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Proposal for a

REGULATION OF THE EUROPEAN PARLIAMENT AND OF THE COUNCIL

on the financial rules applicable to the annual budget of the Union

EXPLANATORY MEMORANDUM

1. CONTEXT OF THE PROPOSAL

The present proposal takes into account recent legislative and political developments regarding the Financial Regulation (hereinafter FR¹).

- (1) For the sake of legal clarity and in order to facilitate the negotiations of the European Parliament and the Council (hereinafter "the legislative authority"), it merges and replaces two earlier Commission proposals on the revision of the FR in a single text and under a standard legislative format (no recast). These two earlier proposals concerned on the one hand, the triennial revision of the Financial Regulation (COM(2010)260 final), which notably addressed the genuine necessity of revisiting budget delivery mechanisms in the current economic context and in view of the future policy challenges; and, on the other hand, the revision of the FR to align it with the Lisbon Treaty (COM(2010)71 final), including the obligations of Member States concerning internal control and audit and their resulting responsibilities in shared management. Therefore, these two earlier proposals (COM(2010)260 final) and (COM(2010)71 final) are withdrawn.
- (2) Additionally, it also incorporates the changes to the FR due to the adoption of the Regulation No 1081/2010 regarding the creation of the European External Action Service (hereinafter the 'EEAS')².

1.1. PROCEDURE

Since the entry into force of the Lisbon Treaty, the FR is to be revised in accordance with the ordinary legislative procedure foreseen in Article 322 TFEU. In order to allow the legislative authority to have a global view of the proposed modifications, the Implementing Rules of the Financial Regulation (hereinafter IR³) are presented, in a Commission Staff working document, together with the FR in a single package. The Implementing Rules, which contain more detailed provisions complementing the FR, will be adopted under the delegated powers of the Commission according to Article 290 TFEU.

The present proposal does not contain any change of *substance* compared to the two earlier proposals mentioned in point 1 above. As a consequence, the working document of the Commission services concerning the Implementing Rules to the FR (SEC(2010)), which has been put forward by the Commission together with the triennial revision, remains entirely valid.

¹ Council Regulation No 1605/2002 of 26.06.2002.

² European Parliament and Council Regulation No 1081/2010 of 24.11.2010

³ Commission Regulation No 2342/2002 of 23 December 2002.

1.2. CALENDAR

It should be recalled that the present revision of the FR occurs while preparation for the post-2013 programmes is also under way. It should therefore be considered in this wider context. For this reason, it is important that all the actors concerned in the legislative process, in particular the European Parliament and the Council, maintain an ambitious timetable for the present revision and on the need to ensure coherence between the financial rules enshrined in the FR and on the content of sector-specific legal bases. For this to be effective, they should aim at an agreement on the package (Financial Regulation and Implementing Rules) so that it could enter into application on 1.1.2012, which is a very ambitious timetable given the inherent constraints of the ordinary legislative procedure.

2. OBJECTIVE OF THE PROPOSAL

Budget is one of the key instruments to deliver EU policies. In 2011 more than EUR 126 billion is planned for allocation to EU policies benefitting the Union and its citizens. In the current economic context it is even more important that the delivery mechanisms of the budget operate in the most efficient way and facilitate the implementation of EU policies, while securing sound treatment of European taxpayers' money. In particular, it is important that these mechanisms are simple and transparent (especially to final recipients of EU funds), provide the possibility for leverage of non-EU budget resources and at the same time strengthen the Commission's accountability for implementation of the budget as set in Article 317 TFEU

The FR contains all the principles and rules which govern the implementation of the budget. It has a horizontal character, being applicable to all areas of expenditure and all revenue.

2.1. BASIS FOR UNDERTAKING THE PRESENT REVISION

The FR should only contain the fundamental principles (FR, Title II) and the basic rules of budgetary and financial management, leaving the details to be specified in the IR and soft law such as internal guidelines. These principles must be respected in all legislative acts⁴ and by all institutions; they should be kept stable and derogations to them limited to a strict minimum.

In terms of content, the key elements of the financial reforms should be preserved, in particular: the role of financial actors, the importance of the financing decision adopted by the College for operational expenditure, the integration of controls with operational services, the internal audit function, activity-based budgeting, and modernisation of accounting principles and basic rules applicable to grants. Procurement rules should be preserved in line with the procurement Directives.

Moreover, it should be borne in mind that not all problems encountered with the application of the rules require modifications of the FR. In the vast majority of cases, the difficulties raised during the public consultation do not find their source in the Financial Regulation or could be solved by interpretation of the rules. Difficulties

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Article 2 FR.

also stem from sector-based regulations, whose level of detail and complexity increase significantly the risk of error or misinterpretation.

In terms of method, any modification of substance has been assessed against the following benchmarks:

- reduce the administrative burden for beneficiaries, contractors and implementing partners;
- facilitate, whenever possible, the leveraging of budget appropriations;
- facilitate the Commission's obligation under Article 317 of the Treaty to implement the budget and accomplish the policy objectives by improving delivery instruments and simplifying the rules and procedures;
- ensure sound financial management and protect the financial interests of the Union against fraud and other illegal activities⁵.

2.2. NEED FOR A REFORM

Reform is necessary with a view to adapting the financial rules to the new requirements of budget implementation (co-financing with other donors, specific financial instruments, PPPs) or where the basic principles create disproportionate workload (interests on pre-financing) or may unduly impede efficiency (prohibition of budget implementation through private sector bodies). The award of small grants and contracts also needs to be facilitated.

Furthermore, the new procedure applicable to the IR, as set out in the Lisbon Treaty, should lead to a new articulation between the FR and the IR, imposing a complete review of the whole set of financial rules. In this regard, some IR provisions which currently define exceptions or derogations to FR provisions should be introduced in the FR itself, while the IR should be limited to technical details and implementing modalities⁶.

In this context, the Commission has based its proposal on the following objectives:

- to introduce more flexibility in the application of budgetary principles, which should better suit operational needs and alleviate unnecessary administrative burden for recipients of Union funds;
- to streamline relations with implementing partners to which the Commission entrusts the management of programmes or part of programming actions (projects), in particular taking account of the nature of the implementing partner (Member States, agencies, EIB, public and private operators, etc.) and the financial risks entailed (proportionality);

⁵ Article 310 (6) TFEU.

⁶ Article 290 TFEU foresees that the European Parliament and the Council may entrust delegated powers to the Commission only "[...] to supplement or amend certain non-essential elements of the [concerned] legislative act", i.e. the FR.

- to shift the regime of grants from a real-cost based management (inputs) towards a performance-based scheme (outputs), in order to better target policy objectives and achieve significant simplification of procedural and documentary requirements for the benefit of beneficiaries, and facilitate the use of lump sums;
- to ensure sound financial management while leaving significant room for manoeuvre for Authorising Officers so that they can adapt the means to their operational constraints and the financial risks they are faced with;
- to modernise the system of risk management and control measures so as to make them more proportional to the probability of errors and to the cost involved.

2.3. ALIGNMENT WITH THE LISBON TREATY

For the first time in decades, the Lisbon Treaty (Treaty on the Functioning of the European Union - TFEU), which entered into force on December 1, 2009, foresees important changes concerning budgetary and financial issues. These changes should be translated in the Financial Regulation and concern in particular:

- the introduction of the multiannual financial framework in the Treaty, and its link to annual budgetary procedure: in this regard, as a consequence of the introduction of the multiannual financial framework in the TFEU, some provisions of the Interinstitutional Agreement (IIA) on budgetary discipline and sound financial management should be introduced in the Financial Regulation;
- the new annual budgetary procedure and the abolition of the distinction between compulsory and non-compulsory expenditure, which have an impact on the provisions relating to transfers and the provisional twelfths;
- the new provisions introduced in Article 317 TFEU concerning the control and audit obligations of the Member States in the implementation of the budget, together with Point 44 of the Interinstitutional Agreement (IIA) on budgetary discipline and sound financial management (See point 4.3.1. for more details).

The present proposal also allows for the streamlining of the Financial Regulation in line with the Lisbon Treaty, through both technical adaptations and the deletion of obsolete provisions.

3. RESULTS OF CONSULTATIONS WITH THE INTERESTED PARTIES

The proposal builds on the results of the public consultation of 19 October 2009⁷, which resulted in 235 contributions of all type of stakeholders implementing or receiving Union funds such as citizens, public and private operators or regional and national administrations. In particular, its aims at addressing the major concern expressed in this public consultation, i.e. the excessive administrative burden imposed on recipients of Union funds.

⁷ http://ec.europa.eu/budget/library/consultations/FRconsult2009/draft_report_en.pdf

The Commission has furthermore built on the experience of its operational services, which have been involved in a wide internal consultation, and lessons learned from previous revisions.

4. DETAILED CONTENT OF THE PROPOSAL

The present revision has three main objectives.

4.1. SIMPLIFICATION

In order to simplify grant procedures and to shift towards a more result-oriented approach, the Commission proposes to facilitate the **use of lump sums and other instruments** allowing the Commission to reasonably assess and fix *ex ante* the amount necessary for achieving a project. In future, grant would, to a larger extent, be paid on the basis of such a *ex ante* assessment, upon evidence that the project is achieved.

Furthermore, the Commission proposes to revise rules requiring interest on pre-financing. The current FR imposes disproportionate administrative burden on grant beneficiaries when obliging them to open a separate bank account so as to be able to reimburse interest on generated on the funds received. In practice, the amounts concerned are often very low. The Commission proposes to reverse the current approach: as a principle, interest on pre-financing would not be due to the Union unless, the grant agreement, for reasons of proportionality (ex: very large sums involved) and sound financial management, foresees that interest has to be invested in the project or recovered.

Regarding procurement rules the provisions related to bank guarantees to be provided by the contractor and the procedures for the award of small contracts are modified so as to achieve simplification.

4.2. OBTAIN MORE RESULTS WITH LIMITED RESOURCES (LEVERAGING)

The Commission sees the need to increase the leverage of Union funds against the background of two political developments: the Political Guidelines that Commission President Barroso adopted in 2009 for his second mandate, which proposed to maximise investment and devise innovative financial instruments, and the budgetary constraints both at national and Union levels, which will impact the negotiations on the future Multiannual financial framework (post 2013).

A number of instruments are proposed to leverage Union funds, including:

- **The pooling of funds in external relations:** together with the revised rules on external assigned revenue, the creation of **EU Trust funds** will allow pooling of funds from multiple sources (Member States, Union Budget, third countries);
- **Synergy with EIB own funds:** the proposal seeks to foster a systematic use of mixed Instruments (EU funds/EIB funds for risk capital, guarantee funds, long term loans), which take into account the 'privileged partner' status of the EIB under the EU Treaty, and its contribution to the reinforcement of the internal market;

- **Synergy with private funds and public-private partnerships (PPPs):** the Commission proposes to facilitate the creation of PPPs, either via a simple delegation of the Commission to a private entity that has successfully passed an ex ante check (capacity to manage public funds in accordance with standards of sound financial management), or via a basic act entrusting a EU public body with the implementation of a PPP, within a "light" framework regulation;
- **Leveraging effect of prizes in the R&D sector:** learning from successful experience abroad, the Commission proposes to clarify rules for the award prizes which could, in the future, be more extensively used to induce private R&D investments into R&D.

4.3. INCREASE ACCOUNTABILITY: RESPONSIBILITIES OF IMPLEMENTING PARTNERS AND 'TOLERABLE RISK OF ERROR'

4.3.1. Reshaping the various methods of implementation

The proposal seeks to simplify the different methods of implementation (centralised direct/indirect, shared, decentralised and joint management), to render the rules applicable to the different methods more coherent and to strengthen the accountability of the implementing partners so as to support the Commission in discharging its responsibility under the Treaty.

The Commission proposes **a set of common principles** that shall apply in all cases of indirect managed, i.e. whenever the Commission entrusts third parties with the implementation of the Union budget. These principles (which may be complemented by sector specific-rules) are:

- Ex ante verification of the capacity to manage EU funds, taking due account of the specific risks of the actions concerned (flexibility and proportionality);
- Management, control and audit obligations (sound financial management);
- A single chain of accountability, established notably through the annual management declarations of assurance to be signed by the Commission implementing partners and a regular clearance of the accounts.

Member States are the most important partner of the Commission and have a crucial role to play in the implementation of the budget (Article 317(5) TFEU). The current FR and the Commission proposal take this into account by providing for specific rules, reflecting the common principles mentioned.

The proposal for shared management builds on what already exists and has proved to function well in the area of shared management. On the basis of Article 317 TFEU, requiring the FR to lay down the control and audit obligations of the Member States in the implementation of the budget and the resulting responsibilities, the proposal defines the key functions which management and control systems under shared management have to perform. The Member States have considerable flexibility in arranging their existing administrative structures around these functions.

4.3.2. Introducing the concept of Tolerable Risk of Error (TRE)

Until now the benchmark for measuring how the Commission has managed risk has been the standard 2% materiality level applied by the Court of Auditors across the whole budget,

irrespective of the risks and the cost of controls entailed in each policy area. In order to allow a more adequate yardstick for measuring the Commission's management of risk, the Commission proposes that a TRE is decided by the Council and the European Parliament for each policy area following a Commission proposal assessing the cost and benefits of controls.

A TRE defined for each policy area would therefore be a useful tool at the disposal of the Commission, to be used ex-ante, in order to adjust the way it manages programmes taking into account the risks involved. It does not interfere with control arrangements or corrective measures which are applied where errors are detected. Furthermore, the TRE would not entail differentiated levels of tolerable error between Member States but would be applicable to a policy area at Union level.

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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 322 thereof, in conjunction with the Treaty establishing the European Atomic Energy Community, and in particular Article 106a thereof,

Having regard to the proposal from the European Commission⁸,

Having regard to the opinion of the Court of Auditors⁹,

After transmission of the draft legislative act to the national Parliaments,

Acting in accordance with the ordinary legislative procedure,

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 Communities¹⁰ has been substantially amended several times. Since further amendments are to be made, including changes to take account of amendments introduced by the Treaty of Lisbon, the Regulation (EC, Euratom) No 1605/2002 should be replaced by this Regulation, in the interests of clarity.
- (2) Regulation (EC, Euratom) No 1605/2002 laid down the budgetary principles and financial rules to be respected in all legislative 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 need to 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 annual budget of the Union (hereinafter the 'budget'), and the burden they impose on stakeholders. It is necessary to maintain and strengthen the key elements of the financial reform: the role of the financial actors, the integration of controls in operational services, the internal auditors, the Activity Based Budgeting, the modernisation of accounting principles and rules and the basic principles for grants.

⁸ OJ XXX

⁹ OJ C [...]

¹⁰ OJ L 248, 16.9.2002, p. 1.

- (3) Due to the specific nature and tasks of the European Central Bank, notably its independence as regards the management of its finances, it should be excluded from the scope of 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 and to facilitate the use of specific financial instruments like those concluded with the European Investment Bank or implementation through public and private partnerships.
- (5) Regulation (EC, Euratom) No 1605/2002 was confined to stating the broad principles and basic rules governing the whole budgetary sector covered by 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 on the Financial Regulation applicable to the general budget of the European Communities¹¹ in order to produce a better hierarchy of rules and make Regulation (EC, Euratom) No 1605/2002 easier to read. Under the Treaty on the Functioning of the European Union (hereinafter the 'TFEU') the Commission may receive delegation to adopt acts of general application to supplement or amend certain non-essential elements of legislative acts. As a consequence, some provisions laid down in Regulation (EC, Euratom) No 2342/2002, should be incorporated into this Regulation. The detailed rules for the application of this Regulation adopted by the Commission should be confined to technical details and implementing modalities.
- (6) Police and judicial cooperation in criminal matters became an integral part of other Union policies and internal actions. The specific financial provisions applicable to that policy are thus no longer justified and should therefore not be included in this Regulation.
- (7) Under the multiannual financial framework for 2007-2013, established by Interinstitutional Agreement of 17 May 2006 between the European Parliament, the Council and the Commission on budgetary discipline and sound financial management¹², the Guarantee Fund for external actions is no longer subject to a special regime. Payments to that Fund from the budget are now entered in a dedicated budget line. The relevant specific financial provisions are no longer necessary and should therefore not be included in this Regulation.
- (8) The rules governing interest generated by pre-financing should be simplified as they generate excessive administrative burden on both recipients of Union funds and Commission services and create misunderstandings between the Commission services and operators and partners. For reasons of simplification, in particular in respect of grant beneficiaries, and in line with the principle of sound financial management, there should no longer be an obligation to generate interest on pre-financing and to recover such interest. [However, it should be possible to include such obligation in a delegation agreement in order to allow the re-use of interests generated by pre-financing for the programmes managed by some delegates, or its recovery.

¹¹ OJ L 357, 31.12.2002, p. 1.

¹² OJ C 139, 14.6.2006, p. 1.

- (9) Carry over rules for assigned revenue should take into account the distinction between external and internal assigned revenue. In order to respect the purpose assigned by the donor, external assigned revenues 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 the internal assigned revenue for one year only, unless specified otherwise in the basic act applicable or in duly justified circumstances.
- (10) As regards provisional twelfths, the rules should be clarified for the situation where the European Parliament decides to reduce the amount of the additional expenditure in excess of the provisional twelfths adopted by Council in accordance with Article 315 of the TFEU.
- (11) The Treaty requires that the multiannual financial framework be laid down in the form of a regulation. It is therefore necessary to incorporate certain provisions from the multiannual financial framework for 2007-2013 into this Regulation. In particular, in order to ensure budgetary discipline, it is necessary to establish a link between the multiannual financial framework and the annual budgetary procedure. It is also necessary to include provisions on commitment of the European Parliament and of the Council to respect the allocations of commitment appropriations laid down in the basic acts for structural operations, rural development and the European Fisheries Fund.
- (12) The derogation concerning assigned revenue should be modified to take into account the specificities of, on the one hand, internal assigned revenue - arising from appropriations authorised by the budgetary authority, and, on the other hand, external assigned revenue - collected from and assigned by various donors to a specific programme or action. Furthermore, external donors should be allowed to co-finance external actions, in particular humanitarian actions, even in cases where the basic act does not expressly provide for such co-financing. To facilitate the management of real estate stock, the list of internal assigned revenue should include revenue from the sale of buildings or assimilated operations.
- (13) As regards the presentation of assigned revenues in the draft budget, more transparency should be introduced 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 its establishment.
- (14) As regards the principle of specification, a distinction is no longer made between compulsory and non-compulsory expenditure. Provisions concerning transfers should therefore be adapted accordingly.
- (15) The rules governing transfers of appropriations should also be simplified and clarified on certain points because they have proved cumbersome or unclear in practice. It is necessary to ensure better budget implementation, especially in relation to payments appropriations, assigned revenues and administrative appropriations which are common to several titles. To this purpose, the typology of transfers should be simplified and more flexibility should be allowed in the adoption procedure of some transfers. In particular, the possibility for the Commission to decide on transfers of unused budgetary appropriations in cases of international humanitarian disasters and

crisis has proved to be relevant and efficient. That possibility should therefore be extended to similar events occurring after 1st December. In those cases, for reasons of transparency, the Commission should inform immediately the budgetary authority of its decision. The Commission should also decide autonomously, within certain limits, on transfers from the emergency aid reserve.

- (16) Concerning provisions on proportionality, the notion of tolerable risk of error should be introduced as part of the risk assessment made by the Authorising Officer. The institutions should be able to move away from the general 2% materiality threshold used by the Court of Auditors to conclude on the legality and regularity of the underlying transactions. Tolerable risk levels constitute more appropriate basis for the Discharge Authority to judge the quality of the management of risk by the Commission. The European Parliament and the Council should therefore determine the level of tolerable risk of error per policy area, taking into account the costs and benefits of controls.
- (17) For the purposes of Article 316 of the TFEU, it should be provided that the European Council and the Council share the same section in the budget.
- (18) The amended 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 the years to come as well as on a possibility for a Commission to submit any working paper to support budget requests.
- (20) As regards the specific features of the Common Foreign and Security Policy, the forms basic acts can take under the TFEU and under Title V and VI of the Treaty on European Union should be updated. In addition, the adoption procedure of preparatory measures in the area of external actions should be adapted to the provisions of the TFEU.
- (21) As regards methods of implementation, which govern in particular the conditions of externalisation of implementing powers to third parties, the rules have become too complex over the years and should be simplified. At the same time, the initial objective of externalisation, to ensure that whatever the method of implementation, expenditure should be implemented with a level of control and transparency equivalent to that expected from the Commission services, should be maintained. Therefore, a clear distinction should be made between situations where the budget is implemented directly, by the Commission or its executive agencies and situations where the budget is implemented indirectly through third parties. This should allow establishment of a common regime for indirect management with the possibility to adapt it in accordance with sector-specific rules, in particular where the budget is implemented indirectly by Member States under shared management. Such common regime should include in particular the basic principles to be respected by the Commission where it decides to implement the budget indirectly and the basic principles to be respected by entrusted parties. The Commission should be able to apply Union rules and procedures or to

accept the application of the rules and procedures of the entrusted entity, provided the latter guarantees an equivalent protection of the financial interests of the Union.

- (22) Rules on ex ante assessment of entities, other than Member States which are not subject to ex-ante assessment, should be adapted to ensure that all entrusted entities and persons provide a level of protection of the financial interests of the Union equivalent to that required under this Regulation. As part of the supervision tasks of the Commission, it is necessary to provide for a set of control and audit obligations, including clearance of accounts procedures for all budget management types.
- (23) In order to take account of operational needs and to facilitate implementation by potential beneficiaries or implementing partners, requirements should remain proportionate to the specific risks of the action and its overall control environment. The nature of the tasks and the measures carried out by the Commission as part of the supervision and support of the implementation of the action should be taken into account when assessing the capacity of the third party or entity to comply with such requirements. Furthermore, this Regulation should accommodate new financial instruments such as financial instruments and Public Private Partnerships in order to improve budget and policy delivery.
- (24) The experience with Public Private Partnerships (PPPs) institutionalised as Union bodies under Article 185 of Regulation (EC, Euratom) No 1605/2002 demonstrates that further alternatives should be added in order to increase the choice of instruments to include bodies whose rules are more flexible and accessible to the private partners than those applicable to the Union institutions. Such alternatives should operate under indirect management. An alternative should be a body established by a basic act and endowed with financial rules which should take into account the principles necessary to ensure sound financial management of Union funds. These principles should be adopted in a delegated regulation and should be based on those with which third entities entrusted with budget implementation tasks have to comply. Another alternative should be the implementation of PPPs by bodies governed by private law of a Member State.
- (25) Basic control and audit obligations of Member States where they implement the budget indirectly in shared management, which currently exist only in sector-specific Regulations, should be, for the purposes of Article 317 of the TFEU, introduced in this Regulation. Therefore it is necessary to include provisions, setting out a coherent framework for all policy areas concerned, on a harmonised administrative structure at national level, common management and control obligations for those structures, annual management declaration of assurance with independent audit opinion thereon and an annual declaration by Member States by which they assume the responsibility for the management of Union funds they are entrusted with, financial clearance, suspension and correction mechanisms operated by the Commission. Detailed provisions should remain in sector-specific Regulations.
- (26) With regard to the duties of the authorising officer by delegation, some provisions should be clarified, in particular concerning the internal control procedures that he puts into place ex ante and ex post and his reporting duties. In this respect, the content of his annual activity report should be updated in line with practice which consists in including the required financial and management information to support his declaration of assurance on the performance of his duties.

- (27) The responsibilities of the Accounting Officer of the Commission should be clarified, in particular it should be specified that he 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 to financial institutions, the possibility to open fiduciary accounts should be introduced 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 other currencies than euro.
- (29) Concerning revenue operations, it is necessary to streamline the rules on estimates of receivable amounts in order to take into account budgetary needs. Registration should be required when expectation of revenue has a certain degree of probability and can be translated into figures with a reasonable degree of approximation. Simplification should be achieved by introducing some specific provisions on procedures of adjustment or cancellation of an estimate of amount receivable.
- (30) The rules on recovery should both be clarified and strengthened. In particular, clarification is needed in order to specify that the cancellation of an established amount receivable does not imply a waiver of a Union's established entitlement. Moreover, in order to reinforce the safeguarding of the financial interests of the Union, Union funds claimed for reimbursement should be treated by Member States not less favourably than claims of public companies on their territory.
- (31) Taking into account Commission Communication on the management of fines temporarily collected¹³, fines, penalties and sanctions and any income generated by them should be recorded as budget revenue in the year following the exhaustion of all remedies against the decisions imposing them. As an exception to this rule, a portion limited to 2% of the total amounts of fines or penalties to be entered in the budget should be withheld to supply the Fund created by that Communication.
- (32) As regards payments and in line with the principle of sound financial management, clarification of the various types of payments should be provided. Moreover, pre-financing payments should be cleared regularly by the responsible authorising officer 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 with third parties.
- (33) Institutions should be allowed to give their prior agreement in order to officially accept the transmission of documents by electronic procedure. Moreover, in accordance with Commission decisions on electronic and digitised documents, financial provisions on verifications applicable to commitments should be updated and recognise explicitly the legal value of electronic order forms and invoices for the registration of legal commitments.

¹³ CO M XXX

- (34) The rules for exclusion should be improved in order to strengthen the protection of financial interests of the Union. The reference to money laundering should be added, as provided for in the Directive 2004/18/EC of the European Parliament and of the Council of 31 March 2004 on the coordination of procedures for the award of public works contracts, public supply contracts and public service contracts¹⁴. Moreover, situations of exclusion concerning candidates or tenderers convicted by a judgment having the force of *res judicata* for an offence concerning their professional conduct, or for fraud, corruption, involvement in a criminal organisation, money laundering or similar criminal infringements detrimental to the financial interests of the Union, should be extended to persons having powers of representation, decision making or control over these candidates and tenderers. However, for reasons of proportionality, exclusion should not apply to candidates and tenderers who can demonstrate that they have taken adequate measures against the concerned persons having powers of representation. Finally, in order to ensure the continuity of service of the institution, derogation from the obligation of exclusion based on the grounds of bankruptcy or analogous situations, grave professional misconduct and non compliance with social obligations should be introduced in case of negotiated procedures 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.
- (35) Although the European Central Bank (ECB) and the European Investment Bank (EIB) have their own specific status within the Union framework, the use of their own resources is of financial interest to the Union. Therefore, they should have access to the information contained in the central exclusion database, which was created to protect the financial interests of the Union, and should take it into account under their responsibility for the award of contracts under their procurement rules. The ECB and the EIB should also communicate to the Commission information on tenderers which are subject to a definitive judgment for fraud or similar criminal infringements detrimental to the financial interests of the Union.
- (36) Concerning administrative and financial penalties, a sound legal basis for the publication of decisions applying such penalties should be introduced, in line with data protection requirements. Such publications should remain facultative for reasons of data protection and legal security.
- (37) For reasons of legal clarity and simplification, the framework for the award and monitoring of Union grants should be revised, in particular the specific provisions for implementing the principles of transparency, equal treatment, co-financing, non-profit, degressive award for operating grants, prohibition of retrospective awards and control.
- (38) For the purpose of the framework for the award and monitoring of Union grants, and in the light of practical experience, the lump sums regime should be clarified (lump sums, standard scale of unit costs and flat rates) and clearly distinguished from any ex-post verification of real costs. Control measures should be adjusted to this new approach with the possibility to request operational audits and to extend findings to non audited projects of same beneficiary where recurrent errors have been detected in similar projects. Finally, the possibility for a beneficiary to redistribute its grant by way of subsidies to third parties should be extended under certain conditions in order

¹⁴ OJ L 134, 30.4.2004, p. 114.

to facilitate the correct implementation of programmes dedicated to numerous physical persons who can only be reached through two levels of dispatch. This redistribution should be authorised as long as appropriate guarantees are presented by the first rank beneficiary and adequate clauses to limit the margin of appreciation for the choice of sub-beneficiaries and the amount of the award are introduced in the grant agreement.

- (39) As a new type of financial support, prizes should be regulated separately from the grant regime with specific rules not containing any reference to predictable costs. Prizes should be part of the annual work programme and, above a certain threshold, should be awarded by a beneficiary or by a contractor after their award conditions and criteria have been approved by the Commission.
- (40) Financial instruments are increasingly valuable to multiply the effect of Union funds when those funds are pooled with others funds or include a leverage effect. Since such financial instruments cannot be assimilated to services or grants, a new type of financial support should be established.
- (41) As regards the rules on accounting and the accounts, 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 financed by the budget, in order to take into account the specific independent status of the ECB.
- (42) 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 whose accounts are consolidated, it should be provided that the report on budgetary and financial management of the financial year has to be prepared by each institution or body and then sent to the budgetary authority and the Court of Auditors by 31 March of the following financial year.
- (43) It is necessary to update the Union rules and principles on accounting in order to ensure their coherence with the International Public Sector Accounting Standard rules.
- (44) The provisions concerning provisional and final accounts should be updated, in particular in order to provide for the reporting information that should accompany the accounts sent to the Commission's Accounting officer for the purpose of consolidation. Reference should also be made to the representation letter accompanying the transmission, by the institutions and bodies financed by the budget, to the Court of Auditors of their final accounts, as well as to the representation letter accompanying the transmission of the Union's final consolidated accounts. Finally, an earlier deadline should be set out for the Court of Auditors to make its observations on the provisional accounts of institutions other than the Commission and bodies financed by the budget in order to allow them to draw up their final accounts taking into account the remarks by the Court of Auditors.
- (45) As regards the information which is to be submitted by the Commission in the context of discharge, the Commission should notably submit to the European Parliament and to the Council an evaluation report on the Union's finances based on the results achieved, in accordance with Article 318 of the TFEU. Adequate provisions should therefore be introduced in this Regulation for such report in relation to other existing reporting requirements.

- (46) As regards the specific provisions of this Regulation concerning the structural funds, cohesion funds, European fisheries fund, the European Agricultural Fund for Rural Development and funds in the area of Freedom, Security and Justice managed under shared management, the provision for repayment of payments on account 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 Funds¹⁵ should be retained. Moreover, by way of derogation from the rule of carry over, it should be allowed to carry over commitment appropriations available at the end of the financial year, arising from repayments of payment on account, until the closure of the programme, and to use those commitment appropriations when other commitment appropriations are no longer available.
- (47) Furthermore, clarification is needed for the participation of the Joint Research Centre (JRC) in procurement and grant procedures when it carries out activities financed in whole or in part by the budget outside the budget lines usually dedicated to the JRC in the research funds. When participating in grant and public procurement procedures as a third party, the JRC should be exempted from the application of the provisions concerning exclusion criteria, administrative and financial penalties, economic and financial capacity and the lodging of guarantees. Moreover, it is necessary to take into account the technical-scientific services provided by the JRC to other institutions or Commission services through internal administrative arrangements, which fall outside public procurement rules. Finally, in order to carry out these tasks effectively, that revenue stemming from the activities linked to those tasks should exceptionally be considered external assigned revenue.
- (48) As regards the specific provisions relating to the implementation of external actions, it is necessary to adapt them to the changes proposed for the methods of implementation.
- (49) 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 European 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 for the use of the funds. Moreover, the accounting officer of each trust fund should be the accounting officer of the Commission.
- (50) As regards entities entrusted under indirect management to implement external actions, the period for the conclusion of contracts and grants by these entities should be limited to three years following the signature of the delegation agreement with the Commission, unless specific exceptional and external circumstances prevail. However, that deadline should not apply to multiannual programmes implemented under the structural funds procedures. Detailed rules for de-commitment of appropriations in the case of those multiannual programmes should be laid down in sector-specific rules.
- (51) With regard to specific rules on procurement applicable to external actions, it is necessary to allow third country nationals to participate in tender procedures, in the

¹⁵ OJ L 161, 26.6.1999, p. 1.

case of implementation of a programme without a basic act and where duly justified exceptional circumstances prevail.

- (52) As regards specific provisions for administrative appropriations, institutions should be allowed to develop a long term real estate policy and profit from lower interest rates thanks to the favourable credit rating of the Union on the financial market. To this end, they should be authorised to raise loans outside the budget to acquire real estate assets. This would provide the possibility to address the complexity of the current system, while saving costs and introducing more transparency.
- (53) As regards framework research programmes, in the light of practical experience, the scope of the special selection procedure of natural persons as experts should be clarified as their assistance is required in the evaluation of project proposals, grant applications, projects and tenders and for providing expert opinion and advice.
- (54) The Commission should be empowered to adopt delegated acts in accordance with Article 290 of the Treaty in order to establish detailed rules for the application of this Regulation, a framework financial regulation for the bodies set up under the TFEU and the Euratom Treaty and a model financial regulation for Public-Private Partnerships in order to lay down the necessary principles to ensure sound financial management.
- (55) The revision of this Regulation should be made only when necessary. Too frequent revisions generate disproportionate cost of adjusting administrative structures and procedures to the new rules. Furthermore, time may be too short to allow for valid conclusion to be drawn from the application of the rules in force.
- (56) In order to ensure continuity in the implementation of the current programmes, the provisions concerning control and audit obligations of Member States when they implement the budget indirectly under shared management should apply only to the next generation of sector-specific regulations,

HAVE ADOPTED THIS REGULATION:

PART ONE COMMON PROVISIONS

TITLE I

SUBJECT MATTER AND SCOPE

Article 1 *Subject matter*

This Regulation lays down the rules for the establishment and the implementation of the annual budget of the Union, (hereinafter the 'budget') and the presentation and auditing of the accounts.

Article 2 *Scope*

Any provision concerning the implementation of the revenue and expenditure of the budget, contained in another legislative act, must comply with the budgetary principles set out in Title II.

This Regulation shall apply to the European Parliament, the European Council and the Council, the European Commission, the Court of Justice of the European Union and the European 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 (hereinafter referred to as 'institution(s)').

This Regulation shall not apply to the European Central Bank.

This Regulation shall apply to the implementation of administrative expenditure relating to the appropriations provided in the budget for the Euratom Supply Agency.

TITLE II

BUDGETARY PRINCIPLES

Article 3 *Budgetary principles*

The budget shall be established and implemented in compliance 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 BUDGET ACCURACY

Article 4 *Definition of the budget*

1. The budget is the instrument which, for each financial year, forecasts and authorises all revenue and expenditure considered necessary for the Union and the European Atomic Energy Community.

2. The revenue and expenditure of the Union shall comprise:

- (a) the revenue and expenditure of the Union, including administrative expenditure occasioned for the institutions by the provisions of the Treaty on European Union 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 expenditure and revenue of the European Atomic Energy Community.

Article 5 *Rules governing the principles of unity and budgetary accuracy*

1. Subject to Article 80, no revenue shall be collected and no expenditure effected unless booked to a line in the budget.

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

3. An appropriation may not be entered in the budget if it is not for an item of expenditure considered necessary.

4. Interest yielded by the funds which are the property of the Union shall not be due to the Union save otherwise provided for in the agreements concluded with the entrusted entities listed in points (ii) to (viii) of Article 55(1)(b), and in grant decisions or agreements

concluded with beneficiaries. In those cases, such interest shall be re-used for the corresponding programme or recovered.

CHAPTER 2

PRINCIPLE OF ANNUALITY

Article 6 *Definition*

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

Article 7 *Type of appropriations*

1. The budget shall contain differentiated appropriations, which shall 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 current financial year, subject to Article 83(2) and Article 180(2).
3. Payment appropriations shall cover payments made to honour the legal commitments entered into in the current financial year and/or earlier financial years.
4. Paragraphs 1 and 2 shall be without prejudice to the special provisions of Titles I, IV and VI of Part Two. They shall not prevent appropriations being committed globally nor budgetary commitments being made in annual instalments.

Article 8 *Accounting rules for the 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 the financial year. However, the own resources for the month of January of the next financial year may be paid in advance pursuant to the Council Regulation (EC, Euratom) No 1150/2000¹⁶.
2. The entries in respect of value added tax own resources, the additional resource based on gross national income and any financial contributions may be adjusted in accordance with the Regulation referred to in paragraph 1.
3. The appropriations authorised for a given financial year may be used solely to cover expenditure committed and paid in that financial year and to cover amounts due against commitments from earlier financial years.

¹⁶ JO L 130, 31.5.2000, p. 1.

4. Commitments shall be entered in the accounts on the basis of the legal commitments entered into up to 31 December, subject to the global commitments referred to in Article 83(2) and the agreements referred to in Article 180(2) and concluded with third countries, which shall be entered in the accounts on the basis of the budget 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 at the latest.

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.

Article 9

Cancellation and carry over of appropriations

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

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

2. Differentiated commitment appropriations and non-differentiated appropriations not yet committed at the close of the financial year may be carried over in respect of:

- (a) amounts corresponding to commitment appropriations for which most of the preparatory stages of the commitment procedure have been completed by 31 December. These amounts may then be committed up to 31 March of the following year;
- (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, when the appropriations provided for the relevant lines in the budget for the following financial year do not 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 close 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 (hereinafter the 'budgetary authority') by 15 March at the latest 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 10, appropriations placed in reserve and appropriations for staff expenditure may not be carried over.

Article 10
Carry over rules for assigned revenue

Revenue not used and appropriations available at 31 December arising from the assigned revenue referred to in Article 18 shall be carried over as follows:

- (a) external assigned revenue shall be carried over automatically and must be fully used until all the operations relating to the programme or action to which they are 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, unless specified otherwise in the basic act applicable, or in duly justified exceptional circumstances; the corresponding appropriations available must be used first.

Article 11
Decommitment of appropriations

Without prejudice to Articles 170 and 174, where amounts are decommitted as a result of total or partial non-implementation of the actions for which they were earmarked, in any financial year after that in which the appropriations were entered in the budget, the appropriations concerned shall be cancelled.

Article 12
Commitment of appropriations

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

Article 13
Rules applicable in case of late adoption of the budget

1. If the budget has not been definitively adopted at the beginning of the financial year, the first paragraph of Article 315 of the Treaty on the Functioning of the European Union (hereinafter the 'TFEU') shall apply to commitment and payment of expenditure which it has been possible to book to a specific chapter in the budget as part of implementation of the last budget duly adopted.

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

Payments may be made monthly per chapter to a maximum of one twelfth of the allotted appropriations in the relevant chapter of the preceding financial year.

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

3. If the continuity of action by the Union and management needs so require, the Council, acting by a qualified majority on a proposal of the Commission, may authorise two or more provisional twelfths both for commitments and for payments over and above those automatically made available pursuant to paragraphs 1 and 2. It shall forward the decision on authorisation without delay to the European Parliament.

The decision shall enter into force thirty days following its adoption unless the European Parliament, acting by a majority of its Members, decides to reduce that expenditure within those thirty days.

If the European Parliament decides to reduce that expenditure, the Council shall review the decision on authorisation taking into account the amount approved by the European Parliament.

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

CHAPTER 3

PRINCIPLE OF EQUILIBRIUM

Article 14

Definition and scope

1. Budget revenue and payment appropriations must be in balance.
2. Within the framework of the budget, the Union and the European Atomic Energy Community, as well as the bodies set up by the Union as referred to in Article 200, may not raise loans.

Article 15

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 35. They shall be drawn up in accordance with the Council Regulation implementing the Decision on the system of the Union's own resources.
3. After the presentation of the accounts for each financial year, any discrepancy with 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 draft amending budget must be submitted by the Commission within 15 days following the submission of the provisional accounts.

CHAPTER 4

PRINCIPLE OF UNIT OF ACCOUNT

Article 16 *Use of euro*

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 65, 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 European External Action Service (hereinafter referred to as 'EEAS'), the authorising officer responsible shall be authorised to carry out operations in national currencies as laid down in the delegated Regulation referred to in Article 199.

CHAPTER 5

PRINCIPLE OF UNIVERSALITY

Article 17 *Definition and scope*

Total revenue shall cover total payment appropriations, subject to Article 18. All revenue and expenditure shall be entered in full without any adjustment against each other, subject to Article 20.

Article 18 *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 the Council Regulation implementing the Decision on the system of the Union's own resources;
- (b) financial contributions from Member States, third countries, including in both cases their public and parastatal agencies, legal 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 the Regulation on speeding up and clarifying the implementation of the excessive deficit procedure;

- (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) contributions to Union activities from third countries or various bodies;
- (f) assigned revenue referred to in Article 173(2) and Article 175(2).

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 being replaced or scrapped when the book value is fully depreciated;
- (c) revenue arising from the repayment of amounts wrongly paid;
- (d) proceeds from the supply of goods, services and works for other departments, institutions or bodies, including refunds by other institutions or bodies of mission allowances paid on their behalf;
- (e) insurance payments received;
- (f) revenue from the sale, letting or any other contract concerning rights connected with real estate;
- (g) revenue from the sale of publications and films, including those on an electronic medium.

4. The basic act applicable may also assign the revenue for which it provides to specific items of expenditure. Unless specified otherwise in the basic act applicable, 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.

Article 19 *Donations*

1. The Commission may accept any donation made to the Union, such as foundations, subsidies, gifts and bequests.

2. Acceptance of donations of a value of EUR 50000 or more which involve 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 the date of receipt of the request from the

Commission. If no objection has been made within that period, the Commission shall take a final decision in respect of acceptance.

Article 20

Rules on deductions and exchange rates adjustments

1. The delegated Regulation referred to in Article 199 may specify the cases where certain revenue may be deducted from requests for payment, which shall then be passed for payment of the net amount.
2. The cost of products or services provided to the Union incorporating taxes refunded by third countries on the basis of the relevant agreements shall be charged to the budget for the tax inclusive amount. Subsequent reimbursement of taxes shall be treated as assigned revenue in accordance with Article 18(2).
3. 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.

CHAPTER 6

PRINCIPLE OF SPECIFICATION

Article 21

General provisions

1. Appropriations shall be earmarked for specific purposes by title and chapter; the chapters shall be further subdivided into articles and items.
2. The Commission may, within its own section of the budget, transfer appropriations autonomously as detailed in Article 23 or shall request the budgetary authority's approval for the transfer of appropriations in the cases detailed in Article 24.
3. Appropriations may be transferred only to budget lines for which the budget has authorised appropriations or carries a token entry "*pro memoria*".
4. Appropriations corresponding to assigned revenue may be transferred only if such revenue is used for the purpose to which it is assigned.

Article 22

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 the transfers referred to in paragraph 1, the institutions shall inform the budgetary authority of their intentions. In the event of duly substantiated reasons being raised within this period by either branch of the budgetary authority, the procedure laid down in Article 24 shall apply.

3. Any institution other than the Commission may propose to the budgetary authority, within its own section of the budget, transfers from one title to another exceeding the limit of 10 % of the appropriations for the financial year on the line from which the transfer is to be made. Those transfers shall be subject to the procedure laid down in Article 24.

4. Any institution other than the Commission may, within its own section of the budget, make transfers within articles without informing the budgetary authority beforehand.

Article 23 *Internal transfers by the Commission*

1. The Commission may, within its own section of the budget, autonomously:

- (a) transfer commitment appropriations within each chapter;
- (b) transfer payment appropriations within each title;
- (c) as regards expenditure on staff and administration which is common to several titles, transfer appropriations from one title to another ;
- (d) as regards operational expenditure, transfer appropriations between chapters within the same title, up to a maximum total of 10 % of the appropriations for the year shown on the line from which the transfer is made.

2. The Commission may, within its own section of the budget, decide on the following transfer appropriations from one title to another, provided it informs immediately the budgetary authority of its decision:

- (a) transfer appropriations from the "provisions" title referred to in Article 43, where the only condition to lift the reserve lies in the adoption of a basic act in accordance with the ordinary legislative procedure foreseen in Article 294 TFEU;
- (b) in duly substantiated exceptional cases of international humanitarian disasters and crises, occurring after 1 December of the budgetary year, the Commission may transfer unused budgetary appropriations for the current budgetary year still available in the budget titles falling under heading 4 of the multiannual financial framework to the budget titles concerning the crisis management aid and humanitarian aid operations.

Article 24 *Transfers by the Commission submitted to the budgetary authority*

1. The Commission shall submit its proposal of transfers simultaneously to the European Parliament and the Council.

2. The budgetary authority shall take decisions on transfers of appropriations as provided for in paragraphs 3 to 6, save as otherwise provided in Title I of Part Two.

3. Save in urgent circumstances, the Council, by a qualified majority, and the European Parliament, shall deliberate upon the Commission proposal within six weeks of the date on which the two institutions received the proposal for each transfer submitted to them.

4. The transfer proposal shall be approved, if within the six-week period in any of the following cases:

- (a) 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) European Parliament and the Council refrain from acting or have not taken a decision contrary to the Commission proposal.

5. The six-week period referred to under point 4 shall be reduced to three weeks, unless either the European Parliament or the Council requests otherwise, in any of 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 million;
- (b) the transfer concerns only payment appropriations and the overall amount of the transfer does not exceed EUR 100 million.

6. If either the European Parliament or the Council has amended the transfer while the other institution has approved it or refrains from acting, or if European Parliament and the Council have amended the transfer, the smaller amount approved either by the European Parliament or the Council shall be deemed approved, unless the Commission withdraws its proposal.

Article 25

Transfer 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 budgetary authority on a proposal from the Commission, or by the Commission for a maximum of 10% of the appropriations for the year shown on the line from which the transfer is made.

The procedure provided for in Article 24(3) and (4) shall apply. If the Commission proposal is not agreed to by the European Parliament and the Council and there is a failure to arrive at a common position on the use of this reserve, the European Parliament and the Council shall refrain from acting on the Commission's proposal of transfers.

CHAPTER 7

PRINCIPLE OF SOUND FINANCIAL MANAGEMENT

Article 26

Principles of economy, efficiency and effectiveness

1. Budget 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 for 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 is concerned with the best relationship between resources employed and results achieved.

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

3. Specific, measurable, achievable, relevant and timed objectives shall be set for all sectors of activity covered by the budget. Achievement of those objectives shall be monitored by performance indicators for each activity and information shall be provided by the spending authorities to the budgetary authority. Such 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 disseminated to spending, legislative and budgetary authorities.

Article 27

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 (hereinafter the 'High Representative') or by a Member State, which may have an impact on the budget, including changes in the number of posts, must be accompanied by a financial statement and by the evaluation provided for in Article 26(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, must be accompanied by a financial statement prepared by the institution proposing the amendment.

2. 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 assessment of the risk involved, as well as existing and planned fraud prevention and protection measures.

Article 28
Internal control of budget implementation

1. The budget shall be implemented in compliance with effective and efficient internal control as appropriate in each management mode, and in accordance with the relevant sector-specific regulations.

2. For the purposes of the implementation of the budget, internal control is defined as a process applicable at all levels of the management and designed to provide reasonable assurance of achieving the following objectives:

- (a) effectiveness, efficiency and economy of operations;
- (b) reliability of reporting;
- (c) safeguarding of assets and information;
- (d) prevention, detection and correction 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.

Article 29
Tolerable risk of error

The Legislative authority shall, in accordance with the procedure laid down in Article 322 of the TFEU, decide on a level of tolerable risk of error at an appropriate aggregation of the budget. That decision shall be taken into account during the annual discharge procedure, in accordance with Article 157(2).

The level of tolerable risk of error shall be based on an analysis of the costs and benefits of controls. Member States and entities and persons referred to in point (b) Article 55(1) shall on request report to the Commission on the costs of controls borne by them as well as the number and size of activities financed by the budget.

The level of tolerable risk of error shall be closely monitored and shall be reviewed in case of major changes in the control environment.

CHAPTER 8

PRINCIPLE OF TRANSPARENCY

Article 30
Publication of accounts, budgets and reports

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

2. The President of the European Parliament shall have the budget and amending budgets, as finally adopted, published in the *Official Journal of the European Union*.

The budget shall be published within three months following the date on which the budget is declared finally 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*.

Article 31

Publication of Union funds 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 manner, information on the recipients of funds deriving from the budget held by it when the budget is implemented on a centralised basis and directly by its departments or by Union Delegations in accordance with the second paragraph of Article 53, and information on the recipients of funds as provided by the entities to which budget implementation tasks are delegated under other modes of management.

3. This information shall be made available with due observance of the requirements of confidentiality, in particular the protection of personal data as laid down in Directive 95/46/EC of the European Parliament and of the Council¹⁷ and Regulation (EC) No 45/2001 of the European Parliament and of the Council¹⁸, and of the requirements of security, taking into account the specificities of each management mode referred to in Article 53 and where applicable in conformity with the relevant sector-specific rules.

¹⁷ OJ L 281, 23.11.1995, p. 31.

¹⁸ OJ L 8, 12.1.2001, p. 1.

TITLE III

ESTABLISHMENT AND STRUCTURE OF THE BUDGET

CHAPTER 1

ESTABLISHMENT OF THE BUDGET

Article 32

Estimates of revenue and expenditure

The European Parliament, the European Council and the Council, the Court of Justice of the European Union, the Court of Auditors, the Economic and Social Committee, the Committee of the Regions, the Ombudsman, the European Data-Protection Supervisor and the EEAS shall draw up an estimate of their revenue and expenditure, which they shall send to the Commission before 1 July each year.

The EEAS shall draw up an estimate of its revenue and expenditure, which it shall send to the Commission before 1 July each year. 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.

These estimates shall also be sent by these institutions to the budgetary authority for information by no later than 1 July each year. The Commission shall draw up its own estimates, which it shall also send to the budgetary authority by the same date.

In preparing its own estimates the Commission shall use the information referred to in Article 33.

Article 33

Estimated budget of the bodies referred to in Article 200

Each body referred to in Article 200 shall, in accordance with the instrument establishing it, send to the Commission and the budgetary authority by 31 March each year an estimate of its revenue and expenditure, including the establishment plan, and its draft work programme.

Article 34

Draft budget

1. The Commission shall submit a proposal containing the draft budget to the European Parliament and the Council, at the latest, by 1 September of the year preceding that in which the budget is to be implemented.

The draft budget shall contain a summary general statement of the expenditure and revenue of the Union and consolidate the estimates referred to in Article 32.

The draft budget shall follow the structure and presentation set out in Articles 41 to 46.

Each of the sections 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 multi-annual financial framework.

2. Where relevant, 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.

3. The Commission shall also attach to the draft budget any working paper it considers useful to support its budget requests.

4. In accordance with Article 8(5) of Decision 2010/427/EU of 26 July 2010 establishing the organisation and functioning of the European External Action Service¹⁹ and in order to ensure the budgetary transparency in the area of external action of the Union, the Commission shall transmit to the budgetary authority, together with the draft budget, a working document presenting, in a comprehensive way:

- (a) all administrative and operational expenditure related 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 previous year, broken down into expenditure by delegation and expenditure for the EEAS' central administration; together with the operational expenditure, broken down by geographic area (regions, countries), thematic areas, Union Delegation and mission.

The working document 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 budget 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 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, Council and Commission staff;

¹⁹ OJ L 201, 3.8.2010, p. 30.

- (d) provide a detailed picture of all staff in place in the Union delegations at the time of presenting the draft budget, including a breakdown by geographic area, individual country 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.

Article 35

Letter of amendment to the draft budget

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

Article 36

Approval of the outcome of the Conciliation Committee

Once the Conciliation Committee has agreed on a joint text, the European Parliament and the Council shall endeavour to approve the outcome of the Conciliation Committee as soon as possible in accordance with Article 314(6) of the TFEU, in accordance with their respective internal rules of procedure.

Article 37

Adoption of the budget

1. The President of the European Parliament shall declare the budget finally adopted in accordance with the procedure provided for in Article 314(9) of the TFEU and Article 177(7) of the Treaty establishing the European Atomic Energy Community (hereinafter the 'Euratom Treaty').

2. Once the budget has been declared finally adopted, each Member State shall, from 1 January of the following financial year or from the date of the declaration of final adoption of the budget if that is after 1 January, be bound to make over to the Union the payments due as specified in the Council Regulation implementing the Decision on the system of the Union's own resources.

Article 38

Draft amending budgets

1. If there are unavoidable, exceptional or unforeseen circumstances, the Commission may present draft amending budgets.

Requests for amending budgets, in the same circumstances as referred to in the preceding paragraph, 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, taking into account any expected under-implementation of appropriations.

2. The Commission shall, save in exceptional circumstances, submit any draft amending budget simultaneously to the European Parliament and the Council by 1 September each year at the latest. It may attach an opinion to the requests for amending budgets from the other institutions.

3. The European Parliament and the Council shall discuss them with due account for their urgency.

Article 39

Early transmission of estimates and draft budgets

The Commission and the budgetary authority may agree to bring forward certain dates for the transmission of the estimates, and for the adoption and transmission of the draft budget. This arrangement may not, however, have the effect of shortening or prolonging the periods allowed for consideration of these texts under Article 314 of the TFEU and Article 177 of the Euratom Treaty.

CHAPTER 2

STRUCTURE AND PRESENTATION OF THE BUDGET

Article 40

Structure of the budget

The budget shall consist of the following:

- (a) a general statement of revenue and expenditure;
- (b) separate sections subdivided into statements of revenue and expenditure for each institution.

The European Council and the Council shall share the same section of the budget.

Article 41

Classification of the budget

1. Commission revenue and the revenue and expenditure of the other institutions shall be classified by the budgetary authority 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 budgetary authority and classified according to purpose.

A title shall correspond to a policy area and a 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.

Article 42 *Prohibition of negative revenue*

The budget may not contain negative revenue.

The own resources paid under the Council Decision on the system of the Union's own resources shall be net amounts and shall be shown as such in the summary statement of revenue in the budget.

Article 43 *Provisions*

1. Each section of the budget may include a 'provisions' title. Appropriations shall be entered in this title in the following two circumstances:

- (a) where no basic act exists for the action concerned when the budget is established;
- (b) where there are serious grounds for doubting the adequacy of the appropriations or the possibility of implementing, under conditions consonant with sound financial management, the appropriations entered on the lines concerned.

The appropriations in this title may be used only after transfer in accordance with the procedure laid down in point (d) of Article 23 (1), where the adoption of the basic act is subject to the procedure laid down in Article 294 of the TFEU, and that of Article 24, 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 budgetary authority shall take a decision on these transfers as provided in Article 24.

Article 44 *Negative reserve*

The Commission section of the budget may include a 'negative reserve' limited to a maximum amount of EUR 200 million. This reserve, which shall be entered in a separate title, may comprise both commitment appropriations and payment appropriations.

This reserve must be drawn upon before the end of the financial year by means of transfer in accordance with the procedure laid down in Articles 21 and 23.

Article 45
Reserve for emergency aid

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 24 and 25.

Article 46
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;
 - (ii) the estimated revenue for the preceding financial year and the revenue for year $n - 2$;
 - (iii) the commitment and payment appropriations for the financial year concerned;
 - (iv) the commitment and payment appropriations for the preceding financial year;
 - (v) the expenditure committed and the expenditure paid in year $n - 2$;
 - (vi) appropriate remarks on each subdivision, as set out in Article 41(1);
 - (b) in each section of the budget, the revenue and expenditure shall be shown in the same structure as in point (a);
 - (c) as regards staff:
 - (i) for each section of the budget, 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 budget 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 budget 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 must specify the number of highly qualified technical or scientific 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 200 which receives a grant 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) as regards 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 beneficiaries who initially defaulted, leading to activation of the performance guarantee. These 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. These lines shall carry a token entry "*pro memoria*", so long as 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 these 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 the financial year concerned;

(e) the total amount of CFSP expenditure shall be entered into one budget chapter, entitled CFSP, with specific budgetary articles. Those articles shall cover CFSP expenditure and shall contain specific budget lines identifying at least the single major missions.

2. In addition to the documents referred to in paragraph 1 the budgetary authority may attach any other relevant documents to the budget.

Article 47

Rules on the Establishment Plan for staff

1. The establishment plan described in point (c) of Article 46(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 establishment plans by up to 10 % of posts authorised, subject to two conditions:

- (a) that the volume of staff appropriations corresponding to a full financial year is not affected, and
- (b) that the limit of the total number of posts authorised by each establishment plan is not exceeded.

Three weeks before making the modifications referred to in the second subparagraph, the institutions shall inform the budgetary authority of their intentions. In the event of duly justified reasons being raised within this period by either branch of the budgetary authority, the institutions shall refrain from making the modifications and the normal procedure 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

Article 48

Compliance of the budget with the multiannual financial framework

The budget shall comply with the multiannual financial framework.

Article 49

Compliance of Union acts with the budget and the multiannual financial framework

Where by implementation of an act of the Union the appropriations available in the budget or the allocations available in the multiannual financial framework would be exceeded, such act may be implemented in financial terms only after the budget has been amended and, if necessary, the financial framework has been appropriately revised.

TITLE IV

IMPLEMENTATION OF THE BUDGET

CHAPTER 1

GENERAL PROVISIONS

Article 50

Budget implementation according to sound financial management

1. The Commission shall implement the revenue and expenditure of the budget in accordance with this Regulation, on 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.

Article 51

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.

A basic act is a legal act which provides a legal basis for the action and for the implementation of the corresponding expenditure entered in the budget.

2. In application of the TFEU and the Euratom Treaty, a basic act is an act adopted by the legislative authority and may take the form of a regulation, a directive or a decision within the meaning of Article 288 of the TFEU.

3. In application of Title V of the Treaty on European Union, a basic act may take one of the forms specified in Articles 26(2), 28(1), 29, 31(2), 33 and 37 of the Treaty on European Union.

4. Recommendations and opinions do not constitute basic acts within the meaning of this Article, nor do resolutions, conclusions, declarations or other acts which have no legal effects.

5. By way of derogation from paragraphs 1, 2 and 3, the following may be implemented without a basic act provided the actions which they are intended to finance fall within the powers 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 successive financial years;
- (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 are to follow a coherent approach and may take various forms. The relevant commitment appropriations may be entered in the budget for not more than three successive financial years. The legislative procedure must be concluded before the end of the third financial year. In the course of the legislative procedure, the commitment of appropriations must correspond to the particular features of the preparatory action as regards the activities envisaged, the aims pursued and the persons benefited. Consequently, the means implemented cannot correspond in volume to those envisaged for financing the definitive action itself.

When the draft budget is presented, the Commission shall submit a report to the budgetary authority on the actions referred to in point (a) and the first paragraph of this point which shall also contain an assessment of results and the follow-up envisaged;

- (c) appropriations for preparatory measures in the field of Title V of the Treaty on European Union. These 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 are 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 of the Union for Foreign Affairs and Security Policy.

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

- (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 given in the delegated Regulation referred to in Article 199;
- (e) appropriations for the operation of each institution under its administrative autonomy.

Article 52 *Implementation of the budget by other Institutions*

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 with the Commission in order to facilitate the implementation of the Union Delegations' administrative appropriations. Those arrangements shall not contain any derogation from the provisions of this Regulation and the delegated Regulation referred to in Article 199.

Article 53

Delegation of budget implementation powers

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 by this Regulation and by their internal rules and within the limits which they lay down in the instrument of delegation. Those so empowered may act only within the limits of the powers expressly conferred upon them.

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 submitted to the same duties, obligations and accountability as any other subdelegated authorising officer of the Commission.

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

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

Article 54

Conflict of interests

1. All financial actors and any other person involved in budget implementation, management, audit or control shall be prohibited from taking any action which may bring their own interests into conflict with those of the Union. Should such a case arise, the person concerned must refrain from such actions and refer the matter to the competent authority.

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

CHAPTER 2

METHODS OF IMPLEMENTATION

Article 55

Methods of implementation of the budget

1. The Commission shall implement the budget in the following ways:

(a) by its departments, by Union Delegations in accordance with the second paragraph of Article 53, or through executive agencies referred to in Article 59;

(b) indirectly, in shared management with Member States or by entrusting budget implementation tasks to:

- (i) third countries or the bodies they have designated;
- (ii) international organisations and their agencies;
- (iii) financial institutions entrusted with the implementation of Financial Instruments pursuant to Title VIII;
- (iv) the European Investment Bank and the European Investment Fund or any other subsidiary of the Bank;
- (v) bodies referred to in Articles 200 and 201;
- (vi) public law bodies or bodies governed by private law with a public service mission as far as these latter provide adequate financial guarantees;
- (vii) bodies governed by private law of a Member State, entrusted with the implementation of a public and private partnership and providing adequate financial guarantees;
- (viii) persons entrusted with the implementation of specific actions pursuant to Title V of the Treaty on the European Union, and identified in the relevant basic act within the meaning of Article 51 of this Regulation.

2. Member States and entities and persons listed under point (b) of paragraph 1 shall not have the status of authorising officer by delegation.

3. The Commission may not entrust third parties with executive powers it enjoys under the Treaties where they involve a large measure of discretion implying political choices.

Article 56

Shared management with Member States

1. Member States shall respect the principles of sound financial management, transparency and non-discrimination and ensure the visibility of Union action when they manage Union funds. To this end, Member States shall fulfil the control and audit obligations and assume the resulting responsibilities laid down in this Regulation. Complementary provisions may be laid down in sector-specific rules.

2. Member States shall prevent, detect and correct irregularities and fraud when executing tasks related to the implementation of the budget. To this end they shall carry out ex ante and ex post controls including, where appropriate, on the spot checks, to ensure that the actions financed from the budget are effectively carried out and implemented correctly, recover funds unduly paid and bring legal proceedings as necessary.

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

3. In accordance with the sector-specific rules, Member States shall accredit one or more public sector bodies which shall be solely responsible for the proper management and control of the funds, for which accreditation has been granted. This shall be without prejudice to the possibility for these bodies to carry out tasks not related to the management of Union funds or to entrust certain of their tasks to other bodies.

The accreditation shall be given by a Member State authority in accordance with sector-specific rules ensuring that the body is capable of properly managing the funds. The sector-specific rules may also define a role of the Commission in the accreditation process.

The accrediting authority shall be responsible for supervising the body and for taking all necessary measures to remedy any deficiency in its operation, including the suspension and withdrawal of the accreditation.

4. Bodies accredited pursuant to paragraph 3 of this Article shall:

- (a) set up and ensure the functioning of an effective and efficient internal control system;
- (b) use an annual accounting system providing 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 accredited body;
- (d) ensure, in conformity with Article 31(2), annual expenditure publication of recipients of Union funds;
- (f) ensure a protection of personal data which satisfies the principles laid down in Directive 95/46/EC.

5. Bodies accredited pursuant to paragraph 3 of this Article shall provide the Commission by 1 February of the following financial year with:

- (a) their accounts drawn up for the expenditure made in the execution of the tasks entrusted;
- (b) a summary of the results of all available audits and controls carried out, including an analysis of systematic or recurrent weaknesses as well as corrective actions taken or planned;
- (c) a management declaration of assurance as to the completeness, accuracy and veracity of the accounts, the proper functioning of the internal control systems as well as to the legality and regularity of the underlying transactions and the respect of the principle of sound financial management;
- (d) the opinion of an independent audit body on the management declaration of assurance mentioned in point (c) of this paragraph, covering all its elements.

If a Member State has accredited more than one body per policy area, it shall by 15 February of the following financial year provide the Commission with a synthesis report consisting of

an overview at national level of all management declarations of assurance and the independent audit opinions thereon, prepared for the policy area concerned.

6. The Commission shall:

- (a) apply procedures for a timely financial clearance of the accounts of the accredited bodies, ensuring that the accounts are complete, accurate and true and allowing for a timely clearance of irregularity cases;
- (b) exclude from Union financing expenditure the disbursements which have been made in breach of Union law.

Sector-specific rules shall govern the conditions under which payments to Member States may be suspended by the Commission or interrupted by the authorising officer by delegation

Article 57

Indirect management with entities and persons other than Member States

1. Entities and persons entrusted with budget implementation tasks pursuant to point (b) of Article 55(1) shall respect the principles of sound financial management, transparency and non-discrimination and 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:

- (a) the nature of the tasks entrusted 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.

2. To this effect, the entities and persons referred to in paragraph 1 shall:

- (a) set up and ensure the functioning of an effective and efficient internal control system;
- (b) use an annual accounting system providing 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 conformity with Article 31(2), annual expenditure publication of recipients of Union funds;
- (f) ensure a reasonable protection of personal data.

Persons referred to in point (viii) of Article 55(1) (b) may satisfy these requirements progressively. They shall adopt their financial rules with the Commission's prior consent.

3. The entities and persons referred to in paragraph 1 shall prevent, detect and correct irregularities and fraud when executing tasks related to the implementation of the budget. To this end they shall carry out ex ante and ex post controls including, where appropriate, on the spot checks, to ensure that the actions financed from the budget are effectively carried out and implemented correctly, recover funds unduly paid and bring legal proceedings as necessary.

4. The Commission may suspend payments to entities and persons referred to in paragraph 1, in particular when systemic errors which question the reliability of the internal control systems of the entity or person concerned or the legality and regularity of the underlying transactions are detected.

The authorising officer by delegation may interrupt payments to such entities or persons fully or partially for the purpose of further verifications when information comes to his notice 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, provided the interruption is necessary to prevent significant damage to the financial interests of the Union.

5. The entities and persons referred to in paragraph 1 shall provide the Commission with:

- (a) a report on the implementation of the tasks entrusted;
- (b) their accounts drawn up for the expenditure made in the execution of the tasks entrusted;
- (c) a summary of the results of all available audits and controls carried out, including an analysis of systematic or recurrent weaknesses as well as corrective actions taken or planned;
- (d) a management declaration of assurance as to the completeness, accuracy and veracity of the accounts, the proper functioning of the internal control system as well as to the legality and regularity of the underlying transactions and the respect of the principle of sound financial management;
- (e) the opinion of an independent audit body on the management declaration of assurance mentioned in point (d) of this paragraph, covering all its elements.

These elements shall be provided to the Commission by 1 February of the following financial year with the exception of the audit opinion referred to in point (e). The latter shall be provided at the latest by 15 March.

These obligations shall be without prejudice to the provisions made in agreements concluded with international organisations and third countries. These provisions shall include at least the obligation of such entities to provide the Commission annually with a statement that, during the financial year concerned, the Union contribution has been used and accounted for in compliance with the requirements set out in paragraph 2 of this Article and the obligations laid down in the agreement concluded with the relevant international organisations or third country.

6. The Commission shall:

- (a) ensure supervision and evaluation of the implementation of the tasks entrusted;
- (b) apply procedures for a timely financial clearance of the accounts of the entrusted entities and persons, ensuring that the accounts are complete, accurate and true and allowing for a timely clearance of irregularity cases;
- (c) exclude from Union financing expenditure the disbursements which have been made in breach of the applicable rules.

7. Paragraphs 5 and 6 of this Article shall not apply to entities and persons which are subject to a separate procedure of discharge from the budgetary authority.

Article 58

Ex ante controls and agreements under indirect management

1. Before the Commission entrusts tasks of budget implementation to entities or persons listed under point (b) of Article 55(1), it shall obtain evidence that the requirements of points (a) to (d) of Article 57(2) are fulfilled.

The entity or person concerned shall inform the Commission without delay of any substantial change in its systems, rules and procedures that relate to the management of the Union funds entrusted. Where such a change occurs, the Commission shall review the agreements concluded with the entity or person concerned in order to ensure continued compliance with the conditions set out in points (a) to (d) of Article 57(2).

2. When choosing an entity from within a category listed in points (ii), (iii), (vi) and (vii) of Article 55(1)(b) the Commission shall take due account of the nature of the tasks to be entrusted as well as the experience and the operational and financial capacity of the entities concerned. The choice shall be justified on objective grounds and may not give rise to a conflict of interest.

3. Agreements concluded under indirect management shall stipulate the requirements laid down in points (a) to (d) of Article 57(2). They shall clearly define the tasks entrusted and contain an undertaking of the entities or persons concerned to fulfil the obligations laid down in points (e) to (f) of Article 57(2), and to refrain from any act which may give rise to a conflict of interests.

Article 59

Executive agencies

1. The executive agencies shall be legal persons under Union law created by Commission Decision to which powers may be delegated to implement all or part of a Union programme or project on behalf of the Commission and under its responsibility in accordance with Council Regulation (EC) No 58/2003²⁰.

²⁰ OJ L 11, 16.1.2003, p. 1.

2. Implementation of the corresponding operational appropriations shall be carried out by the director of the agency in direct management.

Article 60
Limits to delegation of powers

1. The Commission may not entrust measures of implementation of funds deriving from the budget, including payment and recovery, to external private-sector entities or bodies, except in the case referred to in points (vi) and (vii) of Article 55(1)(b), or in specific cases where the payments involved are to be made to beneficiaries determined by the Commission, are subject to conditions and amounts fixed by the Commission and do not involve the exercise of discretion by the entity or body making the payments.

2. The tasks which may be entrusted by contract to external private-sector entities or bodies other than those which have a public-service mission are technical expertise tasks and administrative, preparatory or ancillary tasks involving neither the exercise of public authority nor the use of discretionary powers of judgment.

CHAPTER 3 **FINANCIAL ACTORS**

SECTION 1 **PRINCIPLE OF SEGREGATION OF DUTIES**

Article 61
Segregation of duties

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

SECTION 2 **AUTHORISING OFFICER**

Article 62
The authorising officer

1. The 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 lay down in its internal administrative rules the staff of an appropriate level to whom it delegates in compliance with the conditions in its rules of procedure the duties of the authorising officer, the scope of the powers delegated and the possibility for the persons to whom these powers are delegated to subdelegate them.

4. The powers of authorising officer shall be delegated or subdelegated only to staff.
5. Authorising officers by delegation or subdelegation may act only within the limits set by the instrument of delegation or subdelegation. The responsible authorising officer by delegation or subdelegation may be assisted in his task by one or more members of staff entrusted, under his responsibility, to carry out certain operations necessary for implementation of the budget and presentation of the accounts.
6. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with the second paragraph of Article 53, they shall be subject to the Commission as the institution responsible for the definition, exercise, control and appraisal of their duties and responsibilities as authorising officers by subdelegation. The Commission shall, at the same time, inform the High Representative thereof.

Article 63

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 principles of sound financial management and for ensuring that the requirements of legality and regularity are complied with.
2. For the purposes of paragraph 1 of this Article the authorising officer by delegation shall, in accordance with Article 28 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 duties. The establishment of such structure and systems shall be supported by a comprehensive risk analysis.
3. To implement expenditure, the authorising officer by delegation and by subdelegation shall make budgetary commitments and legal commitments, shall validate expenditure and authorise payments and shall undertake the preliminaries 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, members of staff who carry out the verification shall be other than, and not subordinate to, those 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 by the members of staff other than those responsible for the ex post controls. The members of staff responsible for the ex post controls shall not be subordinate to the members of staff responsible for the ex ante controls.

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

8. Any member of staff, involved in the financial management and control of transactions who considers that a decision he is required by his superior to apply or to agree to is irregular or contrary to the principles of sound financial management or the professional rules he is required to observe, shall inform the authorising officer by delegation in writing and, if that officer fails to take action, the panel referred to in Article 70(6). In the event of any illegal activity, fraud or corruption which may harm the interests of the Union, he shall inform the authorities and bodies designated by the applicable legislation.

9. The authorising officer by delegation shall report to his institution on the performance of his 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 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.

That report shall indicate the results of the operations by reference to the objectives set, the risks associated with these operations, the use made of the resources provided and the efficiency and effectiveness of the internal control system. No later than 15 June each year, the Commission shall send to the budgetary authority a summary of the annual reports for the previous year. The annual activity reports of the authorising officers by delegation shall also be made available to the budgetary authority.

Article 64 *Powers and duties of heads of Union Delegations*

1. Where Heads of Union Delegations act as authorising officers by subdelegation in accordance with the second paragraph of Article 53, they shall cooperate closely with the Commission for the proper implementation of the funds, in order to ensure, in particular, the legality and regularity of financial transactions, the respect of the principle of sound financial management in the management of the funds and the effective protection 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 responsible Directors-General of the Commission and of the EEAS thereof without delay. Those Directors-General shall take appropriate steps to remedy the situation.

2. If Heads of Union Delegations find themselves in a situation referred to in Article 63(8), they shall refer the matter to the specialised financial irregularities panel set up pursuant to Article 70(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 the second paragraph of Article 53 shall report to their authorising officer by delegation so that the latter can integrate their reports in his annual activity report referred to in Article 63(9). The reports of the Heads of Union Delegations shall include information on the efficiency and effectiveness of internal management and control systems put in place in their delegation, as well as on the management of operations subdelegated to them, and provide the assurance pursuant to Article 70(5). These reports shall be annexed to the annual activity report of the authorising officer by delegation, and shall be made available to the budgetary authority taking into account, where appropriate, their confidentiality.

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

4. Heads of Union Delegations acting as authorising officers by subdelegation in accordance with the second paragraph of Article 53 shall reply to any request by the authorising officer by delegation of Commission at its 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 in accordance with Article 319 of the TFEU.

SECTION 3

ACCOUNTING OFFICER

Article 65

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) proper implementation of payments, collection of revenue and recovery of amounts established as being receivable;
- (b) preparing and presenting the accounts in accordance with Title IX;

- (c) keeping the accounts in accordance with Title IX;
- (d) laying down, in accordance with Title IX, the accounting procedures and the chart of accounts;
- (e) laying down and validating the accounting systems and where appropriate validating systems laid down by the authorising officer to supply or justify accounting information; the accounting officer shall be empowered to verify at any time the respect of validation criteria;
- (f) treasury management.

The responsibilities of the accounting officer of 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 also act as the accounting officer of the EEAS in respect of the implementation of the EEAS section of the budget, subject to Article 208.

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.

3. The accounting officer shall obtain from authorising officers, who shall guarantee its reliability, all the information necessary for the production of accounts which give a true image of the Institutions' financial situation and of budgetary implementation.

4. Before the adoption of the accounts by the institution or the body referred to in Article 200, the accounting officer shall sign them off, thereby certifying that he has a reasonable assurance that the accounts present a true and fair view of the financial situation of the institution or body referred to in Article 200.

For that purpose, the accounting officer shall verify that the accounts have been prepared in accordance with the Union accounting rules and procedures and that all revenue and expenditure is entered in the accounts.

The authorising officers by delegation shall forward all information that the accounting officer needs in order to fulfil his 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 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. Save as otherwise provided in this Regulation, only the accounting officer is empowered to manage cash and cash equivalents. He shall be responsible for their safekeeping.

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 listed in the first paragraph of point (iii) and (iv) of Article 55(1)(b).

These 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.

That bank account is managed under the responsibility of the authorising officer.

Article 66

Powers which may be delegated by the accounting officer

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

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

SECTION 4 IMPREST ADMINISTRATOR

Article 67

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 Regulation referred to in Article 199.

However, in the field of crisis management aid and humanitarian aid operations within the meaning of Article 118, imprest accounts may be used without any limitation on the amount while respecting the level of appropriations decided by the budgetary authority 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.

CHAPTER 4

LIABILITY OF THE FINANCIAL ACTORS

SECTION 1

GENERAL RULES

Article 68

Suspension and withdrawal of delegations given to authorising officers

1. Without prejudice to any disciplinary action, authorising officers by delegation and subdelegation may at any time have their delegation or subdelegation withdrawn temporarily or definitively by the authority which appointed them.
2. Without prejudice to any disciplinary action, the accounting officer may at any time be suspended temporarily or definitively from his duties by the authority which appointed him.
3. Without prejudice to any disciplinary action, imprest administrators may at any time be suspended temporarily or definitively from their duties by the authority which appointed them.

Article 69

Liability of the authorising officer for illegal activity, fraud or corruption

1. The provisions of this Chapter are without prejudice to any liability under criminal law which the financial actors referred to in Article 68 may incur as provided in the applicable national law and in the provisions in force on the protection of the Union's financial interests and on the fight against corruption involving officials of the Union or officials of Member States.
2. Each authorising officer, accounting officer or imprest administrator shall be liable to disciplinary action and payment of compensation as laid down in the Staff Regulations, without prejudice to Articles 70, 71 and 72. 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.

SECTION 2

RULES APPLICABLE TO AUTHORISING OFFICERS BY DELEGATION AND SUBDELEGATION

Article 70

Rules applicable to authorising officers

1. The authorising officer 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:

- (a) the authorising officer, whether intentionally or through gross negligence on his part, determines entitlements to be recovered or issues recovery orders, commits expenditure or signs a payment order without complying with this Regulation and the delegated Regulation referred to in Article 199;
- (b) the authorising officer, whether intentionally or through gross negligence on his part, omits to draw up a document establishing an amount receivable, neglects to issue a recovery order or is late in issuing it or is late in issuing a payment order, thereby rendering the institution liable to civil action by third parties.

3. An authorising officer by delegation or subdelegation who considers that a decision which it is his responsibility to take is irregular or contrary to the principles of sound financial management shall inform the delegating authority in writing. If the delegating authority then gives a reasoned instruction in writing to the authorising officer by delegation or subdelegation to take that decision, the authorising officer may not be held liable.

4. In the event of subdelegation within his services, the authorising officer by delegation continues to be responsible for the efficiency and effectiveness of the internal management and control systems put in place and for the choice of the authorising officer by 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, their efficiency and effectiveness. The Heads of Union Delegations shall be responsible for the adequate setting up and functioning of those systems, in accordance with the instructions of the authorising officer by delegation, and for the management of the funds and the operations they carry out within the Union Delegation under their responsibility. Before taking up their duties, they must complete specific training courses on the tasks and responsibilities of authorising officers and the implementation of the budget, in accordance with delegated Regulation referred to in Article 199.

Heads of Union Delegations shall report on their responsibilities pursuant to the first subparagraph of this paragraph in accordance with Article 64(3).

Each year, Heads of Union Delegations provide to the authorising officer by delegation of the Commission the 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 establish his statement of assurance, as provided for in Article 63(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 entailing liability to disciplinary action or to payment of compensation. If the panel detects systemic problems, it shall send a report with recommendations to the

authorising officer and to the authorising officer by delegation, provided the latter is not 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 the second paragraph of Article 53, the specialised financial irregularities panel set up by the Commission pursuant to paragraph 4 of this Article shall be competent for cases referred to in that paragraph.

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

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

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

SECTION 3

RULES APPLICABLE TO ACCOUNTING OFFICERS AND IMPREST ADMINISTRATORS

Article 71

Rules applicable to accounting officers

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

- (a) he loses or damages funds, assets and documents in his keeping;
- (b) he wrongly alters bank accounts or postal giro accounts;
- (c) he recovers or pays amounts which are not in conformity with the corresponding recovery or payment orders;
- (d) he fails to collect revenue due.

Article 72
Rules applicable to imprest officers

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

- (a) he loses or damages funds, assets and documents in his keeping;
- (b) he cannot provide proper supporting documents for the payments he has made;
- (c) he makes payments to persons other than those entitled;
- (d) he fails to collect revenue due.

CHAPTER 5

REVENUE OPERATIONS

SECTION 1

MAKING AVAILABLE OF OWN RESOURCES

Article 73
Own resources

An estimate of revenue constituted by own resources, as referred to in the Council Decision on the system of the Union's own resources, shall be entered in the budget in euro. It shall be made available in accordance with the Council Regulation implementing that Decision.

SECTION 2

ESTIMATE OF AMOUNTS RECEIVABLE

Article 74
Estimate of the amount 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 first make an estimate of the amount receivable.
2. The estimate of the amount receivable is adjusted by the authorising officer responsible as soon as he is aware of an event modifying the measure or the situation which has generated its drawing up.

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

When the recovery order is drawn up for the same amount, the estimate of amounts receivable 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 the Council Decision on the system of the Union's own resources which are paid at fixed intervals by the Member States. The authorising officer responsible shall issue a recovery order in respect of these amounts.

SECTION 3

ESTABLISHMENT OF AMOUNTS RECEIVABLE

Article 75

Establishment of amounts receivable

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

- (a) verifies that the debt exists;
- (b) determines or verifies the reality and the amount of the debt;
- (c) verifies the conditions in which the debt is due.

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 must 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 conditions in which interest on late payment is due to the Union shall be laid down in the delegated Regulation referred to in Article 199.

SECTION 4

AUTHORISATION OF RECOVERY

Article 76

Authorisation of recovery

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

SECTION 5

RECOVERY

Article 77 *Rules on recovery*

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

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

2. Where the responsible authorising officer by delegation is planning to waive or partially waive recovery of an established amount receivable, he shall ensure that the waiver is in order and complies with the principle of sound financial management and proportionality in accordance with the procedures and the criteria laid down in the delegated Regulation referred to in Article 199. The waiver decision must be substantiated. The authorising officer may delegate the decision only as laid down in the delegated Regulation referred to in Article 199.

The responsible authorising officer may cancel an established amount receivable in full or in part, in accordance with the conditions set out in the delegated Regulation referred to in Article 199. The partial cancellation of an established amount receivable does not imply a waiver of a Union's established entitlement.

Article 78 *Limitation period*

Without prejudice to the provisions of specific regulations and the application of the Council Decision relating to the Union's own resources system, 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.

The date for calculating the limitation period and the conditions for interrupting this period shall be laid down in the delegated Regulation referred to in Article 199.

Article 79 *National treatment for Union entitlements*

Amounts receivable by the Union shall not be treated less favourably than entitlements belonging to public bodies in the Member States where the recovery proceeding has been conducted.

Article 80
Fines, penalties and accrued interest imposed by the Commission

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.

The amount referred to in the first paragraph shall be recorded as budgetary revenue at the latest in the year following the exhaustion of all legal remedies to the extent that they are not returned to the entity that paid them in accordance with a judgment of the Court of Justice of the European Union.

However, a portion not exceeding 2 % of the total amounts referred to in the first paragraph may be withheld as a guarantee to ensure a minimum return on funds if the decision imposing the fine is overruled by the Court of Justice of the European Union. This portion shall be recorded as budget revenue in following years.

The first paragraph shall not apply to decisions on clearance of accounts or financial corrections.

CHAPTER 6

EXPENDITURE OPERATIONS

Article 81
Financing decision

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 Article 51(5), the commitment of the expenditure shall be preceded by a financing decision adopted by the institution or the authorities to which powers have been delegated by the institution.

SECTION 1

COMMITMENT OF EXPENDITURE

Article 82
Types of commitments

1. The budgetary commitment is the operation reserving the appropriation necessary to cover subsequent payments to honour legal commitments.

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

The budgetary commitment and the legal commitment shall be adopted by the same authorising officer, save in duly substantiated cases as provided for in the delegated Regulation referred to in Article 199.

2. The budgetary commitment is individual when the beneficiary and the amount of the expenditure are known.

The budgetary commitment is global when at least one of the elements necessary to identify the individual commitment is still not known.

The budgetary commitment is provisional when it is intended to cover the expenditure referred to in Article 162 or routine administrative expenditure and either the amount or the final beneficiaries are not definitively known.

3. 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 for administrative expenditure.

Article 83

Rules applicable to commitments

1. In respect of any measure which may give rise to expenditure chargeable to the budget, the authorising officer responsible must first make a budgetary commitment before entering into a legal obligation with third parties or transferring funds to a trust fund on the basis of Article 178.

2. The obligation for a budgetary commitment before entering into a legal commitment as stipulated in paragraph 1, is not applicable to legal commitments concluded following a declaration of a crisis situation in the framework of the Business Continuity Plan, in accordance with the procedures adopted by the Commission under its administrative autonomy.

3. Subject to the special provisions of Title IV of Part Two, global budget commitments shall cover the total cost of the corresponding individual legal commitments concluded up to 31 December of year $n + 1$.

Subject to Article 82(3) and Article 195(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 these budgetary commitments shall be decommitted by the authorising officer responsible.

The amount of each individual legal commitment adopted following a global commitment shall, prior to signature, be registered by the authorising officer responsible in the budgetary accounts and booked to the global commitment. In case of humanitarian aid operations, civil protection operations and crisis management aid, and when the urgency justifies it, the registration of the amounts may be done immediately after the signature of the corresponding individual legal commitment.

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

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

The amount of a budget commitment corresponding to a legal commitment for which no payment within the meaning of Article 87 has been made in a period of three years following the signing of the legal commitment shall be decommitted, exception made for cases under litigation before judicial courts or arbitral bodies.

Article 84 *Verifications 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 conforms to the provisions of the Treaties, of the budget, of this Regulation, of the delegated Regulation referred to in Article 199 of this Regulation and of all acts adopted in accordance with the Treaties and regulations;
- (d) the principle of sound financial management is complied with. The opportunity of prefinancing payments, its amount and the overall payment schedule shall be commensurate with the planned duration, the progress in implementation and the financial risks 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 conforms to the provisions of the Treaties, of the budget, of this Regulation, of the delegated Regulation referred to in Article 199 of this Regulation and of all acts adopted in accordance with the Treaties and the regulations;
- (c) the principle of sound financial management is respected.

SECTION 2 **VALIDATION OF EXPENDITURE**

Article 85 *Validation of expenditure*

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

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

- (b) determines or verifies the reality and the amount of the claim;
- (c) verifies the conditions in which payment is due.

SECTION 3

AUTHORISATION OF EXPENDITURE

Article 86

Authorisation of expenditure

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

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

SECTION 4

PAYMENT OF EXPENDITURE

Article 87

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 the reception 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 the budgetary accounting between the different types of payment referred to in paragraph 1 at the time they are made.

3. The accounting rules referred to in Article 143 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 responsible authorising officer. To this effect appropriate provisions shall be included in the contracts, grant decisions and agreements as well as the delegation agreements entrusting implementation tasks to the entities and persons referred to in point (b) of Article 55(1).

5. Further instalments made to beneficiaries of grants which take the form of a lump sum shall be treated as interim payments.

Article 88

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

Article 89

Time limits for expenditure

The validation, authorisation and payment of expenditure must be completed within the time limits laid down in the delegated Regulation referred to in Article 199, which shall also specify the circumstances in which creditors paid late are entitled to receive default interest charged to the line from which the principal was paid.

CHAPTER 7

IT SYSTEMS

Article 90

Electronic management of operations

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

Article 91

Transmission of documents between institutions

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

CHAPTER 8

INTERNAL AUDITOR

Article 92

Appointment of the internal auditor

Each institution shall establish an internal auditing function which must be performed in compliance with the relevant international standards. The internal auditor appointed by the institution shall be answerable to the latter for verifying the proper operation of budgetary implementation systems and procedures. The internal auditor may not be either authorising officer or accounting officer.

For the purposes of the internal auditing of the EEAS, Heads of Union Delegations, acting as authorising officers by subdelegation in accordance with the second paragraph of Article 53 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 208.

Article 93

Powers and duties of the internal auditor

1. The internal auditor shall advise his 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.

He shall be responsible in particular:

- (a) for 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) for assessing the efficiency and effectiveness of the internal control and audit systems applicable to every budgetary implementation operation.

2. The internal auditor shall perform his duties on all the institution's activities and departments. He shall enjoy full and unlimited access to all information required to perform his duties, if necessary on the spot, 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 findings and recommendations. The institution shall ensure that action is taken on 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 on those recommendations.

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

Article 94
Independence of the internal auditor

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

If the internal auditor is a member of staff, he shall assume responsibility as laid down in the Staff Regulations and set out in the delegated Regulation referred to in Article 199.

TITLE V PROCUREMENT

CHAPTER 1 GENERAL PROVISIONS

SECTION 1 SCOPE AND AWARD PRINCIPLES

Article 95

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 111 and 181, 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.

These contracts comprise:

- (a) building contracts;
- (b) supply contracts;
- (c) works contracts;
- (d) service contracts.

2. Framework contracts are contracts concluded between one or more contracting authorities and one or more economic operators, the purpose of which is to establish the terms governing contracts to be awarded during a given period, in particular with regard to price and, where appropriate, the quantity envisaged. They shall be governed by the provisions of this Title concerning the award procedure, including advertising.

3. This Title does not apply to grants, without prejudice to Articles 100 to 103, or to service contracts concluded between the Commission, on the one hand, and the European Investment Bank, the European Investment Fund or any other subsidiary of the European Investment Bank, on the other hand.

Article 96

Principles applicable to public contracts

1. All public contracts financed in whole or in part by the budget shall comply with the principles of transparency, proportionality, equal treatment and non-discrimination.

2. All procurement contracts shall be put out to tender on the broadest possible base, except when use is made of the negotiated procedure referred to in point (d) of Article 98(1).

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

SECTION 2 PUBLICATION

Article 97 Publication of public contracts

1. All contracts exceeding the thresholds provided for in Article 112 or Article 181 shall be published in the *Official Journal of the European Union*.

Contract notices shall be published in advance except in the cases referred to in Article 98(2) of this Regulation, as specified in the delegated Regulation referred to in Article 199 of this Regulation, and for the service contracts covered by Annex IIB to Directive 2004/18/EC.

Publication of certain information after the contract has been awarded may be dropped where it 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 them.

2. Contracts with a value below the thresholds provided for in Article 112 or Article 181 and the service contracts referred to in Annex IIB to Directive 2004/18/EC shall be advertised by appropriate means, as specified in the delegated Regulation referred to in Article 199.

SECTION 3 PROCUREMENT PROCEDURES

Article 98 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 200 and 201, 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 a contracting authority from a Member State, the procurement procedure may be carried out jointly by the institution and this contracting authority, as specified in the delegated Regulation referred to in Article 199.

2. For contracts where the value exceeds the thresholds provided for in Article 112 or Article 181, use of the negotiated procedure shall be authorised only in the cases provided for in the delegated Regulation referred to in Article 199.

3. The thresholds below which the contracting authority may either use a negotiated procedure or, by way of derogation from the first subparagraph of Article 95(1), simply pay costs against invoices shall be determined in the delegated Regulation referred to in Article 199.

4. The delegated Regulation referred to in Article 199 shall define the procurement procedure, referred to in paragraph 1, applicable to service contracts covered by Annex IIB to Directive 2004/18/EC and to contracts which are declared to be secret, whose performance must be accompanied by special security measures, or when the protection of essential interests of the Union so requires.

Article 99

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.

Article 100

Exclusion criteria applicable for participation in tenders

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 an illegal activity is detrimental to the Union's financial interests;
- (f) they are currently subject to an administrative penalty referred to in Article 103(1).

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

Points (b) and (e) shall not apply when 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 the judgement referred to in points (b) or (e).

2. In 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 at stake on the grounds referred to in paragraph 1, points (a), (c) and (d) if this is indispensable in order to ensure the continuity of service of the institution. In this case, it shall motivate 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, as specified in the delegated Regulation referred to in Article 199.

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

- (a) where the candidate or tenderer is a legal entity, provide information on the ownership or on the management, control and power of representation of the legal entity 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 delegated Regulation referred to in Article 199 shall determine the maximum period during which the situations referred to in paragraph 1 give rise to the exclusion of candidates or tenderers from participation in a procurement procedure. The maximum period shall not exceed 10 years.

Article 101
Exclusion criteria applicable during procurement procedure

A contract shall not be awarded to candidates or tenderers who, during the procurement procedure for this contract:

- (a) are subject to a conflict of interest;
- (b) are guilty of misrepresentation in supplying the information required by the contracting authority as a condition of participation in the procurement procedure or fail to supply this information;
- (c) find themselves in one of the situations of exclusion, referred to in Article 100(1), for this procurement procedure.

Article 102
Central exclusion database

1. A central database shall be set up and operated by the Commission in compliance with Union rules on the protection of personal data. The database shall contain details of candidates and tenderers which is in one of the situations referred to in Article 100, point (b) of Article 103(1) and point (a) of Article 103(2). It shall be common to the institutions, executive agencies and the bodies referred to in Article 200.

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 55 and 58, shall communicate to the competent authorising officer information on candidates and tenderers which are in one of the situations referred to in point (e) of Article 100(1), where the conduct of the operator concerned was detrimental to the Union's financial interest. The authorising officer shall receive this information and request the accounting officer to enter it into the database.

The authorities and bodies mentioned 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 for the award of contracts associated with the implementation of the budget.

3. The European Central Bank, the European Investment Bank 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 for the award of contracts in accordance with their procurement rules.

They shall communicate to the Commission information on candidates and tenderers which are in one of the situations referred to in point (c) of Article 100(1), where the conduct of the operators concerned was detrimental to the Union's financial interests.

4. Transparent and coherent criteria to ensure proportionate application of the exclusion criteria shall be laid down in the delegated Regulation referred to in Article 199. The Commission shall define standardised procedures and technical specifications for the operation of the database.

Article 103
Administrative and financial penalties

1. The contracting authority may impose administrative or financial penalties on the following:

- (a) contractors, candidates or tenderers in the cases referred to in point (b) of Article 101;
- (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 must first give the person concerned an opportunity to present his observations.

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

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

3. Decisions or summary of decisions indicating the name of the economic operator, a short description of the facts, the duration of the exclusion or the amount of the financial penalties may be published by the institution.

Article 104
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 100, 101 and point (a) of Article 103(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.

Article 105
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. If deemed appropriate and proportionate, the contracting authority may require tenderers, as provided in the delegated Regulation referred to in Article 199, to lodge a security in advance as a guarantee that the bids made will not be withdrawn.

3. With the exception of the low value contracts referred to in Article 98(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.

4. 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.

Article 106

Principles of equal treatment and transparency

While the procurement procedure is under way, all contacts between the contracting authority and candidates or tenderers must satisfy conditions ensuring transparency and equal treatment. They may not lead to amendment of the conditions of the contract or the terms of the original tender.

Article 107

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, and all tenderers who meet the exclusion and the 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.

Article 108

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 must be substantiated and be brought to the attention of the candidates or tenderers.

SECTION 4

GUARANTEES AND CONTROL

Article 109 *Guarantees*

1. The contracting authority shall require contractors to lodge a guarantee in advance in the cases specified in the delegated Regulation referred to in Article 199.
2. The contracting authority may, if it deems it appropriate and proportionate, require contractors to lodge such a guarantee in order to:
 - (a) ensure full performance of the contract or
 - (b) limit the financial risks connected with payment of pre-financing.

Article 110 *Errors, irregularities and fraud in the procedure*

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 or suspend performance of the contract or, where appropriate, terminate the contract.

Where those errors, irregularities or fraud are attributable to the contractor, the contracting authority may in addition refuse to make payments, may recover amounts already paid or may terminate all the contracts concluded with this contractor, in proportion to the seriousness of the errors, irregularities or fraud.

CHAPTER 2

Provisions applicable to contracts awarded by the institutions on their own account

Article 111 *The contracting authority*

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 62, the necessary powers for the exercise of the function of contracting authority.

Article 112
Thresholds applicable

1. Subject to Title IV of Part Two of this Regulation, Directive 2004/18/EC lays down the thresholds which determine:

- (a) the publication arrangements referred to in Article 97;
- (b) the choice of procedures referred to in Article 98(1);
- (c) the corresponding time limits.

2. Subject to exceptions and conditions specified in the delegated Regulation referred to in Article 199, 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 period of standstill has elapsed.

Article 113
Rules on tender participation

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 with the Union a special agreement in the field of public procurement under the conditions laid down in that agreement.

Article 114
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 this agreement, under the conditions laid down in that agreement.

TITLE VI GRANTS

CHAPTER 1 Scope and form of grants

Article 115 *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 an objective forming part of a Union policy;
- (b) the functioning of a body which pursues an aim of general European interest or has an objective forming part of a Union policy (operating grants).

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

2. The following shall 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 referred to in Article 95 and aid paid as macro financial assistance and budgetary support;
- (c) financial instruments as referred to in Title VIII of Part One, as well as shareholdings or equity participations 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 they are members;
- (e) expenditure implemented under indirect management within the meaning of Articles 55, 56 and 57;
- (f) contributions made by virtue of their constitutive basic act to bodies set up under Article 59;
- (g) expenditure relating to fisheries markets referred to in Article 3(2) (f) of Council Regulation (EC) No 1290/2005²¹;

²¹ OJ L 209, 11.08.2005, p. 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. Each institution may award grants for communication activities where, for duly justified reasons, the use of public procurement procedures is not appropriate.

Article 116 *Forms of grants*

Grants may take any of the following forms:

- (a) reimbursement of a specified proportion of the eligible costs actually incurred;
- (b) lump sums;
- (c) standard scale of unit costs;
- (d) flat-rate financing;
- (e) a combination of the forms referred to in points (a) to (d).

CHAPTER 2 **Principles**

Article 117 *General principles applicable to grants*

1. Grants shall be subject to the principles of transparency and equal treatment.
2. They may not be cumulative or awarded retrospectively.
3. Grants must involve co-financing without prejudice to the specific rules laid down in Title IV of Part Two.

Grants shall not exceed an overall ceiling expressed in terms of an absolute value which is established on the basis of estimated eligible costs.

The grant shall not exceed the eligible costs.

4. Grants may not have the purpose or effect of producing a profit within the framework of the action or the work programme of the beneficiary.

The first subparagraph shall not apply to:

- (a) actions the objective of which is the reinforcement of the financial capacity of a beneficiary or the generation of an income;
- (b) study, research or training scholarships paid to natural persons;

5. If a political party at Union level realises a surplus of income over expenditure at the end of a financial year for which it received an operating grant, part of that surplus up to 25 % of the total income for that year may, by derogation from the no-profit rule laid down in paragraph 2, be carried over to the following year provided that it is used before the end of the first quarter of this following year.

For the purpose of verifying compliance with the no-profit rule, 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 European level exceed 100 % of its average annual income.

6. For lumps sums, standard scale of unit costs and flat rate financing, the no-profit and the co-financing rules laid down in paragraphs 3 and 4 shall be reasonably ensured at the time of their determination or at the stage of the evaluation of the grant application.

7. Articles 122, 123 and 124 shall not apply to grants awarded to the European Investment Bank, the European Investment Fund or any other subsidiary of that Bank.

Article 118 *Transparency*

1. Grants shall be subject to a work programme, to be published at the start of the year.

That work programme shall be implemented through the publication of calls for proposals, save in duly substantiated exceptional cases of urgency or where the characteristics of the beneficiary or of the action leave no other choice for a given action, or where the beneficiary is identified in a basic act as recipient of a grant.

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

2. All grants awarded in the course of a financial year shall be published annually in accordance with Article 31(2) and (3).

Article 119 *Principle of non-cumulative award*

Each action may give rise to the award of only one grant from the budget to any one beneficiary, except where the relevant basic acts authorise otherwise.

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.

Article 120
Retroactive award

1. A grant may be awarded for an action which has already begun only where the applicant can demonstrate the need to start the action before the grant is awarded.

In such cases, costs eligible for financing may not have been incurred prior to the date of submission of the grant application, save in duly substantiated exceptional cases as provided for in the basic act or in case of extreme urgency for crisis management aid, civil protection operations and humanitarian aid operations.

No grant may be awarded retrospectively for actions already completed.

2. An operating grant shall be awarded within six months after the start of the beneficiary's budgetary year. Costs eligible for financing may neither have been incurred before the grant application was lodged nor before the start of the beneficiary's budgetary year.

Article 121
Principle of degressive award

Unless otherwise specified in the basic act or in the financing decision for grants awarded under point (d) of Article 51(5) with regard to bodies pursuing an objective of general Union interest, when operating grants are renewed for a period exceeding four years, they shall be gradually decreased after the fourth year.

CHAPTER 3

Award procedure

Article 122
Applications for grants

1. Grant applications shall be submitted in writing.

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

- (a) legal persons;
- (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), 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 the behalf of the entity and offer guarantee for the protection of the Union's financial interests equivalent to that offered by legal persons.

3. Articles 100 to 103 shall also apply to grant applicants. Applicants must certify that they are not in one of the situations referred to in Articles 100 to 103. However, the authorising

officer may refrain from requiring such certification, as specified in the delegated Regulation referred to in Article 199, for any of the following:

- (a) very low valued grants;
- (b) when such certification has recently been provided in another award procedure;
- (c) when there is a material impossibility to provide such certification.

4. Administrative and financial penalties which are effective, proportionate and dissuasive may be imposed on applicants by the authorising officer, in accordance with Article 103.

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 or fail to supply that information.

Article 123

Selection and award criteria

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

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

Article 124

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 then, on the basis of the evaluation provided for in paragraph 1, draw up the list of beneficiaries and the amounts approved.

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

CHAPTER 4

Payment and control

Article 125 *Pre-financing guarantee*

The authorising officer responsible may, if he deems it appropriate and proportionate, require the beneficiary to lodge a guarantee in advance in order to limit the financial risks connected with the payment of pre-financing.

Article 126 *Payment of grants and controls*

1. The amount of the grant shall not become final until after the authorising officer responsible has accepted the final reports and accounts, without prejudice to subsequent checks by the institution.
2. Where substantial errors, irregularities or fraud are committed during the award procedure or the implementation of the grant and after the beneficiary has been given the opportunity to make his observations, the responsible authorising officer may take any of the measures referred to in Article 110.
3. Where controls or audits demonstrate that recurrent errors exist for one beneficiary which also have an impact on non-audited projects in which that beneficiary participates or has participated, the authorising officer may extend the findings to those non audited projects which may still be audited in accordance with the grant agreement and request the reimbursement of the related amount.

The beneficiary may, within an adversarial procedure, challenge the correction applied by demonstrating that the calculation of corrections is erroneous and submitting new calculation.

CHAPTER 5

Implementation

Article 127 *Subcontracting and grant redistribution*

1. Where implementation of the action, or the work programme in case of operating grant, requires the award of procurement contracts by the beneficiary, the relevant procedures shall be as set out in the delegated Regulation referred to in Article 199.
2. Where implementation of the action or the work programme requires financial support to be given to third parties, the beneficiary of a Union grant may give such financial support provided that the following conditions are met:

- (a) before awarding the grant, the responsible authorising officer 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, as defined in the Delegated Regulation referred to in Article 199.

3. Each grant decision or agreement shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises and on information, even stored on electronic media, over all third parties who have received Union funds.

TITLE VII

PRIZES

Article 128 *Definition*

For the purposes of this Regulation, "prizes" shall mean financial contributions awarded following contests.

Article 129 *General rules*

1. Prizes are subject to the principles of transparency and equal treatment.
2. Prizes shall be part of the work programme referred to in Article 118 and adopted by the Commission and shall be subject to Article 118(2).

The rules of the contest shall at least establish the award conditions, the criteria, the amount of the prize and the modality of payment.

Prizes may not be awarded directly without a contest and shall be subject to publication in the same way as call for proposals.

3. Prizes shall be awarded by the responsible authorising officer or by a jury. They shall be free to decide whether or not to award prizes depending on their appraisal of the quality of the entries by reference to the rules of the contest.

4. The amount of the prize shall not be linked to the costs incurred by the recipient.

5. Where prizes exceeding EUR 500.000 are awarded by a beneficiary of a grant or by a contractor, their award conditions and criteria shall be approved by the Commission.

TITLE VIII

FINANCIAL INSTRUMENTS

Article 130

Definition and scope

1. For the purpose of this Regulation, "financial instruments" shall mean Union measures of financial support provided from the budget in order to address a specific policy objective by way of loans, guarantees, equity or quasi-equity investments or participations, or other risk-bearing instruments, possibly combined with grants.
2. The provisions of this Title shall also apply to elements directly related to financial instruments, including technical assistance.
3. The Commission may implement financial instruments in direct management mode, or in indirect management mode by entrusting tasks to the entities referred to in points (iii) and (iv) of Article 55(1)(b).

Article 131

Principles applicable to financial instruments

1. Financial instruments shall be provided to final recipients of Union funds in accordance with sound financial management, transparency and equal treatment and in accordance with the objectives established in the basic act that applies to those financial instruments.
2. Without prejudice to points (d) and (e) of article 46(1), the budgetary expenditure linked to a financial instrument shall be kept within the relevant budgetary commitment made for it.
3. Financial intermediaries involved in the execution of financial operations under a financial instrument shall comply with relevant standards on the prevention of money laundering and fight against terrorism. They shall not be established in territories whose jurisdictions do not co-operate with the Union in relation to the application of internationally agreed tax standards.
4. Each agreement between an entity referred to in point (iii) and (iv) of Article 55(1)(b) and a financial intermediary referred to in paragraph 3 shall provide expressly for the Commission and the Court of Auditors to exercise their powers of control, on documents and on the premises and on information, even stored on electronic media, over all third parties who have received Union funds.

TITLE IX

PRESENTATION OF THE ACCOUNTS AND ACCOUNTING

CHAPTER 1

Presentation of the accounts

Article 132

Structure of the Union accounts

The Union 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 200 and of other bodies whose accounts must be consolidated in accordance with Union accounting rules;
- (b) the aggregated budgetary accounts which present the information contained in the budgetary accounts of the institutions financed by the budget.

Article 133

Report on budgetary and financial management

1. Each institution and body referred to in Article 132 shall prepare a report on budgetary and financial management of the financial year.

They shall send the report to the budgetary authority and the Court of Auditors, by 31 March following the financial year.

2. The report referred to in paragraph 1 shall give an account, at least, of the rate of implementation of the appropriations together with summary information on the transfers of appropriations among the various budget items.

Article 134

Rules governing the accounts

The financial statements referred to in Article 132 shall comply with the Union accounting rules as adopted by the Accounting Officer of the Commission and shall present a true and fair view of the assets and liabilities, charges, income and cash flow.

The budgetary accounts referred to in Article 132 shall comply with the budgetary principles laid out in this Regulation. They shall present a true and fair view of the budgetary revenue and expenditure operations.

Article 135
Accounting principles

The financial statements referred to in Article 132 shall present information, including accounting policies, in a manner that provides relevant, reliable, comparable and understandable information. They shall be drawn up in compliance with the generally accepted accounting principles as outlined in the Union's accounting rules.

Article 136
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 the assets and liabilities and financial situation and the economic result at 31 December of the previous year; they shall be presented in accordance with the relevant accounting rules adopted by the Accounting Officer of the Commission;
- (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 the relevant accounting rules adopted by the Accounting Officer of the Commission.

Article 137
Budgetary implementation reports

The budgetary implementation reports shall be presented in millions of euro. They shall comprise:

- (a) the budget implementation reports, which aggregate all budgetary operations for the year in terms of revenue and expenditure;
- (b) the notes to the budget implementation reports, which shall supplement and comment on the information given in the reports.

The structure in which budget implementation reports are presented shall be the same as that of the budget itself.

Article 138
Provisional accounts

The accounting officers of the other institutions and bodies referred to in Article 132 shall send to the accounting officer of the Commission and to the Court of Auditors by 1 March of the following year at the latest their provisional accounts.

The accounting officers of the other institutions and bodies referred to in article 132 shall also send by 1 March of following year at the latest a reporting package to the accounting officer of the Commission, in a standardized form as laid down by the accounting officer of the Commission for consolidation purposes.

The accounting officer of the Commission shall consolidate these provisional accounts with the Commission's provisional accounts and shall send to the Court of Auditors, by 31 March of the following year at the latest, the Commission's and the consolidated Union provisional accounts.

Article 139
Approval of the final consolidated accounts

1. The Court of Auditors shall, by the 1st of June at the latest, make its observations on the provisional accounts of other institutions and each body referred to in Article 132, and by 15 June at the latest, make its observations on the provisional accounts of the Commission and the consolidated Union provisional accounts.

2. The institutions other than the Commission, and each of the bodies referred to in Article 132, 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 of the following year at the latest with a view to drawing up the final consolidated accounts.

The accounting officers of the other institutions and bodies referred to in Article 132 shall also send by 1 July of the following year at the latest, a reporting package to the accounting officer of the Commission, in a standardized 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 132 shall also send to the Court of Auditors, with copy to the accounting officer of the Commission, at the same date as the transmission of his final accounts, a representation letter covering these final accounts.

The final accounts shall be accompanied by a note established by the accounting officer, by which he declares that they were prepared in accordance with this Title and with the applicable accounting principles, rules and methods.

4. The accounting officer of the Commission shall prepare the final consolidated accounts on the basis of the information presented by the other institutions and bodies referred to in Article 132 under paragraph 2. The final consolidated accounts shall be accompanied by a note established by the accounting officer of the Commission, by which he declares that they were prepared in accordance with Title IX and with the accounting principles, rules and methods set out in annex 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 before 31 July of the following financial year.

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 of the TFEU and Article 160c of the Euratom Treaty by 15 November of the following financial year.

CHAPTER 2

Information on the implementation of the budget

Article 140

Report on the budgetary guarantees and risks

In addition to the statements provided for in Articles 136 and 137, the Commission shall report to the European Parliament and to the Council once a year on budgetary guarantees referred to in point (d) of Article 46(1) and the corresponding risks.

This information shall be sent to the Court of Auditors at the same time.

Article 141

Budget implementation report

1. In addition to the statements provided for in Articles 136 and 137, 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.

These figures shall also provide details of the utilisation of appropriations carried over.

The figures shall be sent within 10 working days following the end of each month.

2. Three times a year, within the 30 working days following 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.

This report shall also provide details of the utilisation of appropriations carried over from previous 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.

CHAPTER 3

Accounting

SECTION 1

COMMON PROVISIONS

Article 142

The accounting system

1. The institution's accounting system is the system serving to organise the budgetary and financial information in such a way that figures can be input, filed and registered.
2. The accounts shall consist of general accounts and budgetary accounts. These accounts shall be kept in euro on the basis of the calendar year.
3. Notwithstanding paragraph 2, the authorising officer by delegation may keep analytical accounts.

Article 143

Common provision to the institutions' accounting system

1. The accounting officer of the Commission shall, after consulting the accounting officers of the other institutions and bodies referred to in Article 132, adopt the accounting rules and the harmonised chart of accounts to be applied by all the institutions financed by the budget, the offices referred to in Title V of Part Two and all the bodies referred to in Article 132.
2. When adopting the rules and methods referred to in paragraph 1, the accounting officer of the Commission shall be guided by the internationally accepted accounting standards for the public sector but may depart from them where justified by the specific nature of the Union's activities.

SECTION 1

GENERAL ACCOUNTS

Article 144

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 bodies referred to in Article 132.

Article 145

Entries in the accounts

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

2. All accounting entries, including adjustments to the accounts, shall be based on supporting documents, to which they shall refer.
3. The accounting system must be such as to leave a trail for all accounting entries.

Article 146
Accounting adjustments

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

SECTION 3
BUDGETARY ACCOUNTS

Article 147
Budgetary accounting

1. The budgetary accounts provide a detailed record of budgetary implementation.
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.

CHAPTER 4
Property inventories

Article 148
The inventory

1. Each institution and each body referred to in Article 132 shall keep inventories showing the quantity and value of all the Union's tangible, in tangible and financial assets in accordance with a model drawn up by the accounting officer of the Commission.

Each institution and each body referred to in Article 132 shall check that entries in the inventory correspond to the actual situation.

2. The sale of property shall be suitably advertised.

TITLE X

EXTERNAL AUDIT AND DISCHARGE

CHAPTER 1

External audit

Article 149

External audit by the Court of Auditors

1. 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 9, 13, 18, 22, 23, 25 and 37.
2. Each institution shall inform the Court of Auditors and the budgetary authority of any internal rules it adopts in respect of financial matters.
3. The Court of Auditors shall be informed of the appointment of authorising officers, internal auditors, accounting officers and imprest administrators and of delegation decisions under Articles 53, 65, 66, 67 and 92.

Article 150

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 provisions of the Treaties, the budget, this Regulation, the delegated Regulation referred to in Article 199 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 152, 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 make enquiries of any official responsible for a revenue or expenditure operation and to use any of the auditing procedures appropriate to the aforementioned departments or bodies. The audit in the Member States shall be carried out in conjunction with the national audit institutions or, where they do not have the necessary powers, with the national departments responsible. The Court of Auditors and the national audit bodies 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 Community 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.

Article 151

Controls regarding 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.

Article 152

Court of Auditors' right of access

1. The Commission, the other institutions, the bodies administering revenue or expenditure on the Union's behalf and the final beneficiaries of payments from the budget 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 and, for the same purposes, all documents and data created or stored on a magnetic medium.

The other services and internal audit bodies of the national administrations concerned shall afford the Court of Auditors all the facilities which it considers necessary for the performance of its task.

The first subparagraph shall also apply to natural or legal persons receiving payments from the budget.

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 document required for the full implementation of the audit referred to in Article 150(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 grants.
5. Union financing paid to beneficiaries outside the institutions shall be subject to the agreement in writing by the beneficiaries or, failing agreement on their part, by the contractors or subcontractors, to an audit by the Court of Auditors 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 may not have the effect of reducing the access of the Court of Auditors to the supporting documents.

Article 153

Annual report of the Court of Auditors

1. The Court of Auditors shall transmit to the Commission by 15 June and to other institutions and bodies referred to in Article 132 by 1st of June at the latest, any observations which are, in its opinion, such that they should appear in the annual report. These observations must remain confidential and are subject to a contradictory procedure. Each institution shall address its reply to the Court of Auditors by 15 October at the latest. The replies of institutions other than the Commission shall be sent to the Commission at the same time.
2. After completion of the contradictory procedure, each institution or body concerned shall address its reply to the Court of Auditors by 15 October at the latest. The replies of institutions other than the Commission and of the bodies shall be sent to the Commission at the same time.
3. The annual report shall contain an assessment of the soundness of financial management.
4. 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.

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

6. As soon as the Court of Auditors has transmitted the annual report, the Commission shall inform the Member States concerned immediately of Court's observations which relate to management of the funds for which they are responsible under the rules applicable.

Following receipt of such information, the Member States shall inform the Commission within 100 days of the measures taken to address the Court of Auditors' aforementioned observations which pertain to their respective country. The Commission shall communicate this information to the Court of Auditors, the Council and the European Parliament.

Article 154

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. These observations must remain confidential and are subject to an adversarial procedure.

The institution or the body concerned shall have two-and-a-half months within which to inform the Court of Auditors of any replies it wishes to make on those observations.

The Court of Auditors shall adopt the definitive version of the special report the following month upon the receipt of the replies made by the institution or the 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 of each institution or body concerned to its observations are published immediately next to or after each observation to which they relate.

2. The opinions referred to in Article 287(4) of the 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.

Article 155

Statements of preliminary findings

1. The Court of Auditors shall transmit to the institutions, bodies or Member States concerned the statements of preliminary findings resulting from its audits. The statements of preliminary findings which are, in the Court's opinion, such that they should appear in the annual report, shall be transmitted no later than by 1st of June of the exercise following the one to which they refer. The statements of preliminary findings must remain confidential.

2. The institution, the body or the Member State concerned shall have two and a half months within which to inform the Court of Auditors of any comments it wishes to make on the statements of preliminary findings.

CHAPTER 2

Discharge

Article 156

Timetable of the discharge procedure

1. The European Parliament, upon a recommendation from the Council acting by a 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.

Article 157

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 of the TFEU. It shall also examine the annual report made by the Court of Auditors together 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 of the TFEU.

Article 158

Follow-up measures

1. In accordance with Article 319 of the TFEU and Article 180b 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 these observations and comments, and, in particular, on the instructions they have given to those 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 these 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.

Article 159

Specific provisions regarding the EEAS

The EEAS shall be fully subject to the procedures provided for in Article 319 of the TFEU and in Articles 156, 157 and 158 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

Article 160

Special provisions on the European Agricultural Guarantee Fund

1. Parts One and Three of this Regulation shall 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, save as otherwise provided in this Title.
2. Operations managed directly by the Commission shall be implemented in accordance with the rules laid down in parts one and three.

Article 161

Commitments of EAGF funds

1. For each financial year, the EAGF 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 next financial year only.

Such carryover shall not exceed, within a limit of 2 % of the initial appropriations referred to in the first subparagraph, the amount of the adjustment of direct payments referred to in Article 11 of Council Regulation (EC) No 73/2009²² and which was applied during the last financial year.

Appropriations which are carried over shall be returned exclusively to the budgetary lines which cover the actions referred to in point (c) Article 3(1) of Regulation (EC) No 1290/2005.

Such carryover may lead to an additional payment only to the final beneficiaries who have been subject, in the last financial year, to the adjustment of direct payments in accordance with Article 11 of Regulation (EC) No 73/2009.

The carryover decision shall be taken, at the latest on 15 February of the year to which the carryover is being made, by the Commission, which shall inform the budgetary authority.

Article 162

Global provisional commitments of EAGF appropriations

1. The Commission shall reimburse the expenditure incurred by the Member States.

²² OJ L 270, 21.10.2003, p. 1.

2. The Commission decisions fixing the amounts of these payments shall constitute global provisional commitments, which may not exceed the total appropriations entered for the EAGF.

3. As from 15 November, routine management expenditure for the EAGF may be committed in advance against the appropriations provided for the following financial year. Such commitments may not, however, exceed three quarters of the total corresponding appropriations for the current financial year. They may apply only to expenditure for which the principle is laid down in an existing basic act.

Article 163

Schedule and timing of budgetary commitments of EAGF funds

1. Expenditure effected by the authorities and bodies referred to in the rules relating to the EAGF shall, within two months following receipt of the statements sent in by Member States, be the subject of a commitment by chapter, article and item. Such commitment may be made after the elapse of that two-month period whenever a procedure for a transfer of appropriations concerning the relevant budget lines is necessary. Save 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.

This budgetary commitment shall be deducted from the global provisional commitment referred to in Article 162.

2. Global provisional commitments which have been made for a financial year and which have not given rise to commitment on specific lines in the budget nomenclature by 1 February of the following financial year shall be cancelled in respect of the original financial year.

3. Paragraphs 1 and 2 shall apply subject to the clearance of accounts.

Article 164

Accounting of EAGF funds

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 the year concerned at the latest, provided that the payment order has reached the accounting officer by 31 January of the following financial year at the latest.

Article 165

Transfer of EAGF appropriations

1. Where the Commission may transfer appropriations pursuant to Article 23(1), it shall take its decision by 31 January of the following financial year at the latest and shall inform the budgetary authority as provided for in Article 23(1).

2. In cases other than those referred to in paragraph 1, the Commission shall submit transfer proposals to the budgetary authority by 10 January of the following financial year at the latest.

The budgetary authority shall take decisions on such transfers in accordance with the procedure provided for in Article 24, but within a time limit of three weeks.

Article 166
Assigned revenue of EAGF funds

1. Assigned revenue under this Title shall be assigned according to origin in accordance with Article 18(4).
2. The result of decisions on clearance of accounts, as 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

Article 167

Scope of special provisions on other Union funds

1. Parts One and Three of this Regulation shall apply to expenditure effected by the authorities and bodies referred to in the Regulation (EC) No 1290/2005 on European Agricultural Fund for Rural Development, Regulation (EC) No 1080/2006 of the European Parliament and of the Council²³ on the European Regional Development Fund, Regulation (EC) No 1081/2006 of the European Parliament and of the Council²⁴ on the European Social Fund, Council Regulation (EC) No 1084/2006²⁵ on the Cohesion Fund, Council Regulation (EC) No 1198/2006²⁶ on the European Fisheries Fund, and funds in the area of Freedom, Security and Justice managed in shared management pursuant to Article 56 of this Regulation, (hereinafter the 'Funds'), and to their revenue, save 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 of this Regulation.

Article 168

Respect of the allocations of commitment appropriations

The European Parliament and the Council undertake to respect the allocations of commitment appropriations provided for in the relevant basic acts for structural operations, rural development and the European Fisheries Fund.

Article 169

Payments of contributions, interim payments and repayments regarding other Union funds

1. Payment by the Commission of financial contributions from the Funds shall be made in accordance with the regulations referred to in Article 167.

²³ OJ L 210, 31.7.2006, p. 1.

²⁴ OJ L 210, 31.7.2006, p. 12.

²⁵ OJ L 210, 31.7.2006, p. 79.

²⁶ OJ L 223, 15.8.2006, p. 1.

2. The time limit for interim payments by the Commission shall be laid down in accordance with the regulations referred to in Article 167.
3. The treatment of repayments by the Member States and the implications for the amount of contributions from the Funds shall be governed by the regulations referred to in Article 167.
4. By way of derogation from Article 10, commitment appropriations available on 31 December arising from repayments of payments on account may be carried over until the closure of the programme and used when necessary under the condition that other commitment appropriations are not longer available.

Article 170

Decommitment of appropriation of other Union funds

The Commission shall automatically decommit appropriations that have been committed as provided for in the regulations referred to in Article 167.

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 previous financial year and decide, by 15 February of the current year, on the basis of requirements, whether it is necessary to make the corresponding appropriations available again.

Article 171

Transfer of appropriation between other Union funds

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 governing the Funds referred to in Article 167, or are Technical Assistance expenditure.

Article 172

Management, selection and audit of other Union funds

Aspects concerning the management and selection of projects and audit shall be governed by the regulations referred to in Article 167.

TITLE III RESEARCH

Article 173 Research funds

1. Parts one and three shall apply to the research and technological development appropriations, save as otherwise provided in this Title.

These appropriations shall be entered either in one of the titles of the budget relating to the policy area research by direct or indirect action or in a chapter relating to research activities in another title.

They shall be used by implementation of the actions listed in the delegated Regulation referred to in Article 199.

2. The appropriations relating to the revenue generated by the Research Fund for Coal and Steel established by the Protocol annexed to the TFEU on the financial consequences of the expiry of the ECSC Treaty and on the Research Fund for Coal and Steel shall be treated as assigned revenue within the meaning of Article 18. The commitment appropriations generated by this 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 the research and technological development appropriations shall be recruited in accordance with the procedures laid down by the Council when it adopts each research framework programme.

Article 174 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 substantiated cases, be made available again where it is essential to carry out the programme originally planned, unless the budget for the current financial year 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 previous financial year and assess, in the light of the requirements, the need for making the appropriations available again.

On the basis of this assessment, the Commission may submit appropriate proposals to the budgetary authority, by 15 February of each financial year, stating for each budget item the reasons for making these appropriations available again.

3. The budgetary authority 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.

Article 175

Participation of the Joint Research Centre in non Research fund actions

1. The Joint Research Centre (JRC) may receive funding charged to appropriations entered outside the titles and the chapters referred to in Article 173(1) in respect of its participation to 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 entity established in a Member State.

2. Shall be treated as assigned revenue within the meaning of Article 18(2) the appropriations relating to:

- (a) grant and procurement procedures in which the JRC participates or;
- (b) activities of the JRC on behalf of third parties or;
- (c) activities undertaken under an administrative agreement with other institutions or other Commission's departments for the provision of technical-scientific services.

The commitment appropriations generated by revenue referred to in points (a) and (c) shall be made available as soon as the amount receivable has been estimated.

For activities referred to in point (c), appropriations not used within five years shall be cancelled.

The use of these 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.

3. When participating in grants or tender procedures in accordance with paragraph 1 of this Article, the JRC shall not be subject to the conditions laid in Article 100, points (b) and (c) of Article 101, Articles 102, 103, 122(3) and 122(4) regarding provisions on exclusion and sanctions in relation to procurements and grants.

The JRC shall also be presumed to meet the requirements on economic and financial capacity.

The JRC shall be exempted from lodging guarantees as provided for in Articles 109 and 125.

4. The rules on procurement in Title V of Part One shall not apply to the activities of the JRC on behalf of third parties.

5. By way of derogation from Article 23, the Commission may, within the title of the budget relating to the policy area 'Direct action research', make transfers between chapters of up to 15 % of the appropriation in the line from which the transfer is made.

TITLE IV EXTERNAL ACTIONS

CHAPTER I General provisions

Article 176 External actions

1. Parts One and Three shall apply to external actions financed from the budget, save as otherwise provided in this Title.
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;
 - (b) or in partnership with a third country referred to in point (i) of Article 55(1)(b), through the signature of a financing agreement;

CHAPTER 2 Implementation of actions

Article 177 Implementation of External Actions

The actions referred to in this Title may be implemented directly by the Commission pursuant to point (a) of Article 55(1), or indirectly by any of the entities or persons listed in point (b) of Article 55(1), in accordance with the relevant provisions of Articles 55 to 60. Appropriations for external actions may be combined with funds from other sources to achieve a joint objective.

Article 178 Trust funds for external actions

For emergency, post-emergency or thematic actions, the Commission may create trust funds following an agreement concluded with other donors. The constitutive act of each trust fund shall define the objectives of the trust fund.

The contributions of the Union and the donors shall be entered in to a specific bank account. These contributions are not integrated in the budget and are managed by the Commission under the responsibility of the authorising officer by delegation. The entities and persons referred to in point (b) of Article 55(1) may be entrusted with budget implementation tasks in accordance with the relevant rules for indirect management.

The accounting officer of the trust fund is the accounting officer of the Commission. He is responsible for laying down the accounting procedures and chart of accounts.

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 shall be opened and closed by the accounting officer.

The Commission shall ensure a strict separation of duties between accountant and authorising officers.

A board chaired by the Commission is established for each trust fund to ensure the representation of donors and to decide for the use of the funds.

The funds pooled into the trust funds are managed in conformity with sound financial management and transparency. Funds are committed and paid by financial agents of the Commission.

The Commission is authorised to withdraw a maximum of 7 % of the amounts pooled into the trust fund to cover its management costs. For the duration of the trust fund, these management fees are assimilated to assigned revenues within the meaning of point (b) of Article 18(2) of the Financial Regulation.

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 77 of the Financial Regulation.

Trust funds are created for a limited duration determined in their constitutive agreement. This duration may be extended by a decision of the Commission upon request of the board.

The liquidation of the trust fund is decided by the Commission after expiration of the duration.

The modalities of management, reporting and governance of these trust funds are detailed in the Delegated Regulation referred to in Article 199.

Article 179

Implementation of external actions through indirect management

The implementation of actions implemented indirectly is subject to scrutiny by the Commission and by Union Delegations in accordance with the second paragraph of Article 53. Such scrutiny shall be exercised either by prior approval, by *ex post* checks or by a combined procedure.

Article 180

Agreements on the implementation of external actions

1. Actions carried out shall give rise to one or more of the following instruments:

- (a) an agreement between the Commission and an entity referred to in Article 177;

- (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 agreements or the contracts or the grants provided for in points (a) and (b) shall be managed.

2. Agreements with the entities referred to in paragraph 1(a) shall be concluded by 31 December of year $n+1$ at the latest, year n being the one in which the budgetary commitment was made.

The agreements shall lay down the period within which the entities referred to in paragraph 1a shall conclude all individual contracts and grants which implement the action. Save for multi-donor actions, such period shall not be longer than three years following the date of conclusion of the agreement, except:

- (a) for individual contracts relating to audit and evaluation ;
- (b) under exceptional circumstances in the following cases:
 - (i) riders to contracts already concluded;
 - (ii) individual contracts to be concluded after early termination of an existing contract;
 - (iii) changes of 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 transition assistance and institution building, the cross-border cooperation, regional development, human resources development and rural development components of the Pre-Accession Assistance,
- (b) the cross-border cooperation component of the European Neighbourhood and Partnership policy.

In these cases, the appropriations shall be automatically decommitted by the Commission in accordance with the sector-specific rules.

CHAPTER 3

Procurement

Article 181

External action procurement

1. 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 laid down in the delegated Regulation referred to in Article 199. 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 referred to in Article 177 and entrusted with the corresponding budget implementation tasks.

2. The procurement procedures must be laid down in the agreements provided for in Article 180.

3. 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, as referred to in Article 118.

Article 182

Rules on participation in tender 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 cases referred to in Article 51, it may be decided, under exceptional circumstances duly motivated by the authorizing officer, 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 this agreement.

CHAPTER 4

Grants

Article 183

Full financing of an external action

An action may be financed in full by the budget only if this proves essential for it to be carried out.

Article 184

Applicable rules for external action grants

Grant procedures to be applied in indirect management by the entities referred to in Article 177 shall be laid down in the agreements concluded between the Commission and those entities.

Article 185
Income generated by an action

The responsible authorising officer may deduct the income generated by an action from the profit referred to in Article 117(4) where a generation of income was provided for in the grant agreement and where it is reinvested to ensure the sustainability of the action.

CHAPTER 5
Auditing of accounts

Article 186
EU Audit in external action grants

Each agreement between the Commission and an entity referred to in Article 177, or grant agreement or grant decision must 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

Article 187 *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.
2. This Title shall apply to the operation of the European Anti-fraud Office, with the exception of Articles 190, 191 and 192.
3. Parts One and Three shall apply to the operation of the European offices, save as otherwise provided in this Title.

Article 188 *Appropriations regarding the 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.

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 budgetary authority of such transfers.
4. Each European office's accounts shall form an integral part of the Union's accounts referred to in Article 132.

Article 189 *Authorising Officer of the Inter-institutional 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 62.

Article 190
The accounts of the Inter-institutional 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 is entered the total appropriation for each interinstitutional European office shall show an estimate of the cost of services supplied by the 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.

Article 191
Delegation of powers for Inter-institutional 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.
2. The internal auditor of the Commission shall exercise all responsibilities laid down in Chapter 8 of Title IV of Part One.

Article 192
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

Article 193 *General provisions*

Parts one and three shall apply to administrative appropriations, save as otherwise provided in this Title.

Article 194 *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 may not, however, exceed one quarter of the appropriations decided by the budgetary authority on the corresponding budget line for the current financial year. They may not apply to new expenditure of a kind not yet approved in principle in the last budget duly adopted.

2. Expenditure which must be paid in advance 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.

Article 195 *Specific provisions regarding administrative appropriations*

1. Administrative appropriations shall be non-differentiated appropriations.
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. The institutions shall inform the budgetary authority as soon as possible of any building project likely to have significant financial implications for the budget.

If either branch of the budgetary authority intends to issue an opinion, it shall within two weeks after receipt of the information on the building project notify the institution concerned of its intention to issue such an opinion. Failing a reply, the institution concerned may proceed with the planned operation under its administrative autonomy, subject to Article 335 of the TFEU and Article 185 of the Euratom Treaty with regard to Union representation.

That opinion shall be forwarded to the institution concerned within two weeks of such notification.

The institutions shall request the approval of the budgetary authority for the acquisition of real state assets or any other building project, financed through a loan.

TITLE VII

EXPERTS

Article 196

Experts

The delegated Regulation referred to in Article 199 shall include a specific procedure for the selection of natural persons as experts, for assisting the institutions in the evaluation of grant applications, projects and tenders, and for providing opinion and advice in specific cases. These persons shall be paid 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.

PART THREE

FINAL PROVISIONS

Article 197

Transitional provisions

1. The Funds referred to in Article 167(1) for which the basic acts were repealed before the date of application of this Regulation, appropriations which were committed in application of Article 170 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 the Regulation (EC) No 1290/2005, Regulation (EC) No 1080/2006, Regulation (EC) No 1081/2006, Regulation (EC) No 1084/2006, Regulation (EC) No 1198/2006 for the 2000 to 2006 programming period, 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.

Article 198

Information requests by the Budgetary Authority

The European Parliament and the Council shall be empowered to obtain any information or explanations regarding budgetary matters within their fields of competence.

Article 199

Adoption of the detailed rules for the application of this Regulation

The Commission shall adopt a delegated Regulation on detailed rules for the application of this Regulation in accordance with Articles 202, 203 and 204. The delegated Regulation shall include rules on the implementation of administrative expenditure relating to the appropriations provided in the budget for the Euratom Supply Agency.

Article 200

Framework financial regulation for agencies and bodies set up under the TFEU and the Euratom Treaty

1. The Commission shall adopt a framework financial regulation 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 by means of a delegated act in accordance with Articles 202, 203 and 204 of this Regulation.

This framework financial regulation will be based on the principles and rules provided under this Regulation.

The financial rules of those bodies may not depart from the framework financial regulation except where their specific needs so require and with the Commission's prior consent. Such exception may not concern the budgetary principles referred to in Title II of Part One, the principle of equality of treatment of operators, and specific provisions set out in the basic acts establishing such bodies.

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.

3. The Commission's internal auditor shall exercise the same powers over the bodies referred to in paragraph 1 as he does in respect of Commission departments.

4. Unless otherwise provided in the basic act referred to in paragraph 1, the Court of Auditors shall examine the legality and regularity of the revenue and expenditure of this body before its accounts are consolidated with the Commission's accounts. This examination shall rely on the audit report established by an independent external auditor designated by the body and whose mission is to verify the conformity of the body's accounts with Article 134.

Article 201

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 pursuant to point (v) of Article 55(1)(b) shall adopt their financial rules.

Those rules shall include a set of principles necessary to ensure sound financial management of Union funds, and be based on Article 57 and a model financial regulation adopted by the Commission by means of a delegated act in accordance with Articles 202, 203 and 204.

Article 202

Exercise of the delegation

1. The powers to adopt the delegated act referred to in Articles 199, 200 and 201 shall be conferred on the Commission for an indeterminate period of time.

2. As soon as it adopts this delegated act, the Commission shall notify it simultaneously to the European Parliament and to the Council.

3. The powers to adopt the delegated act are conferred on the Commission subject to the conditions laid down in Articles 203 and 204.

Article 203

Revocation of the delegation

1. The delegation of power referred to in Article 199 may be revoked at any time by the European Parliament or by the Council.

2. The institution which has commenced an internal procedure for deciding whether to revoke the delegation of power shall inform the other institution and the Commission within a

reasonable time before the final decision is taken, indicating the delegated powers which could be subject to revocation and possible reasons for a revocation.

3. The decision of revocation shall put an end to the delegation of the powers specified in that decision. It shall take effect immediately or at a later date specified therein. It shall not affect the validity of the delegated acts already in force. It shall be published in the *Official Journal of the European Union*.

Article 204 *Objections to delegated acts*

1. The European Parliament and the Council may object to the delegated act within a period of two months from the date of notification. At the initiative of the European Parliament or the Council this period shall be extended by one month.

2. If, on expiry of that period, neither the European Parliament nor the Council has objected to the delegated act it shall be published in the *Official Journal of the European Union* and shall enter into force at the date stated therein.

The delegated act may be published in the *Official Journal of the European Union* and enter into force before the expiry of that period if the European Parliament and the Council have both informed the Commission of their intention not to raise objections.

3. If the European Parliament or the Council objects to a delegated act, it shall not enter into force. The institution which objects shall state the reasons for objecting to the delegated act.

Article 205 *Revision*

This Regulation shall be revised whenever it proves necessary to do so, in accordance with the procedure laid down by Article 322 of the TFEU and Article 183 of the Euratom Treaty.

Article 206 *Repeal*

Regulation (EC, Euratom) No 1605/2002 is repealed.

However, Article 53b of Regulation (EC, Euratom) No 1605/2002²⁷ shall continue to apply to all commitments made before 31 December 2013 of funds referred to in Article 167.

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.

²⁷ OJ L 248, 16.9.2002, p. 1.

Article 207
Review concerning the EEAS

The third subparagraph of Article 65(1) and the third paragraph of Article 92 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.

Article 208
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 as of 1 January 2012.

Article 56 shall apply only to commitments made as of 1 January 2014 of funds referred to in Article 167.

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

Done at [...],

For the European Parliament
The President

For the Council
The President

ANNEX – Correlation table

Council Regulation (EC, Euratom) No 1605/2002 as modified by Regulation (EU, Euratom) No 1081/2010 of the European Parliament and the Council	Legislative proposal	Titles
PART ONE	PART ONE	COMMON PROVISIONS
TITLE I	TITLE I	SUBJECT MATTER AND SCOPE
Article 1	Article 1	Subject matter
Article 2	Article 2	Scope
TITLE II	TITLE II	BUDGETARY PRINCIPLES
Article 3	Article 3	Budgetary principles
CHAPTER 1	CHAPTER 1	Principles of unity and of budget accuracy
Article 4	Article 4	Definition of the budget
Article 5	Article 5	Rules governing the principles of unity and budgetary accuracy
Article 5a	-	-

CHAPTER 2	CHAPTER 2	Principle of annuality
Article 6	Article 6	Definition
Article 7	Article 7	Type of appropriations
Article 8	Article 8	Accounting rules for the revenue and appropriations
Article 9	Article 9	Cancellation and carry over of appropriations
Article 10	Article 10	Carry over rules for assigned revenue
Article 11	Article 11	Decommittment of appropriations
Article 12	Article 12	Commitment of appropriations
Article 13	Article 13	Rules applicable in case of late adoption of the budget
CHAPTER 3	CHAPTER 3	Principle of equilibrium
Article 14	Article 14	Definition and scope
Article 15	Article 15	Balance from financial year
CHAPTER 4	CHAPTER 4	Principle of unit of account
Article 16	Article 16	Use of euro
CHAPTER 5	CHAPTER 5	Principle of universality
Article 17	Article 17	Definition and scope
Article 18	Article 18	Assigned revenue

Article 19	Article 19	Donations
Article 20	Article 20	Rules on deductions and exchange rates adjustments
CHAPTER 6	CHAPTER 6	Principle of specification
Article 21	Article 21	General provisions
Article 22	Article 22	Transfers by institutions other than the Commission
Article 23	Article 23	Internal transfers by the Commission
Article 24	Article 24	Transfers by the Commission submitted to the budgetary authority
Article 25	-	-
Article 26	Article 25	Transfer subject to special provisions
CHAPTER 7	CHAPTER 7	Principle of sound financial management
Article 27	Article 26	Principles of economy, efficiency and effectiveness
Article 28	Article 27	Compulsory financial statement
-	Article 28	Internal control of budget implementation
-	Article 29	Tolerable risk of error
CHAPTER 8	CHAPTER 8	Principle of transparency
Article 29	Article 30	Publication of accounts, budgets and reports

Article 30	Article 31	Publication of Union funds recipients and other information
TITLE III	TITLE III	ESTABLISHMENT AND STRUCTURE OF THE BUDGET
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Article 32	Article 33	Estimated budget of the bodies referred to in Article 204
Article 33	Article 34	Draft budget
Article 34	Article 35	Letter of amendment to the draft budget
-	Article 36	Approuval of the outcome of the Conciliation Committee
Article 35	-	-
Article 36	Article 37	Adoption of the budget
Article 37	Article 38	Draft amending budgets
Article 38	-	-
Article 39	Article 39	Early transmission of estimates and draft budgets
CHAPTER 2	CHAPTER 2	Structure and presentation of the budget
Article 40	Article 40	Structure of the budget
Article 41	Article 41	Classification of the budget

Article 42	Article 42	Prohibition of negative revenue
Article 43	Article 43	Provisions
Article 44	Article 44	Negative reserve
Article 45	Article 45	Reserve for emergency aid
Article 46	Article 46	Presentation of the budget
Article 47	Article 47	Rules on the Establishment Plan for staff
-	CHAPTER 3	Budgetary discipline
-	Article 48	Compliance of the budget with the multiannual financial framework
-	Article 49	Compliance of Union acts with the budget and the multiannual financial framework
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Article 48	Article 50	Budget implementation according to sound financial management
Article 49	Article 51	Basic act and exceptions
Article 50	Article 52	Implementation of the budget by other Institutions
Article 51	Article 53	Delegation of budget implementation powers

Article 52	Article 54	Conflict of interests
CHAPTER 2	CHAPTER 2	Methods of implementation
Article 53	Article 55	Methods of implementation of the budget
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Article 53b	Article 56	Shared management with Member States
Article 53c	Article 57	Indirect management with entities and persons other than Member States
Article 53d	-	-
Article 54	Article 58	Ex ante controls and agreements under indirect management
Article 55	Article 59	Executive agencies
Article 56	-	-
Article 57	Article 60	Limits to delegation of powers
CHAPTER 3	CHAPTER 3	Financial actors
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Article 58	Article 61	Segregation of duties
Section 2	Section 2	Authorising officer
Article 59	Article 62	The authorising officer

Article 60	Article 63	Powers and duties of the authorising officer
Article 60a	Article 64	Powers and duties of the heads of Union Delegations
Section 3	Section 3	Accounting officer
Article 61	Article 65	Powers and duties of the accounting officer
Article 62	Article 66	Powers which may be delegated by the accounting officer
Section 4	Section 4	Imprest administrator
Article 63	Article 67	Imprest accounts
CHAPTER 4	CHAPTER 4	Liability of the financial actors
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Article 64	Article 68	Suspension and withdrawal of delegations given to authorising officers
Article 65	Article 69	Liability of the authorising officer for illegal activity, fraud or corruption
Section 2	Section 2	Rules applicable to authorising officers by delegation and subdelegation
Article 66	Article 70	Rules applicable to authorising officers
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Article 67	Article 71	Rules applicable to accounting officers
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Section 4	Section 4	Authorisation of recovery
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Article 73	Article 77	Rules on recovery
Article 73a	Article 78	Limitation period
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CHAPTER 6	CHAPTER 6	Expenditure operations
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Article 77	Article 83	Rules applicable to commitments
Article 78	Article 84	Verifications applicable to commitments
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Article 81	Article 87	Types of payments
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Article 83	Article 89	Time limits for expenditure
CHAPTER 7	CHAPTER 7	IT systems
Article 84	Article 90	Electronic management of operations

-	Article 91	Transmission of documents between institutions
CHAPTER 8	CHAPTER 8	Internal auditor
Article 85	Article 92	Appointment of the internal auditor
Article 86	Article 93	Powers and duties of the internal auditor
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Article 90	Article 97	Publication of public contracts
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Article 92	Article 99	Content of tender documents
Article 93	Article 100	Exclusion criteria applicable for participation in tenders

Article 94	Article 101	Exclusion criteria applicable during procurement procedure
Article 95	Article 102	Central exclusion database
Article 96	Article 103	Administrative and financial penalties
Article 97	Article 104	Award criteria for contracts
Article 98	Article 105	Submission of tenders
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Article 100	Article 107	The award decision
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Article 164 (repealed)	Article 178	Trust funds for external actions
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