall, from 1 January of the following financial year or from the date of the declaration of definitive adoption of the budget if this occurs after 1 January, be bound to make the payments due to the Union, as specified in Regulation (EC, Euratom) No 1150/2000.

FR **Article 41**
Draft amending budgets

1. The Commission may present draft amending budgets which are primarily revenue-driven in the following circumstances:
 - to enter in the budget the balance of the preceding financial year, in accordance with the procedure laid down in Article 18,

- to revise the forecast of own resources on the basis of updated economic forecasts, and
- to update the revised forecast of own resources and other revenue, as well as to review the availability of, and need for, payment appropriations.

If there are unavoidable, exceptional and unforeseen circumstances, in particular in view of the mobilisation of the European Union Solidarity Fund, the Commission may present draft amending budgets which are primarily expenditure-driven.

2. Requests for amending budgets, in the same circumstances as referred to in paragraph 1, from institutions other than the Commission shall be sent to the Commission.

Before presenting a draft amending budget, the Commission and the other institutions shall examine the scope for reallocation of the relevant appropriations, with particular reference to any expected under-implementation of appropriations.

Article 40 shall apply to amending budgets. Amending budgets shall be substantiated by reference to the budget the estimates of which they are amending.

3. The Commission shall, except in duly justified exceptional circumstances or in the case of the mobilisation of the European Union Solidarity Fund for which a draft amending budget can be presented at any time of the year, submit its draft amending budgets simultaneously to the European Parliament and the Council by 1 September of each financial year. It may attach an opinion to the requests for amending budgets from the other institutions.
4. The European Parliament and the Council shall discuss the draft amending budgets while having due regard to their urgency.
5. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on draft amending budgets.

RAP *Article 24*
Draft amending budgets
(Article 41(1) of the Financial Regulation)

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

FR

Article 42
Early transmission of estimates and draft budgets

The Commission, the European Parliament and the Council may agree to bring forward certain dates for the transmission of the estimates, and for the adoption and transmission of the draft budget. Such an arrangement may not, however, have the effect of shortening or extending the periods for which provision is made for consideration of those texts under Article 314 TFEU and Article 106a of the Euratom Treaty.

CHAPTER 2

Structure and presentation of the budget**FR Article 43**
Structure of the budget

The budget shall consist of the following:

- (a) a general statement of revenue and expenditure;
- (b) separate sections for each institution, with the exception of the European Council and the Council which shall share the same section, subdivided into statements of revenue and expenditure.

FR Article 44
Budget nomenclature

1. Commission revenue and the revenue and expenditure of the other institutions shall be classified by the European Parliament and the Council according to their type or the use to which they are assigned under titles, chapters, articles and items.
2. The statement of expenditure for the Commission section shall be set out on the basis of a nomenclature adopted by the European Parliament and the Council and classified according to purpose.

Each title shall correspond to a policy area and each chapter shall, as a rule, correspond to an activity.

Each title may include operational appropriations and administrative appropriations.

The administrative appropriations for a title shall be grouped in a single chapter.

3. When presented by purpose, administrative appropriations for individual titles shall be classified as follows:
 - (a) expenditure on staff authorised in the establishment plan: there shall be an amount of appropriations and a number of establishment plan posts corresponding to that expenditure;
 - (b) expenditure on external personnel and other expenditure referred to in point (b) of the first subparagraph of Article 26(1) and financed under the 'administration' heading of the multiannual financial framework;
 - (c) expenditure on buildings and other related expenditure, including cleaning and maintenance, rental and hiring, telecommunications, water, gas and electricity;
 - (d) external personnel and technical assistance directly linked to the implementation of programmes.

Any administrative expenditure of the Commission of a type which is common to several titles shall be set out in a separate summary statement classified by type.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the classification of the budget.

RAP *Article 25*
Budget nomenclature
(Article 44 of the Financial Regulation)

The budget nomenclature shall comply with the principles of specification, transparency and sound financial management. It shall provide clarity and transparency necessary for the budgetary process, facilitating the identification of the main objectives as reflected in the relevant legal bases, making possible choices on political priorities and enabling efficient and effective implementation.

FR **Article 45**
Prohibition of negative revenue

1. The budget shall not contain negative revenue.
2. The own resources paid under Council Decision 2007/436/EC, Euratom, of 7 June 2007 on the system of the European Communities' own resources ⁽¹⁾ shall be net amounts and shall be shown as such in the summary statement of revenue in the budget.

FR **Article 46**
Provisions

1. Each section of the budget may include a 'provisions' title. Appropriations shall be entered in that title where:
 - (a) no basic act exists for the action concerned when the budget is established; or
 - (b) there are serious grounds for doubting the adequacy of the appropriations or the possibility of implementing, under conditions in accordance with the principle of sound financial management, the appropriations entered on the lines concerned.

The appropriations in that title may be used only after transfer in accordance with the procedure laid down in point (c) of the first subparagraph of Article 26(1) of this Regulation, where the adoption of the basic act is subject to the procedure laid down in Article 294 TFEU, and in accordance with the procedure laid down in Article 27 of this Regulation, for all other cases.

2. In the event of serious implementation difficulties, the Commission may propose, in the course of a financial year, that appropriations be transferred to the 'provisions' title. The European Parliament and the Council shall take a decision on such transfers as provided for in Article 27.

⁽¹⁾ OJ L 163, 23.6.2007, p. 17.

FR Article 47 **Negative reserve**

The Commission section of the budget may include a 'negative reserve' limited to a maximum amount of EUR 200 000 000. Such a reserve, which shall be entered in a separate title, shall comprise payment appropriations only.

That negative reserve shall be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 26 and 27.

FR Article 48 **Emergency Aid Reserve**

1. The Commission section of the budget shall include a reserve for emergency aid for third countries.
2. The reserve referred to in paragraph 1 shall be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 27 and 29.

FR Article 49 **Presentation of the budget**

1. The budget shall show:
 - (a) in the general statement of revenue and expenditure:
 - (i) the estimated revenue of the Union for the financial year concerned ('year n');
 - (ii) the estimated revenue for the preceding financial year and the revenue for year n – 2;
 - (iii) the commitment and payment appropriations for year n;
 - (iv) the commitment and payment appropriations for the preceding financial year;
 - (v) the expenditure committed and the expenditure paid in year n – 2, the latter also expressed as a percentage of the budget of year n;
 - (vi) appropriate remarks on each subdivision, as set out in Article 44(1);
 - (b) in each section, the revenue and expenditure in the same structure as in point (a);
 - (c) with regard to staff:
 - (i) for each section, an establishment plan setting the number of posts for each grade in each category and in each service and the number of permanent and temporary posts authorised within the limits of the appropriations;
 - (ii) an establishment plan for staff paid from the research and technological development appropriations for direct action and an establishment plan for staff paid from the same appropriations for indirect action; the establishment plans shall

- be classified by category and grade and shall distinguish between permanent and temporary posts, authorised within the limits of the appropriations;
- (iii) as regards scientific and technical staff, the classification may be based on groups of grades, in accordance with the conditions laid down in each budget; the establishment plan shall specify the number of highly qualified scientific or technical personnel who are accorded special advantages under the specific provisions of the Staff Regulations;
 - (iv) an establishment plan setting the number of posts by grade and by category for each body referred to in Article 208 which receives a contribution charged to the budget. The establishment plans shall show, next to the number of posts authorised for the financial year, the number authorised for the preceding year;
- (d) with regard to borrowing-and-lending operations:
- (i) in the general statement of revenue, the budget lines corresponding to the relevant operations and intended to record any reimbursements received from recipients who initially defaulted, leading to activation of the performance guarantee. Those lines shall carry a token entry '*pro memoria*' and be accompanied by appropriate remarks;
 - (ii) in the Commission section:
 - the budget lines containing the Union's performance guarantees in respect of the operations concerned. Those lines shall carry a token entry '*pro memoria*', provided that no effective charge which has to be covered by definitive resources has arisen;
 - remarks giving the reference to the basic act and the volume of the operations envisaged, the duration and the financial guarantee given by the Union in respect of such operations;
 - (iii) in a document annexed to the Commission section, as an indication:
 - ongoing capital operations and debt management;
 - the capital operations and debt management for year n;
- (e) with regard to financial instruments under Title VIII of Part One:
- (i) a reference to the basic act;
 - (ii) budget lines corresponding to the relevant operations;
 - (iii) a general description of the financial instruments, including their duration and their impact on the budget;
 - (iv) the envisaged operations, including target volumes based on the leverage effect arising from the existing financial instruments;
- (f) with regard to the funding to entities entrusted pursuant to point (vii) of Article 58(1)(c):
- (i) a reference to the basic act of the relevant programme;
 - (ii) corresponding budget lines;

- (iii) a general description of the tasks entrusted, including their duration and their impact on the budget;
 - (g) the total amount of CFSP expenditure entered in a chapter, entitled 'CFSP', with specific articles. Those articles shall cover CFSP expenditure and shall contain specific lines identifying at least the single major missions.
2. In addition to the documents referred to in paragraph 1, the European Parliament and the Council may attach any other relevant documents to the budget.
 3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the presentation of the budget, including a definition of actual expenditure in the last financial year for which the accounts have been closed, budget remarks and the establishment plans.

RAP *Article 26*

Actual expenditure in the last financial year for which the accounts have been closed (Article 49(1)(a)(v) of the Financial Regulation)

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

- (a) in commitments: commitments entered in the accounts during the financial year against appropriations for that financial year as defined in Article 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 Article 3.

Article 27

Budget remarks

(Article 49(1)(a)(vi) of the Financial Regulation)

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.

Article 28

Establishment plan

(Article 49(1)(c)(i) of the Financial Regulation)

The staff of the Supply Agency shall appear separately in the Commission establishment plan.

FR Article 50
Rules on the establishment plans for staff

1. The establishment plans described in point (c) of Article 49(1) shall constitute an absolute limit for each institution or body; no appointment may be made in excess of the limit set.

However, save in the case of grades AD 16, AD 15 and AD 14, each institution or body may modify its establishment plans by up to 10 % of posts authorised, subject to the following conditions:

- (a) the volume of staff appropriations corresponding to a full financial year is not affected;
- (b) the limit of the total number of posts authorised by each establishment plan is not exceeded; and
- (c) the institution or body has taken part in a benchmarking exercise with other institutions and bodies of the Union as initiated by the Commission's staff screening exercise.

Three weeks before making the modifications referred to in the second subparagraph, the institution shall inform the European Parliament and the Council of its intention to do so. In the event that duly justified reasons are raised within this period by either the European Parliament or the Council, the institution shall refrain from making the modifications and the procedure referred to in Article 41 shall apply.

2. By way of derogation from the first subparagraph of paragraph 1, the effects of part-time work authorised by the appointing authority in accordance with the Staff Regulations may be offset by other appointments.

CHAPTER 3**Budgetary discipline**

FR Article 51
Compliance with the multiannual financial framework

The budget shall comply with the multiannual financial framework.

FR Article 52
Compliance of Union acts with the budget

Where the implementation of a Union act exceeds the appropriations available in the budget, such an act may be implemented in financial terms only after the budget has been amended accordingly.

TITLE IV IMPLEMENTATION OF THE BUDGET

CHAPTER 1 General provisions

FR Article 53 Budget implementation in accordance with the principle of sound financial management

1. The Commission shall implement the revenue and expenditure of the budget in accordance with this Regulation, under its own responsibility and within the limits of the appropriations authorised.
2. The Member States shall cooperate with the Commission so that the appropriations are used in accordance with the principle of sound financial management.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the implementation of the budget in accordance with the principle of sound financial management, and on information on transfers of personal data for audit purposes.

RAP Article 29 *Information on transfers of personal data for audit purposes (Article 53 of the Financial Regulation)*

In any call made in the context of grants, procurement or prizes implemented in direct management, potential beneficiaries, candidates, tenderers and participants shall, in accordance with Regulation (EC) No 45/2001 of the European Parliament and of the Council ⁽¹⁾ be informed that, for the purposes of safeguarding the financial interests of the Union, 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’) and between authorising officers of the Commission and the executive agencies.

FR Article 54 Basic act and exceptions

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

⁽¹⁾ OJ L 8, 12.1.2001, p. 1.

2. By way of derogation from paragraph 1 the following may be implemented without a basic act provided the actions which they are intended to finance fall within the competences of the Union:

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

The total amount of appropriations for the pilot projects shall not exceed EUR 40 000 000 in any financial year;

- (b) appropriations for preparatory actions in the field of application of the TFEU and the Euratom Treaty, designed to prepare proposals with a view to the adoption of future actions. The preparatory actions shall follow a coherent approach and may take various forms. The relevant commitment appropriations may be entered in the budget for not more than three consecutive financial years. The procedure for the adoption of the relevant basic act shall be concluded before the end of the third financial year. In the course of that procedure, the commitment of appropriations shall correspond to the particular features of the preparatory action with regard to the activities envisaged, the aims pursued and the recipients. Consequently, the means implemented shall not correspond in volume to those envisaged for financing the definitive action itself.

The total amount of appropriations for new preparatory actions referred to under this point shall not exceed EUR 50 000 000 in any financial year, and the total amount of appropriations actually committed for preparatory actions shall not exceed EUR 100 000 000;

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

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

Preparatory measures shall be agreed by the Council, on a proposal by the High Representative.

In order to ensure the rapid implementation of preparatory measures, the High Representative shall inform the European Parliament and the Commission as early as possible of the Council's intention to launch a preparatory measure and, in particular, of the estimated resources required for this purpose. The Commission shall take all the measures necessary to ensure a rapid disbursement of the funds.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules for the financing of preparatory measures in the field of the CFSP;

- (d) appropriations for one-off actions, or even actions for an indefinite duration, carried out by the Commission by virtue of tasks resulting from its prerogatives at institutional level pursuant to the TFEU and the Euratom Treaty, other than its right of legislative initiative referred

to in point (b), and under specific powers directly conferred on it by those Treaties, a list of which is to be given in the delegated acts adopted pursuant to this Regulation;

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

When the draft budget is presented, the Commission shall submit a report to the European Parliament and the Council on the actions referred to in points (a) and (b) of the first subparagraph which shall also contain an assessment of results and the follow-up envisaged.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the basic act and the exceptions enumerated in paragraph 2 of this Article.

RAP *Article 30*

Preparatory measures in the field of the common foreign and security policy (Article 54(2)(c) of the Financial Regulation)

The financing of measures agreed by the Council for the preparation of Union crisis management operations under Title V of the Treaty on European Union shall cover incremental costs directly arising from a specific field deployment of a mission or team involving *inter alia* personnel from the Union institutions, including high risk insurance, travel and accommodation costs and per diem payments.

Article 31

Specific powers of the Commission under the Treaties (Article 54(2)(d) of the Financial Regulation)

1. The articles of the Treaty on the Functioning of the European Union (hereinafter ‘TFEU’) which directly confer specific powers on the Commission are as follows:
 - (a) Article 154 (social dialogue);
 - (b) Article 156 (studies, opinions and consultations on social matters);
 - (c) Articles 159 and 161 (special reports on social matters);
 - (d) Article 168(2) (initiatives to promote coordination on health protection matters);
 - (e) Article 171(2) (initiatives to promote coordination on trans-European networks);
 - (f) Article 173(2) (initiatives to promote coordination on matters relating to industry);
 - (g) Article 175, second subparagraph (report on progress made towards achieving economic, social and territorial cohesion);
 - (h) Article 181(2) (initiatives to promote coordination on research and technological development);

- (i) Article 190 (report on research and technological development);
 - (j) Article 210(2) (initiatives to promote coordination of development cooperation policies);
 - (k) Article 214(6) (initiatives to promote coordination on humanitarian aid measures).
2. The articles of the Treaty Establishing the European Atomic Energy Community (hereinafter 'Euratom Treaty') which directly confer specific powers on the Commission are as follows:
 - (a) Article 70 (financial support, within the limits set by the budget, for prospecting programmes in the territories of the Member States);
 - (b) Articles 77 to 85.
3. In the presentation of the draft budget, further detail may be added to the lists set out in paragraphs 1 and 2, with an indication of the articles in question and the amounts involved.

FR**Article 55****Implementation of the budget by institutions other than the Commission**

The Commission shall confer on the other institutions the requisite powers for the implementation of the sections of the budget relating to them.

Detailed arrangements may be agreed between the EEAS and the Commission in order to facilitate the implementation of Union delegations' administrative appropriations. Such arrangements shall not contain any derogation from this Regulation or the delegated acts adopted pursuant to this Regulation.

FR**Article 56****Delegation of budget implementation powers**

1. The Commission and each of the other institutions may, within their departments, delegate their powers of budget implementation in accordance with the conditions laid down in this Regulation and by their internal rules and within the limits which they lay down in the instrument of delegation. Those so empowered shall act within the limits of the powers expressly conferred upon them.
2. However, the Commission may delegate its powers of budget implementation concerning the operational appropriations of its own section to the Heads of Union Delegations. It shall, at the same time, inform the High Representative thereof. When Heads of Union Delegations act as subdelegated authorising officers of the Commission, they shall apply the Commission rules for the implementation of the budget and shall be subject to the same duties, obligations and accountability as any other subdelegated authorising officer of the Commission.

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

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

FR Article 57 Conflict of interests

1. Financial actors and other persons involved in budget implementation and management, including acts preparatory thereto, audit or control shall not take any action which may bring their own interests into conflict with those of the Union.

Where such a risk exists, the person in question shall refrain from such action and shall refer the matter to the authorising officer by delegation who shall confirm in writing whether a conflict of interests exists. The person in question shall also inform his or her hierarchical superior. Where a conflict of interests is found to exist, the person in question shall cease all activities in the matter. The authorising officer by delegation shall personally take any further appropriate action.

2. For the purposes of paragraph 1, a conflict of interests exists where the impartial and objective exercise of the functions of a financial actor or other person, as referred to in paragraph 1, is compromised for reasons involving family, emotional life, political or national affinity, economic interest or any other shared interest with a recipient.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 setting out what is likely to constitute a conflict of interests together with the procedure to be followed in such cases.

RAP Article 32 *Acts likely to constitute a conflict of interests and procedure (Article 57 of the Financial Regulation)*

1. Acts likely to be affected by a conflict of interests within the meaning of Article 57(2) of the Financial Regulation may, inter alia, take one of the following forms without prejudice of their qualification as illegal activities under Article 141:
 - (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.

Other acts likely to be affected by a conflict of interests are those which may impair the impartial and objective performance of a person's duties such as, inter alia, the participation in an evaluation committee for a public procurement or grant procedure when the person may, directly or indirectly, benefit financially from the outcome of these procedures.

2. A conflict of interest 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.
3. In the event of a conflict of interests, the authorising officer by delegation shall take appropriate measures to avoid any undue influence of the person concerned on the process or procedure in question.

CHAPTER 2

Methods of implementation

FR**Article 58****Methods of implementation of the budget**

1. The Commission shall implement the budget in the following ways:
 - (a) directly ('direct management'), by its departments, including its staff in the Union Delegations under the authority of their respective Head of Delegation, in accordance with Article 56(2), or through executive agencies as referred to in Article 62;
 - (b) under shared management with Member States ('shared management'); or
 - (c) indirectly ('indirect management'), where this is provided for in the basic act or in the cases referred to in points (a) to (d) of the first subparagraph of Article 54(2), by entrusting budget implementation tasks to:
 - (i) third countries or the bodies they have designated;
 - (ii) international organisations and their agencies;
 - (iii) the EIB and the European Investment Fund;
 - (iv) bodies referred to in Articles 208 and 209;
 - (v) public law bodies;
 - (vi) bodies governed by private law with a public service mission to the extent that they provide adequate financial guarantees;
 - (vii) bodies governed by the private law of a Member State that are entrusted with the implementation of a public-private partnership and that provide adequate financial guarantees;
 - (viii) persons entrusted with the implementation of specific actions in the CFSP pursuant to Title V of the TEU, and identified in the relevant basic act.
2. The Commission remains responsible for the implementation of the budget in accordance with Article 317 TFEU and shall inform the European Parliament and the Council of the operations carried out by the entities and persons entrusted pursuant to point (c) of paragraph 1 of this Article. Where the entrusted entity or person is identified in a basic act, the financial statement

provided for in Article 31 shall include a full justification for the choice of that particular entity or person.

3. The entities and persons entrusted pursuant to point (c) of paragraph 1 of this Article shall fully cooperate in the protection of the Union's financial interests. Delegation agreements shall provide for the right of the Court of Auditors and the European Anti-Fraud Office (OLAF) to comprehensively exert their competences under the TFEU in the audit of funds.

The Commission shall entrust budget implementation tasks to entities and persons under point (c) of paragraph 1 of this Article provided that transparent, non-discriminatory, efficient and effective review procedures concerning the actual implementation of such tasks are in place.

4. All delegation agreements shall be made available to the European Parliament and the Council at their request.
5. Entities and persons entrusted pursuant to point (c) of paragraph 1 of this Article shall ensure, in accordance with Article 35(2), appropriate annual *ex post* publication of information on recipients. The Commission shall be notified of the measures taken in this regard.
6. Entities and persons entrusted pursuant to point (c) of paragraph 1 shall not have the status of authorising officer by delegation.
7. The Commission shall not entrust executive powers to third parties, where such powers involve a large measure of discretion implying political choices.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the methods of implementation of the budget, including direct management, the exercise of powers delegated to executive agencies, and specific provisions for indirect management with international organisations, with bodies referred to in Articles 208 and 209, with public law bodies or bodies governed by private law with a public service mission, with bodies governed by the private law of a Member State and entrusted with the implementation of a public-private partnership and with persons entrusted with the implementation of specific actions in the CFSP.

RAP *Article 33*
Management mode
(Article 58 of the Financial Regulation)

The accounting system of the Commission shall identify the management mode and, under each management mode, the type of entity or person listed in Article 58(1)(c) of the Financial Regulation entrusted with tasks of budget implementation.

As regards direct management by the Commission according to Article 58(1)(a) of the Financial Regulation, the accounting system shall distinguish management by the following:

- (a) departments of the Commission;

- (b) executive agencies;
- (c) Heads of Union Delegations;
- (d) trust funds referred to in Article 187 of the Financial Regulation.

Article 34

Direct management

(Article 58 (1)(a) of the Financial Regulation)

Where the Commission implements the budget directly in its departments, implementation tasks shall be performed by the financial actors within the meaning of Articles 64 to 75 of the Financial Regulation and in compliance with the conditions laid down in this Regulation.

Article 35

Exercise of powers delegated to executive agencies

(Articles 58(1)(a) and 62 of the Financial Regulation)

1. Decisions to delegate powers to executive agencies shall authorise them, as authorising officers by delegation, to implement appropriations relating to the Union programme the management of which is entrusted to them.
2. The Commission's instrument of delegation shall contain at least the provisions as provided for in points (a) to (d) and (h) of Article 40. It shall be formally accepted in writing by the director on behalf of the executive agency.

Article 43

Specific provisions for indirect management with international organisations

(Articles 58(1)(c)(ii) and 188 of the Financial Regulation)

1. The international organisations referred to in point (ii) of Article 58(1)(c) of the Financial Regulation shall be:
 - (a) international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations;
 - (b) the International Committee of the Red Cross;
 - (c) the International Federation of National Red Cross and Red Crescent Societies;
 - (d) other non-profit organisations assimilated to international organisations by a Commission decision.
2. Where the Commission implements the budget under indirect management with international organisations, the verification agreements concluded with them shall apply.

Article 44**Designation of public law bodies or bodies governed by private law with a public-service mission****(Article 58(1)(c)(v) and (vi) of the Financial Regulation)**

1. The public law bodies or bodies governed by private law with a public-service mission shall be subject to the law of the Member State or the country in which they have been set up.
2. In cases of management by a network, requiring the designation of at least one body or entity by Member State or by country concerned, the body or entity shall be designated by the Member State or the country concerned in accordance with the basic act.

In all other cases, the Commission shall designate such bodies or entities in agreement with the Member States or countries concerned.

FR**Article 59****Shared management with Member States**

1. Where the Commission implements the budget under shared management, implementation tasks shall be delegated to Member States. The Commission and the Member States shall respect the principles of sound financial management, transparency and non-discrimination and shall ensure the visibility of Union action when they manage Union funds. To this end, the Commission and the Member States shall fulfil their respective control and audit obligations and assume the resulting responsibilities laid down in this Regulation. Complementary provisions shall be laid down in sector-specific rules.
2. When executing tasks relating to the implementation of the budget, Member States shall take all the necessary measures, including legislative, regulatory and administrative measures, to protect the Union's financial interests, namely by:
 - (a) ensuring that actions financed from the budget are implemented correctly and effectively and in accordance with the applicable sector-specific rules and, for that purpose, designating in accordance with paragraph 3, and supervising bodies responsible for the management and control of Union funds;
 - (b) preventing, detecting and correcting irregularities and fraud.

In order to protect the Union's financial interests, Member States shall, respecting the principle of proportionality, and in compliance with this Article, and the relevant sector-specific rules, carry out *ex ante* and *ex post* controls including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions. They shall also recover funds unduly paid and bring legal proceedings where necessary in this regard.

Member States shall impose effective, dissuasive and proportionate penalties on recipients where provided for in sector-specific rules and in specific provisions in national legislation.

As part of its risk assessment and in accordance with sector-specific rules, the Commission shall monitor the management and control systems established in the Member States. The Commission shall, in its audit work, respect the principle of proportionality and shall take into account the level of assessed risk in accordance with the sector-specific rules.

3. In accordance with the criteria and procedures laid down in sector-specific rules, Member States shall, at the appropriate level, designate bodies to be responsible for the management and control of Union funds. Such bodies may also carry out tasks not related to the management of Union funds and may entrust certain of their tasks to other bodies.

When deciding on the designation of bodies, Member States may base their decision on whether the management and control systems are essentially the same as those already in place for the previous period and whether they have functioned effectively.

If audit and control results show that the designated bodies no longer comply with the criteria set out in the sector-specific rules, Member States shall take the measures necessary to ensure that deficiencies in the implementation of the tasks of these bodies are remedied, including by ending the designation in accordance with the sector-specific rules.

The sector-specific rules shall define the role of the Commission in the process set out in this paragraph.

4. Bodies designated pursuant to paragraph 3 shall:
 - (a) set up and ensure the functioning of an effective and efficient internal control system;
 - (b) use an accounting system that provides accurate, complete and reliable information in a timely manner;
 - (c) provide the information required under paragraph 5;
 - (d) ensure *ex post* publication in accordance with Article 35(2). Any processing of personal data shall comply with national provisions implementing Directive 95/46/EC.
5. Bodies designated pursuant to paragraph 3 shall, by 15 February of the following financial year, provide the Commission with:
 - (a) their accounts on the expenditure that was incurred, during the relevant reference period as defined in the sector-specific rules, in the execution of their tasks and that was presented to the Commission for reimbursement. Those accounts shall include pre-financing and sums for which recovery procedures are underway or have been completed. They shall be accompanied by a management declaration confirming that, in the opinion of those in charge of the management of the funds:
 - (i) the information is properly presented, complete and accurate;
 - (ii) the expenditure was used for its intended purpose, as defined in the sector-specific rules;
 - (iii) the control systems put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions;

- (b) an annual summary of the final audit reports and of controls carried out, including an analysis of the nature and extent of errors and weaknesses identified in systems, as well as corrective action taken or planned.

The accounts referred to in point (a) of the first subparagraph and the summary referred to in point (b) of the first subparagraph shall be accompanied by an opinion of an independent audit body, drawn up in accordance with internationally accepted audit standards. That opinion shall establish whether the accounts give a true and fair view, whether expenditure for which reimbursement has been requested from the Commission is legal and regular, and whether the control systems put in place function properly. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration referred to in point (a) of the first subparagraph.

The deadline of 15 February may exceptionally be extended by the Commission to 1 March, upon communication by the Member State concerned.

Member States may, at the appropriate level, publish the information referred to in this paragraph.

In addition, Member States may provide declarations signed at the appropriate level based on the information referred to in this paragraph.

6. In order to ensure that Union funds are used in accordance with the applicable rules, the Commission shall:
 - (a) apply procedures for the examination and acceptance of the accounts of the designated bodies, ensuring that the accounts are complete, accurate and true;
 - (b) exclude from Union financing expenditure for which disbursements have been made in breach of applicable law;
 - (c) interrupt payment deadlines or suspend payments where provided for in the sector-specific rules.

The Commission shall end all or part of the interruption of payment deadlines or suspension of payments after a Member State has presented its observations and as soon as it has taken any necessary measures. The annual activity report referred to in Article 66(9) shall cover all the obligations under this subparagraph.

7. Sector-specific rules shall take account of the needs of European Territorial Cooperation programmes as regards, in particular, the content of the management declaration, the process set out in paragraph 3 and the audit function.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on shared management with Member States, including the compilation of a register of bodies responsible for the management and control of Union funds, and on measures to promote best practices.

RAP Article 37*Specific provisions for shared management with Member States measures to promote best practices**(Article 59 of the Financial Regulation)*

The Commission shall compile a register of bodies responsible for management, certification and audit activities under the sector-specific regulations.

In order to promote best practices in the implementation of the Structural Funds, the Cohesion Fund, the European Agricultural Fund for Rural Development, the European Agricultural Guarantee Fund and the European Fisheries Fund, the Commission may make available for information purposes to bodies responsible for management and control activities a methodological guide setting out its own control strategy and approach, including checklists, and best practice examples. This guide shall be updated whenever it proves necessary.

FR**Article 60****Indirect management**

1. Entities and persons entrusted with budget implementation tasks pursuant to point (c) of Article 58(1) shall respect the principles of sound financial management, transparency and non-discrimination and shall ensure the visibility of Union action when they manage Union funds. They shall guarantee a level of protection of the financial interests of the Union equivalent to that required under this Regulation when they manage Union funds, with due consideration for:
 - (a) the nature of the tasks entrusted to them and the amounts involved;
 - (b) the financial risks involved;
 - (c) the level of assurance stemming from their systems, rules and procedures together with the measures taken by the Commission to supervise and support the implementation of the tasks entrusted to them.
2. In order to protect the financial interests of the Union, the entities and persons entrusted pursuant to point (c) of Article 58(1) shall, in accordance with the principle of proportionality:
 - (a) set up and ensure the functioning of an effective and efficient internal control system;
 - (b) use an accounting system that provides accurate, complete and reliable information in a timely manner;
 - (c) be subject to an independent external audit, performed in accordance with internationally accepted auditing standards by an audit service functionally independent of the entity or person concerned;
 - (d) apply appropriate rules and procedures for providing financing from Union funds through grants, procurement and financial instruments;
 - (e) ensure, in accordance with Article 35(2), the *ex post* publication of information on recipients;

- (f) ensure a reasonable protection of personal data, as laid down in Directive 95/46/EC and Regulation (EC) No 45/2001.

Persons entrusted pursuant to point (viii) of Article 58(1)(c) shall adopt their financial rules with the Commission's prior consent. They shall satisfy the requirements laid down in points (a) to (e) of this paragraph no later than six months after the start of their mandate. Where, at the end of this period, they comply with those requirements only in part, the Commission shall take appropriate remedial measures to supervise and support the implementation of the tasks entrusted to them.

3. The entities and persons entrusted pursuant to point (c) of Article 58(1) shall prevent, detect and correct irregularities and fraud when executing tasks relating to the implementation of the budget. To this end, they shall carry out, in accordance with the principle of proportionality, *ex ante* and *ex post* controls including, where appropriate, on-the-spot checks on representative and/or risk-based samples of transactions, to ensure that the actions financed from the budget are effectively carried out and implemented correctly. They shall also recover funds unduly paid and bring legal proceedings where necessary in this regard.
4. The Commission may suspend payments to entities and persons entrusted pursuant to point (c) of Article 58(1), in particular when systemic errors are detected which call into question the reliability of the internal control systems of the entity or person concerned or the legality and regularity of the underlying transactions.

Notwithstanding Article 92, the authorising officer responsible may interrupt payments to such entities or persons fully or partially for the purpose of carrying out further checks where:

- (i) information comes to the notice of the authorising officer responsible indicating a significant deficiency in the functioning of the internal control system or that the expenditure certified by the entity or person concerned is linked to a serious irregularity and has not been corrected;
 - (ii) the interruption is necessary to prevent significant damage to the financial interests of the Union.
5. Without prejudice to paragraph 7, the entities and persons entrusted pursuant to point (c) of Article 58(1) shall provide the Commission with:
 - (a) a report on the implementation of the tasks entrusted to them;
 - (b) their accounts drawn up for the expenditure incurred in the execution of the tasks entrusted to them. Those accounts shall be accompanied by a management declaration confirming that, in the opinion of those in charge of the management of the funds:
 - (i) the information is properly presented, complete and accurate;
 - (ii) the expenditure was used for its intended purpose, as defined in the delegation agreements or, where applicable, in the relevant sector-specific rules;
 - (iii) the control systems put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions;

- (c) a summary of the final audit reports and of controls carried out, including an analysis of the nature and extent of errors and weaknesses identified in systems, as well as corrective action taken or planned.

The documents referred to in the first subparagraph shall be accompanied by an opinion of an independent audit body, drawn up in accordance with internationally accepted audit standards. That opinion shall establish whether the accounts give a true and fair view, whether the control systems put in place function properly, and whether the underlying transactions are legal and regular. The opinion shall also state whether the audit work puts in doubt the assertions made in the management declaration under point (b) of the first subparagraph.

The documents referred to in the first subparagraph shall be provided to the Commission no later than 15 February of the following financial year. The opinion referred to in the second subparagraph shall be provided to the Commission no later than 15 March.

The obligations set out in this paragraph shall be without prejudice to agreements concluded with international organisations and third countries. Such agreements shall include at least the obligation of those international organisations and third countries to provide the Commission annually with a statement that, during the financial year concerned, the Union contribution was used and accounted for in compliance with the requirements set out in paragraph 2 and with the obligations laid down in such agreements.

6. Without prejudice to paragraph 7, the Commission shall:
 - (a) supervise the fulfilment by those persons and entities of their responsibilities, in particular by carrying out audits and evaluations on the programme implementation;
 - (b) apply procedures for the examination and acceptance of the accounts of the entrusted entities and persons, ensuring that the accounts are complete, accurate and true;
 - (c) exclude from Union financing expenditure disbursements which have been made in breach of the applicable rules.
7. Paragraphs 5 and 6 shall not apply to the contribution of the Union to entities which are subject to a separate discharge procedure under Article 208.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on indirect management, including the establishment of the conditions under indirect management according to which the systems, rules and procedures of entities and persons are to be equivalent to those of the Commission, management declarations and compliance statements, and the procedures for the examination and acceptance of the accounts and the exclusion from Union financing of expenditure incurred in breach of the applicable rules.

RAP *Article 38*

Equivalence of systems, rules and procedures in indirect management (Article 60 of the Financial Regulation)

1. The Commission may accept that procurement rules and procedures are equivalent to its own if the following conditions are met:

- (a) they comply with the principle of broad competition of tenderers to obtain the best value for money, and negotiated procedures are limited to reasonable amounts or are duly justified;
- (b) they ensure transparency with adequate *ex ante* publication, in particular of calls for tenders, and adequate *ex post* publication of contractors;
- (c) they ensure equal treatment, proportionality and non-discrimination;
- (d) they prevent conflicts of interests throughout the entire procurement procedure.

National law of Member States or third countries transposing Directive 2004/18/EC shall be considered equivalent to the rules applied by the institutions in accordance with the Financial Regulation.

2. The Commission may accept that grant rules and procedures are equivalent to its own if the following conditions are met:
 - (a) they comply with the principles of proportionality, sound financial management, equal treatment and non-discrimination;
 - (b) they ensure transparency with adequate publication of calls for proposals, direct award procedures being limited to reasonable amounts or being duly justified, and adequate *ex post* publication of beneficiaries taking account of the principle of proportionality;
 - (c) they prevent conflicts of interests throughout the entire grant award procedure;
 - (d) they provide that grants may not be cumulative or awarded retrospectively, that they must, as a rule, involve co-financing and that they may not have the purpose or the effect of producing a profit for the beneficiary.
3. The Commission may accept that the accounting systems and the internal control systems used by entities and persons to be entrusted with budget implementation tasks on behalf of the Commission are providing equivalent levels of protection of the financial interests of the Union and of reasonable assurance of achieving the management objectives if they comply with the principles laid down in Article 32 of the Financial Regulation.

Article 41

Management declaration and compliance statement

(Article 60(5) of the Financial Regulation)

In case of actions terminating before the end of the financial year concerned, the final report of the entrusted entity or person for such action may replace the management declaration referred to in Article 60(5)(b) of the Financial Regulation, provided it is submitted before 15 February of the year following the financial year concerned.

Where international organisations and third countries implement non-multiannual actions limited to 18 months, the compliance statement referred to in Article 60(5) of the Financial Regulation may be incorporated in the final report.

Article 42

Procedures for the examination and acceptance of the accounts and exclusion from Union financing of expenditure made in breach of applicable rules under indirect management (Article 60(6)(b) and (c) of the Financial Regulation)

1. Without prejudice to specific provisions contained in sector specific rules, the procedures referred to in points (b) and (c) of Article 60(6) of the Financial Regulation shall include:
 - (a) desk reviews and, where appropriate, on-the-spot checks by the Commission;
 - (b) the establishment by the Commission of the amount of expenditure recognised as accepted, following, where necessary, a contradictory procedure with the authorities and bodies and after these authorities and bodies have been informed;
 - (c) where appropriate, calculation by the Commission of financial corrections;
 - (d) recovery or payment by the Commission of the balance arising from the difference between accepted expenditure and the sums already paid to the authorities or bodies.

For the purposes of point (d) of the first subparagraph, the Commission shall recover amounts due preferably by offsetting as set out in Article 87.

2. Where budget implementation tasks are entrusted to an entity implementing a multi-donor action, the procedures referred to in points (b) and (c) of Article 60(6) of the Financial Regulation shall consist in verifying that an amount corresponding to that paid by the Commission for the action concerned has been used by the entity for the action and that the expenditure has been incurred in accordance with the obligations laid down in the agreement signed with the entity.

For the purpose of this Regulation, multi-donor action shall mean any action where Union funds are pooled with at least one other donor.

FR

Article 61

Ex ante assessments and delegation agreements

1. Before the Commission entrusts tasks of budget implementation to entities or persons pursuant to point (c) of Article 58(1), it shall obtain evidence that the requirements set out in points (a) to (d) of the first subparagraph of Article 60(2) are being fulfilled.

Where substantial changes are made to the systems or rules of an entity or person entrusted pursuant to point (c) of Article 58(1), or to the procedures that relate to the management

entrusted to that entity or person of Union funds, the entity or person concerned shall inform the Commission thereof without delay. The Commission shall review the delegation agreements concluded with the entity or person concerned in order to ensure continued fulfilment of the requirements set out in points (a) to (d) of the first subparagraph of Article 60(2).

2. Unless the entrusted entity is identified in the basic act, the Commission shall select an entity from one of the categories listed in points (ii), (v), (vi) and (vii) of Article 58(1)(c) taking due account of the nature of the tasks to be entrusted to the entity, as well as the experience and the operational and financial capacity of the entities concerned. The selection shall be transparent, justified on objective grounds and shall not give rise to a conflict of interests.
3. Delegation agreements shall set out the requirements laid down in points (a) to (d) of the first subparagraph of Article 60(2). They shall clearly define the tasks entrusted to the entity and contain an undertaking by the entities or persons concerned to fulfil the obligations laid down in points (e) and (f) of the first subparagraph of Article 60(2), and to refrain from any action which may give rise to a conflict of interests.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the *ex ante* assessment of rules and procedures under indirect management and the content of delegation agreements.

RAP *Article 39*

Ex ante assessment of rules and procedures of the entities and persons in indirect management

(Article 61(1) of the Financial Regulation)

For the purposes of the *ex ante* assessment pursuant to Article 61(1) of the Financial Regulation, the authorising officer responsible may rely on an *ex ante* assessment made by another authorising officer provided that their conclusions are relevant to the specific risks of the tasks to be entrusted, in particular their nature and the amounts involved.

The authorising officer responsible may rely on an *ex ante* assessment made by other donors as far as this assessment was made with regard to conditions equivalent to those for indirect management set out in Article 60 of the Financial Regulation.

Article 40

Content of the agreement entrusting budget implementation tasks to entities and persons

(Articles 61(3) of the Financial Regulation)

Delegation agreements shall include detailed arrangements ensuring the protection of the financial interests of the Union and the transparency of operations carried out. They shall include at least the following:

- (a) a clear definition of the tasks assigned and the limits thereof, concerning in particular the modification of the tasks entrusted, the waiving of debts, the use of funds reimbursed or unused;
- (b) conditions and detailed arrangements for performing the tasks, responsibilities and organising the controls to be carried out, including the evaluation of the programmes;
- (c) conditions for payments of the Union contribution, including the reimbursement of costs incurred in respect of implementation as well as the remuneration of the entrusted entity, together with rules on which supporting documents are required to justify the payments;
- (d) rules on reporting to the Commission on how the tasks are performed, the results expected, irregularities which occurred and the measures taken, the conditions under which payments may be suspended or interrupted as well as the conditions under which performance of the tasks terminates;
- (e) the date, by which individual contracts and agreements which implement the delegation agreement shall be concluded, which shall be commensurate with the nature of the tasks entrusted;
- (f) exclusion rules which allow the entity or person to exclude entities which are in a situation referred to in points (a), (b) and (e) of Article 106(1) and in points (a) and (b) of Article 107 of the Financial Regulation from participating in procurement, grant or prize award procedures or from being awarded procurement contracts, grants or prizes;
- (g) detailed arrangements for Commission scrutiny as well as provisions granting the Commission, OLAF and the Court of Auditors access to the information that is required for them to perform their duties, as well as the power to conduct audits and investigations including on the spot-checks;
- (h) arrangements providing for:
 - (i) an undertaking of the entrusted entity to inform the Commission without delay of any fraud occurring in the management of Union funds and the measures taken;
 - (ii) the designation of a contact point which shall have the appropriate powers to cooperate directly with OLAF in order to facilitate the latter's operational activities;
- (i) conditions governing the use of bank accounts and of the interest yielded as provided for in Article 8(4) of the Financial Regulation;
- (j) provisions guaranteeing the visibility of Union action in relation to the other activities of the body.

FR Article 62 Executive agencies

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

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the exercise of powers delegated to the executive agencies.

2. The director of the executive agency shall implement the corresponding operational appropriations under direct management.

RAP Article 35 *Exercise of powers delegated to executive agencies (Articles 58(1)(a) and 62 of the Financial Regulation)*

1. Decisions to delegate powers to executive agencies shall authorise them, as authorising officers by delegation, to implement appropriations relating to the Union programme the management of which is entrusted to them.
2. The Commission's instrument of delegation shall contain at least the provisions as provided for in points (a) to (d) and (h) of Article 40. It shall be formally accepted in writing by the director on behalf of the executive agency.

FR Article 63 Limits to delegation of powers

1. The Commission shall not entrust tasks relating to implementation of Union funds, including payment and recovery, to external private sector entities or bodies, except in the case referred to in points (v), (vi) and (vii) of Article 58(1)(c), or in specific cases where the payments involved:
 - (i) are to be made to payees determined by the Commission;
 - (ii) are subject to conditions and amounts fixed by the Commission; and
 - (iii) do not involve the exercise of discretion by the entity or body making the payments.
2. The Commission may entrust the following tasks by contract to external private sector entities or bodies that do not have a public service mission: technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgment.

⁽¹⁾ OJ L 11, 16.1.2003, p. 1.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on entrusting tasks to certain external private sector entities or bodies in accordance with the procurement rules set out in Title V of Part One.

RAP *Article 36*
Compliance with the procurement rules
(Article 63 of the Financial Regulation)

Where the Commission entrusts tasks to private bodies under Article 63(2) of the Financial Regulation, it shall conclude a contract in accordance with Title V of Part One and Part Two Title IV Chapter III of the Financial Regulation.

CHAPTER 3
Financial actors

SECTION 1
 PRINCIPLE OF SEGREGATION OF DUTIES

FR **Article 64**
Segregation of duties

1. The duties of authorising officer and accounting officer shall be segregated and mutually exclusive.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the rights and obligations of all financial actors.

RAP *Article 45*
Rights and obligations of the financial actors
(Article 64 of the Financial Regulation)

1. Each institution shall provide each financial actor with the resources required to perform his duties and a charter describing in detail his tasks, rights and obligations.
2. Heads of Union Delegations acting as authorising officers by subdelegation in accordance with Article 56(2) of the Financial Regulation shall be subject to the charter provided by the Commission for the implementation of the financial management tasks subdelegated to them.

SECTION 2
AUTHORISING OFFICER

FR **Article 65**
The authorising officer

1. Each institution shall perform the duties of authorising officer.
2. For the purposes of this Title, the term 'staff' refers to persons covered by the Staff Regulations.
3. Each institution shall delegate, in compliance with the conditions in its rules of procedure, the duties of authorising officer to staff of an appropriate level. It shall indicate, in its internal administrative rules, the staff to whom it delegates those duties, the scope of the powers delegated and whether the persons to whom those powers are delegated may subdelegate them.
4. The powers of authorising officer shall be delegated or subdelegated only to staff.
5. Authorising officers responsible shall act within the limits set by the instrument of delegation or subdelegation. The authorising officer responsible may be assisted by one or more members of staff entrusted, under his or her responsibility, with carrying out certain operations necessary for implementing the budget and presenting the accounts.
6. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with Article 56(2), they shall be subject to the Commission as the institution responsible for the definition, exercise, monitoring and appraisal of their duties and responsibilities as authorising officers by subdelegation. The Commission shall, at the same time, inform the High Representative thereof.
7. The authorising officer responsible may be assisted by staff entrusted, under his or her responsibility, with certain tasks required for the implementation of the budget and production of the financial and management information. Staff assisting authorising officers responsible shall be subject to Article 57.
8. Each institution shall inform the Court of Auditors, the European Parliament and the Council of the appointment and release of authorising officers by delegation, internal auditors and accounting officers, and of any internal rules it adopts in respect of financial matters.
9. Each institution shall inform the Court of Auditors of the appointment of imprest administrators and of delegation decisions under Article 69(1) and Article 70.
10. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the assistance provided to authorising officers responsible and the internal provisions governing delegations.

RAP *Article 46**Assistance for authorising officers by delegation and subdelegation
(Article 65 of the Financial Regulation)*

The authorising officer responsible may be assisted in his duties by 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 subdelegation shall be subject to the obligations referred to in Article 57 of the Financial Regulation.

Heads of Union Delegations acting as authorising officers by subdelegation in accordance with the second paragraph of Article 56(2) of the Financial Regulation may be assisted in their duties by staff of the Commission.

*Article 47**Internal provisions governing delegations
(Article 65 of the Financial Regulation)*

In accordance with the Financial Regulation and this Regulation, each institution 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.

Heads of Union Delegations acting as authorising officers by subdelegation in accordance with the second paragraph of Article 56(2) of the Financial Regulation shall be subject to the internal rules of the Commission for the implementation of the financial management tasks subdelegated to them.

FR **Article 66****Powers and duties of the authorising officer**

1. The authorising officer shall be responsible in each institution for implementing revenue and expenditure in accordance with the principle of sound financial management and for ensuring compliance with the requirements of legality and regularity.
2. For the purposes of paragraph 1, the authorising officer by delegation shall, in accordance with Article 32 and the minimum standards adopted by each institution and having due regard to the risks associated with the management environment and the nature of the actions financed, put in place the organisational structure and the internal control systems suited to the performance of his or her duties. The establishment of such structure and systems shall be supported by a comprehensive risk analysis, which takes into account their cost-effectiveness.
3. To implement expenditure, the authorising officer responsible shall make budgetary and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminary steps for the implementation of appropriations.

4. Implementation of revenue shall comprise drawing up estimates of amounts receivable, establishing entitlements to be recovered and issuing recovery orders. It shall involve waiving established entitlements, where appropriate.
5. Each operation shall be subject at least to an *ex ante* control, based on a desk review of documents and on the available results of controls already carried out, relating to the operational and financial aspects of the operation.

Ex ante controls shall comprise the initiation and the verification of an operation.

For a given transaction, the verification shall be carried out by staff other than those who initiated the operation. The staff who carry out the verification shall not be subordinate to the members of staff who initiated the operation.

6. The authorising officer by delegation may put in place *ex post* controls to verify operations already approved following *ex ante* controls. Such controls may be organised on a sample basis according to risk.

The *ex ante* controls shall be carried out by staff other than those responsible for the *ex post* controls. The staff responsible for the *ex post* controls shall not be subordinate to the members of staff responsible for the *ex ante* controls.

Where the authorising officer by delegation implements financial audits of beneficiaries as *ex post* controls, the related audit rules shall be clear, consistent and transparent, and shall respect the rights of both the Commission and the auditees.

7. Staff responsible for controlling the management of financial operations shall have the necessary professional skills. They shall respect a specific code of professional standards established by each institution.
8. If a member of staff, involved in the financial management and control of transactions, considers that a decision he or she is required by his or her superior to apply or to agree to is irregular or contrary to the principle of sound financial management or the professional rules which that member of staff is required to observe, he or she shall inform his or her hierarchical superior accordingly. If the member of staff does so in writing, the hierarchical superior shall reply in writing. If the hierarchical superior fails to take action or confirms the initial decision or instruction and the member of staff believes that such confirmation does not constitute a reasonable response to his or her concern, the member of staff shall inform the authorising officer by delegation in writing. If that officer fails to take action, the member of staff shall inform the relevant panel referred to in Article 73(6).

In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, the member of staff shall inform the authorities and bodies designated by the applicable legislation. Contracts with external auditors carrying out audits of the financial management of the Union shall provide for an obligation of the external auditor to inform the authorising officer by delegation of any suspected illegal activity, fraud or corruption which may harm the interests of the Union.

9. The authorising officer by delegation shall report to his or her institution on the performance of his or her duties in the form of an annual activity report containing financial and

management information, including the results of controls, declaring that, except as otherwise specified in any reservations related to defined areas of revenue and expenditure, he or she has reasonable assurance that:

- (a) the information contained in the report presents a true and fair view;
- (b) the resources assigned to the activities described in the report have been used for their intended purpose and in accordance with the principle of sound financial management;
- (c) the control procedures put in place give the necessary guarantees concerning the legality and regularity of the underlying transactions.

The activity report shall indicate the results of the operations by reference to the objectives set, the risks associated with those operations, the use made of the resources provided and the efficiency and effectiveness of internal control systems, including an overall assessment of the costs and benefits of controls.

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

10. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on *ex ante* and *ex post* controls, the keeping of supporting documents, on the code of professional standards, the failure of the authorising officer to act, transmission of information to the accounting officer, and reports on negotiated procedures.

RAP Article 48

Keeping of supporting documents by authorising officers (Article 66(2) of the Financial Regulation)

The authorising officer shall set up paper based or electronic systems for the keeping of original supporting documents relating to and subsequent to budget implementation and budget implementation measures. The systems 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;
- (e) keeping of documents relating to pre-financing guarantees for the institution and of a log to enable such guarantees to be adequately monitored.

Documents relating to operations not definitively closed shall be kept for longer than provided for in point (d) of the first paragraph, 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. Article 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data.

Article 49

Ex ante and ex post controls

(Article 66(5) and (6) of the Financial Regulation)

1. Initiation of an operation shall be understood as all the operations which are normally carried out by the staff referred to in Article 46 and which are preparatory to the adoption of the acts implementing the budget by the authorising officer responsible.
2. *Ex ante* verification of an operation shall be understood as all the *ex ante* checks put in place by the authorising officer responsible in order to verify its operational and financial aspects.
3. *Ex ante* controls shall verify the coherence among supporting documents requested and any other information available.

The extent in terms of frequency and intensity of the *ex ante* controls shall be determined by the authorising officer responsible taking into account risk-based and cost-effectiveness considerations. In case of doubt, the authorising officer responsible for validating the relevant payment shall request complementary information or perform an on-the-spot control in order to obtain reasonable assurance as part of the *ex ante* control.

The purpose of the *ex ante* controls 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 Part One of the Financial Regulation is applied.

For the purpose of controls, 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.

4. The *ex post* controls may be carried out on the basis of documents and, where appropriate, on the spot.

The *ex post* controls shall verify that operations financed by the budget are correctly implemented and in particular that the criteria referred to in paragraph 3 are complied with.

The outcomes of *ex post* controls shall be reviewed by the authorising officer by delegation at least annually to identify any potential systemic issues. The authorising officer by delegation shall take measures to address those issues.

The risk analysis referred to in Article 66(6) of the Financial Regulation shall be reviewed in the light of the results of controls and other relevant information.

In case of multiannual programmes, the authorising officer by delegation shall establish a multiannual control strategy, specifying the nature and extent of controls over the period and the manner how the results are to be measured year-on-year for the annual assurance process.

Article 50

Code of professional standards

(Articles 66(7) and 73(5) of the Financial Regulation)

1. The staff designated by the authorising officer responsible to verify financial operations shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.
2. Each institution 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 continuous 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. Heads of Union Delegations acting as authorising officers by subdelegation in accordance with the second paragraph of Article 56(2) of the Financial Regulation shall be subject to the Commission code of professional standards referred to in paragraph 2 of this Article for the implementation of the financial management tasks subdelegated to them.
4. Each institution 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 51**Failure of the authorising officer by delegation to take action
(Article 66(8) of the Financial Regulation)*

Failure by the authorising officer by delegation to take action, as referred to in Article 66(8) of the Financial Regulation, shall mean the absence of any reply within a reasonable time given the circumstances of the case and, in any event, within a month at most.

*Article 52**Transmission of financial and management information to the accounting officer
(Article 66 of the Financial Regulation)*

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

The accounting officer shall be informed, regularly and at least for the closure of the accounts, by the authorising officer of the relevant financial data of the fiduciary bank accounts in order to allow the use of Union funds to be reflected in the accounts of the Union.

*Article 53**Report on negotiated procedures
(Article 66 of the Financial Regulation)*

Authorising officers by delegation shall record, for each financial year, contracts concluded by the negotiated procedures referred to in points (a) to (g) of Article 134(1), points (a) to (d) of Article 135(1) and Articles 266, 268 and 270 of this Regulation. If the proportion of negotiated procedures in relation to the number of contracts awarded by the same authorising officer by delegation increases appreciably in relation to earlier years or if that proportion is distinctly higher than the average recorded for the institution, the authorising officer responsible shall report to the institution setting out any measures taken to reverse that trend. Each institution shall send a report on negotiated procedures to the European Parliament and Council. In the case of the Commission, that report shall be annexed to the summary of the annual activity reports referred to in Article 66(9) of the Financial Regulation.

*Article 74**Bodies responsible in matters of fraud
(Articles 66(8) and 72(2) of the Financial Regulation)*

The authorities and bodies referred to in Articles 66(8) and 72(2) of the Financial Regulation shall be understood as the bodies designated in the Staff Regulations and the decisions of the Union 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 Union's interests.

Article 75

Financial irregularities

(Articles 66(7) and 73(6) of the Financial Regulation)

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 Regulation 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 76

Financial Irregularities Panel

(Articles 66(7) and 73(6) of the Financial Regulation)

1. Cases of financial irregularities as referred to in Article 75 of this Regulation shall be referred to the Panel by the appointing authority for an opinion referred to in the second subparagraph of Article 73(6) of the Financial Regulation.

Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with Article 56(2) of the Financial Regulation, the responsible authorising officer may refer directly to the Panel for an opinion on cases of financial irregularities as referred to in Article 75 of this Regulation.

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 75 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 66(8) of the Financial Regulation, 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. The institution or, in the case of a joint Panel, the participating institutions 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.

Powers and duties of Heads of Union Delegations

1. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with Article 56(2), they shall cooperate closely with the Commission with regard to the proper implementation of the funds, in order to ensure, in particular, the legality and regularity of financial transactions, respect for the principle of sound financial management in the management of the funds and the effective protection of the financial interests of the Union.

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

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

2. If Heads of Union Delegations find themselves in a situation as referred to in Article 66(8), they shall refer the matter to the specialised financial irregularities panel set up pursuant to Article 73(6). In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, they shall inform the authorities and bodies designated by the applicable legislation.
3. Heads of Union Delegations acting as authorising officers by subdelegation in accordance with Article 56(2) shall report to their authorising officer by delegation so that the latter can integrate their reports in his or her annual activity report referred to in Article 66(9). The reports of the Heads of Union Delegations shall include information on the efficiency and effectiveness of internal control systems put in place in their delegation, as well as on the management of operations subdelegated to them, and provide the assurance referred to in the third subparagraph of Article 73(5). Those reports shall be annexed to the annual activity report of the authorising officer by delegation, and shall be made available to the European Parliament and the Council having due regard, where appropriate, to their confidentiality.

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

4. Heads of Union Delegations acting as authorising officers by subdelegation in accordance with Article 56(2) shall reply to any request by the Commission's authorising officer by delegation at the Commission's own request or, in the context of discharge, at the request of the European Parliament.
5. The Commission shall ensure that subdelegating powers are not detrimental to the discharge procedure under Article 319 TFEU.

SECTION 3 ACCOUNTING OFFICER

FR Article 68 **Powers and duties of the accounting officer**

1. Each institution shall appoint an accounting officer who shall be responsible in each institution for the following:
 - (a) properly implementing payments, collecting revenue and recovering amounts established as being receivable;
 - (b) preparing and presenting the accounts in accordance with Title IX of Part One;
 - (c) keeping the accounts in accordance with Title IX of Part One;
 - (d) laying down the accounting procedures and the chart of accounts, in accordance with Title IX of Part One;
 - (e) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information; in this respect, the accounting officer shall be empowered to verify at any time compliance with validation criteria;
 - (f) treasury management.

The responsibilities of the accounting officer of the EEAS shall concern only the EEAS section of the budget as implemented by the EEAS. The accounting officer of the Commission shall remain responsible for the entire Commission section of the budget, including accounting operations relating to appropriations subdelegated to Heads of Union Delegations.

The accounting officer of the Commission shall, subject to Article 213, also act as the accounting officer of the EEAS in respect of the implementation of the EEAS section of the budget.

2. The accounting officer of the Commission shall be responsible for laying down the accounting rules and the harmonised charts of accounts in accordance with Title IX of Part One.
3. The accounting officers shall obtain from authorising officers all the information necessary for the production of accounts which give a true and fair view of the institutions' financial situation and of budgetary implementation. The authorising officers shall guarantee the reliability of that information.
4. Before the adoption of the accounts by the institution, or body referred to in Article 208, the accounting officer shall sign them off, thereby certifying that he or she has reasonable assurance that the accounts present a true and fair view of the financial situation of the institution or body referred to in Article 208.

For that purpose, the accounting officer shall verify that the accounts have been prepared in accordance with the accounting rules, referred to in Article 143, and the accounting procedures, referred to in point (d) of paragraph 1 of this Article, and that all revenue and expenditure is entered in the accounts.

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

The authorising officers shall remain fully responsible for the proper use of the funds they manage, the legality and regularity of the expenditure under their control and the completeness and accuracy of the information forwarded to the accounting officer.

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

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

6. Except as otherwise provided for in this Regulation, only the accounting officer shall be empowered to manage cash and cash equivalents. The accounting officer shall be responsible for their safekeeping.
7. Within the implementation of a programme or an action, fiduciary accounts may be opened in the name of the Commission and on its behalf in order to allow their management by an entity entrusted pursuant to points (ii), (iii), (v) or (vi) of Article 58(1)(c).

Such accounts shall be opened under the responsibility of the authorising officer in charge of the implementation of the programme or action in agreement with the accounting officer of the Commission.

Such accounts shall be managed under the responsibility of the authorising officer.

8. The accounting officer of the Commission shall lay down rules for the opening, management and closure of fiduciary accounts and their use.
9. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the powers and duties of the accounting officer, including his or her appointment and termination of duties, his or her opinion on accounting and inventory systems, treasury and bank account management, signatures on accounts, management of account balances, transfer and conversion operations, methods of payment, legal entity files and the keeping of supporting documents.

RAP *Article 54*
Appointment of the accounting officer
(Article 68 of the Financial Regulation)

1. Each institution shall appoint an accounting officer from officials subject to the Staff Regulations of Officials of the European Union.

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

2. Two or more institutions or bodies may appoint the same accounting officer.

In such case, they shall make the necessary arrangements in order to avoid any conflict of interest.

Article 55***Termination of duties of the accounting officer
(Article 68 of the Financial Regulation)***

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 it 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. Each institution or body referred to in Article 208 of the Financial Regulation shall inform the European Parliament, the Council and the accounting officer of the Commission within two weeks of the appointment or termination of duties of its accounting officer.

Article 56***Validation of accounting and inventory systems
(Article 68 of the Financial Regulation)***

The responsible authorising officer shall notify the accounting officer of all developments or significant modifications of a financial management system, an inventory system or a system for the valuation of assets and liabilities, if it provides data for the accounts of the institution or is used to substantiate data thereof, so that the accounting officer can verify compliance with the validation criteria.

At any time, the accounting officer may reexamine a financial management system already validated. Where a financial management system set up by the authorising officer is not or is no longer validated by the accounting officer, the responsible authorising officer shall establish an action plan in order to correct, in due time, weaknesses for which the validation has been rejected.

The responsible authorising officer shall be responsible for the completeness of information transmitted to the accounting officer.

Article 57***Treasury management
(Article 68 of the Financial Regulation)***

1. The accounting officer shall ensure that his institution 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.
3. The accounting officer of the Commission shall divide up the funds available in accordance with Regulation (EC, Euratom) No 1150/2000.

Article 58

Management of bank accounts

(Article 68 of the Financial Regulation)

1. For the requirements of treasury management, the accounting officer may open accounts in the name of the institution with financial institutions or national central banks or cause such accounts to be opened. In duly warranted circumstances, the accounting officer may open accounts in currencies other than the euro.
2. The accounting officer shall be responsible for closing accounts referred to in the paragraph 1 or for ensuring that such accounts are closed.
3. The accounting officer shall set the operating terms for accounts referred to in paragraph 1 with financial institutions, in accordance with the principles of sound financial management, efficiency and competitive tendering.
4. At least every five years the accounting officer shall relaunch competitive tendering between financial institutions with which accounts could be opened in accordance with paragraph 1.

Where local banking conditions allow for it, imprest related bank accounts opened with financial institutions located outside the Union shall be regularly subject to a competitive survey. Such a survey shall be undertaken, at least every five years, at the initiative of the imprest account holder, who then shall submit to the accounting officer a substantiated proposal for the selection of a bank for a period not exceeding five years.

5. The accounting officer shall ensure strict compliance with the operating terms for accounts opened with financial institutions in accordance with paragraph 1.

For imprest related bank accounts opened with financial institutions located outside the Union, the imprest account holder shall assume this responsibility taking into account the applicable legislation in the country where that holder exercises his mandate.

6. The accounting officer of the Commission shall inform the accounting officers of the other institutions and of the bodies referred to in Article 208 of the Financial Regulation, on the operating terms of accounts opened with financial institutions. The accounting officers of the other institutions and of the bodies referred to in Article 208 of the Financial Regulation shall harmonise, with those operating terms, the operating terms of the accounts they open.

Article 59***Signatures on accounts******(Article 68 of the Financial Regulation)***

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. Manual instructions shall be signed by at least two duly authorised members of staff, or by the accounting officer in person.

For the purposes of the first subparagraph, the accounting officer of each institution shall communicate to all financial institutions with which the institution concerned has opened accounts the names and specimen signatures of the authorised members of staff.

Article 60***Management of account balances******(Article 68 of the Financial Regulation)***

1. The accounting officer shall ensure that the balance on the bank accounts provided for in Article 58 does not deviate significantly from the cash-flow forecasts referred to in Article 57(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 institution as a result of exchange rate fluctuations.

Article 61***Transfers and conversion operations******(Article 68 of the Financial Regulation)***

Without prejudice to Article 69, the accounting officer shall conduct transfers between accounts opened by him in the name of the institution with financial institutions, and conduct currency conversion operations.

Article 62***Methods of payment******(Article 68 of the Financial Regulation)***

Payments shall be made by bank credit transfer, by cheque or, from imprest accounts by debit card in accordance with Article 67(4).

*Article 63**Legal entities files**(Article 68 of the Financial Regulation)*

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 institution.

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 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 their institution 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.

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

*Article 64**Keeping of supporting documents by the accounting officer**(Article 68 of the Financial Regulation)*

Supporting documents for the accounting system and for the preparation of the accounts referred to in Article 141 of the Financial Regulation 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. Article 37(2) of Regulation (EC) No 45/2001 shall apply to the conservation of traffic data.

Each institution shall decide in which department the supporting documents are to be kept.

FR Article 69
Powers which may be delegated by the accounting officer

1. The accounting officer may, in the performance of his or her duties, delegate certain tasks to subordinate staff.

The instrument of delegation shall set out those tasks.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on persons empowered to administer accounts in a local unit.

RAP Article 65
Persons empowered to administer accounts
(Article 69 of the Financial Regulation)

Each institution shall lay down the conditions in accordance with which the staff it designates and empowers to administer accounts in the local units referred to in Article 72 are authorised to communicate the names and specimen signatures to local financial institutions.

SECTION 4
IMPREST ADMINISTRATOR

FR Article 70
Imprest accounts

1. Imprest accounts may be set up for the collection of revenue other than own resources and for the payment of small sums as defined in the delegated acts adopted pursuant to this Regulation.

However, in the field of crisis management aid and humanitarian aid operations within the meaning of Article 128, imprest accounts may be used without any limitation on the amount, while respecting the level of appropriations decided by the European Parliament and the Council on the corresponding budget line for the current financial year.

2. Imprest accounts shall be endowed by the institution's accounting officer and shall be placed under the responsibility of imprest administrators designated by the institution's accounting officer.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the conditions for imprest accounts, including maximum amounts to be paid by imprest administrators and rules also for external actions, including rules regarding the choice of imprest administrators, the endowment of imprest accounts, checks by authorising and accounting officers and the respect of procurement procedures. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the creation of imprest accounts and imprest administrators in Union delegations.

RAP

*Article 66**Conditions of use of imprest accounts
(Article 70 of the Financial Regulation)*

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 97(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.

4. In Union delegations, imprest accounts shall be set up for the payment of expenditure from both the Commission section of the budget and the European External Action Service (hereinafter 'EEAS') section of the budget, ensuring full traceability of expenditure.

*Article 67**Conditions governing creation and payment
(Article 70 of the Financial Regulation)*

1. The decision setting up an imprest account and appointing an imprest administrator and the decision amending the operating terms for an imprest account shall specify in particular:
 - (a) the maximum amount which 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 institution;
 - (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 60 000 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 budgetary and legal commitments signed by the authorising 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 89 of the Financial Regulation, cheque or other means of payment, including debit cards, 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 68

Choice of imprest administrators

(Article 70 of the Financial Regulation)

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 69

Endowment of imprest accounts

(Article 70 of the Financial Regulation)

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 regularised, in terms of expenditure or miscellaneous or assigned revenue, in accordance with the decision setting up the imprest account referred to in Article 67 and the provisions of the Financial Regulation. The amounts in question shall be deducted by the authorising officer when he subsequently replenishes the imprest accounts concerned.

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

Article 70

Checks by authorising officers and accounting officers

(Article 70 of the Financial Regulation)

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 in 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 im-

prest 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 71

Procurement procedure

(Article 70 of the Financial Regulation)

Payments made from imprest accounts may, within the limits laid down in Article 137(3), consist simply in the payment of costs against invoices, without prior acceptance of a tender.

Article 72

Creation of imprest accounts

(Article 70 of the Financial Regulation)

For the payment of certain categories of expenditure, one or more imprest accounts may be set up in each local unit outside the Union in accordance with Article 70 of the Financial Regulation. A local unit shall be, for instance, a Union delegation, office or branch office in a third country.

The decision setting up such an imprest account shall lay down its operating terms in accordance with Article 70 of the Financial Regulation and on the basis of the specific needs of each local unit.

Article 73

Imprest administrators and persons empowered to administer accounts in the Union delegations

(Article 70 of the Financial Regulation)

In exceptional circumstances and for the purposes of continuity of service, the duties of EEAS imprest administrator in the Union delegations may be performed by staff of the Commission. Under the same conditions, the staff of the EEAS may be designated as imprest administrators for the Commission in the Union delegations.

In Union delegations the rules and conditions laid down in first subparagraph shall apply to the appointment of persons authorised by the accounting officer to carry out banking operations.

CHAPTER 4

Liability of financial actors

SECTION 1

GENERAL RULES

FR**Article 71****Withdrawal of delegation and suspension of duties given to financial actors**

1. Authorising officers responsible may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.
2. The accounting officer or imprest administrators, or both, may at any time be suspended temporarily or definitively from their duties by the authority which appointed them.
3. This Article shall be without prejudice to any disciplinary action taken in respect of the financial actors referred to in paragraphs 1 and 2.

FR**Article 72****Liability of the authorising officer for illegal activity, fraud or corruption**

1. This Chapter is without prejudice to any liability under criminal law which the financial actors referred to in Article 71 may incur as provided for in applicable national law and in the provisions in force concerning the protection of the Union's financial interests and the fight against corruption involving Union officials or officials of Member States.
2. Without prejudice to Articles 73, 74 and 75 of this Regulation, each authorising officer responsible, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations. In the event of illegal activity, fraud or corruption which may harm the interests of the Union, the matter shall be submitted to the authorities and bodies designated by the applicable legislation, in particular to OLAF.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the liability of the authorising officers, the accounting officers and the imprest administrators in the event of illegal activity, fraud or corruption.

RAP*Article 74**Bodies responsible in matters of fraud**(Articles 66(8) and 72(2) of the Financial Regulation)*

The authorities and bodies referred to in Articles 66(8) and 72(2) of the Financial Regulation shall be understood as the bodies designated in the Staff Regulations and the decisions of the Union 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 Union's interests.

SECTION 2**RULES APPLICABLE TO AUTHORISING OFFICERS RESPONSIBLE****FR****Article 73****Rules applicable to authorising officers**

1. The authorising officer responsible shall be liable for payment of compensation as laid down in the Staff Regulations.
2. The obligation to pay compensation shall apply in particular if the authorising officer responsible, whether intentionally or through gross negligence on his or her part:
 - (a) determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation or the delegated acts adopted pursuant to this Regulation;
 - (b) omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the institution liable to civil action by third parties.
3. An authorising officer by delegation or subdelegation who considers that a decision, which is his or her responsibility to take, is irregular or contrary to the principle of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to take that decision, that authorising officer shall not be held liable.
4. In the event of subdelegation within his or her service, the authorising officer by delegation shall continue to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by subdelegation.
5. In the event of subdelegation to the Heads of Union Delegations, the authorising officer by delegation shall be responsible for the definition of the internal management and control systems put in place, as well as their efficiency and effectiveness. The Heads of Union Delegations shall be responsible for the adequate setting up and functioning of those systems, in accordance with the instructions of the authorising officer by delegation, and for the management of the funds and the operations they carry out within the Union delegation under their responsibility. Before taking up their duties, they shall complete specific training courses on the tasks and responsibilities of authorising officers and the implementation of the budget.

Heads of Union Delegations shall report on their responsibilities pursuant to the first subparagraph of this paragraph in accordance with Article 67(3).

Each year, Heads of Union Delegations shall provide to the Commission's authorising officer by delegation assurance on the internal management and control systems put in place in their delegation, as well as on the management of operations subdelegated to them, and the results thereof, in order to allow the authorising officer to make the statement of assurance provided for in Article 66(9).

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

On the basis of the opinion of this panel, the institution shall decide whether to initiate proceedings for disciplinary action or payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer and to the authorising officer by delegation, unless the latter is the person involved, as well as to the internal auditor.

7. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with Article 56(2), the specialised financial irregularities panel set up by the Commission pursuant to paragraph 6 of this Article shall be competent for cases referred to in Article 56(2).

If the panel detects systemic problems, it shall send a report with recommendations to the authorising officer, the High Representative and the Commission's authorising officer by delegation, unless the latter is the person involved, as well as to the internal auditor.

On the basis of the opinion of the panel, the Commission may request the High Representative to initiate, in the High Representative's capacity as appointing authority, proceedings for disciplinary action or payment of compensation against authorising officers by subdelegation if irregularities concern the competences of the Commission subdelegated to them. In such a case, the High Representative shall take appropriate action in accordance with the Staff Regulations in order to enforce decisions on disciplinary action or the payment of compensation, as recommended by the Commission.

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

8. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules applicable to authorising officers by delegation, including confirmation of instructions and the role of the financial irregularities panel.

RAP *Article 50*

Code of professional standards

(Articles 66(7) and 73(5) of the Financial Regulation)

1. The staff designated by the authorising officer responsible to verify financial operations shall be chosen on the grounds of their knowledge, skills and particular qualifications as evidenced by diplomas or by appropriate professional experience, or after an appropriate training programme.
2. Each institution 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 continuous 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. Heads of Union Delegations acting as authorising officers by subdelegation in accordance with the second paragraph of Article 56(2) of the Financial Regulation shall be subject to the Commission code of professional standards referred to in paragraph 2 of this Article for the implementation of the financial management tasks subdelegated to them.
4. Each institution 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 75

Financial irregularities

(Articles 66(7) and 73(6) of the Financial Regulation)

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 Regulation 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 76

Financial Irregularities Panel

(Articles 66(7) and 73(6) of the Financial Regulation)

1. Cases of financial irregularities as referred to in Article 75 of this Regulation shall be referred to the Panel by the appointing authority for an opinion referred to in the second subparagraph of Article 73(6) of the Financial Regulation.

Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with Article 56(2) of the Financial Regulation, the responsible authorising officer may refer directly to the Panel for an opinion on cases of financial irregularities as referred to in Article 75 of this Regulation.

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 75 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 66(8) of the Financial Regulation, 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. The institution or, in the case of a joint Panel, the participating institutions 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.

Article 77

Confirmation of instructions

(Article 73(3) of the Financial Regulation)

1. An authorising officer by delegation or subdelegation 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 subdelegation. If the 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 subdelegation 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.

Any instructions confirmed in the circumstances described in Article 73(3) of the Financial Regulation shall be recorded by the authorising officer by delegation responsible and mentioned in his annual activity report.

SECTION 3

RULES APPLICABLE TO ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS

FR

Article 74

Rules applicable to accounting officers

1. An accounting officer shall be liable to disciplinary action and payment of compensation, as laid down in, and in accordance with, the procedures in the Staff Regulations. An accounting officer may, in particular, become liable as a result of any of the following forms of misconduct on his or her part:
 - (a) losing or damaging funds, assets or documents in his or her keeping;

- (b) wrongly altering bank accounts or postal giro accounts;
 - (c) recovering or paying amounts which are not in conformity with the corresponding recovery or payment orders;
 - (d) failing to collect revenue due.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the liability of accounting officers in the event of other forms of misconduct.

FR **Article 75**
Rules applicable to imprest administrators

1. An imprest administrator officer shall be liable to disciplinary action and payment of compensation, as laid down in, and in accordance with, the procedures in the Staff Regulations. An imprest administrator may in particular become liable as a result of any of the following forms of misconduct on his or her part:
 - (a) losing or damaging funds, assets or documents in his or her keeping;
 - (b) not providing proper supporting documents for the payments he or she has made;
 - (c) making payments to persons other than those entitled to such payments;
 - (d) failing to collect revenue due.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the liability of imprest administrators in the event of other forms of misconduct.

CHAPTER 5
Revenue operations

SECTION 1
MAKING OWN RESOURCES AVAILABLE

FR **Article 76**
Own resources

1. An estimate of revenue constituted by own resources, as referred to in Decision 2007/436/EC, Euratom, shall be entered in the budget in euros. It shall be made available in accordance with Regulation (EC, Euratom) No 1150/2000.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules applicable to own resources.

RAP *Article 78*
Rules applying to own resources
(Article 76 of the Financial Regulation)

The authorising officer shall draw up a schedule indicating when the own resources defined in the Decision on the system of the Union's own resources will be made available to the Commission.

Own resources shall be established and recovered in accordance with the rules adopted pursuant to the Decision referred to in the first paragraph.

SECTION 2
ESTIMATE OF AMOUNTS RECEIVABLE

FR **Article 77**
Estimate of amounts receivable

1. When the authorising officer responsible has sufficient and reliable information in respect of any measure or situation which may give rise to an amount owing to the Union, the authorising officer responsible shall make an estimate of the amount receivable.
2. The estimate of the amount receivable shall be adjusted by the authorising officer responsible as soon as he or she is aware of an event modifying the measure or the situation which gave rise to the estimate being made.

When establishing the recovery order on a measure or situation that had previously given rise to an estimate of amounts receivable, that estimate shall be adjusted accordingly by the authorising officer responsible.

If the recovery order is drawn up for the same amount as the original estimate of amounts receivable, that estimate shall be reduced to zero.

3. By way of derogation from paragraph 1, no estimate of the amount receivable shall be made before Member States make available to the Commission the amounts of own resources defined in Decision 2007/436/EC, Euratom, which are paid at fixed intervals by the Member States. The authorising officer responsible shall issue a recovery order in respect of those amounts.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the estimate of amounts receivable.

RAP *Article 79**Estimate of amounts receivable
(Article 77 of the Financial Regulation)*

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

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

- (a) the revenue is booked to the correct budget item;
 - (b) the estimate is in order and complies with the provisions applicable and the principle of sound financial management.
2. Subject to Articles 181(2) and 183(2) of the Financial Regulation and Article 7(2) of this Regulation, an estimate of amounts receivable shall not have the effect of making commitment appropriations available. In the cases referred to in Article 21 of the Financial Regulation, appropriations may be made available only after the sums due have actually been recovered by the Union.

SECTION 3**ESTABLISHMENT OF AMOUNTS RECEIVABLE****FR****Article 78
Establishment of amounts receivable**

1. The establishment of an amount receivable is the act by which the authorising officer responsible:
 - (a) verifies that the debt exists;
 - (b) determines or verifies the reality and the amount of the debt;
 - (c) verifies the conditions according to which the debt is due.
2. The own resources made available to the Commission and any amount receivable that is identified as being certain, of a fixed amount and due shall be established by a recovery order to the accounting officer followed by a debit note sent to the debtor, both drawn up by the authorising officer responsible.
3. Amounts wrongly paid shall be recovered.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the establishment of amounts receivable, including procedures and supporting documents, and of default interest.

RAP *Article 80*
Procedure
(Article 78 of the Financial Regulation)

1. The establishment by the authorising officer responsible of an amount receivable shall constitute recognition of the right of the Union 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 Union has established the amount receivable;
 - (b) if payment of the debt is made before the deadline, no default interest will be due;
 - (c) failing reimbursement by the deadline referred to in point (b) the debt shall bear interest at the rate referred to in Article 83, without any prejudice to any specific regulations applicable;
 - (d) failing reimbursement by the deadline referred to in point (b) the institution 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 Union's financial interests when he has justified grounds to believe that the amount due to the Commission would be lost, after the debtor has been informed of the reasons and date of the recovery by offsetting;
 - (f) if, after taking all the steps set out in points (a) to (e) of this subparagraph, the amount has not been recovered in full, the institution shall effect recovery by enforcement of a decision secured either in accordance with Article 79(2) of the Financial Regulation or by legal action.

The Authorising officer shall print out the debit note and send it to the debtor. The accounting officer shall be informed of that dispatch through the financial information system.

Article 81
Establishment of amounts receivable
(Article 78 of the Financial Regulation)

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

- (a) the receivable is certain, meaning that it is 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 91(1).

Article 82

Supporting documents for the establishment of amounts receivable (Article 78 of the Financial Regulation)

1. The establishment of an amount receivable shall be based on supporting documents certifying the Union's 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 Article 48.

Article 83

Default interest (Article 78 of the Financial Regulation)

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 80(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 80(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) eight 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 80(3)(b) and specified in the debit note up to the calendar day on which the debt is repaid in full.

The recovery order corresponding to the amount of the default interest shall be issued when this interest is actually received.

4. In the case of fines, where the debtor provides a financial guarantee which is accepted by the accounting officer instead of payment, the interest rate applicable from the deadline referred to in Article 80(3)(b) shall be the rate referred to in paragraph 2 of this Article as in force on the first day of the month in which the decision imposing a fine has been adopted and increased only by one and a half percentage points.

SECTION 4

AUTHORISATION OF RECOVERY

FR

Article 79

Authorisation of recovery

1. The authorisation of recovery is the act by which the authorising officer responsible instructs the accounting officer, by issuing a recovery order, to recover an amount receivable which that authorising officer responsible has established.
2. The institution may formally establish an amount as being receivable from persons other than Member States by means of a decision which shall be enforceable within the meaning of Article 299 TFEU.

If the efficient and timely protection of the Union's financial interests so requires, the Commission may also, in exceptional circumstances, adopt such an enforceable decision for the benefit of other institutions at their request with respect to claims arising in relation to staff to whom the Staff Regulations apply.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the establishment of the recovery order.

RAP

Article 84

Establishment of the recovery order (Article 79 of the Financial Regulation)

1. The recovery order shall specify:
 - (a) the financial year to which the revenue is to be booked;
 - (b) the references of the act or legal commitment which is the source of the debt and gives rise to the entitlement to recovery;
 - (c) the budget article and any other subdivision that may apply, including, where appropriate, the references of the corresponding budget commitment;
 - (d) the amount to be recovered, expressed in euro;

- (e) the name and address of the debtor;
 - (f) the deadline referred to in Article 80(3)(b);
 - (g) the possible method of recovery, including in particular recovery by offsetting or enforcement of any guarantee lodged.
2. The recovery order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.
 3. The accounting officer of each institution shall keep a list of amounts due to be recovered. Union 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.

4. In order to reinforce the protection of the Union's financial interests, the Commission shall establish a list of Union entitlements stating the names of the debtors and the amount of the debt, where the debtor has been ordered to reimburse by a Court decision that has the force of *res judicata* and where no or no significant reimbursement has been made for one year following its pronouncement. The list shall be published, with due regard to the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001.

As far as personal data referring to natural persons are concerned, the information published shall be removed once the amount of the debt has been fully reimbursed. The same shall apply to personal data referring to legal persons for whom the official title identifies one or more natural persons.

The decision to include the debtor on the list of Union entitlements shall be taken in compliance with the principle of proportionality and shall take into account, in particular the significance of the amount.

Article 85

Enforceable decision for the benefit of other institutions (Article 79(2) of the Financial Regulation)

1. The exceptional circumstances referred to in article 79(2) of the Financial Regulation are met when the possibility to have a voluntary payment and to recover the debt by offsetting as provided for in Article 80(1) of the Financial Regulation have been exhausted by the institution concerned and the debt represents a significant amount.
2. In the case referred to in paragraph 1, the institutions concerned other than those mentioned under Article 299 of the TFEU may request the Commission to adopt an enforceable decision.

3. In all cases, the enforceable decision shall specify that the amounts claimed shall be entered in the section of the budget corresponding to the institution concerned, which shall act as Authorising officer. The revenue shall be entered as general revenue except if it falls within the specified cases of assigned revenues as provided for in Article 21(3) of the Financial Regulation.
4. The requesting institution shall inform the Commission of any event likely to alter the recovery and shall intervene in support of the Commission in case of appeal against the enforceable decision.
5. The Commission and the institution concerned shall agree on the practical modalities for the implementation of this Article.

Article 88

***Recovery procedure failing voluntary payment
(Articles 79 and 80 of the Financial Regulation)***

1. Without prejudice to Article 87, if the full amount has not been recovered by the deadline referred to in Article 80(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 87, where the recovery method referred to in paragraph 1 of this Article 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 79(2) of the Financial Regulation or by legal action.

SECTION 5
RECOVERY

FR **Article 80**
Rules on recovery

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

The accounting officer shall recover amounts by offsetting them against equivalent claims that the Union has on any debtor who in turn has a claim on the Union. Such claims shall be certain, of a fixed amount and due.

2. Where the authorising officer by delegation plans to waive or partially waive recovery of an established amount receivable, he or she shall ensure that the waiver is in order and is in accordance with the principles of sound financial management and proportionality. The waiver decision shall be substantiated. The authorising officer may delegate the waiver decision.

The authorising officer by delegation may cancel an established amount receivable in full or in part. The partial cancellation of an established amount receivable does not imply a waiver of an established Union entitlement.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the manner of recovery, including recovery by offsetting, the recovery procedure failing voluntary payment, additional time for payment, recovery of fines and other penalties, waiver of recovery and cancellation of an established amount receivable.

3. The Member States shall in the first instance be responsible for carrying out controls and audits and for recovering amounts unduly spent, as provided for in the sector-specific rules. To the extent that Member States detect and correct irregularities on their own account, they shall be exempt from financial corrections by the Commission concerning those irregularities.
4. The Commission shall make financial corrections on Member States in order to exclude from Union financing expenditure incurred in breach of applicable law. The Commission shall base its financial corrections on the identification of amounts unduly spent, and the financial implications for the budget. Where such amounts cannot be identified precisely, the Commission may apply extrapolated or flat-rate corrections in accordance with the sector-specific rules.

The Commission shall, when deciding on the amount of a financial correction, take account of the nature and gravity of the breach of applicable law and the financial implications for the budget, including the case of deficiencies in management and control systems.

The criteria for establishing financial corrections and the procedure to be applied may be laid down in the sector-specific rules.

5. The methodology for applying extrapolated or flat-rate corrections shall be laid down in accordance with the sector-specific rules with a view to enabling the Commission to protect the financial interests of the Union.

RAP *Article 86*
Collection formalities
(Article 80 of the Financial Regulation)

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.
3. Partial reimbursement by a debtor subject to several recovery orders shall first be posted on the oldest entitlement unless otherwise specified by the debtor.

Any partial payments shall first cover the interest.

*Article 87**Recovery by offsetting**(Article 80 of the Financial Regulation)*

1. Where the debtor has a claim on the Union that is certain as defined in point (a) of Article 81, of a fixed amount and due, relating to a sum established by a payment order, the accounting officer shall, following the deadline referred to in Article 80(3)(b) recover established amounts receivable by offsetting.

In exceptional circumstances, where it is necessary to safeguard the financial interests of the Union, when the accounting officer has justified grounds to believe that the amount due to the Union would be lost, the accounting officer shall recover by offsetting before the deadline referred to in Article 80(3)(b).

The accounting officer shall also recover by offsetting before the deadline referred to in Article 80(3)(b) when the debtor agrees.

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 the deadline has passed.

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

*Article 88**Recovery procedure failing voluntary payment**(Articles 79 and 80 of the Financial Regulation)*

1. Without prejudice to Article 87, if the full amount has not been recovered by the deadline referred to in Article 80(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 87, where the recovery method referred to in paragraph 1 of this Article 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 79(2) of the Financial Regulation or by legal action.

Article 89

Additional time for payment

(Article 80 of the Financial Regulation)

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

- (a) the debtor undertakes to pay interest at the rate specified in Article 83 for the entire additional period allowed, starting from the deadline referred to in Article 80(3)(b);
- (b) in order to safeguard the rights of the Union, the debtor lodges a financial guarantee covering the debt outstanding in both the principal sum and the interest, which is accepted by the institution'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 institution's accounting officer.

In exceptional circumstances, following a request by the debtor, the accounting officer may waive the requirement of a guarantee referred to in point (b) of the first paragraph when, on the basis of his assessment, the debtor is willing and able to make the payment in the additional time period but is not able to lodge such guarantee and is in a distressed situation.

Article 90

Recovery of fines or other penalties

(Articles 80 and 83 of the Financial Regulation)

1. Where an action is brought before the Court of Justice of the European Union against a Commission decision imposing a fine or other penalties under the TFEU or Euratom Treaty and until such time as all legal remedies have been exhausted, the debtor shall either provisionally pay the amounts concerned on the bank account designated by the accounting officer or provide a financial guarantee acceptable to the accounting officer. The guarantee shall be independent of the obligation to pay the fine or penalty payment or other penalties and shall be enforceable upon first call. It shall cover the claim as to principal and the interest due as specified in Article 83(4).
2. The Commission shall secure the provisionally cashed amounts by having them invested in financial assets thus ensuring the security and liquidity of the monies whilst also aiming at yielding a positive return.
3. After the exhaustion of all legal remedies and where the fine or penalty has been confirmed any of the following measures shall be taken:
 - (a) the provisionally collected amounts and the interest and other amounts they have yielded shall be entered into the budget in accordance with Article 83 of the Financial Regulation at the latest during the financial year following the year in which all legal remedies have been exhausted;

- (b) where a financial guarantee has been lodged, the latter shall be enforced and the corresponding amounts entered in the budget;

Where the amount of the fine or of the penalty has been increased by the Court, points (a) and (b) of the first subparagraph shall apply up to the amounts of the decision of the Commission and the accounting officer shall collect the amount corresponding to the increase, which will be entered into the budget.

4. After all legal remedies have been exhausted and where the fine or penalty has been cancelled or reduced any of the following measures shall be taken:
 - (a) the amounts unduly collected together with the interest yielded shall be repaid to the third party concerned. In cases where the overall return yielded for the relevant period has been negative, the nominal value of the amounts unduly collected shall be repaid;
 - (b) where a financial guarantee has been lodged, the latter shall be released accordingly.

Article 91

Waiving of recovery of an established amount receivable

(Article 80 of the Financial Regulation)

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 image of the Union;
 - (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 authorising 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 Union and its 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 80(2) of the Financial Regulation 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 84.
4. The waiving of recovery of an established amount receivable may not be delegated by the institution in any of the following cases:
 - (a) where the amount to be waived is EUR 1 000 000 or more;
 - (b) where the amount to be waived is EUR 100 000 or more, where this represents 25 % or more of the established amount receivable.

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

5. Each institution shall send to the European Parliament and Council each year a report on the waivers referred to in paragraphs 1 to 4 of this Article involving EUR 100 000 or more. In the case of the Commission, that report shall be annexed to the summary of the annual activity reports referred to in Article 66(9) of the Financial Regulation.

Article 92

Cancellation of an established amount receivable (Article 80 of the Financial Regulation)

1. In the event of a mistake, the authorising officer responsible shall cancel totally or partially the established amount receivable in accordance with Articles 82 and 84 and include adequate reasons.
2. Each institution shall lay down in its internal rules the conditions and procedure for delegating the power to cancel an established amount receivable.

FR

Article 81

Limitation period

1. Without prejudice to the provisions of specific regulations and the application of Decision 2007/436/EC, Euratom, entitlements of the Union in respect of third parties and entitlements of third parties in respect of the Union shall be subject to a limitation period of five years.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the limitation period.

RAP *Article 93*
Rules for limitation periods
(Article 81 of the Financial Regulation)

1. The limitation period for entitlements of the Union 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 80(3)(b).

The limitation period for entitlements of third parties in respect of the Union 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 Union 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 Union shall be interrupted by any act notified to the Union by its creditors or on behalf of its 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 89, 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.

FR **Article 82**
National treatment for Union entitlements

In the event of insolvency proceedings, Union entitlements shall be given the same preferential treatment as entitlements of the same nature due to public bodies in the Member States where the recovery proceedings are being conducted.

FR Article 83**Fines, penalties and accrued interest imposed by the Commission**

1. Amounts received by way of fines, penalties and sanctions, and any accrued interest or other income generated by them shall not be recorded as budgetary revenue as long as the decisions imposing them may be overruled by the Court of Justice of the European Union.
2. The amounts referred to in paragraph 1 shall be recorded as budgetary revenue as soon as possible and at the latest in the year following the exhaustion of all legal remedies. Amounts that are to be returned to the entity that paid them, following a judgment of the Court of Justice of the European Union, shall not be recorded as budgetary revenue.
3. Paragraph 1 shall not apply to decisions on clearance of accounts or financial corrections.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the amounts received by way of fines, penalties and accrued interest.

RAP Article 90*Recovery of fines or other penalties**(Articles 80 and 83 of the Financial Regulation)*

1. Where an action is brought before the Court of Justice of the European Union against a Commission decision imposing a fine or other penalties under the TFEU or Euratom Treaty and until such time as all legal remedies have been exhausted, the debtor shall either provisionally pay the amounts concerned on the bank account designated by the accounting officer or provide a financial guarantee acceptable to the accounting officer. The guarantee shall be independent of the obligation to pay the fine or penalty payment or other penalties and shall be enforceable upon first call. It shall cover the claim as to principal and the interest due as specified in Article 83(4).
2. The Commission shall secure the provisionally cashed amounts by having them invested in financial assets thus ensuring the security and liquidity of the monies whilst also aiming at yielding a positive return.
3. After the exhaustion of all legal remedies and where the fine or penalty has been confirmed any of the following measures shall be taken:
 - (a) the provisionally collected amounts and the interest and other amounts they have yielded shall be entered into the budget in accordance with Article 83 of the Financial Regulation at the latest during the financial year following the year in which all legal remedies have been exhausted;
 - (b) where a financial guarantee has been lodged, the latter shall be enforced and the corresponding amounts entered in the budget;

Where the amount of the fine or of the penalty has been increased by the Court, points (a) and (b) of the first subparagraph shall apply up to the amounts of the decision of the Commission and the accounting officer shall collect the amount corresponding to the increase, which will be entered into the budget.

4. After all legal remedies have been exhausted and where the fine or penalty has been cancelled or reduced any of the following measures shall be taken:
 - (a) the amounts unduly collected together with the interest yielded shall be repaid to the third party concerned. In cases where the overall return yielded for the relevant period has been negative, the nominal value of the amounts unduly collected shall be repaid;
 - (b) where a financial guarantee has been lodged, the latter shall be released accordingly.

CHAPTER 6

Expenditure operations

FR Article 84 Financing decisions

1. Every item of expenditure shall be committed, validated, authorised and paid.
2. Except in the case of appropriations which can be implemented without a basic act in accordance with point (e) of the first subparagraph of Article 54(2), the commitment of expenditure shall be preceded by a financing decision adopted by the institution or the authorities to which powers have been delegated by the institution.
3. The financing decision referred to in paragraph 2 shall specify the objective pursued, the expected results, the method of implementation and its total amount. It shall also contain a description of the actions to be financed and an indication of the amount allocated to each action, and an indicative implementation timetable.

In the case of indirect management, the financing decision shall also specify the entity or person entrusted pursuant to point (c) of Article 58(1), the criteria used to select the entity or person and the tasks entrusted to that entity or person.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on financing decisions.

RAP Article 94 *Financing decision* *(Article 84 of the Financial Regulation)*

1. The financing decision shall set out the essential elements of an action involving expenditure from the budget.
2. The financing decision shall in particular 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 eligibility, 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;
 - (c) for trust funds referred to in Article 187 of the Financial Regulation:
 - (i) the reference to the basic act and the budgetary line;
 - (ii) the appropriations reserved to the trust fund for the year together with the amounts planned over its duration;
 - (iii) the objectives of the trust fund and its duration;
 - (iv) the rules of governance of the trust fund;
 - (v) the possibility to entrust budget implementation tasks to the entities and persons referred to in Article 187(2) of the Financial Regulation;
 - (d) for prizes:
 - (i) the reference to the basic act and the budgetary line;
 - (ii) the objectives to be fulfilled and the foreseen results;
 - (iii) the essential conditions for participation and award criteria;
 - (iv) the timetable of the contest and the amount of the prize or prizes;
 - (e) for financial instruments:
 - (i) the reference to the basic act and the budgetary line;
 - (ii) the objectives to be fulfilled and the foreseen results;
 - (iii) the amount allocated to the financial instrument;
 - (iv) the indicative implementation timetable.
3. Where the work programme referred to in Article 128 of the Financial Regulation contains the information set out in point (a) of paragraph 2 of this Article for

the grants financed from appropriations authorised for the financial year, the decision adopting it shall be considered to be the financing decision for those grants.

As regards procurement, trust funds, prizes and financial instruments, where the implementation of the corresponding appropriations authorised for the financial year is provided for by a work programme containing the information referred to in points (b), (c), (d) and (e) of paragraph 2 of this Article, the decision adopting this work programme shall also be considered to be the financing decision for the procurement, trust funds, prizes and financial instruments involved.

If the work programme does not contain such information for one or more actions, it must be modified accordingly or a specific financing decision must be adopted 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

FR Article 85 Types of commitments

1. A budgetary commitment is the operation by which the appropriation necessary to cover subsequent payments to honour legal commitments is reserved.

A legal commitment is the act whereby the authorising officer enters into or establishes an obligation which results in a charge.

Budgetary commitments and legal commitments shall be adopted by the same authorising officer, except in duly justified cases as provided for in the delegated acts adopted pursuant to this Regulation.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the types of commitment, adoption of global commitments, single signature, and administrative expenditure covered by provisional commitments.
3. Budgetary commitments shall fall into one of the following categories:
 - (a) individual: the budgetary commitment is individual when the beneficiary and the amount of the expenditure are known;
 - (b) global: the budgetary commitment is global when at least one of the elements necessary to identify the individual commitment is still not known;

- (c) provisional: the budgetary commitment is provisional when it is intended to cover the expenditure referred to in Article 170 or routine administrative expenditure and either the amount or the final payees are not definitively known.
4. Budgetary commitments for actions extending over more than one financial year may be broken down over several years into annual instalments only where the basic act so provides or where they relate to administrative expenditure.

RAP *Article 95*

*Global and provisional commitments
(Article 85 of the Financial Regulation)*

1. The global budgetary 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 direct financial assistance to third countries, including budget support, which constitute legal commitments may give rise to payments without the conclusion of other legal commitments.
2. The provisional budgetary 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 relating to communication expenditures engaged in by the institutions for the coverage of Union events, directly by payments.

Article 96

*Adoption of a global commitment
(Article 85 of the Financial Regulation)*

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 recipients is taken and, where implementation of the appropriations concerned involves the adoption of a work programme within the meaning of Article 188, 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 97

*Single signature
(Article 85 of the Financial Regulation)*

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

- (a) where the commitments are provisional;
 - (b) where global commitments relate to financing agreements with third countries;
 - (c) where the institution's decision constitutes the legal commitment;
 - (d) where the global commitment is implemented by a number of legal commitments, for which different authorising officers are responsible;
 - (e) where, in connection with imprest accounts available for external action, legal commitments must be signed by members of staff of the local units referred to in Article 72 on the instruction of the authorising officer responsible, who remains, however, fully responsible for the underlying transaction.
 - (f) where an institution has delegated authorising officer powers to the director of an interinstitutional European office pursuant to Article 199(1) of the Financial Regulation.
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 deputisation rules adopted by each institution, provided that that person has the status of authorising officer in accordance with Article 65(3) of the Financial Regulation.

Article 98

*Administrative expenditure covered by provisional commitments
(Article 85 of the Financial Regulation)*

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

- (a) expenditure on staff, whether or not covered by the Staff Regulations, on other human resources and pensions and on the remuneration of experts;
- (b) expenditure relating to members of the institution;
- (c) training expenditure;
- (d) expenditure on competitions, selection and recruitment;
- (e) mission expenses;
- (f) representation expenses;
- (g) meeting expenses;
- (h) freelance interpreters and translators;
- (i) exchanges of officials;

- (j) recurring rentals of movable and immovable property or recurring payments relating to building contracts within the meaning of Article 121 of this Regulation or loan instalments pursuant to Article 203(8) of the Financial Regulation;
- (k) miscellaneous insurance;
- (l) cleaning, maintenance and security;
- (m) welfare and medical expenditure;
- (n) the use of telecommunications services;
- (o) financial charges;
- (p) legal expenses;
- (q) damages, including interest;
- (r) work equipment;
- (s) water, gas and electricity;
- (t) publications on paper or in electronic versions;
- (u) communications activities engaged in by the institutions for the coverage of Union events.

FR Article 86**Rules applicable to commitments**

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible shall make a budgetary commitment before entering into a legal commitment with third parties or transferring funds to a trust fund on the basis of Article 187.
2. The obligation to make a budgetary commitment before entering into a legal commitment as provided for in paragraph 1, shall not be applicable to legal commitments concluded following a declaration of a crisis situation in the framework of a business continuity plan, in accordance with the procedures adopted by the Commission or by any other institution under its administrative autonomy.
3. In the case of humanitarian aid operations, civil protection operations and crisis management aid, the obligation set out in paragraph 1 shall not apply if efficient delivery of the Union's intervention requires that the Union enter into a legal commitment with third parties immediately and prior booking of the individual budgetary commitment is not possible. The booking of the budgetary commitment shall be done without delay after entering into a legal commitment with third parties.
4. Subject to the special provisions of Title IV of Part Two, global budgetary commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year $n + 1$.

Subject to Articles 85(4) and 203(2), individual legal commitments relating to individual or provisional budgetary commitments shall be concluded by 31 December of year n .

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

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

5. The budgetary and legal commitments entered into for actions extending over more than one financial year shall, except in the case of staff expenditure, have a final date for implementation set, in accordance with the principle of sound financial management.

Any parts of such commitments which have not been executed six months after that date shall be decommitted in accordance with Article 15.

The amount of a budgetary commitment corresponding to a legal commitment for which no payment within the meaning of Article 90 has been made within two years of the signing of the legal commitment shall be decommitted, except where that amount relates to a case under litigation before judicial courts or arbitral bodies or where there are special provisions laid down in sector-specific rules.

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on budgetary and legal commitments including registration of individual commitments.

RAP *Article 99*
Registration of individual legal commitments
(Article 86 of the Financial Regulation)

In the case of a global budget commitment followed by one or several individual legal commitments, the authorising officer responsible shall register in the central accounts the amounts of this or these successive individual legal commitments.

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, except in the cases referred to in the fourth subparagraph of Article 86(4) of the Financial Regulation.

In all cases, the authorising officer responsible shall check that the aggregated amount does not exceed the amount of the global commitment covering them.

FR **Article 87**
Checks applicable to commitments

1. When adopting a budgetary commitment, the authorising officer responsible shall ensure that:
 - (a) the expenditure has been charged to the correct item in the budget;
 - (b) the appropriations are available;

- (c) the expenditure is in compliance with the Treaties, the budget, this Regulation, the delegated acts adopted pursuant to this Regulation and all acts adopted pursuant to the Treaties and any other regulation;
 - (d) the principle of sound financial management is respected. The appropriateness of pre-financing payments, their amount and the overall payment schedule shall be commensurate with the planned duration, the progress in implementation and the financial risks that such prefinancing entails.
2. When registering a legal commitment by physical or electronic signature, the authorising officer shall ensure that:
 - (a) the commitment is covered by the corresponding budgetary commitment;
 - (b) the expenditure is regular and in compliance with the Treaties, the budget, this Regulation, the delegated acts adopted pursuant to this Regulation and with all acts adopted pursuant to the Treaties and any other regulation;
 - (c) the principle of sound financial management is respected.
 3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the checks applicable to commitments.

SECTION 2

VALIDATION OF EXPENDITURE

FR

Article 88

Validation of expenditure

1. The validation of expenditure is the act whereby the authorising officer responsible:
 - (a) verifies the existence of the creditor's entitlement;
 - (b) determines or verifies the reality and the amount of the claim;
 - (c) verifies the conditions according to which payment is due.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the establishment of detailed rules on validation of expenditure, including passing for payment of staff expenditure and for interim and balance payments of procurement contracts and grants, certified correct for pre-financing payments, and 'passed for payment' and 'certified correct' forms.

RAP

Article 100

Validation and 'passing for payment' (Article 88 of the Financial Regulation)

1. Validation of any expenditure shall be based on supporting documents within the meaning of Article 110 attesting the creditor's entitlement, on the basis of a state-

ment of services actually rendered, supplies actually delivered or work actually carried out, or on the basis of other documents justifying payment, including recurring payments of subscriptions or training courses.

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.
3. The validation decision shall be expressed by the signing of a 'passed for payment' voucher by the authorising officer responsible or by technically competent member of staff, duly empowered by a formal decision of the authorising officer and under his responsibility in accordance with Article 65(5) of the Financial Regulation. Such empowerment decisions shall be kept for future reference.

Article 101

Certified correct for pre-financing payments

(Article 88 of the Financial Regulation)

For pre-financing payments, the authorising officer responsible or a technically competent member of staff, duly empowered by the authorising officer responsible shall certify with the endorsement 'certified correct' that the conditions required in the legal commitment for the payment of the pre-financing are met.

Article 102

Passing for payment of procurement contracts for interim and balance payments

(Article 88 of the Financial Regulation)

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

- (a) the institution has received and formally registered an invoice drawn up by the contractor;
- (b) the invoice itself, or an internal document accompanying the invoice received, has been endorsed 'certified correct' and signed by the authorising officer responsible or by a technically competent member of staff, 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.

For recurring payments including payment of subscriptions or training courses, the endorsement 'certified correct', shall certify that the entitlement of the creditor is in accordance with relevant documents justifying payment.

Article 103

Passing for payment of grants for interim and balance payments (Article 88 of the Financial Regulation)

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

- (a) the institution has received and formally registered a payment request drawn up by the beneficiary;
- (b) the payment request itself, or an internal document accompanying the cost statement received, has been endorsed 'certified correct' and signed by an official or other servant technically competent, duly empowered by the authorising officer responsible;
- (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.

By endorsement referred to in point (b) of the first paragraph, the official or other servant technically competent, duly empowered by the authorising officer responsible, certifies that the action or work programme carried out by the beneficiary is in all respects in compliance with the grant agreement or decision, including, where applicable that the costs declared by the beneficiary are eligible.

Article 104

Passing for payment of staff expenditure (Article 88 of the Financial Regulation)

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

- (a) in respect of monthly salary:
 - (i) the complete list of staff, giving all the components of remuneration;
 - (ii) a form (personal information sheet) based on decisions taken in each individual case, showing, 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, if the mission expenses differ from the mission order;
- (e) in respect of some other administrative expenditure related to staff including subscriptions or training courses which, according to the contract, are to be paid in advance: the supporting documents referring to the decision on which the expenditure is based and giving all the components of the calculation.

The statement of mission expenses referred to in point (d)(ii) of the first subparagraph shall indicate 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.

Article 105

Material form of 'passed for payment' (Article 88 of the Financial Regulation)

In a non-computerised system, 'passed for payment' shall take the form of a stamp incorporating the signature of the authorising officer responsible or of a technically competent member of staff, duly empowered by the authorising officer responsible in accordance with Article 100. In a computerised system, 'passed for payment' shall take the form of an electronically secured validation by the authorising officer responsible or of a technically competent member of staff, duly empowered by the authorising officer responsible.

Article 106

Material form of 'certified correct' (Article 88 of the Financial Regulation)

In a non-computerised system, 'certified correct' shall take the form of a stamp incorporating the signature of the authorising officer responsible or of a technically competent member of staff, duly empowered by the authorising officer responsible in accordance with Article 101. In a computerised system, 'certified correct' may take the form of an electronically secured validation by the technically competent member of staff, duly empowered by the authorising officer responsible.

SECTION 3 AUTHORISATION OF EXPENDITURE

FR Article 89 Authorisation of expenditure

1. The authorisation of expenditure is the act by which the authorising officer responsible, having verified that the appropriations are available, instructs the accounting officer, by issuing a payment order, to pay an amount of expenditure which the authorising officer responsible has validated.

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

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the authorisation of expenditure, including the establishment of mandatory details for payment orders, and on checks by the authorising officer of payment orders.

RAP Article 107 *Checks on payments by the authorising officer (Article 89 of the Financial Regulation)*

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

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

Article 108 *Mandatory details on payment orders and transmission to the accounting officer (Article 89 of the Financial Regulation)*

1. The payment order shall state:
 - (a) the financial year to which the expenditure is to be booked;
 - (b) the budget article and any other subdivision that may apply;
 - (c) the references of the legal commitment giving rise to an entitlement to payment;
 - (d) the references of the budgetary 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 248.
2. The payment order shall be dated and signed by the authorising officer responsible, then sent to the accounting officer.

SECTION 4 PAYMENT OF EXPENDITURE

FR Article 90 Types of payments

1. Payment shall be made on production of proof that the relevant action is in accordance with the provisions of the basic act or the contract and shall cover one or more of the following operations:
 - (a) payment of the entire amount due;
 - (b) payment of the amount due in any of the following ways:
 - (i) pre-financing, which may be divided into a number of payments after the signature of the delegation agreement, the contract or grant agreement or after notification of the grant decision;
 - (ii) one or more interim payments as a counterpart of a partial execution of the action;
 - (iii) payment of the balance of the amounts due where the action is completely executed.
2. A distinction shall be made in budgetary accounting between the different types of payment referred to in paragraph 1 at the time each payment is made.
3. The accounting rules referred to in Article 152 shall include the rules for clearing the pre-financing in the accounts and for the acknowledgment of the eligibility of costs.
4. Pre-financing payments shall be cleared regularly by the authorising officer responsible, according to the economic nature and the timing of the underlying project.

Where the authorising officer responsible deems it inefficient to request a financial statement from beneficiaries and contractors, he or she shall, for grants or contracts above EUR 5 000 000, obtain information from them on cumulative spending at least once a year.

For the purposes of the second subparagraph, appropriate provisions shall be included in the contracts, grant decisions and agreements as well as in the delegation agreements

This paragraph is without prejudice to the specific rules laid down in Title IV of Part Two.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the types of payments and supporting documents.

RAP *Article 109**Types of payment**(Article 90 of the Financial Regulation)*

1. Pre-financing shall provide a float. It may be split into a number of payments in accordance with sound financial management.
2. An interim payment, which may be repeated, may cover expenditure incurred for the implementation of the decision or agreement or to pay for services, supplies or works completed and/or delivered at interim stages of the contract. 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 which clears all preceding expenditure, or a recovery order.

*Article 110**Supporting documents**(Article 90 of the Financial Regulation)*

1. Pre-financing, including in cases where it is split into a number of payments, shall be paid either on the basis of the contract, the decision, agreement or the basic act, or on the basis of supporting documents which make it possible to check that the terms of the contract, decision or agreement in question are complied with. 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.
2. 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, or in accordance with the terms of the contract or agreement.
3. 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 this Article in accordance with the basic act, decisions, contracts and agreements. Interim and final technical and financial implementation reports, shall constitute supporting documents for the purposes of paragraph 2.
4. The supporting documents shall be kept by the authorising officer responsible in accordance with Article 48.

FR **Article 91****Payment limited to funds available**

Payment of expenditure shall be made by the accounting officer within the limits of the funds available.

SECTION 5
TIME LIMITS FOR EXPENDITURE OPERATIONS

FR **Article 92**
Time limits

1. Payments shall be made within:
 - (a) 90 calendar days for delegation agreements, contracts, grant agreements and decisions involving technical services or actions which are particularly complex to evaluate and for which payment depends on the approval of a report or a certificate;
 - (b) 60 calendar days for all other delegation agreements, contracts, grant agreements and decisions for which payment depends on the approval of a report or a certificate;
 - (c) 30 calendar days for all other delegation agreements, contracts, grant agreements and decisions.
2. The authorising officer responsible may suspend the time limit for payment where:
 - (a) the amount of the payment request is not due; or
 - (b) 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 in a payment request, he or she may suspend the time limit for payment for the purpose of verifying, including by means of on-the-spot checks, that the expenditure is indeed eligible.

3. The creditors concerned shall be informed in writing of the reasons for that suspension.
4. Where the suspension exceeds two months, the creditor may request a decision by the authorising officer responsible on whether the suspension is to be continued.
5. Except in the case of Member States, on expiry of the time limits laid down in paragraph 1, the creditor shall be entitled to interest.
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on time limits for payment and on the specification of the circumstances in which creditors in receipt of a late payment are entitled to receive default interest charged to the line from which the principal was paid.

RAP **Article 111**
Payment time limits and default interest
(Article 92 of the Financial Regulation)

1. The time allowed for making payments shall be understood as including validation, authorisation and payment of expenditure.

It shall begin to run from the date on which a payment request is received.

A payment request shall be registered by the authorised department of the authorising officer responsible as soon as possible and is deemed to be received on the date it is registered.

The date of payment is deemed to be the date on which the institution's account is debited.

2. A payment request shall include the following essential elements:

- (a) creditor's identification;
- (b) amount;
- (c) currency;
- (d) date.

Where at least one essential element is missing, the payment request shall be rejected.

The creditor shall be informed in writing of the rejection and the reasons for it as soon as possible and in any case within 30 calendar days from the date on which the payment request was received.

3. In the case of suspension as referred to in Article 92(2) of the Financial Regulation, the remaining time allowed for payment shall begin to run again from the date on which the requested information or revised documents are received or the necessary further verification, including on-the-spot checks, is carried out.

4. On expiry of the time limits laid down in Article 92(1) of the Financial Regulation, the creditor shall be entitled to interest in accordance with the following conditions:

- (a) the interest rates shall be those referred to in Article 83(2) of this Regulation;
- (b) the interest shall be payable for the period elapsing from the calendar day following expiry of the time limit for payment laid down in Article 92(1) of the Financial Regulation up to the day of payment.

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

5. Each institution shall submit to the European Parliament and Council a report on the compliance with the time limits and on the suspension of the time limits laid down in Article 92 of the Financial Regulation. The report of the Commission shall be annexed to the summary of the annual activity reports referred to in Article 66(9) of the Financial Regulation.

CHAPTER 7
IT systems and e-Government

FR Article 93
Electronic management of operations

1. Where revenue and expenditure operations are managed by means of computer systems, documents may be signed by a computerised or electronic procedure.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the electronic management of operations.

RAP Article 112
Description of IT systems
(Article 93 of the Financial Regulation)

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 113
Periodical save
(Article 93 of the Financial Regulation)

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

FR Article 94
Transmission of documents

Subject to the prior agreement of the institutions and Member States concerned, any transmission of documents between them may be done by electronic means.

FR Article 95
e-Government

1. Under shared management, all official exchanges of information between the Member States and the Commission shall be carried out by means indicated in the sector-specific rules. Those rules shall provide for interoperability of data gathered or received, and transmitted in the management of the budget.

2. The institutions and the executive agencies, as well as the bodies referred to in Article 208, shall establish and apply uniform standards for the electronic exchange of information with third parties participating in procurement and grant procedures. In particular, they shall, to the greatest possible extent, design and implement solutions for the submission, storage and processing of data submitted in grant and procurement procedures, and to this end, shall put in place a single 'electronic data interchange area' for applicants, candidates and tenderers.
3. The Commission shall report regularly to the European Parliament and the Council on progress in the implementation of e-Government.

CHAPTER 8

Administrative principles

FR Article 96 **Good administration**

1. The authorising officer responsible shall make known without delay the need to supply evidence and/or documentation, their form and prerequisite content, as well as, where appropriate, the indicative timetable for completion of award procedures.
2. Where, due to an obvious clerical error on the part of the applicant or tenderer, the applicant or tenderer omits to submit evidence or to make statements, the evaluation committee or, where appropriate, the authorising officer responsible shall, except in duly justified cases, ask the applicant or tenderer to provide the missing information or clarify supporting documents. Such information or clarifications shall not substantially change the proposal or alter the terms of the tender.

FR Article 97 **Indication of means of redress**

Where a procedural act of an authorising officer adversely affects the rights of an applicant or tenderer, beneficiary or contractor, it shall contain an indication of the available means of administrative and/or judicial redress for challenging this act.

In particular, the nature of the redress, the body or bodies before which it can be brought, as well as time limits for their exercise shall be indicated.

CHAPTER 9

Internal auditor

FR Article 98 **Appointment of the internal auditor**

1. Each institution shall establish an internal auditing function which shall be performed in compliance with the relevant international standards. The internal auditor appointed by the insti-

tution shall be accountable to the latter for verifying the proper operation of budgetary implementation systems and procedures. The internal auditor may be neither authorising officer nor accounting officer.

2. For the purposes of the internal auditing of the EEAS, Heads of Union Delegations, acting as authorising officers by subdelegation in accordance with Article 56(2), shall be subject to the verifying powers of the internal auditor of the Commission for the financial management subdelegated to them.

The internal auditor of the Commission shall also act as the internal auditor of the EEAS in respect of the implementation of the EEAS section of the budget, subject to Article 213.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the appointment of the internal auditor.

RAP *Article 114*
Appointment of the internal auditor
(Article 98 of the Financial Regulation)

1. Each institution shall appoint its internal auditor in accordance with arrangements adapted to its specific features and requirements. The institution shall inform the European Parliament and Council of the appointment of the internal auditor.
2. Each institution shall determine, in accordance with its specific features and its requirements, the scope of the mission of the internal auditor and shall lay down in detail the objectives and procedures for the exercise of the internal audit function with due respect for international internal audit standards.
3. The institution may appoint as internal auditor, by virtue of their particular competence, an official or other servant covered by the Staff Regulations chosen from nationals of the Member States.
4. If two or more institutions appoint the same internal auditor they shall make the necessary arrangements for him to be declared liable for his actions as laid down in Article 119.
5. The institution shall inform the European Parliament and Council when the duties of the internal auditor are terminated.

FR **Article 99**
Powers and duties of the internal auditor

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

The internal auditor shall be responsible, in particular, for:

- (a) assessing the suitability and effectiveness of internal management systems and the performance of departments in implementing policies, programmes and actions by reference to the risks associated with them;
 - (b) assessing the efficiency and effectiveness of the internal control and audit systems applicable to each budgetary implementation operation.
2. The internal auditor shall perform his or her duties in relation to all the institution's activities and departments. He or she shall enjoy full and unlimited access to all information required to perform his or her duties, if necessary on the spot access, including in the Member States and in third countries.

The internal auditor shall take note of the annual report of the authorising officers and any other pieces of information identified.

3. The internal auditor shall report to the institution on his or her findings and recommendations. The institution shall ensure that action is taken with regard to recommendations resulting from audits. The internal auditor shall also submit to the institution an annual internal audit report indicating the number and type of internal audits carried out, the recommendations made and the action taken with regard to those recommendations.
4. The institution shall make available the contact details of the internal auditor to any natural or legal person involved in expenditure operations, for the purposes of confidentially contacting the internal auditor.
5. Each year the institution shall forward a report to the European Parliament and the Council containing a summary of the number and type of internal audits carried out, the recommendations made and the action taken on those recommendations.
6. The reports and findings of the internal auditor, as well as the report of the institution, shall be accessible to the public only after validation by the internal auditor of the action taken for their implementation.
7. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the powers and duties of the internal auditor.

RAP *Article 115*
Resources for the internal auditor
(Article 99 of the Financial Regulation)

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

*Article 116**Work programme**(Article 99 of the Financial Regulation)*

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

*Article 117**Reports of the internal auditor**(Article 99 of the Financial Regulation)*

1. The internal auditor shall submit to the institution the annual internal audit report provided for in Article 99(3) of the Financial Regulation, indicating the number and type of internal audits carried out, the principal recommendations made and the action taken on those recommendations.

That annual report shall also mention any systemic problems detected by the specialised panel set up pursuant to Article 73(6) of the Financial Regulation.

2. Each institution shall consider whether the recommendations made in the reports of its internal auditor are suitable for an exchange of best practices with the other institutions.
3. 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.

FR**Article 100****Independence of the internal auditor**

1. Special rules applicable to the internal auditor shall be laid down by the institution and shall be such as to guarantee that the internal auditor is totally independent in the performance of his or her duties, and to establish the internal auditor's responsibility.

If the internal auditor is a member of staff, he or she shall exercise exclusive audit functions in full independence and assume responsibility as laid down in the Staff Regulations and set out in the delegated acts adopted pursuant to this Regulation.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the independence and the liability of the internal auditor, including the right for the internal auditor to bring an action before the Court of Justice of the European Union.

RAP *Article 118**Independence**(Article 100 of the Financial Regulation)*

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

*Article 119**Liability of the internal auditor**(Article 100 of the Financial Regulation)*

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

The institution shall take a reasoned decision to open an investigation. That decision shall be communicated to the interested party. The institution may put in charge of the investigation, under its direct responsibility, one or more officials of a grade equal to or higher than that of the member of staff concerned. In the course of the investigation, the views of the interested party shall be heard.

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

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

The interested party may bring an action in respect of such decisions before the Court of Justice of the European Union, as provided for in the Staff Regulations.

*Article 120**Action before the Court of Justice of the European Union**(Article 100 of the Financial Regulation)*

Without prejudice to the remedies allowed by the Staff Regulations, the internal auditor may bring an action directly before the Court of Justice of the European Union 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 Union.

TITLE V PUBLIC PROCUREMENT

CHAPTER 1 General provisions

SECTION 1 SCOPE AND AWARD PRINCIPLES

FR Article 101 Definition of public contracts

1. Public contracts are contracts for pecuniary interest concluded in writing between one or more economic operators and one or more contracting authorities within the meaning of Articles 117 and 190, in order to obtain, against payment of a price paid in whole or in part from the budget, the supply of movable or immovable assets, the execution of works or the provision of services.

Such contracts comprise:

- (a) building contracts;
 - (b) supply contracts;
 - (c) works contracts;
 - (d) service contracts.
2. Framework contracts are contracts concluded between one or more economic operators and one or more contracting authorities, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. They shall be governed by the provisions of this Title concerning the award procedure, including advertising.
 3. Except for Articles 106 to 109, this Title shall not apply to grants, or to contracts for technical assistance concluded with the EIB or the European Investment Fund.
 4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the definition and scope of procurement contracts, including framework contracts and specific contracts.

RAP Article 121 *Definitions and scope* *(Article 101 of the Financial Regulation)*

1. Building contracts cover the purchase, long lease, usufruct, leasing, rental or hire purchase, with or without option to buy, of land, existing buildings or other real estate.

2. Supply contracts cover the purchase, leasing, rental or hire purchase, with or without option to buy, of products. A contract for the supply of products and, incidentally, for siting and installation shall be considered a supply contract.
3. Works contracts cover either the execution, or both the execution and design, of works or a work related to one of the activities referred to in Annex I to Directive 2004/18/EC or the realisation, by whatever means, of a work corresponding to the requirements specified by the contracting authority. A 'work' shall mean the outcome of building or civil engineering works taken as a whole that is sufficient of itself to fulfil an economic or technical function.
4. Service contracts cover all intellectual and non-intellectual services other than those covered by supply contracts, works contracts and building contracts.

A contract covering two or more types of procurement (works, services or supplies) shall be awarded in accordance with the provisions applicable to the type of procurement that characterises the main subject of the contract in question.

In the case of mixed contracts consisting of services and supplies, the main object shall be determined by a comparison of the values of the respective services or supplies.

Any references to nomenclatures in the context of public procurement shall be made using the 'Common Procurement Vocabulary (CPV)' as set out in Regulation (EC) No 2195/2002 of the European Parliament and of the Council ⁽¹⁾.

5. The terms 'work contractor', 'supplier' and 'service provider' covers any natural or legal person or public entity or consortium of such persons and/or bodies which offers to execute works, supply products and provide services. The term 'economic operator' shall mean 'work contractors', 'suppliers' and 'service providers'. 'Tenderers' shall mean economic operators who have submitted a tender. 'Candidates' shall mean those who have asked to be allowed to take part in a restricted procedure, a competitive dialogue, or a negotiated procedure. 'Vendors' shall mean economic operators registered in a list of vendors according to Article 136(1)(b).

Consortia of economic operators shall be authorised to submit tenders or to be candidates. Contracting authorities may not demand that consortia must have a given legal form in order to be allowed to submit a tender or request to take part, but the consortium selected may be required to adopt a given legal form after it has been awarded the contract if this change is necessary for proper performance of the contract.

6. Departments of the Union institutions shall be considered to be contracting authorities, save where they conclude between themselves administrative arrangements for the provision of services, the supply of products, for the execution of works or for the implementation of building contracts.

⁽¹⁾ OJ L 340, 16.12.2002, p. 1.

7. Technical assistance shall mean support and capacity-building activities necessary for the implementation of a programme or an action, in particular preparatory, management, monitoring, evaluation, audit and control activities.
8. All exchanges with contractors, including the conclusion of contracts and any amendments thereto, may be done through electronic exchange systems set up by the contracting authority.
9. These systems shall meet the following requirements:
 - (a) only authorised persons may have access to the system and to documents transmitted through it;
 - (b) only authorised persons may electronically sign or transmit a document through the system;
 - (c) authorised persons must be identified through the system by established means;
 - (d) the time and date of the electronic transaction must be determined precisely;
 - (e) the integrity of documents must be preserved;
 - (f) the availability of documents must be preserved;
 - (g) where appropriate, the confidentiality of documents must be preserved;
 - (h) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 must be ensured.
10. Data sent or received through such a system shall enjoy legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

A document sent or notified through such a system shall be considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings, shall be deemed original and shall enjoy legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it.

The electronic signatures referred to in point (b) of paragraph 9 shall have the equivalent legal effect of handwritten signatures.

Article 122

Framework contracts and specific contracts (Article 101 of the Financial Regulation)

1. The duration of a framework contract may not exceed four years, save in exceptional cases duly justified in particular by the subject of the framework contract.

Specific contracts based on framework contracts shall be awarded in accordance with the terms of the framework contract, only between the contracting authorities and the contractors of the framework contract.

When awarding specific contracts, the parties may not make substantial changes to the framework contract.

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

In duly justified circumstances, contracting authorities may consult in writing the contractor, requesting it to supplement its tender if necessary.

3. Where a framework contract is to be concluded with several economic operators, it shall be concluded with at least three operators, provided that there is a sufficient number of economic operators who satisfy the selection criteria or a sufficient number of admissible tenders which meet the award criteria.

A framework contract with several economic operators may take the form of separate contracts which contain identical terms.

Specific contracts based on framework contracts concluded with several economic operators shall be awarded in accordance with the following arrangements:

- (a) in case of framework contracts without reopening of competition by application of the terms laid down in the framework contract;
- (b) in case of framework contracts with reopening of competition, after the parties have again competed on the basis of the same and, if necessary, more precisely formulated terms, and, where appropriate, on the basis of other terms referred to in the specification for the framework contract.

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

4. In sectors subject to a rapid price and technological evolution, framework contracts without reopening of competition shall contain a clause either on a mid-term review or on a benchmarking system. After the mid-term review, if the conditions initially laid down are no longer adapted to the price or technological evolution, the contracting authority may not use the framework contract concerned and shall take appropriate measures to terminate it.
5. Only specific contracts based on framework contracts shall be preceded by a budgetary commitment.

Article 186
Technical assistance
(Articles 101 and 125 of the Financial Regulation)

‘Technical assistance’ shall mean support and capacity-building activities necessary for the implementation of a programme or an action, in particular preparatory, management, monitoring, evaluation, audit and control activities.

FR Article 102
Principles applicable to public contracts

1. All public contracts financed in whole or in part by the budget shall respect the principles of transparency, proportionality, equal treatment and non-discrimination.
2. All public procurement contracts shall be put out to tender on the broadest possible basis, except when use is made of the negotiated procedure referred to in point (d) of Article 104(1).

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

SECTION 2
PUBLICATION

FR Article 103
Publication of public contracts

1. All contracts exceeding the thresholds provided for in Article 118 or Article 190 shall be published in the *Official Journal of the European Union* by the contracting authorities.

Contract notices shall be published in advance except in the cases referred to in Article 104(2), and for the service contracts covered by Annex II B to Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts ⁽¹⁾.

Publication of certain information after the contract has been awarded may be dispensed with where it would hinder application of the law, would be contrary to the public interest, would harm the legitimate business interests of public or private undertakings or would distort fair competition between them.

2. Contracts with a value below the thresholds provided for in Article 118 or Article 190 and the service contracts referred to in Annex II B to Directive 2004/18/EC shall be advertised by appropriate means.

⁽¹⁾ OJ L 134, 30.4.2004, p. 114.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the requirements for the advertising of contracts and publication of notices.

RAP**Article 123*****Advertising of contracts covered by Directive 2004/18/EC******(Article 103 of the Financial Regulation)***

1. Publication for contracts with a value equal to or above the thresholds laid down in Article 170(1) shall consist in a contract notice, without prejudice to Article 134, and an award notice. A prior information notice shall be compulsory only where the contracting authority intends to make use of the possibility of shortening time limits for receipt of tenders in accordance with Article 152(4).
2. The prior information notice is the notice by which the contracting authorities make known, by way of indication, the estimated total value and subject of contracts and framework contracts which they intend to award during a financial year, but excluding contracts under the negotiated procedure without prior publication of a contract notice.

The prior information notice shall be published either by the Publications Office of the European Union (hereinafter ‘Publications Office’) or by the contracting authorities themselves on their buyer profile.

The compulsory prior information notice shall be sent to the Publications Office or published on the buyer profile as soon as possible and in any event by no later than 31 March of each financial year.

Contracting authorities which publish the prior information notice on their buyer profile shall send to the Publications Office, electronically and using the format and transmission procedures specified in point (3) of Annex VIII to Directive 2004/18/EC, a notice announcing the publication of a prior information notice on a buyer profile.

3. The contract notice is the means by which the contracting authorities make known their intention to launch a procedure for the award of a contract or framework contract or to set up a dynamic purchasing system in accordance with Article 131. Without prejudice to contracts concluded after a negotiated procedure as referred to in Article 134, the contract notice shall be compulsory for the contracts with an estimated value equal to or above the thresholds laid down in Article 170(1).

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

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

Contracting authorities shall state whether or not they authorise variants and shall specify the minimum capacity levels they demand if they make use of the possibility provided for in the second subparagraph of Article 146(2). They shall set out the selection criteria referred to in Article 146 that they intend to use, the minimum number of candidates they plan to invite to tender and, where appropriate, the maximum number, and the objective and non-discriminatory criteria they intend to apply in order to limit the number, in accordance with the second subparagraph of Article 128(1).

Where there is unrestricted, direct and full access to the call for tenders by electronic means, in particular in the dynamic purchasing systems referred to in Article 131, the internet address at which these documents can be consulted shall appear in the contract notice.

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

Where appropriate, contracting authorities shall specify in the contract notice that the procurement procedure is an interinstitutional procurement procedure. In such cases, the contract notice shall indicate the institutions, executive agencies or bodies referred to in Article 208 of the Financial Regulation which are involved in the procurement procedure, the institution responsible for the procurement procedure and the global volume of the contracts for all those institutions, executive agencies or bodies.

4. The award notice shall give the outcome of the procedure for the award of contracts, framework contracts or contracts based on a dynamic purchasing system. In the case of contracts with a value equal to or above the thresholds laid down in Article 170(1), the award notice shall be compulsory. It shall not be compulsory for specific contracts based on framework contracts.

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

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

In case of interinstitutional procedures, the award notice shall be sent by the contracting authority responsible for the procedure.

The award notice shall also be sent to the Publications Office in the case of a contract or a framework contract with a value equal to or above the thresholds laid down in Article 170(1) and awarded pursuant to a negotiated procedure without prior publication of a contract notice, in sufficient time for the publication to occur before the signature of the contract, in accordance with the terms and conditions set out in Article 171(1).

Without prejudice to Article 21, information relating to the value and contractors of specific contracts based on a framework contract during a financial year shall be published on the internet website of the contracting authority no later than 30 June following the end of that financial year if, as a result of the conclusion of a specific contract or of the aggregate volume of the specific contracts, the thresholds referred to in Article 170(1) are exceeded.

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

Article 124

Advertising of contracts not covered by Directive 2004/18/EC

(Article 103 of the Financial Regulation)

1. Contracts with a value below the thresholds laid down in Article 170(1) shall be advertised by appropriate means in order to ensure competitive tendering and impartiality of the procurement procedure. Such advertising shall involve:
 - (a) a contract notice as referred to in Article 123(3), or a notice of a call for expressions of interest for contracts covering a similar subject with a value greater than the amount referred to in Article 137(1);
 - (b) appropriate *ex ante* publicity on internet for contracts with a value greater than the amount referred to in Article 137(2).
2. A list of contractors to whom building contracts and contracts declared secret in accordance with Article 134(1)(j) of this Regulation are awarded shall be published only once a year, with an indication of the subject and value of the contracts awarded. That list shall be sent to the European Parliament and Council. In the case of the Commission, it shall be annexed to the summary of the annual activity reports referred to in Article 66(9) of the Financial Regulation.
3. Information relating to contracts with a value greater than the amount referred to in Article 137(1) that have not been the subject of an individual award notice shall be sent to the Publications Office. The annual lists of contractors shall be sent by no later than 30 June of the following financial year.
4. Information relating to contracts with a value greater than the amount referred to in Article 137(2) shall be published on the internet site of the institution no later than 30 June of the following financial year.

Article 125**Publication of notices***(Article 103 of the Financial Regulation)*

1. The Publications Office shall publish the notices referred to in Articles 123 and 124 in the *Official Journal of the European Union* no later than 12 calendar days after their dispatch.

The period specified in the first subparagraph shall be reduced to five calendar days in the case of the fast-track procedures referred to in Article 154.

2. The contracting authorities must be able to provide evidence of the date of dispatch.

Article 126**Other forms of advertising***(Article 103 of the Financial Regulation)*

In addition to the advertising provided for in Articles 123, 124 and 125, contracts may be advertised in any other way, notably in electronic form. Any such advertising shall refer to the notice published in the *Official Journal of the European Union*, as provided for in Article 125, if one has been published, and may not precede the publication of that notice, which alone is authentic.

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

SECTION 3**PROCUREMENT PROCEDURES****FR****Article 104****Procurement procedures**

1. Procurement procedures shall take one of the following forms:
 - (a) the open procedure;
 - (b) the restricted procedure;
 - (c) contests;
 - (d) the negotiated procedure;
 - (e) the competitive dialogue.

Where a public contract or a framework contract is of interest to two or more institutions, executive agencies or bodies referred to in Article 208 and 209, and whenever there is

a possibility for realising efficiency gains, the contracting authorities concerned shall seek to carry out the procurement procedure on an interinstitutional basis.

Where a public contract or framework contract is necessary for the implementation of a joint action between an institution and one or more contracting authorities from Member States, the procurement procedure may be carried out jointly by the institution and the contracting authorities, in certain situations, which are to be specified in the delegated acts adopted pursuant to this Regulation.

Joint procurement may be conducted with EFTA States, and Union candidate countries, if this possibility has been specifically provided for in a bilateral or multilateral treaty.

2. For contracts where the value exceeds the thresholds provided for in Articles 118 or 190, use of the negotiated procedure shall be authorised only in cases provided for in the delegated acts adopted pursuant to this Regulation.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the types of procurement procedure, joint procurement, low value contracts and payment against invoices.

RAP *Article 127*

Types of procurement procedure (Article 104 of the Financial Regulation)

1. Contracts shall be awarded by call for tender, using the open, restricted or negotiated procedure after publication of a contract notice or by negotiated procedure without prior publication of a contract notice, where appropriate following a contest.
2. Procurement procedures are open where all interested economic operators may submit a tender. That applies also in the case of the dynamic purchasing systems referred to in Article 131.

Procurement procedures are restricted where all economic operators may ask to take part but only candidates satisfying the selection criteria referred to in Article 146 and invited simultaneously and in writing by the contracting authorities may submit a tender or a solution under the competitive dialogue procedure referred to in Article 132.

The selection phase may be repeated for each individual contract, also in the case of a competitive dialogue, or may involve drawing up a list of potential candidates under the procedure referred to in Article 136(1)(a).

3. In a negotiated procedure, the contracting authorities shall consult tenderers of their choice who satisfy the selection criteria laid down in Article 146, and negotiate the terms of their tenders with one or more of them.

In negotiated procedures where a contract notice is published, as referred to in Article 135, the contracting authorities shall simultaneously and in writing invite the selected candidates to negotiate.

4. Contests are procedures which enable the contracting authority to acquire, mainly in the fields of architecture and civil engineering or data processing, a plan or design proposed by a selection board after being put out to competitive tender with or without the award of prizes.

Article 128

*Number of candidates in restricted or negotiated procedures
(Article 104 of the Financial Regulation)*

1. In a restricted procedure and the procedures referred to in points (a) and (b) of Article 136(1), the number of candidates invited to submit a tender may not be less than five, provided that a sufficient number of candidates satisfy the selection criteria.

The contracting authority may also provide for a maximum number of candidates, depending on the subject of the contract and on the basis of objective and non-discriminatory selection criteria. In such cases, the range and criteria shall be indicated in the contract notice or the call for expressions of interest referred to in Articles 123 and 124.

In any event, the number of candidates invited to tender must be sufficient to ensure genuine competition.

2. In negotiated procedures and after a competitive dialogue, the number of candidates invited to negotiate or to tender may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria.

The number of candidates invited to tender must be sufficient to ensure genuine competition.

The first and second subparagraphs shall not apply to the following:

- (a) contracts involving very low values, as referred to in Article 137(2);
 - (b) contracts for legal services according to the CPV nomenclature;
 - (c) contracts declared secret, as referred to in Article 134(1)(j).
3. Where the number of candidates meeting the selection criteria and the minimum levels is below the minimum number specified in paragraphs 1 and 2, the contracting authority may continue the procedure by inviting the candidate or candidates with the required capacities. However, the contracting authority may not include other economic operators who were not initially invited to be part of the procedure, or candidates who do not have the required capacities.

Article 129

Arrangements for negotiated procedures

(Article 104 of the Financial Regulation)

Contracting authorities shall negotiate with tenderers the tenders they have submitted in order to adapt them to the requirements set out in the contract notice referred to in Article 123 or in the specifications and in any additional documents and in order to find the tender offering best value for money.

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

Where contracting authorities may, in accordance with Article 135, award contracts using a negotiated procedure after publishing a contract notice, they may arrange for the negotiated procedure to be conducted in stages so as to reduce the number of tenders to be negotiated, while applying the award criteria set out in the contract notice or specification. The contract notice or specification shall state that use is to be made of this possibility.

Article 130

Contests

(Article 104 of the Financial Regulation)

1. The rules for the organisation of a contest shall be communicated to those interested in taking part.

The number of candidates invited to take part must be sufficient to ensure genuine competition.

2. The selection board shall be appointed by the authorising officer responsible. It shall be made up exclusively of natural persons who are independent of participants in the contest. Where a particular professional qualification is required for participation in a contest, at least one third of the members of the selection board must have the same or an equivalent qualification.

The selection board shall be autonomous in its opinions. Its opinions shall be adopted on the basis of projects submitted to it anonymously by the candidates and solely in the light of the criteria set out in the contest notice.

3. The proposals of the selection board, based on the merits of each project, and its observations, shall be recorded in a report signed by its members.

Candidates shall remain anonymous until the selection board has given its opinion.

Candidates may be asked by the selection board to answer the questions recorded in the report in order to clarify a project. A full report of the resulting dialogue shall be drawn up.

4. The contracting authority shall then take a decision giving the name and address of the candidate selected and the reasons for the choice by reference to the criteria announced in the contest notice, especially if it departs from the proposals made in the selection board's opinion.

Article 131

Dynamic purchasing system

(Article 104 of the Financial Regulation)

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

They shall indicate in the specification, amongst other matters, the nature of the purchases envisaged under that system, and all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.

3. Contracting authorities shall give any economic operator, throughout the duration of the dynamic purchasing system, the possibility of submitting an indicative tender with a view to being admitted to the system under the conditions referred to in paragraph 1. They shall complete evaluation within a maximum of 15 days from the date of submission of the indicative tender. However, they may extend the evaluation period provided that no invitation to tender is issued in the meantime.

The contracting authority shall inform tenderers at the earliest possible opportunity that they have been admitted to the dynamic purchasing system or that their tender has been rejected.

4. Each specific contract shall be the subject of an invitation to tender. Before issuing this invitation, contracting authorities shall publish a simplified contract notice inviting all interested economic operators to submit an indicative tender, within a time limit that may not be less than 15 days from the date on which the simplified notice is sent. Contracting authorities may not proceed with tendering until they have completed evaluation of all the indicative tenders received by that deadline.

Contracting authorities shall invite all tenderers admitted to the system to submit a tender within a reasonable time. They shall award the contract to the tenderer who has submitted the tender offering best value for money on the basis of the award criteria set out in the contract notice for the establishment of the dynamic purchasing system. Those criteria may, if appropriate, be formulated more precisely in the invitation to tender.

5. A dynamic purchasing system may not last for more than four years, except in duly justified exceptional cases.

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

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

Article 132

Competitive dialogue

(Article 104 of the Financial Regulation)

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

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

2. Contracting authorities shall publish a contract notice setting out their needs and requirements, which they shall define in that notice and/or in a descriptive document.
3. Contracting authorities shall open a dialogue with the candidates satisfying the selection criteria set out in Article 146 in order to identify and define the means best suited to satisfying their needs.

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

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

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

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

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

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

Article 133

Joint procurement

(Article 104 of the Financial Regulation)

In the case of a joint procurement procedure between one institution and the contracting authority from one or more Member States, EFTA States or Union candidate countries, the procedural provisions applicable to the institution shall apply.

Where the share pertaining to or managed by the contracting authority of a Member State in the total estimated value of the contract is equal to or above 50 %, or in other duly justified cases, the institution may decide that the procedural rules applicable to the contracting authority from a Member State shall apply, provided that they can be considered as equivalent to those of the institution.

The institution and the contracting authority from Member States, EFTA States or Union candidate countries, concerned by the joint procurement procedure shall agree in particular upon the practical modalities for the evaluation of the requests for participation or the tenders, the award of the contract, the law applicable to the contract and the competent court for hearing disputes.

Article 134

Use of a negotiated procedure without prior publication of a contract notice

(Article 104 of the Financial Regulation)

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

- (a) where no tenders, or no suitable tenders, or no request to participate have been submitted in response to an open procedure or restricted procedure after the initial procedure has been completed, provided that the original terms of the contract as specified in the tender documents referred to in Article 138 are not substantially altered;
- (b) where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator;
- (c) in so far as is strictly necessary where, for reasons of extreme urgency brought about by unforeseeable events not attributable to the contracting authorities, it is impossible to comply with the time limits set for the other procedures and laid down in Articles 152, 153 and 154;
- (d) where a service contract follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates; in the latter case, all successful candidates shall be invited to participate in the negotiations;
- (e) for additional services and works not included in the project initially envisaged or in the initial contract but which, through unforeseen circumstances, have become necessary for the performance of the services or works, subject to the conditions set out in paragraph 2;
- (f) for new services or works consisting in the repetition of similar services or works entrusted to the economic operator awarded the initial contract by the same contracting authority, provided that these services or works conform to a basic project and that this project was the subject of an initial contract awarded under the open or restricted procedure, subject to the conditions set out in paragraph 3;
- (g) for supply contracts:
 - (i) in the case of additional deliveries which are intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire equipment having different technical characteristics which would result in incompatibility or disproportionate technical difficulties in operation and maintenance; the duration of such contracts may not exceed three years;
 - (ii) where the products are manufactured purely for the purpose of research, experiment, study or development, with the exception of commercial viability tests and large-scale production aimed at recovering research and development costs;
 - (iii) in respect of supplies quoted and purchased on a commodity market;

- (iv) in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;
 - (h) for building contracts, after prospecting the local market;
 - (i) for contracts for legal services according to the CPV nomenclature, provided that such contracts are appropriately advertised;
 - (j) for contracts declared to be secret by the institution or by the authorities delegated by the institution, or for contracts whose performance must be accompanied by special security measures, in accordance with the administrative provisions in force or when the protection of the essential interests of the Union so requires.
2. For the additional services and works referred to in point (e) of paragraph 1, the contracting authority may make use of the negotiated procedure without prior publication of a contract notice on condition that the award is made to the contractor performing the contract in any of the following cases:
- (a) where such additional contracts cannot be technically or economically separated from the main contract without serious inconvenience for the contracting authority;
 - (b) where such services or works, although separable from the performance of the original contract, are strictly necessary for its completion.
- The aggregate value of additional contracts may not exceed 50 % of the amount of the initial contract.
3. In the cases referred to in point (f) of paragraph 1 of this Article, the option of using the negotiated procedure shall be pointed out as soon as the first operation is put out to competitive tender, and the total estimated amount for the subsequent services or work shall be taken into consideration in calculating the thresholds referred to in Article 170(1). That procedure may be used only during the execution of the original contract and at the latest during the three years following its signing.

Article 135

Use of a negotiated procedure after prior publication of a contract notice (Article 104 of the Financial Regulation)

1. Contracting authorities may use the negotiated procedure after having published a contract notice, whatever the estimated value of the contract, in the following cases:
- (a) where tenders which are irregular or unacceptable, by reference in particular to the selection or award criteria, are submitted in response to

an open or restricted procedure, or a competitive dialogue, which has been completed provided that the original terms of the contract as specified in the call for tenders referred to in Article 138 are not substantially altered, without prejudice to the application of paragraph 2 of this Article;

- (b) in exceptional cases involving work, supplies or services where the nature or the risks do not permit prior overall pricing by the tenderer;
 - (c) where the nature of the service to be procured, in particular in the case of financial services and intellectual services, is such that contract specifications cannot be established with sufficient precision to permit the award of the contract by selecting the best tender in accordance with the rules governing open or restricted procedures;
 - (d) for works contracts, where the works are performed solely for purposes of research, testing or development and not with the aim of ensuring profitability or recovering research and development costs;
 - (e) for the service contracts referred to in Annex IIB to Directive 2004/18/EC, subject to points (i) and (j) of Article 134(1) of this Regulation and the second paragraph thereof.
 - (f) for research and development services other than those where the benefits accrue exclusively to the contracting authority for its use in the conduct of its own affairs, on condition that the service provided is wholly remunerated by the contracting authority;
 - (g) for service contracts for the acquisition, development, production or co-production of programme material intended for broadcasting by broadcasters and contracts for broadcasting time.
2. In the cases referred to in point (a) of paragraph 1, contracting authorities may refrain from publishing a contract notice if they include in the negotiated procedure all the tenderers and only the tenderers satisfying the selection criteria who, during the previous procedure, submitted tenders in accordance with the formal requirements of the procurement procedure.

Article 136

Procedure involving a call for expressions of interest (Article 104 of the Financial Regulation)

1. For contracts with a value not exceeding that referred to in Article 170(1) and without prejudice to Articles 134 and 135, contracting authorities may use a call for expressions of interest to do either of the following:
 - (a) to pre-select candidates to be invited to submit tenders in response to future restricted invitations to tender;
 - (b) to collect a list of vendors to be invited to submit requests to participate or tenders.

2. The list drawn up following a call for expressions of interest shall be valid for the following period:
 - (a) not more than three years from the date on which the notice referred to in point (a) of Article 124(1) is sent to the Publications Office in the case referred to in point (a) of paragraph 1 of this Article;
 - (b) not more than five years from the date on which the notice referred to in point (a) of Article 124(1) is sent to the Publications Office in the case of vendors' list referred to in point (b) of paragraph 1 of this Article.

The list referred to in the first subparagraph may include sub-lists.

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. Where a contract is to be awarded, the contracting authority shall invite all candidates or vendors entered on the relevant list or sub-list to do either of the following:
 - (a) to submit a tender in the case referred to in point (a) of paragraph 1;
 - (b) to submit, in case of the list referred to in point (b) of paragraph 1, either of the following:
 - (i) tenders including documents relating to exclusion and selection criteria;
 - (ii) documents relating to exclusion and selection criteria and, in a second step, tenders, for those fulfilling these criteria.

Article 137

Low-value contracts

(Article 104 of the Financial Regulation)

1. A negotiated procedure without prior publication of a contract notice with consultation of at least three candidates may be used for contracts with a low value not exceeding EUR 60 000.
If, following consultation of the candidates, the contracting authority receives only one tender that is administratively and technically valid, the contract may be awarded provided that the award criteria are met.
2. Contracts with a very low value not exceeding EUR 15 000 may be awarded on the basis of a single tender following a negotiated procedure without prior publication of a contract notice.
3. Payments of amounts not exceeding EUR 1 000 in respect of items of expenditure may consist simply in payment against invoices, without prior acceptance of a tender.

Article 168***Separate contracts and contracts with lots******(Article 104 and 118 of the Financial Regulation)***

1. The estimated value of a contract may not be determined with a view to evading the requirements laid down in this Regulation, nor may a contract be split up for that purpose.

Whenever appropriate, technically feasible, and cost efficient, contracts with a value equal to or greater than the thresholds laid down in Article 170(1) shall be awarded at the same time in the form of separate lots.

2. Where the subject of a supply, service or works contract is subdivided into several lots, each one the subject of an individual contract, the total value of all the lots shall be taken into account for the overall evaluation of the applicable threshold.

Where the total value of all the lots is equal to or exceeds the thresholds laid down in Article 170(1), Article 97(1) and paragraphs 1 and 2 of Article 104 of the Financial Regulation shall apply to each of the lots.

3. Where a contract is to be awarded in the form of separate lots, tenders shall be evaluated separately for each lot. If several lots are awarded to the same tenderer, a single contract covering those lots may be signed.

FR**Article 105****Content of tender documents**

Tender documents shall give a full, clear and precise description of the subject of the contract and specify the exclusion, selection and award criteria applicable to the contract.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the content of tender documents, including the possibility of, and the conditions for, revision of the price and the technical specifications.

RAP**Article 138*****Tender documents******(Article 105 of the Financial Regulation)***

1. The tender documents shall include at least:
 - (a) the invitation to tender or to negotiate or to take part in the dialogue under the procedure referred to in Article 132;
 - (b) the attached specification or, in the case of a competitive dialogue as referred to in Article 132, a document describing the needs and requirements of the contracting authority, or the reference for the internet address at which such specification or document can be consulted;

- (c) the draft contract based on the model contract.

Point (c) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

The tender documents shall contain a reference to the advertising measures taken under Articles 123 to 126.

2. The invitation to tender or to negotiate or to take part in the dialogue shall at least:
 - (a) specify the rules governing the lodging and presentation of tenders, including in particular the closing date and time for submission, any requirement as to the use of a standard reply form, the documents to be attached, including those in evidence of financial, economic, technical and professional capacity referred to in Article 146 if they are not specified in the contract notice, and the address to which they must be sent;
 - (b) state that submission of a tender implies acceptance of the specification referred to in paragraph 1 to which the tender relates and that this submission binds the contractor to whom the contract is awarded during performance of the contract;
 - (c) specify the period during which a tender will remain valid and may not be varied in any respect;
 - (d) forbid any contact between the contracting authority and the tenderer during the procedure, save, exceptionally, under the conditions laid down in Article 160, and, where provision is made for an on-the-spot visit, specify the arrangements for such a visit;
 - (e) specify, in the case of a competitive dialogue, the date set and the address for the start of the consultation phase.
3. The specifications shall at least:
 - (a) specify the exclusion and selection criteria applying to the contract, save in a competitive dialogue, in the restricted procedure and in the negotiated procedure following publication of a notice as referred to in Article 135; in such cases those criteria shall appear solely in the contract notice or the call for expressions of interest;
 - (b) specify the award criteria and their relative weighting or, where appropriate, the decreasing order of importance, if this is not specified in the contract notice;
 - (c) set out the technical specifications referred to in Article 139;
 - (d) state the minimum requirements which variants must meet in the procedures referred to in Article 149(2) under which the contract is awarded

to the tender offering best value for money, where the contracting authority has stated in the contract notice that such variants are permitted;

- (e) state that the Protocol on the Privileges and Immunities of the European Union or, where appropriate, the Vienna Convention on Diplomatic Relations or Vienna Convention on Consular Relations applies;
 - (f) specify the evidence of access to contracts, as set out in Article 172;
 - (g) specify, in the dynamic purchasing systems referred to in Article 131, the nature of the purchases envisaged, as well as all the necessary information concerning the purchasing system, the electronic equipment used and the technical connection arrangements and specifications.
4. The model contract shall in particular:
- (a) specify the liquidated damages for failure to comply with its clauses;
 - (b) specify the details which must be contained in invoices or in the relevant supporting documents in accordance with Article 102;
 - (c) state that, when the institutions are contracting authorities, Union law is the law which applies to the contract, complemented, where necessary, by a national law as specified in the contract.
 - (d) specify the competent court for hearing disputes.

For the purposes of point (c) of the first subparagraph of this paragraph, in case of contracts referred to in Article 121(1), the draft contract may refer exclusively to national law.

5. The contracting authorities may demand information from the tenderer on any part of the contract that the tenderer may intend to subcontract to third parties and on the identity of any subcontractors. In addition to the information referred to in Article 143, the contracting authority may also require the candidate or tenderer to submit information on the financial, economic, technical and professional capacities, as referred to in Articles 146, 147 and 148, of the envisaged subcontractor, in particular when subcontracting represents a significant part of the contract.

Article 139

Technical specifications

(Article 105 of the Financial Regulation)

1. Technical specifications must afford equal access for candidates and tenderers and not have the effect of creating unjustified obstacles to competitive tendering.

They shall define the characteristics required of a product, service or material or work with regard to the purpose for which they are intended by the contracting authority.

2. The characteristics referred to in paragraph 1 shall include:
 - (a) the quality levels;
 - (b) environmental performance;
 - (c) wherever possible, the accessibility criteria for people with disabilities or the design for all users;
 - (d) the levels and procedures of conformity assessment;
 - (e) fitness for use;
 - (f) safety or dimensions, including, for supplies, the sales name and user instructions, and, for all contracts, terminology, symbols, testing and test methods, packaging, marking and labelling, production procedures and methods;
 - (g) for works contracts, the procedures relating to quality assurance and the rules relating to design and costing, the test, inspection and acceptance conditions for works and methods or techniques of construction and all the other technical conditions which the contracting authority may impose under general or specific regulations in relation to the finished works and to the materials or parts which they involve.
3. The technical specifications shall be formulated in any of the following ways:
 - (a) by reference to European standards, or to European technical approvals or common technical specifications, where such exist, to international standards, to other technical reference systems established by European standardisation bodies or, failing this, their national equivalents; every reference shall be followed by the expression 'or equivalent';
 - (b) in terms of performance or of functional requirements, which may include environmental characteristics and shall be sufficiently detailed to enable tenderers to determine the purpose of the contract and the contracting authorities to award the contract;
 - (c) by a mixture of those two formulation methods.
4. Where the contracting authorities make use of the possibility of referring to the specifications referred to in point (a) of paragraph 3, they may not reject a tender on the grounds that it does not comply with those specifications if the tenderer or candidate proves, to the satisfaction of the contracting authority, by any appropriate means, that the tender meets in equivalent manner the requirements set.

An appropriate means may take the form of a technical dossier of the manufacturer or a test report from a recognised body.

5. Where the contracting authorities make use of the possibility provided for in point (b) of paragraph 3, of prescribing specifications in terms of performance or of functional requirements, they may not reject a tender which complies with a national standard transposing a European standard, a European technical approval or common technical specifications, an international standard or technical reference systems established by European standardisation bodies, if those specifications relate to the necessary performance or functional requirements.

The tenderer must prove to the satisfaction of the contracting authority and by any appropriate means that the tender meets the performance or functional requirements set by the contracting authority. An appropriate means may take the form of a technical dossier of the manufacturer or a test report from a recognised body.

6. Where contracting authorities lay down environmental characteristics in terms of performance or of functional requirements, they may use the detailed specifications, or, if necessary, parts thereof, as defined by European, multinational or national eco-labels, or by any other eco-label, provided that the following conditions are satisfied:
 - (a) the specifications used are appropriate to define the characteristics of the supplies or services that are the object of the contract;
 - (b) the requirements for the label are drawn up on the basis of scientific information;
 - (c) the eco-labels are adopted using a procedure in which all the parties concerned, such as government bodies, consumers, manufacturers, distributors and environmental organisations, can participate;
 - (d) the eco-labels are accessible to all interested parties.
7. Contracting authorities may indicate that the products or services bearing the eco-label are presumed to comply with the technical specifications laid down in the contract documents. They shall accept any other appropriate means of proof, such as a technical dossier of the manufacturer or a test report from a recognised body. A recognised body for the purposes of paragraphs 4, 5 and 6 is a test and calibration laboratory or a certification and inspection body which complies with applicable European standards.
8. Save in exceptional cases, duly warranted by the subject of the contract, those specifications may not refer to a specific make or source, or a particular process, or to trade marks, patents, types or a specific origin or production which would have the effect of favouring or eliminating certain products or economic operators.

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

*Article 140**Price revision**(Article 105 of the Financial Regulation)*

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

FR**Article 106****Exclusion criteria applicable for participation in procurement procedures**

1. Candidates or tenderers shall be excluded from participation in procurement procedures if:
 - (a) they are bankrupt or being wound up, are having their affairs administered by the courts, have entered into an arrangement with creditors, have suspended business activities, are the subject of proceedings concerning those matters, or are in any analogous situation arising from a similar procedure provided for in national legislation or regulations;
 - (b) they or persons having powers of representation, decision-making or control over them have been convicted of an offence concerning their professional conduct by a judgment of a competent authority of a Member State which has the force of *res judicata*;
 - (c) they have been guilty of grave professional misconduct proven by any means which the contracting authority can justify including by decisions of the EIB and international organisations;
 - (d) they are not in compliance with their obligations relating to the payment of social security contributions or the payment of taxes in accordance with the legal provisions of the country in which they are established or with those of the country of the contracting authority or those of the country where the contract is to be performed;
 - (e) they or persons having powers of representation, decision-making or control over them have been the subject of a judgment which has the force of *res judicata* for fraud, corruption, involvement in a criminal organisation, money laundering or any other illegal activity, where such illegal activity is detrimental to the Union's financial interests;
 - (f) they are subject to an administrative penalty referred to in Article 109(1).

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

Points (b) and (e) of the first subparagraph shall not apply where the candidates or tenderers can demonstrate that adequate measures have been adopted against the persons having powers of representation, decision-making or control over them, who are subject to a judgement as referred to in points (b) or (e) of the first subparagraph.

2. In the case of a negotiated procedure where, for technical or artistic reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular economic operator, the institution may decide not to exclude the economic operator concerned on the grounds referred to in points (a), (c) and (d) of the first subparagraph of paragraph 1, if it is indispensable to do so in order to ensure the continuity of service of the institution. In such cases, the institution shall duly justify its decision.
3. Candidates or tenderers shall certify that they are not in one of the situations listed in paragraph 1. However, the contracting authority may refrain from requiring such certification for very low value contracts.

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

- (a) where the candidate or tenderer is a legal person, provide information on the ownership or on the management, control and power of representation of the legal person and certify that they are not in one of the situations referred to in paragraph 1;
 - (b) where subcontracting is envisaged, certify that the subcontractor is not in one of the situations referred to in paragraph 1.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on:
 - (a) the exclusion criteria applicable for participation in calls for tenders, including rules on illegal activities giving rise to exclusion;
 - (b) what evidence may be satisfactory to show that an exclusion situation does not exist;
 - (c) the duration of an exclusion. Such exclusion shall not exceed 10 years.

RAP *Article 141*
Illegal activities giving rise to exclusion
(Article 106 of the Financial Regulation)

The cases referred to in Article 106(1)(e) of the Financial Regulation shall include all illegal activities detrimental to the Union's financial interests and in particular the following:

- (a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995 ⁽¹⁾;
- (b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997 ⁽²⁾;
- (c) cases of participation in a criminal organisation, as defined in Article 2 of Council Framework Decision 2008/841/JHA ⁽³⁾;
- (d) cases of money laundering as defined in Article 1 of Directive 2005/60/EC of the European Parliament and of the Council ⁽⁴⁾;
- (e) cases of terrorist offences, offences linked to terrorist activities, and inciting, aiding, abetting or attempting to commit such offences, as defined in Articles 1, 3 and 4 of Council Framework Decision 2002/475/JHA ⁽⁵⁾.

Article 142

Application of exclusion criteria and duration of exclusion (Articles 106, 107, 108 and 109 of the Financial Regulation)

1. In order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impacts on the Union's financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express its views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 108(2) and (3) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 106(4) of the Financial Regulation. The period referred to in Article 106(4) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:

⁽¹⁾ OJ C 316, 27.11.1995, p. 48.

⁽²⁾ OJ C 195, 25.6.1997, p. 1.

⁽³⁾ OJ L 300, 11.11.2008, p. 42.

⁽⁴⁾ OJ L 309, 25.11.2005, p. 15.

⁽⁵⁾ OJ L 164, 22.6.2002, p. 3.

- (a) from the date of the judgment having the force of *res judicata* in the cases referred to in points (b) and (e) of Article 106(1) of the Financial Regulation;
- (b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 106(1)(c) of the Financial Regulation where the misconduct relates to contracts with the institution concerned.

For the purposes of point (b) of the third subparagraph, if the grave professional misconduct was established by a decision of a public authority or an international organisation, the date of the decision shall prevail.

That period of exclusion may be extended to 10 years in the event of a repeated offence within five years of the date referred to in points (a) and (b) of the third subparagraph, subject to paragraph 1.

- 2. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 106(1) of the Financial Regulation.

Article 143

Evidence

(Articles 106 and 107 of the Financial Regulation)

- 1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Articles 106 and 107 of the Financial Regulation.

However, in case of restricted procedure, competitive dialogue and negotiated procedure after publication of a contract notice, whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender, all the candidates shall provide the certificates referred to in paragraph 3.

Depending on its risk assessment, the contracting authority may refrain from requiring the declaration referred to in the first subparagraph for contracts referred to in Article 137(2). However, for contracts referred to in Articles 265(1), 267(1), and 269(1), the contracting authority may refrain from requiring that declaration for contracts with a value less than or equal to EUR 20 000.

- 2. The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph 3 of this Article, confirming the declaration referred to in paragraph 1 of this Article in the following cases:
 - (a) for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 170(1);

- (b) for contracts in the field of external actions with a value equal to or greater than the thresholds laid down in Article 265(1)(a), Article 267(1)(a), or Article 269(1)(a).

For contracts with a value less than the thresholds referred to in points (a) and (b) of the first subparagraph of this paragraph, the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3.

3. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in points (a), (b) or (e) of Article 106(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (a) or (d) of Article 106(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in paragraph 1 of this Article is not issued in the country concerned and for the other cases of exclusion referred to in Article 106 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

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

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

7. When requested by the contracting authority, the candidate or tenderer shall submit a declaration on honour from the intended subcontractor that he is not in one of the situations referred to in Articles 106 and 107 of the Financial Regulation.

In case of doubt on this declaration on the honour, the contracting authority shall request the evidence referred to in paragraphs 3 and 4. Paragraph 5 shall apply, where appropriate.

FR**Article 107****Exclusion criteria applicable to awards**

1. A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for that contract:
 - (a) are subject to a conflict of interests;
 - (b) are guilty of misrepresenting the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply that information;
 - (c) find themselves in one of the situations of exclusion, referred to in Article 106(1), for the procurement procedure.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the exclusion criteria applicable during the procurement procedure, and the establishment of what evidence may be considered satisfactory to show that an exclusion situation does not exist. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the duration of an exclusion.

RAP**Article 142*****Application of exclusion criteria and duration of exclusion
(Articles 106, 107, 108 and 109 of the Financial Regulation)***

1. In order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impacts on the Union's financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express its views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 108(2) and (3)

of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 106(4) of the Financial Regulation. The period referred to in Article 106(4) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:

- (a) from the date of the judgment having the force of *res judicata* in the cases referred to in points (b) and (e) of Article 106(1) of the Financial Regulation;
- (b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 106(1)(c) of the Financial Regulation where the misconduct relates to contracts with the institution concerned.

For the purposes of point (b) of the third subparagraph, if the grave professional misconduct was established by a decision of a public authority or an international organisation, the date of the decision shall prevail.

That period of exclusion may be extended to 10 years in the event of a repeated offence within five years of the date referred to in points (a) and (b) of the third subparagraph, subject to paragraph 1.

2. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 106(1) of the Financial Regulation.

Article 143

Evidence

(Articles 106 and 107 of the Financial Regulation)

1. Candidates and tenderers shall provide a declaration on their honour, duly signed and dated, stating that they are not in one of the situations referred to in Articles 106 and 107 of the Financial Regulation.

However, in case of restricted procedure, competitive dialogue and negotiated procedure after publication of a contract notice, whenever the contracting authority limits the number of candidates to be invited to negotiate or submit a tender, all the candidates shall provide the certificates referred to in paragraph 3.

Depending on its risk assessment, the contracting authority may refrain from requiring the declaration referred to in the first subparagraph for contracts referred to in Article 137(2). However, for contracts referred to in Articles 265(1), 267(1), and 269(1), the contracting authority may refrain from requiring that declaration for contracts with a value less than or equal to EUR 20 000.

2. The tenderer to whom the contract is to be awarded shall provide, within a time limit defined by the contracting authority and preceding the signature of the contract, the evidence referred to in paragraph 3 of this Article, confirming the declaration referred to in paragraph 1 of this Article in the following cases:
 - (a) for contracts awarded by the institutions on their own account, with a value equal to or greater than the thresholds referred to in Article 170(1);
 - (b) for contracts in the field of external actions with a value equal to or greater than the thresholds laid down in Article 265(1)(a), Article 267(1)(a), or Article 269(1)(a).

For contracts with a value less than the thresholds referred to in points (a) and (b) of the first subparagraph of this paragraph, the contracting authority may, where it has doubts as to whether the tenderer to whom the contract is to be awarded is in one of the situations of exclusion, require him to provide the evidence referred to in paragraph 3.

3. The contracting authority shall accept as satisfactory evidence that the candidate or tenderer to whom the contract is to be awarded is not in one of the situations described in points (a), (b) or (e) of Article 106(1) of the Financial Regulation, a recent extract from the judicial record or, failing that, an equivalent document recently issued by a judicial or administrative authority in the country of origin or provenance showing that those requirements are satisfied. The contracting authority shall accept, as satisfactory evidence that the candidate or tenderer is not in the situation described in point (a) or (d) of Article 106(1) of the Financial Regulation, a recent certificate issued by the competent authority of the State concerned.

Where the document or certificate referred to in paragraph 1 of this Article is not issued in the country concerned and for the other cases of exclusion referred to in Article 106 of the Financial Regulation, it may be replaced by a sworn or, failing that, a solemn statement made by the interested party before a judicial or administrative authority, a notary or a qualified professional body in his country of origin or provenance.

4. Depending on the national legislation of the country in which the candidate or tenderer is established, the documents referred to in paragraphs 1 and 3 shall relate to legal persons and/or natural persons including, where considered necessary by the contracting authority, company directors or any person with powers of representation, decision-making or control in relation to the candidate or tenderer.
5. Where they have doubts as to whether candidates or tenderers are in one of the situations of exclusion, contracting authorities may themselves apply to the competent authorities referred to in paragraph 3 to obtain any information they consider necessary about that situation.
6. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 3 if such evidence has already been submitted to it for the purposes of another procurement procedure

and provided that the issuing date of the documents does not exceed one year and that they are still valid.

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

7. When requested by the contracting authority, the candidate or tenderer shall submit a declaration on honour from the intended subcontractor that he is not in one of the situations referred to in Articles 106 and 107 of the Financial Regulation.

In case of doubt on this declaration on the honour, the contracting authority shall request the evidence referred to in paragraphs 3 and 4. Paragraph 5 shall apply, where appropriate.

FR

Article 108

Central exclusion database

1. The central exclusion database set up and operated by the Commission, shall contain details of candidates and tenderers which are in one of the situations referred to in Article 106, point (b) of the first subparagraph of Article 109(1) and point (a) of Article 109(2). That database shall be common to the institutions, executive agencies and the bodies referred to in Article 208. The European Parliament and the Council shall be annually informed of the number of new cases and of the total number of cases entered into the database.
2. The authorities of the Member States and third countries as well as the bodies, other than those referred to in paragraph 1, participating in the implementation of the budget in accordance with Articles 58 and 61, shall communicate to the authorising officer responsible information on candidates and tenderers that are in one of the situations referred to in point (e) of the first subparagraph of Article 106(1), where the conduct of the operator concerned was detrimental to the Union's financial interests. That authorising officer shall receive this information and request the accounting officer to enter it into the database.

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

3. The ECB, the EIB and the European Investment Fund shall have access to the information contained in the database for the purpose of protecting their own funds and may take it into account, as appropriate and on their own responsibility, when awarding contracts in accordance with their procurement rules.

They shall communicate to the Commission information on candidates and tenderers that are in one of the situations referred to in point (e) of the first subparagraph of Article 106(1), where the conduct of the operators concerned was detrimental to the Union's financial interests.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the central exclusion database, including the definition of standardised procedures and technical specifications for the operation of the database.
5. Access may be granted to authorities of third countries only when the rules laid down in Article 9 of Regulation (EC) No 45/2001 are fulfilled and after an evaluation on a case-by-case basis.

RAP *Article 142*

*Application of exclusion criteria and duration of exclusion
(Articles 106, 107, 108 and 109 of the Financial Regulation)*

1. In order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impacts on the Union's financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express its views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 108(2) and (3) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 106(4) of the Financial Regulation. The period referred to in Article 106(4) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:

- (a) from the date of the judgment having the force of *res judicata* in the cases referred to in points (b) and (e) of Article 106(1) of the Financial Regulation;
- (b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 106(1)(c) of the Financial Regulation where the misconduct relates to contracts with the institution concerned.

For the purposes of point (b) of the third subparagraph, if the grave professional misconduct was established by a decision of a public authority or an international organisation, the date of the decision shall prevail.

That period of exclusion may be extended to 10 years in the event of a repeated offence within five years of the date referred to in points (a) and (b) of the third subparagraph, subject to paragraph 1.

2. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 106(1) of the Financial Regulation.

*Article 144**Central database**(Article 108 of the Financial Regulation)*

1. The institutions, executive agencies and bodies referred to in Article 108(1) of the Financial Regulation shall transmit to the Commission, in the format established by the Commission, information identifying third parties which are in one of the situations referred to in Articles 106, 107, 109(1)(b) and 109(2)(a) of the Financial Regulation, the grounds for exclusion and the duration of the period of exclusion.

They shall also transmit information concerning persons with powers of representation, decision making or control over third parties which are legal entities, when these persons have found themselves in one of the situations referred to in Articles 106, 107, 109(1)(b) and 109(2)(a) of the Financial Regulation.

The authorities and bodies referred to in paragraphs 2 and 3 of Article 108 of the Financial Regulation shall transmit to the Commission, in the format established by the Commission, information identifying third parties who are in one of the situations referred to in Article 106(1)(e) of the Financial Regulation, where their conduct was detrimental to the Union's financial interests and persons with powers of representation, decision making or control over third parties which are legal entities, such as:

- (a) the type of their conviction;
 - (b) the duration of the period of exclusion from procurement procedures, where applicable.
2. The institutions, agencies, authorities and bodies referred to in paragraph 1 shall designate the persons authorised to communicate to and receive from the Commission the information contained in the database.

In the case of the institutions, agencies, authorities and bodies referred to in Article 108(1) of the Financial Regulation, the designated persons shall address the information as soon as possible to the accounting officer of the Commission, and request, as appropriate, entry, modification or removal of data in the database.

In the case of the authorities and bodies referred to in Article 108(2) of the Financial Regulation, the designated persons shall address the requisite information to the Commission authorising officer responsible for the programme or action concerned, within three months of the issue of the relevant judgement.

The accounting officer of the Commission shall enter, modify or remove data in the database. He shall, via a secured protocol, provide on a monthly basis validated data contained in the database to the designated persons.

3. The institutions, agencies, authorities and bodies referred to in paragraph 1 shall certify to the Commission that the information communicated by them was established and transmitted in accordance with the principles set out in Regulation (EC) No 45/2001 and in Directive 95/46/EC of the European Parliament and of the Council ⁽¹⁾ concerning the protection of personal data.

In particular, they shall inform in advance all third parties or persons referred to in paragraph 1 that their data may be included in the database and communicated by the Commission to the designated persons referred to in paragraph 2. They shall update, where appropriate, the information transmitted, following rectification or erasure or any modification of data.

Any party entered in the database shall have the right to be informed of the data stored concerning that party, upon request to the accounting officer of the Commission.

4. Member States shall take appropriate measures to assist the Commission in order to manage the database efficiently, in compliance with Directive 95/46/EC.

Appropriate arrangements shall be laid down in the agreements with the authorities of third countries and all bodies referred to in paragraphs 2 and 3 of Article 108 of the Financial Regulation, in order to ensure compliance with these provisions and with the principles concerning the protection of personal data.

FR**Article 109****Administrative and financial penalties**

1. The contracting authority may impose administrative and/or financial penalties on the following:
 - (a) contractors, candidates or tenderers in the cases referred to in point (b) of Article 107(1);
 - (b) contractors who have been declared to be in serious breach of their obligations under contracts covered by the budget.

In all cases, however, the contracting authority shall first give the person concerned an opportunity to present his or her observations.
2. The penalties referred to in paragraph 1 shall be proportionate to the importance of the contract and the seriousness of the misconduct, and may consist of:
 - (a) the exclusion of the candidate or tenderer or contractor concerned from the contracts and grants financed by the budget, for a maximum period of ten years; and/or
 - (b) the payment of financial penalties by the candidate or tenderer or contractor up to the value of that contract.

⁽¹⁾ OJ L 281, 23.11.1995, p. 3.

3. In order to reinforce the protection of the Union's financial interests, institutions may decide, in compliance with the principle of proportionality, to publish their decisions imposing administrative or financial penalties referred to in paragraph 1 after the procedure set out in paragraph 1 has been fully complied with.

The decision to publish a decision imposing administrative or financial penalties referred to in the first subparagraph shall take into account, in particular, the seriousness of the misconduct, including its impact on the Union's financial interests and image, the time which has elapsed since the misconduct took place, the duration and recurrence of the misconduct, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

The decision on the publication shall be included in the decision imposing administrative or financial penalties and shall expressly provide for publication of the decision imposing penalties, or of a summary thereof, on the Internet site of the institution.

In order to ensure a deterrent effect, the summary published shall include the name of the person responsible for the misconduct, a short description of that misconduct, the programme concerned and the duration of the exclusion and/or the amount of the financial penalties.

The decision shall be published after the legal remedies against the decision have been exhausted or after the expiry of the deadlines for redress and the publication shall remain on the internet site until the end of the exclusion period or until six months after the payment of the financial penalties where these penalties constitute the sole measure decided.

Where natural persons are concerned, the decision to publish shall be taken with due consideration of the right to privacy and with due observance of the rights provided for in Regulation (EC) No 45/2001.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on different administrative and financial penalties for tenderers or candidates who have made false declarations, have made substantial errors, have committed irregularities or fraud or have been found in serious breach of their contractual obligations.

RAP *Article 142*

*Application of exclusion criteria and duration of exclusion
(Articles 106, 107, 108 and 109 of the Financial Regulation)*

1. In order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impacts on the Union's financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

When determining the period of exclusion, the institution responsible shall give the candidate or tenderer concerned the opportunity to express its views.

Where the duration of the period of exclusion is determined, in accordance with the applicable law, by the authorities or bodies referred to in Article 108(2) and (3) of the Financial Regulation, the Commission shall apply this duration up to the maximum duration laid down in Article 106(4) of the Financial Regulation. The period referred to in Article 106(4) of the Financial Regulation is set at a maximum of five years, calculated from the following dates:

- (a) from the date of the judgment having the force of *res judicata* in the cases referred to in points (b) and (e) of Article 106(1) of the Financial Regulation;
- (b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in Article 106(1)(c) of the Financial Regulation where the misconduct relates to contracts with the institution concerned.

For the purposes of point (b) of the third subparagraph, if the grave professional misconduct was established by a decision of a public authority or an international organisation, the date of the decision shall prevail.

That period of exclusion may be extended to 10 years in the event of a repeated offence within five years of the date referred to in points (a) and (b) of the third subparagraph, subject to paragraph 1.

2. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 106(1) of the Financial Regulation.

Article 145

Administrative and financial penalties

(Articles 109 and 131 of the Financial Regulation)

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have made false declarations, have made substantial errors or committed irregularities or fraud, or have been found in serious breach of their contractual obligations may be excluded from all contracts and grants financed by the Union budget for a maximum of five years from the date on which the infringement is established as confirmed following a contradictory procedure with the candidate, tenderer or the contractor.

That period may be extended to 10 years in the event of a repeated offence within five years of the date referred to in the first subparagraph.

2. Tenderers or candidates who have made false declarations, have committed substantial errors, irregularities or fraud, may also be subject to financial penalties representing 2 % to 10 % of the total estimated value of the contract being awarded.

Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2 % to 10 % of the total value of the contract in question.

That rate may be increased to 4 % to 20 % in the event of a repeat infringement within five years of the date referred to in the first subparagraph of paragraph 1.

3. The institution shall determine the administrative or financial penalties taking into account in particular the elements referred to in Article 142(1).

FR

Article 110

Award criteria for contracts

1. Contracts shall be awarded on the basis of award criteria applicable to the content of the tender after the capability of economic operators not excluded under Articles 106, 107 and point (a) of Article 109(2) has been checked in accordance with the selection criteria contained in the documents relating to the call for tenders.
2. Contracts shall be awarded by the automatic award procedure or by the best-value-for-money procedure.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the specification of the selection criteria and the award criteria. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the documents that give proof of economic and financial capacity and the evidence of technical and professional capacity and detailed rules on electronic auctions and abnormally low tenders.

RAP

Article 146

Selection criteria

(Article 110(1) of the Financial Regulation)

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

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

3. Any tenderer or candidate may be asked to prove that he is authorised to perform the contract under national law, as evidenced by inclusion in a trade or professional register, or a sworn declaration or certificate, membership of a specific organisation, express authorisation, or entry in the value added tax (hereinafter 'VAT') register.

4. The contracting authorities shall specify in the contract notice or in the call for expressions of interest or the invitation to submit a tender, the references chosen to test the status and the legal capacity of tenderers or candidates.
5. The information requested by the contracting authority as proof of the financial, economic, technical and professional capacity of the candidate or tenderer and the minimum capacity levels required in accordance with paragraph 2 may not go beyond the subject of the contract and shall take account of the legitimate interests of the economic operators as regards in particular the protection of the firm's technical and business secrets.
6. The contracting authority may, depending on his assessment of risks, decide not to require proof of the financial, economic, technical and professional capacity of candidates or tenderers in the case of the following contracts:
 - (a) contracts awarded by the institutions on their own account, with a value not exceeding the value referred to in Article 137(1);
 - (b) contracts awarded in the field of external actions, with a value below the thresholds referred to in Article 265(1)(a), Article 267(1)(a) or Article 269(1)(a).

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

Article 147

Economic and financial capacity

(Article 110(1) of the Financial Regulation)

1. Proof of economic and financial capacity may in particular be furnished by one or more of the following documents:
 - (a) appropriate statements from banks or, where appropriate, evidence of relevant professional risk indemnity insurance;
 - (b) financial statements for at most the last three years for which accounts have been closed;
 - (c) a statement of overall turnover and turnover concerning the works, supplies or services covered by the contract during a period which may be no more than the last three financial years available.
2. The contracting authority may waive the obligation of a candidate or tenderer to submit the documentary evidence referred to in paragraph 1 if such evidence has already been submitted to it for the purposes of another procurement procedure and still complies with paragraph 1.

If, for some exceptional reason which the contracting authority considers justified, the tenderer or candidate is unable to provide the references requested by

the contracting authority, he may prove his economic and financial capacity by any other means which the contracting authority considers appropriate.

3. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

The contracting authority may require that the economic operator and the entities referred to in the first subparagraph are jointly liable for the execution of the contract.

Under the same conditions, a consortium of economic operators as referred to in Article 121(5) may rely on the capacities of members of the consortium or of other entities.

Article 148

Technical and professional capacity

(Article 110(1) of the Financial Regulation)

1. Technical and professional capacity of economic operators shall be evaluated and verified in accordance with paragraphs 2 and 3. In procurement procedures for supplies requiring siting or installation operations, services and/or works, such capacity shall be assessed with regard in particular to their know-how, efficiency, experience and reliability.
2. Evidence of the technical and professional capacity of economic operators may, depending on the nature, quantity or scale and purpose of the supplies, services or works to be provided, be furnished on the basis of one or more of the following documents:
 - (a) the educational and professional qualifications of the service provider or work contractor and/or those of the firm's managerial staff and, in particular, those of the person or persons responsible for providing the services or carrying out the works;
 - (b) a list:
 - (i) of the principal services provided and supplies delivered in the past three years, with the sums, dates and recipients, public or private;
 - (ii) of the works carried out in the last five years, with the sums, dates and place;
 - (c) a description of the technical equipment, tools and plant to be employed by the firm for performing a service or works contract;

- (d) a description of the technical equipment and the measures employed to ensure the quality of supplies and services, and a description of the firm's study and research facilities;
- (e) an indication of the technicians or technical bodies involved, whether or not belonging directly to the firm, especially those responsible for quality control;
- (f) in respect of supplies: samples, descriptions and/or authentic photographs and/or certificates drawn up by official quality control institutes or agencies of recognised competence attesting the conformity of the products with the specifications or standards in force;
- (g) a statement of the average annual manpower and the number of managerial staff of the service provider or work contractor in the last three years;
- (h) an indication of the proportion of the contract which the service provider may intend to subcontract;
- (i) for public works contracts and public service contracts, and only in appropriate cases, an indication of the environmental management measures that the economic operator will be able to apply when performing the contract.

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

For the purposes of point (b)(ii) of the first subparagraph the list of the most important works shall be accompanied by certificates of satisfactory execution, specifying whether they have been carried out in a professional manner and have been fully completed.

3. Where the services or products to be supplied are complex or, exceptionally, are required for a special purpose, evidence of technical and professional capacity may be secured by means of a check carried out by the contracting authority or on its behalf by a competent official body of the country in which the service provider or supplier is established, subject to that body's agreement. Such checks shall concern the supplier's technical capacity and production capacity and, if necessary, its study and research facilities and quality control measures.
4. Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European standards series certified by accredited bodies. However, contracting authorities shall also accept other evidence of equivalent quality assurance measures from economic operators that have no access to such certificates, or no possibility of obtaining them within the relevant time limits.
5. Where contracting authorities require the production of certificates drawn up by independent bodies attesting that the economic operator complies with certain

environmental management schemes or standards, they shall refer to the European Union Eco-Management and Audit Scheme or to other environmental management schemes as recognised in accordance with Article 45 of Regulation (EC) No 1221/2009 of the European Parliament and of the Council ⁽¹⁾ or other environmental management standards based on the relevant European or international standards by accredited bodies. They shall recognise equivalent certificates from bodies established in other Member States. They shall also accept other evidence of equivalent environmental management measures from economic operators.

6. An economic operator may, where appropriate and for a particular contract, rely on the capacities of other entities, regardless of the legal nature of the links which it has with them. It must in that case prove to the contracting authority that it will have at its disposal the resources necessary for performance of the contract, for example by producing an undertaking on the part of those entities to place those resources at its disposal.

Under the same conditions, a consortium of economic operators as referred to in Article 121(5) may rely on the capacities of members of the consortium or of other entities.

7. In the case of works contracts, service contracts and siting and installation operations in the context of a supply contract, the contracting authority may require that certain critical tasks be performed directly by the tenderer itself or, where a tender is submitted by a consortium of economic operators as referred to in Article 121(6), a participant in the consortium.
8. Contracting authorities may conclude that economic operators will not perform the contract to an appropriate quality standard where the contracting authority establishes that they have conflicting interests which may negatively affect the performance of the contract.

Article 149

Award arrangements and criteria

(Article 110(2) of the Financial Regulation)

1. Without prejudice to Article 107 of the Financial Regulation, contracts shall be awarded in one of the following two ways:
 - (a) under the automatic award procedure, in which case the contract is awarded to the tender which, while being in order and satisfying the conditions laid down, quotes the lowest price;
 - (b) under the best-value-for-money procedure.

⁽¹⁾ OJ L 342, 22.12.2009, p. 1.

2. To determine which tender offers the best value for money the contracting authority shall take into account the price quoted and other quality criteria justified by the subject of the contract such as, technical merit, aesthetic and functional characteristics, environmental characteristics, running costs, profitability completion or delivery times, after-sales service and technical assistance. The contracting authority may lay down minimum levels of quality. Tenders below those levels of quality shall be rejected.
3. The contracting authority shall specify, in the contract notice or in the specification or in the descriptive document, the weighting it will apply to each of the criteria for determining best value for money. That weighting may be expressed as a range with an appropriate maximum spread.

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

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

Article 150

Use of electronic auctions

(Article 110(2) of the Financial Regulation)

1. Contracting authorities may use electronic auctions, in which new prices, revised downwards, and/or new values concerning certain elements of tenders are presented.
For the purpose of the first subparagraph, contracting authorities shall use a repetitive electronic process (electronic auction), which shall be held after an initial full evaluation of the tenders, enabling them to be ranked using automatic evaluation methods.
2. In open, restricted or negotiated procedures in the case referred to in Article 135(1) (a), the contracting authorities may decide that the award of a public contract shall be preceded by an electronic auction when the tender specifications can be established with precision.

In the same circumstances, an electronic auction may be held on the reopening of competition among the parties to a framework contract as referred to in Article 122(3)(b) and on the opening for competition of contracts to be awarded under the dynamic purchasing system referred to in Article 131.

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

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

The specification shall include the following details:

- (a) the features, the values for which will be the subject of electronic auction, provided that those features are quantifiable and can be expressed in figures or percentages;
 - (b) any limits on the values which may be submitted, as they result from the specifications relating to the subject of the contract;
 - (c) the information which will be made available to tenderers in the course of the electronic auction and, where appropriate, when it will be made available to them;
 - (d) the relevant information concerning the electronic auction process;
 - (e) the conditions under which the tenderers will be able to bid and, in particular, the minimum differences which will, where appropriate, be required when bidding;
 - (f) the relevant information concerning the electronic equipment used and the arrangements and technical specifications for connection.
4. Before proceeding with an electronic auction, contracting authorities shall make a full initial evaluation of the tenders in accordance with the award criteria set and with the weighting fixed for them.

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

5. When the contract is to be awarded on the basis of the tender offering best value for money, the invitation shall be accompanied by the outcome of a full evaluation of the relevant tender, carried out in accordance with the weighting provided for in the first subparagraph of Article 149(3).

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

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

6. Throughout each phase of an electronic auction the contracting authorities shall instantaneously communicate to all tenderers at least sufficient information to enable them to ascertain their relative rankings at any moment. They may also communicate other information concerning other prices or values submitted, provided that that is stated in the specification. They may also at any time announce the number of participants in that phase of the auction. In no case, however, may they disclose the identities of the tenderers during any phase of an electronic auction.
7. Contracting authorities shall close an electronic auction in one or more of the following ways:
 - (a) in the invitation to take part in the auction, they shall indicate the date and time fixed in advance;
 - (b) when they receive no more new prices or new values which meet the requirements concerning minimum differences;
 - (c) when the number of phases in the auction, fixed in the invitation to take part in the auction, has been completed.

For the purposes of point (b) of the first subparagraph, the contracting authorities shall state in the invitation to take part in the auction the time which they will allow to elapse after receiving the last submission before they close the electronic auction.

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

8. After closing an electronic auction, contracting authorities shall award the contract in accordance with Article 149 on the basis of the results of the electronic auction.

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

Article 151

Abnormally low tenders

(Article 110(2) of the Financial Regulation)

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

provisions relating to employment protection and working conditions in force at the place where the work, service or supply is to be performed.

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

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

FR**Article 111****Submission of tenders**

1. The arrangements for submitting tenders shall be such as to ensure that there is genuine competition and that the contents of tenders remain confidential until they are all opened simultaneously.
2. The Commission shall ensure by appropriate means and in application of Article 95 that tenderers may enter the contents of the tenders and any supporting evidence in an electronic format ('e-procurement').

The Commission shall report to the European Parliament and the Council on the progress of the implementation of this provision by 28 October 2014 and regularly afterwards.

3. If deemed appropriate and proportionate, the contracting authority may require tenderers to lodge a security in advance as a guarantee that the bids made will not be withdrawn.
4. With the exception of low value contracts, referred to in Article 104(3), applications and tenders shall be opened by an opening board appointed for this purpose. Any tender or application declared by the board not to satisfy the conditions laid down shall be rejected.
5. All requests to participate or tenders declared by the opening board as satisfying the conditions laid down shall be evaluated, on the basis of the criteria provided in the documents relating to the call for tenders, in order to propose to the contracting authority the award of the contract or to proceed with an electronic auction.
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the submission of tenders and the establishment of the time limits for receipt of tenders and requests to participate, the time allowed for

access to invitation to tender documents and the time limits in urgent cases. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the different methods of communication and detailed rules on the possibility of a tender guarantee, the opening of tenders, the requests to participate and the Committee for the evaluation of tenders and requests to participate.

RAP *Article 152*

*Time limits for receipt of tenders and requests to participate
(Article 111(1) of the Financial Regulation)*

1. The contracting authorities shall lay down in calendar days fixed and peremptory time limits for the receipt of tenders and requests to participate. The time limits shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders, taking particular account of the complexity of the contract or the need to visit the site or consult on the spot the documents annexed to the specifications.
2. In open procedures for contracts with a value equal to or above the thresholds set in Article 170(1), the time limit for receipt of tenders shall be no less than 52 days from the date on which the contract notice is dispatched.
3. In restricted procedures, in cases of use of the competitive dialogue referred to in Article 132 and in negotiated procedures with publication of a contract notice for contracts above the thresholds set in Article 170(1), the time limit for receipt of requests to participate shall be no less than 37 days from the date on which the contract notice is dispatched.

In restricted procedures for contracts with a value equal to or above the thresholds set in Article 170(1), the time limit for receipt of tenders shall be no less than 40 days from the date on which the invitation to tender is dispatched.

However, in the procedures after a call for expressions of interest referred to in Article 136(1), the time limit shall be:

- (a) no less than 21 days from the date on which the invitation to tender is dispatched for receipt of tenders in the case of the procedure referred to in Article 136(1)(a) and Article 136(3)(b)(i);
 - (b) no less than 10 days for receipt of requests to participate and no less than 21 days for receipt of tenders in the case of the two-step procedure referred to in Article 136(3)(b)(ii).
4. Where the contracting authorities, in accordance with Article 123(2), have sent a pre-information notice for publication or have themselves published a prior information notice on their buyer profile for contracts above the thresholds set in Article 170(1), the time limit for the receipt of tenders may generally be reduced to 36 days but shall in no circumstances be less than 22 days from the date of dispatch of the contract notice or the invitation to tender.

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

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

Article 153

Time allowed for access to tender documents (Article 111(1) of the Financial Regulation)

1. Provided that the request was made in good time before the deadline for submission of tenders, the specification or descriptive documents in the procedure referred to in Article 132 and additional documents shall be sent, within five working days of the receipt of the request, to all economic operators who have requested the specification or expressed interest in taking part in a dialogue or submitting a tender, subject to paragraph 4. Contracting authorities are not bound to reply to requests for documents made less than five working days before the deadline for submission of tenders.
2. Provided that the request was made in good time before the deadline for submission of tenders, additional information relating to the specification or the descriptive documents or additional documents shall be supplied simultaneously to all economic operators who have requested the specification or expressed interest in taking part in a dialogue or submitting a tender as soon as possible and no later than six calendar days before the deadline for the receipt of tenders or, in the case of requests for information received less than eight calendar days before the deadline for receipt of tenders, as soon as possible after receipt of the request. Contracting authorities are not bound to reply to requests for additional information made less than five working days before the deadline for submission of tenders.
3. If, for whatever reason, the specifications and the additional documents or information cannot be supplied within the time limits set in paragraphs 1 and 2 of this Article, or where tenders can be made only after a visit to the site or after on-the-spot consultation of the documents annexed to the specifications, the time limits for receipt of tenders referred to in Article 152 shall be extended to enable all economic operators to acquaint themselves with all the requisite information for preparing tenders. That extension shall be advertised in appropriate manner, in accordance with the arrangements set out in Articles 123 to 126.

4. In the open procedure, including the dynamic purchasing systems referred to in Article 131, if there is unrestricted and full direct access by electronic means to the entire call for tenders and any additional documents, paragraph 1 of this Article shall not apply. The contract notice referred to in Article 123(3) shall give the internet address at which those documents can be consulted.

Article 154

Time limits in urgent cases

(Article 111(1) of the Financial Regulation)

1. Where duly substantiated urgency renders impracticable the minimum time limits laid down in Article 152(3) for restricted procedures and negotiated procedures where a contract notice is published, contracting authorities may set the following time limits, expressed in calendar days:
 - (a) a time limit for the receipt of requests to participate which may not be less than 15 days from the date on which the contract notice is dispatched or 10 days if the notice is sent to the Publications Office electronically;
 - (b) a time limit for the receipt of tenders which may not be less than 10 days from the date of dispatch of the invitation to tender.
2. In restricted procedures and fast-track negotiated procedures, additional information on the specifications shall, provided it has been requested in good time, be communicated to all candidates or tenderers no later than four calendar days before the deadline for receipt of tenders.

Article 155

Methods of communication

(Article 111(1) of the Financial Regulation)

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

The means of communication chosen shall be generally available and shall not restrict the access of economic operators to the procurement procedure.

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

- (a) each submission contains all the information required for its evaluation;
- (b) the integrity of data is preserved;
- (c) the confidentiality of tenders and requests to participate is preserved and the contracting authorities examine the content of tenders and requests to participate only after the time limit set for submitting them has expired;

- (d) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001.

Where necessary for the purposes of legal proof, the contracting authorities may decide that requests to participate submitted by fax must be confirmed by letter or electronically as soon as possible and at all events before the final date set in Articles 152.

2. Where the contracting authority authorises submission of tenders and requests to participate by electronic means, the tools used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use and shall not restrict economic operators' access to the procurement procedure.
3. Except for contracts below the threshold laid down in Article 170(1), devices for the electronic receipt of tenders and requests to participate shall guarantee, through technical means and appropriate procedures, that:
 - (a) the economic operator can be authenticated with certainty;
 - (b) the exact time and date of the receipt of tenders and requests to participate can be determined precisely;
 - (c) it may be reasonably ensured that, before the time limits laid down, no-one can have access to data transmitted under these requirements;
 - (d) where that access prohibition is infringed, it may be reasonably ensured that the infringement is clearly detectable;
 - (e) only authorised persons may set or change the dates for opening data received;
 - (f) during the different stages of the procurement procedure access to all data submitted, or to part thereof, must be possible only through simultaneous action by authorised persons;
 - (g) simultaneous action by authorised persons must give access to data transmitted only after the prescribed date;
 - (h) data received and opened in accordance with these requirements must remain accessible only to persons authorised to acquaint themselves therewith.
4. Where the contracting authority authorises submission of tenders and requests to participate by electronic means, the electronic documents submitted by means of such systems shall be deemed to be the originals and to be signed by an authorised representative of the economic operator.
5. Where submission is by letter, tenderers or candidates may choose to submit tenders or requests to participate:

- (a) either by post or by courier service, in which case the call for tenders shall specify that the evidence shall be constituted by the date of dispatch, the postmark or the date of the deposit slip;
 - (b) by hand-delivery to the premises of the institution by the tenderer or candidate in person or by an agent; for which purposes the call for tenders shall specify, in addition to the information referred to in Article 138(2)(a), the department to which tenders or requests to participate are to be delivered against a signed and dated receipt.
6. In order to maintain secrecy and to avoid any difficulties where tenders are sent by letter, the invitation to tender must include the following provision:

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

Article 156

Tender guarantees

(Article 111(3) of the Financial Regulation)

The contracting authority may require a tender guarantee, lodged in accordance with Article 163, representing 1 % to 2 % of the total value of the contract.

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

Article 157

Opening of tenders and requests to participate

(Article 111(4) of the Financial Regulation)

1. All requests to participate and tenders that satisfy the requirements of Article 155 shall be opened.
2. Where the value of a contract exceeds the threshold laid down in Article 137(1), the authorising officer responsible shall appoint a committee to open the tenders.

The opening committee shall be made up of at least three persons representing at least two organisational entities of the institution concerned with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 57 of the Financial Regulation. In the representations or local units referred to in Article 72 of this Regulation or iso-

lated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

In the case of a procurement procedure launched on an interinstitutional basis, the opening committee shall be appointed by the responsible authorising officer from the institution responsible for the procurement procedure. The composition of the opening committee shall reflect, in so far as possible, the interinstitutional character of the procurement procedure.

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

They shall also initial either of the following:

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

Where the contract is awarded under the automatic award procedure in accordance with point (a) of Article 149(1), the prices quoted in tenders satisfying the requirements shall be made public.

The members of the committee shall sign the written record of the opening of the tenders received, which shall identify those tenders which comply with the requirements of Article 155 and those which do not, and which shall give the grounds on which tenders were rejected for non-compliance, by reference to the methods of submitting tenders referred to in Article 155. That record may be signed in an electronic system providing sufficient identification of the signatory.

Article 158

Committee for the evaluation of tenders and requests to participate (Article 111(5) of the Financial Regulation)

1. All requests to participate and tenders declared as complying with the requirements of Article 155 shall be evaluated and ranked by an evaluation committee set up for each of the two stages on the basis of the pre-announced exclusion and selection criteria and the award criteria respectively.

That committee shall be appointed by the authorising officer responsible to give an advisory opinion on contracts with a value above the threshold referred to in Article 137(1).

However, the authorising officer responsible may decide that the evaluation committee is to evaluate and rank the tenders on the basis of the award criteria only and that the exclusion and selection criteria are to be evaluated by other appropriate means guaranteeing the absence of conflicts of interests.

2. The evaluation committee shall be made up of at least three persons representing at least two organisational entities of the institutions or bodies referred to in Article 208 of the Financial Regulation with no hierarchical link between them, at least one of which does not come under the authorising officer responsible. The authorising officer responsible shall ensure that these persons satisfy the obligations laid down in Article 57 of the Financial Regulation.

In the representations and local units referred to in Article 72 or isolated in a Member State, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

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

Outside experts may assist the committee by decision of the authorising officer responsible. The authorising officer responsible shall ensure that these experts satisfy the obligations laid down in Article 57 of the Financial Regulation.

In the case of a procurement procedure launched on an interinstitutional basis, the evaluation committee shall be appointed by the responsible authorising officer from the institution responsible for the procurement procedure. The composition of the evaluation committee shall reflect, in so far as possible, the interinstitutional character of the procurement procedure.

3. Requests to participate and tenders which do not satisfy all the essential requirements set out in the tender documents shall be eliminated.

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

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

4. In the case of abnormally low tenders as referred to in Article 151, the evaluation committee shall request any relevant information concerning the composition of the tender.

FR Article 112 **Principles of equal treatment and transparency**

1. While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers shall satisfy conditions ensuring transparency and equal treat-

ment. They shall not lead to amendment of the conditions of the contract or the terms of the original tender.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the principles of equal treatment and transparency. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the contact that is allowed between contracting authorities and tenderers during the contract award procedure, the minimum requirements of the written record of an evaluation and the minimum details of the decision taken by the contracting authority.

RAP

Article 159

Results of the evaluation

(Article 112 of the Financial Regulation)

1. A written record of the evaluation and ranking of requests to participate and tenders declared to satisfy the requirements shall be drawn up and dated.

The written record shall be signed by all the members of the evaluation committee. That record may be signed in an electronic system providing sufficient identification of the signatory.

If the evaluation committee was not given responsibility to verify the tenders against the exclusion and selection criteria, the written record shall also be signed by the persons who were given that responsibility by the authorising officer responsible. The written record shall be kept for future reference.

2. The written record referred to in paragraph 1 shall contain at least the following:
 - (a) the name and address of the contracting authority, and the subject and value of the contract, the framework contract or the dynamic purchasing system;
 - (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
 - (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
 - (d) the reasons for the rejection of tenders found to be abnormally low;
 - (e) the names of the candidates or contractor proposed and the reasons for that choice and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties.
3. The contracting authority shall then take its decision giving at least the following:
 - (a) the name and address of the contracting authority, the subject and value of the contract, or the subject and maximum value of the framework contract or the dynamic purchasing system;

- (b) the names of the candidates or tenderers rejected and the reasons for their rejection;
- (c) the names of the candidates or tenderers to be examined and the reasons for their selection;
- (d) the reasons for the rejection of tenders found to be abnormally low;
- (e) the names of the candidates or contractor selected and the reasons for that choice by reference to the selection and award criteria announced in advance and, if known, the proportion of the contract or the framework contract which the contractor intends to subcontract to third parties;
- (f) in the case of negotiated procedures and competitive dialogue, the circumstances referred to in Articles 132, 134, 135, 266, 268, 270 and 271 which justify their use;
- (g) where appropriate, the reasons why the contracting authority has decided not to award a contract.

In the case of a procurement procedure launched on an interinstitutional basis, the decision referred to in the first subparagraph shall be taken by the contracting authority responsible for the procurement procedure.

Article 160

Contacts between contracting authorities and tenderers (Article 112 of the Financial Regulation)

1. Contact between the contracting authority and tenderers during the contract award procedure may take place, by way of exception, under the conditions set out in paragraphs 2 and 3.
2. Before the closing date for the submission of tenders, in respect of the additional documents and information referred to in Article 153, the contracting authority may:
 - (a) at the instance of tenderers, communicate additional information solely for the purpose of clarifying the nature of the contract, such information to be communicated on the same date to all tenderers who have asked for the specifications;
 - (b) at its own instance, if it discovers an error, a lack of precision, an omission or any other type of clerical defect in the text of the contract notice, invitation to tender or specifications, inform the persons concerned on the same date and in a manner identical with that applicable in respect of the original invitation to tender.
3. If, after the tenders have been opened, some clarification is required in connection with a tender, or if obvious clerical errors in the tender must be corrected, the

contracting authority may contact the tenderer, although such contact may not lead to any alteration of the terms of the tender.

4. In every case where contact has been made, and in the duly justified cases where contact has not been made as referred to in Article 96 of the Financial Regulation, a record shall be kept in the procurement file.

FR**Article 113****The award decision**

1. The authorising officer shall decide to whom the contract is to be awarded, in compliance with the selection and award criteria laid down in advance in the documents relating to the call for tenders and the procurement rules.
2. The contracting authority shall notify all candidates or tenderers whose applications or tenders are rejected of the grounds on which the decision was taken, as well as the duration of the standstill period referred to in Article 118(2). The contracting authority shall notify all tenderers who meet the exclusion and selection criteria, and who make a request in writing, of the characteristics and relative advantages of the successful tender and the name of the tenderer to whom the contract is awarded.

However, certain details need not be disclosed where disclosure would hinder application of the law, would be contrary to the public interest or would harm the legitimate business interests of public or private undertakings or could distort fair competition between those undertakings.

3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the award decision and the signature and implementation of the contract.

RAP**Article 161*****Information for candidates and tenderers******(Articles 113, 114 and 118 of the Financial Regulation)***

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract or framework contract or admission to a dynamic purchasing system, including the grounds for any decision not to award a contract or framework contract, or set up a dynamic purchasing system, for which there has been competitive tendering or to recommence the procedure.
2. The contracting authority shall, within not more than 15 calendar days from the date on which a written request is received, communicate the information provided for in Article 113(2) of the Financial Regulation.
3. In the case of contracts awarded by the Union institutions on their own account, with a value equal to or more than the thresholds referred to in

Article 170(1) and which are not excluded from the scope of Directive 2004/18/EC, the contracting authority shall inform all unsuccessful tenderers or candidates, simultaneously and individually, by electronic means, that their application or tender has not been accepted at either of the following stages:

- (a) shortly after decisions have been taken on the basis of exclusion and selection criteria and before the award decision, in procurement procedures organised in two separate stages;
- (b) as regards the award decisions and decisions to reject offers, as soon as possible after the award decision and within the following week at the latest.

In each case, the contracting authority shall indicate the reasons why the tender or application has not been accepted and the available legal remedies.

Unsuccessful tenderers or candidates may request additional information about the reasons for their rejection in writing by mail, fax or email, and all selected tenderers whose tenders are not eliminated may obtain information about the characteristics and relative merits of the tender accepted and the name of the successful tenderer, without prejudice to the second subparagraph of Article 113(2) of the Financial Regulation. The contracting authority shall reply within no more than 15 calendar days from receipt of the request.

Article 162

Signature of the contract

(Articles 113 and 118 of the Financial Regulation)

Performance of the contract may not start before the contract is signed.

FR

Article 114

Cancellation of the procurement procedure

The contracting authority may, before the contract is signed, either abandon the procurement or cancel the award procedure without the candidates or tenderers being entitled to claim any compensation.

The decision shall be justified and be brought to the attention of the candidates or tenderers.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the cancellation of the procurement procedure.

RAP

Article 161

Information for candidates and tenderers

(Articles 113, 114 and 118 of the Financial Regulation)

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract or framework contract or admission to a dynamic purchasing system, including the grounds for any decision not

to award a contract or framework contract, or set up a dynamic purchasing system, for which there has been competitive tendering or to recommence the procedure.

2. The contracting authority shall, within not more than 15 calendar days from the date on which a written request is received, communicate the information provided for in Article 113(2) of the Financial Regulation.
3. In the case of contracts awarded by the Union institutions on their own account, with a value equal to or more than the thresholds referred to in Article 170(1) and which are not excluded from the scope of Directive 2004/18/EC, the contracting authority shall inform all unsuccessful tenderers or candidates, simultaneously and individually, by electronic means, that their application or tender has not been accepted at either of the following stages:
 - (a) shortly after decisions have been taken on the basis of exclusion and selection criteria and before the award decision, in procurement procedures organised in two separate stages;
 - (b) as regards the award decisions and decisions to reject offers, as soon as possible after the award decision and within the following week at the latest.

In each case, the contracting authority shall indicate the reasons why the tender or application has not been accepted and the available legal remedies.

Unsuccessful tenderers or candidates may request additional information about the reasons for their rejection in writing by mail, fax or email, and all selected tenderers whose tenders are not eliminated may obtain information about the characteristics and relative merits of the tender accepted and the name of the successful tenderer, without prejudice to the second subparagraph of Article 113(2) of the Financial Regulation. The contracting authority shall reply within no more than 15 calendar days from receipt of the request.

SECTION 4 GUARANTEES AND CORRECTIVE ACTION

FR Article 115 Guarantees

Other than in the case of low value contracts, the contracting authority may, if it deems it appropriate and proportionate on a case-by-case basis and subject to a risk analysis, require contractors to lodge a guarantee in order to:

- (a) ensure full performance of the contract; or
- (b) limit the financial risks connected with payment of pre-financing.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules, including criteria for risk analysis, on the guarantees that are required from contractors.

RAP *Article 163**Guarantees**(Article 115 of the Financial Regulation)*

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

The guarantee shall be denominated in euro.

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

*Article 164**Performance guarantee**(Article 115 of the Financial Regulation)*

1. In order to ensure that the works, supplies or services have been fully delivered and when final acceptance according to the terms of the contract cannot be given upon final payment, the authorising officer may demand a performance guarantee on a case-by-case basis and subject to a preliminary risk analysis.
2. A guarantee corresponding to 10 % of the total value of the contract may be constituted by deductions from payments as and when they are made.

It may be replaced by an amount withheld from the final payment in order to constitute a guarantee until final acceptance of the services, supplies or works. The amount shall be determined by the authorising officer and shall be proportionate to the risks identified in relation to the performance of the contract, taking into account its subject matter, as well as the usual commercial terms applicable to the sector.

Conditions for such a guarantee shall be announced in the tender documents.

3. After final acceptance of the works, services or supplies, guarantees shall be released in accordance with the terms of the contract.

*Article 165**Guarantee for pre-financing**(Article 115 of the Financial Regulation)*

1. Once the contracting authority has established the need for a pre-financing, it shall assess the risks associated with pre-financing payments, before launching the procurement procedure, taking into account in particular the following criteria:
 - (a) the estimated value of the contract;

- (b) its subject matter;
 - (c) its duration and pace;
 - (d) the structure of the market.
2. A guarantee shall be required in return for the payment of pre-financing in the case referred to in the second subparagraph of Article 146(6), or when the authorising officer decides to do so pursuant to paragraph 1 of this Article.

No guarantee shall be required for low value contracts as referred to in Article 137(1).

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

FR Article 116 Errors, irregularities and fraud in the procedure

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

Where, after the award of the contract, the award procedure or the performance of the contract prove to have been subject to substantial errors, irregularities or fraud, the contracting authority may, depending on the stage reached in the procedure, refrain from concluding the contract, suspend its performance or, where appropriate, terminate it.

Where those errors, irregularities or fraud are attributable to the contractor, the contracting authority may, in addition, refuse to make payments, recover amounts already paid or terminate all the contracts concluded with that contractor, in proportion to the seriousness of the errors, irregularities or fraud.

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the suspension of a contract in the event of errors, irregularities and fraud.

RAP Article 166 *Suspension in the event of errors or irregularities* *(Article 116 of the Financial Regulation)*

1. Contracts may be suspended under Article 116 of the Financial Regulation in order to verify whether presumed substantial errors or irregularities or fraud have actually occurred. If they are not confirmed, performance of the contract shall resume as soon as possible.
2. A substantial error or irregularity shall be any infringement of a provision of a contract or regulation resulting from an act or an omission which causes or might cause a loss to the Union budget.

CHAPTER 2

Provisions applicable to contracts awarded by the institutions on their own account**FR****Article 117****The contracting authority**

1. The institutions shall be deemed to be contracting authorities in the case of contracts awarded on their own account. They shall delegate, in accordance with Article 65, the necessary powers for the exercise of the function of the contracting authority.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the delegation of the function of the contracting authority, including the identification of the appropriate levels for the calculation of thresholds.

RAP*Article 167**Identification of the appropriate level for the calculation of thresholds
(Articles 117 and 118 of the Financial Regulation)*

It shall be for each authorising officer by delegation or subdelegation within each institution to assess whether the thresholds laid down in Article 118 of the Financial Regulation have been reached.

FR**Article 118****Thresholds applicable**

1. Subject to Title IV of Part Two, Directive 2004/18/EC lays down the thresholds which determine:
 - (a) the publication arrangements referred to in Article 103;
 - (b) the choice of procedures referred to in Article 104(1);
 - (c) the corresponding time limits.
2. Subject to exceptions and conditions to be specified in the delegated acts adopted pursuant to this Regulation, the contracting authority shall not, in the case of contracts covered by Directive 2004/18/EC, sign the contract or framework contract with the successful tenderer until a standstill period has elapsed.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the thresholds applicable, separate contracts and contracts with lots, estimating the value of certain contracts, and the standstill period before the signature of the contract.

RAP

Article 161***Information for candidates and tenderers******(Articles 113, 114 and 118 of the Financial Regulation)***

1. The contracting authorities shall as soon as possible inform candidates and tenderers of decisions reached concerning the award of the contract or framework contract or admission to a dynamic purchasing system, including the grounds for any decision not to award a contract or framework contract, or set up a dynamic purchasing system, for which there has been competitive tendering or to recommence the procedure.
2. The contracting authority shall, within not more than 15 calendar days from the date on which a written request is received, communicate the information provided for in Article 113(2) of the Financial Regulation.
3. In the case of contracts awarded by the Union institutions on their own account, with a value equal to or more than the thresholds referred to in Article 170(1) and which are not excluded from the scope of Directive 2004/18/EC, the contracting authority shall inform all unsuccessful tenderers or candidates, simultaneously and individually, by electronic means, that their application or tender has not been accepted at either of the following stages:
 - (a) shortly after decisions have been taken on the basis of exclusion and selection criteria and before the award decision, in procurement procedures organised in two separate stages;
 - (b) as regards the award decisions and decisions to reject offers, as soon as possible after the award decision and within the following week at the latest.

In each case, the contracting authority shall indicate the reasons why the tender or application has not been accepted and the available legal remedies.

Unsuccessful tenderers or candidates may request additional information about the reasons for their rejection in writing by mail, fax or email, and all selected tenderers whose tenders are not eliminated may obtain information about the characteristics and relative merits of the tender accepted and the name of the successful tenderer, without prejudice to the second subparagraph of Article 113(2) of the Financial Regulation. The contracting authority shall reply within no more than 15 calendar days from receipt of the request.

Article 162***Signature of the contract******(Articles 113 and 118 of the Financial Regulation)***

Performance of the contract may not start before the contract is signed.

Article 167***Identification of the appropriate level for the calculation of thresholds
(Articles 117 and 118 of the Financial Regulation)***

It shall be for each authorising officer by delegation or subdelegation within each institution to assess whether the thresholds laid down in Article 118 of the Financial Regulation have been reached.

Article 168***Separate contracts and contracts with lots
(Article 104 and 118 of the Financial Regulation)***

1. The estimated value of a contract may not be determined with a view to evading the requirements laid down in this Regulation, nor may a contract be split up for that purpose.

Whenever appropriate, technically feasible, and cost efficient, contracts with a value equal to or greater than the thresholds laid down in Article 170(1) shall be awarded at the same time in the form of separate lots.

2. Where the subject of a supply, service or works contract is subdivided into several lots, each one the subject of an individual contract, the total value of all the lots shall be taken into account for the overall evaluation of the applicable threshold.

Where the total value of all the lots is equal to or exceeds the thresholds laid down in Article 170(1), Article 97(1) and paragraphs 1 and 2 of Article 104 of the Financial Regulation shall apply to each of the lots.

3. Where a contract is to be awarded in the form of separate lots, tenders shall be evaluated separately for each lot. If several lots are awarded to the same tenderer, a single contract covering those lots may be signed.

Article 169***Arrangements for estimating the value of certain contracts
(Article 118 of the Financial Regulation)***

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

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

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

2. For framework contracts and dynamic purchasing systems the value to be taken into account shall be the maximum value of all the contracts envisaged during the total lifetime of the framework contract or dynamic purchasing system.
3. For service contracts, account shall be taken of:
 - (a) in the case of insurance services, the premium payable and other forms of remuneration;
 - (b) in the case of banking or financial services, the fees, commissions, interest and other types of remuneration;
 - (c) in the case of design contracts, the fees, commissions payable and other forms of remuneration.
4. In the case of service contracts which do not specify a total price or of supply contracts for leasing, rental or hire purchase of products, the value to be taken as the basis for calculating the estimated value shall be:
 - (a) in the case of fixed-term contracts:
 - (i) where their term is 48 months or less in the case of services or 12 months or less in the case of supplies, the total contract value for their duration;
 - (ii) where their term is more than 12 months in the case of supplies, the total value including the estimated residual value;
 - (b) in the case of contracts for an indefinite period or, in the case of services, for a period exceeding 48 months, the monthly value multiplied by forty-eight.
5. In the case of service or supply contracts which are awarded regularly or are to be renewed within a given time, the contract value shall be established on the basis of:
 - (a) either the actual aggregate cost of similar contracts for the same types of services or products awarded over the previous financial year or 12 months, adjusted, where possible, for anticipated changes in quantity or value over the 12 months following the initial contract;
 - (b) or the estimated aggregate cost of successive contracts awarded during the 12 months following the first service performed or first delivery or during the term of the contract, where this is greater than 12 months.
6. In the case of works contracts, account shall be taken not only of the value of the works but also of the estimated total value of the supplies needed to carry out the works and made available to the contractor by the contracting authority.

Article 170***Thresholds for application of the procedures under Directive 2004/18/EC
(Article 118 of the Financial Regulation)***

1. The thresholds referred to in Article 118 of the Financial Regulation shall be those set out in Directive 2004/18/EC respectively for supply, service and works contracts.
2. The time limits referred to in Article 118 of the Financial Regulation shall be those specified in Articles 152, 153 and 154.

Article 171***Standstill period before signature of the contract
(Article 118 of the Financial Regulation)***

1. The contracting authority shall not sign the contract or framework contract, covered by Directive 2004/18/EC, with the successful tenderer until 14 calendar days have elapsed.

That period shall run from either of the following dates:

- (a) the day after the simultaneous dispatch of the notifications to successful and unsuccessful tenderers;
- (b) where the contract or framework contract is awarded pursuant to a negotiated procedure without prior publication of a contract notice, the day after the contract award notice referred to in Article 123 has been published in the *Official Journal of the European Union*.

Where a fax or electronic means are used for the dispatch referred to in point (a) of the second subparagraph, the standstill period shall be 10 calendar days.

If necessary, the contracting authority may suspend the signing of the contract for additional examination if this is justified by the requests or comments made by unsuccessful or aggrieved tenderers or candidates or by any other relevant information received. The requests, comments or information must be received during the period set in the first subparagraph. In the case of suspension all the candidates or tenderers shall be informed within three working days following the suspension decision.

Except in the cases provided for in paragraph 2, any contract signed before the expiry of the period set in the first subparagraph shall be null and void.

Where the contract or framework contract cannot be awarded to the successful envisaged tenderer, the contracting authority may award it to the following best tenderer.

2. The period set in paragraph 1 shall not apply in the following cases:
 - (a) open, restricted or negotiated procedures after publication of a contract notice where only one tender has been submitted;

- (b) specific contracts based on a framework contract;
- (c) negotiated procedures referred to in Articles 134(1)(c), 134(1)(g)(iii), 134(1)(h) and 134(1)(j).

FR Article 119 Rules on participation in tendering procedures

1. Participation in tendering procedures shall be open on equal terms to all natural and legal persons coming within the scope of the Treaties and to all natural and legal persons in a third country which has a special agreement with the Union in the field of public procurement under the conditions laid down in that agreement.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the evidence to be provided in relation to access to contracts.

2. OLAF shall exercise the power conferred on the Commission by Council Regulation (Euratom, EC) No 2185/96 of 11 November 1996 concerning on-the-spot checks and inspections carried out by the Commission in order to protect the European Communities' financial interests against fraud and other irregularities ⁽¹⁾ to carry out on-the-spot inspections and checks in the Member States and, in accordance with the cooperation and mutual assistance agreements in force, in third countries and on the premises of international organisations.

RAP Article 172 *Evidence of access to contracts* *(Article 119 of the Financial Regulation)*

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

FR Article 120 Procurement rules of the World Trade Organisation

Where the Multilateral Agreement on Government Procurement concluded within the World Trade Organisation applies, the contracts shall also be open to nationals of the States which have ratified that agreement, under the conditions laid down therein.

⁽¹⁾ OJ L 292, 15.11.1996, p. 2.

TITLE VI GRANTS

CHAPTER 1 Scope and form of grants

FR Article 121 Scope of grants

1. Grants are direct financial contributions, by way of donation, from the budget in order to finance any of the following:

- (a) an action intended to help achieve a Union policy objective;
- (b) the functioning of a body which pursues an aim of general Union interest or has an objective forming part of, and supporting, a Union policy ('operating grants').

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

The Commission may establish secure electronic systems for exchanges with the beneficiaries.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the detailed specification of the scope of grants, and concerning rules determining whether grant agreements or grant decisions are to be used. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning details of the electronic exchange system, including the conditions under which documents submitted by means of such systems, including grant agreements, are to be deemed originals and to have been signed, and the use of framework partnerships.

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

- (a) expenditure on the members and staff of the institutions and contributions to the European schools;
- (b) public contracts as referred to in Article 101, aid paid as macro-financial assistance, and budget support;
- (c) financial instruments, as well as shareholdings or equity participation in international financial institutions such as the European Bank for Reconstruction and Development (EBRD) or specialised Union bodies such as the European Investment Fund;
- (d) contributions paid by the Union as subscriptions to bodies of which it is a member;
- (e) expenditure implemented under shared management and indirect management within the meaning of Articles 58, 59 and 60, unless specified otherwise in the financial rules applicable to the budget of the entities or persons entrusted pursuant to point (c) of Article 58(1) or in delegation agreements;

- (f) contributions to executive agencies referred to in Article 62, made by virtue of each agency's constitutive act;
 - (g) expenditure relating to fisheries markets as referred to in point (f) of Article 3(2) of Council Regulation (EC) No 1290/2005 of 21 June 2005 on the financing of the common agricultural policy ⁽¹⁾;
 - (h) repayment of travel and subsistence expenses incurred by, or where appropriate any other indemnities paid to, persons invited or mandated by the institutions;
 - (i) prizes given as rewards for a contest, to which Title VII of Part One applies.
3. Interest rate rebates and guarantee fee subsidies shall be treated as grants, provided that they are not combined in a single measure with financial instruments as referred to in Title VIII of Part One.
- Such rebates and subsidies shall be subject to the provisions of this Title, with the exception of the following:
- (a) the co-financing principle as set out in Article 125(3);
 - (b) the no-profit principle as set out in Article 125(4);
 - (c) for actions where the objective is to reinforce the financial capacity of a beneficiary or to generate an income, the assessment of the financial capacity of the applicant as referred to in Article 132(1).
4. Each institution may award grants for communication activities where, for duly justified reasons, the use of public procurement procedures is not appropriate.

RAP *Article 173*
Subscriptions
(Article 121 of the Financial Regulation)

The subscriptions referred to in Article 121(2)(d) of the Financial Regulation shall be sums paid to bodies of which the Union is member, in accordance with the budgetary decisions and the conditions of payment established by the body concerned.

Article 174
Agreement and decision for grants
(Article 121(1) of the Financial Regulation)

- 1. Grants shall be covered by a decision or by a written agreement.
- 2. To determine the instrument to be used, the following elements shall be taken into account:
 - (a) location of the beneficiary, within or outside the Union;

⁽¹⁾ OJ L 209, 11.8.2005, p. 1.

- (b) complexity and standardisation of the content of the actions or work programmes funded.

Article 175

Expenditure on the members of the institutions

(Article 121 of the Financial Regulation)

Expenditure on the members of the institutions as referred to in Article 121(2)(a) of the Financial Regulation shall include contributions to associations of current and former members of the European Parliament. These contributions shall be implemented in accordance with the internal administrative rules of the European Parliament.

Article 176

Actions which may receive grants

(Article 121 of the Financial Regulation)

An action which may receive a grant within the meaning of Article 121 of the Financial Regulation must be clearly defined.

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

Article 177

Bodies pursuing an aim of general Union interest

(Article 121 of the Financial Regulation)

A body pursuing an aim of general Union interest is:

- (a) a body involved in education, training, information, innovation or research and study in European policies, any activities contributing to the promotion of citizenship or human rights, or an European standards body;
- (b) an entity representing non-profit bodies active in the Member States, in the candidate countries or in the potential candidate countries and promoting principles and policies consistent with the objectives of the Treaties.

Article 178

Partnerships

(Article 121 of the Financial Regulation)

1. Specific grants for actions and operating grants may form part of a framework partnership.
2. A framework partnership may be established as a long-term cooperation mechanism between the Commission and the beneficiaries of grants. It may take the form of a framework partnership agreement or a framework partnership decision.

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

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

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

3. Framework partnerships shall be treated as grants with regard to programming, *ex ante* publication and award.
4. Specific grants based on framework partnership agreements or decisions shall be awarded in accordance with the procedures laid down in those agreements or decisions, and in compliance with this Title.

They shall be subject to the *ex post* publication procedures laid down in Article 191.

Article 179

Electronic exchange systems

(Article 121(1) of the Financial Regulation)

1. All exchanges with beneficiaries, including the conclusion of grant agreements, the notification of grant decisions and any amendments thereto, may be done through electronic exchange systems set up by the Commission.
2. These systems shall meet the following requirements:
 - (a) only authorised persons may have access to the system and to documents transmitted through it;
 - (b) only authorised persons may electronically sign or transmit a document through the system;
 - (c) authorised persons must be identified through the system by established means;
 - (d) the time and date of the electronic transaction must be determined precisely;
 - (e) the integrity of documents must be preserved;
 - (f) the availability of documents must be preserved;
 - (g) where appropriate, the confidentiality of documents must be preserved;

- (h) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 must be ensured.
3. Data sent or received through such a system shall enjoy legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

A document sent or notified through such a system shall be considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings, shall be deemed original and shall enjoy legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it.

The electronic signatures referred to in point (b) of paragraph 2 shall have the equivalent legal effect of handwritten signatures.

FR Article 122 Beneficiaries

1. Where several entities satisfy the criteria for being awarded a grant and together form one entity, that entity may be treated as the sole beneficiary, including where the entity is specifically established for the purpose of implementing the action to be financed by the grant.
2. For the purpose of this Title, the following entities shall be considered as entities affiliated to the beneficiary:
 - (a) entities forming the beneficiary in accordance with paragraph 1;
 - (b) entities that satisfy the eligibility criteria and that do not fall within one of the situations referred to in Article 131(4) and that have a link with the beneficiary, in particular a legal or capital link, which is neither limited to the action nor established for the sole purpose of its implementation.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the minimum content of grant agreements or decisions, in particular, where a grant is awarded to several entities, the specific obligations of the coordinator, if any, and of the other beneficiaries, the applicable responsibility regime and the conditions for adding or removing a beneficiary.

RAP Article 180 *Content of grant agreements and decisions* *(Article 122 of the Financial Regulation)*

1. The grant agreement shall at least lay down the following:
 - (a) the subject;
 - (b) the beneficiary;

- (c) the duration, namely:
 - (i) the date of its entry into force;
 - (ii) the starting date and the duration of the action or financial year being funded;
- (d) the maximum amount of Union funding expressed in euro and the form of the grant supplemented, as appropriate, by:
 - (i) the total estimated eligible costs of the action or work programme and the financing rate of the eligible costs;
 - (ii) the unit cost, lump sum or flat rate referred to in points (b), (c) and (d) of Article 123 of the Financial Regulation where determined;
 - (iii) a combination of the elements set out in points (i) and (ii) of this point;
- (e) a description of the action or, for an operating grant, of the work programme approved for that financial year by the authorising officer together with a description of the results expected from the implementation of the action or of the work programme;
- (f) the general terms and conditions applicable to all agreements of this type, such as the acceptance by the beneficiary of checks and audits by the Commission, OLAF and the Court of Auditors;
- (g) the estimated overall budget of the action or work programme;
- (h) where implementation of the action involves procurement, the principles referred to in Article 209 or the procurement rules which the beneficiary must comply with;
- (i) the responsibilities of the beneficiary, in particular:
 - (i) in terms of sound financial management and submission of activity and financial reports; whenever appropriate, intermediate targets shall be established, upon which those reports become due;
 - (ii) in the case of an agreement between the Commission and a number of beneficiaries, the specific obligations of the coordinator, if any, and of the other beneficiaries towards the coordinator as well as the financial responsibility of the beneficiaries for amounts due to the Commission;
- (j) the arrangements and time limits for approving those reports and for payment by the Commission;
- (k) as appropriate, details of the eligible costs of the action or approved work programme, or of the unit costs, lump sums or flat rates referred to in Article 123 of the Financial Regulation;

- (l) provisions governing the visibility of the Union financial support, except in duly justified cases, where public display is not possible or appropriate.

The general terms and conditions referred to in point (f) of the first subparagraph shall at least:

- (i) state that Union law is the law which applies to the grant agreement, complemented, where necessary, by national law as specified in the grant agreement. Derogation may be made in the agreements concluded with international organisations;
 - (ii) specify the competent court or arbitration tribunal to hear disputes.
2. The grant agreement may lay down the arrangements and time limits for suspension or termination in accordance with Article 135 of the Financial Regulation.
 3. In the cases referred to in Article 178, the framework partnership decision or framework partnership agreement shall specify the information referred to in points (a), (b), (c)(i), (f), and (h) to (j) and (l) of the first subparagraph of paragraph 1 of this Article.

The specific grant decision or agreement shall contain the information referred to in points (a) to (e), (g) and (k) of the first subparagraph of paragraph 1 and, where necessary, point (i) of the first subparagraph of paragraph 1.

4. Grant agreements may be amended only in writing. Such amendments, including those aiming at adding or removing a beneficiary, shall not have the purpose or the effect of making such changes to agreements as would call into question the grant award decision or be contrary to the equal treatment of applicants.
5. Paragraphs 1, 2, 3 and 4 shall apply *mutatis mutandis* to grant decisions.

Part of the information referred to in paragraph 1 may be provided in the call for proposals or any related document, instead of the grant decision.

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Article 123**Forms of grants**

1. Grants may take any of the following forms:
 - (a) reimbursement of a specified proportion of the eligible costs, referred to in Article 126, actually incurred;
 - (b) reimbursement on the basis of unit costs;
 - (c) lump sums;
 - (d) flat-rate financing;
 - (e) a combination of the forms referred to in points (a) to (d).

2. When determining the appropriate form of a grant, the potential beneficiaries' interests and accounting methods shall be taken into account to the greatest possible extent.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning rules for the different forms of grants, including low value grants.

RAP *Article 181*
Forms of grants
(Article 123 of the Financial Regulation)

1. Grants in the form referred to in point (a) of Article 123(1) of the Financial Regulation shall be calculated on the basis of the eligible costs actually incurred by the beneficiary, subject to a preliminary budget estimate as submitted with the proposal and included in the grant decision or agreement.
2. Unit costs as referred to in point (b) of Article 123(1) of the Financial Regulation shall cover all or certain specific categories of eligible costs which are clearly identified in advance by reference to an amount per unit.
3. Lump sums as referred to in point (c) of Article 123(1) of the Financial Regulation shall cover in global terms all or certain specific categories of eligible costs which are clearly identified in advance.
4. Flat-rate financing as referred to in point (d) of Article 123(1) of the Financial Regulation shall cover specific categories of eligible costs which are clearly identified in advance by applying a percentage.

FR **Article 124**
Lump sums, unit costs and flat-rate financing

1. Without prejudice to the provisions of the basic act, the use of lump sums, unit costs or flat-rate financing shall be authorised by way of a Commission decision ensuring respect for the principle of equal treatment of beneficiaries for the same category of actions or work programmes.

Where the maximum amount per grant does not exceed the amount of a low value grant, the authorisation may be given by the authorising officer responsible.

2. The authorisation shall at least be supported by the following:
 - (a) justification concerning the appropriateness of such forms of financing with regard to the nature of the supported actions or work programmes, as well as to the risks of irregularities and fraud and costs of control;
 - (b) identification of the costs or categories of costs covered by lump sums, unit costs or flat-rate financing, which shall exclude ineligible costs under the applicable Union rules;
 - (c) description of the methods for determining lump sums, unit costs or flat-rate financing, and of the conditions for reasonably ensuring that the no-profit and co-financing

principles are complied with and that double financing of costs is avoided. Those methods shall be based on:

- (i) statistical data or similar objective means; or
- (ii) a beneficiary-by-beneficiary approach, by reference to certified or auditable historical data of the beneficiary or to its usual cost accounting practices.

3. Where recourse to the usual cost accounting practices of the beneficiary is authorised, the authorising officer responsible may assess compliance of those practices *ex ante* with the conditions set out in paragraph 2 or through an appropriate strategy for *ex post* controls.

If the compliance of the beneficiary's usual cost accounting practices with the conditions referred to in paragraph 2 has been established *ex ante*, the amounts of lump sums, unit costs or flat-rate financing determined by application of those practices shall not be challenged by *ex post* controls.

The authorising officer responsible may consider that the usual cost accounting practices of the beneficiary are compliant with the conditions referred to in paragraph 2 if they are accepted by national authorities under comparable funding schemes.

4. The grant decision or agreement may authorise or impose, in the form of flat-rates, funding of the beneficiary's indirect costs up to a maximum of 7 % of total eligible direct costs for the action, except where the beneficiary is in receipt of an operating grant financed from the budget. The 7 % ceiling may be exceeded on the basis of a reasoned decision of the Commission.
5. SME owners and other natural persons who do not receive a salary may declare eligible personnel costs for the work carried out under an action or work programme, on the basis of unit costs determined by way of a Commission decision.
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules regarding lump sums, unit costs and flat-rate financing.

RAP Article 182

Lump sums, unit costs and flat-rate financing (Article 124 of the Financial Regulation)

1. The authorisation to use lump sums, unit costs or flat-rate financing referred to in Article 124(1) of the Financial Regulation shall apply for the duration of the programme. This authorisation may be reviewed if substantial changes are needed. Data and amounts shall be assessed periodically and, where appropriate, lump sums, unit costs or flat-rate financing shall be adjusted.

In the case of an agreement between the Commission and a number of beneficiaries, the ceiling referred to in the second subparagraph of Article 124(1) of the Financial Regulation shall apply to each beneficiary.

2. The grant decision or agreement shall contain all necessary provisions in order to verify that the conditions for the payment of the grant on the basis of lump sums, unit costs or flat-rate financing have been respected.

3. Payment of the grant on the basis of lump sums, unit costs or flat-rate financing shall be without prejudice to the right of access to the beneficiaries' statutory records for the purposes intended by the first subparagraph of paragraph 1 and Article 137(2) of the Financial Regulation.
4. Where an *ex post* control reveals that the generating event has not occurred and an undue payment has been made to the beneficiary on a grant based on lump sums, unit costs or flat-rate financing, the Commission shall be entitled to recover up to the amount of the grant without prejudice to the penalties referred to in Article 109 of the Financial Regulation.

CHAPTER 2

Principles

FR Article 125 General principles applicable to grants

1. Grants shall be subject to the principles of transparency and equal treatment.
2. Without prejudice to Article 130, grants shall not be cumulative or awarded retrospectively.
3. Grants shall involve co-financing without prejudice to the specific rules laid down in Title IV of Part Two.

Unless otherwise specified in this Regulation, the regulations governing political parties at European level and the rules regarding their funding are laid down in Regulation (EC) No 2004/2003 of the European Parliament and of the Council of 4 November 2003 on the regulations governing political parties at European level and the rules regarding their funding⁽¹⁾.

4. Grants shall not have the purpose or effect of producing a profit within the framework of the action or the work programme of the beneficiary ('no-profit principle').

The first subparagraph shall not apply to:

- (a) actions the objective of which is the reinforcement of the financial capacity of a beneficiary, or actions which generate an income to ensure their continuity after the period of Union financing provided for in the grant decision or agreement;
- (b) study, research or training scholarships paid to natural persons;
- (c) other direct support paid to natural persons most in need, such as unemployed persons and refugees;
- (d) grants based on flat rates and/or lump sums and/or unit costs where these comply with the conditions set out in Article 124(2);
- (e) low value grants.

⁽¹⁾ OJ L 297, 15.11.2003, p.1.

Where a profit is made, the Commission shall be entitled to recover the percentage of the profit corresponding to the Union contribution to the eligible costs actually incurred by the beneficiary to carry out the action or work programme.

5. For the purpose of this Title, profit shall be defined as a surplus of the receipts over the eligible costs incurred by the beneficiary, when the request is made for payment of the balance.

The receipts referred to in the first subparagraph shall be limited to income generated by the action or work programme, as well as financial contributions specifically assigned by donors to the financing of the eligible costs.

In the case of an operating grant, amounts dedicated to the building up of reserves shall not be taken into account for the purpose of verifying compliance with the no-profit principle.

6. If a political party at Union level realises a surplus of income over expenditure at the end of a financial year in which it received an operating grant, the part of that surplus corresponding to up to 25 % of the total income for that year may, by derogation from the no-profit principle laid down in paragraph 4, be carried over to the following year provided that it is used before the end of the first quarter of that following year.

For the purpose of verifying compliance with the no-profit principle, the own resources, in particular donations and membership fees, aggregated in the annual operations of a political party at Union level, which exceed 15 % of the eligible costs to be borne by the beneficiary, shall not be taken into account.

The second subparagraph shall not apply if the financial reserves of a political party at Union level exceed 100 % of its average annual income.

7. Grants may be awarded without a call for proposals to the EIB or the European Investment Fund for actions of technical assistance. In such cases Articles 131(2) to (5) and 132(1) shall not apply.
8. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 complementing the general principles applicable to grants, including the no-profit principle and the co-financing principle. Furthermore, the Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning the definition of technical assistance.

RAP *Article 183*

Co-financing principle

(Article 125(3) of the Financial Regulation)

1. Under the co-financing principle, the resources which are necessary to carry out the action or the work programme shall not be provided entirely by the Union contribution.

Co-financing may take the form of the beneficiary's own resources, income generated by the action or work programme or financial or in-kind contributions from third parties.

2. In-kind contributions shall mean non-financial resources made available free of charge by third parties to the beneficiary.

*Article 184**No-profit principle**(Article 125(5) of the Financial Regulation)*

Financial contributions from third parties that may be used by the beneficiary to cover other costs than those eligible under the Union grant or that are not due to the third party where they are not used at the end of the action or work programme, shall not be considered as financial contributions specifically assigned by the donors to the financing of the eligible costs within the meaning of Article 125(5) of the Financial Regulation.

*Article 185**Low value grants**(Article 125(4) of the Financial Regulation)*

Low value grants shall be considered to be those grants which are lower than or equal to EUR 60 000.

*Article 186**Technical assistance**(Articles 101 and 125 of the Financial Regulation)*

‘Technical assistance’ shall mean support and capacity-building activities necessary for the implementation of a programme or an action, in particular preparatory, management, monitoring, evaluation, audit and control activities.

FR Article 126 **Eligible costs**

1. Grants shall not exceed an overall ceiling expressed in terms of an absolute value which shall be established on the basis of estimated eligible costs.

Grants shall not exceed the eligible costs.

2. Eligible costs are costs actually incurred by the beneficiary of a grant which meet all of the following criteria:
 - (a) they are incurred during the duration of the action or of the work programme, with the exception of costs relating to final reports and audit certificates;
 - (b) they are indicated in the estimated overall budget of the action or work programme;
 - (c) they are necessary for the implementation of the action or of the work programme which is the subject of the grant;
 - (d) they are identifiable and verifiable, in particular being recorded in the accounting records of the beneficiary and determined according to the applicable accounting

standards of the country where the beneficiary is established and according to the usual cost accounting practices of the beneficiary;

- (e) they comply with the requirements of applicable tax and social legislation;
- (f) they are reasonable, justified, and comply with the principle of sound financial management, in particular regarding economy and efficiency.

3. Calls for proposals shall specify the categories of costs considered as eligible for Union funding.

Without prejudice to the basic act and in addition to paragraph 2, the following categories of costs shall be eligible where the authorising officer responsible has declared them as such under the call for proposals:

- (a) costs relating to a pre-financing guarantee lodged by the beneficiary of the grant, where that guarantee is required by the authorising officer responsible pursuant to Article 134(1);
- (b) costs relating to external audits where such audits are required in support of the requests for payments by the authorising officer responsible;
- (c) value added tax ('VAT') where it is not recoverable under the applicable national VAT legislation and is paid by a beneficiary other than a non-taxable person as defined in the first subparagraph of Article 13(1) of Council Directive 2006/112/EC of 28 November 2006 on the common system of value added tax ⁽¹⁾;
- (d) depreciation costs, provided they are actually incurred by the beneficiary;
- (e) salary costs of the personnel of national administrations to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken.

4. Costs incurred by entities affiliated to a beneficiary as described in Article 122 may be accepted as eligible by the authorising officer responsible under the call for proposals. In such a case, the following conditions shall apply cumulatively:

- (a) the entities concerned are identified in the grant agreement or decision;
- (b) the entities concerned abide by the rules applicable to the beneficiary under the grant agreement or decision with regard to eligibility of costs and rights of checks and audits by the Commission, OLAF and the Court of Auditors.

5. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning further specifications on eligible costs.

⁽¹⁾ OJ L 347, 11.12.2006, p. 1.

RAP *Article 187*
Eligible costs
(Article 126(3)(c) of the Financial Regulation)

VAT shall be considered as not recoverable under the applicable national VAT legislation, if according to national law it is attributable to any of the following activities:

- (a) exempt activities without right of deduction;
- (b) activities which fall outside the scope of VAT;
- (c) activities, as referred to in points (a) or (b), in respect of which VAT is not deductible but refunded by means of specific refund schemes or compensation funds not foreseen by Directive 2006/112/EC, even if that scheme or fund is established by national VAT legislation.

VAT relating to the activities listed in Article 13(2) of Directive 2006/112/EC shall be regarded as paid by a beneficiary other than a non-taxable person as defined in the first subparagraph of Article 13(1) of that Directive, regardless of whether those activities are regarded by the Member State concerned as activities engaged in by bodies governed by public law acting as public authorities.

FR **Article 127**
Co-financing in kind

1. For the purpose of calculating the profit generated by the grant, co-financing in the form of contributions in kind shall not be taken into account.
2. The authorising officer responsible may accept contributions in kind as co-financing, if considered necessary or appropriate. Where co-financing in kind is offered in support of low value grants and the authorising officer responsible has decided to refuse this, he or she shall justify why it is unnecessary or inappropriate.

Such contributions shall not exceed:

- (a) either the costs actually incurred by third parties and duly supported by accounting documents;
- (b) or, in the absence of such documents, the costs that correspond to those generally accepted on the market in question.

Contributions in kind shall be presented separately in the estimated budget to reflect the total resources allocated to the action. Their unit value shall be evaluated in the provisional budget and shall not be subject to subsequent changes.

Contributions in kind shall comply with national tax and social security rules.

FR Article 128
Transparency

1. Grants shall be subject to a work programme, to be published prior to its implementation.

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

The first subparagraph shall not apply to crisis management aid, civil protection operations or humanitarian aid operations.

2. Calls for proposals shall specify the planned date by which all applicants shall have been informed of the outcome of the evaluation of their application and the indicative date for the signature of grant agreements or notification of grant decisions.

Those dates shall be fixed on the basis of the following periods:

- (a) for informing all applicants of the outcome of the evaluation of their application, a maximum of six months from the final date for submission of complete proposals;
- (b) for signing grant agreements with applicants or notifying grant decisions to them, a maximum of three months from the date of informing applicants they have been successful.

Those periods may be adjusted in order to take into account any time needed to comply with specific procedures that may be required by the basic act in accordance with Regulation (EU) No 182/2011 of the European Parliament and of the Council ⁽¹⁾ and may be exceeded in exceptional, duly justified cases, in particular for complex actions, where there is a large number of proposals or delays attributable to the applicants.

The authorising officer by delegation shall report in his or her annual activity report on the average time taken to inform applicants, sign grant agreements or notify grant decisions. In the event of the periods referred to in the second subparagraph being exceeded, the authorising officer by delegation shall give reasons and, where not duly justified in accordance with the third subparagraph, shall propose remedial action.

3. All grants awarded in the course of a financial year shall be published annually in accordance with Article 35(2) and (3).
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the requirements regarding the work programme, the content of calls for proposals, the exceptions to calls for proposals, information for applicants and *ex post* publication.

⁽¹⁾ OJ L 55, 28.2.2011, p. 13.

RAP

Article 188**Programming****(Article 128 of the Financial Regulation)**

1. An annual or multiannual work programme for grants shall be prepared by each authorising officer responsible. The work programme shall be adopted by the institution and published on the grants internet site of the institution concerned as soon as possible, and no later than 31 March of the year of implementation.

The work programme shall specify the period it covers, the basic act, if any, the objectives pursued, the expected results, the indicative timetable of calls for proposals with the indicative amount and the maximum rate of co-financing.

The work programme shall in addition contain the information set out in Article 94 for the decision adopting it to be considered as the financing decision for the grants of the year concerned.

2. Any substantial change in the work programme shall also be adopted and published as provided for in paragraph 1.

Article 189**Content of calls for proposals****(Article 128 of the Financial Regulation)**

1. Calls for proposals shall specify:
 - (a) the objectives pursued;
 - (b) the eligibility, exclusion, selection and award criteria as referred to in Articles 131 and 132 of the Financial Regulation and the relevant supporting documents;
 - (c) the arrangements for Union financing;
 - (d) the arrangements and final date for the submission of proposals and the planned date by which all applicants are to be informed of the outcome of the evaluation of their application and the indicative date for the signature of grant agreements or notification of grant decisions.
2. Calls for proposals shall be published on the internet site of the Union institutions and in addition to publication on the internet site by any other appropriate means, including the *Official Journal of the European Union*, where it is necessary to provide additional publicity among potential beneficiaries. They may be published as from the adoption of the financing decision referred to in Article 84 of the Financial Regulation, including during the year preceding budget implementation. Any modification of the content of the calls for proposals shall be subject to publication under the same conditions as those for the calls for proposals.

Article 190***Exceptions to calls for proposals******(Article 128 of the Financial Regulation)***

1. Grants may be awarded without a call for proposals only in the following cases:
 - (a) for the purposes of humanitarian aid and civil protection operations or for crisis management aid within the meaning of paragraph 2;
 - (b) in other exceptional and duly substantiated emergencies;
 - (c) to bodies with a *de jure* or *de facto* monopoly, duly substantiated in the award decision;
 - (d) to bodies identified by a basic act, within the meaning of Article 54 of the Financial Regulation, as beneficiaries of a grant or to bodies designated by the Member States, under their responsibility, where those Member States are identified by a basic act as beneficiaries of a grant;
 - (e) in the case of research and technological development, to bodies identified in the work programme referred to in Article 128 of the Financial Regulation, where the basic act expressly provides for that possibility, and on condition that the project does not fall under the scope of a call for proposals;
 - (f) for actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals.

The cases referred to in point (f) of the first subparagraph shall be duly substantiated in the award decision.

2. Crisis situations in third countries shall be understood as situations of immediate or imminent danger threatening to escalate into armed conflict or to destabilise the country. Crisis situations shall also be understood as situations caused by natural disasters, manmade crisis such as wars and other conflicts or extraordinary circumstances having comparable effects related inter alia to climate change, environmental degradation, privation of access to energy and natural resources or extreme poverty.

Article 191***Ex post publication******(Article 128 of the Financial Regulation)***

1. Information relating to grants awarded in the course of a financial year shall be published in accordance with Article 21.
2. Following the publication referred to in paragraph 1, when requested by the European Parliament and the Council, the Commission shall forward them a report on:

- (a) the number of applicants in the past year;
- (b) the number and percentage of successful applications per call for proposals;
- (c) the mean duration of the procedure from date of closure of the call for proposals to the award of a grant;
- (d) the number and amount of grants where the *ex post* publication obligation was waived in the past year in accordance with Article 21(4).

Article 192

Information for applicants

(Article 128 of the Financial Regulation)

The Commission shall provide information and advice to applicants by the following means:

- (a) laying down joint standards for application forms for similar grants and monitoring the size and readability of the application forms;
- (b) supplying information to potential applicants in particular through seminars and the provision of handbooks;
- (c) maintaining permanent data for beneficiaries in the legal entity file referred to in Article 63.

FR

Article 129

Principle of non-cumulative award

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

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

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

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

2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the principle of the non-cumulative award of grants.

RAP

Article 193

Financing from separate budget lines

(Article 129 of the Financial Regulation)

An action may be financed jointly from separate budget lines by different authorising officers responsible.

FR Article 130 Principle of non-retroactivity

1. A grant may be awarded for an action which has already begun provided that the applicant can demonstrate the need for starting the action prior to signature of the grant agreement or notification of the grant decision.

In such cases, costs eligible for financing shall not have been incurred prior to the date of submission of the grant application, except in duly justified exceptional cases as provided for in the basic act or in the event of extreme urgency for crisis management aid, civil protection operations and humanitarian aid operations, or in situations of imminent or immediate danger threatening to escalate into armed conflict or to destabilise a country, whereby an early engagement by the Union would be of major importance in promoting conflict prevention.

No grant may be awarded retroactively for actions already completed.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the principle of non-retroactivity.

2. In the case of operating grants, the grant agreement shall be signed or notification of the grant decision given within six months of the start of the beneficiary's financial year. Costs eligible for financing may neither have been incurred before the grant application was submitted nor before the start of the beneficiary's financial year.

RAP Article 194 *Retroactive effect of funding in cases of extreme urgency and conflict prevention (Article 130 of the Financial Regulation)*

Within the scope of Article 130(1) of the Financial Regulation, the expenditure incurred by a beneficiary before the date of submission of the application shall be eligible for Union financing under the following conditions:

- (a) the reasons for such derogation have been properly substantiated in the financing decision;
- (b) the financing decision and the grant agreement or decision set explicitly the eligibility date earlier than the date for submission of applications.

CHAPTER 3 Award procedure

FR Article 131 Applications for grants

1. Grant applications shall be submitted in writing, including, where appropriate, in a secure electronic format.

The Commission shall provide, where it deems it feasible, the possibility of making online grant applications.

2. Grant applications shall be eligible if submitted by the following:
 - (a) legal persons; or
 - (b) natural persons, in so far as this is required by the nature or characteristics of the action or the objective pursued by the applicant.

For the purposes of point (a) of the first subparagraph, grant applications may be eligible if submitted by entities which do not have legal personality under the applicable national law, provided that their representatives have the capacity to undertake legal obligations on behalf of the entity and offer guarantees for the protection of the Union's financial interests equivalent to those offered by legal persons.

3. The application shall state the legal status of the applicant and demonstrate his or her financial and operational capacity to carry out the proposed action or work programme.

For that purpose the applicant shall submit a declaration on his or her honour and, unless the grant is a low value grant, any supporting documents requested, on the basis of a risk assessment, by the authorising officer responsible. The prerequisite documents shall be indicated in the call for proposals.

The verification of financial capacity shall not apply to natural persons in receipt of scholarships, to natural persons most in need and in receipt of direct support, to public bodies or international organisations. The authorising officer responsible may, depending on a risk assessment, waive the obligation to verify the operational capacity of public bodies or international organisations.

4. Article 106(1) and Articles 107, 108 and 109 shall also apply to grant applicants. Applicants shall certify that they are not in one of the situations referred to in those Articles. However, the authorising officer responsible shall not require such certification in the following cases:

- (a) low value grants;
- (b) when such certification has recently been provided in another award procedure.

5. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer responsible, in accordance with Article 109.

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

6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the arrangements for grant applications, evidence of not falling within an exclusion situation, applicants without legal personality, legal persons forming one applicant, financial and administrative penalties, eligibility criteria and low value grants.

RAP *Article 145**Administrative and financial penalties**(Articles 109 and 131 of the Financial Regulation)*

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have made false declarations, have made substantial errors or committed irregularities or fraud, or have been found in serious breach of their contractual obligations may be excluded from all contracts and grants financed by the Union budget for a maximum of five years from the date on which the infringement is established as confirmed following a contradictory procedure with the candidate, tenderer or the contractor.

That period may be extended to 10 years in the event of a repeated offence within five years of the date referred to in the first subparagraph.

2. Tenderers or candidates who have made false declarations, have committed substantial errors, irregularities or fraud, may also be subject to financial penalties representing 2 % to 10 % of the total estimated value of the contract being awarded.

Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2 % to 10 % of the total value of the contract in question.

That rate may be increased to 4 % to 20 % in the event of a repeat infringement within five years of the date referred to in the first subparagraph of paragraph 1.

3. The institution shall determine the administrative or financial penalties taking into account in particular the elements referred to in Article 142(1).

*Article 195**Submission of grant applications**(Article 131 of the Financial Regulation)*

1. The arrangements for the submission of grant applications shall be determined by the authorising officer responsible, who may choose the method of submission. Grant applications may be submitted by letter or by electronic means.

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

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

- (a) each submission contains all the information required for its evaluation;
- (b) the integrity of data must be preserved;
- (c) the confidentiality of proposals must be preserved;

- (d) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 is ensured.

For the purposes of point (c) of the third subparagraph, the authorising officer responsible shall examine the content of applications only after the time limit set for submitting them has expired.

The authorising officer responsible may require that electronic submission be accompanied by an advanced electronic signature within the meaning of Directive 1999/93/EC of the European Parliament and of the Council ⁽¹⁾.

2. Where the authorising officer responsible authorises submission of applications by electronic means, the tools used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use. The information relating to the specifications required for presentation of applications, including encryption shall be made available to the applicants.

Moreover, the devices for the electronic receipt of applications shall guarantee security and confidentiality. They shall also guarantee that the exact time and date of receipt of applications can be determined precisely.

3. Where submission is by letter, applicants may choose to submit applications in one of the following ways:
- (a) by post or by courier service, in which case the call for proposals shall specify that the evidence shall be constituted by the date of dispatch, the postmark or the date of the deposit slip;
 - (b) by hand-delivery to the premises of the institution by the applicant in person or by an agent, in which case the call for proposals shall specify the department to which applications are to be delivered against a signed and dated receipt.

Article 196

Content of grant applications

(Article 131 of the Financial Regulation)

1. Applications shall be made on the form established in accordance with the joint standards laid down pursuant to Article 192(a) and made available by the authorising officers responsible, and in accordance with the criteria laid down in the basic act and the call for proposals.

The supporting documents referred to in the second subparagraph of Article 131(3) of the Financial Regulation may consist in particular in the profit and loss account and the balance sheet for the last financial year for which the accounts were closed.

⁽¹⁾ OJ L 13, 19.1.2000, p. 12.

2. The estimated budget for the action or work programme attached to the application shall have revenue and expenditure in balance, subject to provisions for contingencies or possible variations in exchange rates which may be authorised in duly justified cases, and shall indicate the estimated eligible costs of the action or work programme.
3. Where the application concerns grants for an action for which the amount exceeds EUR 750 000 or operating grants which exceed EUR 100 000, an audit report produced by an approved external auditor shall be submitted. That report shall certify the accounts for the last financial year available.

The first subparagraph of this paragraph shall apply only to the first application made by a beneficiary to an authorising officer responsible in any one financial year.

In the case of agreements between the Commission and a number of beneficiaries, the thresholds set in the first subparagraph shall apply to each beneficiary.

In case of partnerships referred to in Article 178, the audit report referred to in the first subparagraph of this paragraph, covering the last two financial years available must be produced before signature of the framework partnership agreement or notification of the framework partnership decision.

The authorising officer responsible may, depending on a risk assessment, waive the obligation of audit report referred to in the first subparagraph for education and training establishments and, in case of agreements with a number of beneficiaries, beneficiaries who have accepted joint and several liabilities or who do not bear any financial responsibility.

The first subparagraph of this paragraph shall not apply to public bodies and the international organisations referred to in Article 43.

4. The applicant shall indicate the sources and amounts of Union funding received or applied for the same action or part of the action or for its functioning during the same financial year as well as any other funding received or applied for the same action.

Article 197

Evidence of non-exclusion

(Article 131 of the Financial Regulation)

Applicants shall declare on their honour that they are not in one of the situations listed in Articles 106(1) and 107 of the Financial Regulation, except in the cases provided for in points (a) and (b) of Article 131(4) of the Financial Regulation. The authorising officer responsible may, depending on a risk assessment, request that successful applicants provide the evidence referred to in Article 143. Where requested by the authorising officer responsible, successful applicants shall supply such evidence, unless

there is a material impossibility recognised by the authorising officer responsible or such evidence has already been submitted for the purposes of another grant or procurement procedure, provided that the documents are not more than one year old counting from their date of issue and that they are still valid.

Article 198

Applicants without legal personality

(Article 131 of the Financial Regulation)

When an application for a grant is submitted by an applicant which does not have legal personality, in accordance with Article 131(2) of the Financial Regulation, the representatives of that applicant shall prove that they have the capacity to undertake legal obligations on behalf of the applicant and that the applicant has financial and operational capacity equivalent to that of legal persons.

Article 199

Entities forming one applicant

(Article 131 of the Financial Regulation)

Where several entities satisfy the criteria for applying for a grant and together form one entity, that entity may be treated by the authorising officer responsible as the sole applicant, provided that the application identifies the entities involved in the proposed action or work programme as part of the applicant.

Article 200

Financial and administrative penalties

(Article 131 of the Financial Regulation)

Financial or administrative penalties, or both, may be imposed on applicants who have made false declarations or substantial errors, or committed irregularities or fraud, in accordance with the conditions laid down in Article 145.

Such financial or administrative penalties, or both, may also be imposed on beneficiaries who have been found in serious breach of their contractual obligations.

Article 201

Eligibility criteria

(Article 131 of the Financial Regulation)

1. The eligibility criteria shall be published in the call for proposals.
2. The eligibility criteria shall determine the conditions for participating in a call for proposals. Those criteria shall be established with due regard for the objectives of the action and shall comply with the principles of transparency and non-discrimination.

FR Article 132
Selection and award criteria

1. The selection criteria announced in advance in the call for proposals shall be such as to make it possible to assess the applicant's ability to complete the proposed action or work programme.
2. The award criteria announced in advance in the call for proposals shall be such as to make it possible to assess the quality of the proposals submitted in the light of the objectives and priorities set.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on selection and award criteria.

RAP Article 202
Selection criteria
(Article 132(1) of the Financial Regulation)

1. The selection criteria shall be published in the call for proposals and shall be such as to make it possible to assess the applicant's financial and operational capacity to complete the proposed action or work programme.
2. The applicant must have stable and sufficient sources of funding to maintain his activity throughout the period during which the action is being carried out or the year for which the grant is awarded and to participate in its funding. The applicant must have the professional competencies and qualifications required to complete the proposed action or work programme unless specifically provided otherwise in the basic act.
3. Financial and operational capacity shall be verified in particular on the basis of an analysis of any of the supporting documents referred to in Article 196 and requested by the authorising officer responsible in the call for proposals.

If no supporting documents were requested in the call for proposals and if the authorising officer responsible has doubts about the financial or operational capacity of applicants, he shall request them to provide any appropriate documents.

In the case of the partnerships referred to in Article 178, that verification shall be performed before signature of the framework partnership agreement or notification of the framework partnership decision.

Article 203
Award criteria
(Article 132(2) of the Financial Regulation)

1. The award criteria shall be published in the call for proposals.
2. The award criteria shall be such as to enable grants to be awarded either to the actions which maximise the overall effectiveness of the Union programme which

they implement or to the bodies whose work programme is designed to attain the same result. Those criteria shall be defined in such a way as to ensure also that the Union funds are properly managed.

The award criteria shall be applied in such a way as to enable the selection of planned actions or work programmes which the Commission can be confident will comply with its objectives and priorities and guarantee the visibility of the Union financing.

3. The award criteria shall be defined in such a way that it will be possible subsequently to carry out an evaluation.

FR**Article 133****Evaluation procedure**

1. Proposals shall be evaluated, on the basis of pre-announced selection and award criteria, with a view to determining which proposals may be financed.
2. The authorising officer responsible shall, on the basis of the evaluation provided for in paragraph 1, draw up the list of beneficiaries and the amounts approved.
3. The authorising officer responsible shall inform applicants in writing of the decision on their application. If the grant requested is not awarded, the institution concerned shall give the reasons for the rejection of the application, with reference in particular to the selection and award criteria.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the evaluation and award of grants and information to applicants.

RAP**Article 204*****Evaluation of applications and award
(Article 133 of the Financial Regulation)***

1. The authorising officer responsible shall appoint a committee to evaluate the proposals, unless the Commission decides otherwise in the framework of a specific sectorial programme.

The committee shall be made up of at least three persons representing at least two organisational entities of the institutions or bodies referred to in Articles 62 and 208 of the Financial Regulation with no hierarchical link between them. To avoid any conflict of interests, those persons shall be subject to the obligations laid down in Article 57 of the Financial Regulation.

In the representations and local units referred to in Article 72 of this Regulation and the delegated bodies referred to in Articles 62 and 208 of the Financial Regulation, if there are no separate entities, the requirement of organisational entities with no hierarchical link between them shall not apply.

Outside experts may assist the committee by decision of the authorising officer responsible. The authorising officer responsible shall ensure that these experts satisfy the obligations laid down in Article 57 of the Financial Regulation.

2. The authorising officer responsible shall, where appropriate, divide the process into several procedural stages. The rules governing the process shall be announced in the call for proposals.

Where a call for proposals specifies a two-stage submission procedure, only those applicants whose proposals satisfy the evaluation criteria for the first stage shall be requested to submit a complete proposal in the second stage.

Where a call for proposals specifies a two-stage evaluation procedure, only those proposals that pass the first stage, based on the evaluation against a limited set of criteria, shall go forward for further evaluation.

The applicants whose proposals are rejected at any stage shall be informed in accordance with Article 133(3) of the Financial Regulation.

Each subsequent stage of the procedure must be clearly distinct from the previous one.

The same documents and information shall not be required to be provided more than once during the same procedure.

3. The evaluation committee or, where appropriate, the authorising officer responsible may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, provided that such information or clarification does not substantially change the proposal. In accordance with Article 96 of the Financial Regulation, in the case of obvious clerical errors, the evaluation committee or the authorising officer may refrain from doing so only in duly justified cases. The authorising officer shall keep appropriate records of contacts with applicants during the procedure.
4. Upon completion of its work, the members of the evaluation committee shall sign a record of all the proposals examined, containing an assessment of their quality and identifying those which may receive funding. Those records may be signed in an electronic system providing sufficient authentication of the signatory.

Where necessary that record shall rank the proposals examined, provide recommendations on the maximum amount to award and possible non-substantial adjustments to the grant application.

The record shall be kept for future reference.

5. The authorising officer responsible may invite an applicant to adjust its proposal in the light of the recommendations of the evaluation committee. The authorising officer responsible shall keep appropriate records of contacts with applicants during the procedure.

The authorising officer responsible shall, after evaluation, take his decision giving at least:

- (a) the subject and the overall amount of the decision;
 - (b) the name of the successful applicants, the title of the actions, the amounts accepted and the reasons for that choice, including where it is inconsistent with the opinion of the evaluation committee;
 - (c) the names of any applicants rejected and the reasons for that rejection.
6. Paragraphs 1, 2 and 4 of this Article are not compulsory for the award of grants pursuant to Article 190 of this Regulation and to Article 125(7) of the Financial Regulation.

Article 205

Information for applicants

(Article 133 of the Financial Regulation)

Rejected applicants shall be informed as soon as possible of the outcome of the evaluation of their application and in any case within 15 calendar days after information has been sent to the successful applicants.

CHAPTER 4

Payment and control

FR

Article 134

Pre-financing guarantee

1. The authorising officer responsible may, if he or she deems it appropriate and proportionate, on a case-by-case basis and subject to risk analysis, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.
2. Notwithstanding paragraph 1, guarantees shall not be required in the case of low value grants.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the pre-financing guarantee.

RAP

Article 206

Pre-financing guarantee

(Article 134 of the Financial Regulation)

1. In order to limit the financial risks connected with the payment of pre-financing, the authorising officer responsible may, on the basis of a risk assessment require the beneficiary to lodge a guarantee in advance, for up to the same amount as the pre-financing, except for low value grants, or split the payment into several instalments.

2. Whenever a guarantee is required, it is subject to the assessment and acceptance of the authorising officer responsible.

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

3. The guarantee shall be provided by an approved bank or financial institution established in one of the Member States. When the beneficiary is established in a third country, the authorising officer responsible may agree that a bank or financial institution established in that third country may provide the guarantee if he considers that the bank or financial institution offers equivalent security and characteristics as those offered by a bank or financial institution established in a Member State.

At the request of the beneficiary, the guarantee referred to in the first subparagraph may be replaced by a joint and several guarantee by a third party or by the irrevocable and unconditional joint guarantee of the beneficiaries of an action who are parties to the same grant agreement or decision, after acceptance by the authorising officer responsible.

The guarantee shall be denominated in euro.

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

4. The guarantee shall be released as the pre-financing is gradually cleared against interim payments or payment of the balance to the beneficiary in accordance with the conditions laid down in the grant agreement or decision.

FR

Article 135**Payment of grants and controls**

1. The amount of the grant shall not become final until after the authorising officer responsible has approved the final reports and accounts, without prejudice to subsequent checks by the institution concerned, which shall be carried out in a timely manner.
2. Where the award procedure proves to have been subject to substantial errors, irregularities or fraud, the authorising officer responsible shall suspend the procedure and may take whatever measures are necessary, including the cancellation of the procedure. The authorising officer responsible shall inform OLAF immediately of suspected cases of fraud.
3. Where, after the award of the grant, the award procedure or the implementation of the grant proves to have been subject to substantial errors, irregularities, fraud, or breach of obligations, the authorising officer responsible may, depending on the stage reached in the procedure and, provided that the applicant or beneficiary has been given the opportunity to make observations:
 - (a) refuse to sign the grant agreement or to give notification of the grant decision;
 - (b) suspend implementation of the grant; or
 - (c) where appropriate, terminate the grant agreement or decision.

4. Where such errors, irregularities or fraud are attributable to the beneficiary, or should the beneficiary breach his or her obligations under a grant agreement or decision, the authorising officer responsible may, in addition, reduce the grant or recover amounts unduly paid under the grant agreement or decision, in proportion to the seriousness of the errors, irregularities or fraud or of the breach of obligations, provided that the beneficiary has been given the opportunity to make observations.
5. Where controls or audits demonstrate systemic or recurrent errors, irregularities, fraud or breach of obligations attributable to the beneficiary and having a material impact on a number of grants awarded to that beneficiary under similar conditions, the authorising officer responsible may suspend implementation of all the grants concerned or, where appropriate, terminate the concerned grant agreements or decisions with that beneficiary, in proportion to the seriousness of the errors, irregularities or fraud or of the breach of obligations, provided that the beneficiary has been given the opportunity to make observations.

The authorising officer responsible may, in addition, following an adversarial procedure, reduce the grants or recover amounts unduly paid in respect of all the grants affected by the systemic or recurrent errors, irregularities, fraud or breach of obligations referred to in the first subparagraph that may be audited in accordance with the grant agreements or decisions.

6. The authorising officer responsible shall determine the amounts to be reduced or recovered, wherever possible and practicable, on the basis of costs unduly declared as eligible for each grant concerned, following acceptance of the revised financial statements submitted by the beneficiary.
7. Where it is not possible or practicable to quantify precisely the amount of ineligible costs for each grant concerned, the amounts to be reduced or recovered may be determined by extrapolating the reduction or recovery rate applied to the grants for which the systemic or recurrent errors or irregularities have been demonstrated, or, where ineligible costs cannot serve as a basis for determining the amounts to be reduced or recovered, by applying a flat rate, having regard to the principle of proportionality. The beneficiary shall be given the opportunity to make observations on the extrapolation method or flat rate to be applied and to propose a duly substantiated alternative method or rate before the reduction or recovery is made.
8. The Commission shall ensure equal treatment of beneficiaries of a programme, in particular where it is implemented by several authorising officers responsible.

Beneficiaries shall be informed of the means for challenging decisions taken under paragraphs 3, 4, 5, 6 and 7 of this Article, in accordance with Article 97.

9. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules for the payment of grants and controls, including rules concerning supporting documents and the suspension and reduction of grants.

RAP *Article 207**Supporting documents for payment requests
(Article 135 of the Financial Regulation)*

1. For each grant, pre-financing may be split into several instalments in accordance with sound financial management.

The payment in full of the new pre-financing payment shall be subject to the consumption of at least 70 % of the total amount of any earlier pre-financing.

Where the consumption of the previous pre-financing is less than 70 %, the amount of the new pre-financing payment shall be reduced by the unused amounts of the previous pre-financing.

The statement of the beneficiary's outlay shall be produced in support of any request for a new payment.

2. The beneficiary shall, without prejudice to Article 110, certify on his honour that information contained in payment requests is full, reliable and true. He shall also certify that the costs incurred can be considered eligible in accordance with the grant agreement or decision and that payment requests are substantiated by adequate supporting documents that can be checked.
3. A certificate on the financial statements of the action or the work programme and underlying accounts, produced by an approved external auditor or in case of public bodies, by a competent and independent public officer, may be demanded by the authorising officer responsible in support of any payment, on the basis of a risk assessment. The certificate shall be attached to the payment request. The certificate shall certify, in accordance with a methodology approved by the authorising officer responsible and on the basis of agreed-upon procedures compliant with international standards, that the costs declared by the beneficiary in the financial statements on which the payment request is based are real, accurately recorded and eligible in accordance with the grant agreement or decision.

In specific and duly justified cases, the authorising officer responsible may request the certificate in the form of an opinion or other format in accordance with international standards.

The certificate on the financial statements and underlying accounts shall be compulsory for interim payments and for payments of balances in the following cases:

- (a) grants for an action for which the amount awarded in the form referred to in Article 123(1)(a) of the Financial Regulation is EUR 750 000 or more, when the cumulative amounts of payment requests under that form is at least EUR 325 000;
- (b) operating grants for which the amount awarded in the form referred to in Article 123(1)(a) of the Financial Regulation is EUR 100 000 or more.

Depending on a risk assessment, the authorising officer responsible may also waive the obligation to provide such certificate on the financial statements and underlying accounts in the case of:

- (a) public bodies and the international organisations referred to in Article 43;
- (b) the beneficiaries of grants in connection with humanitarian aid, civil protection emergency operations and the management of crisis situations, save in respect of payments of balances;
- (c) for payments of balances, beneficiaries of grants in connection with humanitarian aid who have signed a framework partnership agreement or have been notified a framework partnership decision, as referred to in Article 178, and who have in place a system of control offering equivalent guarantees for such payments;
- (d) beneficiaries of multiple grants who have provided independent certification offering equivalent guarantees on the control systems and methodology used to prepare their claims.

The authorising officer responsible may also waive the obligation to provide a certificate on the financial statements and underlying accounts where an audit has been or will be directly done by the Commission's own staff or by a body authorised to do so on its behalf, which provides equivalent assurances about the costs declared.

In the case of an agreement between the Commission and a number of beneficiaries, the thresholds referred to in points (a) and (b) of the third subparagraph shall apply to each beneficiary.

4. An operational verification report, produced by an independent third party approved by the authorising officer responsible, may be requested by the authorising officer responsible in support of any payment, on the basis of a risk assessment. Where requested by the authorising officer responsible, the verification report shall be attached to the payment request and the corresponding costs are eligible under the same conditions as the costs relating to audit certificates as laid down in Article 126 of the Financial Regulation. The verification report shall state that the operational verification was done in accordance with a methodology approved by the authorising officer responsible and whether the action or work programme was actually implemented in accordance with the conditions set out in the grant agreement or grant decision.

Article 208

Suspension and reduction of grants (Article 135 of the Financial Regulation)

1. The implementation of the grant agreement or decision, the participation of a beneficiary in its implementation or payments may be suspended in order

to verify whether presumed substantial errors or irregularities or fraud or breach of obligations have actually occurred. If they are not confirmed, implementation shall resume as soon as possible.

2. Where the agreed action or work programme is not carried out or is not carried out properly, in full or on time, the authorising officer responsible shall, provided that the beneficiary has been given the opportunity to make observations, either reduce or recover the grant in proportion, depending on the stage of the procedure.

FR Article 136
Periods for record-keeping

1. Beneficiaries shall keep records, supporting documents, statistical records and other records pertaining to a grant for five years following the payment of the balance, and for three years in the case of low value grants.
2. Records pertaining to audits, appeals, litigation, or the pursuit of claims arising out of the performance of the project shall be retained until such audits, appeals, litigation or claims have been disposed of.

CHAPTER 5
Implementation

FR Article 137
Implementation contracts and financial support to third parties

1. Where implementation of an action or a work programme requires financial support to be given to third parties, the beneficiary may give such financial support provided that the following conditions are met:
 - (a) before awarding the grant, the authorising officer responsible has verified that the beneficiary offers adequate guarantees as regards the recovery of amounts due to the Commission;
 - (b) the conditions for the giving of such support are strictly defined in the grant decision or agreement between the beneficiary and the Commission, in order to avoid the exercise of discretion by the beneficiary;
 - (c) the amounts concerned are small, except where the financial support is the primary aim of the action.
2. Each grant decision or agreement shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, concerning documents premises and information, including that stored on electronic media, over all third parties who have received Union funds.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on implementation contracts and financial support to third parties.

RAP

*Article 209**Implementation contracts**(Article 137 of the Financial Regulation)*

1. Without prejudice to the application of the Directive 2004/18/EC, where implementation of the action or work programme requires the award of a procurement contract, the beneficiary shall award the contract to the tender offering best value for money or, as appropriate, to the tender offering the lowest price, while avoiding any conflict of interests.
2. Where implementation of the actions or work programme requires the award of a procurement contract with a value of more than EUR 60 000, the authorising officer responsible may require the beneficiary to abide by special rules in addition to those referred to in paragraph 1.

Those special rules shall be based on rules contained in the Financial Regulation and determined with due regard for the value of the contracts concerned, the relative size of the Union contribution in relation to the total cost of the action and the risk. Such special rules shall be included in the grant decision or agreement.

*Article 210**Financial support to third parties**(Article 137 of the Financial Regulation)*

Provided the objectives or results to be obtained are sufficiently detailed in the conditions referred to in Article 137(1) of the Financial Regulation, the margin of discretion may only be considered to be exhausted if the grant decision or agreement also specifies the following:

- (a) the maximum amount of financial support that can be paid to a third party which shall not exceed EUR 60 000, save where the financial support is the primary aim of the action, and the criteria for determining the exact amount;
- (b) the different types of activity that may receive such financial support, on the basis of a fixed list;
- (c) the definition of the persons or categories of persons which may receive such financial support and the criteria to give it.

TITLE VII

PRIZES

FR Article 138 General rules

1. Prizes shall respect the principles of transparency and equal treatment and shall promote the achievement of policy objectives of the Union.
2. For this purpose, prizes shall be subject to a work programme to be published prior to its implementation. The work programme shall be implemented through the publication of contests.

Contests for prizes with a unit value of EUR 1 000 000 or more may only be published if they are provided for in the statements or any other relevant document referred to in point (e) of Article 38(3).

The rules of the contest shall at least lay down the conditions for participation including the exclusion criteria provided for in Article 106(1) and Articles 107, 108 and 109, the award criteria, the amount of the prize and the payment arrangements.

Prizes may not be awarded directly without a contest and shall be published annually in accordance with Article 35(2) and (3).

3. Entries in a contest shall be evaluated by a panel of experts on the basis of the published rules of the contest.

Prizes shall then be awarded by the authorising officer responsible, on the basis of the evaluation provided by the panel of experts who shall be free to decide whether to recommend the award of prizes, depending on their appraisal of the quality of the entries.

4. The amount of the prize shall not be linked to costs incurred by the winner.
5. Where implementation of an action or work programme requires prizes to be given to third parties by a beneficiary of a Union grant, that beneficiary may give such prizes provided that the minimum content of the rules of the contest, as laid down in paragraph 2, is strictly defined in the grant decision or agreement between the beneficiary and the Commission, with no margin for discretion.
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on prizes, including programming, rules of contest, *ex post* publication, evaluation, information and notification of winners.

RAP Article 211 *Programming (Article 138(2) of the Financial Regulation)*

1. An annual or multiannual work programme for prizes shall be prepared by each authorising officer responsible. The work programme shall be adopted by the institution and published on the internet site of the institution concerned as soon as possible, and no later than 31 March of the year of implementation.

The work programme shall specify the period it covers, the basic act, if any, the objectives pursued, the expected results, the indicative timetable of contests with the indicative amount of the prizes.

The work programme shall in addition contain the information set out in Article 94 for the decision adopting it to be considered as the financing decision for the prizes of the year concerned.

2. Any substantial change in the work programme shall also be adopted and published as provided for in paragraph 1.

Article 212

Rules of contests

(Article 138(2) of the Financial Regulation)

1. Rules of contests shall lay down the following:
 - (a) the conditions for participation, which shall at least:
 - (i) specify the eligibility criteria;
 - (ii) specify the arrangements and final date for the registration of participants, if required, and for the submission of entries, under the conditions set out in paragraph 2;
 - (iii) provide for exclusion of participants which are in one of the situations referred to in Article 106(1) and Articles 107, 108 and 109 of the Financial Regulation;
 - (iv) provide for the sole liability of participants in case of claim relating to the activities carried out in the framework of the contest;
 - (v) provide for acceptance by the winners of checks and audits by the Commission, OLAF and the Court of Auditors and of the publicity obligations as specified in the rules of the contest;
 - (vi) state that Union law is the law which applies to the contest, complemented, where necessary, by national law as specified in the rules of contest;
 - (vii) specify the competent court or arbitration tribunal to hear disputes;
 - (viii) state that financial or administrative penalties, or both, may be imposed on participants who have made false declarations, or committed irregularities or fraud, in accordance with the conditions laid down in Article 145 and in proportion to the value of the prizes in question;
 - (b) the award criteria, which shall be such as to make possible to assess the quality of the entries with regard to the objectives pursued and the expected results and to determine objectively whether entries qualify as the winners;

- (c) the amount of the prize or prizes;
- (d) the arrangements for the payment of prizes to the winners after their award.

For the purposes of point (a)(i) of the first subparagraph, beneficiaries of Union grants shall be eligible, unless stated otherwise in the rules of contest.

For the purposes of point (a)(vi) of the first subparagraph, derogation may be made in the case of participation of international organisations.

2. The authorising officer responsible shall choose means of communication which are non-discriminatory in nature for the submission of entries and which have no effect of restricting the access of participants to the contest.

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

- (a) each entry contains all the information required for its evaluation;
 - (b) the integrity of data is preserved;
 - (c) the confidentiality of entries is preserved;
 - (d) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 is ensured.
3. Rules of contests may set the conditions for cancelling the contest, in particular where its objectives cannot be fulfilled or where a legal or natural person who does not comply with the conditions for participation would qualify as the winner.
 4. Rules of contests shall be published on the internet site of the Union institutions. In addition to the publication on the internet site, rules of contests may also be published by any other appropriate means, including the *Official Journal of the European Union*, where it is necessary to provide additional publicity among potential participants. They may be published as from the adoption of the financing decision referred to in Article 84 of the Financial Regulation, including during the year preceding budget implementation. Any modification of the content of the rules of contests shall be also subject to publication under the same conditions.

Article 213

Ex post publication

(Article 138(2) of the Financial Regulation)

1. Information relating to prizes awarded in the course of a financial year shall be published in accordance with Article 21.
2. Following the publication referred to in paragraph 1, when requested by the European Parliament and the Council the Commission shall forward them a report on:
 - (a) the number of participants in the past year;

- (b) the number of participants and the percentage of successful entries per contest;
- (c) a list of the experts having taken part in panels in the past year, together with a reference to the procedure for their selection.

Article 214

Evaluation

(Article 138(3) of the Financial Regulation)

1. For the purpose of evaluating the entries, the authorising officer responsible shall appoint a panel of at least three experts, who may be outside experts or persons representing at least two organisational entities of the institutions or bodies referred to in Articles 62 and 208 of the Financial Regulation with no hierarchical link between them, except in the representations or local bodies referred to in Article 72 of this Regulation and the delegated bodies referred to in article 62 and 208 of the Financial Regulation, if there are no separate entities.

The experts referred to in the first subparagraph shall be subject to the requirements on conflict of interests laid down in Article 57 of the Financial Regulation.

Outside experts shall declare that they are not in a situation of conflict of interests at the time of appointment and that they undertake to inform the authorising officer if any conflict of interests should arise in the course of the evaluation procedure.

2. Upon completion of their work, the members of the panel shall sign a record of all the entries examined, containing an assessment of their quality and identifying those to which the prizes may be awarded. That record may be signed in an electronic system providing sufficient authentication of the signatory.

The record referred to in the first subparagraph shall be kept for future reference.

3. The authorising officer responsible shall then decide whether or not to award the prizes. That decision shall also specify the following:
 - (a) the subject and total amount of prizes awarded, if any;
 - (b) the names of the winning participants, if any, the amount of the prizes awarded to each winning participant and the reasons for that choice;
 - (c) the names of any participant rejected and the reasons for that rejection.

*Article 215**Information and notification**(Article 138(3) of the Financial Regulation)*

1. Participants shall be informed as soon as possible of the outcome of the evaluation of their entry and in any case within 15 calendar days after the award decision has been taken by the authorising officer.
2. The decision to award the prize shall be notified to the winning participant and shall serve as the legal commitment within the meaning of Article 86 of the Financial Regulation.

TITLE VIII

FINANCIAL INSTRUMENTS**FR Article 139****Scope**

1. Financial instruments shall be authorised by means of a basic act.

Notwithstanding the first subparagraph, financial instruments may be established, in duly justified cases, without being authorised by means of a basic act, provided that such instruments are included in the budget in accordance with point (e) of Article 49(1).

2. Where Union support is provided by means of financial instruments and combined in a single measure with elements directly related to financial instruments targeting the same final recipients, including technical assistance, interest rate rebates and guarantee fee subsidies, this Title shall apply to all elements of that measure.
3. Where financial instruments are combined with grants funded from the budget under Title VI of Part One for elements not directly related to financial instruments, separate records shall be maintained for each source of financing.
4. The Commission may implement financial instruments under direct management, or under indirect management, as set out in the basic act, by entrusting tasks to entities pursuant to points (ii), (iii), (v) and (vi) of Article 58(1)(c).

The entities entrusted pursuant to points (ii), (iii), (v) and (vi) of Article 58(1)(c), when implementing financial instruments, may further entrust, under their responsibility, part of that implementation to financial intermediaries provided that those entities ensure that the financial intermediaries satisfy the criteria laid down in Article 140(1), (3) and (5). Financial intermediaries shall be selected on the basis of open, transparent, proportionate and non-discriminatory procedures, avoiding conflicts of interests.

The Commission shall remain responsible for ensuring that the implementation framework for financial instruments complies with the principle of sound financial management and supports the attainment of defined and timed policy objectives, measurable in terms of outputs

and results. The Commission shall be accountable for the implementation of financial instruments without prejudice to the entrusted entities' legal and contractual responsibility in accordance with the applicable law.

5. Where financial instruments are implemented under shared management with Member States, the provisions applying to those instruments, including rules for contributions to financial instruments managed directly or indirectly in accordance with this Title, shall be laid down in the Regulations referred to in Article 175.
6. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on financial instruments, including the selection of entities entrusted with the implementation of financial instruments, the content of delegation agreements, management costs and fees, the specific rules for fiduciary accounts, the direct implementation of the financial instruments and the selection of managers, of financial intermediaries and of final recipients.

RAP *Article 216*

*Selection of the entities entrusted with the implementation of financial instruments in indirect management
(Article 139 of the Financial Regulation)*

1. For the implementation of financial instruments under indirect management, the Commission shall obtain evidence that the entrusted entity fulfils the requirements of Article 60(2) of the Financial Regulation. Once that evidence is obtained, it shall be valid for any future implementation of financial instruments by the relevant entity, unless substantial changes to the entrusted entities' systems, rules and procedures covered by those requirements have been made.
2. For the selection of entities entrusted with the implementation of financial instruments pursuant to Article 61(2) of the Financial Regulation, the Commission shall publish a call to potential entrusted entities. That call shall include the selection and award criteria.

The call referred to in the first subparagraph shall also indicate whether the entrusted entity is required to allocate its own financial resources to the specific financial instrument or share the risk. Where such indication is made and where it is necessary to mitigate a possible conflict of interest, the call shall also indicate that the entrusted entity is required to propose measures on alignment of interest, as set out in Article 140(2) of the Financial Regulation. The measures on alignment of interest shall be included in the agreement of the specific financial instrument.

The Commission shall open a dialogue with the entities that satisfy the selection criteria in a transparent and objective manner and without giving rise to a conflict of interest. After the dialogue the Commission shall sign delegation agreements with the entity or entities that have submitted the best value for

money proposals including, where applicable, the allocation of their own financial resources or risk-sharing.

3. The Commission may enter into direct negotiations with potential entrusted entities before signing delegation agreements where the entrusted entity is identified in the relevant basic act or listed in Article 58(1)(c)(iii) of the Financial Regulation, or in duly justified and properly documented exceptional cases, in particular where:
 - (a) no suitable proposals were submitted following a call to potential entrusted entities;
 - (b) financial instruments with specific characteristics require a particular type of entrusted entity on account of its technical competence, its high degree of specialisation or its administrative power;
 - (c) for reasons of extreme urgency brought about by unforeseeable events not attributable to the Union, it is impossible to comply with the procedure referred to in paragraph 2.

Article 217

Content of the delegation agreement with entities entrusted with the implementation of financial instruments in indirect management (Article 139 of the Financial Regulation)

In addition to the requirements listed in Article 40, delegation agreement with entities entrusted with the implementation of financial instruments shall include appropriate arrangements for ensuring compliance with the principles and conditions set out in Article 140 of the Financial Regulation. In particular, the delegation agreements shall contain:

- (a) the description of the financial instrument, including its investment strategy or policy, the type of support provided, the criteria for eligibility for financial intermediaries and final recipients as well as additional operational requirements transposing the policy objectives of the instrument;
- (b) the requirements for a target range of values for the leverage effect;
- (c) a definition of non-eligible activities and exclusion criteria;
- (d) provisions ensuring alignment of interest and addressing possible conflicts of interest;
- (e) provisions for the selection of financial intermediaries pursuant to the second subparagraph of Article 139(4) of the Financial Regulation and for the establishment of dedicated investment vehicles, if applicable;
- (f) provisions on the liability of the entrusted entity and of other entities involved in the implementation of the financial instrument;

- (g) provisions on the settlement of disputes;
- (h) provisions on the governance of the financial instrument;
- (i) provisions regarding the use and reuse of the Union contribution in compliance with Article 140(6) of the Financial Regulation;
- (j) provisions for the management of contributions from the Union and of fiduciary accounts, including counterparty risks, acceptable treasury operations, responsibilities of parties concerned, remedial actions in the event of excessive balances on fiduciary accounts, record keeping and reporting;
- (k) provisions on the remuneration of the entrusted entity, including management fee rates and on the calculation and payment of management costs and fees to the entrusted entity in accordance with Article 218;
- (l) where appropriate, provisions on a framework of conditions for the contributions from the funds referred to in Article 175 of the Financial Regulation, in particular the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural development and the Future Fisheries Fund (hereinafter ‘CSF Funds’);
- (m) provisions on the duration, possibility of extension, and termination of the financial instrument, including the conditions for early termination and, where appropriate, exit strategies;
- (n) provisions on the monitoring of the implementation of support to financial intermediaries and final recipients including reporting by the financial intermediaries;
- (o) where applicable, type and nature of any hedging operations referred to in Article 219.

Article 218

Management costs and fees to entrusted entities (Article 139 of the Financial Regulation)

1. The Commission shall remunerate the entrusted entities for the implementation of a financial instrument through performance based fees, reimbursement of exceptional expenses and, where the entrusted entity manages the treasury of the financial instrument, treasury management fees.
2. Performance based fees shall comprise administrative fees to remunerate the entrusted entity for the work carried out in the implementation of a financial instrument. Where appropriate, they may also comprise policy related incentives to promote the achievement of the policy objectives or incentivise the financial performance of the financial instrument.

Article 219***Specific rules for fiduciary accounts in indirect management
(Article 139 of the Financial Regulation)***

1. Entities entrusted with the implementation of financial instruments may open fiduciary accounts within the meaning of Article 68(7) of the Financial Regulation, in their name and exclusively on behalf of the Commission. Those entrusted entities shall send the corresponding account statements to the Commission's responsible service.
2. The fiduciary accounts shall maintain appropriate liquidity and the assets held on such fiduciary accounts shall be managed in accordance with the principles of sound financial management and follow appropriate prudential rules in accordance with Article 140(7) of the Financial Regulation.
3. For the implementation of financial instruments, entrusted entities shall not carry out hedging operations for speculative purposes. The type and nature of any hedging operations shall be agreed *ex ante* by the Commission and included in the delegation agreements referred to in Article 217.

Article 220***Financial instruments implemented directly
(Article 139 of the Financial Regulation)***

1. In exceptional cases, financial instruments may be implemented directly pursuant to Article 139(4) of the Financial Regulation through any of the following:
 - (a) a dedicated investment vehicle in which the Commission participates together with other public or private investors with a view to increasing the leverage effect of the Union contribution;
 - (b) loans, guarantees, equity participations and other risk-sharing instruments other than investments in dedicated investment vehicles, provided directly to final recipients or through financial intermediaries.
2. For the implementation of financial instruments, the Commission shall not carry out hedging operations for speculative purposes. The type and nature of any hedging operations shall be agreed *ex ante* by the Commission and included in the agreements with entities implementing the financial instrument.

Article 221***Selection of financial intermediaries, managers of dedicated investment vehicles
and of final recipients
(Article 139 of the Financial Regulation)***

1. Where the Commission implements financial instruments directly or indirectly through dedicated investment vehicles, such vehicles shall be established accord-

ing to the laws of a Member State. They may also be established according to the laws of a country other than a Member State in the area of external action. The managers of such vehicles shall be obliged by law or contract to act with the diligence of a professional manager and in good faith.

2. The managers of the dedicated investment vehicles referred to in paragraph 1 and financial intermediaries or final recipients of the financial instruments shall be selected with due account of the nature of the financial instrument to be implemented, the experience and the operational and financial capacity of the entities concerned, and/or the economic viability of projects of final recipients. The choice shall be transparent, justified on objective grounds and shall not give rise to a conflict of interest.
3. No financial support shall be granted to managers of dedicated investment vehicles, to financial intermediaries and to final recipients which are in one of the situations referred to in Articles 106(1), 107, 108 and 109 of the Financial Regulation.

FR

Article 140

Principles and conditions applicable to financial instruments

1. Financial instruments shall be used in accordance with the principles of sound financial management, transparency, proportionality, non-discrimination, equal treatment and subsidiarity, and in accordance with their objectives and, where applicable, the duration established in the basic act for those financial instruments.
2. Financial instruments shall comply with the following:
 - (a) addressing market failures or sub-optimal investment situations, which have proven to be financially viable but do not give rise to sufficient funding from market sources;
 - (b) additionality: financial instruments shall not be aimed at replacing those of a Member State, private funding or another Union financial intervention;
 - (c) non-distortion of competition in the internal market and consistency with State aid rules;
 - (d) leverage effect: the Union contribution to a financial instrument shall aim at mobilising a global investment exceeding the size of the Union contribution according to the indicators defined in advance;
 - (e) alignment of interest: when implementing financial instruments, the Commission shall ensure that there is a common interest in achieving the policy objectives defined for a financial instrument, possibly fostered by provisions such as co-investment, risk-sharing requirements or financial incentives, while preventing a conflict of interests with other activities of the entrusted entity;
 - (f) financial instruments shall be established on the basis of an *ex ante* evaluation, including an evaluation of the possible reuse of additional resources referred to in point (f) of paragraph 8.

3. The budgetary expenditure linked to a financial instrument and the financial liability of the Union shall in no case exceed the amount of the relevant budgetary commitment made for it, thus excluding contingent liabilities for the budget.
4. The entities entrusted pursuant to points (ii), (iii), (v) and (vi) of Article 58(1)(c) and all financial intermediaries selected to participate in the execution of financial operations under a financial instrument shall comply with relevant standards and applicable legislation on the prevention of money laundering, the fight against terrorism and tax fraud. For the implementation of financial instruments in accordance with this Title, the entities entrusted pursuant to points (ii), (iii), (v) and (vi) of Article 58(1)(c) shall not be established, and shall not maintain business relations with entities incorporated, in territories whose jurisdictions do not cooperate with the Union in relation to the application of the internationally agreed tax standard and shall transpose such requirements in their contracts with the selected financial intermediaries.
5. Entities entrusted pursuant to points (ii), (iii), (v) and (vi) of Article 58(1)(c), financial intermediaries as referred to in paragraph 4 of this Article involved in managing Union financial instruments, and final recipients of Union support under this Title shall afford the Court of Auditors all the facilities and give it all the information which the Court of Auditors considers necessary for the performance of its task, pursuant to Article 161.

Regulation (Euratom, EC) No 2185/96 and Regulation (EC) No 1073/1999 of the European Parliament and of the Council of 25 May 1999 concerning investigations conducted by the European Anti-fraud Office (OLAF) ⁽¹⁾ shall apply to Union support under this Title.

6. Amounts corresponding at least to the Union contribution, or, where applicable, multiples thereof shall be used for the attainment of the specific policy objectives pursued through the financial instrument and shall not generate undue advantages, in particular in the form of undue dividends or profits for third parties.

Without prejudice to sector-specific rules for shared management, revenues, including dividends, capital gains, guarantee fees and interest on loans and on amounts on fiduciary accounts paid back to the Commission or fiduciary accounts opened for financial instruments and attributable to the support from the budget under a financial instrument, shall be entered in the budget after deduction of management costs and fees.

Annual repayments, including capital repayments, guarantees released, and repayments of the principal of loans, paid back to the Commission or fiduciary accounts opened for financial instruments and attributable to the support from the budget under a financial instrument, shall constitute internal assigned revenue in accordance with Article 21 and shall be used for the same financial instrument, without prejudice to paragraph 9 of this Article, for a period not exceeding the period for the commitment of appropriations plus two years, unless specified otherwise in a basic act.

7. Payments to fiduciary accounts shall be made by the Commission on the basis of payment requests that are duly substantiated with disbursement forecasts, taking into account the balances available on the fiduciary accounts and the need to avoid excessive balances on such

⁽¹⁾ OJ L 136, 31.5.1999, p. 1.

amounts. In the event of the amounts on the fiduciary accounts being sufficient to cover the contractually stipulated minimum reserve on the fiduciary accounts, as increased by the disbursement forecasts for the current financial year, and to cover the amounts needed to exclude contingent liabilities in relation to payment obligations in currencies other than euro, no further payment to the fiduciary accounts shall be made. Disbursement forecasts are to be provided on an annual or, where appropriate, on a semi-annual basis.

8. The Commission shall report annually to the European Parliament and the Council on the activities relating to financial instruments. The report shall include, for each financial instrument supported:
 - (a) an identification of the financial instrument and the basic act;
 - (b) a description of the financial instrument, implementation arrangements and the added value of the Union contribution;
 - (c) the financial institutions involved in implementation, including any issues relating to the application of paragraph 5;
 - (d) the aggregate budgetary commitments and payments from the budget for each financial instrument;
 - (e) the performance of the financial instrument, including the investments realised;
 - (f) an evaluation of the use of any amounts returned to the instrument as internal assigned revenue under paragraph 6;
 - (g) the balance on the fiduciary account;
 - (h) revenues and repayments under paragraph 6;
 - (i) the value of equity investments, with respect to previous years;
 - (j) the accumulated figures for impairments of assets of equity or risk-sharing instruments, and for called guarantees for guarantee instruments;
 - (k) the target leverage effect, and the achieved leverage effect;
 - (l) its contribution to the achievement of the objectives of the programme concerned as measured by the established indicators, including, where applicable, the geographical diversification.
9. Where the European Parliament or the Council consider that a financial instrument has not achieved its objectives effectively, they may request that the Commission submit a proposal for a revised basic act with a view to the winding down of the instrument. In the event of the winding down of the financial instrument, any new repayments of that instrument pursuant to the third subparagraph of paragraph 6 shall be considered as general revenue.
10. The purpose of the financial instruments and, where applicable, their specific legal form and legal place of registration shall be published on the Commission website.
11. For financial instruments the authorising officer responsible shall ensure that financial statements, covering the period 1 January to 31 December and in compliance with the

accounting rules referred to in Article 143 and the International Public Sector Accounting Standards (IPSAS), as well as any information necessary to produce financial statements in accordance with Article 68(3), will be provided by the entities entrusted pursuant to points (ii), (iii), (v) and (vi) of Article 58(1)(c) by 15 February of the following year. The authorising officer responsible shall also ensure that audited financial statements for financial instruments are provided by those entities by 15 May of the following year.

12. The Commission shall ensure a harmonised management of financial instruments in particular in the area of accounting, reporting, monitoring and financial risk management.
13. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the implementation of financial instruments, including the conditions for their use, the leverage effect, the *ex ante* evaluation, the monitoring and the treatment of contributions from the Funds referred to in Article 175.

RAP *Article 222*

Conditions for the use of financial instruments (Article 140 of the Financial Regulation)

1. Financial instruments shall address market imperfections or failures or sub-optimal investment situations and provide support only to final recipients that are deemed potentially economically viable at the time of the Union support through a financial instrument.
2. Financial instruments shall provide support to final recipients in a proportionate manner. In particular, preferential treatment of investors providing co-investment or risk-sharing should be justified, proportionate to the risks taken by the investors in a financial instrument and limited to the minimum necessary to ensure their investment or risk-sharing.

Article 223

Leverage effect (Article 140 of the Financial Regulation)

1. Financial instruments shall aim at achieving a leverage effect of the Union contribution by mobilising a global investment exceeding the size of the Union contribution.

The leverage effect of Union funds shall be equal to amount of finance to eligible final recipients divided by the amount of the Union contribution.

2. The target range of values for the leverage effect shall be based on an *ex ante* evaluation for the corresponding financial instrument.

*Article 224**Ex ante evaluation of financial instruments**(Article 140 of the Financial Regulation)*

1. Financial instruments shall be based on *ex ante* evaluations identifying market imperfections or failures, or sub-optimal investment situations and assessing investment needs in view of the policy objectives.
2. The *ex ante* evaluation shall demonstrate that identified market needs cannot be addressed appropriately and in a timely manner through either market led activities or types of Union intervention other than funding by a financial instrument, such as regulation, liberalisation, reform or other policy action. It shall assess the likelihood and possible costs of market distortions and crowding-out of private funding through the financial instruments and shall identify means to minimise negative effects of such distortions.
3. In accordance with the principle of subsidiarity, the *ex ante* evaluation shall demonstrate that an Union-level financial instrument addresses identified market needs more appropriately than similar financial instruments at national or regional level, including those financed by CSF Funds. Factors such as difficult access to funding at national level, in particular for cross-border projects, economies of scale or strong demonstration effects linked to the diffusion of best practices to Member States shall be taken into account when assessing the added value of the Union contribution.
4. The *ex ante* evaluation shall determine the most efficient mode for delivering the financial instrument.
5. The *ex ante* evaluation shall also demonstrate that the planned financial instrument is consistent with:
 - (a) new and existing financial instruments, avoiding undesirable overlaps and achieving synergies and economies of scale;
 - (b) financial instruments and other forms of public intervention addressing the same market environment, avoiding inconsistencies and exploring potential synergies.
6. The *ex ante* evaluation shall assess proportionality of the envisaged intervention with regard to the size of the identified funding gap, the expected leverage effect of the planned financial instrument and also examine additional qualitative effects, such as the diffusion of best practices, the effective promotion of Union policy objectives throughout the implementation chain or the access to specific expertise available from actors involved in the implementation chain.
7. The *ex ante* evaluation shall establish a set of appropriate performance indicators for the proposed financial instruments and specify the expected output, results and impact.

8. A separate *ex ante* evaluation of financial instruments shall only be carried out where such evaluation complying in full with the criteria in paragraphs 1 to 7 is not included in the *ex ante* evaluation or an impact assessment of the programme or activity covered by a basic act.

Article 225

Monitoring of financial instruments

(Article 140 of the Financial Regulation)

1. In order to ensure the harmonised monitoring of financial instruments referred to in Article 140(12) of the Financial Regulation, a monitoring system shall be put in place by the authorising officer responsible to contribute to the provision of reasonable assurance that Union funds are used in accordance with Article 32(2) of the Financial Regulation.
2. The monitoring system shall be used to assess the progress of the implementation towards the achievement of the policy objectives reflected in the relevant output and result indicators established pursuant to the *ex ante* evaluation, and to analyse the compliance of the implementation with the defined requirements pursuant to Article 140(2) of the Financial Regulation and provide the basis for the Commission's reporting required under Articles 38(5) and 140(8) of the Financial Regulation.
3. In case of indirect management, the monitoring by the Commission shall build on the reporting and accounts provided by entrusted entities and on the audits available and controls carried out by the entrusted entity, taking due account of the management declaration of the entrusted entity and the opinion of the independent audit body referred to in Article 60(5) of the Financial Regulation. The Commission shall review the information provided by the entrusted entities and may carry out controls, including on a sample basis, at the appropriate implementation levels up to final recipients.

The monitoring by the entrusted entity shall build on the reporting and accounts provided by financial intermediaries and on the audits available and controls carried out by the financial intermediary, taking due account of the management declaration of the financial intermediary and the opinion of independent auditors.

Where, no financial intermediary exists, the entrusted entity shall directly monitor the use of the financial instrument based on the reporting and accounts provided by the final recipients.

The entrusted entity shall review, where appropriate on a sample basis, the information provided by the financial intermediaries or final recipients and shall carry out controls as set out in the agreement referred to in Article 217.

4. In case of direct management, the monitoring by the Commission shall build on the reporting and accounts provided by financial intermediaries and final recipi-

ents, subject to appropriate controls. The provisions under paragraph 3 shall apply to direct management mutatis mutandis.

5. The agreements implementing the financial instrument shall contain the provisions necessary for the application of paragraphs 1 to 4.

Article 226

Treatment of contributions from the CSF Funds (Article 140 of the Financial Regulation)

1. Separate records shall be kept for contributions from CSF Funds to financial instruments established under Title VIII of the Financial Regulation and supported by CSF Funds pursuant to the sector specific rules.
2. Contributions from the CSF Funds shall be placed in separate accounts and used in accordance with the objectives of the respective CSF Funds to actions and final recipients consistent with the programme or programmes from which contributions are made.
3. As regards contributions from CSF Funds to financial instruments established under Title VIII of the Financial Regulation, the sector specific rules shall apply.

TITLE IX

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1

Presentation of the accounts

FR Article 141 Structure of the accounts

The accounts shall comprise:

- (a) the consolidated financial statements, which present the consolidation of the financial information contained in the financial statements of the institutions financed by the budget, those of the bodies referred to in Article 208 and of other bodies whose accounts are required to be consolidated in accordance with the accounting rules referred to in Article 143;
- (b) the aggregated budgetary accounts which present the information contained in the budgetary accounts of the institutions.

FR Article 142 Report on budgetary and financial management

1. Each institution and body referred to in Article 141 shall prepare a report on budgetary and financial management for the financial year.

They shall send the report to the European Parliament, the Council and the Court of Auditors, by 31 March of the following financial year.

2. The report referred to in paragraph 1 shall give an account, both in absolute terms and expressed as a percentage, at least, of the rate of implementation of appropriations together with summary information on the transfers of appropriations among the various budget items.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the report on budgetary and financial management.

RAP *Article 227*

*Report on budgetary and financial management during the year
(Article 142 of the Financial Regulation)*

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

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

The report on budgetary and financial management shall be separate from the reports on implementation of the budget.

FR **Article 143**
Rules governing the accounts

1. The accounting officer of the Commission shall adopt rules based on internationally accepted accounting standards for the public sector. The accounting officer may diverge from those standards if he or she considers this necessary in order to give a true and fair view of the assets and liabilities, charges, income and cash flow. Where an accounting rule diverges materially from those standards, the notes to the financial statements shall disclose this fact and the reasons for it.
2. The budgetary accounts referred to in Article 141 shall respect the budgetary principles laid down in this Regulation. They shall present a true and fair view of the budgetary revenue and expenditure operations.

FR **Article 144**
Accounting principles

1. The financial statements referred to in Article 141 shall present information, including information on accounting policies, in a manner that ensures it is relevant, reliable, comparable and understandable. The financial statements shall be drawn up in accordance with generally accepted accounting principles as outlined in the accounting rules referred to in Article 143.

2. The Commission shall be empowered to adopt delegated acts concerning the establishment of the framework for the implementation by the accounting officer of his or her tasks under this Article and Articles 145, 146, 148, 151, 154, 156 and 157.

RAP *Article 228*

*Exception to the accounting principles
(Article 144 of the Financial Regulation)*

Where, in a specific case, the accounting officers consider that an exception should be made to the content of one of the accounting principles outlined in the Union accounting rules, that exception shall be duly substantiated and reported in the notes to the financial statements referred to in Article 232.

Article 229

*Supporting documents
(Article 144 of the Financial Regulation)*

1. Each entry shall be based on dated and numbered supporting documents, produced on paper or on a medium which guarantees the reliability and safeguarding of its content for the periods laid down in Article 48.
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.

FR

Article 145

Financial statements

1. The financial statements shall be presented in millions of euro and shall comprise:
 - (a) the balance sheet and the statement of financial performance, which represent all assets and liabilities, the financial situation and the economic result at 31 December of the preceding year; they shall be presented in accordance with the accounting rules referred to in Article 143;
 - (b) the cash-flow statement showing amounts collected and disbursed during the year and the final treasury position;
 - (c) the statement of changes in net assets presenting an overview of the movements during the year in reserves and accumulated results.
2. The notes to the financial statements shall supplement and comment on the information presented in the statements referred to in paragraph 1 and shall supply all the additional information prescribed by internationally accepted accounting practice where such information is relevant to the activities of the Union.

RAP *Article 230*
Statement of financial performance
(Article 145 of the Financial Regulation)

The statement of financial performance shall show the income and charges for the year, classified according to their nature.

Article 231
Cash flow statement
(Article 145 of the Financial Regulation)

The cash flow statement shall report cash flows during the period showing the movement between opening and closing treasury amounts.

The treasury shall be made up of the following:

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

Article 232
Notes to the financial statements
(Article 145 of the Financial Regulation)

The notes referred to in article 145 of the Financial Regulation shall form an integral part of the financial statements. The notes 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 a true and fair view.

FR **Article 146**
Budgetary implementation reports

1. The budgetary implementation reports shall be presented in millions of euro. They shall consist of:
 - (a) reports which aggregate all budgetary operations for the year in terms of revenue and expenditure;
 - (b) explanatory notes, which shall supplement and comment on the information given in the reports.
2. The structure of the budgetary implementation reports shall be the same as that of the budget itself.

RAP *Article 233*
Budgetary outturn accounts
(Article 146 of the Financial Regulation)

1. The budgetary outturn accounts 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.
2. As regards information on revenue, a statement shall also be attached showing, for each Member State, the breakdown of amounts of own resources still to be recovered at the end of the financial year and covered by a recovery order.

FR **Article 147**
Provisional accounts

1. The accounting officers of the other institutions and bodies referred to in Article 141 shall send their provisional accounts to the accounting officer of the Commission and to the Court of Auditors by 1 March of the following year.
2. The accounting officers of the other institutions and bodies referred to in Article 141 shall also send by 1 March of the following year a reporting package to the accounting officer of the Commission, in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.
3. The accounting officer of the Commission shall consolidate those provisional accounts with the Commission's provisional accounts and shall send to the Court of Auditors, by 31 March of the following year, the provisional accounts of the Commission and the consolidated provisional accounts of the Union.

FR **Article 148**
Approval of the final consolidated accounts

1. The Court of Auditors shall, by 1 June, make its observations on the provisional accounts of the institutions other than the Commission and each body referred to in Article 141,

and, by 15 June, make its observations on the provisional accounts of the Commission and the consolidated provisional accounts of the Union.

2. The institutions other than the Commission, and each of the bodies referred to in Article 141, shall draw up their final accounts and send them to the accounting officer of the Commission, the Court of Auditors, the European Parliament and the Council by 1 July with a view to drawing up the final consolidated accounts.

The accounting officers of the other institutions and bodies referred to in Article 141 shall also send, by 1 July, a reporting package to the accounting officer of the Commission, in a standardised format as laid down by the accounting officer of the Commission for consolidation purposes.

3. The accounting officer of each institution and body referred to in Article 141 shall also send to the Court of Auditors, with a copy to the accounting officer of the Commission, at the same date as the transmission of his or her final accounts, a representation letter covering those final accounts.

The final accounts shall be accompanied by a note drawn up by the accounting officer, in which the latter declares that the final accounts were prepared in accordance with this Title and with the applicable accounting principles, rules and methods.

4. The accounting officer of the Commission shall draw up the final consolidated accounts on the basis of the information presented pursuant to paragraph 2 of this Article by the institutions other than the Commission and by bodies referred to in Article 141. The final consolidated accounts shall be accompanied by a note drawn up by the accounting officer of the Commission, in which the latter declares that the final consolidated accounts were prepared in accordance with this Title and with the accounting principles, rules and methods set out in the notes to the financial statements.
5. After approving the final consolidated accounts and its own final accounts, the Commission shall send them both to the European Parliament, the Council and the Court of Auditors by 31 July.

By the same date, the accounting officer of the Commission shall transmit a representation letter covering the final consolidated accounts to the Court of Auditors.

6. The final consolidated accounts shall be published in the *Official Journal of the European Union* together with the statement of assurance given by the Court of Auditors in accordance with Article 287 TFEU and Article 106a of the Euratom Treaty by 15 November.

RAP *Article 234*
Modalities of transmission of accounts
(Article 148 of the Financial Regulation)

Provisional accounts and the final accounts referred to in Articles 147 and 148 of the Financial Regulation may be sent by electronic means.

CHAPTER 2

Information on the implementation of the budget

FR Article 149
Report on budgetary guarantees and risks

In addition to the statements and reports provided for in Articles 145 and 146, the Commission shall report to the European Parliament and to the Council once a year on the budgetary guarantees referred to in point (d) of Article 49(1) and the corresponding risks.

That information shall be sent to the Court of Auditors at the same time.

FR Article 150
Information on budget implementation

1. In addition to the statements and reports provided for in Articles 145 and 146, the Commission's accounting officer shall send once a month to the European Parliament and to the Council figures, aggregated at chapter level at least, on the implementation of the budget, both for revenue and for expenditure against all appropriations.

Those figures shall also provide details of the utilisation of appropriations carried over.

The figures shall be sent within 10 working days of the end of each month.

2. Three times a year, within 30 working days of 31 May, 31 August and 31 December, the Commission's accounting officer shall send to the European Parliament and to the Council a report on the implementation of the budget, covering both revenue and expenditure broken down by chapter, article and item.

Those reports shall also provide details of the utilisation of appropriations carried over from preceding financial years.

3. The figures and the report on implementation of the budget shall at the same time be sent to the Court of Auditors and published on the Commission's website.
4. By 15 September of each year, the accounting officer shall send to the European Parliament and to the Council a report containing information on current risks noted, general trends observed, new accounting issues encountered, progress on accounting matters, including those raised by the Court of Auditors, and information on recoveries.

CHAPTER 3 Accounting

SECTION 1 COMMON PROVISIONS

FR Article 151 The accounting system

1. An institution's accounting system shall serve to organise the budgetary and financial information in such a way that figures can be entered, filed and registered.
2. The accounting system shall consist of general accounts and budgetary accounts. The accounts shall be kept in euro and on the basis of the calendar year.
3. The authorising officer by delegation may also keep analytical accounts.

RAP Article 235 *Organisation of the accounts* (Article 151 of the Financial Regulation)

1. The accounting officer of each institution and body referred to in Article 141 of the Financial Regulation shall draw up and keep updated documents describing the organisation of the accounts and accounting procedures of his institution and body.
2. Budget revenue and expenditure shall be recorded in the computerised system referred to in Article 236, according to the economic nature of the operation, as current revenue or expenditure or as capital.

Article 236 *Computerised systems* (Article 151 of the Financial Regulation)

1. The accounts shall be kept with the help of an integrated computerised 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 each institution.

FR Article 152 Common requirements for the institutions' accounting system

The accounting officer of the Commission shall, in accordance with Article 143, after consulting the accounting officers of the other institutions and of the bodies referred to in Article 141, adopt the accounting rules and the harmonised chart of accounts to be applied by all the institutions, the offices referred to in Title V of Part Two and all the bodies referred to in Article 141.

SECTION 2 **GENERAL ACCOUNTS**

FR Article 153 The general accounts

The general accounts shall record, in chronological order using the double-entry method, all events and operations which affect the economic and financial situation and the assets and liabilities of the institutions and of the bodies referred to in Article 141.

FR Article 154 Entries in the general accounts

1. Balances and movements in the general accounts shall be entered in the accounting ledgers.
2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which the entries shall refer.
3. The accounting system shall be such as to leave a clear audit trail for all accounting entries.

RAP Article 237 *Accounting ledgers* *(Article 154 of the Financial Regulation)*

Each institution and each body referred to in Article 141 of the Financial Regulation shall keep a journal, a general ledger and at least sub-ledgers for debtors, creditors and fixed assets, unless it is not justified by cost-benefit considerations.

The accounting ledgers shall consist of electronic documents which are identified by the accounting officer and offer full guarantees for use as evidence.

Entries in the journal shall be transferred to the general ledger, itemised according to the chart of accounts referred to in Article 212.

The journal and the general ledger may be split into as many special journals and special ledgers as necessary to meet requirements.

Entries recorded in special journals and special ledgers shall be centralised at least every month in the journal and in the general ledger.

Article 238

Trial balance

(Article 154 of the Financial Regulation)

Each institution and body referred to in Article 141 of the Financial Regulation 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 239

Accounting reconciliations

(Article 154 of the Financial Regulation)

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 246 to 253 shall apply.

Article 240

Entries in the accounts

(Article 154 of the Financial Regulation)

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

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

That revaluation shall be based on the rates laid down in accordance with Article 6.

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 Union accounting rules adopted under Article 152 of the Financial Regulation shall specify the conversion and re-evaluation rules to be provided for the purposes of accrual accounting.

Article 241

Accounting records

(Article 154 of the Financial Regulation)

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

Article 242

Recording in the journal

(Article 154 of the Financial Regulation)

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 243

Validation of entries

(Article 154 of the Financial Regulation)

1. Entries in the journal and in sub-ledgers 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.

Article 244**Reconciliation of accounts***(Article 154 of the Financial Regulation)*

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 bank balances 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 250.
3. The interinstitutional liaison accounts shall be reconciled monthly.
4. The suspense accounts shall be opened and reviewed annually by the accounting officer. Those accounts shall be under the responsibility of the authorising officer and he shall clear them as soon as possible.

FR**Article 155****Accounting adjustments**

The accounting officer shall, after the close of the financial year and up to the date of presentation of the general accounts, make any adjustments which, without involving disbursement or collection in respect of that year, are necessary for a true and fair presentation of those accounts. Such adjustments shall comply with the accounting rules referred to in Article 143.

SECTION 3**BUDGETARY ACCOUNTS****FR****Article 156****Budgetary accounting**

1. The budgetary accounts shall provide a detailed record of the implementation of the budget.
2. For the purposes of paragraph 1, the budgetary accounts shall record all budgetary revenue and expenditure operations provided for in Title IV of Part One.

RAP *Article 245*
Content and keeping of budget accounts
(Article 156 of the Financial Regulation)

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

The global provisional commitments relating to the European Agricultural Guarantee Fund (hereinafter 'EAGF') and the corresponding payments shall also be recorded in the budget accounts.

Those commitments shall be presented in respect of total EAGF appropriations.

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 4

Property inventories**FR Article 157**
The inventory

1. Each institution and body referred to in Article 141 shall keep inventories showing the quantity and value of all the Union's tangible, intangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.

Each institution and body referred to in Article 141 shall check that entries in the inventory correspond to the actual situation.

2. The sale of the Union's tangible assets shall be suitably advertised.

RAP Article 246
Property inventories
(Article 157 of the Financial Regulation)

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 247
Safeguarding property
(Article 157 of the Financial Regulation)

Each of the institutions and bodies referred to in Article 141 of the Financial Regulation shall adopt provisions on safeguarding the assets included in their respective balance sheets and decide which administrative departments are responsible for the inventory system.

Article 248
Entry of items in the inventory
(Article 157 of the Financial Regulation)

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 Union accounting rules adopted under Article 152 of the Financial Regulation shall be entered in the inventory and recorded in the fixed assets accounts.

*Article 249**Content of the inventory for each item
(Article 157 of the Financial Regulation)*

The inventory shall contain an appropriate description of each item and specify its location, or for movable items, the service or person responsible, the date of acquisition and its unit cost.

*Article 250**Inventory checks of movable property
(Article 157 of the Financial Regulation)*

Inventory checks carried out by the institutions and bodies referred to in Article 141 of the Financial Regulation 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 fixed tangible assets and intangible assets, which shall be checked at least on a three-year basis.

*Article 251**Resale of tangible assets
(Article 157 of the Financial Regulation)*

Members, officials or other servants and any other staff of the institutions and bodies referred to in Article 141 of the Financial Regulation may not acquire items that are resold by these institutions and bodies, save where those items are resold by public tender procedure.

*Article 252**Procedure for sale of tangible assets
(Article 157 of the Financial Regulation)*

1. Sales of tangible assets shall be advertised locally in appropriate manner, if the unit purchase value is EUR 8100 or more. The period between publication of the last announcement and conclusion of the sales contract shall be no less than 14 calendar days.

The sales referred to in the first subparagraph shall be the subject of a notice of sale published in the *Official Journal of the European Union*, if the unit purchase value is EUR 391100 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 Union* and conclusion of the sales contract shall be no less than one month.

2. The institutions and bodies referred to in Article 141 of the Financial Regulation may forgo advertising where the cost of advertising exceeds the expected return from the operation.
3. The institutions and bodies referred to in Article 141 of the Financial Regulation shall always endeavour to obtain the best price for sales of tangible assets.
4. Paragraphs 1, 2 and 3 shall not apply to sales between Union institutions and their bodies referred to in Article 208 of the Financial Regulation.

Article 253

Procedure for disposing of tangible assets (Article 157 of the Financial Regulation)

A statement or record shall be drawn up by the authorising officer whenever any property in the inventory, including buildings, 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 Union or any other person.

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

Members, officials or other servants and any other staff of the institutions and bodies referred to in Article 141 of the Financial Regulation may not be recipients of the property in the inventory given away free of charge or scrapped.

Article 254

Inventory and advertising of sales in Union delegations (Article 157 of the Financial Regulation)

1. In the case of the Union delegations, the permanent inventories of movable property belonging to the Union shall be kept locally. They shall be sent regularly to the central departments in accordance with the rules adopted by each institution.

Movable property in transit to the Union delegations shall be entered on a provisional list before being recorded in the permanent inventories.

2. The advertising for sales of movable property of Union delegations shall be done in accordance with local usage.

TITLE X

EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1

External audit

FR Article 158

External audit by the Court of Auditors

The European Parliament, the Council and the Commission shall inform the Court of Auditors, as soon as possible, of all decisions and rules adopted pursuant to Articles 13, 16, 21, 25, 26, 29 and 40.

FR Article 159

Rules and procedure on the audit

1. The examination by the Court of Auditors of whether all revenue has been received and all expenditure incurred in a lawful and proper manner shall have regard to the Treaties, the budget, this Regulation, the delegated acts adopted pursuant to this Regulation and all other acts adopted pursuant to the Treaties.
2. In the performance of its task, the Court of Auditors shall be entitled to consult, in the manner provided for in Article 161, all documents and information relating to the financial management of departments or bodies with regard to operations financed or co-financed by the Union. It shall have the power to hear any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to the aforementioned departments or bodies. The audit in the Member States shall be carried out in liaison with the national audit institutions or, where they do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit institutions of the Member States shall cooperate in a spirit of trust while maintaining their independence.

In order to obtain all the necessary information for the performance of the task entrusted to it by the Treaties or the acts adopted pursuant to them, the Court of Auditors may be present, at its request, during the audit operations carried out within the framework of the implementation of the budget by, or on behalf of, any institution.

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

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

FR Article 160
Checks on securities and cash

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

FR Article 161
Court of Auditors' right of access

1. The Commission, the other institutions, the bodies administering revenue or expenditure on the Union's behalf and recipients shall afford the Court of Auditors all the facilities and give it all the information which the Court of Auditors considers necessary for the performance of its task. They shall place at the disposal of the Court of Auditors all documents concerning the award and performance of contracts financed by the budget and all accounts of cash or materials, all accounting records or supporting documents, and also administrative documents relating thereto, all documents relating to revenue and expenditure, all inventories, all organisation charts of departments, which the Court of Auditors considers necessary for auditing the budgetary and financial outturn report on the basis of records or on-the-spot auditing and, for the same purposes, all documents and data created or stored electronically.

The internal audit bodies and other services of the national administrations concerned shall afford the Court of Auditors all the facilities which it considers necessary for the performance of its task.

2. The officials whose operations are checked by the Court of Auditors shall:
 - (a) show their records of cash in hand, any other cash, securities and materials of all kinds, and also the supporting documents in respect of their stewardship of the funds with which they are entrusted, and also any books, registers and other documents relating thereto;
 - (b) present the correspondence and any other documents required for the full implementation of the audit referred to in Article 159(1).

The information supplied under point (b) of the first subparagraph may be requested only by the Court of Auditors.

3. The Court of Auditors shall be empowered to audit the documents in respect of the revenue and expenditure of the Union which are held by the departments of the institutions and, in particular, by the departments responsible for decisions in respect of such revenue and expenditure, the bodies administering revenue or expenditure on the Union's behalf and the natural or legal persons receiving payments from the budget.
4. The task of establishing that the revenue has been received and the expenditure incurred in a lawful and proper manner and that the financial management has been sound shall extend to the utilisation, by bodies outside the institutions, of Union funds received by way of contributions.

5. Union financing paid to recipients outside the institutions shall be subject to the agreement in writing by those recipients or, failing agreement on their part, by contractors or subcontractors, to an audit by the Court of Auditors into the use made of the financing granted.
6. The Commission shall provide the Court of Auditors, at its request, with any information on borrowing-and-lending operations.
7. Use of integrated computer systems shall not have the effect of reducing access by the Court of Auditors to the supporting documents.

FR**Article 162****Annual report of the Court of Auditors**

1. The Court of Auditors shall transmit to the Commission and the institutions concerned, by 30 June, any observations which are, in its opinion, such that they should appear in the annual report. Those observations shall remain confidential and shall be subject to an adversarial procedure. Each institution shall address its reply to the Court of Auditors by 15 October. The replies of institutions other than the Commission shall be sent to the Commission at the same time.
2. The annual report shall contain an assessment of the soundness of financial management.
3. The annual report shall contain a section for each institution. The Court of Auditors may add any summary report or general observations which it sees fit to make.

The Court of Auditors shall take all necessary steps to ensure that the replies of each institution to its observations are published next to or after each observation to which they relate.

4. The Court of Auditors shall transmit to the authorities responsible for giving discharge and to the other institutions, by 15 November, its annual report accompanied by the replies of the institutions and shall ensure publication thereof in the *Official Journal of the European Union*.
5. As soon as the Court of Auditors has transmitted the annual report, the Commission shall immediately inform the Member States concerned of the details of that report which relate to management of the funds for which they are responsible under the applicable rules.

Following receipt of such information, the Member States shall reply to the Commission within 60 days. The Commission shall transmit a summary of that information to the Court of Auditors, the European Parliament and the Council by 28 February.

FR**Article 163****Special reports of the Court of Auditors**

1. The Court of Auditors shall transmit to the institution or the body concerned any observations which are, in its opinion, such that they should appear in a special report. Those observations shall remain confidential and shall be subject to an adversarial procedure.

The institution or the body concerned shall inform the Court of Auditors, within two and a half months of transmission of those observations, of any replies it wishes to make in relation to those observations.

The Court of Auditors shall adopt the definitive version of the special report the month following receipt of the replies made by the institution or body concerned.

The special reports, together with the replies of the institutions or bodies concerned, shall be transmitted without delay to the European Parliament and the Council, each of which shall decide, where appropriate in conjunction with the Commission, what action is to be taken in response.

The Court of Auditors shall take all necessary steps to ensure that the replies to its observations from each institution or body concerned are published together with the special report.

2. The opinions referred to in the second subparagraph of Article 287(4), TFEU which do not relate to proposals or drafts covered by the legislative consultation procedure may be published by the Court of Auditors in the *Official Journal of the European Union*. The Court of Auditors shall take its decision on publication after consulting the institution which requested the opinion or which is concerned by it. Opinions published shall be accompanied by any remarks by the institutions concerned.

CHAPTER 2

Discharge

FR

Article 164

Timetable of the discharge procedure

1. The European Parliament, upon a recommendation from the Council acting by qualified majority, shall, before 15 May of year $n + 2$, give a discharge to the Commission in respect of the implementation of the budget for year n .
2. If the date provided for in paragraph 1 cannot be met, the European Parliament or the Council shall inform the Commission of the reasons for the postponement.
3. If the European Parliament postpones the decision giving a discharge, the Commission shall make every effort to take measures, as soon as possible, to remove or facilitate removal of the obstacles to that decision.

FR

Article 165

The discharge procedure

1. The discharge decision shall cover the accounts of all the Union's revenue and expenditure, the resulting balance and the assets and liabilities of the Union shown in the balance sheet.
2. With a view to granting the discharge, the European Parliament shall, after the Council has done so, examine the accounts, financial statements and the evaluation report referred to in Article 318 TFEU. It shall also examine the annual report made by the Court of Auditors to-

gether with the replies of the institutions under audit, and any relevant special reports by the Court of Auditors in respect of the financial year concerned and the Court of Auditors' statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions.

3. The Commission shall submit to the European Parliament, at the latter's request, any information required for the smooth application of the discharge procedure for the financial year concerned, in accordance with Article 319 TFEU.

FR Article 166
Follow-up measures

1. In accordance with Article 319 TFEU and Article 106a of the Euratom Treaty, the Commission and the other institutions shall take all appropriate steps to act on the observations accompanying the European Parliament's discharge decision and on the comments accompanying the recommendation for discharge adopted by the Council.
2. At the request of the European Parliament or the Council, the institutions shall report on the measures taken in the light of those observations and comments, and, in particular, on the instructions they have given to any of their departments which are responsible for the implementation of the budget. The Member States shall cooperate with the Commission by informing it of the measures they have taken to act on those observations so that the Commission may take them into account when drawing up its own report. The reports from the institutions shall also be transmitted to the Court of Auditors.

FR Article 167
Specific provisions regarding the EEAS

The EEAS shall be subject to the procedures provided for in Article 319 TFEU and in Articles 164, 165 and 166 of this Regulation. The EEAS shall fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information, including through attendance at meetings of the relevant bodies.

PART TWO

SPECIAL PROVISIONS

TITLE I

EUROPEAN AGRICULTURAL GUARANTEE FUND

FR Article 168
Special provisions on the European Agricultural Guarantee Fund

1. Parts One and Three shall, except as otherwise provided in this Title, apply to expenditure effected by the authorities and bodies referred to in the rules relating to the European Agricultural Guarantee Fund (EAGF), and to revenue.
2. Operations managed directly by the Commission shall be implemented in accordance with the rules laid down in Parts One and Three.

FR Article 169
Commitments of EAGF appropriations

1. For each financial year, the EAGF appropriations shall include non-differentiated appropriations, with the exception of the expenditure related to the measures referred to in Article 3(2) of Regulation (EC) No 1290/2005, which shall be covered by differentiated appropriations.
2. Payment appropriations which have been carried over but which have not been used by the end of the financial year shall be cancelled.
3. Non-committed appropriations relating to the actions referred to in Article 3(1) of Regulation (EC) No 1290/2005 may be carried over to the following financial year only.

Such carryover shall not exceed, within a limit of 2 % of the initial appropriations, the amount of the adjustment of direct payments as referred to in Article 11 of Council Regulation (EC) No 73/2009 of 19 January 2009 establishing common rules for direct support schemes for farmers under the common agricultural policy and establishing certain support schemes for farmers ⁽¹⁾, and which was applied during the preceding financial year.

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

Such carryover may lead to an additional payment only to the final recipients who were subject, in the preceding financial year, to the adjustment of direct payments as referred to in Article 11 of Regulation (EC) No 73/2009.

The carryover decision shall be taken, by 15 February of the year to which the carryover is being made, by the Commission, which shall inform the European Parliament and the Council thereof.

⁽¹⁾ OJ L 30, 31.1.2009, p. 16.

FR Article 170 **Global provisional commitments of EAGF appropriations**

1. The Commission shall reimburse the EAGF expenditure incurred by the Member States.
2. The Commission decisions fixing the amount of reimbursement of such expenditure shall constitute global provisional commitments, which may not exceed the total appropriations entered for the EAGF.
3. As of 15 November of the financial year, routine management expenditure for the EAGF may be committed in advance against the appropriations provided for the following financial year. Such commitments shall not, however, exceed three quarters of the total corresponding appropriations for the financial year. They shall apply only to expenditure for which the principle is laid down in an existing basic act.

FR Article 171 **Schedule and timing of EAGF budgetary commitments**

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

The commitments referred to in the first subparagraph shall be deducted from the global provisional commitment referred to in Article 170.

2. Global provisional commitments which have been made for a financial year and which have not given rise to a commitment on specific lines in the budget nomenclature by 1 February of the following financial year shall be cancelled in respect of the financial year concerned.
3. Paragraphs 1 and 2 shall apply subject to the examination and acceptance of accounts.

FR Article 172 **Accounting of EAGF expenditure**

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

FR Article 173
Transfer of EAGF appropriations

1. Where the Commission transfers appropriations pursuant to Article 26(1), it shall take its decision by 31 January of the following financial year and shall inform the European Parliament and the Council as provided for in Article 26(1).
2. In cases other than those referred to in paragraph 1, the Commission shall submit transfer proposals to the European Parliament and the Council by 10 January of the following financial year.

The European Parliament and the Council shall take decisions on such transfers in accordance with the procedure provided for in Article 27, but for the purposes of this Article, the time limit applicable shall be three weeks.

FR Article 174
Assigned EAGF revenue

1. Assigned revenue under this Title shall be assigned according to the origin of the revenue in accordance with Article 21(3).
2. The result of decisions referred to in Article 30 of Regulation (EC) No 1290/2005, shall be entered in a single article.

TITLE II**STRUCTURAL FUNDS, COHESION FUND, EUROPEAN FISHERIES FUND,
EUROPEAN AGRICULTURAL FUND FOR RURAL DEVELOPMENT, AND
FUNDS IN THE AREA OF FREEDOM, SECURITY AND JUSTICE MANAGED
IN SHARED MANAGEMENT**

FR Article 175
Special provisions

1. Parts One and Three shall apply to expenditure effected by the authorities and bodies referred to in Council Regulation (EC) No 1698/2005 of 20 September 2005 on support for rural development by the European Agricultural Fund for Rural Development (EAFRD) ⁽¹⁾, Regulation (EC) No 1080/2006 of the European Parliament and of the Council of 5 July 2006 on the European Regional Development Fund ⁽²⁾, Regulation (EC) No 1081/2006 of the European Parliament and of the Council of 5 July 2006 on the European Social Fund ⁽³⁾, Council Regulation (EC) No 1083/2006 of 11 July 2006 laying down general provisions on the European

⁽¹⁾ OJ L 277, 21.10.2005, p. 1.

⁽²⁾ OJ L 210, 31.7.2006, p. 1.

⁽³⁾ OJ L 210, 31.7.2006, p. 12.

Regional Development Fund, the European Social Fund and the Cohesion Fund ⁽¹⁾, Council Regulation (EC) No 1084/2006 of 11 July 2006 establishing a Cohesion Fund ⁽²⁾, Council Regulation (EC) No 1198/2006 of 27 July 2006 on the European Fisheries Fund ⁽³⁾, and funds in the area of Freedom, Security and Justice including the Funds under the 'Solidarity and Management of Migration Flows' Programme, managed in shared management pursuant to Article 59 (the 'Funds'), and to their revenue, except as otherwise provided in this Title.

2. Operations managed directly by the Commission shall also be implemented in accordance with the rules laid down in Parts One and Three.

FR**Article 176****Respect of the allocations of commitment appropriations**

The European Parliament and the Council shall respect the allocations of commitment appropriations provided for in the relevant basic acts for structural operations, rural development and the European Fisheries Fund.

FR**Article 177****Payments of contributions, interim payments and repayments**

1. Payment by the Commission of financial contributions from the Funds shall be made in accordance with the Regulations referred to in Article 175.
2. The time limit for interim payments by the Commission shall be laid down in accordance with the Regulations referred to in Article 175.
3. In accordance with the Regulations referred to in Article 175, the repayment in full, or in part, of pre-financing payments in respect of a given operation shall not have the effect of reducing the contribution from the Funds to the operation concerned.

Amounts repaid shall constitute internal assigned revenue in accordance with point (c) of Article 21(3).

The treatment of repayments by the Member States and the implications of that treatment for the amount of contributions from the Funds shall be governed by the Regulations referred to in Article 175.

4. By way of derogation from Article 14, commitment appropriations available on 31 December arising from repayments of pre-financing payments may be carried over until the closure of the programme and used when necessary provided that other commitment appropriations are no longer available.

⁽¹⁾ OJ L 210, 31.7.2006, p. 25.

⁽²⁾ OJ L 210, 31.7.2006, p. 79.

⁽³⁾ OJ L 223, 15.8.2006, p. 1.

5. In budgetary accounting, expenditure shall be booked to the accounts for a financial year on the basis of reimbursements made by the Commission to the Member States by 31 December of that financial year, including the expenditure charged by 31 January of the following financial year, against the payment appropriations made available in the month following the transfers referred to in Article 179.

FR**Article 178****Decommitment of appropriations**

1. The Commission shall automatically decommit appropriations that have been committed as provided for in the Regulations referred to in Article 175.
2. The decommitted appropriations may be made available again in the event of a manifest error attributable solely to the Commission.

To this end, the Commission shall examine decommitments made during the preceding financial year and decide, by 15 February of the current financial year, on the basis of requirements, whether it is necessary to make the corresponding appropriations available again.

FR**Article 179****Transfer of appropriations**

1. With regard to the operational expenditure referred to in this Title, the Commission may, except in the case of the European Agricultural Fund for Rural Development, make transfers from one title to another, provided that the appropriations concerned are for the same objective within the meaning of the Regulations referred to in Article 175, or are Technical Assistance expenditure. The Commission shall take its decisions by 31 January of the following financial year.
2. In cases other than those referred to in paragraph 1, the Commission may submit proposals for transfers to the Funds of payment appropriations to the European Parliament and the Council by 10 January of the following financial year. The transfer of the payment appropriations may be made from any item of the budget. The European Parliament and the Council shall take decisions on such transfers in accordance with the procedure provided for in Article 27, but for the purposes of this Article the time limit applicable shall be three weeks.
3. If the transfer is not approved or only partially approved by the European Parliament and the Council, the corresponding part of the expenditure referred to in Article 177(5) shall be charged to the payment appropriations of the following financial year.

FR**Article 180****Management, selection and audit**

The management and selection of projects, and their audit, shall be governed by the Regulations referred to in Article 175.

TITLE III RESEARCH

FR Article 181 Research funds

1. Parts One and Three shall apply to research and technological development appropriations, except as otherwise provided in this Title.

Such appropriations shall be entered either in one of the titles of the budget relating to the policy areas linked to 'Indirect research' and 'Direct research' or in a chapter relating to research activities in another title.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on types of operations under research.

2. The appropriations relating to the revenue generated by the Research Fund for Coal and Steel established by Protocol No 37 on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel annexed to the TEU and the TFEU shall be treated as assigned revenue within the meaning of Article 21. The commitment appropriations generated by such revenue shall be made available as soon as the amount receivable has been estimated and the payment appropriations as soon as the revenue has been received.
3. With regard to the operational expenditure referred to in this Title, the Commission may make transfers from one title to another, provided that the appropriations are used for the same purpose.
4. Experts paid from research and technological development appropriations shall be recruited in accordance with the procedures laid down by the European Parliament and the Council when they adopt each research framework programme or in accordance with the corresponding rules for the participation of undertakings, research centres and universities.

RAP Article 255 *Types of operations* *(Article 181 of the Financial Regulation)*

1. Direct action shall be carried out by the establishments of the Joint Research Centre (hereinafter 'JRC') and shall in principle be entirely financed from the budget. It shall consist of:
 - (a) research programmes;
 - (b) exploratory research activities;
 - (c) scientific and technical support activities of an institutional nature.

2. The JRC may participate in indirect actions under the conditions laid down in Article 183 of the Financial Regulation.
3. The estimate of amount receivable, as referred to in Article 181(2) of the Financial Regulation shall be sent to the accounting officer for registration.

FR

Article 182

Commitments of Research Fund

1. The commitment appropriations corresponding to the amount of the commitment decommitted as a result of total or partial non-implementation of the projects relating to research for which they were earmarked may, exceptionally and in duly justified cases, be made available again where it is essential to carry out the programme originally planned, unless the budget for the financial year concerned (year n) contains funds for this purpose.
2. For the purposes of paragraph 1, the Commission shall, at the beginning of each financial year, examine decommitments made during the preceding financial year (year n – 1) and assess, in the light of the requirements, the need to make the appropriations available again.

On the basis of this assessment, the Commission may submit appropriate proposals to the European Parliament and the Council, by 15 February of each financial year, stating for each budget item the reasons for making those appropriations available again.

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

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

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

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

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

FR

Article 183

Joint Research Centre

1. The Joint Research Centre (JRC) may receive funding charged to appropriations entered outside the titles and the chapters referred to in Article 181(1) in respect of its participation in procurement and grant procedures following Titles V and VI of Part One, and financed in whole or in part from the budget.

For the purposes of the participation in the procurement and grant procedures, the JRC shall be considered as a legal person established in a Member State.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the JRC.

2. Appropriations relating to the following shall be treated as assigned revenue within the meaning of Article 21(2):
 - (a) grant and procurement procedures in which the JRC participates;
 - (b) activities of the JRC on behalf of third parties; or
 - (c) activities undertaken under an administrative agreement with other institutions or other Commission departments for the provision of technical-scientific services.

The commitment appropriations generated by revenue referred to in points (a) and (c) of the first subparagraph shall be made available as soon as the amount receivable has been estimated.

For activities referred to in point (c) of the first subparagraph, appropriations not used within five years shall be cancelled.

3. The use of appropriations shall be shown in a set of analytical accounts in the budgetary outturn account for each category of action to which it relates; it shall be separate from revenue originating from financing by third parties (public or private) and from revenue from other services carried out by the Commission for third parties.
4. When participating in grant or procurement procedures in accordance with paragraph 1 of this Article, the JRC shall not be subject to the conditions laid down in Article 106, points (b) and (c) of Article 107(1), Articles 108 and 109, Articles 131(4) and 131(5) regarding provisions on exclusion and penalties in relation to procurement and grants.

The JRC shall also be presumed to meet the requirements relating to economic and financial capacity.

The JRC shall be exempted from lodging guarantees as referred to in Articles 115 and 134.

5. The rules on procurement in Title V of Part One shall not apply to the activities of the JRC on behalf of third parties.
6. By way of derogation from Article 26, the Commission may, within the title of the budget relating to the 'Direct research' policy area, make transfers between chapters of up to 15 % of the appropriation in the line from which the transfer is made.

RAP *Article 256**Additional rules applicable to the JRC
(Article 183 of the Financial Regulation)*

1. The activities of a competitive nature conducted by the JRC shall consist of:
 - (a) activities carried out following grant or procurement procedures;
 - (b) activities on behalf of third parties;
 - (c) activities undertaken under an administrative agreement with other institutions or other Commission departments for the provision of technical-scientific services.
2. Where the activities conducted by the JRC for third parties involve procurement, the procurement procedure shall comply with the principles of transparency and equal treatment.
3. The estimates of amounts receivable referred to in Article 183(2) of the Financial Regulation shall be sent to the accounting officer for registration.

TITLE IV

EXTERNAL ACTIONS

CHAPTER 1

General provisions**FR** **Article 184**
External actions

1. Parts One and Three shall apply to external actions financed from the budget, except as otherwise provided in this Title.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the actions which may be financed under external actions.
2. The appropriations for the actions referred to in paragraph 1 shall be used by the Commission:
 - (a) either within the framework of aid granted on an autonomous basis; or
 - (b) in partnership with a third country as referred to in point (i) of Article 58(1)(c), through the signature of a financing agreement.
3. Where external actions are co-financed both from appropriations entered in the budget and from external assigned revenue referred to in point (b) of Article 21(2), the funds which are not committed after the end of the contracting period referred to in Article 189(2) for the relevant action shall be reimbursed on a pro rata basis after the deduction of a lump sum corresponding to audit, evaluation and contingencies which can be committed at a later time.

4. The second subparagraph of Article 90(4) shall not apply to the actions referred to in this Title.

For grants under direct management of more than EUR 5 000 000 financing external actions, no more than two pre-financing payments shall remain uncleared throughout the duration of the action.

RAP *Article 257*
Actions which may be financed
(Article 184 of the Financial Regulation)

Appropriations for the actions referred to in Chapter 1 of Title IV of Part Two of the Financial Regulation may, in particular, finance procurement contracts, grants, including interest rate subsidies, special loans, loan guarantees and financial assistance, budgetary support and other specific forms of budgetary aid.

CHAPTER 2

Implementation of actions

SECTION 1

GENERAL PROVISIONS

FR **Article 185**
Implementation of external actions

The actions referred to in this Title may be implemented directly by the Commission pursuant to point (a) of Article 58(1), under shared management pursuant to point (b) of Article 58(1) or indirectly by any entity or person entrusted pursuant to point (c) of Article 58(1), in accordance with the relevant provisions of Articles 58 to 63. Appropriations for external actions may be combined with funds from other sources to achieve a joint objective.

SECTION 2

BUDGET SUPPORT AND MULTI-DONOR TRUST FUNDS

FR **Article 186**
Use of budget support

1. Where provided for in the relevant basic acts, the Commission may provide budget support to a beneficiary third country if that country's management of public finances is sufficiently transparent, reliable and effective.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the use of budget support and on the obligations of recipients.

2. The financing decision referred to in Article 84 shall detail the objectives and the expected results of the provision of budget support to a beneficiary third country. The payment of the Union contribution shall be based on the fulfilment of conditions referred to in paragraph 1, including the improvement of the management of public finances, and on clear and objective performance indicators forming the basis for the measurement of progress over time in the respective sector.
3. The Commission shall include in the corresponding financing agreement concluded in accordance with point (b) of Article 184(2), the appropriate provisions pursuant to which the beneficiary third country is to commit to immediately reimburse all or part of the relevant operation funding, in the event that it is established that the payment of the relevant Union funds has been vitiated by serious irregularities attributable to the that country.

In order to process the reimbursement referred to in the first subparagraph, the second subparagraph of Article 80(1) may be applied.
4. The Commission shall support in beneficiary third countries the development of parliamentary control and audit capacities and increase transparency and public access to information.

RAP Article 258*Use of budget support**(Article 186 of the Financial Regulation)*

1. Where provided for in the relevant basic acts, the Commission may use sectoral or general budget support within a third country if the following conditions are met:
 - (a) the partner country's management of public finances is sufficiently transparent, reliable and effective;
 - (b) the partner country has put in place sufficiently credible and relevant sectoral or national policies; and
 - (c) where the partner country has put in place stability oriented macroeconomic policies.
2. Agreements concluded with the partner country shall contain an obligation for that country to provide the Commission with reliable and timely information which allows the Commission to evaluate the fulfilment of the conditions set out in paragraph 1.

FR Article 187**Union trust funds for external actions**

1. For emergency, post-emergency or thematic actions, the Commission may create trust funds under an agreement concluded with other donors. The constitutive act of each trust fund shall define the objectives of the trust fund.
2. Union trust funds shall be implemented in accordance with the principles of sound financial

management, transparency, proportionality, non-discrimination and equal treatment, and in accordance with the specific objectives defined in each constitutive act.

Union trust funds shall be implemented directly by the Commission pursuant to point (a) of Article 58(1), with the exception of Union trust funds for emergency or post-emergency action, which may also be implemented indirectly by entrusting budget implementation tasks to entities pursuant to points (i), (ii), (v), and (vi) of Article 58(1)(c).

3. Union trust funds shall comply with the following conditions:
 - (a) there is added value to the Union intervention: trust funds shall only be created and implemented at Union level where their objectives, in particular by reason of their scale or potential effects, can be better achieved at Union level than at national level;
 - (b) Union trust funds shall bring clear Union political visibility and managerial advantages as well as better Union control of risks and disbursements of the Union and other donors' contributions. They should not be created if they merely duplicate other existing funding channels or similar instruments without providing any additionality.
4. A board chaired by the Commission shall be established for each Union trust fund to ensure the representation of the donors, and of the non-contributing Member States as observers, and to decide upon the use of the funds.
5. Union trust funds shall be created for a limited duration determined in their constitutive act. This duration may be extended by a decision of the Commission upon request of the board of the trust fund concerned.

The European Parliament and/or the Council may request the Commission to discontinue appropriations for that trust fund or to revise the constitutive act with a view to the liquidation of the trust fund, where appropriate. In such an event, any remaining funds shall be returned on a pro rata basis to the budget as general revenue and to the contributing Member States and other donors.

6. The contributions of the Union and of the donors shall be lodged in a specific bank account. The contributions of the Union shall be transferred to this account on the basis of payment requests that are duly substantiated with disbursement forecasts, taking into account the balance available on the account and the resulting need for additional payments. Disbursement forecasts are to be provided on an annual, or where appropriate on a semi-annual, basis.

Contributions shall not be integrated in the budget and shall be managed by the Commission under the responsibility of the authorising officer by delegation.

The accounting officer of a Union trust fund shall be the accounting officer of the Commission. He or she shall be responsible for laying down accounting procedures and chart of accounts common to all Union trust funds.

The Commission's internal auditor and the Court of Auditors shall exercise the same powers over the trust fund as they do in respect of other actions carried out by the Commission.

The specific bank account of the trust fund shall be opened and closed by the accounting officer.

The Commission shall ensure a strict separation of duties between accounting and authorising officers.

Funds shall be committed and paid by financial actors of the Commission, as defined in Chapter 3 of Title IV of Part One.

7. The Commission shall be authorised to withdraw a maximum of 5 % of the amounts pooled into the trust fund to cover its management costs from the years in which the contributions referred to in paragraph 6 have started to be used. For the duration of the trust fund, such management fees shall be assimilated to assigned revenue within the meaning of point (b) of Article 21(2).

The accounting officer shall act on the recovery orders relating to actions funded by the trust fund. Revenue arising from the repayment of these recovery orders shall be returned to the specific bank account of the trust fund. Cancellation and waiving of recovery orders shall be made under the rules referred to in Article 80.

8. The Commission shall submit its draft decisions concerning the creation, the extension and the liquidation of a Union trust fund to the competent committee provided for in the basic act under which the Union contribution to the Union trust fund is provided.
9. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the management, reporting and governance of trust funds for external actions.
10. The Commission shall submit annually a comprehensive and detailed report to the European Parliament and the Council on the activities supported by Union trust funds, on their implementation and performance, as well as on their accounts. The Commission shall attach its report to the summary of the annual reports referred to in the third subparagraph of Article 66(9).

RAP *Article 259*

Union trust funds for external actions (Article 187 of the Financial Regulation)

The contributions of other donors shall be taken into account when cashed in the specific bank account of the trust fund and for the amount in euro resulting from the conversion at their reception on the specific bank account.

The Union contribution shall be transferred in due time to cover the legal commitments of the trust fund taking due account of available funds provided by the other donors.

Interests accumulated on the trust fund's specific bank account shall be invested in the trust fund except where otherwise provided for in the constitutive act of the trust fund.

All transactions made on the bank account referred to in the third paragraph during the year shall be properly accounted for in the accounts of the trust fund.

Financial reporting on the operations carried out by each trust fund shall be established twice every year by the authorising officer.

The trust funds shall be subject to an independent external audit every year.

The board of the trust fund shall approve the annual report of the trust fund drawn up by the authorising officer together with annual accounts drawn up by the accounting officer. Those reports shall be attached to the annual report of the authorising officer by delegation and presented to the European Parliament and Council within the discharge procedure of the Commission.

The rules for composition of the board and its internal rules shall be laid down in the constitutive act of the trust fund adopted by the Commission and adhered to by the donors. Those rules shall ensure a fair representation of the donors and include the requirement to have the positive vote of the Commission for the final decision on the use of the funds.

SECTION 3

OTHER MANAGEMENT MODES

FR

Article 188

Implementation of external actions through indirect management

1. The implementation of actions implemented indirectly pursuant to point (c) of Article 58(1) shall be subject to scrutiny by the Commission and by Union delegations in accordance with Article 56(2). Such scrutiny shall be exercised either by prior approval, by *ex post* checks or by a combined procedure.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the implementation of external actions through indirect management.

RAP

Article 43

Specific provisions for indirect management with International Organisations (Articles 58(1)(c) (ii) and 188 of the Financial Regulation)

1. The international organisations referred to in point (ii) of Article 58(1)(c) of the Financial Regulation shall be:
 - (a) international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations;
 - (b) the International Committee of the Red Cross;
 - (c) the International Federation of National Red Cross and Red Crescent Societies;
 - (d) other non-profit organisations assimilated to international organisations by a Commission decision.

2. Where the Commission implements the budget under indirect management with international organisations, the verification agreements concluded with them shall apply.

FR**Article 189****Financing agreements on the implementation of external actions**

1. External actions carried out shall give rise to one or more of the following instruments:
 - (a) a financing agreement between the Commission and an entity or person referred to in Article 185;
 - (b) a contract or a grant agreement between the Commission and natural or legal persons responsible for carrying out the actions.

The terms on which the external aid is given shall be laid down in the instrument by which the financing agreements or the contracts or the grant agreements provided for in points (a) and (b) of the first subparagraph shall be managed.

2. Financing agreements with the entities referred to in point (a) of the first subparagraph of paragraph 1 shall be concluded by 31 December of year $n + 1$, year n being the one in which the budgetary commitment was made.

The financing agreements shall lay down the period within which the entities referred to in point (a) of the first subparagraph of paragraph 1 shall conclude all individual contracts and grant agreements which implement the action. Such period shall be no longer than three years following the date of conclusion of the financing agreement, except:

- (a) for multi-donor actions;
 - (b) for individual contracts relating to audit and evaluation;
 - (c) in the following exceptional circumstances:
 - (i) riders are added to contracts which have already been concluded;
 - (ii) individual contracts are to be concluded after early termination of an existing contract;
 - (iii) changes of the entity charged with the entrusted tasks.
3. Paragraph 2 shall not apply to the multiannual programmes that are implemented through split commitments in the following cases:
 - (a) the Instrument for Pre-Accession Assistance;
 - (b) the European Neighbourhood and Partnership Instrument.

In those cases, the appropriations shall be automatically decommitted by the Commission in accordance with the sector-specific rules.

4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on financing agreements concerning the implementation of external actions.

CHAPTER 3

Procurement

FR

Article 190

External action procurement

1. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on external action procurement.
2. The provisions of Chapter 1 of Title V of Part One relating to the general provisions on procurement shall be applicable to contracts covered by this Title subject to the special provisions relating to thresholds and the arrangements for awarding external contracts to be laid down in the delegated acts adopted pursuant to this Regulation. The contracting authorities for the purposes of this Chapter shall be:
 - (a) the Commission on behalf of, and for the account of, one or more third countries;
 - (b) entities and persons referred to in Article 185 and entrusted with the corresponding budget implementation tasks.
3. The procurement procedures shall be laid down in the financing agreements provided for in Article 189.
4. The provisions of this Chapter shall not apply to actions under sector-specific basic acts relating to crisis management aid, to civil protection operations and to humanitarian aid operations.

RAP

Article 260

Renting of buildings

(Article 190 of the Financial Regulation)

The only buildings contracts which may be financed from operating appropriations for external action shall be those relating to the renting of buildings already constructed at the time the lease is signed. These contracts shall be published as laid down in Article 124.

Article 261**Definitions**

(Article 190 of the Financial Regulation)

1. Service contracts shall comprise study and technical assistance contracts.

A study contract is a service contract concluded between a supplier and the contracting authority which includes studies for the identification and preparation of projects, feasibility studies, economic and market studies, technical studies and audits.

A technical assistance contract is where the supplier is called on to play an advisory role, to manage or supervise a project or to provide the consultants specified in the contract.

2. Where a third country has qualified management staff in its departments or entities with public-sector participation, the contracts may be performed directly by these departments or entities by direct labour.

Article 262***Special provisions relating to thresholds and the arrangements for awarding external contracts***

(Article 190 of the Financial Regulation)

1. Articles 123 to 126, with the exception of the definitions, paragraphs 3 and 4 of Article 127, Articles 128, 134 to 137, paragraphs 3 to 6 of Article 139, Articles 148(4), 151(2), 152 to 158, 160 and 164 of this Regulation shall not apply to procurement contracts concluded by the contracting authorities referred to in Article 190(2) of the Financial Regulation or on their behalf.

Implementation of the procurement provisions under this Chapter shall be decided by the Commission, including the appropriate controls to be applied by the responsible authorising officer where the Commission is not the contracting authority.

2. In the event of failure to comply with the procedures referred to in paragraph 1, expenditure on the operations in question shall not be eligible for Union financing.
3. This Chapter shall not apply to the contracting authorities referred to in Article 190(2)(b) of the Financial Regulation where, following the checks referred to in Article 61 of the Financial Regulation, the Commission has authorised them to use their own procurement procedures.

Article 263

Advertising and non-discrimination

(Articles 190 and 191 of the Financial Regulation)

1. The Commission shall take the necessary implementing measures to guarantee as wide a participation as possible, on equal terms, in competitive tendering for the award of contracts financed by the Union. To that end, care shall be taken in particular to:
 - (a) ensure adequate publication, in reasonable time, of the prior information notices, contract notices and award notices;
 - (b) eliminate any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons referred to in Article 182 of the Financial Regulation.
2. Articles 265(5), 267(3) and 269(4) shall be without prejudice to the use of e-procurement.

Article 264

Advertising

(Article 190 of the Financial Regulation)

1. The prior information notice for international calls for tender shall be sent to the Publications Office as early as possible for supply and service contracts and as quickly as possible after the decision authorising the programme for works contracts.
2. For the purposes of this Chapter, the contract notice shall be published:
 - (a) at least in the *Official Journal of the European Union* and on the internet for international calls for tender;
 - (b) at least in the official gazette of the recipient State or in any equivalent publication for local invitations to tender.

Where the contract notice is also published locally, it must be identical to the one published in the *Official Journal of the European Union* and on the internet and it must be published simultaneously. The Commission shall be responsible for publication in the *Official Journal of the European Union* and on the internet. If the notice is published locally, this may be done by the entities referred to in Article 190(2)(b) of the Financial Regulation.

3. The award notice shall be sent when the contract is signed except where, if still necessary, the contract was declared secret or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the European Union, or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate.

*Article 265**Thresholds and procedures for awarding service contracts**(Article 190 of the Financial Regulation)*

1. The thresholds and procedures referred to in Article 190 of the Financial Regulation shall be as follows for service contracts:
 - (a) for contracts with a value of EUR 300 000 or more:
 - (i) an international restricted invitation to tender within the meaning of Article 127(2) and Article 264(2)(a);
 - (ii) an international open invitation to tender within the meaning of Article 127(2) and Article 264(2)(a);
 - (b) for contracts with a value of less than EUR 300 000: competitive negotiated procedure within the meaning of paragraph 3 of this Article, or a framework contract.

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

Payments for amounts less than or equal to EUR 2 500 in respect of item of expenditure may consist simply in payment against invoices without prior acceptance of a tender.

2. In the international restricted procedure referred to in point (a) of paragraph 1, the contract notice shall state the number of candidates who will be invited to submit tenders. For service contracts at least four candidates shall be invited. The number of candidates allowed to submit tenders must be sufficient to ensure genuine competition.

The list of selected candidates shall be published on the Commission's internet site.

If the number of candidates satisfying the selection criteria or the minimum capacity levels is less than the minimum number, the contracting authority may invite to submit a tender only those candidates who satisfy the criteria to submit a tender.

3. Under the negotiated procedure referred to in point (b) of paragraph 1, the contracting authority shall draw up a list of at least three tenderers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 129.

Tenderers for the competitive negotiated procedure may be chosen from an appropriately advertised list of vendors as referred to in Article 136(1)(b). That list shall be drawn up following a call for expression of interest and shall be valid for no more than five years from the date of advertisement. That list may include sub-lists. Any interested person may submit an application at any time during the period of validity of the list, except for the last three months of that period. Where

a contract is to be awarded the contracting authority shall invite all vendors entered on the relevant list or sub-list to submit a tender.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

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

4. For legal services according to the CPV nomenclature, the contracting authorities may use the competitive negotiated procedure, whatever is the estimated value of the contract.
5. The bids shall be sent in a package or outer envelope containing two separate sealed envelopes, one bearing the words 'Envelope A — Technical bid' and the other the words 'Envelope B — Financial bid'. The outer envelope shall bear:
 - (a) the address indicated in the tender documents for the submission of tenders;
 - (b) the reference to the call for tenders to which the tenderer is responding;
 - (c) where appropriate, the numbers of the lots for which a tender is being submitted;
 - (d) the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.

If interviews were envisaged in the tender documents, the evaluation committee may interview the principal members of the team of experts proposed in the technically acceptable bids, after establishing its written provisional conclusions and before definitively concluding the evaluation of the technical bids. In such cases the experts shall be interviewed by the evaluation committee, preferably collectively if they form a team, and at intervals close enough to allow comparisons to be made. Interviews shall be conducted in accordance with a standard model agreed in advance by the selection board and applied to all the experts or teams called for interview. The date and time of the interview must be communicated to the tenderers at least 10 calendar days in advance. In cases of *force majeure*, preventing the tenderer from attending the interview, a new date and time must be sent to the tenderer.

6. The contract award criteria shall serve to identify the tender offering best value for money.

The tender offering best value for money shall be selected using an 80/20 weighting distribution between technical quality and price. For that purpose:

- (a) the score awarded to the technical bids shall be multiplied by 0,80;
- (b) the score awarded to the price bids shall be multiplied by 0,20.

*Article 266**Use of the negotiated procedure for service contracts**(Article 190 of the Financial Regulation)*

1. For service contracts, contracting authorities may use the negotiated procedure with a single tender in the following cases:
 - (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 104(1) of the Financial Regulation cannot be kept;
 - (b) where the services are entrusted to public-sector bodies or to non-profit institutions or associations and relate to activities of an institutional nature or designed to provide assistance to peoples in the social field;
 - (c) for services which are an extension of services already started, subject to the conditions laid down in paragraph 2;
 - (d) where the tender procedure or the attempt to use a framework contract has been unsuccessful, that is to say, where no qualitatively and/or financially worthwhile tender has been received, in which case, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered;
 - (e) where the contract concerned follows a contest and must, under the rules applying, be awarded to the successful candidate or to one of the successful candidates, in which case, all successful candidates shall be invited to participate in the negotiations;
 - (f) where, for technical reasons, or for reasons connected with the protection of exclusive rights, the contract can be awarded only to a particular service provider;
 - (g) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the beneficiary country so requires;
 - (h) where a new contract has to be concluded after early termination of an existing contract.

For the purposes of point (a) of the first subparagraph of this paragraph, operations carried out in crisis situations as referred to in Article 190(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

Activities of an institutional nature referred to in point (b) of the first subparagraph include services directly linked to the statutory mission of the public sector bodies.

2. Services which are an extension of services already started, as referred to in point (c) of paragraph 1, are as follows:
 - (a) additional services not covered by the principal contract but which, as a result of unforeseen circumstances, have become necessary for the performance of the contract, provided that the additional service cannot be technically and economically separated from the principal contract without serious inconvenience for the contracting authority and the aggregate amount of additional services does not exceed 50 % of the value of the principal contract;
 - (b) additional services consisting in the repetition of similar services entrusted to the contractor providing services under a first contract, provided that:
 - (i) a contract notice was published for the first service and the possibility of using the negotiated procedure for new services for the project and the estimated cost were clearly indicated in the contract notice published for the first service;
 - (ii) the extension of the contract is for a value and duration not exceeding the value and the duration of the initial contract.

Article 267

Thresholds and procedures for awarding supply contracts (Article 190 of the Financial Regulation)

1. The thresholds and procedures referred to in Article 190 of the Financial Regulation shall be as follows for supply contracts:
 - (a) for contracts with a value of EUR 300 000 or more: an international open invitation to tender within the meaning of Article 127(2) and Article 264(2)(a);
 - (b) for contracts with a value of less than EUR 300 000: a framework contract or:
 - (i) for contracts of a value of EUR 100 000 or more but less than EUR 300 000: local open invitation to tender within the meaning of Article 127(2) and point (b) of Article 264(2);
 - (ii) for contracts with a value of less than EUR 100 000: competitive negotiated procedure within the meaning of paragraph 2.
 - (c) payments for amounts less than or equal to EUR 2 500 in respect of item of expenditure may consist simply in payment against invoices without prior acceptance of a tender.

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

2. Under the negotiated procedure referred to in point (b)(ii) of paragraph 1 of this Article, the contracting authority shall draw up a list of at least three suppliers of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 129.

Tenders shall be opened and evaluated by an evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

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

3. Each technical and financial bid must be placed in a single sealed envelope, itself placed in a package or outer envelope. The inner envelope shall bear:
 - (a) the address indicated in the tender documents for the submission of tenders;
 - (b) the reference to the call for tenders to which the tenderer is responding;
 - (c) where appropriate, the numbers of the lots for which a tender is being submitted;
 - (d) the phrase ‘Not to be opened before the tender-opening session’, in the language of the tender documents.

At the place and time set in the tender documents, the tenders shall be opened in public by the evaluation committee. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the contracting authority considers appropriate must be announced.

4. In the case of a supply contract not involving after-sales service, the sole award criterion shall be price.

Where proposals for after-sales service or for training are particularly significant, the tender offering either the lowest price or best value for money shall be chosen, with due account for the technical quality of the service offered and the price quoted.

Article 268

Use of the negotiated procedure for supply contracts (Article 190 of the Financial Regulation)

1. Supply contracts may be awarded by negotiated procedure with a single tender in the following cases:

- (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 111(1) of the Financial Regulation cannot be kept;
- (b) where warranted by the nature or particular characteristics of the supplies, for example, where performance of the contract is exclusively reserved for the holders of patents or licences to use patents;
- (c) for additional deliveries by the original supplier intended either as a partial replacement of normal supplies or installations or as the extension of existing supplies or installations, where a change of supplier would oblige the contracting authority to acquire equipment having different technical characteristics which would result in either incompatibility or disproportionate technical difficulties in operation and maintenance;
- (d) where the tender procedure has been unsuccessful, that is where no qualitatively or financially worthwhile tender has been received;
- (e) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the beneficiary country so requires;
- (f) for contracts in respect of supplies quoted and purchases on a commodity market;
- (g) for contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law;
- (h) where a new contract has to be concluded after early termination of an existing contract.

In cases referred to in point (d) of the first subparagraph, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

2. For the purposes of point (a) of paragraph 1 of this Article, operations carried out in crisis situations as referred to in Article 190(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

*Article 269**Thresholds and procedures for awarding works contracts**(Article 190 of the Financial Regulation)*

1. The thresholds and procedures referred to in Article 190 of the Financial Regulation shall be as follows for works contracts:
 - (a) for contracts with a value of EUR 5 000 000 or more any of the following:
 - (i) an international open invitation to tender within the meaning of Article 127(2) and point (a) of Article 264(2);
 - (ii) in view of the characteristics of certain works, an international restricted invitation to tender within the meaning of Article 127(2) and point (a) of Article 264(2);
 - (b) for contracts with a value of EUR 300 000 or more but less than EUR 5 000 000: a local open invitation to tender within the meaning of Article 127(2) and Article 264(2)(b);
 - (c) for contracts with a value of less than EUR 300 000: a competitive negotiated procedure within the meaning of paragraph 2 of this Article;

Contracts with a value of less than or equal to EUR 20 000 may be awarded on the basis of a single tender.

2. Under the negotiated procedure referred to in point (c) of paragraph 1 of this Article, the contracting authority shall draw up a list of at least three contractors of its choice. The procedure involves limited competitive tendering, without publication of a notice and shall be known as a competitive negotiated procedure not covered by Article 129.

Tenders shall be opened and evaluated by an evaluation committee with the necessary technical and administrative expertise. The members of the evaluation committee must sign a declaration of impartiality.

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

3. The selection criteria shall cover the capacity of the tenderer to carry out similar contracts, in particular by reference to works carried out in recent years. Once selection is made and since inadmissible tenders have already been eliminated, the only award criterion shall be the price.
4. Each technical and financial bid must be placed in a single sealed envelope, itself placed in a package or outer envelope. The inner envelope shall bear:
 - (a) the address indicated in the tender documents for the submission of tenders;
 - (b) the reference to the call for tenders to which the tenderer is responding;

- (c) where appropriate, the numbers of the lots for which a tender is being submitted;
- (d) the phrase 'Not to be opened before the tender-opening session', in the language of the tender documents.

At the place and time set in the tender documents, the tenders shall be opened in public by the evaluation committee. At the public tender-opening session, the names of the tenderers, the prices quoted, the provision of the necessary tender guarantee and any other formality which the contracting authority thinks appropriate must be announced.

Article 270

Use of the negotiated procedure for works contracts (Article 190 of the Financial Regulation)

1. Works contracts may be awarded by negotiated procedure with a single tender in the following cases:
 - (a) where, for reasons of extreme urgency brought about by events which the contracting authorities could not have foreseen and which can in no way be attributed to them, the time limit for the procedures referred to in points (a), (b) and (c) of Article 111(1) of the Financial Regulation cannot be kept;
 - (b) for additional works not included in the initial contract concluded but which have, through unforeseen circumstances, become necessary for carrying out the work described therein, subject to the conditions laid down in paragraph 2;
 - (c) where the tender procedure has been unsuccessful, that is where no qualitatively or financially worthwhile tender has been received;
 - (d) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the Union or the beneficiary country so requires;
 - (e) where a new contract has to be concluded after early termination of an existing contract.

For the purposes of point (a) of the first subparagraph of this paragraph, operations carried out in crisis situations as referred to in Article 190(2) shall be considered to satisfy the test of extreme urgency. The authorising officer by delegation, where appropriate in concertation with the other authorising officers by delegation concerned, shall establish that a situation of extreme urgency exists and shall review his decision regularly with regard to the principle of sound financial management.

In cases referred to in point (c) of the first subparagraph, after cancelling the tender procedure, the contracting authority may negotiate with one or more tenderers of its choice, from among those that took part in the invitation to tender, provided that the original terms of the contract are not substantially altered.

2. The additional works referred to in point (b) of paragraph 1 shall be awarded to the work contractor already carrying out the work:
 - (a) where such works cannot be technically or economically separated from the main contract without serious inconvenience for the contracting authority;
 - (b) where such works, although separable from the performance of the original contract, are strictly necessary for its completion;
 - (c) where the aggregate value of contracts awarded for additional works does not exceed 50 % of the value of the principal contract.

Article 271

Use of the negotiated procedure for buildings contracts (Article 190 of the Financial Regulation)

Buildings contracts as referred to in Article 260 may be awarded by negotiated procedure after the local market has been prospected.

Article 272

Choice of procurement procedure for mixed contracts (Article 190 of the Financial Regulation)

In the case of contracts involving both supplies of services and supplies of goods or execution of works, the contracting authority, after the Commission has given its agreement if it is not the contracting authority, shall determine the thresholds and procedures applicable by reference to the predominant aspect assessed on the basis of the relative value and the operational significance of the various components of the contract.

Article 273

Tender documents (Article 190 of the Financial Regulation)

1. The tender documents referred to in Article 138 shall be drawn up on the basis of best international practices and in accordance with the provisions of this Chapter regarding advertising and contacts between the contracting authority and tenderers.
2. For service contracts, the tender file must contain the following documents:
 - (a) instructions to tenderers, which must include:
 - (i) the type of contract;

- (ii) the award criteria and their weightings;
 - (iii) the possibility of interviews and the timetable for them;
 - (iv) whether variants are permitted;
 - (v) the proportion of sub-contracting which may be authorised;
 - (vi) the maximum budget available for the contract;
 - (vii) the currency of tenders;
- (b) shortlist of candidates selected (mentioning the ban on association);
 - (c) general conditions for service contracts;
 - (d) specific conditions which amplify, supplement or derogate from the general conditions;
 - (e) terms of reference indicating the planned timetable for the project and dates from which it is planned that the principal experts must be available;
 - (f) price schedule (for completion by the tenderer);
 - (g) tender form;
 - (h) contract form;
 - (i) if applicable, bank (or similar) guarantee forms for the payment of pre-financing.

Point (h) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

3. For supply contracts, the tender file must contain the following documents:
- (a) instructions to tenderers, which must include:
 - (i) the selection and award criteria;
 - (ii) whether variants are authorised;
 - (iii) the currency of tenders;
 - (b) general conditions for supply contracts;
 - (c) specific conditions which amplify, supplement or derogate from the general conditions;
 - (d) technical annex containing any plans, technical specifications and the planned timetable for performance of the contract;
 - (e) price schedule (for completion by the tenderer) and the breakdown of prices;
 - (f) tender form;

- (g) contract form;
- (h) if applicable, bank (or similar) guarantee forms for:
 - (i) the tender;
 - (ii) payment of pre-financing;
 - (iii) proper performance.

Point (g) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

4. For works contracts, the tender file must contain the following documents:
 - (a) instructions to tenderers, which must include:
 - (i) the selection and award criteria;
 - (ii) whether variants are authorised;
 - (iii) the currency of tenders;
 - (b) general conditions for works contracts;
 - (c) specific conditions which amplify, supplement or derogate from the general conditions;
 - (d) technical annexes containing plans, technical specifications and the planned timetable for performance of the contract;
 - (e) price schedule (for completion by the tenderer) and the breakdown of prices;
 - (f) tender form;
 - (g) contract form;
 - (h) if applicable, bank (or similar) guarantee forms for:
 - (i) the tender;
 - (ii) payment of pre-financing;
 - (iii) proper performance.

Point (g) of the first subparagraph shall not apply to cases where, due to exceptional and duly justified circumstances, the model contract cannot be used.

5. In the event of contradiction between the specific conditions referred to in point (d) of paragraph 2, point (c) of paragraph 3 and point (c) of paragraph 4 and the general conditions, those specific conditions shall apply.
6. Where contracting authorities require the production of certificates drawn up by independent bodies attesting the compliance of the economic operator with certain quality assurance standards, they shall refer to quality assurance systems based on the relevant European or, where appropriate, international standards

certified by bodies conforming to the European or international standards on certification. They shall also accept other evidence of equivalent quality assurance measures from economic operators.

Article 274

Guarantees

(Article 190 of the Financial Regulation)

1. By way of derogation from Article 163, advance guarantees shall be denominated in euro or in the currency of the contract they cover.
2. The contracting authority may demand a tender guarantee, within the meaning of this Chapter, representing 1 % to 2 % of the overall value of the contract for supply and works contracts. It shall comply with Article 163. It shall be released when the contract is signed. It shall be retained if a tender submitted by the final date for submission is subsequently withdrawn.
3. A performance guarantee may be required by the contracting authority for an amount set in the tender file and corresponding to between 5 and 10 % of the total value of the contract for supply and works contracts. This guarantee shall be determined on the basis of objective criteria such as the type and value of the contract.

However, a performance guarantee shall be required where the following thresholds are exceeded:

- (a) EUR 345 000 for works contracts,
- (b) EUR 150 000 for supply contracts.

The guarantee shall remain valid at least until final acceptance of the supplies and works. If the contract is not properly performed the entire guarantee shall be retained.

Article 275

Time limits for procedures

(Article 190 of the Financial Regulation)

1. Tenders must reach the contracting authority at the address and by no later than the date and time shown in the invitation to tender. The time limit for receipt of tenders and requests to participate, laid down by the contracting authorities, shall be long enough to allow interested parties a reasonable and appropriate period to prepare and submit their tenders.

For service contracts, the minimum time between the date of dispatch of the letter of invitation to tender and the final date for receipt of tenders shall be 50 days. However, in urgent cases other time limits may be authorised.

2. Tenderers may put questions in writing before the closing date for receipt of tenders. The contracting authority shall provide the answers to the questions before the closing date for receipt of tenders.
3. In international restricted procedures, the time limit for receipt of requests to participate shall be no less than 30 days from the date on which the contract notice is published. The period between the date on which the letter of invitation is sent and the final date for the receipt of tenders shall be no less than 50 days. However, in certain exceptional cases other time limits may be authorised.
4. In international open procedures, the time limits for receipt of tenders, running from the date on which the contract notice is sent, shall be at least:
 - (a) 90 days for works contracts;
 - (b) 60 days for supply contracts.However, in certain exceptional cases other time limits may be authorised.
5. In local open procedures, the time limits for receipt of tenders, running from the date when the contract notice is published, shall be at least:
 - (a) 60 days for works contracts;
 - (b) 30 days for supply contracts.However, in certain exceptional cases other time limits may be authorised.
6. For the competitive negotiated procedures referred to in Articles 265(1)(b), 267(1)(c) and 269(1)(c), candidates shall be allowed at least 30 days from the date of dispatch of the letter of invitation to tender in which to submit their tenders.
7. The time limits specified in paragraphs 1 to 6 are expressed in calendar days.

Article 276

Evaluation committee

(Article 190 of the Financial Regulation)

1. All requests to participate and tenders declared as satisfying the requirements shall be evaluated and ranked by an evaluation committee on the basis of the exclusion, selection and award criteria announced in advance. This committee shall have an odd number of members, at least three, with all the necessary technical and administrative expertise to assess the tenders.
2. If the Commission is not the contracting authority, it may request to receive a copy of tender documents, tenders, the evaluation of the tenders and the signed contracts. It may also participate as an observer to the opening and evaluation of tenders.
3. Tenders which do not contain all the essential items demanded in the tender documents or which do not correspond to the specific requirements laid down shall be eliminated.

However, the evaluation committee or the contracting authority may ask candidates or tenderers to supply additional material or to clarify the supporting documents submitted in connection with the exclusion, selection and award criteria, within the time limit they specify and having respect to the principle of equal treatment.

4. In the case of abnormally low tenders as referred to in Article 151, the committee shall ask for the necessary clarifications concerning the composition of the tender.
5. The obligation to establish an evaluation committee may be waived for procedures with a value less than or equal to EUR 20 000.

FR

Article 191

Rules on participation in tendering procedures

1. Participation in tendering procedures shall be open on equal terms to all persons coming within the scope of the Treaties and to any other natural or legal person in accordance with the specific provisions in the basic instruments governing the cooperation sector concerned.
2. In the cases referred to in Article 54(2), it may be decided, under exceptional circumstances duly justified by the authorising officer responsible, to allow third-country nationals other than those referred to in paragraph 1 to tender for contracts.
3. Where an agreement on widening the market for procurement of goods or services to which the Union is party applies, the contracts for procurement financed by the budget shall also be open to third-country nationals other than those referred to in paragraphs 1 and 2, under the conditions laid down in that agreement.
4. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the participation in tendering procedures.

RAP

Article 263

Advertising and non-discrimination

(Articles 190 and 191 of the Financial Regulation)

1. The Commission shall take the necessary implementing measures to guarantee as wide a participation as possible, on equal terms, in competitive tendering for the award of contracts financed by the Union. To that end, care shall be taken in particular to:
 - (a) ensure adequate publication, in reasonable time, of the prior information notices, contract notices and award notices;
 - (b) eliminate any discriminatory practice or technical specifications liable to hamper wide participation on equal terms by all natural or legal persons referred to in Article 182 of the Financial Regulation.
2. Articles 265(5), 267(3) and 269(4) shall be without prejudice to the use of e-procurement.

CHAPTER 4

Grants**FR Article 192**
Full financing of an external action

An action may be financed in full by the budget only where this is essential for it to be carried out. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the full financing of an external action.

RAP *Article 277*
Financing in full
(Article 192 of the Financial Regulation)

In case of derogation from the co-financing requirement, grounds shall be provided in the award decision.

FR Article 193
Applicable rules for external action grants

Grant procedures to be applied in indirect management by the entities referred to in Article 185 shall be laid down in the agreements concluded between the Commission and those entities.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on grant procedures applicable under indirect management.

CHAPTER 5

Auditing of accounts**FR Article 194**
Union audit in external action

Each agreement between the Commission and an entity referred to in Article 185, or grant agreement or grant decision shall expressly provide for the Commission and the Court of Auditors to have the power of audit, on the basis of documents and on the spot, over all contractors and subcontractors who have received Union funds.

TITLE V

EUROPEAN OFFICES

FR

Article 195

The European offices

1. 'European offices', for the purposes of this Title, are the administrative structures set up by one or more institutions to perform specific cross-cutting tasks.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the scope of the European offices and the delegations by the institutions to the European offices.

2. This Title shall apply to the operation of OLAF, with the exception of Articles 198, 199 and 200.
3. Parts One and Three shall apply to the operation of the European offices, except as otherwise provided in this Title.

RAP

Article 278

The European offices and setting up of additional offices (Article 195 of the Financial Regulation)

The offices referred to in Article 195 of the Financial Regulation are as follows:

- (a) the Publications Office;
- (b) the European Anti-Fraud Office;
- (c) The European Personnel Selection Office and the European Administrative School administratively attached to it;
- (d) the Office for the Administration and Payment of Individual Entitlements;
- (e) the Office for Infrastructure and Logistics in Brussels and the Office for Infrastructure and Logistics in Luxembourg.

One or more institutions may set up additional offices provided that this can be justified by a cost-benefit study and guarantees the visibility of the Union action.

Article 279

Delegations by the institutions to interinstitutional European offices (Articles 195 and 199 of the Financial Regulation)

Each institution shall be responsible for budgetary commitments. The institutions may delegate to the Director of the interinstitutional European office concerned all subsequent acts, in particular legal commitments, validation of expenditure, authorisation of payments and implementation of revenue, and shall set the limits and conditions for such delegation of powers.

Article 280***Specific rules for the Publications Office
(Articles 195 and 199 of the Financial Regulation)***

With regard to the Publications Office, each institution shall decide on its publication policy. The net proceeds from the sale of publications shall be reused as assigned revenue by the institution which is the author of those publications, in accordance with Article 21 of the Financial Regulation.

FR**Article 196****Appropriations regarding the European offices**

1. The appropriations for each European office, the total amount of which shall be entered in a specific budget line within the section of the budget relating to the Commission, shall be set out in detail in an Annex to that section.

The Annex shall take the form of a statement of revenue and expenditure, subdivided in the same way as the sections of the budget.

The appropriations entered in that Annex shall cover all the financial requirements of each European office in the performance of its duties on behalf of the institutions.

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the appropriations for the European offices, including the delegation of certain tasks by the accounting officer, treasury and bank accounts.

2. Each European office's establishment plan shall be annexed to that of the Commission.
3. The director of each European office shall take decisions on transfers within the Annex provided for in paragraph 1. The Commission shall inform the European Parliament and the Council of such transfers.
4. Each European office's accounts shall form an integral part of the Union's accounts referred to in Article 141.

RAP**Article 281*****Delegation of certain tasks by the accounting officer
(Article 196 of the Financial Regulation)***

The Commission accounting officer, acting on a proposal from the management committee of the Office in question, may delegate to a member of the staff of the Office some of his tasks relating to the collection of revenue and the payment of expenditure made directly by the Office in question.

*Article 282**Treasury — bank accounts**(Article 196 of the Financial Regulation)*

To meet the cash requirements of an interinstitutional Office, bank accounts or post office giro accounts may be opened in its name by the Commission, acting on a proposal from the management committee. The final cash position for each year shall be reconciled and adjusted between the Office in question and the Commission at the end of the financial year.

FR**Article 197****Authorising officer of European offices**

The Commission shall, in respect of the appropriations entered in the Annex for each European office, delegate the powers of authorising officer to the director of the European office concerned, in accordance with Article 65.

FR**Article 198****The accounts of the interinstitutional European offices**

1. Each interinstitutional European office shall draw up analytical accounts of its expenditure, enabling the proportion of its services supplied to each of the institutions to be determined. The director of the European office concerned shall adopt, after approval by its Management Committee, the criteria on which the accounting system shall be based.
2. The remarks concerning the specific budget line in which the total appropriation for each interinstitutional European office is entered shall show an estimate of the cost of services supplied by that office to each of the institutions. This shall be based on the analytical accounts provided for in paragraph 1.
3. Each interinstitutional European office shall notify the institutions concerned of the results of the analytical accounts.

FR**Article 199****Delegation of authorising officer powers for interinstitutional European offices**

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

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the delegation of authorising officer powers to the director of an interinstitutional European office.

2. The internal auditor of the Commission shall exercise all responsibilities laid down in Chapter 9 of Title IV of Part One.

RAP *Article 279**Delegations by the institutions to interinstitutional European offices
(Articles 195 and 199 of the Financial Regulation)*

Each institution shall be responsible for budgetary commitments. The institutions may delegate to the Director of the interinstitutional European office concerned all subsequent acts, in particular legal commitments, validation of expenditure, authorisation of payments and implementation of revenue, and shall set the limits and conditions for such delegation of powers.

*Article 280**Specific rules for the Publications Office
(Articles 195 and 199 of the Financial Regulation)*

With regard to the Publications Office, each institution shall decide on its publication policy. The net proceeds from the sale of publications shall be reused as assigned revenue by the institution which is the author of those publications, in accordance with Article 21 of the Financial Regulation.

FR **Article 200****Services to third parties**

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

TITLE VI

ADMINISTRATIVE APPROPRIATIONS**FR** **Article 201****General provisions**

1. Parts One and Three shall apply to administrative appropriations, except as otherwise provided in this Title.
2. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on the scope of administrative appropriations and rent guarantees.

RAP *Article 283**General provisions
(Article 201 of the Financial Regulation)*

The administrative appropriations covered by this Title shall be those set out in Article 41 of the Financial Regulation.

Budgetary commitments corresponding to administrative appropriations of a type common to several 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 25.

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

Article 284

Rent guarantees

(Article 201 of the Financial Regulation)

Rent guarantees provided by the institutions shall take the form of a bank guarantee or a deposit on a blocked bank account in the name of the institution 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 Union's financial interests.

Article 285

Advances to staff and members of the institutions

(Article 201 of the Financial Regulation)

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

FR **Article 202**
Commitments

1. As from 15 October of each year, routine administrative expenditure may be committed in advance against the appropriations provided for the following financial year. Such commitments shall not, however, exceed one quarter of the appropriations decided by the European Parliament and the Council on the corresponding budget line for the current financial year. They shall not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.
2. Expenditure which shall be paid in advance pursuant to legal or contractual provisions, for example rents, may give rise to payments from 1 December onwards to be charged to the appropriations for the following financial year. In this case, the limit referred to in paragraph 1 shall not apply.

FR Article 203 Specific provisions regarding administrative appropriations

1. Administrative appropriations shall be non-differentiated appropriations.
The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on specific administrative appropriations, including buildings and advances to staff members of the institutions.
2. Administrative expenditure arising from contracts covering periods that extend beyond the financial year, either in accordance with local practice or relating to the supply of equipment, shall be charged to the budget of the financial year in which it is effected.
3. Each institution shall provide the European Parliament and the Council, by 1 June each year, with a working document on its building policy, which shall incorporate the following information:
 - (a) for each building, the expenditure and surface area covered by the appropriations of the corresponding budget lines;
 - (b) the expected evolution of the global programming of surface area and locations for the coming years with a description of the building projects in planning phase which are already identified;
 - (c) the final terms and costs, as well as relevant information regarding project implementation of new building projects previously submitted to the European Parliament and the Council under the procedure established in paragraphs (4) and (5) and not included in the preceding year's working documents.
4. For any building project likely to have significant financial implications for the budget, the institution shall inform the European Parliament and the Council as early as possible about the building surface area required and provisional planning before any prospecting of the local market takes place, in the case of building contracts, or before invitations to tender are issued, in the case of building works.
5. For any building project likely to have significant financial implications for the budget, the institution shall present the building project, including its detailed estimated costs and its financing, as well as a list of draft contracts intended to be used, and shall request the approval of the European Parliament and the Council before contracts are concluded. At the request of the institution, documents submitted relating to the building project shall be treated confidentially.

Except in cases of *force majeure*, the European Parliament and the Council shall deliberate upon the building project within four weeks of its receipt by both institutions.

The building project shall be deemed approved at the expiry of this four-week period, unless the European Parliament or the Council take a decision contrary to the proposal within that period of time.

If the European Parliament and/or the Council raise duly justified concerns within that four-week period, that period shall be extended once by two weeks.

If the European Parliament or the Council take a decision contrary to the building project, the institution concerned shall withdraw its proposal and may submit a new one.

6. In cases of *force majeure*, the information provided for in paragraph 4 may be submitted jointly with the building project. The European Parliament and the Council shall deliberate upon the building project within two weeks of its receipt by both institutions. The building project shall be deemed to be approved at the expiry of this two-week period, unless the European Parliament and/or the Council take a decision contrary to the proposal within this period of time.
7. The following shall be considered as building projects likely to have significant financial implications for the budget:
 - (i) any acquisition of land;
 - (ii) the acquisition, sale, structural renovation, construction of buildings or any project combining these elements to be implemented in the same timeframe, exceeding EUR 3 000 000;
 - (iii) any new building contract (including usufructs, long-term leases and renewals of existing building contracts under less favourable conditions) not covered by point (ii) with an annual charge of at least EUR 750 000;
 - (iv) the extension or renewal of existing building contracts (including usufruct and long-term leases) under the same or more favourable conditions, with an annual charge of at least EUR 3 000 000.

This paragraph shall also apply to building projects which have an interinstitutional nature, as well as to Union delegations.

8. Without prejudice to Article 17, a building acquisition project may be financed through a loan, subject to prior approval by the European Parliament and the Council.

Loans shall be contracted and repaid in accordance with the principle of sound financial management and with due regard to the best financial interest of the Union.

When the institution proposes to finance the acquisition through a loan, the financing plan to be submitted, together with the request for prior approval by the institution concerned, shall specify in particular, the maximum level of financing, the financing period, the type of financing, the financing conditions and savings compared to other types of contractual arrangements.

The European Parliament and the Council shall deliberate upon the request for prior approval within four weeks, extendable once by two weeks, of its receipt by both institutions. The acquisition through a loan shall be deemed to be rejected if the European Parliament and the Council do not expressly approve it within the deadline.

RAP *Article 286**Buildings**(Article 203 of the Financial Regulation)*

1. The expenditure referred to in Article 203(3)(a) of the Financial Regulation shall include the costs of the fitting out of buildings. It shall not include the charges.
2. The early information procedure set out in Article 203(4) of the Financial Regulation and the prior approval procedure set out in Article 203(5) of the Financial Regulation shall not apply to acquisition of land free of charge or for a symbolic amount.
3. The early information and prior approval procedure set out in points 3 to 7 of Article 203 of the Financial Regulation shall not apply to residential buildings. The European Parliament and the Council may request from the institution in charge any information related to residential buildings.
4. In exceptional or urgent political circumstances the early information referred to in Article 203(4) of the Financial Regulation concerning building projects relating to Union delegations or offices in third countries may be submitted jointly with the building project pursuant to Article 203(5) of the Financial Regulation. In such cases, the early information and prior approval procedures shall be conducted at the earliest possible opportunity.
5. The prior approval procedure set out in paragraphs 5 and 6 of Article 203 of the Financial Regulation shall not apply to preparatory contracts or studies necessary to evaluate the detailed cost and financing of the building project.
6. The thresholds of EUR 750 000 or EUR 3 000 000 referred to in points (ii), (iii) and (iv) of Article 203(7) of the Financial Regulation shall include the costs of fitting out of the building. For rents and usufruct contracts, those thresholds shall take into account the costs of the fitting out of the building but not the other charges.
7. One year after the date of entry into application of the Financial Regulation, the Commission shall report on the application of the procedures set out in paragraphs 3 to 8 of Article 203 of the Financial Regulation.

**TITLE VII
EXPERTS****FR****Article 204****Remunerated external experts**

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on remunerated external experts, including a specific procedure for the selection of natural persons as remunerated external experts, for assisting the institutions in the evaluation of grant applications, projects and tenders, and for providing opinions and advice in specific cases.

Such experts shall be remunerated on the basis of a fixed amount announced in advance and shall be chosen on the basis of their professional capacity. The selection shall be done on the basis of selection criteria respecting the principles of non-discrimination, equal treatment and absence of conflict of interests.

RAP *Article 287*

*Remunerated external experts
(Article 204 of the Financial Regulation)*

1. For values below the thresholds laid down in Article 170(1), remunerated external experts may be selected on the basis of the procedure laid down in paragraph 2.
2. A call for expressions of interest shall be published in the *Official Journal of the European Union* or where it is necessary to provide publicity among potential candidates, on the internet site of the institution concerned.

The call for expressions of interest shall include a description of the tasks, their duration and the fixed conditions of remuneration. Those conditions may be based on unit prices.

A list of experts shall be drawn up following the call for expressions of interest. It shall be valid for no more than five years from its publication or for the duration of a multiannual programme related to the tasks.

3. Any interested natural person may submit an application at any time during the period of its validity, with the exception of the last three months of that period. Remunerated external experts shall not be selected to perform the tasks referred to in Article 204 of the Financial Regulation if they are in one of the situations of exclusion referred to in Articles 106 and 107 of the Financial Regulation.
4. All exchanges with selected experts, including the conclusion of contracts and any amendments thereto, may be done through electronic exchange systems set up by the institution.

These systems shall meet the following requirements:

- (a) only authorised persons may have access to the system and to documents transmitted through it;
- (b) only authorised persons may electronically sign or transmit a document through the system;
- (c) authorised persons must be identified through the system by established means;
- (d) the time and date of the electronic transaction must be determined precisely;

- (e) the integrity of documents must be preserved;
- (f) the availability of documents must be preserved;
- (g) where appropriate, the confidentiality of documents must be preserved;
- (h) the protection of personal data in accordance with the requirements of Regulation (EC) No 45/2001 must be ensured.

Data sent or received through such a system shall enjoy legal presumption of the integrity of the data and the accuracy of the date and time of sending or receiving the data indicated by the system.

A document sent or notified through such a system shall be considered as equivalent to a paper document, shall be admissible as evidence in legal proceedings, shall be deemed to be the original of the document and shall enjoy legal presumption of its authenticity and integrity, provided it does not contain any dynamic features capable of automatically changing it.

The electronic signatures referred to in point (b) of the second subparagraph shall have the equivalent legal effect of handwritten signatures.

5. The list of experts and the subject of the tasks shall be published annually. The remuneration shall be published where it exceeds EUR 15 000 for the task performed.
6. Paragraph 5 shall not apply if such publication risks threatening the rights and freedoms of individuals concerned as protected by the Charter of Fundamental Rights of the European Union or harm the commercial interests of experts.

PART THREE

FINAL AND TRANSITIONAL PROVISIONS

FR Article 205 **Transitional provisions**

1. With regard to the Funds referred to in Article 175(1) for which the basic acts are repealed before 1 January 2013, appropriations which were decommitted in application of Article 178 may be made available again in the case of a manifest error attributable solely to the Commission or in the case of *force majeure* which has serious repercussions for the implementation of operations supported by those Funds.
2. For transfers of appropriations concerning operational expenditure referred to in Regulations (EC) No 1260/1999, (EC) No 1290/2005, (EC) No 1080/2006, (EC) No 1081/2006, (EC) No 1083/2006, Regulation (EC) No 1084/2006, and (EC) No 1198/2006, for which Union payments still have to be made for the financial settlement of outstanding Union commitments until the closure of the assistance, the Commission may make transfers from one title to another, provided that the appropriations concerned are for the same objective or relate to Union initiatives or to technical assistance and innovative measures and are transferred to measures of the same nature.
3. The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning detailed rules on transitional provisions.

FR Article 206 **Information requests by the European Parliament and the Council**

The European Parliament and the Council shall be entitled to obtain any information or explanations regarding budgetary matters within their fields of competence.

FR Article 207 **Thresholds and amounts**

The Commission shall be empowered to adopt delegated acts in accordance with Article 210 concerning all the thresholds and amounts laid down in this Regulation, without prejudice to Article 118.

FR Article 208 **Framework Financial Regulation for bodies set up under the TFEU and the Euratom Treaty**

1. The Commission shall be empowered to adopt a framework Financial Regulation by means of a delegated act in accordance with Article 210 for bodies which are set up under the TFEU and the Euratom Treaty and which have legal personality and receive contributions charged to the budget.

The framework Financial Regulation shall be based on the principles and rules set out in this Regulation.

The financial rules of those bodies shall not depart from the framework Financial Regulation except where their specific needs so require and with the Commission's prior consent.

2. Discharge for the implementation of the budgets of the bodies referred to in paragraph 1, shall be given by the European Parliament on the recommendation of the Council. The bodies referred to in paragraph 1 shall fully cooperate with the institutions involved in the discharge procedure and provide, as appropriate, any additional necessary information necessary, including through attendance at meetings of the relevant bodies.
3. The Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1 as those exercised in respect of the Commission.
4. An independent external auditor shall verify that the annual accounts of each of the bodies referred to in paragraph 1 properly present the income, expenditure and financial position of the relevant body prior to the consolidation in the Commission's final accounts. Unless otherwise provided in the basic act referred to in paragraph 1, the Court of Auditors shall prepare a Specific Annual Report on each body in line with the requirements of Article 287(1) TFEU. In preparing this report, the Court shall consider the audit work performed by the independent external auditor and the action taken in response to the auditor's findings.

FR**Article 209****Model Financial Regulation for public-private partnership bodies**

The bodies having legal personality set up by a basic act and entrusted with the implementation of a public-private partnership shall adopt their financial rules.

Those rules shall include a set of principles necessary to ensure sound financial management of Union funds.

The Commission shall be empowered to adopt a model Financial Regulation by means of a delegated act in accordance with Article 210 which shall lay down the principles necessary to ensure sound financial management of Union funds and which shall be based on Article 60.

The financial rules of those bodies shall not depart from the model Financial Regulation except where their specific needs so require and with the Commission's prior consent.

FR**Article 210****Exercise of the delegation**

1. The power to adopt delegated acts is conferred on the Commission subject to the conditions laid down in this Article.
2. The delegation of power referred to in Articles 8, 11, 13, 19, 21, 22, 23, 25, 26, 29, 30, 31, 34, 35, 38, 41, 44, 49, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125,

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3. The delegation of power referred to in Articles 8, 11, 13, 19, 21, 22, 23, 25, 26, 29, 30, 31, 34, 35, 38, 41, 44, 49, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 137, 138, 139, 140, 142, 144, 181, 183, 184, 186, 187, 188, 189, 190, 191, 192, 193, 195, 196, 199, 201, 203, 204, 205, 207, 208 and 209 may be revoked at any time by the European Parliament or by the Council. A decision of revocation shall put an end to the delegation of the power specified in that decision. It shall take effect the day following the publication of the decision in the *Official Journal of the European Union* or at a later date specified therein. It shall not affect the validity of any delegated acts already in force.
4. As soon as it adopts a delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.
5. A delegated act adopted pursuant to Articles 8, 11, 13, 19, 21, 22, 23, 25, 26, 29, 30, 31, 34, 35, 38, 41, 44, 49, 53, 54, 57, 58, 59, 60, 61, 62, 63, 64, 65, 66, 68, 69, 70, 72, 73, 74, 75, 76, 77, 78, 79, 80, 81, 83, 84, 85, 86, 87, 88, 89, 90, 92, 93, 98, 99, 100, 101, 103, 104, 105, 106, 107, 108, 109, 110, 111, 112, 113, 114, 115, 116, 117, 118, 119, 121, 122, 123, 124, 125, 126, 128, 129, 130, 131, 132, 133, 134, 135, 137, 138, 139, 140, 142, 144, 181, 183, 184, 186, 187, 188, 189, 190, 191, 192, 193, 195, 196, 199, 201, 203, 204, 205, 207, 208 and 209 shall enter into force only if no objection has been expressed either by the European Parliament or the Council within a period of two months of notification of that act to the European Parliament and the Council or if, before the expiry of that period, the European Parliament and the Council have both informed the Commission that they will not object. That period shall be extended by two months at the initiative of the European Parliament or the Council.

FR Article 211 Review

This Regulation shall be reviewed whenever it proves necessary to do so and in any case at the latest two years before the end of the first post-2013 multiannual financial framework.

Such review shall cover, inter alia, the implementation of the provisions in Title VIII of Part One.

FR Article 212
Repeal

Regulation (EC, Euratom) No 1605/2002 is repealed with effect from 1 January 2013, with the exception of:

- (a) Articles 53 to 57, which shall continue to apply to all commitments made up to 31 December 2013;
- (b) point (a) of Article 166(3), which shall continue to apply to all commitments made up to 31 December 2012; and
- (c) point (b) of Article 166(3), which shall continue to apply to the commitments made between 1 January 2013 and 31 December 2013.

Title VI of Part One of Regulation (EC, Euratom) No 1605/2002 may continue to apply for grant agreements signed and grant decisions notified up to 31 December 2013 in the framework of global commitments under the budget for 2012 or earlier years, should the authorising officer responsible so decide, with due regard for the principles of equal treatment and transparency.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

RAP Article 288
Transitional provisions

Articles 35 to 43 of Regulation (EC, Euratom) No 2342/2002 shall continue to apply to commitments made up to 31 December 2013. Articles 33 to 44 of this Regulation shall apply only to commitments made as of 1 January 2014.

Title VI of part one of Regulation (EC, Euratom) No 2342/2002 may continue to apply to grant agreements signed and grant decisions notified by 31 December 2013 in the framework of global commitments under the budget 2012 or earlier years, should the authorising officer responsible so decide, with due regard for the principles of equal treatment and transparency.

Article 289
Repeal

Regulation (EC, Euratom) No 2342/2002 is repealed.

References to the repealed Regulation shall be construed as references to this Regulation and shall be read in accordance with the correlation table in the Annex.

FR Article 213
Review concerning the EEAS

The third subparagraph of Article 68(1) and the second subparagraph of Article 98(2) will be reviewed in 2013 taking due account of the specificity of the EEAS and, in particular, that of the Union Delegations, and, where appropriate, an adequate financial management capacity of the EEAS.

FR Article 214
Entry into force

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

It shall apply from 1 January 2013, with the exception of:

- (a) Articles 58 to 63, which shall apply only to commitments made as of 1 January 2014;
- (b) Point (c) of the second subparagraph of Article 50(1) and Articles 82, 139 and 140, which shall apply from 1 January 2014;
- (c) Articles 177, 179 and 210, which shall apply from 27 October 2012.

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

RAP Article 290
Entry into force

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

It shall apply as of 1 January 2013.

However, Articles 216 to 226 shall apply as of 1 January 2014.

1.5. Statements

JOINT STATEMENTS

Joint statement on MFF-related issues

The European Parliament, the Council and the Commission agree that the Financial Regulation would be revised in order to include amendments made necessary by the outcome of the negotiations on the multiannual financial framework for the years 2014–20, including on the following issues:

- the carry-over rules for the emergency aid reserve and for projects financed under the Connecting Europe Facility;
- the carry-over of unused appropriations and of the budgetary balance, as well as the related proposal to enter these in a reserve for payments and commitments;
- the possible inclusion of the European Development Fund in the Union budget;
- the treatment of funds resulting from the agreements on the fight against the illegal traffic in tobacco products.’

Joint statement on expenditure related to buildings with reference to Article 203

‘The European Parliament, the Council and the Commission agree that:

1. the early warning procedure foreseen in Article 203(4) and the prior approval procedure foreseen in Article 203(5) do not apply to the acquisition of land free of charge or for a symbolic amount;
2. any reference to ‘buildings’ in Article 203 shall only apply to non-residential buildings. The European Parliament and the Council may request any information related to residential buildings;
3. in exceptional or urgent political circumstances the information concerning building projects relating to EU delegations or offices in third countries foreseen in Article 203(4) may be submitted jointly with the building project under Article 203(5); in such cases the European Parliament, the Council and the Commission commit themselves to deal with the building project at the earliest possible opportunity;
4. the prior approval procedure foreseen in Article 203(5) and (6) does not apply to preparatory contracts or studies necessary to evaluate the detailed cost and financing of the building project;
5. the thresholds of EUR 750 000 or EUR 3 000 000 referred to in points (ii) to (iv) of Article 203(7) include the fitting out of the building; for rent contracts, these thresholds apply to the rent without charges but include costs related to the fitting out of the building;
6. the expenditure mentioned under Article 203(3)(a) does not include charges;

7. one year after the date of entry into application of the Financial Regulation, the Commission shall report on the application of the procedures foreseen in Article 203.’

***Joint statement by the European Parliament, the Council
and the Commission on Article 203(3)***

‘The European Parliament, the Council and the Commission agree that equivalent provisions will be included in the framework Financial Regulation for bodies set up under the TFEU and the Euratom Treaty.’

STATEMENTS BY THE COMMISSION

Statement by the Commission on Article 59(5) and (6)

‘The Commission confirms that:

- the submission of information to the Commission on a yearly basis as provided for in Article 59, paragraph 5, gives a view, inter alia, of the accounts on the expenditure made during the relevant reference period as defined in the sector-specific rules;
- this submission of information is distinct from the procedure of examination and acceptance of the accounts as provided for in Article 59, paragraph 6.

The Financial Regulation does not prejudice the modalities for the examination and acceptance of the accounts nor the modalities for the closure of expenditure which are to be defined in the sector-specific rules.’

***Statement by the Commission on ‘the deadline for the submission of the required
information by the Member States under Article 59(5)’***

‘The submission of the annual information after 15 February implies the corresponding postponement of the deadline for the signature of the annual activity reports of the Directorates-General implementing Union funds under shared management and for their transmission to the Court of Auditors in the context of its annual report. Consequently, it jeopardises the timely submission of the summary of annual reports to the European Parliament and the Council by 15 June as provided in Article 66, paragraph 9 and of the observations by the Court of Auditors, according to Article 162, paragraph 1.’

Statement by the Commission on Article 59(5), last sub-paragraph

‘The Commission recalls that, as foreseen by Article 59(1) of the Financial Regulation, it shall respect the principle of non-discrimination in fulfilling its responsibilities concerning the implementation of the budget under shared management. Accordingly, the absence of a voluntary declaration by a Member State signed at the appropriate national or regional level shall not have any consequences on the Commission’s examination and assessment of the documentation provided under Article 59(5).’

***Statement by the Commission on the application
of Article 80(3) to Structural Funds***

'Wherever a Member State detects and corrects on its own account the irregularities, it may reuse the contribution from the funds cancelled within the operational programme concerned, except for any operation that was subject of the correction or, where a financial correction is made for a systemic irregularity, for any operation affected by the systemic error.'

***Statement by the Commission on 'financial corrections by Commission —
extrapolation' - Article 80(4)***

'Wherever possible, the financial corrections shall be calculated on the basis of the amounts unduly spent.

The Commission confirms that it will resort to extrapolated or flat rate corrections solely where it is not possible with proportionate effort to precisely quantify the amounts unduly spent.'

***Statement by the Commission on 'grant reduction or recovery
in the case of systemic or recurrent error or irregularity by a grant
beneficiary — extrapolation' - Article 135(5)***

'The Commission confirms that, in the case of proven systemic or recurrent errors or irregularities by a beneficiary, calculation of the amounts to be reduced or recovered by way of extrapolation shall be seen as a last resort solution.

Wherever possible, the amounts to be reduced or recovered shall be calculated on the basis of the revised financial statements submitted by the beneficiary.

Extrapolation of the reduction or recovery rate shall be used solely where it is not possible or where it could create significant administrative difficulty for the beneficiary to precisely quantify the amounts of ineligible costs.

In addition, the Commission confirms that, before any reduction or recovery is decided, any substantiated alternative method or rate proposed by the beneficiary shall be duly examined by the Commission.'

***Statement by the Commission on 'eligibility of non-recoverable VAT' -
point (c) of Article 126(3)***

'The Commission confirms that, as indicated in Article 121(2)(e), provisions of Title VI — including Article 126(3)(c) on eligibility of non-recoverable VAT — do not apply to expenditure implemented under shared management within the meaning of Article 58(1)(b) and Article 59.'

***Statement by the Commission on 'the comitology
for EU trust funds' - Article 187(8)***

The Commission confirms that:

- the creation of EU trust funds shall be duly justified in terms of added value of the Union intervention and additionality;
- the draft decisions to create, extend and liquidate EU trust funds will be submitted to the examination procedure in accordance with the provisions of the relevant basic acts.'

Statement by the Commission on loans - Article 203(8)

The Commission underlines that using loans for the acquisition of buildings is not contrary to the principle of equilibrium according to Article 17 of the Financial Regulation.

The borrowing of the funds constitutes an off-budget operation: the amount of the loan is not recorded in the budget as revenue and the full amount of the building price is not recorded as expenditure. Only the annual instalments to be paid to the bank are included as expenditure matched by the annual administrative budget (revenue). From an accounting point of view, the loan does not finance the budget expenditures, but the acquisition of an asset. The loan (debt) is compensated by the value of the building (asset). Therefore, loans for the acquisition of buildings do not create a deficit.

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(1) Text in normal print refers to the old (left-hand white column) or new (grey columns) Financial Regulation (FR); text in italics refers to the implementing rules (IR) (left-hand white column) or the rules of application (RAP) (grey columns). In the first two columns (Correlation table), correlation information in square brackets [] indicates continuity of the substance, rather than formally legal correlation as identified in the FR and RAP correlation tables or refers to cases where IR and RAP articles do not implement the same correlating article of the FR. Correlation on substance is most challenging for Chapter 2 of Title IV of Part One 'Methods of implementation'.

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2. SELECTION OF LEGAL TEXTS RELEVANT TO THE BUDGET OF THE EUROPEAN UNION

2.1. Treaty on European Union

Common foreign and security policy (Article 41)

'Article 41 (ex Article 28 TUE)

1. Administrative expenditure to which the implementation of this Chapter gives rise for the institutions shall be charged to the Union budget.
2. Operating expenditure to which the implementation of this Chapter gives rise shall also be charged to the Union budget, except for such expenditure arising from operations having military or defence implications and cases where the Council acting unanimously decides otherwise. In cases where expenditure is not charged to the Union budget, it shall be charged to the Member States in accordance with the gross national product scale, unless the Council acting unanimously decides otherwise. As for expenditure arising from operations having military or defence implications, Member States whose representatives in the Council have made a formal declaration under Article 31(1), second subparagraph, shall not be obliged to contribute to the financing thereof.
3. The Council shall adopt a decision establishing the specific procedures for guaranteeing rapid access to appropriations in the Union budget for urgent financing of initiatives in the framework of the common foreign and security policy, and in particular for preparatory activities for the tasks referred to in Article 42(1) and Article 43. It shall act after consulting the European Parliament. Preparatory activities for the tasks referred to in Article 42(1) and Article 43 which are not charged to the Union budget shall be financed by a start-up fund made up of Member States' contributions. The Council shall adopt by a qualified majority, on a proposal from the High Representative of the Union for Foreign Affairs and Security Policy, decisions establishing:
 - (a) the procedures for setting up and financing the start-up fund, in particular the amounts allocated to the fund;
 - (b) the procedures for administering the start-up fund;
 - (c) the financial control procedures.

When the task planned in accordance with Article 42(1) and Article 43 cannot be charged to the Union budget, the Council shall authorise the High Representative to use the fund. The High Representative shall report to the Council on the implementation of this remit.'

2.2. Treaty on the Functioning of the European Union

Court of Auditors (Article 287)

'Article 287 TFEU (ex Article 248 TEC)

1. The Court of Auditors shall examine the accounts of all revenue and expenditure of the Union. It shall also examine the accounts of all revenue and expenditure of all bodies, offices or agencies set up by the Union in so far as the relevant constituent instrument does not preclude such examination.

The Court of Auditors shall provide the European Parliament and the Council with a statement of assurance as to the reliability of the accounts and the legality and regularity of the underlying transactions which shall be published in the Official Journal of the European Union. This statement may be supplemented by specific assessments for each major area of Union activity.

2. The Court of Auditors shall examine whether all revenue has been received and all expenditure incurred in a lawful and regular manner and whether the financial management has been sound. In doing so, it shall report in particular on any cases of irregularity.

The audit of revenue shall be carried out on the basis both of the amounts established as due and the amounts actually paid to the Union.

The audit of expenditure shall be carried out on the basis both of commitments undertaken and payments made.

These audits may be carried out before the closure of accounts for the financial year in question.

3. The audit shall be based on records and, if necessary, performed on the spot in the other institutions of the Union, on the premises of any body, office or agency which manages revenue or expenditure on behalf of the Union and in the Member States, including on the premises of any natural or legal person in receipt of payments from the budget. In the Member States the audit shall be carried out in liaison with national audit bodies or, if these do not have the necessary powers, with the competent national departments. The Court of Auditors and the national audit bodies of the Member States shall cooperate in a spirit of trust while maintaining their independence. These bodies or departments shall inform the Court of Auditors whether they intend to take part in the audit.

The other institutions of the Union, any bodies, offices or agencies managing revenue or expenditure on behalf of the Union, any natural or legal person in receipt of payments from the budget, and the national audit bodies or, if these do not have the necessary powers, the competent national departments, shall forward to the Court of Auditors, at its request, any document or information necessary to carry out its task.

In respect of the European Investment Bank's activity in managing Union expenditure and revenue, the Court's rights of access to information held by the Bank shall be governed by an agreement between the Court, the Bank and the Commission. In the absence of an

agreement, the Court shall nevertheless have access to information necessary for the audit of Union expenditure and revenue managed by the Bank.

4. The Court of Auditors shall draw up an *annual report after the close of each financial year*. It shall be forwarded to the other institutions of the Union and shall be published, together with the replies of these institutions to the observations of the Court of Auditors, in the Official Journal of the European Union.

The Court of Auditors may also, at any time, submit observations, particularly in the form of special reports, on specific questions and deliver opinions at the request of one of the other institutions of the Union.

It shall adopt its annual reports, special reports or opinions by a majority of its Members. However, it may establish internal chambers in order to adopt certain categories of reports or opinions under the conditions laid down by its Rules of Procedure.

It shall assist the European Parliament *and the Council* in exercising their powers of control over the implementation of the budget.

The Court of Auditors shall draw up its Rules of Procedure. Those rules shall require the approval of the Council.'

Enforcement (Article 299)

'Article 299 TFUE (ex Article 256 TEC)

Acts of the Council, the Commission or the European Central Bank which impose a pecuniary obligation on persons other than States, shall be enforceable.

Enforcement shall be governed by the rules of civil procedure in force in the State in the territory of which it is carried out. The order for its enforcement shall be appended to the decision, without other formality than verification of the authenticity of the decision, by the national authority which the government of each Member State shall designate for this purpose and shall make known to the Commission and to the Court of Justice of the European Union.

When these formalities have been completed on application by the party concerned, the latter may proceed to enforcement in accordance with the national law, by bringing the matter directly before the competent authority.

Enforcement may *be suspended only by a decision of the Court. However, the courts of the country concerned shall have jurisdiction over complaints that enforcement is being carried out in an irregular manner.*'

Financial provisions (Articles 310 to 325)

'Article 310 TFEU (ex Article 268 TEC)

1. All items of revenue and expenditure of the Union shall be included in estimates to be drawn up for each financial year and shall be shown in the budget.

The Union's annual budget shall be established by the European Parliament and the Council in accordance with Article 314.

The revenue and expenditure shown in the budget shall be in balance.

2. The expenditure shown in the budget shall be authorised for the annual budgetary period in accordance with the regulation referred to in Article 322.
3. The implementation of expenditure shown in the budget shall require the prior adoption of a legally binding Union act providing a legal basis for its action and for the implementation of the corresponding expenditure in accordance with the regulation referred to in Article 322, except in cases for which that law provides.
4. With a view to maintaining budgetary discipline, the Union shall not adopt any act which is likely to have appreciable implications for the budget without providing an assurance that the expenditure arising from such an act is capable of being financed within the limit of the Union's own resources and in compliance with the multiannual financial framework referred to in Article 312.
5. The budget shall be implemented in accordance with the principle of sound financial management. Member States shall cooperate with the Union to ensure that the appropriations entered in the budget are used in accordance with this principle.
6. The Union and the Member States, in accordance with Article 325, shall counter fraud and any other illegal activities affecting the financial interests of the Union.'

'Article 311 TFEU (ex Article 269 TEC)

The Union shall provide itself with the means necessary to attain its objectives and carry through its policies.

Without prejudice to other revenue, the budget shall be financed wholly from own resources.

The Council, acting in accordance with a special legislative procedure, shall unanimously and after consulting the European Parliament adopt a decision laying down the provisions relating to the system of own resources of the Union. In this context it may establish new categories of own resources or abolish an existing category. That decision shall not enter into force until it is approved by the Member States in accordance with their respective constitutional requirements.

The Council, acting by means of regulations in accordance with a special legislative procedure, shall lay down implementing measures for the Union's own resources system in so far as this is provided for in the decision adopted on the basis of the third paragraph. The Council shall act after obtaining the consent of the European Parliament.'

'Article 312 TFEU

1. The multiannual financial framework shall ensure that Union expenditure develops in an orderly manner and within the limits of its own resources.

It shall be established for a period of at least five years.

The annual budget of the Union shall comply with the multiannual financial framework.

2. The Council, acting in accordance with a special legislative procedure, shall adopt a regulation laying down the multiannual financial framework. The Council shall act unanimously after obtaining the consent of the European Parliament, which shall be given by a majority of its component members.

The European Council may, unanimously, adopt a decision authorising the Council to act by a qualified majority when adopting the regulation referred to in the first subparagraph.

3. The financial framework shall determine the amounts of the annual ceilings on commitment appropriations by category of expenditure and of the annual ceiling on payment appropriations. The categories of expenditure, limited in number, shall correspond to the Union's major sectors of activity.

The financial framework shall lay down any other provisions required for the annual budgetary procedure to run smoothly.

4. Where no Council regulation determining a new financial framework has been adopted by the end of the previous financial framework, the ceilings and other provisions corresponding to the last year of that framework shall be extended until such time as that act is adopted.
5. Throughout the procedure leading to the adoption of the financial framework, the European Parliament, the Council and the Commission shall take any measure necessary to facilitate its adoption.'

'Article 313 TFEU (ex Article 272(1) TEC)

The financial year shall run from 1 January to 31 December.'

'Article 314 TFEU (ex Article 272(2) to (10), TEC)

The European Parliament and the Council, acting in accordance with a special legislative procedure, shall establish the Union's annual budget in accordance with the following provisions.

1. With the exception of the European Central Bank, each institution shall, before 1 July, draw up estimates of its expenditure for the following financial year. The Commission shall consolidate these estimates in a draft budget, which may contain different estimates.

The draft budget shall contain an estimate of revenue and an estimate of expenditure.

2. The Commission shall submit a proposal containing the draft budget to the European Parliament and to the Council not later than 1 September of the year preceding that in which the budget is to be implemented.

The Commission may amend the draft budget during the procedure until such time as the Conciliation Committee, referred to in paragraph 5, is convened.

3. The Council shall adopt its position on the draft budget and forward it to the European Parliament not later than 1 October of the year preceding that in which the budget is to be implemented. The Council shall inform the European Parliament in full of the reasons which led it to adopt its position.
4. If, within forty-two days of such communication, the European Parliament:
 - (a) approves the position of the Council, the budget shall be adopted;
 - (b) has not taken a decision, the budget shall be deemed to have been adopted;
 - (c) adopts amendments by a majority of its component members, the amended draft shall be forwarded to the Council and to the Commission. The President of the European Parliament, in agreement with the President of the Council, shall immediately convene a meeting of the Conciliation Committee. However, if within ten days of the draft being forwarded the Council informs the European Parliament that it has approved all its amendments, the Conciliation Committee shall not meet.
5. The Conciliation Committee, which shall be composed of the members of the Council or their representatives and an equal number of members representing the European Parliament, shall have the task of reaching agreement on a joint text, by a qualified majority of the members of the Council or their representatives and by a majority of the representatives of the European Parliament within twenty-one days of its being convened, on the basis of the positions of the European Parliament and the Council.

The Commission shall take part in the Conciliation Committee's proceedings and shall take all the necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.

6. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee agrees on a joint text, the European Parliament and the Council shall each have a period of fourteen days from the date of that agreement in which to approve the joint text.
7. If, within the period of fourteen days referred to in paragraph 6:
 - (a) the European Parliament and the Council both approve the joint text or fail to take a decision, or if one of these institutions approves the joint text while the other one fails to take a decision, the budget shall be deemed to be definitively adopted in accordance with the joint text; or
 - (b) the European Parliament, acting by a majority of its component members, and the Council both reject the joint text, or if one of these institutions rejects the joint text while the other one fails to take a decision, a new draft budget shall be submitted by the Commission; or
 - (c) the European Parliament, acting by a majority of its component members, rejects the joint text while the Council approves it, a new draft budget shall be submitted by the Commission; or

- (d) the European Parliament approves the joint text whilst the Council rejects it, the European Parliament may, within fourteen days from the date of the rejection by the Council and acting by a majority of its component members and three-fifths of the votes cast, decide to confirm all or some of the amendments referred to in paragraph 4(c). Where a European Parliament amendment is not confirmed, the position agreed in the Conciliation Committee on the budget heading which is the subject of the amendment shall be retained. The budget shall be deemed to be definitively adopted on this basis.
8. If, within the twenty-one days referred to in paragraph 5, the Conciliation Committee does not agree on a joint text, a new draft budget shall be submitted by the Commission.
9. When the procedure provided for in this Article has been completed, the President of the European Parliament shall declare that the budget has been definitively adopted.
10. Each institution shall exercise the powers conferred upon it under this Article in compliance with the Treaties and the acts adopted thereunder, with particular regard to the Union's own resources and the balance between revenue and expenditure.'

'Article 315 TFEU (ex Article 273 TEC)

If, at the beginning of a financial year, the budget has not yet been definitively adopted, a sum equivalent to not more than one twelfth of the budget appropriations for the preceding financial year may be spent each month in respect of any chapter of the budget in accordance with the provisions of the Regulations made pursuant to Article 322; that sum shall not, however, exceed one twelfth of the appropriations provided for in the same chapter of the draft budget.

The Council on a proposal by the Commission, may, provided that the other conditions laid down in the first paragraph are observed, authorise expenditure in excess of one twelfth in accordance with the regulations made pursuant to Article 322. The Council shall forward the decision immediately to the European Parliament.

The decision referred to in the second paragraph shall lay down the necessary measures relating to resources to ensure application of this Article, in accordance with the acts referred to in Article 311.

It shall enter into force thirty days following its adoption if the European Parliament, acting by a majority of its component Members, has not decided to reduce this expenditure within that time-limit.'

'Article 316 TFEU (ex Article 271 TEC)

In accordance with conditions to be laid down pursuant to Article 322, any appropriations, other than those relating to staff expenditure, that are unexpended at the end of the financial year may be carried forward to the next financial year only.

Appropriations shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided in accordance with the regulations made pursuant to Article 322.

The expenditure of the European Parliament, the European Council and the Council, the Commission and the Court of Justice of the European Union shall be set out in separate parts of the budget, without prejudice to special arrangements for certain common items of expenditure.'

'Article 317 TFEU (ex Article 274 TEC)

The Commission shall implement the budget in cooperation with the Member States, in accordance with the provisions of the regulations made pursuant to Article 322, on its own responsibility and within the limits of the appropriations, having regard to the principles of sound financial management. Member States shall cooperate with the Commission to ensure that the appropriations are used in accordance with the principles of sound financial management.

The regulations shall lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities. They shall also lay down the responsibilities and detailed rules for each institution concerning its part in effecting its own expenditure.

Within the budget, the Commission may, subject to the limits and conditions laid down in the regulations made pursuant to Article 322, transfer appropriations from one chapter to another or from one subdivision to another.'

'Article 318 TFEU (ex Article 275 TCE)

The Commission shall submit annually to the European Parliament and to the Council the accounts of the preceding financial year relating to the implementation of the budget. The Commission shall also forward to them a financial statement of the assets and liabilities of the Union.

The Commission shall also submit to the European Parliament and to the Council an evaluation report on the Union's finances based on the results achieved, in particular in relation to the indications given by the European Parliament and the Council pursuant to Article 319.'

'Article 319 TFEU (ex Article 276 TCE)

1. The European Parliament, acting on a recommendation from the Council, shall give a discharge to the Commission in respect of the implementation of the budget. To this end, the Council and the European Parliament in turn shall examine the accounts, the financial statement and the evaluation report referred to in Article 318, the annual report by the Court of Auditors together with the replies of the institutions under audit to the observations of the Court of Auditors, the statement of assurance referred to in Article 287(1), second subparagraph and any relevant special reports by the Court of Auditors.
2. Before giving a discharge to the Commission, or for any other purpose in connection with the exercise of its powers over the implementation of the budget, the European Parliament may ask to hear the Commission give evidence with regard to the execution of expenditure or the operation of financial control systems. The Commission shall submit any necessary information to the European Parliament at the latter's request.
3. The Commission shall take all appropriate steps to act on the observations in the decisions giving discharge and on other observations by the European Parliament relating to the execution of expenditure, as well as on comments accompanying the recommendations on discharge adopted by the Council.

At the request of the European Parliament or the Council, the Commission shall report on the measures taken in the light of these observations and comments and in particular on the instructions given to the departments which are responsible for the implementation of the budget. These reports shall also be forwarded to the Court of Auditors.'

'Article 320 TFEU (ex Article 277 TEC)

The multiannual financial framework and the annual budget shall be drawn up in euro.'

'Article 321 TFEU (ex Article 278 TEC)

The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings in the currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of the Treaties. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.

The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or of any other financial institution approved by that State.'

'Article 322 TFEU (ex Article 279 TEC)

1. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, and after consulting the Court of Auditors, shall adopt by means of regulations:
 - (a) the financial rules which determine in particular the procedure to be adopted for establishing and implementing the budget and for presenting and auditing accounts;
 - (b) rules providing for checks on the responsibility of financial actors, in particular authorising officers and accounting officers.
2. The Council, acting on a proposal from the Commission and after consulting the European Parliament and the Court of Auditors, shall determine the methods and procedure whereby the budget revenue provided under the arrangements relating to the Union's own resources shall be made available to the Commission, and determine the measures to be applied, if need be, to meet cash requirements.'

'Article 323 TFEU

The European Parliament, the Council and the Commission shall ensure that the financial means are made available to allow the Union to fulfil its legal obligations in respect of third parties.'

'Article 324 TFEU

Regular meetings between the Presidents of the European Parliament, the Council and the Commission shall be convened, on the initiative of the Commission, under the budgetary procedures referred to in this Title. The Presidents shall take all the necessary steps to promote consultation and the reconciliation of the positions of the institutions over which they preside in order to facilitate the implementation of this Title.'

'Article 325 TFEU (ex Article 280 TEC)

1. The Union and the Member States shall counter fraud and any other illegal activities affecting the financial interests of the Union through measures to be taken in accordance with this Article, which shall act as a deterrent and be such as to afford effective protection in the Member States, and in all the Union's institutions, bodies, offices and agencies.
2. Member States shall take the same measures to counter fraud affecting the financial interests of the Union as they take to counter fraud affecting their own financial interests.
3. Without prejudice to other provisions of the Treaties, the Member States shall coordinate their action aimed at protecting the financial interests of the Union against fraud. To this end they shall organise, together with the Commission, close and regular cooperation between the competent authorities.
4. The European Parliament and the Council, acting in accordance with the ordinary legislative procedure, after consulting the Court of Auditors, shall adopt the necessary measures in the fields of the prevention of and fight against fraud affecting the financial interests of the Union with a view to affording effective and equivalent protection in the Member States and in all the Union's institutions, bodies, offices and agencies.
5. The Commission, in cooperation with Member States, shall each year submit to the European Parliament and to the Council a report on the measures taken for the implementation of this Article.'

Enhanced cooperation (Article 332)

'Article 332 TFEU (ex Articles 27a to 27e, 40 to 40b and 43 to 45 TEU and ex Articles 11 and 11a TEC)

Expenditure resulting from implementation of enhanced cooperation, other than administrative costs entailed for the institutions, shall be borne by the participating Member States, unless all members of the Council, acting unanimously after consulting the European Parliament, decide otherwise.'

General and final provisions (Articles 335 and 340)

'Article 335 TFEU (ex Article 282 TEC)

In each of the Member States, the Union shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Union shall be represented by the Commission. However, the Union shall be represented by each of the institutions, by virtue of their administrative autonomy, in matters relating to their respective operation.'

'Article 340 (ex Article 288 TEC)

The contractual liability of the Union shall be governed by the law applicable to the contract in question.

In the case of non-contractual liability, the Union shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

Notwithstanding the second paragraph, the European Central Bank shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by it or by its servants in the performance of their duties.

The personal liability of its servants towards the Union shall be governed by the provisions laid down in their Staff Regulations or in the Conditions of Employment applicable to them.'

2.3. Treaty establishing the European Atomic Energy Community

Institutional provisions (Article 106a)

'Article 106a

1. Article 7, Articles 13 to 19, Article 48(2) to (5), and Articles 49 and 50 of the Treaty on European Union, and Article 15, Articles 223 to 236, Articles 237 to 244, Article 245, Articles 246 to 270, Article 272, 273 and 274, Articles 277 to 281, Articles 285 to 304, Articles 310 to 320, Articles 322 to 325 and Articles 336, 342 and 344 of the Treaty on the Functioning of the European Union, and the Protocol on Transitional Provisions, shall apply to this Treaty.
2. Within the framework of this Treaty, the references to the Union, to the «Treaty on European Union», to the «Treaty on the Functioning of the European Union» or to the «Treaties» in the provisions referred to in paragraph 1 and those in the protocols annexed both to those Treaties and to this Treaty shall be taken, respectively, as references to the European Atomic Energy Community and to this Treaty.
3. The provisions of the Treaty on European Union and of the Treaty on the Functioning of the European Union shall not derogate from the provisions of this Treaty.'

Financial provisions (Articles 171 to 183a)

'Article 171

1. Estimates shall be drawn up for each financial year of all revenue and expenditure of the Community, other than those of the Agency and the Joint Undertakings, and such revenue and expenditure shall be shown either in the operating budget or in the research and investment budget.

The revenue and expenditure shown in each budget shall be in balance.

2. The revenue and expenditure of the Agency, which shall operate in accordance with commercial principles, shall be budgeted for in a special account.

The manner of estimating, implementing and auditing such revenue and expenditure shall be laid down, with due regard to the statutes of the Agency, in financial regulations made pursuant to Article 322 of the Treaty on the Functioning of the European Union.

3. The estimates of revenue and expenditure, together with the operating accounts and the balance sheets of the Joint Undertakings for each financial year, shall be placed before the Commission, the Council and the European Parliament in accordance with the statutes of those undertakings.'

'Article 172

1. *(repealed)*
2. *(repealed)*
3. *(repealed)*
4. Loans for the financing of research or investment shall be raised on terms fixed by the Council in the manner provided for in Article 314 of the Treaty on the Functioning of the European Union.

The Community may borrow on the capital market of a Member State, either in accordance with the legal provisions applying to internal issues, or, if there are no such provisions in a Member State, after the Member State concerned and the Commission have conferred together and have reached agreement upon the proposed loan.

The competent authorities of the Member State concerned may refuse to give their assent only if there is reason to fear serious disturbances on the capital market of that State.'

'Articles 173 and 173a

(repealed)'

'Article 174

1. The expenditure shown in the operating budget shall include in particular:
 - (a) administrative expenditure;
 - (b) expenditure relating to safeguards and to health and safety.
2. The expenditure shown in the research and investment budget shall include in particular:
 - (a) expenditure relating to the implementation of the Community research programme;
 - (b) any participation in the capital of the Agency and in its investment expenditure;
 - (c) expenditure relating to the equipment of training establishments;
 - (d) any participation in Joint Undertakings or in certain joint operations.'

'Article 175

(repealed)'

'Article 176

1. Subject to the limits resulting from programmes or decisions involving expenditure which, in pursuance of this Treaty, require the unanimous approval of the Council, allocations for research and investment expenditure shall include:

- (a) commitment appropriations, covering a series of items which constitute a separate unit and form a coherent whole;
 - (b) payment appropriations which represent the maximum amount payable each year in respect of the commitments entered into under subparagraph (a).
2. The schedule of due dates for commitments and payments shall be annexed to the corresponding draft budget proposed by the Commission.
 3. Appropriations for research and investment shall be classified under different chapters grouping items of expenditure according to their nature or purpose and subdivided, as far as may be necessary, in accordance with the regulations made pursuant to Article 322 of the Treaty on the Functioning of the European Union.
 4. Unused payment authorisations shall be carried forward to the next financial year by decision of the Commission, unless the Council decides otherwise.'

'Articles 177 to 181

(repealed)

'Article 182

1. The Commission may, provided it notifies the competent authorities of the Member States concerned, transfer into the currency of one of the Member States its holdings of currency of another Member State, to the extent necessary to enable them to be used for purposes which come within the scope of this Treaty. The Commission shall as far as possible avoid making such transfers if it possesses cash or liquid assets in the currencies which it needs.
2. The Commission shall deal with each Member State through the authority designated by the State concerned. In carrying out financial operations the Commission shall employ the services of the bank of issue of the Member State concerned or any other financial institutions approved by that State.'
3. As regards expenditure which the Community has to incur in the currencies of third countries, the Commission shall, before the budgets are finally adopted, submit to the Council a programme indicating anticipated revenue and expenditure in the different currencies.
This programme shall be approved by the Council, acting by a qualified majority. It may be modified in the course of the financial year in accordance with the same procedure.
4. Member States shall provide the Commission with the currency of third countries needed for the expenditure shown in the programme provided for in paragraph 3 according to the scales laid down in Article 172. Amounts collected by the Commission in the currency of third countries shall be transferred to Member States in accordance with the same scales.
5. The Commission may freely make use of any amounts in the currency of third countries derived from loans it has raised in such countries.

6. The Council may, acting unanimously on a proposal from the Commission apply, in whole or in part, to the Agency and to Joint Undertakings the exchange arrangements provided for in the preceding paragraphs, and, where appropriate, adapt these arrangements to their operational requirements.'

'Articles 183 and 183a

(repealed)'

General provisions (Article 185)

'Article 185

In each of the Member States, the Community shall enjoy the most extensive legal capacity accorded to legal persons under their laws; it may, in particular, acquire or dispose of movable and immovable property and may be a party to legal proceedings. To this end, the Community shall be represented by the Commission.'

General provisions (Article 188)

'Article 188

The contractual liability of the Community shall be governed by the law applicable to the contract in question.

In the case of non contractual liability, the Community shall, in accordance with the general principles common to the laws of the Member States, make good any damage caused by its institutions or by its servants in the performance of their duties.

The personal liability of its servants towards the Community shall be governed by the provisions laid down in the Staff Regulations or in the Conditions of Employment applicable to them.'

2.4.Regulation (EU) No 182/2011 of the European Parliament and of the Council of 16 February 2011 laying down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers

‘THE EUROPEAN PARLIAMENT AND THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 291(3) thereof,

Having regard to the proposal from the Commission,

After transmission of the draft legislative act to the national parliaments,

Acting in accordance with the ordinary legislative procedure ⁽¹⁾,

Whereas:

- (1) Where uniform conditions for the implementation of legally binding Union acts are needed, those acts (hereinafter «basic acts») are to confer implementing powers on the Commission, or, in duly justified specific cases and in the cases provided for in Articles 24 and 26 of the Treaty on European Union, on the Council.
- (2) It is for the legislator, fully respecting the criteria laid down in the Treaty on the Functioning of the European Union («TFEU»), to decide in respect of each basic act whether to confer implementing powers on the Commission in accordance with Article 291(2) of that Treaty.
- (3) Hitherto, the exercise of implementing powers by the Commission has been governed by Council Decision 1999/468/EC ⁽²⁾.
- (4) The TFEU now requires the European Parliament and the Council to lay down the rules and general principles concerning mechanisms for control by Member States of the Commission's exercise of implementing powers.
- (5) It is necessary to ensure that the procedures for such control are clear, effective and proportionate to the nature of the implementing acts and that they reflect the institutional requirements of the TFEU as well as the experience gained and the common practice followed in the implementation of Decision 1999/468/EC.
- (6) In those basic acts which require the control of the Member States for the adoption by the Commission of implementing acts, it is appropriate, for the purposes of such control, that

⁽¹⁾ Position of the European Parliament of 16 December 2010 (not yet published in the Official Journal) and decision of the Council of 14 February 2011.

⁽²⁾ OJ L 184, 17.7.1999, p. 23.

committees composed of the representatives of the Member States and chaired by the Commission be set up.

- (7) Where appropriate, the control mechanism should include referral to an appeal committee which should meet at the appropriate level.
- (8) In the interests of simplification, the Commission should exercise implementing powers in accordance with one of only two procedures, namely the advisory procedure or the examination procedure.
- (9) In order to simplify further, common procedural rules should apply to the committees, including the key provisions relating to their functioning and the possibility of delivering an opinion by written procedure.
- (10) Criteria should be laid down to determine the procedure to be used for the adoption of implementing acts by the Commission. In order to achieve greater consistency, the procedural requirements should be proportionate to the nature and impact of the implementing acts to be adopted.
- (11) The examination procedure should in particular apply for the adoption of acts of general scope designed to implement basic acts and specific implementing acts with a potentially important impact. That procedure should ensure that implementing acts cannot be adopted by the Commission if they are not in accordance with the opinion of the committee, except in very exceptional circumstances, where they may apply for a limited period of time. The procedure should also ensure that the Commission is able to review the draft implementing acts where no opinion is delivered by the committee, taking into account the views expressed within the committee.
- (12) Provided that the basic act confers implementing powers on the Commission relating to programmes with substantial budgetary implications or directed to third countries, the examination procedure should apply.
- (13) The chair of a committee should endeavour to find solutions which command the widest possible support within the committee or the appeal committee and should explain the manner in which the discussions and suggestions for amendments have been taken into account. For that purpose, the Commission should pay particular attention to the views expressed within the committee or the appeal committee as regards draft definitive anti-dumping or countervailing measures.
- (14) When considering the adoption of other draft implementing acts concerning particularly sensitive sectors, notably taxation, consumer health, food safety and protection of the environment, the Commission, in order to find a balanced solution, will, as far as possible, act in such a way as to avoid going against any predominant position which might emerge within the appeal committee against the appropriateness of an implementing act.
- (15) The advisory procedure should, as a general rule, apply in all other cases or where it is considered more appropriate.
- (16) It should be possible, where this is provided for in a basic act, to adopt implementing acts which are to apply immediately on imperative grounds of urgency.

- (17) The European Parliament and the Council should be promptly informed of committee proceedings on a regular basis.
- (18) Either the European Parliament or the Council should be able at any time to indicate to the Commission that, in its view, a draft implementing act exceeds the implementing powers provided for in the basic act, taking into account their rights relating to the review of the legality of Union acts.
- (19) Public access to information on committee proceedings should be ensured in accordance with Regulation (EC) No 1049/2001 of the European Parliament and of the Council of 30 May 2001 regarding public access to European Parliament, Council and Commission documents ⁽¹⁾.
- (20) A register containing information on committee proceedings should be kept by the Commission. Consequently, rules relating to the protection of classified documents applicable to the Commission should also apply to the use of the register.
- (21) Decision 1999/468/EC should be repealed. In order to ensure the transition between the regime provided for in Decision 1999/468/EC and this Regulation, any reference in existing legislation to the procedures provided for in that Decision should, with the exception of the regulatory procedure with scrutiny provided for in Article 5a thereof, be understood as a reference to the corresponding procedures provided for in this Regulation. The effects of Article 5a of Decision 1999/468/EC should be provisionally maintained for the purposes of existing basic acts which refer to that Article.
- (22) The Commission's powers, as laid down by the TFEU, concerning the implementation of the competition rules are not affected by this Regulation,

HAVE ADOPTED THIS REGULATION:

Article 1
Subject-matter

This Regulation lays down the rules and general principles governing the mechanisms which apply where a legally binding Union act (hereinafter a «basic act») identifies the need for uniform conditions of implementation and requires that the adoption of implementing acts by the Commission be subject to the control of Member States.

Article 2
Selection of procedures

1. A basic act may provide for the application of the advisory procedure or the examination procedure, taking into account the nature or the impact of the implementing act required.

⁽¹⁾ OJ L 145, 31.5.2001, p. 43.

2. The examination procedure applies, in particular, for the adoption of:
 - (a) implementing acts of general scope;
 - (b) other implementing acts relating to:
 - (i) programmes with substantial implications;
 - (ii) the common agricultural and common fisheries policies;
 - (iii) the environment, security and safety, or protection of the health or safety, of humans, animals or plants;
 - (iv) the common commercial policy;
 - (v) taxation.
3. The advisory procedure applies, as a general rule, for the adoption of implementing acts not falling within the ambit of paragraph 2. However, the advisory procedure may apply for the adoption of the implementing acts referred to in paragraph 2 in duly justified cases.

Article 3

Common provisions

1. The common provisions set out in this Article shall apply to all the procedures referred to in Articles 4 to 8.
2. The Commission shall be assisted by a committee composed of representatives of the Member States. The committee shall be chaired by a representative of the Commission. The chair shall not take part in the committee vote.
3. The chair shall submit to the committee the draft implementing act to be adopted by the Commission.

Except in duly justified cases, the chair shall convene a meeting not less than 14 days from submission of the draft implementing act and of the draft agenda to the committee. The committee shall deliver its opinion on the draft implementing act within a time limit which the chair may lay down according to the urgency of the matter. Time limits shall be proportionate and shall afford committee members early and effective opportunities to examine the draft implementing act and express their views.

4. Until the committee delivers an opinion, any committee member may suggest amendments and the chair may present amended versions of the draft implementing act.

The chair shall endeavour to find solutions which command the widest possible support within the committee. The chair shall inform the committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards those suggestions which have been largely supported within the committee.

5. In duly justified cases, the chair may obtain the committee's opinion by written procedure. The chair shall send the committee members the draft implementing act and shall lay down a time limit for delivery of an opinion according to the urgency of the matter. Any committee member

who does not oppose the draft implementing act or who does not explicitly abstain from voting thereon before the expiry of that time limit shall be regarded as having tacitly agreed to the draft implementing act.

Unless otherwise provided in the basic act, the written procedure shall be terminated without result where, within the time limit referred to in the first subparagraph, the chair so decides or a committee member so requests. In such a case, the chair shall convene a committee meeting within a reasonable time.

6. The committee's opinion shall be recorded in the minutes. Committee members shall have the right to ask for their position to be recorded in the minutes. The chair shall send the minutes to the committee members without delay.
7. Where applicable, the control mechanism shall include referral to an appeal committee.

The appeal committee shall adopt its own rules of procedure by a simple majority of its component members, on a proposal from the Commission.

Where the appeal committee is seised, it shall meet at the earliest 14 days, except in duly justified cases, and at the latest 6 weeks, after the date of referral. Without prejudice to paragraph 3, the appeal committee shall deliver its opinion within 2 months of the date of referral.

A representative of the Commission shall chair the appeal committee.

The chair shall set the date of the appeal committee meeting in close cooperation with the members of the committee, in order to enable Member States and the Commission to ensure an appropriate level of representation. By 1 April 2011, the Commission shall convene the first meeting of the appeal committee in order to adopt its rules of procedure.

Article 4

Advisory procedure

1. Where the advisory procedure applies, the committee shall deliver its opinion, if necessary by taking a vote. If the committee takes a vote, the opinion shall be delivered by a simple majority of its component members.
2. The Commission shall decide on the draft implementing act to be adopted, taking the utmost account of the conclusions drawn from the discussions within the committee and of the opinion delivered.

Article 5

Examination procedure

1. Where the examination procedure applies, the committee shall deliver its opinion by the majority laid down in Article 16(4) and (5) of the Treaty on European Union and, where applicable, Article 238(3) TFEU, for acts to be adopted on a proposal from the Commission. The votes of the representatives of the Member States within the committee shall be weighted in the manner set out in those Articles.

2. Where the committee delivers a positive opinion, the Commission shall adopt the draft implementing act.
3. Without prejudice to Article 7, if the committee delivers a negative opinion, the Commission shall not adopt the draft implementing act. Where an implementing act is deemed to be necessary, the chair may either submit an amended version of the draft implementing act to the same committee within 2 months of delivery of the negative opinion, or submit the draft implementing act within 1 month of such delivery to the appeal committee for further deliberation.
4. Where no opinion is delivered, the Commission may adopt the draft implementing act, except in the cases provided for in the second subparagraph. Where the Commission does not adopt the draft implementing act, the chair may submit to the committee an amended version thereof.

Without prejudice to Article 7, the Commission shall not adopt the draft implementing act where:

- (a) that act concerns taxation, financial services, the protection of the health or safety of humans, animals or plants, or definitive multilateral safeguard measures;
- (b) the basic act provides that the draft implementing act may not be adopted where no opinion is delivered; or
- (c) a simple majority of the component members of the committee opposes it.

In any of the cases referred to in the second subparagraph, where an implementing act is deemed to be necessary, the chair may either submit an amended version of that act to the same committee within 2 months of the vote, or submit the draft implementing act within 1 month of the vote to the appeal committee for further deliberation.

5. By way of derogation from paragraph 4, the following procedure shall apply for the adoption of draft definitive anti-dumping or countervailing measures, where no opinion is delivered by the committee and a simple majority of its component members opposes the draft implementing act.

The Commission shall conduct consultations with the Member States. 14 days at the earliest and 1 month at the latest after the committee meeting, the Commission shall inform the committee members of the results of those consultations and submit a draft implementing act to the appeal committee. By way of derogation from Article 3(7), the appeal committee shall meet 14 days at the earliest and 1 month at the latest after the submission of the draft implementing act. The appeal committee shall deliver its opinion in accordance with Article 6. The time limits laid down in this paragraph shall be without prejudice to the need to respect the deadlines laid down in the relevant basic acts.

Article 6

Referral to the appeal committee

1. The appeal committee shall deliver its opinion by the majority provided for in Article 5(1).
2. Until an opinion is delivered, any member of the appeal committee may suggest amendments to the draft implementing act and the chair may decide whether or not to modify it.

The chair shall endeavour to find solutions which command the widest possible support within the appeal committee.

The chair shall inform the appeal committee of the manner in which the discussions and suggestions for amendments have been taken into account, in particular as regards suggestions for amendments which have been largely supported within the appeal committee.

3. Where the appeal committee delivers a positive opinion, the Commission shall adopt the draft implementing act.

Where no opinion is delivered, the Commission may adopt the draft implementing act.

Where the appeal committee delivers a negative opinion, the Commission shall not adopt the draft implementing act.

4. By way of derogation from paragraph 3, for the adoption of definitive multilateral safeguard measures, in the absence of a positive opinion voted by the majority provided for in Article 5(1), the Commission shall not adopt the draft measures.
5. By way of derogation from paragraph 1, until 1 September 2012, the appeal committee shall deliver its opinion on draft definitive anti-dumping or countervailing measures by a simple majority of its component members.

Article 7

Adoption of implementing acts in exceptional cases

By way of derogation from Article 5(3) and the second subparagraph of Article 5(4), the Commission may adopt a draft implementing act where it needs to be adopted without delay in order to avoid creating a significant disruption of the markets in the area of agriculture or a risk for the financial interests of the Union within the meaning of Article 325 TFEU.

In such a case, the Commission shall immediately submit the adopted implementing act to the appeal committee. Where the appeal committee delivers a negative opinion on the adopted implementing act, the Commission shall repeal that act immediately. Where the appeal committee delivers a positive opinion or no opinion is delivered, the implementing act shall remain in force.

Article 8

Immediately applicable implementing acts

1. By way of derogation from Articles 4 and 5, a basic act may provide that, on duly justified imperative grounds of urgency, this Article is to apply.
2. The Commission shall adopt an implementing act which shall apply immediately, without its prior submission to a committee, and shall remain in force for a period not exceeding 6 months unless the basic act provides otherwise.
3. At the latest 14 days after its adoption, the chair shall submit the act referred to in paragraph 2 to the relevant committee in order to obtain its opinion.

4. Where the examination procedure applies, in the event of the committee delivering a negative opinion, the Commission shall immediately repeal the implementing act adopted in accordance with paragraph 2.
5. Where the Commission adopts provisional anti-dumping or countervailing measures, the procedure provided for in this Article shall apply. The Commission shall adopt such measures after consulting or, in cases of extreme urgency, after informing the Member States. In the latter case, consultations shall take place 10 days at the latest after notification to the Member States of the measures adopted by the Commission.

Article 9

Rules of procedure

1. Each committee shall adopt by a simple majority of its component members its own rules of procedure on the proposal of its chair, on the basis of standard rules to be drawn up by the Commission following consultation with Member States. Such standard rules shall be published by the Commission in the Official Journal of the European Union.

In so far as may be necessary, existing committees shall adapt their rules of procedure to the standard rules.

2. The principles and conditions on public access to documents and the rules on data protection applicable to the Commission shall apply to the committees.

Article 10

Information on committee proceedings

1. The Commission shall keep a register of committee proceedings which shall contain:
 - (a) a list of committees;
 - (b) the agendas of committee meetings;
 - (c) the summary records, together with the lists of the authorities and organisations to which the persons designated by the Member States to represent them belong;
 - (d) the draft implementing acts on which the committees are asked to deliver an opinion;
 - (e) the voting results;
 - (f) the final draft implementing acts following delivery of the opinion of the committees;
 - (g) information concerning the adoption of the final draft implementing acts by the Commission; and
 - (h) statistical data on the work of the committees.
2. The Commission shall also publish an annual report on the work of the committees.
3. The European Parliament and the Council shall have access to the information referred to in paragraph 1 in accordance with the applicable rules.

4. At the same time as they are sent to the committee members, the Commission shall make available to the European Parliament and the Council the documents referred to in points (b), (d) and (f) of paragraph 1 whilst also informing them of the availability of such documents.
5. The references of all documents referred to in points (a) to (g) of paragraph 1 as well as the information referred to in paragraph 1(h) shall be made public in the register.

Article 11

Right of scrutiny for the European Parliament and the Council

Where a basic act is adopted under the ordinary legislative procedure, either the European Parliament or the Council may at any time indicate to the Commission that, in its view, a draft implementing act exceeds the implementing powers provided for in the basic act. In such a case, the Commission shall review the draft implementing act, taking account of the positions expressed, and shall inform the European Parliament and the Council whether it intends to maintain, amend or withdraw the draft implementing act.

Article 12

Repeal of Decision 1999/468/EC

Decision 1999/468/EC is hereby repealed.

The effects of Article 5a of Decision 1999/468/EC shall be maintained for the purposes of existing basic acts making reference thereto.

Article 13

Transitional provisions: adaptation of existing basic acts

1. Where basic acts adopted before the entry into force of this Regulation provide for the exercise of implementing powers by the Commission in accordance with Decision 1999/468/EC, the following rules shall apply:
 - (a) where the basic act makes reference to Article 3 of Decision 1999/468/EC, the advisory procedure referred to in Article 4 of this Regulation shall apply;
 - (b) where the basic act makes reference to Article 4 of Decision 1999/468/EC, the examination procedure referred to in Article 5 of this Regulation shall apply, with the exception of the second and third subparagraphs of Article 5(4);
 - (c) where the basic act makes reference to Article 5 of Decision 1999/468/EC, the examination procedure referred to in Article 5 of this Regulation shall apply and the basic act shall be deemed to provide that, in the absence of an opinion, the Commission may not adopt the draft implementing act, as envisaged in point (b) of the second subparagraph of Article 5(4);
 - (d) where the basic act makes reference to Article 6 of Decision 1999/468/EC, Article 8 of this Regulation shall apply;

- (e) where the basic act makes reference to Articles 7 and 8 of Decision 1999/468/EC, Articles 10 and 11 of this Regulation shall apply.
2. Articles 3 and 9 of this Regulation shall apply to all existing committees for the purposes of paragraph 1.
 3. Article 7 of this Regulation shall apply only to existing procedures which make reference to Article 4 of Decision 1999/468/EC.
 4. The transitional provisions laid down in this Article shall not prejudice the nature of the acts concerned.

Article 14

Transitional arrangement

This Regulation shall not affect pending procedures in which a committee has already delivered its opinion in accordance with Decision 1999/468/EC.

Article 15

Review

By 1 March 2016, the Commission shall present a report to the European Parliament and the Council on the implementation of this Regulation, accompanied, if necessary, by appropriate legislative proposals.

Article 16

Entry into force

This Regulation shall enter into force on 1 March 2011.

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

Done at Strasbourg, 16 February 2011.

For the European Parliament

The President

J. BUZEK

For the Council

The President

MARTONYI J.

2.5. Council Regulation (EU, EURATOM) No 1311/2013 of 2 December 2013 laying down the multiannual financial framework for the years 2014-2020

THE COUNCIL OF THE EUROPEAN UNION,

Having regard to the Treaty on the Functioning of the European Union, and in particular Article 312 thereof,

Having regard to the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission,

Having regard to the consent of the European Parliament,

After transmission of the draft legislative act to national parliaments,

Acting in accordance with a special legislative procedure,

Whereas:

- (1) The annual ceilings on commitments appropriations by category of expenditure and the annual ceilings on payment appropriations established by this Regulation must respect the ceilings set for commitments and own resources in Council Decision 2007/436/EC, Euratom ⁽¹⁾.
- (2) Taking into account the need for an adequate level of predictability for preparing and implementing medium-term investments, the duration of the multiannual financial framework (MFF) should be set at seven years starting on 1 January 2014. A review will take place in 2016 at the latest, following the European Parliament elections. This will allow the institutions, including the European Parliament elected in 2014, to reassess the priorities. The results of this review should be taken into account in any revision of this Regulation for the remaining years of the MFF. This arrangement is hereinafter referred to as «review/revision».
- (3) In the context of the mid-term review/revision of the MFF, the European Parliament, the Council and the Commission agree to jointly examine the most suitable duration for the subsequent MFF before the Commission presents its proposals with a view to striking the right balance between the duration of the respective terms of office of the members of the European Parliament and the European Commission - and the need for stability for programming cycles and investment predictability.

⁽¹⁾ Council Decision 2007/436/EC, Euratom of 7 June 2007 on the system of the European Communities' own resources (OJ L 163, 23.6.2007, p. 17).

- (4) Specific and maximum possible flexibility should be implemented to allow the Union to fulfil its obligations in compliance with Article 323 of the Treaty on the Functioning of the European Union (TFEU).
- (5) The following special instruments are necessary to allow the Union to react to specified unforeseen circumstances, or to allow the financing of clearly identified expenditure which cannot be financed within the limits of the ceilings available for one or more headings as laid down in the MFF, thereby facilitating the budgetary procedure: the Emergency Aid Reserve, the European Union Solidarity Fund, the Flexibility Instrument, the European Globalisation Adjustment Fund, the Contingency Margin, the specific flexibility to tackle youth unemployment and strengthen research and the global margin for commitments for growth and employment, in particular youth employment. Specific provision should therefore be made for a possibility to enter commitment appropriations into the budget over and above the ceilings set out in the MFF where it is necessary to use special instruments.
- (6) If it is necessary to mobilise the guarantees given under the general budget of the Union for the loans provided under the Balance of Payment Facility or the European Financial Stabilisation Mechanism set out in Council Regulation (EC) No 332/2002 ⁽¹⁾ and in Council Regulation (EU) No 407/2010 ⁽²⁾, respectively, the necessary amount should be mobilised over and above the ceilings of the commitments and payments appropriations of the MFF, while respecting the own-resources ceiling.
- (7) The MFF should be laid down in 2011 prices. The rules for technical adjustments to the MFF to recalculate the ceilings and margins available should also be laid down.
- (8) The MFF should not take account of budget items financed by assigned revenue within the meaning of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽³⁾ (the «Financial Regulation»).
- (9) This Regulation might need to be revised in case of unforeseen circumstances that cannot be dealt with within ceilings established as part of the MFF. It is therefore necessary to provide for revision of the MFF in such cases.
- (10) Rules should be laid down for other situations that might require the MFF to be adjusted or revised. Such adjustments or revisions might be related to the implementation of the budget, measures linking effectiveness of funds to sound economic governance, revision of the Treaties, enlargements, the reunification of Cyprus, or delayed adoption of new rules governing certain policy areas.
- (11) The national envelopes for cohesion policy are established on the basis of the statistical data and forecasts used for the July 2012 update of the Commission proposal for this Regulation.

⁽¹⁾ Council Regulation (EC) No 332/2002 of 18 February 2002 establishing a facility providing medium-term financial assistance for Member States' balances of payments (OJ L 53, 23.2.2002, p. 1).

⁽²⁾ Council Regulation (EU) No 407/2010 of 11 May 2010 establishing a European financial stabilisation mechanism (OJ L 118, 12.5.2010, p. 1).

⁽³⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

Given the forecasting uncertainties and the impact for the capped Member States, and to take account of the particularly difficult situation of Member States suffering from the crisis, the Commission will, in 2016, review all Member States' total allocations under the «Investment for growth and jobs» goal of cohesion policy for the years 2017 to 2020.

- (12) It is necessary to provide for general rules on interinstitutional cooperation in the budgetary procedure.
- (13) Specific rules are also necessary for dealing with large-scale infrastructure projects whose lifetime extends well beyond the period set for the MFF. It is necessary to establish maximum amounts for the contributions from the general budget of the Union to those projects, thereby ensuring that they do not have any impact on other projects financed from that budget.
- (14) The Commission should present a proposal for a new multiannual financial framework before 1 January 2018, to enable the institutions to adopt it sufficiently in advance of the start of the subsequent multiannual financial framework. This Regulation should continue to apply in the event that a new financial framework is not adopted before the end of the term of the MFF laid down in this Regulation.
- (15) The Economic and Social Committee and the Committee of the Regions were consulted and have adopted opinions ⁽¹⁾,

HAS ADOPTED THIS REGULATION:

CHAPTER 1

General provisions

Article 1

Multiannual Financial Framework

The multiannual financial framework for the period 2014 to 2020 (the «MFF») is set out in the Annex.

Article 2

Mid-term review/revision of the MFF

By the end of 2016 at the latest, the Commission shall present a review of the functioning of the MFF taking full account of the economic situation at that time as well as the latest macroeconomic projections. This compulsory review shall, as appropriate, be accompanied by a legislative proposal for the revision of this Regulation in accordance with the procedures set out in the TFEU. Without prejudice to Article 7 of this Regulation, preallocated national envelopes shall not be reduced through such a revision.

⁽¹⁾ Opinion of the European Economic and Social Committee on the 'Proposal for a Council Regulation laying down the multiannual financial framework for the years 2014-2020' (OJ C 229, 31.7.2012, p. 32); Opinion of the Committee of the Regions on 'New Multiannual Financial Framework post-2013' (OJ C 391, 18.12.2012, p. 31).

Article 3

Compliance with the ceilings of the MFF

1. The European Parliament, the Council and the Commission shall, during each budgetary procedure and when implementing the budget for the year concerned, comply with the annual expenditure ceilings set out in the MFF.

The sub-ceiling for Heading 2 as set out in the Annex is established without prejudice to the flexibility between the two pillars of the Common Agricultural Policy (CAP). The adjusted ceiling to be applied to pillar I of the CAP following the transfers between the European Agricultural Fund for Rural Development and direct payments shall be laid down in the relevant legal act and the MFF shall be adjusted accordingly under the technical adjustment provided for in Article 6(1) of this Regulation.

2. The special instruments provided for in Articles 9 to 15 shall ensure the flexibility of the MFF and shall be laid down in order to allow the budget procedure to run smoothly. The commitment appropriations may be entered in the budget over and above the ceilings of the relevant headings laid down in the MFF where it is necessary to use the resources from the Emergency Aid Reserve, the European Union Solidarity Fund, the Flexibility Instrument, the European Globalisation Adjustment Fund, the Contingency Margin, the specific flexibility to tackle youth unemployment and strengthen research and the global margin for commitments for growth and employment, in particular youth employment, in accordance with Council Regulation (EC) No 2012/2002 ⁽¹⁾, Regulation (EC) No 1927/2006 of the European Parliament and of the Council ⁽²⁾, and the Interinstitutional Agreement between the European Parliament, the Council and the Commission ⁽³⁾.
3. Where a guarantee for a loan covered by the general budget of the Union in accordance with Regulation (EC) No 332/2002 or Regulation (EU) No 407/2010 needs to be mobilised, it shall be over and above the ceilings laid down in the MFF.

Article 4

Respect of own resources ceiling

1. For each of the years covered by the MFF, the total appropriations for payments required, after annual adjustment and taking account of any other adjustments and revisions as well as the application of paragraphs 2 and 3 of Article 3, shall not be such as to produce a call-in rate for own resources that exceeds the own resources ceiling set in accordance with Decision 2007/436/EC, Euratom.

⁽¹⁾ Council Regulation (EC) No 2012/2002 of 11 November 2002 establishing the European Union Solidarity Fund (OJ L 311, 14.11.2002, p. 3).

⁽²⁾ Regulation (EC) No 1927/2006 of the European Parliament and of the Council of 20 December 2006 on establishing the European Globalisation Adjustment Fund (JO L 406, 30.12.2006, p. 1).

⁽³⁾ Interinstitutional Agreement between the European Parliament, the Council and the Commission of 2 December 2013 on budgetary discipline, cooperation in budgetary matters and on sound financial management (OJ C 373, 20.12.2013, p. 1).

2. Where necessary, the ceilings set in the MFF shall be lowered by way of revision in order to ensure compliance with the own-resources ceiling set in accordance with Decision 2007/436/EC, Euratom.

Article 5

Global margin for payments

1. Every year, starting in 2015, as part of the technical adjustment referred to in Article 6, the Commission shall adjust the payment ceiling for the years 2015-2020 upwards by an amount equivalent to the difference between the executed payments and the MFF payment ceiling of the year n-1.
2. The annual adjustments shall not exceed the following maximum amounts (in 2011 prices) for the years 2018-2020 as compared to the original payment ceiling of the relevant years:
 - 2018 - EUR 7 billion
 - 2019 - EUR 9 billion
 - 2020 - EUR 10 billion.
3. Any upward adjustment shall be fully offset by a corresponding reduction of the payment ceiling for year n-1.

Article 6

Technical adjustments

1. Each year the Commission, acting ahead of the budgetary procedure for year n+1, shall make the following technical adjustments to the MFF:
 - (a) revaluation, at year n+1 prices, of the ceilings and of the overall figures for appropriations for commitments and appropriations for payments;
 - (b) calculation of the margin available under the own-resources ceiling set in accordance with Decision 2007/436/EC, Euratom;
 - (c) calculation of the absolute amount of the Contingency Margin provided for in Article 13;
 - (d) calculation of the global margin for payments provided for in Article 5;
 - (e) calculation of the global margin for commitments provided for in Article 14.
2. The Commission shall make the technical adjustments referred to in paragraph 1 on the basis of a fixed deflator of 2 % per year.
3. The Commission shall communicate the results of the technical adjustments referred to in paragraph 1 and the underlying economic forecasts to the European Parliament and the Council.
4. Without prejudice to Article 7 and 8, no further technical adjustments shall be made in respect of the year concerned, either during the year or as ex-post corrections during subsequent years.

Article 7

Adjustment of cohesion policy envelopes

1. To take account of the particularly difficult situation of Member States suffering from the crisis, the Commission shall in 2016, together with the technical adjustment for the year 2017, review all Member States' total allocations under the «Investment for growth and jobs» goal of cohesion policy for the years 2017 to 2020, applying the allocation method defined in the relevant basic act on the basis of the then available most recent statistics and of the comparison, for the capped Member States, between the cumulated national GDP observed for the years 2014 and 2015 and the cumulated national GDP estimated in 2012. It shall adjust those total allocations whenever there is a cumulative divergence of more than +/- 5 %.
2. The adjustments required shall be spread in equal proportions over the years 2017-2020 and the corresponding ceilings of the MFF shall be modified accordingly. The payment ceilings shall also be modified accordingly to ensure an orderly progression in relation to the appropriations for commitments.
3. In its technical adjustment for the year 2017, following the mid-term review of the eligibility of Member States for the Cohesion Fund provided for in Article 90(5) of Regulation (EU) No 1303/2013 of the European Parliament and of the Council ⁽¹⁾, in case a Member State either becomes newly eligible to the Cohesion Fund or loses its existing eligibility, the Commission shall add or subtract the resulting amounts to or from the funds allocated to the Member State for the years 2017 to 2020.
4. The required adjustments resulting from paragraph 3 shall be spread in equal proportions over the years 2017-2020 and the corresponding ceilings of the MFF shall be modified accordingly. The payment ceilings shall also be modified accordingly to ensure an orderly progression in relation to the appropriations for commitments.
5. The total net effect, whether positive or negative, of the adjustments referred to in paragraphs 1 and 3 shall not exceed EUR 4 billion.

Article 8

Adjustments related to measures linking effectiveness of funds to sound economic governance

In the case of the lifting by the Commission of a suspension of budgetary commitments concerning the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development or the European Maritime and Fisheries Fund in the context of measures linking effectiveness of funds to sound economic governance, the Commission, in accordance with the relevant basic act, shall transfer the suspended commitments

⁽¹⁾ Regulation (EU) No 1303/2013 of the European Parliament and of the Council of 17 December 2013 laying down common provisions on the European Regional Development Fund, the European Social Fund, the Cohesion Fund, the European Agricultural Fund for Rural Development and the European Maritime and Fisheries Fund covered by the Common Strategic Framework and laying down general provisions on the European Regional Development Fund, the European Social Fund and the Cohesion Fund and repealing Council Regulation (EC) No 1083/2006 (See page 320 of this Official Journal).

to the following years. Suspended commitments of year n may not be re-budgeted beyond year $n+3$.

CHAPTER 2

Special instruments

Article 9

Emergency Aid Reserve

1. The Emergency Aid Reserve is intended to allow for a rapid response to specific aid requirements of third countries following events which could not be foreseen when the budget was established, first and foremost for humanitarian operations, but also for civil crisis management and protection, and situations of particular pressure resulting from migratory flows at the Union's external borders where circumstances so require.
2. The annual amount of the Reserve is fixed at EUR 280 million (2011 prices) and may be used up to year $n+1$ in accordance with the Financial Regulation. The Reserve shall be entered in the general budget of the Union as a provision. The portion of the annual amount stemming from the previous year shall be drawn on first. That portion of the annual amount from year n which is not used in year $n+1$ shall lapse.

Article 10

European Union Solidarity Fund

1. The European Union Solidarity Fund is intended to allow financial assistance in the event of major disasters occurring on the territory of a Member State or of a candidate country, as defined in the relevant basic act. There shall be a ceiling on the annual amount available for that Fund of EUR 500 million (2011 prices). On 1 October each year, at least one quarter of the annual amount shall remain available in order to cover needs arising until the end of that year. The portion of the annual amount not entered in the budget may be used up to year $n+1$. The portion of the annual amount stemming from the previous year shall be drawn on first. That portion of the annual amount from year n which is not used in year $n+1$ shall lapse.
2. In exceptional cases and if the remaining financial resources available in the European Union Solidarity Fund in the year of occurrence of the disaster, as defined in the relevant basic act, are not sufficient to cover the amount of assistance considered necessary by the European Parliament and the Council, the Commission may propose that the difference be financed through the annual amounts available for the following year.

Article 11

Flexibility Instrument

1. The Flexibility Instrument is intended to allow the financing, for a given financial year, of clearly identified expenditure which could not be financed within the limits of the ceilings available for one or more other headings. There shall be a ceiling on the annual amount

available for the Flexibility Instrument of EUR 471 million (2011 prices).

2. The unused portion of the annual amount of the Flexibility Instrument may be used up to year $n+3$. The portion of the annual amount stemming from previous years shall be used first, in order of age. That portion of the annual amount from year n which is not used in year $n+3$ shall lapse.

Article 12

European Globalisation Adjustment Fund

1. The European Globalisation Adjustment Fund, the objectives and scope of which are defined in Regulation (EC) No 1927/2006 of the European Parliament and of the Council, shall not exceed a maximum annual amount of EUR 150 million (2011 prices).
2. The appropriations for the European Globalisation Adjustment Fund shall be entered in the general budget of the Union as a provision.

Article 13

Contingency Margin

1. A Contingency Margin of up to 0,03 % of the Gross National Income of the Union shall be constituted outside the ceilings of the MFF, as a last-resort instrument to react to unforeseen circumstances. It may be mobilised only in relation to an amending or annual budget.
2. Recourse to the Contingency Margin shall not exceed, at any given year, the maximum amount foreseen in the annual technical adjustment of the MFF, and shall be consistent with the own-resources ceiling.
3. Amounts made available through the mobilisation of the Contingency Margin shall be fully offset against the margins in one or more MFF headings for the current or future financial years.
4. The amounts thus offset shall not be further mobilised in the context of the MFF. Recourse to the Contingency Margin shall not result in exceeding the total ceilings of commitment and payment appropriations laid down in the MFF for the current and future financial years.

Article 14

Global margin for commitments for growth and employment, in particular youth employment

1. Margins left available below the MFF ceilings for commitment appropriations for the years 2014-2017 shall constitute a Global MFF Margin for commitments, to be made available over and above the ceilings established in the MFF for the years 2016 to 2020 for policy objectives related to growth and employment, in particular youth employment.
2. Each year, as part of the technical adjustment provided for in Article 6, the Commission shall calculate the amount available. The Global MFF Margin or part thereof may be mobilised by the European Parliament and the Council in the framework of the budgetary procedure pursuant to Article 314 TFEU.

Article 15

Specific flexibility to tackle youth unemployment and strengthen research

Up to EUR 2543 million (in 2011 prices) may be frontloaded in 2014 and 2015, as part of the annual budgetary procedure, for specified policy objectives relating to youth employment, research, ERASMUS in particular for apprenticeships, and Small and Medium-sized Enterprises. That amount shall be fully offset against appropriations within and/or between headings in order to leave unchanged the total annual ceilings for the period 2014-2020 and the total allocation per heading or sub-heading over the period.

Article 16

Contribution to the financing of large-scale projects

1. A maximum amount of EUR 6300 million (in 2011 prices) shall be available for the European satellite navigation programmes (EGNOS and Galileo) from the general budget of the Union for the period 2014-2020.
2. A maximum amount of EUR 2707 million (in 2011 prices) shall be available for the International Thermonuclear Experimental Reactor project (ITER) from the general budget of the Union for the period 2014-2020.
3. A maximum amount of EUR 3786 million (in 2011 prices) shall be available for Copernicus (the European Earth Observation Programme) from the general budget of the Union for the period 2014-2020.

CHAPTER 3

Revision

Article 17

Revision of the MFF

1. Without prejudice to Article 4(2), Articles 18 to 22 and Article 25, in the event of unforeseen circumstances, the MFF may be revised in compliance with the own-resources ceiling set in accordance with Decision 2007/436/EC, Euratom.
2. As a general rule, any proposal for a revision of the MFF in accordance with paragraph 1 shall be presented and adopted before the start of the budgetary procedure for the year or the first of the years concerned.
3. Any proposal for revision of the MFF in accordance with paragraph 1 shall examine the scope for reallocating expenditure between the programmes covered by the heading concerned by the revision, with particular reference to any expected under-utilisation of appropriations. The objective should be that a significant amount, in absolute terms and as a percentage of the new expenditure planned, shall be within the existing ceiling for the heading.
4. Any revision of the MFF in accordance with paragraph 1 shall take into account the scope for offsetting any raising of the ceiling for one heading by the lowering of the ceiling for another.

5. Any revision of the MFF in accordance with paragraph 1 shall maintain an appropriate relationship between commitments and payments.

Article 18

Revision related to implementation

When notifying the European Parliament and the Council of the results of the technical adjustments to the MFF, the Commission shall present any proposals to revise the total appropriations for payments which it considers necessary, in the light of implementation, to ensure a sound management of the yearly payments ceilings and, in particular, their orderly progression in relation to the appropriations for commitments. The European Parliament and the Council shall decide on those proposals before 1 May of year n.

Article 19

Revision following new rules or programmes for the Structural Funds, the Cohesion Fund the European Agricultural Fund for Rural Development, the European Maritime and Fisheries Fund, the Asylum and Migration Fund and the Internal Security Fund

1. In the event of the adoption after 1 January 2014 of new rules or programmes under shared management for the Structural Funds, the Cohesion Fund, the European Agricultural Fund for Rural Development, the European Maritime and Fisheries Fund, the Asylum and Migration Fund and the Internal Security Fund, the MFF shall be revised in order to transfer to subsequent years, in excess of the corresponding expenditure ceilings, allocations not used in 2014.
2. The revision concerning the transfer of unused allocation for the year 2014 shall be adopted before 1 May 2015.

Article 20

Revision of the MFF in case of a revision of the Treaties

Should a revision of the Treaties with budgetary implications occur between 2014 and 2020, the MFF shall be revised accordingly.

Article 21

Revision of the MFF in the event of enlargement of the Union

If there is an accession or accessions to the Union between 2014 and 2020, the MFF shall be revised to take account of the expenditure requirements resulting therefrom.

Article 22

Revision of the MFF in the event of the reunification of Cyprus

In the event of the reunification of Cyprus between 2014 and 2020, the MFF shall be revised to take account of the comprehensive settlement of the Cyprus problem and the additional financial needs resulting from the reunification.

Article 23

Interinstitutional cooperation in the budgetary procedure

The European Parliament, the Council and the Commission (hereinafter «the institutions») shall take measures to facilitate the annual budgetary procedure.

The institutions shall cooperate in good faith throughout the procedure with a view to reconciling their positions. The institutions shall, at all stages of the procedure, cooperate through appropriate interinstitutional contacts in order to monitor the progress of the work and analyse the degree of convergence.

The institutions shall ensure that their respective calendars of work are coordinated as far as possible, in order to enable proceedings to be conducted in a coherent and convergent fashion, leading to the final adoption of the general budget of the Union.

Trilogues may be held at all stages of the procedure and at different levels of representation, depending on the nature of the expected discussions. Each institution, in accordance with its own rules of procedure, shall designate its participants for each meeting, define its mandate for the negotiations and inform the other institutions in good time of the arrangements for the meetings.

Article 24

Unity of the budget

All expenditure and revenue of the Union and Euratom shall be included in the general budget of the Union in accordance with Article 7 of the Financial Regulation, including expenditure resulting from any relevant decision taken unanimously by the Council after consulting the European Parliament, in the framework of Article 332 TFEU.

Article 25

Transition towards the next multiannual financial framework

Before 1 January 2018, the Commission shall present a proposal for a new multiannual financial framework.

If no Council regulation determining a new multiannual financial framework has been adopted before 31 December 2020, the ceilings and other provisions corresponding to the last year of the MFF shall be extended until a regulation determining a new financial framework is adopted. If a new Member State accedes to the Union after 2020, the extended financial framework shall, if necessary, be revised in order to take the accession into account.

Article 26

Entry into force

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

It shall apply from 1 January 2014.

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

Done at Brussels, 2 December 2013.

For the Council

The President

E. GUSTAS

MULTIANNUAL FINANCIAL FRAMEWORK (EU-28)

COMMITMENT APPROPRIATIONS	(EUR million - 2011 prices)						Total 2014-2020	
	2014	2015	2016	2017	2018	2019		2020
1. Smart and Inclusive Growth	60 283	61 725	62 771	64 238	65 528	67 214	69 004	450 763
1a: Competitiveness for growth and jobs	15 605	16 321	16 726	17 693	18 490	19 700	21 079	125 614
1b: Economic, social and territorial cohesion	44 678	45 404	46 045	46 545	47 038	47 514	47 925	325 149
2. Sustainable Growth: Natural Resources	55 883	55 060	54 261	53 448	52 466	51 503	50 558	373 179
of which: Market related expenditure and direct payments	41 585	40 989	40 421	39 837	39 079	38 335	37 605	277 851
3. Security and citizenship	2 053	2 075	2 154	2 232	2 312	2 391	2 469	15 686
4. Global Europe	7 854	8 083	8 281	8 375	8 553	8 764	8 794	58 704
5. Administration	8 218	8 385	8 589	8 807	9 007	9 206	9 417	61 629
of which: Administrative expenditure of the institutions	6 649	6 791	6 955	7 110	7 278	7 425	7 590	49 798
6. Compensations	27	0	0	0	0	0	0	27
TOTAL COMMITMENT APPROPRIATIONS	134 318	135 328	136 056	137 100	137 866	139 078	140 242	959 988
as a percentage of GNI	1,03 %	1,02 %	1,00 %	1,00 %	0,99 %	0,98 %	0,98 %	1,00 %
TOTAL PAYMENT APPROPRIATIONS	128 030	131 095	131 046	126 777	129 778	130 893	130 781	908 400
as a percentage of GNI	0,98 %	0,98 %	0,97 %	0,92 %	0,93 %	0,93 %	0,91 %	0,95 %
Margin available	0,25 %	0,25 %	0,26 %	0,31 %	0,30 %	0,30 %	0,32 %	0,28 %
Own Resources Ceiling as a percentage of GNI	1,23 %	1,23 %	1,23 %	1,23 %	1,23 %	1,23 %	1,23 %	1,23 %

2.6. INTERINSTITUTIONAL AGREEMENT of 2 December 2013 between the European Parliament, the Council and the Commission on budgetary discipline, on cooperation in budgetary matters and on sound financial management 2013/C 373/01

THE EUROPEAN PARLIAMENT, THE COUNCIL OF THE EUROPEAN UNION AND THE EUROPEAN COMMISSION,

hereinafter referred to as the 'institutions',

HAVE AGREED AS FOLLOWS:

1. The purpose of this Agreement, adopted in accordance with Article 295 of the Treaty on the Functioning of the European Union (TFEU), is to implement budgetary discipline and improve the functioning of the annual budgetary procedure and cooperation between the institutions on budgetary matters as well as to ensure sound financial management.
2. Budgetary discipline in this Agreement covers all expenditure. The Agreement is binding on all the institutions for as long as it is in force.
3. This Agreement does not alter the respective budgetary powers of the institutions as laid down in the Treaties, in Council Regulation (EU, Euratom) No 1311/2013 ⁽¹⁾ (the 'MFF Regulation') and in Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council ⁽²⁾ (the 'Financial Regulation').
4. Any amendment of this Agreement requires the common agreement of all the institutions.
5. This Agreement is in three parts:
 - Part I contains complementary provisions related to the multiannual financial framework (MFF) and provisions on special instruments not included in the MFF.
 - Part II relates to interinstitutional cooperation during the budgetary procedure.
 - Part III contains provisions related to the sound financial management of Union funds.
6. This Agreement enters into force on 23 December 2013 and replaces the Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management ⁽³⁾.

⁽¹⁾ Council Regulation (EU, Euratom) No 1311/2013 of 20 December 2013 laying down the Multiannual Financial Framework for the years 2014-2020 (OJ L 347, 20.12.2013, p. 884).

⁽²⁾ Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council of 25 October 2012 on the financial rules applicable to the general budget of the Union and repealing Council Regulation (EC, Euratom) No 1605/2002 (OJ L 298, 26.10.2012, p. 1).

⁽³⁾ OJ C 139, 14.6.2006, p. 1.

PART I

MFF AND SPECIAL INSTRUMENTS

A. Provisions related to the MFF

7. Information relating to operations not included in the general budget of the Union and to the foreseeable development of the various categories of the Union's own resources is set out, by way of indication, in separate tables. That information shall be updated annually together with the documents accompanying the draft budget.
8. The institutions shall, for the purposes of sound financial management, ensure as far as possible during the budgetary procedure and at the time of the budget's adoption that sufficient margins are left available beneath the ceilings for the various headings of the MFF, except in the sub-heading 'Economic, social and territorial cohesion'.

Updating of forecasts for payment appropriations after 2020

9. In 2017, the Commission shall update the forecasts for payment appropriations after 2020. That update shall take into account all relevant information, including the real implementation of budget appropriations for commitments and budget appropriations for payments, as well as the implementation forecasts. It shall also consider the rules designed to ensure that payment appropriations develop in an orderly manner compared to commitment appropriations and the growth forecasts of the Union's Gross National Income.

B. Provisions related to the special instruments not included in the MFF

Emergency Aid Reserve

10. When the Commission considers that the Emergency Aid Reserve needs to be called on, it shall present to the European Parliament and the Council a proposal for a transfer from the Reserve to the corresponding budgetary lines.

Any Commission proposal for a transfer from the Reserve, however, shall be preceded by an examination of the scope for reallocating appropriations.

In the event of disagreement, a trilogue procedure shall be initiated.

Transfers from the Reserve shall be made in accordance with the Financial Regulation.

European Union Solidarity Fund

11. When the conditions for mobilising the European Union Solidarity Fund as set out in the relevant basic act are met, the Commission shall make a proposal to mobilise it. Where there is scope for reallocating appropriations under the heading requiring additional expenditure, the Commission shall take that into account when making the necessary proposal, in accordance with the Financial Regulation, by means of the appropriate budgetary instrument. The decision to mobilise the Solidarity Fund shall be taken jointly by the European Parliament and the Council. The Council shall act by a qualified majority and the European Parliament shall act by a majority of its component members and three fifths of the votes cast.

In the event of disagreement, a trilogue procedure shall be initiated.

Flexibility Instrument

12. The Commission shall make a proposal for the Flexibility Instrument to be mobilised after it has examined all possibilities for re-allocating appropriations under the heading requiring additional expenditure.

The proposal shall identify the needs to be covered and the amount. It may be presented, for any given financial year, during the budgetary procedure.

The decision to mobilise the Flexibility Instrument shall be taken jointly by the European Parliament and the Council. The Council shall act by a qualified majority and the European Parliament shall act by a majority of its component members and three fifths of the votes cast.

Agreement shall be reached in the framework of the annual budgetary procedure.

European Globalisation Adjustment Fund

13. When the conditions for mobilising the European Globalisation Adjustment Fund, as set out in the relevant basic act, are met, the Commission shall make a proposal to mobilise it. The decision to mobilise the Globalisation Adjustment Fund shall be taken jointly by the European Parliament and the Council. The Council shall act by a qualified majority and the European Parliament shall act by a majority of its component members and three fifths of the votes cast.

At the same time as it presents its proposal for a decision to mobilise the Globalisation Adjustment Fund, the Commission shall present to the European Parliament and the Council a proposal for a transfer to the relevant budgetary lines.

In the event of disagreement, a trilogue procedure shall be initiated.

Transfers related to the Globalisation Adjustment Fund shall be made in accordance with the Financial Regulation.

Contingency Margin

14. The mobilisation of the Contingency Margin, or part thereof, shall be proposed by the Commission after a thorough analysis of all other financial possibilities. Such a proposal may only be made in relation to a draft amending or annual budget, for the adoption of which such a proposal would be necessary. The Commission shall accompany the proposal for the mobilisation of the Contingency Margin with a proposal for the reallocation, within the existing budget, of a significant amount, as far as supported by the Commission's analysis.

The decision to mobilise the Contingency Margin shall be taken jointly by the European Parliament and the Council simultaneously with their approval of the amending budget or general budget of the Union the adoption of which the Contingency Margin facilitates. The European Parliament and the Council shall act in accordance with the voting rules provided for in Article 314 TFEU for the approval of the general budget of the Union.

PART II

IMPROVEMENT OF INTERINSTITUTIONAL COOPERATION IN BUDGETARY MATTERS

A. *Interinstitutional cooperation procedure*

15. The details of interinstitutional cooperation during the budgetary procedure are set out in the Annex.

Budgetary Transparency

16. The Commission shall prepare an annual report to accompany the general budget of the Union, bringing together available and non-confidential information relating to:
- the assets and liabilities of the Union, including those arising from borrowing and lending operations carried out by the Union in accordance with its powers under the Treaties,
 - the revenue, expenditure, assets and liabilities of the European Development Fund (EDF), the European Financial Stability Facility (EFSF), the European Stability Mechanism (ESM), and other possible future mechanisms, including trust funds,
 - the expenditure incurred by Member States in the framework of enhanced cooperation, to the extent that it is not included in the general budget of the Union.

B. *Incorporation of financial provisions in legislative acts*

17. Each legislative act, concerning a multiannual programme, adopted under the ordinary legislative procedure shall contain a provision in which the legislator lays down the financial envelope for the programme.

That amount shall constitute the prime reference amount for the European Parliament and the Council during the annual budgetary procedure.

The European Parliament and the Council, and the Commission when it draws up the draft budget, undertake not to depart by more than 10 % from that amount for the entire duration of the programme concerned, unless new, objective, long-term circumstances arise for which explicit and precise reasons are given, with account being taken of the results obtained from implementing the programme, in particular on the basis of assessments. Any increase resulting from such variation shall remain beneath the existing ceiling for the heading concerned, without prejudice to the use of instruments mentioned in the MFF Regulation and in this Agreement.

This Point applies neither to appropriations for cohesion adopted under the ordinary legislative procedure and pre-allocated by Member States, which contain a financial envelope for the entire duration of the programme nor to the large scale projects referred to in Article 16 of the MFF Regulation.

18. Legislative acts, concerning multiannual programmes, not subject to the ordinary legislative procedure shall not contain an 'amount deemed necessary'.

Should the Council wish to include a financial reference amount, that amount shall be taken as illustrating the will of the legislator and shall not affect the budgetary powers of the European Parliament and the Council as set out in the TFEU. A provision to this effect shall be included in all legislative acts which contain such a financial reference amount.

If the financial reference amount concerned has been the subject of an agreement pursuant to the conciliation procedure provided for in the Joint Declaration of the European Parliament, the Council and the Commission of 4 March 1975 ⁽¹⁾, it shall be considered a reference amount within the meaning of Point 17 of this Agreement.

C. *Expenditure relating to fisheries agreements*

19. Expenditure on fisheries agreements shall be subject to the following specific rules.

The Commission undertakes to keep the European Parliament regularly informed about the preparation and conduct of the negotiations, including their budgetary implications.

In the course of the legislative procedure relating to fisheries agreements, the institutions undertake to make every effort to ensure that all procedures are carried out as quickly as possible.

Amounts provided for in the budget for new fisheries agreements or for the renewal of fisheries agreements which come into force after January 1 of the related financial year shall be put in reserve.

If appropriations relating to fisheries agreements (including the reserve) prove insufficient, the Commission shall provide the European Parliament and the Council with the necessary information for an exchange of views in the form of a trilogue, possibly in a simplified form, on the causes of the situation, and on measures which might be adopted under established procedures. Where necessary, the Commission shall propose appropriate measures.

Each quarter, the Commission shall present to the European Parliament and the Council detailed information about the implementation of fisheries agreements in force and a financial forecast for the remainder of the year.

20. Representatives of the European Parliament may take part, with observer status, in bilateral and multilateral conferences negotiating international fisheries agreements, taking account of the European Parliament's powers in the field of fisheries agreements and in accordance with points 25 and 26 of the Framework Agreement on relations between the European Parliament and the European Commission ⁽²⁾.
21. Without prejudice to the relevant procedure governing the negotiation of fisheries agreements, the European Parliament and the Council commit themselves, in the framework of budgetary cooperation, to arrive at a timely agreement on the adequate financing of fisheries agreements.

⁽¹⁾ OJ C 89, 22.4.1975, p. 1.

⁽²⁾ OJ L 304, 20.11.2010, p. 47.

D. Expenditure relating to the reserve for crises in the agricultural sector

22. Appropriations for the Reserve for crises in the agricultural sector provided for in Article 25 of Regulation (EU) No 1306/2013 of the European Parliament and of the Council ⁽¹⁾ shall be entered directly in the general budget of the Union. Any amount of the Reserve not made available for crisis measures shall be reimbursed to direct payments.

Expenditure related to measures for crises occurring between 16 October and the end of the financial year may be financed from the reserve of the following financial year in accordance with the requirements laid down in the third paragraph.

If the Commission considers that the Reserve needs to be called on, in accordance with the relevant legislative act, it shall present to the European Parliament and to the Council a proposal for a transfer from the Reserve to the budget lines financing the measures it considers necessary. Any Commission proposal for a transfer from the Reserve shall be preceded by an examination of the scope for reallocating appropriations.

Transfers from the Reserve shall be made in accordance with the Financial Regulation.

In the event of disagreement, a trilogue procedure shall be initiated.

E. Financing of the common foreign and security policy (CFSP)

23. The total amount of CFSP operating expenditure shall be entered entirely in one budget chapter, entitled CFSP. That amount shall cover the real predictable needs, assessed in the framework of the establishment of the draft budget, on the basis of forecasts drawn up annually by the High Representative of the Union for Foreign Affairs and Security Policy (the 'High Representative'), and a reasonable margin for unforeseen actions. No funds may be entered in a reserve.
24. As regards CFSP expenditure which is charged to the general budget of the Union in accordance with Article 41 of the Treaty on European Union, the institutions shall endeavour, in the Conciliation Committee, and on the basis of the draft budget established by the Commission, to secure agreement each year on the amount of the operating expenditure to be charged to the general budget of the Union, and on the distribution of that amount between the articles of the CFSP budget chapter suggested in the fourth paragraph of this Point. In the absence of agreement, it is understood that the European Parliament and the Council shall enter in the budget the amount contained in the previous budget or the amount proposed in the draft budget, whichever is the lower.

The total amount of CFSP operating expenditure shall be distributed between the articles of the CFSP budget chapter as suggested in the fourth paragraph. Each article shall cover instruments already adopted, instruments which are foreseen but not yet adopted and all other future — that is unforeseen — instruments to be adopted by the Council during the financial year concerned.

Since, under the Financial Regulation, the Commission has the authority to transfer appropriations autonomously between articles within the CFSP budget chapter, the flexibility deemed necessary for speedy implementation of CFSP actions shall accordingly be assured. In the

⁽¹⁾ Regulation (EU) No 1306/2013 of the European Parliament and of the Council of 17 December 2013 on the financing, management and monitoring of the Common Agricultural Policy (OJ L 347, 20.12.2013, p. 549).

event of the amount of the CFSP budget chapter during the financial year being insufficient to cover the necessary expenses, the European Parliament and the Council shall seek a solution as a matter of urgency, on a proposal from the Commission, taking into account Article 3 of the MFF Regulation and Point 10 of this Agreement.

Within the CFSP budget chapter, the articles into which the CFSP actions are to be entered could read along the following lines:

- single major missions as referred to in Article 49(1)(g) of the Financial Regulation,
- crisis management operations, conflict prevention, resolution and stabilisation, and monitoring and implementation of peace and security processes,
- non-proliferation and disarmament,
- emergency measures,
- preparatory and follow-up measures,
- European Union Special Representatives.

25. Each year, the High Representative shall consult the European Parliament on a forward-looking document, which shall be transmitted by June 15 of the year in question, setting out the main aspects and basic choices of the CFSP, including the financial implications for the general budget of the Union, an evaluation of the measures launched in the year n-1 and an assessment of the coordination and complementarity of CFSP with the Union's other external financial instruments. Furthermore, the High Representative shall keep the European Parliament regularly informed by holding joint consultation meetings at least five times a year, in the framework of the regular political dialogue on the CFSP, to be agreed at the latest in the Conciliation Committee. Participation in those meetings shall be determined by the European Parliament and the Council respectively, bearing in mind the objective, and the nature of the information exchanged in those meetings.

The Commission shall be invited to participate in those meetings.

If the Council adopts a decision in the field of the CFSP entailing expenditure, the High Representative shall immediately, and in any event no later than five working days thereafter, send the European Parliament an estimate of the costs envisaged (a 'financial statement'), in particular those costs regarding time-frame, staff employed, use of premises and other infrastructure, transport facilities, training requirements and security arrangements.

Once a quarter, the Commission shall inform the European Parliament and the Council about the implementation of CFSP actions and the financial forecasts for the remainder of the financial year.

F. Involvement of the institutions as regards development policy issues and the European Development Fund

26. The Commission shall establish an informal dialogue with the European Parliament on development policy issues regardless of their source of financing. The scrutiny of the European Parliament of the European Development Fund (EDF) will be aligned on a voluntary

basis to the scrutiny rights that exist under the general budget of the Union, specifically in relation to the Development Cooperation Instrument, pursuant to detailed arrangements to be fixed in the informal dialogue.

The European Parliament and the Council note that the Commission, with a view to, *inter alia*, enhancing the democratic scrutiny of development policy, intends to propose the budgetisation of the EDF as of 2021.

G. *Cooperation of the institutions in the budgetary procedure on administrative expenditure*

27. The savings implied by the ceiling for heading 5 as set out in the Annex to the MFF Regulation, shall be proportionately shared between all institutions as well as other Union bodies based on their respective share of the administrative budgets.

Each institution, body or agency is expected to present estimates of expenditure in the annual budgetary procedure consistent with the orientations referred to in the first paragraph.

To neutralise the additional capacity built up by the increase of working time to 40 hours per week, the European Parliament, the Council and the Commission agree to progressively render 5 % of the staff as in the establishment plan on 1 January 2013 ⁽¹⁾. This reduction should apply to all institutions, bodies and agencies, and be effected between 2013 and 2017. This does not prejudice the budgetary rights of the European Parliament and the Council.

PART III

SOUND FINANCIAL MANAGEMENT OF UNION FUNDS

A. *Joint management*

28. The Commission shall ensure that the European Parliament, the Council and the Court of Auditors, at their request, receive any information and documentation related to Union funds spent through international organisations, obtained under the verification agreements concluded with those organisations, which are considered necessary for the exercise of the competences of the European Parliament, the Council or the Court of Auditors under the TFEU.

Evaluation report

29. In the evaluation report provided for by Article 318 TFEU, the Commission shall distinguish between internal policies, focused on the Europe 2020 strategy, and the external policies and shall use more performance information, including performance audit results, to evaluate the finances of the Union based on the results achieved.

Financial programming

30. The Commission shall submit twice a year, the first time in April or May (together with the documents accompanying the draft budget) and the second time in December or January

⁽¹⁾ The Council and the Commission have already implemented a first reduction of 1 % of staff as in their establishment plan on 1 January 2013.

(after the adoption of the general budget of the Union), a complete financial programming for headings 1 (except the sub-heading for 'Economic, social and territorial cohesion'), 2 (for 'environment' and 'fisheries' only), 3 and 4 of the MFF. That programming, structured by heading, policy area and budget line, should identify:

- (a) the legislation in force, with a distinction being drawn between multiannual programmes and annual actions:
 - for multiannual programmes, the Commission should indicate the procedure under which they were adopted (ordinary or special legislative procedure), their duration, the total financial envelope and the share allocated to administrative expenditure,
 - for annual actions (relating to pilot projects, preparatory actions and agencies) and actions financed under the prerogatives of the Commission, the Commission should provide multiannual estimates and indicate the margins left under the authorised ceilings fixed in Commission Delegated Regulation (EU) No 1268/2012⁽¹⁾;
- (b) pending legislative proposals: ongoing Commission proposals, with the latest update.

The Commission should consider ways of cross-referencing the financial programming with its legislative programming to provide more precise and reliable forecasts. For each legislative proposal, the Commission should indicate whether it is included in the April programme or in the December programme. The European Parliament and the Council should in particular be informed of:

- (a) all new legislative acts adopted and all pending proposals presented but not included in the April or the December programme (with the corresponding amounts);
- (b) legislation foreseen in the Commission's annual legislative work programme, with an indication of whether the actions are likely to have a financial impact.

Whenever necessary, the Commission should indicate the reprogramming entailed by new legislative proposals.

B. Agencies and European schools

31. Before presenting a proposal for the creation of a new agency, the Commission should produce a sound, complete and objective impact assessment, taking into account, *inter alia*, the critical mass of staff and competencies, cost-benefit aspects, subsidiarity and proportionality, the impact on national and Union activities, and the budgetary implications for the expenditure heading concerned. On the basis of that information and without prejudice to the legislative procedures governing the setting up of the agency, the European Parliament and the Council commit themselves, in the framework of budgetary cooperation, to arrive at a timely agreement on the financing of the proposed agency.

⁽¹⁾ Commission Delegated Regulation (EU) No 1268/2012 of 29 October 2012 on the rules of application of Regulation (EU, Euratom) No 966/2012 of the European Parliament and of the Council on the financial rules applicable to the general budget of the Union (OJ L 362, 31.12.2012, p. 1).

The following procedural steps shall be applied:

- firstly, the Commission shall systematically present any proposal for setting up a new agency to the first trilogue following the adoption of its proposal, and shall present the financial statement accompanying the draft legal act proposing the creation of the agency and shall illustrate the consequences thereof for the remaining period of the financial programming,
 - secondly, during the legislative process, the Commission shall assist the legislator in assessing the financial consequences of the amendments proposed. Those financial consequences should be considered during the relevant legislative trilogues,
 - thirdly, before the conclusion of the legislative process, the Commission shall present an updated financial statement taking into account potential modifications by the legislator; this final financial statement shall be placed on the agenda of the final legislative trilogue and formally endorsed by the legislator. It shall also be placed on the agenda of a subsequent budgetary trilogue (in urgent cases, in simplified form), in view of reaching an agreement on the financing,
 - fourthly, the agreement reached during a trilogue, taking into account the Commission's budgetary assessment with regard to the content of the legislative process, shall be confirmed in a joint declaration. That agreement shall be subject to approval by the European Parliament and the Council, each in accordance with its own rules of procedure.
- The same procedure would be applied to any amendment to a legal act concerning an agency which would have an impact on the resources of the agency in question.
 - Should the tasks of an agency be modified substantially without an amendment to the legal act setting up the agency in question, the Commission shall inform the European Parliament and the Council by means of a revised financial statement, so as to allow the European Parliament and the Council to arrive at a timely agreement on the financing of the agency.
32. Relevant provisions from the Common Approach annexed to the Joint Statement of the European Parliament, the Council of the European Union and the European Commission on decentralised agencies signed on 19 July 2012 should be duly taken into account in the budgetary procedure.
33. When the creation of a new European school is envisaged by the Board of Governors, a similar procedure is to be applied, *mutatis mutandis*, for its budgetary implications on the general budget of the Union.

Done at Brussels, 9 December 2013.

For the Council
The President
J. BERNATONIS

For the Commission
J. LEWANDOWSKI
Member of the Commission

Done at Strasbourg, 10 December 2013.

For the European Parliament
The President
M. SCHULZ

ANNEX

INTERINSTITUTIONAL COOPERATION DURING THE BUDGETARY PROCEDURE

Part A.

Calendar of the budgetary procedure

1. The institutions shall agree a pragmatic calendar each year in due time before the start of the budgetary procedure on the basis of present practice.

Part B.

Priorities for the budgetary procedure

2. In due time before the adoption of the draft budget by the Commission, a trilogue shall be convened to discuss the possible priorities for the budget of the coming financial year.

Part C.

Establishment of the draft budget and updating of estimates

3. The institutions, other than the Commission, are invited to adopt their statement of estimates before the end of March.
4. The Commission shall, each year, present a draft budget showing the Union's actual financing requirements.

It shall take into account:

- (a) forecasts provided by the Member States in relation to the Structural Funds;
 - (b) the capacity for utilising appropriations, while endeavouring to maintain a strict relationship between appropriations for commitments and appropriations for payments;
 - (c) possibilities for starting up new policies through pilot projects, new preparatory actions or both, or for continuing multiannual actions which are coming to an end, after assessing whether it is possible to secure a basic act, within the meaning of the Financial Regulation (definition of a basic act, necessity of a basic act for implementation and exceptions);
 - (d) the need to ensure that any change in expenditure in relation to the previous year is in accordance with the constraints of budgetary discipline.
5. The institutions shall, as far as possible, avoid entering items in the budget involving insignificant amounts of expenditure on operations.
 6. The European Parliament and the Council also undertake to bear in mind the assessment of the possibilities for implementing the budget made by the Commission in its drafts and in connection with the implementation of the current budget.

7. In the interests of sound financial management and owing to the effect of major changes in the titles and chapters of the budget nomenclature on the management reporting responsibilities of Commission departments, the European Parliament and the Council undertake to discuss any major changes with the Commission during the conciliation.
8. In the interest of loyal and sound institutional cooperation, the European Parliament and the Council commit to maintaining regular and active contacts at all levels, through their respective negotiators, throughout the whole budgetary procedure and, in particular, during the conciliation period. The European Parliament and the Council undertake to ensure the timely and constant mutual exchange of relevant information and documents at both formal and informal levels, as well as to hold technical or informal meetings as needed, during the conciliation period, in cooperation with the Commission. The Commission shall ensure timely and equal access to information and documents for the European Parliament and the Council.
9. Until such time as the Conciliation Committee is convened, the Commission may, if necessary, amend the draft budget in accordance with Article 314(2) TFEU, including by an amending letter updating expenditure estimates for agriculture. The Commission shall submit information on updates to the European Parliament and the Council for their consideration as soon as it is available. It shall supply the European Parliament and the Council with all the duly justified reasons they may require.

Part D.

Budgetary procedure before the conciliation procedure

10. A trilogue shall be convened in good time before the Council's reading, to allow the institutions to have an exchange of views on the draft budget.
11. In order for the Commission to be able to assess in due time the implementability of amendments, envisaged by the European Parliament and the Council, which create new preparatory actions or pilot projects or which prolong existing ones, the European Parliament and the Council shall inform the Commission of their intentions in this regard, so that a first discussion may already take place at that trilogue.
12. A trilogue could be convened before the votes in plenary of the European Parliament.

Part E.

Conciliation procedure

13. If the European Parliament adopts amendments to the Council's position, the President of the Council shall, during the same plenary sitting, take note of the differences in the position of the two institutions and give his/her agreement for the President of the European Parliament to convene the Conciliation Committee immediately. The letter convening the Conciliation Committee shall be sent at the latest on the first working day of the week following the end of the parliamentary part-session during which the plenary vote was delivered, and the conciliation period shall start on the following day. The 21-day time

period shall be calculated in accordance with Regulation (EEC, Euratom) No 1182/71 of the Council ⁽¹⁾.

14. If the Council cannot agree on all the amendments adopted by the European Parliament, it should confirm its position by letter sent before the first meeting foreseen during the conciliation period. In such case, the Conciliation Committee shall proceed in accordance with the conditions laid down in the following points.
15. The Conciliation Committee shall be chaired jointly by representatives of the European Parliament and of the Council. Meetings of the Conciliation Committee shall be chaired by the co-chair from the institution hosting the meeting. Each institution, in accordance with its own rules of procedure, shall designate its participants for each meeting and define its mandate for the negotiations. The European Parliament and the Council shall be represented at an appropriate level in the Conciliation Committee, such that each delegation can commit politically its respective institution, and that actual progress towards the final agreement may be made.
16. In accordance with the second subparagraph of Article 314(5) TFEU, the Commission shall take part in the Conciliation Committee's proceedings and shall take all necessary initiatives with a view to reconciling the positions of the European Parliament and the Council.
17. Trilogues shall take place throughout the conciliation procedure, at different levels of representation, with the aim of resolving outstanding issues and preparing the ground for an agreement to be reached in the Conciliation Committee.
18. Meetings of the Conciliation Committee and trilogues shall be held alternately at the premises of the European Parliament and of the Council, with a view to an equal sharing of facilities, including interpretation facilities.
19. The dates of the meetings of the Conciliation Committee and the trilogues shall be set in advance by agreement of the three institutions.
20. A common set of documents ('input documents') comparing the various steps of the budgetary procedure shall be made available to the Conciliation Committee ⁽²⁾. Those documents shall include 'line by line' figures, totals by MFF headings and a consolidated document with figures and remarks for all budget lines deemed technically 'open'. Without prejudice to the final decision of the Conciliation Committee, a specific document shall list all budget lines deemed technically closed ⁽³⁾. Those documents shall be classified by budgetary nomenclature.

Other documents shall also be attached to the input documents for the Conciliation Committee, including a letter of executability from the Commission on the Council's position and the

⁽¹⁾ Regulation (EEC, Euratom) No 1182/71 of the Council of 3 June 1971 determining the rules applicable to periods, dates and time limits (OJ L 124, 8.6.1971, p. 1).

⁽²⁾ The various steps include: the budget of the current financial year (including adopted amending budgets); the initial draft budget; the Council's position on the draft budget; the European Parliament's amendments to the Council's position and the letters of amendment presented by the Commission (if not yet fully approved by all institutions).

⁽³⁾ A budget line deemed technically closed is a line for which there is no disagreement between the European Parliament and the Council, and for which no letter of amendment has been presented.

European Parliament's amendments, and any letter(s) from other institutions concerning the Council's position or the European Parliament's amendments.

21. With a view to reaching agreement by the end of the conciliation period, trilogues shall:
- define the scope of the negotiations on the budgetary issues to be addressed,
 - endorse the list of the budget lines deemed technically closed, subject to the final agreement on the entire budget of the financial year,
 - discuss issues identified under the first indent with a view to reaching possible agreements to be endorsed by the Conciliation Committee,
 - address thematic issues, including by headings of the MFF.

Tentative conclusions shall be drawn jointly during or immediately after each trilogue, and, simultaneously, the agenda of the following meeting shall be agreed. Those conclusions shall be registered by the institution hosting the trilogue and shall be deemed provisionally approved after 24 hours, without prejudice to the final decision of the Conciliation Committee.

22. The conclusions of trilogues and a document for possible endorsement shall be available to the Conciliation Committee at its meetings, together with the budget lines in respect of which an agreement has been tentatively reached during the trilogues.
23. The joint text provided for in Article 314(5) TFEU shall be established by the secretariats of the European Parliament and of the Council with the assistance of the Commission. It shall consist of a letter of transmission addressed by the chairs of the two delegations to the Presidents of the European Parliament and Council, containing the date of the agreement at the Conciliation Committee, and annexes which shall include:
- line by line figures for all budget items and summary figures by MFF headings,
 - a consolidated document, indicating the figures and final text of all lines that have been modified during the conciliation procedure,
 - the list of the lines not modified with regard to the draft budget or the Council's position on it.

The Conciliation Committee may also approve conclusions and possible joint statements in relation to the budget.

24. The joint text shall be translated into the official languages of the institutions of the Union (by the services of the European Parliament) and shall be submitted for the approval of the European Parliament and the Council within a period of 14 days from the date of the agreement on the joint text pursuant to point 23.

The budget shall be subject to legal-linguistic finalisation after the adoption of the joint text by integrating the annexes of the joint text with the budget lines not modified during the conciliation procedure.

25. The institution hosting the meeting (trilogue or conciliation) shall provide interpretation facilities with a full linguistic regime applicable to the Conciliation Committee meetings and an ad hoc linguistic regime for the trilogues.

The institution hosting the meeting shall provide for the copying and distribution of room documents.

The services of the three institutions shall cooperate in the encoding of the results of the negotiations in order to finalise the joint text.

Part F.

Amending budgets

General principles

26. Bearing in mind that amending budgets are frequently focused on specific and sometimes urgent issues, the institutions agree on the following principles to ensure appropriate inter-institutional cooperation for a smooth and swift decision-making process for amending budgets while avoiding, as far as possible, having to convene a conciliation meeting for amending budgets.
27. As far as possible, the institutions shall endeavour to limit the number of amending budgets.

Calendar

28. The Commission shall inform the European Parliament and the Council in advance of the possible dates of adoption of draft amending budgets, without prejudice to the final date of adoption.
29. Each in accordance with its internal rules of procedure, the European Parliament and the Council shall endeavour to examine the draft amending budget proposed by the Commission at an early opportunity after its adoption by the Commission.
30. In order to speed up the procedure, the European Parliament and the Council shall ensure that their respective calendars of work are coordinated as far as possible in order to enable proceedings to be conducted in a coherent and convergent fashion. They shall therefore seek as soon as possible to establish an indicative timetable for the various stages leading to the final adoption of the amending budget.

The European Parliament and the Council shall take into account the relative urgency of the amending budget and the need to approve it in due time to be effective during the financial year concerned.

Cooperation during the readings

31. The institutions shall cooperate in good faith throughout the procedure, clearing the way, as far as possible, for the adoption of amending budgets at an early stage of the procedure.

When appropriate, and when there is a potential divergence, the European Parliament or the Council, before each takes its final position on the amending budget, or the Commission at any

time, may propose that a specific trilogue be convened to discuss the divergences and to try to reach a compromise.

32. All draft amending budgets proposed by the Commission and not yet finally approved shall be entered systematically on the agenda of trilogues planned for the annual budgetary procedure. The Commission shall present the draft amending budgets and the European Parliament and the Council shall, as far as possible, make known their respective positions ahead of the trilogue.
33. If a compromise is reached during a trilogue, the European Parliament and the Council undertake to consider the results of the trilogue when deliberating on the amending budget in accordance with the TFEU and their rules of procedure.

Cooperation after the readings

34. If the European Parliament approves the position of the Council without amendments, the amending budget shall be adopted in accordance with the TFEU.
35. If the European Parliament adopts amendments by a majority of its component members, Article 314(4)(c) TFEU shall apply. However, before the Conciliation Committee meets, a trilogue shall be called:
 - if an agreement is reached during the trilogue and subject to the agreement of the European Parliament and the Council on the results of the trilogue, the conciliation shall be closed by an exchange of letters without a meeting of the Conciliation Committee,
 - if no agreement is reached during the trilogue, the Conciliation Committee shall meet and organise its work in accordance with the circumstances, with a view to completing the decision-making process as much as possible before the 21-day deadline laid down in Article 314(5) TFEU. The Conciliation Committee may conclude by an exchange of letters.

Part G.

Reste à liquider (RAL)

36. Given the need to ensure an orderly progression of the total appropriations for payments in relation to the appropriations for commitments so as to avoid any abnormal shift of RAL from one year to another, the European Parliament, the Council and the Commission agree to monitor closely the level of the RAL so as to mitigate the risk of hampering the implementation of Union programmes because of a lack of payment appropriations at the end of the MFF.

In order to ensure a manageable level and profile for the payments in all headings, de-commitment rules shall be applied strictly in all headings, in particular the rules for automatic de-commitments.

In the course of the budgetary procedure, the institutions shall meet regularly with a view to jointly assessing the state of play and the outlook for budgetary implementation in the current and future years. This shall take the form of dedicated interinstitutional meetings at the appropriate level, before which the Commission shall provide the detailed state of play, broken down by fund and Member State, on payment implementation, reimbursement claims received and revised forecasts. In particular, in order to ensure that the Union can fulfill all its financial obligations stemming from existing and future commitments in the period 2014-2020 in accordance with Article 323 TFEU, the European Parliament and the Council shall analyse and discuss the Commission's estimates as to the required level of payment appropriations.

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