COMMISSION OF THE EUROPEAN COMMUNITIES

Brussels, 4.7.2006
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Draft

COMMISSION REGULATION (EC, Euratom)

amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

EXPLANATORY MEMORANDUM

1. PROCEDURE

On 18 May 2006, the Commission approved a modified proposal for revising the Financial Regulation (FR)[1], incorporating to a large extent the opinions of the other institutions and taking into account the concerns expressed by representatives of civil society. The main objective of the Commission's modified proposal is to improve the efficiency and transparency of the rules by striking a better balance between the cost of control and the financial risks at stake whilst maintaining a high level of protection of the Community funds.

According to Article 184 of the current FR, a conciliation procedure between Council and Parliament will now be necessary, if the Parliament so requests, before the Council definitively adopts the revision of the FR. The objective is to rapidly reach agreement on the FR in 2006 so that the amendments can enter into force on 1 January 2007, together with the new generation of spending programmes.

In order to speed-up the legislative process the Commission is now taking the initiative to present a draft Regulation amending Regulation (EC, Euratom) No 2342/2002 laying down the implementing rules (IR) of the FR and to consult the other institutions on the proposed amendments to the IR.

This draft proposal concerns the amendments to the IR which can be made only after prior modification of the FR, i.e. the amendments "linked" to the revision of the FR. It is based to a large extent on the Commission staff working document[2] on the linked IR presented in October 2005 which was transmitted to the other institutions for information. In addition, this draft proposal takes into account the amendments voted by the European Parliament on the FR which relate as far as their substance is concerned, to the IR. In order to give the other institutions the opportunity to express an opinion on them, the changes deriving from those EP's amendments are included in the present draft proposal even if they do not formally require prior modification of the FR.

Provided that the process of the revision of the Financial Regulation develops smoothly and the Council adopts the revised Financial Regulation early in the autumn and at the same time the institutions give their opinion on this draft Regulation, the Commission will be able to take these opinions into account and adopt definitively the Regulation on the "linked" IR in the second half of 2006. Hopefully, this will happen in good time to be able to prepare the services for the application of the legislative changes. In this way, the whole package of the new financial rules can be applied as from January 2007.

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1 COM(2006) 213.

2 SEC(2005) 1244.

2. AMENDMENTS PROPOSED

2.1. Budgetary principles – interests yielded by pre-financing payments

Regarding the principle of **unity of the budget**, the new rules proposed in Article 5a of the FR for the **recovery of interest on pre-financing** need to be further specified. Firstly, the amount of pre-financing to be considered as a significant amount, above which the interests under the FR must be recovered ("de minimis" rule), is fixed at EUR 50,000, as a general rule, and EUR 250,000 for external actions (Article 3) in the light of the specificity of these actions and the strong involvement of NGO's in their implementation. That threshold should, however, be raised to EUR 750,000 for crisis management aid and humanitarian aid operations to take account of the exception of the financial management in this area (e.g. the fact that pre-financing covers expenditure already incurred before awarding the grant).

Secondly, the proposed modification of the FR (Article 5a) requires the IR to list the cases where, by derogation from the proposed rule that interests should be deducted from the final payment, interest on pre-financing should be recovered annually in order to protect the EU's financial interests. Accrual based accounting requires that earned revenue where this is significant is accounted for in the financial year of occurrence. Taking this into account and in the light of the different policies implemented by the Commission, the threshold of EUR 750,000 is proposed (Article 4 IR).

Regarding the **principle of unit of account**, a new provision is inserted in Article 7(1) in order to avoid that currency conversions have a significant impact on the level of the Union co-financing, as requested by the European Parliament in its amendment No 32.

In relation to the **principle of specification** of the budget, following the proposed modifications of Articles 22 and 23 of the FR, in some cases transfers within 10% of the appropriations on a budget line are subject to a more flexible procedure than those exceeding that 10% limit. The method of calculating the 10% limit should be clarified (Article 17). At the same time, Article 17(1) specifies when time for the purposes of the deadlines under the "notification procedure" is deemed to start running.

Following the discussions with the Court, the Council and the EP, the action plan towards an integrated internal control framework defines the tolerable risk level in terms of managing the risks of illegality or irregularity in the underlying transactions. In the Financial Regulation this concept has been defined in Article 30a(3). The implementing rules make the overall framework more explicit, but detailed information on controls will have to be presented in the context of basic acts, or their sectoral implementing rules. The process will be further deepened through the inter-institutional discussion provided for by action 4 of the Commission's action plan towards an integrated internal control framework[3]. Provision will be made for a transition period up to 2009 for reviewing, where necessary, financial statements and/or legal acts.

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[3] COM(2006) 9.

2.2. Methods of management

The IR should be amended to specify that, on the basis of the proposed modification of Article 54(2)(c) FR, the use of **indirect centralised management** should no longer be limited to national public-sector bodies but extended to international public-sector organisations, to CFSP special advisers entrusted with the management of specific actions in the area of foreign and security policy, and to bodies from third countries other than those already mentioned in Articles 38 IR (Articles 38, 39, 41 IR). In order to protect the Communities' financial interests, persons entrusted with the management of specific actions in the field of foreign and security policy shall put in place the appropriate structures and procedures in order to assume the responsibility for the funds they would manage (Article 39a IR). This will provide a more satisfactory framework for the current practice. At the same time, since restrictions on the use of national agencies, especially the need for the basic act to authorise their use, have been removed in the proposed revision of the FR, it is also necessary to remove some additional limitations which are in the IR, such as the comitology procedure in order to simplify and facilitate the use of national agencies. However, in those cases the Commission should inform the legislative authority annually of the implementing tasks delegated and the bodies concerned.

As regards the **checks to be carried out by the Commission in the different methods of management**, the Commission proposed in the revision of the FR to introduce a set of basic requirements common to indirect and decentralised management (Article 56). It is necessary to complement these rules by specifying that in these two models of management, the Commission may, with due account for internationally-accepted standards, accept that the procurement procedures of the bodies and authorities referred to in Article 54(2)(c) FR ("national agencies") and 166(1)(a) FR (third countries) are equivalent to its own.

In shared management, the purpose of the **annual summary of available audits and declarations** referred to in the new Article 42a shall be to facilitate analysis by the Commission of the audit and control activities of Member States by making available relevant audit opinions and management declarations relating to beneficiaries of EU programmes under shared management.

As regards the **joint management**, the principles for awarding procurement and grants have to be respected by the international organisations and set down in the agreements concluded with them.

2.3. Financial actors

Articles 74 and 75 should be restructured and simplified without affecting their content. In line with the Commission's modified proposal on the FR, the possibility for the authorising officer by delegation to refer a matter to the **financial irregularities panel** is introduced in Article 75 IR.

2.4. Recovery of debts

Concerning **privileges**, the proposed modification of the FR introduces the principle (new Article 73a FR) that Community claims enjoy the same privileges in national legal systems as the fiscal entitlements of Member States ("principle of equivalence",

already known in connection with the ECSC[4]). Since a privilege ranking for different taxes may exist in national law, it is necessary to identify, from among the various national taxes, the appropriate one with which Community claims should be equated. In this respect, value-added tax seems to be of sufficiently uniform throughout the EU to enable the Community to exercise its preferential right with equal effectiveness in all Member States. At the same time, it is necessary to specify that preferential treatment also applies to default interest within the meaning of Article 86 IR.

In accordance with the principles of sound financial management and legal certainty, the proposed modification of the FR (new Article 73b FR) introduces a general **limitation period** of five years for Community debts and entitlements against third parties, after which the debt claim is extinguished. The IR accordingly should contain a detailed set of rules for the starting dates and the grounds for interruption of this limitation period (Article 85c), which are largely based on the rules applicable in the Member States. In compliance with the principle of equal treatment of operators, the acts which may interrupt a limitation period include procedural steps taken both by the Community and by third parties having an entitlement against the Community.

2.5. Public procurement and contracts

In sectors where there is rapid development in prices and technology, and in order to ensure sound financial management, **framework contracts** without a reopening of competition shall contain a stipulation on a mid term review. If the conditions initially laid down are no longer geared to price trends or technological development, the contracting authority shall not use the framework contract concerned and shall take appropriate measures to terminate it, as requested by the EP (Amendment No 80).

Information relating to specific contracts based on a framework contract should be given as requested by the EP. To that end, information relating to the value and beneficiaries of specific contracts based on a framework contract during a financial year shall be published on the internet website of the contracting authority no later than 31 March following the end of this financial year, if as a result of the conclusion of a specific contract or of the aggregate volume of the specific contracts the thresholds referred to in Article 158 are exceeded.

Following the amendments of the EP, the contracting authority may depending on its risks analysis, **refrain from requiring the declaration** that the candidates or tenderers are not in one of the situations giving rise to exclusion for contracts with a value equal to or less than EUR 3,500 and for external aid, EUR 10,000.

Whenever appropriate, technically feasible, and cost efficient, as requested by the EP, contracts with a value equal to or greater than the thresholds laid down in Article 158 should be awarded at the same time in the **form of separate lots**.

Information on **available legal remedies** should be indicated by the contracting authority to rejected tenderers, as requested by the EP.

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[4] Recommendation 86/198/ECSC (JO L 144, 29.5.1986, p. 40), adopted following the judgment of the Court of Justice of 17 May 1983, Case 168/82, [1983] ECR 1681.

Given the possibility for an institution to **carry out a procurement procedure jointly** with a contracting authority from a Member State, the IR should specify which procurement procedure should apply to those cases.

In order to ensure a proper management of the **common central database on exclusions**, the main practical arrangements for using the database should be laid down in the IR.

In accordance with the principle of proportionality, economic operators that are in any of the **situations of legal exclusion** mentioned in the FR should not be excluded indefinitely from participation in a procurement procedure. Accordingly the criteria for the duration of exclusion should be specified in the IR.

As a result of the revision of the FR, the provisions of the IR on **penalties** need to be adapted accordingly (Article 134a IR).

For the sake of legal certainty, the modalities and exceptions to the standstill procedure before the signature of a contract should be specified in the IR. Moreover, in the light of the recent proposal for a Directive with regard to improving the effectiveness of review procedures concerning the award of public contracts[5], the modalities of the **standstill procedure** in the case of direct awards of public contracts should also be specified in the IR.

2.6. Grants

In the light of the modifications proposed in Article 108(2) and (3) of the FR, which clarifies what is and what is not a grant, some types of **equity investment participation and risk bearing instruments** have to be defined (Article 160b IR). Moreover, it is necessary to determine which of the rules in the Title on grants apply to these forms of financing. In programmes to promote investment (for example, in small and medium-sized enterprises (SMEs)), especially the framework competitiveness programme proposed by the Commission, the Community contributes to risk capital and guarantee facilities managed by financial institutions.

In order to simplify the management of certain types of grants, especially small grants or those having a standardised content, **grants should be awarded either by a Commission decision or by a written agreement** with the beneficiary, as referred to in Article 108 of the FR. In such cases for reasons of cohesion and consistency annual work programme shall determine which legal instrument will be used for that purpose (Article 160e). Some Articles have to be adapted to take account of the introduction of the decisions in the grant award process.

Concerning the **applicable law for both contracts and grant agreements**, Community contractual policy should be brought into line with the best international practice in order to ensure that Community law is applicable to all contractual relations to which the institutions are party. To this end, it should be made compulsory for authorising officers to insert in their procurement contracts and grant agreements an applicable law clause specifying that Community law is primarily

[5] COM(2006) 195.

applicable, supplemented as appropriate by the national law agreed by the parties (Articles 130, 164 IR). This is especially important in order to ensure that the proposed strengthening of the possibilities of recovery can have its full effect.

Lump sums and flat rates shall be determined on the basis of the costs or the category of costs to which they relate, established by objective means such as statistical data, so to obtain a reasonable assurance that, *a priori* lump sums and flat rates do not include profit. These objective elements are to be reassessed regularly and updated by the Commission on the same basis (Article 165(2) IR). Moreover, it seems appropriate to provide for *ex-post* controls aimed at verifying that the event giving rise to the entitlement to a lump sum or to flat-rate financing has in fact occurred. If these controls reveal that the event has not occurred and that, consequently, a payment has wrongly been made to the beneficiary, the Commission will have the duty to recover up to the amount of the lump sum or the flat-rate financing and, in the event of a false declaration by the beneficiary, impose financial penalties up to 50% of the lump-sum or flat-rate financing (Article 165(3) IR).

The **co-financing rule** is clarified, in particular in the case of lump-sums and flat-rate financing (Article 165a).

Responding to a request by the EP, the possibility of adoption of the **annual work programme** at an early stage, during the previous year, is expressly provided for (Article 166).

In order to protect the interests of the beneficiaries and to increase legal certainty, changes to the content of the **call for proposals** must remain the exception. Applicants must be given a supplementary deadline if these changes are substantial. Such changes shall be subject to the same conditions of publication as the call itself.

As for the **award of grants**, the exceptions to the requirement for a call for proposals should be extended to cover an existing derogation under the rules of participation, in the field of research and development. This enables grants to be awarded directly to beneficiaries identified by the Commission for proposals of high quality, provided that they do not fall within the ambit of programmed calls for proposals for the financial year concerned. In the light of the experience gained, additional derogations should be introduced to cover actions with specific characteristics that require implementation by a body with particular expertise or institutional or administrative power, without this necessarily qualifying as a monopoly (*de facto* or *de jure*) (Article 168 IR).

In order to protect the Communities' financial interests, the representatives of **beneficiaries not having legal personality** should demonstrate that they have the capacity to act on their behalf and that they offer financial guarantees equivalent to those provided by legal persons (Article 174a IR).

As requested by the EP, and in order to inform it, the Commission shall annually send to the budgetary authority information about the grant procedures.

To increase the efficiency of the calls for proposals, the Commission shall provide **information and guidance to the applicants** on the rules applicable to the award of grants.

In order to clarify which **costs** may be **eligible** for Community financing, an indicative list is provided for in a new Article 172a.

As for procurement, provisions are inserted in order to determine the conditions for submission of the applications, especially for applications submitted by electronic means.

In order to facilitate the **management of the award procedure**, and in accordance with the principle of sound financial management, the IR should explicitly confirm the possibility of restricting a call for proposals to a targeted category of beneficiaries. In this way, the Commission, while duly respecting the principles of equal treatment and non-discrimination, will be able to target calls for proposals at specific categories or types of entities most concerned by the programme in question (Article 175a IR). An example is twinning schemes in external relations where the target organisations are national administrations of the Member States who should "twin" with administrations in third countries and provide them with expertise.

As requested by the EP, and in order to inform the applicants of the possibility of success of their applications as soon as possible, the submission procedure and the evaluation **procedure may be divided into different stages**, making it possible to reject at an early stage the proposals which can have noprospect of success after that stage of the procedure.

According to the provisions of Article 114(3) of the FR, the **very low value grants** are defined, with reference to the amount of the single tender procurements in Article 129(3) of the IR (i.e. EUR 3,500).

As requested by the EP, and in order to improve the quality of proposals, and to help the applicants, additional information may be requested by them during the award procedure, in particular in the case of **evident material errors** in the applications.

As regards lump sums, the level above which the unit amounts of **lump sums have to be determined in the basic act** is fixed at EUR 25,000 (Article 181 IR). On the other hand, the unit amounts of lump sums below EUR 25,000, as well as the amounts of flat-rate amounts, must be fixed by the Commission.

The necessary **contracts to be concluded by the beneficiary to implement a grant** should be simplified in order to make management easier for the beneficiaries and for the Commission. Whenever these contracts are of low value, the rules to be followed by the beneficiary should be limited to what is strictly necessary, i.e. the principle of sound financial management and the absence of conflict of interests. For bigger contracts, the authorising officer should be able to determine additional specific requirements based on those applicable to the institutions for equivalent contracts.

Financial support to third parties which may be awarded by a beneficiary of a Community grant is organised in such a way as to exclude discretionary powers and is limited to the total amount of EUR 100,000 (Article 184a IR).

2.7. Accounting

It is necessary to clarify the status of the **report on budgetary and financial management** (Article 185 IR) which accompanies the accounts in accordance with Article 122 of the FR, in particular the fact that it is separate from the report on the implementation of the budget referred to in Article 121 FR.

2.8. External actions

As regards some components of the IPA and ENPI multi-annual programmes using split commitments, the Commission proposed in the revision of Article 166(3) of the FR to introduce a **"n + 4" decommitment rule**. It is necessary to further specify this rule in the IR, in particular as regards the procedure and the consequences of the automatic decommitment.

The possibility of **secret procurement** procedures for security reasons, which was already introduced for procurement on behalf of the institutions in Articles 119 and 127 IR, is now extended to external relations operational procurement (Articles 240, 242, 244, 246 IR). In addition, the threshold for **negotiated procedure** on the basis of a single tender (operational expenditure) is raised from EUR 5,000 to EUR 10,000 in order to increase management flexibility (Articles 241, 243, 245 IR).

2.9. Offices

In the light of specific problems facing European interinstitutional offices and particularly the **Office for Official Publications** (OPOCE), the Commission proposed that the possibility for the institutions to delegate authorising officer powers to the Directors of such Offices (Articles 171 and 174a FR) be included in the FR. In order to implement this possibility, the necessary arrangements should be specified (Articles 258 and 258a IR) and in particular that budgetary commitment should remain the responsibility of each Institution, whereas all subsequent acts could be delegated to the Director of the Office.

2.10. External experts

Concerning the selection of **external individual experts** for the evaluation of proposals and other forms of technical assistance, the simplified procedures announced in the FR need to be defined. These should include publication of an open call for expressions of interest in order to draw up an appropriate list of eligible experts and select from these on the basis of technical capacity, thus excluding discrimination.

Draft

COMMISSION REGULATION (EC, Euratom)

amending Regulation (EC, Euratom) No 2342/2002 laying down detailed rules for the implementation of Council Regulation (EC, Euratom) No 1605/2002 on the Financial Regulation applicable to the general budget of the European Communities

THE COMMISSION OF THE EUROPEAN COMMUNITIES,

Having regard to the Treaty establishing the European Community,

Having regard to the Treaty establishing the European Atomic Energy Community,

Having regard to Council Regulation (EC, Euratom) No 1605/2002 of 25 June 2002 on the Financial Regulation applicable to the general budget of the European Communities[6] and in particular Article 183 thereof,

Having consulted the European Parliament, the Council, the Court of Justice of the European Communities, the Court of Auditors, the European Economic and Social Committee, the Committee of the Regions, the Ombudsman and the European Data Protection Supervisor,

Whereas:

(1) In accordance with the budgetary principles, in particular the principle of unity, the rules established in the Financial Regulation for recovering interest on pre-financing need to be specified in the implementing rules. Thus, it has to be clarified what amount has to be considered as a significant amount. Below these threshold, interest on pre-financing shall not be due to the European Communities. The cases where interest yielded on pre-financing has to be recovered annually in order to protect the financial interests of the Communities also have to be specified.

(2) As for the principle of specification, a precise definition should be given of the methods of calculating the time and percentage limits to be respected for transfers of appropriations of the Commission and of the other institutions. In addition, as the provision on procedures for transfers by the institutions other than the Commission has been consolidated in the Financial Regulation, it can therefore be deleted from the implementing rules.

(3) In respect of methods of implementing the budget, in particular indirect centralised management, it has to be specified that the persons entrusted with the management of specific actions pursuant to Title V of the EU Treaty should be require to put in place the appropriate structures and procedures in order to assume responsibility for the

[6] OJ L 248, 16.9.2002, p. 1. Regulation as amended by Regulation (EC, Euratom) No […/…] (OJ L […], […] p. […].

funds that they would manage. At the same time, since the revised Financial Regulation has removed the requirement for prior authorisation in the basic act for recourse to national bodies entrusted with public tasks, it is necessary to remove from the implementing rules the provisions referring to comitology procedures in this regard.

(4) As regards shared management, the content of the annual summary of available audits and declarations referred to in Article 53b of the Financial Regulation should be specified.

(5) As regards joint management, it is necessary to insert specific provisions detailing the content of the arrangements to be concluded by the Commission in its cooperation with international organisations.

(6) As regards the liability of the financial actors, it has to be clarified that the appointing authority may request the opinion of the financial irregularities panel on a case, based on information provided by a member of staff in accordance with the relevant provision of the Financial Regulation. In addition, the authorising officer by delegation should be entitled to refer a matter to the financial irregularities panel if he considers that a financial irregularity has occurred.

(7) As regards the recovery of debts, in accordance with the principle established in the Financial Regulation that Community claims enjoy the same privileges in national legal systems as fiscal entitlements which belong to Member States, it is necessary to determine the tax with which the Community claim is to be equated for cases where the enforcing state provides for a privilege ranking of fiscal entitlements depending on the tax involved.

(8) Given the general limitation period of five years established in the Financial Regulation for Community debts and entitlements, it is necessary to specify the rules regarding the starting dates and the grounds for interruption of the limitation period, both for the institutions and for third parties who have an enforceable claim against the institutions.

(9) As regards procurement, framework contracts without a reopening of competition in sectors subject to a rapidly rising trend in prices and technological development should be subject to a mid term review and the contracting authority should take appropriate measures, including termination of the framework contract.

(10) In accordance with the principle of proportionality, for contracts with a value of not more than EUR 3,500 and EUR 10,000 for external aid the contracting authority should be able, depending on its risk analysis, refrain from requiring from candidates or tenderers the declaration that they are not in one of the situations giving rise to exclusion.

(11) For simplification reasons, payments against invoices without prior acceptance of a tender should be possible for amount lower or equal to EUR 500, and for external aid competitive negotiated procedure for awarding supply contract should be possible for contracts with a value of less than EUR 60,000.

(12) Whenever appropriate, technically feasible and cost efficient, procurement contracts with a value equal to or greater than the thresholds laid down in Article 158 of the Financial Regulation should be awarded at the same time in the form of separate lots.

(13) Information on available legal remedies should be indicated by the contracting authority to rejected tenderers.

(14) Given the possibility for an institution to carry out a procurement procedure jointly with a contracting authority from a Member State, it should be specified which procurement procedure should apply to those cases.

(15) In order to ensure proper management of the common central database on exclusions, the major practical arrangements for using the database should be laid down.

(16) In accordance with the principle of proportionality, economic operators that are in any of the situations of legal exclusion mentioned in the Financial Regulation should not be excluded indefinitely from participation in a procurement procedure. Accordingly, the criteria for a duration of exclusion should be specified.

(17) As a result of the revision of the Financial Regulation, the provisions on penalties need to be adapted accordingly.

(18) For the sake of legal certainty, the modalities and exceptions to the standstill procedure before the signature of a contract should be specified.

(19) An appropriate provision should determine to what extent the particular forms of financing laid down in Article 108(3) of the Financial Regulation should be treated in the same way as grants under Title VI of Part One.

(20) In order to ensure consistency in the use of the legal instruments by which grants are awarded - decision or written agreement - the annual work programme shall determine which legal instrument should be used for that purpose. It is necessary to adapt some articles in order to take account of the introduction of the decisions in the grant award procedure.

(21) In order to ensure that Community law is applicable to all legal relations to which institutions are party, it should be made compulsory for the authorising officers to insert in all their contracts and grant agreements a specific clause on the applicability of Community law, complemented as appropriate by the national law agreed by the parties.

(22) As for the award of grants, the exceptions to the requirement for a call for proposals should be extended in order to cover the possibility which exists under the current regulations in the field of research and development to award grants directly to beneficiaries identified by the Commission for proposals of high quality which do not fall within the ambit of programmed calls for proposals for the financial year concerned. Furthermore, in the light of the experience gained, an additional derogation should be introduced to cover actions with specific characteristics that require an implementing body with particular expertise or administrative power without this necessarily qualifying as a monopoly.

(23) In order to protect the Communities' financial interests, it has to be specified that the representatives of beneficiaries who do not have legal personality should prove that they have the capacity to act on their behalf and that they offer financial guarantees equivalent to those provided by legal persons.

(24) In order to facilitate the management of the award procedure, and in accordance with the principle of sound financial management, the possibility to restrict a call for proposals to a targeted category of beneficiaries should be provided for. The Commission would thus be able, while duly respecting the principles of equal treatment and non-discrimination, to reject applications from entities not concerned by the programme in question.

(25) In order to help the applicants, and to increase the efficiency of the calls for proposals, certain procedural steps should be improved. Commission should provide information and guidance to the applicants about the rules applicable to the award of grants and it should inform them as soon as possible of the possibility of success of their applications. It is possible to divide the procedure of submission, and the procedure of evaluation in different stages, and thus allow rejecting at an early stage the proposals which cannot have any prospect of success at later stage. In order to clarify which costs may be eligible for Community financing, an indicative list should be provided for. It is also appropriate to determine the conditions for submission of the applications, especially for applications submitted by electronic means. Furthermore, it should be possible to ask additional information to the applicants during the award procedure, in particular in the case of evident material errors in the applications.

(26) The possibility of adoption of the annual work programme at an early stage, during the previous year, should be provided for in order to allow to launch the calls for proposals as soon as possible before the beginning of the year they are related to.

(27) For the reasons of transparency, the Commission should annually inform the budgetary authority about the management of the grant award procedures.

(28) In order to protect the interests of the beneficiaries and to increase legal certainty, modifications of the content of the call for proposals should remain exceptional, and applicants should benefit from a supplementary deadline if these modifications were substantial. They should be subject to the same conditions of publication as the call itself.

(29) Concerning lump sums, it has to be specified that the unit amounts of lump sums below a threshold of EUR 25,000 and the amounts of flat rates will be fixed by the Commission on the basis of objective elements, such as statistical data where available; these amounts should be reassessed regularly and updated by the Commission on the same basis. On the other hand, lump sums above a threshold of EUR 25,000 must be determined in the basic act. In addition, the authorising officer responsible should be required to carry out appropriate ex-post controls in order to ascertain that the conditions for their award have been respected, for example that the event giving rise to the lump sums or flat rates has in fact occurred. These controls will be independent of the controls to be carried out for grants intended for the reimbursement of the eligible costs actually incurred. The non-profit rule and the co-financing rule should be specified.

(30) With regard to contracts necessary to implement a Community grant, it should be specified that, whenever these contracts are of low value, the rules to be followed by the beneficiary should be limited to what is strictly necessary, that is to say the principle of sound management and the absence of conflicts of interests. For contracts with a higher value, the authorising officer may determine additional specific requirements, based on those applicable to the institutions for equivalent contracts.

(31) The financial support to third parties which may be awarded by a beneficiary of a Community grant should be organised in a way that does not leave scope for discretion and is limited to a total amount of EUR 100,000 as required by Article 120 of Financial Regulation.

(32) As regards the keeping and presentation of accounts, it should be clarified that the report on budgetary and financial management which accompanies the accounts in accordance with Article 122 of the Financial Regulation is separate from the report on the implementation of the budget referred to in Article 121 of the Financial Regulation. At the same time, following the modifications to the scope of consolidation established in the Financial Regulation, all previous references to the bodies referred to in Article 185 of the Financial Regulation should be replaced by a reference to the bodies referred to in Article 121 of the Financial Regulation.

(33) As regards some components of the Council Regulation No […./….][7] Establishing an Instrument for Pre-Accession Assistance (IPA) and the Regulation of the European Parliament and the Council No […./….][8] laying down general provisions establishing an European Neighbourhood and Partnership Instrument (ENPI) using split commitments, the Financial Regulation introduced a "n+4" decommitment rule. It is therefore necessary to provide for specific detailed provisions, in particular concerning the procedure and the consequences of the automatic decommitment.

(34) As for external actions, further measures of simplification are needed. In particular, the threshold for negotiated procedure on the basis of a single tender has to be raised. In addition, the possibility of secret procurement procedures for security reasons, which is already possible for procurement on behalf of the institutions, has to be extended to external relations operational procurement.

(35) As regards inter-institutional offices, the specific rules for the Office for Official Publications (OPOCE) need to be amended following the new possibility introduced in the Financial Regulation for inter-institutional delegation to the directors of inter-institutional European offices. In this respect, the budgetary commitment should remain the responsibility of each institution, which decides on the publication of its documents, whereas all subsequent acts could be delegated to the director of OPOCE.

(36) Regarding external individual experts needed for the evaluation of proposals and other forms of technical assistance, it should be possible to select these experts from a list drawn up on the basis of their technical capacity, after publishing a call for expressions of interest.

(37) Regulation (EC, Euratom) No 2342/2002 should therefore be amended accordingly,

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7 OJ L […], […] p. […].
8 OJ L […], […] p. […].

HAS ADOPTED THIS REGULATION:

Article 1

Regulation (EC, Euratom) No 2342/2002 is amended as follows:

(1) Article 2 is replaced by the following:

"Article 2
Legislative acts concerning the implementation of the budget
(Article 2 of the Financial Regulation)

The Commission shall annually update in the preliminary draft budget the information on the acts referred to in Article 2 of the Financial Regulation."

(2) Article 3 is replaced by the following:

"Article 3
Scope of pre-financing
(Article 5a of the Financial Regulation)

1. In the case of direct centralised management involving a number of partners, indirect centralised management and decentralised management within the meaning of Article 53 of the Financial Regulation, the rules laid down in Article 5a of the Financial Regulation shall apply solely to the entity receiving pre-financing directly from the Commission.

2. Pre-financing shall be regarded as representing a significant amount within the meaning of Article 5a(2)(a) of the Financial Regulation if the amount is higher than EUR 50,000.

However, for external actions pre-financing shall be regarded as representing a significant amount if the amount is higher than EUR 250,000. For crisis management aid and humanitarian aid operations, pre-financing shall be regarded as representing a significant amount if it exceeds per agreement EUR 750,000 at the end of each financial year and is for projects of a duration of more than 12 months."

(3) Article 4 is replaced by the following:

"Article 4
Recovery of interest yielded by pre-financing
(Article 5a of the Financial Regulation)

1. The authorising officer responsible shall recover for each reporting period following the implementation of the agreement the amount of interest generated by pre-financing payments which exceed EUR 750,000 per agreement at the end of each financial year.

2. The authorising officer responsible may recover at least once a year the amount of interest generated by pre-financing payments lower than those referred to in paragraph 1, taking account of the risks associated with his management environment and the nature of the actions financed.

3. The authorising officer responsible shall recover the amount of interest generated by pre-financing payments which exceeds the balance of the amounts due as referred to in Article 5a(1) of the Financial Regulation."

(4) The following Article 4a is inserted:

"Article 4a
Accounting for interest yielded on pre-financing
(Article 5a of the Financial Regulation)

1. Authorising officers shall ensure that, in grant agreements concluded with beneficiaries and intermediaries, pre-financing is paid to bank accounts or sub-accounts which allow the funds and related interest to be identified. Otherwise, the accounting methods of the beneficiaries or intermediaries must make it possible to identify the funds paid by the Community and the interest or other benefits yielded by these funds.

2. In the cases referred to in the second subparagraph of Article 5a(1) of the Financial Regulation, the authorising officer responsible draws up before the end of each financial year estimates of the amount of any interest or equivalent benefit yielded by these funds and establishes a provision for that amount. That provision shall be entered in the accounts and cleared by effective recovery, following the implementation of the agreement.

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

3. Article 3 to 4a shall be without prejudice to the entry of pre-financing on the assets side of financial statements, as laid down in the accounting rules referred to in Article 133 of the Financial Regulation."

(5) In point (c) of Article 5, "Articles 157 and 181(5) of the Financial Regulation" is replaced by "Articles 157 and 160a of the Financial Regulation".

(6) In Article 7, the following paragraph 1a is inserted:

"1a In order to avoid that currency conversion operations have a significant impact on the level of the Community co-financing, the specific arrangements for conversion referred to in paragraph 1 shall provide, if appropriate, for a rate of conversion between the euro and other currencies to be calculated using the average of the daily exchange rate in a given period".

(7) Article 10 is amended as follows:

(a) In paragraph 1, first subparagraph, point (b) is replaced by the following:

"(b) in the statement of expenditure, the budget remarks, including general remarks, shall show which lines may receive the appropriations corresponding to the assigned revenue which are made available."

(b) In paragraph 1, the second subparagraph is replaced by the following:

"In the case referred to in point (a) of the first subparagraph, a token entry (p.m.) shall be made and the estimated revenue shall be shown for information in the remarks".

(c) In the first sentence of paragraph 2, "Article 161(2) of the Financial Regulation" is replaced by "Articles 160(1a) and 161(2) of the Financial Regulation".

(8) Article 11 is amended as follows:

(a) In paragraph 1, "Article 5 of Regulation (EC, Euratom) No 1150/2000" is replaced by "Article xx of Regulation (EC, Euratom) No […./….]".

(b) In paragraph 4, "Regulation (EC, Euratom) No 1150/2000" is replaced by "Regulation (EC, Euratom) No […/...]".

(9) The following Article 13a is inserted:

"Article 13a
Charges entailed by acceptance of donations to the Communities
(Article 19 of the Financial Regulation)

Charges as referred to in Article 19(2) of the Financial Regulation shall include the follow-up costs entailed by the acceptance of donations to the Communities as estimated by the Commission."

(10) Article 14 is replaced by the following:

"Article 14
Passing for payment of the net amount
(Article 20(1) of the Financial Regulation)

Pursuant to Article 20(1) of the Financial Regulation, the following deductions may be made from payment requests, invoices or statements, which shall then be passed for payment of the net amount:

(a) penalties imposed on parties to procurement contracts or grant agreements;

(b) discounts, refunds and rebates on individual invoices and payment requests;

(c) interest generated by pre-financing payments, as referred to in Article 5a(1), first subparagraph of the Financial Regulation."

(11) Article 16 is deleted.

(12) Article 17 is replaced by the following:

"Article 17
Rules concerning the calculation of time-limits and percentages on transfers
(Articles 22 and 23 of the Financial Regulation)

1. The time limits laid down in Article 24 of the Financial Regulation which are applicable for decisions on transfers referred to in Article 22(1) and Article 23(1) points (b) and (c) of the Financial Regulation shall be deemed to begin on the date on which the budgetary authority was informed by the institution of the intended transfer.

2. The percentages referred to in Articles 22 and 23 of the Financial Regulation shall be calculated at the time the request for transfer is made and with reference to the appropriations provided in the budget, including amending budgets.

3. For the percentage limits referred to in Articles 22 and 23 of the Financial Regulation, the amount to be taken into consideration shall be the sum of the transfers to be made on the line from which transfers are being made, after adjustment for earlier transfers made. The amount corresponding to the transfers which can be carried out autonomously by the institution concerned without a decision of the budgetary authority shall not be taken into consideration."

(13) In the first sentence of Article 20, "the first subparagraph of Article 26(2) of the Financial Regulation" is replaced by "Article 26 of the Financial Regulation".

(14) In Article 22, the first subparagraph of paragraph 1 is deleted.

(15) Article 23 is replaced by the following:

"Article 23
Provisional publication of the budget
(Articles 29 of the Financial Regulation)

As soon as possible and no later than four weeks after the final adoption of the budget, the final detailed budget figures shall be published in all languages on the internet site of the institutions, at the Commission's initiative, pending official publication in the *Official Journal of the European Union."*

(16) After Article 23, the following Chapter 7 is inserted:

"CHAPTER 7
(Chapter 9 of the Financial Regulation)
Principle of effective and efficient control

Article 23a
Definition of effective and efficient internal control
(Article 30a(1) of the Financial Regulation)

1. Effective internal control is based on best international practices and includes in particular:

   (a) segregation of tasks;

   (b) appropriate risk management and control strategy including controls at beneficiary level;

   (c) avoiding conflicts of interests;

   (d) adequate audit trails and data integrity in data systems;

   (e) procedures for monitoring of performance and for follow-up of identified internal control weaknesses and exceptions;

   (f) periodic assessment of the sound functioning of the control system.

2. Efficient internal control is based on the following elements:

   (a) taking account of the management mode applied, the implementation of an appropriate risk management and control strategies coordinated among appropriate actors involved in the control chain balancing the cost for the Community budget and benefits of controls and setting the control level in order to attain a tolerable risk level;

   (b) the accessibility of control results to all appropriate actors involved in the control chain;

   (c) the timely application of corrective measures including, where appropriate, dissuasive penalties;

   (d) the provision of a management assurance at the appropriate management level, that systems have been put in place that provide reasonable assurance on the legality and regularity of underlying transactions.

Article 23b
Implementation of the internal control
(Articles 30a(3) and 33(2)(d) of the Financial Regulation)

1. The Commission shall describe in the Financial Statement referred to in Article 28 of the Financial Regulation the risk inherent in the implementation of a basic act and the major control mechanisms required in order to address that risk and provide an adequate level of control, having regard in particular to the costs for the Community budget and benefits of controls for the different policy areas and the value of the expenditure concerned.

2. In compliance with the basic act, the Commission shall, where necessary, complete the modalities for the management of the inherent risks by:

   (a) indicating the level and intensity of controls considered as sufficient if no significant irregularities or illegalities are revealed;

   (b) defining minimum criteria for control sampling as well as keeping record of the reasons for the selection made in the sampling exercise;

   (c) specifying reporting requirements on the controls done.

3. The Commission shall report on the implementation of the major control mechanisms, that it has put in place, in the activity statement referred to in Article 33 of the Financial Regulation, which shall inform the budget authority on the adequacy of those controls and on the associated required resources for the Community budget."

(17) Article 25 is amended as follows:

   (a) point (a)(ii) is replaced by the following:

      "(ii) for each category of staff, an organisation chart of budgetary posts and persons in post at the beginning of the year in which the preliminary draft budget is presented, indicating their distribution by grade and administrative unit;"

(18) Article 31 is deleted.

(19) Article 32 is amended as follows:

   (a) In the Title, "Article 49(2)(a) and (b)" is replaced by "Article 49(6)(a) and (b)".

   (b) In paragraph 1, "Article 49(2)(a)" is replaced by "Article 49(6)(a)".

   (c) In paragraph 2, "Article 49(2)(b)" is replaced by "Article 49(6)(b)".

(20) In the title of Article 33, "Article 49(2)(c) is replaced by "Article 49(6)(d)".

(21) In Article 34, the following paragraph 3 is added:

"3. A conflict of interest shall be presumed to exist if an applicant, candidate or tenderer is a member of staff, unless his participation in the procedure has been authorised in advance by his superior."

(22) Article 35 is replaced by the following:

"Article 35
Checks to be carried out by the Commission
(Articles 53b, 53d, 54(2)(c) and 56 of the Financial Regulation)

1. Decisions entrusting executive tasks to the entities or persons referred to in Article 56 of the Financial Regulation shall include all appropriate arrangements for ensuring the transparency of operations carried out.

2. The Commission shall review these arrangements as necessary whenever there are substantial changes to the procedures or systems applied by such entities or persons in order to ensure continued compliance with the conditions set out in Article 56.

3. The entities or persons concerned shall provide the Commission, within a specified time limit, with any information it requests and shall inform it without delay of any substantial changes in their procedures or systems. The Commission shall, as appropriate, set out those obligations in the instruments of delegation or in the agreements concluded with those entities or persons.

4. The Commission may accept that the procurement procedures of the bodies referred to in Articles 54(2)(c) and of the beneficiaries referred to in Article 166(1)(a) of the Financial Regulation are equivalent to its own, with due account for internationally accepted standards.

5. Where the Commission implements the budget by joint management, the verification agreements concluded with the international organisations concerned shall apply.

6. The independent external audit referred to in Article 56(1)(d) of the Financial Regulation shall be at least an audit service functionally independent of the entity to which the Commission entrusts implementation tasks."

(23) In Article 36, "Article 53" is replaced by "Article 53a".

(24) In Article 37, paragraph 2 is deleted.

(25) Article 38 is replaced by the following:

"Article 38
Eligibility of national or international public-sector bodies or private-law entities with a public-service mission for the delegation of powers and conditions relating thereto (Article 54(2)(c) of the Financial Regulation)

1. The Commission may delegate tasks involving the exercise of public authority to:

   (a) international public-sector bodies;

   (b) national public-sector bodies or private-law entities with a public-service mission governed by the law of one of the Member States, one of the States of the European Economic Area (EEA) or one of the countries that is a candidate for membership of the European Union or, if appropriate, by the law of any other State.

2. The Commission shall ensure that the bodies or entities referred to in paragraph 1 offer adequate financial guarantees, issued preferably by a public authority, in particular as regards full recovery of amounts due to the Commission.

3. Where the Commission is planning to entrust tasks involving the exercise of public authority, and in particular tasks of budget implementation, to a body referred to in point (c) of Article 54(2) of the Financial Regulation, it shall analyse compliance with the principles of economy, effectiveness and efficiency."

(26) Article 39 is amended as follows:

(a) The title is replaced by the following:

"Article 39
Designation of national or international public-sector bodies or private-law entities with a public-service mission
(Article 54(2)(c) of the Financial Regulation)"

(b) In paragraph 2, the first sentence is replaced by the following:

"Such bodies, entities or international public-sector bodies shall be chosen in an objective and transparent manner, in accordance with the principle of sound financial management, to match the implementation requirements identified by the Commission."

(c) In paragraph 3, the last sentence is replaced by the following:

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

(d) A new paragraph 4 is added:

"4. Where the Commission entrusts implementing tasks to bodies under point (c) of Article 54(2) of the Financial Regulation, it shall inform annually the legislative authority of the cases and bodies concerned."

(27) The following Article 39a is inserted:

"Article 39a
Persons entrusted with the management of specific actions pursuant to Title V of the Treaty on European Union,
(Article 54(2)(d) of the Financial Regulation)

Persons entrusted with the management of specific actions as referred to in point (d) of Article 54(2) of the Financial Regulation shall put in place the appropriate structures and procedures in order to assume the responsibility for the funds that they will manage. Those persons shall have the status of CFSP Special Advisers of the Commission pursuant to Articles 1 and 5 of the Conditions of Employment of Other Servants of the European Communities."

(28) Article 41 is amended as follows:

(a) The title is replaced by the following:

"Article 41
Detailed arrangements for indirect centralised management
(Articles 54(2)(b), (c) and (d) of the Financial Regulation)"

(b) The first paragraph is replaced by the following:

"1. Where the Commission entrusts implementing tasks to bodies, entities or persons under points (b), (c) and (d) of Article 54(2) of the Financial Regulation, it shall conclude an agreement with them laying down the detailed arrangements for the management of funds and the protection of the financial interests of the Union."

(c) Paragraph 3 is replaced by the following:

"3. The bodies, entities or persons referred to in paragraph 1 shall not have the status of authorising officers by delegation."

(29) Article 42 is amended as follows:

(a) In the title, "Article 53" is replaced by "Articles 53b and 53c."

(b) In paragraph 1, "Article 53(5)" is replaced by "Articles 53b and 53c."

(30) The following Article 42a is inserted:

"Article 42a
Summary of the audits and declarations
(Article 53b of the Financial Regulation)

1. The summaries shall be provided by the appropriate coordinating body designated by the Member State for the area of expenditure concerned.

2. The summary related to audits shall:

   (a) provide an overview of the certificates established by the certification bodies (agriculture) and of the audit opinions provided by the audit authorities (structural and other similar measures);

   (b) be provided by 15 February of the year following the year of the audit activity for agricultural expenditure and for structural and other similar measures.

3. The summary related to declarations shall:

   (a) provide an overview of the statements of assurance provided by the paying agencies (agriculture), and of certifications by the certifying authorities (structural and other similar measures);

   (b) be provided by 15 February of the following financial year for agricultural expenditure and for structural and other similar measures."

(31) The following Article 42b is inserted:

"Article 42b
Assessment of efficiency of internal control systems
(Article 53b of the Financial Regulation)

In shared, decentralised and indirect centralised management, where the costs of controls are not charged to the Community budget, the assessment of the efficiency of the internal control systems and, where appropriate, the implementation of corrective measures, are the responsibility respectively of the Member States, the third countries or the bodies to whom budget implementation tasks have been entrusted."

(32) Article 43 is replaced by the following:

"Article 43
Joint management
(Articles 53d, 108a and 165 of the Financial Regulation)

1. The Commission shall ensure that suitable arrangements exist for the control and audit of the action in its entirety.

2. The international organisations referred to in Article 53d of the Financial Regulation are as follows:

   (a) international public-sector organisations set up by intergovernmental agreements, and specialised agencies set up by such organisations;

   (b) the International Committee of the Red Cross (ICRC);

   (c) the International Federation of National Red Cross and Red Crescent Societies;

   (d) the European Investment Bank and the European Investment Fund.

3. Where the budget is implemented by joint management with international organisations in accordance with Articles 53d and 165 of the Financial Regulation, the organisations and the actions to be financed shall be chosen in an objective and transparent manner.

4. Without prejudice to Article 35, agreements concluded with the international organisations referred to in Article 53d of the Financial Regulation shall contain in particular:

   (a) a definition of the action, the project or the programme to be implemented under joint management;

   (b) the conditions and the detailed arrangements for their implementation, including in particular the principles for the award of procurement and grants;

   (c) the rules on reporting to the Commission on this implementation;

   (d) provisions obliging the organisation to which implementation tasks are entrusted to exclude from participation in a procurement or grant award procedure candidates and applicants who are in one of the situations referred to in Article 93(1)(a) (b) and (e) and 94 (a) (b) of the Financial Regulation;

   (e) the conditions for payments of the Community contribution, and the supporting documents required to justify the payments;

   (f) the conditions under which this implementation terminates;

   (g) the detailed arrangements for Commission scrutiny;

   (h) provisions regarding the use of any interest yielded;

   (i) provisions guaranteeing the visibility of the Community action, project or programme in relation to the other activities of the organisation.

5. A project or programme is considered to be jointly elaborated when the Commission and the international public-sector body jointly assess the feasibility and define the implementation agreements.

6. In the implementation of projects in joint management, international organisations shall comply with at least the following requirements:

(a) procurement and grant award procedures shall comply with the principles of transparency, proportionality, sound financial management, equal treatment and non-discrimination, lack of conflict of interests and respect of international standards;

(b) grants may not be cumulative or awarded retrospectively, must involve co-financing, and may not have the purpose or effect of producing a profit for the beneficiary.

These requirements shall be expressly established in the agreements concluded with the international organisations."

(33) In Article 45, paragraph 2, "grade A1" is replaced by "grade AD16".

(34) In Article 58, paragraph 3, "Regulation (EC, Euratom) No 1150/2000" is replaced by "Regulation (EC, Euratom) No …./….".

(35) In Article 67, paragraph 4 is replaced by the following:

"4. Payments from imprest accounts may be made by bank credit transfer, including the direct debit system referred to in Article 80 of the Financial Regulation, cheque or other means of payment, in accordance with the instructions laid down by the accounting officer."

(36) In Article 72, "Staff Regulations of Officials and the Conditions of Employment of Other Servants of the European Communities (hereinafter "the Staff Regulations")" is replaced by "Staff Regulations".

(37) Article 74 is replaced by the following:

"Article 74
Financial irregularities
(Articles 60(6) and 66(4) of the Financial Regulation).

Without prejudice to the powers of the European Anti-Fraud Office (OLAF), the specialised financial irregularities panel (hereinafter 'the panel') shall be competent in respect of any infringement of a provision of the Financial Regulation or of a provision relating to financial management or the checking of operations resulting from an act or omission of a member of staff."

(38) Article 75 is replaced by the following:

"Article 75
Financial irregularities panel
(Articles 60(6) and 66 (4) of the Financial Regulation)

1. Cases of financial irregularities as referred to in Article 74 shall be referred to the panel for an opinion by the appointing authority pursuant to Article 66(4), second subparagraph, of the Financial Regulation.

   An authorising officer by delegation may refer a matter to the panel if he considers that a financial irregularity has occurred.

   The panel shall deliver an opinion evaluating whether irregularities within the meaning of Article 74 have occurred, how serious they are and what their consequences might be. Should the panel's analysis suggest that the case referred to it is a matter for OLAF, it shall transmit the case-file to the appointing authority without delay and shall inform OLAF at once.

   When the panel is directly informed of a matter by a member of staff in accordance with Article 60(6) of the Financial Regulation, it shall transmit the file to the appointing authority and shall inform the member of staff accordingly. The appointing authority may request the panel's opinion on the case.

2. The institution or, in the case of a joint panel, the participating institutions shall, depending on its or their own internal organisation, specify the operating arrangements of the panel and its composition, which shall include an outside personality with the required qualifications and expertise."

(39) In Article 77(2), the first sentence is replaced by the following:

"Subject to Articles 160(1a) and 161(2) of the Financial Regulation, an estimate of amounts receivable shall not have the effect of making commitment appropriations available."

(40) In Article 78(3), point (f) is replaced by the following:

"(f) if, after all those steps have been taken, the amount has not been recovered in full, the institution shall affect recovery by enforcement in accordance with Article 72(2) of the Financial Regulation."

(41) In Article 84, paragraph 2 is replaced by the following:

"2. Without prejudice to Article 83, where the recovery method referred to in paragraph 1 cannot be used and the debtor has failed to pay in response to the letter of formal notice sent by the accounting officer, the accounting officer shall enforce recovery in accordance with Article 72(2) of the Financial Regulation."

(42) The following Article 85b is inserted:

"Article 85b
Privileges attaching to amounts receivable by the Communities
(Article 73a of the Financial Regulation)

Where, in the Member State in whose jurisdiction the recovery is to be enforced, the general or special privileges are attached to fiscal claims, amounts receivable by the Communities shall enjoy privileges of the same rank as those granted in respect of value-added tax by the national law applicable.

The privileges attaching to amounts receivable by the Communities shall cover both the principal debt and the interest."

(43) The following Article 85c is inserted:

"Article 85c
Rules for limitation periods
(Article 73b of the Financial Regulation)

1. The limitation period for entitlements of the Communities in respect of third parties shall begin to run on the expiry of the deadline communicated to the debtor in the debit note as specified in Article 78(3)(b).

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

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

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

3. A new limitation period of 5 years shall begin to run on the day following the interruptions referred to in paragraph 2.

4. Any legal action relating to an amount receivable as referred to in paragraph 1, including actions brought before a court which later declares itself not to have jurisdiction, shall interrupt the limitation period. The new limitation period of 5 years shall not begin until a judgment having the force of *res judicata* is given or there is an extrajudicial settlement between the same parties on the same action.

5. Where the accounting officer allows the debtor additional time for payment in accordance with Article 85, this shall be considered as an interruption of the

limitation period. The new limitation period of 5 years shall begin to run on the day following the expiry of the extended time for payment.

6. Entitlements shall not be recovered after the expiry of the limitation period, as established in paragraphs 1 to 5."

(44) In Article 87(3), the second sentence is replaced by the following:

"The authorising officer responsible shall waive recovery in accordance with Article 81."

(45) Article 93 is deleted.

(46) In Article 94(1), the following point (f) is added:

"(f) where an institution has delegated authorising officer powers to the director of an inter-institutional European office pursuant to Article 174a(1) of the Financial Regulation."

(47) In article 106, the following paragraph 6 is added:

"6. The institutions shall submit to the budgetary authority a report on the compliance with the time limits and on the suspension of the time limits laid down in paragraphs 1 to 5."

(48) In the second subparagraph of Article 115 (2), "Staff Regulations" is replaced by "Staff Regulations of Officials of the European Communities."

(49) In Article 116(6), the last sentence of the first subparagraph is replaced by the following:

"Those who have asked to be allowed to take part in a restricted procedure, a competitive dialogue, or a negotiated procedure are referred to as "candidates"."

(50) In Article 117, paragraph (1) is replaced by the following:

"1. Where a framework contract is concluded with several economic operators, the latter must be at least three in number, insofar as there is a sufficient number of economic operators who satisfy the selection criteria and/or of admissible tenders which meet the award criteria.

A framework contract with a number of economic operators may take the form of contracts which are separate but concluded in identical terms.

The term of a framework contract may not exceed four years, save in exceptional cases duly justified in particular by the subject of the framework contract.

In sectors subject to a rapid price and technological evolution framework contracts without reopening of competition shall contain a stipulation on a mid term review. If the conditions initially laid down are no longer geared to the

price or technological evolution, the contracting authority may not use the concerned framework contract and shall take appropriate measures to terminate it."

(51) Article 118 is amended as follows

(a) In paragraph 3, the following subparagraph is added:

"Whenever appropriate, contracting authorities shall specify in the contract notice that the procurement procedure is an inter-institutional procurement procedure. In such cases, the contract notice shall indicate the names of the institutions, executive agencies or bodies referred to in Article 185 of the Financial Regulation which are involved in the procurement procedure, the institution responsible for the procurement procedure and the global volume of the contracts for all those institutions, executive agencies or bodies."

(b) Paragraph 4 is amended as follows:

(i) The second subparagraph is replaced by the following:

"The award notice shall be sent to the OPOCE within the following time-limits:

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

(ii) In the case of a contract or a framework contract with a value equal or above the thresholds laid down in Article 158 and awarded pursuant to a negotiated procedure without prior publication of a contract notice, in sufficient time for the publication to occur before the signature of the contract, in accordance with the terms and conditions provided in Article 158a, paragraph 1."

(ii) The following subparagraph is added:

"Information relating to the value and beneficiaries of specific contracts based on a framework contract during a financial year shall be published on the internet website of the contracting authority no later than 31 March following the end of this financial year, if as a result of the conclusion of a specific contract or of the aggregate volume of the specific contracts the thresholds referred to in Article 158 are exceeded."

(52) In Article 123(2), the first subparagraph is replaced by the following:

"In negotiated procedures and after a competitive dialogue, the number of candidates invited to negotiate or to tender may not be less than three, provided that a sufficient number of candidates satisfy the selection criteria."

(53) The following Article 125c is inserted:

"Article 125c
Joint procurement procedure with a Member State
(Article 91 of the Financial Regulation)

In the case of a joint procurement procedure between one institution and the contracting authority from one or more Members States, the procedural provisions applicable to the institution shall apply. In duly justified cases, the institution may decide that the procedural rules applicable to the contracting authority from a Member State shall apply provided that they can be considered as equivalent to those of the institution."

(54) Article 129(4) is replaced by the following:

"4. Payments of amounts lower than EUR 500 in respect of items of expenditure may consist simply in payment against invoices, without prior acceptance of a tender."

(55) Article 130 is amended as follows:

(a) In paragraph 3, point (a) is replaced by the following:

"(a) specify the exclusion and selection criteria applying to the contract, save in a competitive dialogue, in the restricted procedure and in the negotiated procedure following publication of a notice as referred to in Article 127; in such cases those criteria shall appear solely in the contract notice or the call for expressions of interest;"

(b) Paragraph 4 is amended as follows:

(i) point (c) is replaced by the following:

"(c) state that, when the Commission is the contracting authority, Community law is the law which applies to the contract, complemented, where necessary, by a national law as specified in the contract;"

(ii) the following point (d) is added:

"(d) specify the competent court for hearing disputes."

(c) In paragraph 5, the following sentence is added:

"The contracting authority may also require the candidate or tenderer to submit any information on the financial and operational capacities of the envisaged subcontractor, in particular when subcontracting represents a significant part of the contract."

(56) Article 133 is replaced by the following:

"Article 133
Illegal activities giving rise to exclusions
(Article 93 and 114 of the Financial Regulation)

The cases referred to in point (e) of Article 93(1) of the Financial Regulation shall be the following:

(a) cases of fraud as referred to in Article 1 of the Convention on the protection of the European Communities' financial interests drawn up by the Council Act of 26 July 1995[9];

(b) cases of corruption as referred to in Article 3 of the Convention on the fight against corruption involving officials of the European Communities or officials of Member States of the European Union, drawn up by the Council Act of 26 May 1997[10];

(c) cases of involvement in a criminal organisation, as defined in Article 2(1) of Joint Action 98/733/JHA of the Council[11];

(d) cases of money laundering as defined in Article 1 of Council Directive 91/308/EEC[12]."

(57) The following Article 133a is inserted:

"Article 133a
Application of exclusion criteria
(Articles 93, 94, 95 and 96 of the Financial Regulation)

1. In order to determine duration of exclusion and to ensure compliance with the principle of proportionality, the institution responsible shall take into account in particular the seriousness of the facts, including their impact on the Communities' financial interests and image and the time which has elapsed, the duration and recurrence of the offence, the intention or degree of negligence of the entity concerned and the measures taken by the entity concerned to remedy the situation.

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9 OJ C 316, 27.11.1995, p. 48.
10 OJ C 195, 25.6.1997, p. 1.
11 OJ L 351, 29.12.1998, p. 1.
12 OJ L 166, 28.6.1991, p. 77.

2. The period referred to in Article 93(3) of the Financial Regulation is set at a maximum of 5 years:

(a) from the date of the judgment having the force of *res judicata* in the cases referred to in points (b), (e) of Article 93(1) of the Financial Regulation;

(b) from the date on which the infringement is committed or, in the case of continuing or repeated infringements, the date on which the infringement ceases, in the cases referred to in point (c) of Article 93(1) of the Financial Regulation.

That period of exclusion may be extended to 10 years in the event of a repeated offence within five years of the date referred to in points (a) and (b), taking due account of paragraph 1.

3. Candidates and tenderers shall be excluded from a procurement and grant procedure as long as they are in one of the situations referred to in points (a) and (d) of Article 93 of the Financial Regulation."

(58) Article 134 is amended as follows:

(a) The title of Article 134 is replaced by the following:

"Article 134
Evidence
(Articles 93 and 94 of the Financial Regulation)"

(b) In paragraph 1, the following subparagraph is added:

"Depending on its risks assessment, the contracting authority may refrain from requiring the declaration referred to in subparagraph 1 that the candidates or tenderers are not in one of the situations referred to in Articles 93 and 94 for contracts with a value equal to or less than EUR 3,500 referred to in Article 129(3) and EUR 10,000 as referred to in Articles 241(1) last subparagraph, 243(1) last subparagraph, 245(1) last subparagraph."

(c) The following paragraph 6 is added:

"6. Whenever requested by the contracting authority, the candidate or tenderer shall submit a declaration on his honour from the envisaged subcontractor that he is not in one of the situations referred to in Articles 93 and 94 of the Financial Regulation.

In case of doubt on this declaration on the honour, the contracting authority shall request the evidence referred to in paragraphs 3 and 4. Paragraph 5 shall also apply, where appropriate."

(59) The following Articles 134a and 134b are inserted:

"Article 134a
Common central data base
(Article 95 of the Financial Regulation)

1. The institutions, executive agencies, authorities and bodies referred to in Articles 95(1) and (2) of the Financial Regulation shall transmit to the Commission information, in a structured template, on the third party concerned, the grounds and duration of the exclusion. They shall also transmit information concerning natural persons with powers of representation, decision making or control over given third party, who have found themselves in one of the situations referred to in Articles 93, 94 and 96(1)(b) and (2)(a).

   The Member States' authorities shall communicate information on exclusions pursuant Article 93(1)(a) of the Financial Regulation only for contracts falling under Directive 2004/18/EC.

   They shall certify to the Commission that the information was established and transmitted in accordance with the rules on the protection of personal data and that the third party concerned was informed about the transmission of the information. They shall update, where appropriate, the information transmitted.

2. In compliance with the Community rules on the processing of personal data, the Commission shall, via a secured protocol and on a regular basis, provide validated data contained in the database to persons designated in the institutions, executive agencies, authorities and bodies referred to in paragraph 1.

3. Entry of third parties into the database and their removal pursuant Article 95(1) of the Financial Regulation shall be made upon written request by the authorising officer responsible addressed to the accounting officer of the Commission. The authorising officer responsible for requesting entry of third parties into the database and their removal as well as the procedure shall be defined in the administrative rules of the institution concerned, executive agency, or body referred to in Article 185 of the Financial Regulation.

4. Upon receipt of a communication transmitted pursuant Article 95(2) first subparagraph of the Financial Regulation, the Commission authorising officer responsible for the programme or action concerned shall, after verifying that the third party is clearly identified and that the grounds and duration of the exclusion are indicated, forward it to the accounting officer of the Commission for entry into the database.

Article134b
Administrative and financial penalties
(Articles 96 and 114 of the Financial Regulation)

1. Without prejudice to the application of penalties laid down in the contract, candidates or tenderers and contractors who have made false declarations, have made substantial errors or committed irregularities and fraud, or have been found in serious breach of their contractual obligations may be excluded from all contracts and grants financed by the Community budget for a maximum of five years from the date on which the infringement is established, as confirmed following an adversarial procedure with the contractor.

   That period may be extended to 10 years in the event of a repeated offence within five years of the date referred to in the first subparagraph.

2. Tenderers or candidates who have made false declarations, have committed substantial errors or irregularities and fraud, may also be subject to financial penalties representing 2% to 10% of the total estimated value of the contract being awarded.

   Contractors who have been found in serious breach of their contractual obligations may be subject to financial penalties representing 2% to 10% of the total value of the contract in question.

   That rate may be increased to 4% to 20% in the event of a repeat infringement within five years of the date referred to in the first subparagraph of paragraph 1.

3. The institution shall determine the administrative or financial penalties taking into account in particular the elements referred to in Article 133a(1).”

(60) In Article 140(3), the first subparagraph is amended as follows:

“In restricted procedures, in cases of use of the competitive dialogue referred to in Article 125b and in negotiated procedures with publication of a contract notice for contracts above the thresholds set in Article 158, the time limit for receipt of requests to participate shall be no less than thirty-seven days from the date on which the contract notice is dispatched.”

(61) In the first subparagraph of Article 146, the following sentence is added:

“However, the authorising officer responsible may decide that the evaluation committee is to evaluate and rank only the award criteria and that the exclusion and selection criteria are to be evaluated by other appropriate means guaranteeing the absence of conflict of interest.”

(62) Article 147 is amended as follows:

(a) Paragraph 1 is replaced by the following:

“1. A written record of the evaluation and ranking of requests to participate and tenders declared to satisfy the requirements shall be drawn up and

dated. The written record shall be signed by all the members of the evaluation committee and, if the evaluation committee was not given responsibility for the evaluation and ranking of the exclusion and selection criteria, by the persons who were given that responsibility by the authorising officer responsible. It shall be kept for future reference."

b) In paragraph 3, the following subparagraph is added:

"In the case of the inter-institutional procurement procedure, the decision referred to in the first subparagraph shall be taken by the contracting authority responsible for the procurement procedure."

(63) Article 149 is amended as follows:

(a) The title is replaced by the following:

"Article 149
Information for candidates and tenderers
(Articles 100(2), 101 and 105 of the Financial Regulation)"

(b) Paragraph 3 is amended as follows:

(i) The first paragraph is replaced by the following:

"In the case of contracts awarded by the Community institutions on their own account, with a value equal to or more than the thresholds referred to in Article 158 and not excluded from the scope of Directive 2004/18/EC, the contracting authority shall inform all unsuccessful tenderers or candidates, simultaneously and individually, by mail and fax or email, that their application or tender has not been accepted:

(a) shortly after decisions have been taken on exclusion and selection criteria and before the award decision, or

(b) as regards the award decisions and decisions to reject offers, as soon as possible after the award decision and within the following week at the latest.

In each case, the contracting authority shall indicate the reasons why the tender or application has not been accepted and the available legal remedies."

(ii) The fourth subparagraph is deleted.

(64) The following Article 149a is inserted:

"Article 149a
Signature of the contract
(Articles 100 and 105 of the Financial Regulation)

Implementation of a contract shall not start before the contract is signed."

(65) Article 155 is amended as follows

(a) In paragraph 1, the following subparagraph is inserted:

"Whenever appropriate, technically feasible, and cost efficient, contracts with a value equal to or greater than the thresholds laid down in Article 158 should be awarded at the same time in the form of separate lots."

(b) The following paragraph 4 is inserted:

"Where a contract is to be awarded in the form of separate lots, tenders shall be evaluated separately for each lot. If several lots are awarded to the same tenderer, a single contract covering these lots may be signed."

(66) The following Article 158a is inserted:

"Article 158a
Standstill period before signature of the contract
(Article 105 of the Financial Regulation)

1. Subject to paragraph 2, the contracting authority shall not sign the contract or framework contract, covered by Directive 2004/18/EC, with the successful tenderer until ten calendar days have elapsed:

(a) from the day after the simultaneous dispatch of the award decisions and decisions to reject, or:

(b) where the contract or framework contract is awarded pursuant to a negotiated procedure without prior publication of a contract notice, from the day after the contract award notice referred to in Article 118 has been published in the *Official Journal of the European Union*.

If necessary the contracting authority may suspend the signing of the contract for additional examination if this is justified by the requests or comments made by unsuccessful or aggrieved tenderers or candidates or by any other relevant information he received. The requests or comments and the information must be received during the ten calendar days following the notification of the rejection or award decisions or where applicable, the publication of a contract notice. In the case of suspension all the candidates or tenderers shall be informed within three working days following the suspension decision.

Except in the cases provided for in paragraph 2, any contract signed before the expiry of the ten calendar days period shall be null and void.

2. The ten calendar days period before signing the contract shall not apply in the following cases:

(a) in case of open procedures where only one tender has been submitted;

(b) in case of restricted or negotiated procedures after prior publication of a contract notice where the tenderer to whom the contract is to be awarded was the only one who satisfies the exclusion and selection criteria, provided that, in accordance with Article 149(3), first subparagraph, point (a), the other candidates or tenderers have been informed of the grounds of their exclusion or rejection shortly after the relevant decisions have been taken on the basis of the exclusion and selection criteria;

(c) in case of specific contracts based on framework contract and by applying the terms set out in such a framework contract, without reopening the competition.

(d) in case of extreme urgency referred to in Article 126(1)(c)."

(67) In Article 160, the second subparagraph of paragraph 1, paragraph 2 and paragraph 3 are deleted.

(68) The following Articles 160a, 160b, 160c, 160d and 160e are inserted:

"Article 160a
Subscriptions
(Article 108 of the Financial Regulation)

The subscriptions referred to in point (d) of Article 108(2) of the Financial Regulation are sums paid to bodies of which the Communities are members, in accordance with the budgetary decisions and the conditions of payment established by the body concerned.

Article 160b
Participations
(Article 108 of the Financial Regulation)

For the purposes of Article 108(2) and (3) of the Financial Regulation, the following definitions shall apply:

(a) *"equity participation"* means an ownership position in an organisation or venture taken through an investment, in which returns on the investment are dependent on the profitability of the organisation or venture;

(b) *"share-holding"* means an equity participation in the form of shares in an organisation or venture;

(c) *"equity investment"* means the provision of capital to a firm by an investor in return for partial ownership of that firm where, in addition, this investor may assume some management control of the firm and may share in future profits;

(d) *"quasi-equity financing"* means a type of financing that generally involves a mix of equity and debt, where the equity allows investors to achieve a high rate of return upon the success of the company and/or where the debt component entails a premium price contributing to the return of the investor."

(e) *"risk-bearing instrument"* means a financial instrument which guarantees the coverage of a defined risk, totally or partially, possibly in exchange for an agreed remuneration.

Article 160c
Specific rules
(Article 108(3) of the Financial Regulation)

1. Where grants as referred to in points (a) and (b) of Article 108(3) of the Financial Regulation are awarded by the Commission under direct centralised management, they shall be subject to the provisions of this Title, with the exception of the following provisions:

   (a) the no-profit rule as referred to in Article 165;

   (b) the co-financing requirement as referred to in Article 172;

   (c) for the actions the objective of which is the reinforcement of the financial capacity of a beneficiary or the generation of an income, the assessment of the financial viability of the applicant as referred to in Article 173(4);

   (d) the requirement for an advance guarantee as referred to in Article 182.

   The provision of the first subparagraph is without prejudice to the accounting treatment of the grants concerned, which shall be determined by the accounting officer in accordance with international accounting standards.

2. In all cases where a financial contribution is made, the authorising officer responsible shall ensure that appropriate arrangements have been made with the recipient of the contribution defining the modalities for payment and control.

Article 160d
Prizes
(Article 109(3)(b) of the Financial Regulation)

For the purposes of point (b) of Article 109(3) of the Financial Regulation, prizes are the reward for an entry in a contest.

They shall be awarded by a panel of judges who are 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.

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

The rules of the contest shall lay down the award conditions and criteria and the amount of the prize.

Article 160e
Agreement and decision for grants
(Article 108(1) of the Financial Regulation)

1. For each community programme or action, the annual work programme shall determine whether grants shall be only covered by a decision or also by a written agreement.

2. To determine the instrument to be used, the following elements shall be taken into account:

   – equal treatment and non-discrimination between beneficiaries, in particular on the basis of nationality or geographical location;

   – coherence of that instrument with other instruments used within the same community programme or action;

   – complexity and standardisation of the content of the actions or work programmes funded.

3. In the case of programmes managed by several authorising officers, the instrument to be used shall be determined in consultation between these authorising officers responsible."

(69) Article 163 is replaced by the following:

"Article 163
Partnerships
(Article 108 of the Financial Regulation)

1. Specific grants may form part of a framework partnership.

2. A framework partnership may be established as long-term cooperation between the Commission and the beneficiaries of grants. It may take the form of a framework partnership agreement or a framework partnership decision.

   The framework partnership agreement or decision shall specify the common objectives, the nature of actions planned on a one-off basis or as part of an approved annual work programme, the procedure for awarding specific grants, in compliance with the principles and procedural rules of this Title, and the

general rights and obligations of each party under the specific agreements or decisions.

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

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

3. Partnership framework agreements or decisions shall be treated as grants for the purposes of the award procedure; they shall be subject to the *ex ante* publication procedures referred to in Article 167.

4. Specific grants based on the framework partnership agreements or decisions shall be awarded in accordance with the procedures laid down in those agreements or decisions, in compliance with the principles of this Title.

They shall be subject to the ex post publication procedures laid down in Article 169."

(70) Article 164 is amended as follows:

(a) Paragraph 1 is amended as follows:

(i) The first sentence is replaced by the following:

"1. The decision or grant agreement shall in particular lay down:"

(ii) point (d) is replaced by the following:

"(d) the total estimated cost of the action and the Community funding provided for, as an overall ceiling expressed as an absolute value, supplemented as appropriate by an indication of:

(i) the maximum rate of funding of the costs of the action or approved work programme in the case referred to in point (a) of Article 108a(1) of the Financial Regulation;

(ii) the lump-sum and/or flat-rate financing referred to in points (b) and (c) of Article 108a(1) of the Financial Regulation;

(iii) a combination of (i) and (ii)."

(iii) points (f) and (g) are replaced by the following:

"(f) the general terms and conditions applicable to all agreements or decisions of that type, such as the acceptance by the beneficiary of audits by the Commission, OLAF and the Court of Auditors and of the *ex post* publication rules referred to in Article 169, in accordance with Regulation (EC) No 45/2001 of the European

Parliament and of the Council[13]; for grant agreements, these general terms shall in particular:

(i) state that Community law is the law which applies to the grant agreement, complemented, where necessary, by national law as specified in the grant agreement;

(ii) specify the competent court to hear disputes.

(g) the estimated overall budget."

(iv) the following point (ga) is inserted:

"(ga) as appropriate, details of the eligible costs of the action or approved work programme and/or of the lump sums or flat-rate financing referred to in Article 108a(1) of the Financial Regulation;"

(b) Paragraph 2 is replaced by the following:

"In the cases referred to in Article 163, the framework partnership decision or framework partnership agreement shall specify the information referred to in points (a), (b), (c)(i), (d)(ii), (f), (h), (i) and (j) of paragraph 1 of this Article.

The specific decision or agreement shall contain the information referred to in points (a), (b) (c), (d), (e), (g) and (ga) of paragraph 1 and, where necessary, point (i) thereof."

(71) In Article 165, paragraphs 1 and 2 are replaced by the following:

"1. For each beneficiary, profit is defined as:

(a) in the case of a grant for an action, a surplus of receipts over the costs incurred by the beneficiary when the request is made for final payment;

(b) in the case of an operating grant, a surplus balance on the operating budget of the beneficiary.

2. Lump sums and flat-rate financing shall be determined according to Article 181 on the basis of the costs or the category of costs to which they relate, established by objective means such as statistical data, in such a way as to exclude *a priori* a profit. On the same basis, these amounts shall be reassessed and, where appropriate, adjusted by the Commission every two years.

In that case, and for each grant, non-profit is verified at the time of the determination of the amounts.

Where the *ex-post* controls on the generating event reveals that the event has not occurred and an unduly payment has been made to the beneficiary on a lump sum or flat-rate financing, the Commission shall be entitled to recover up

[13] OJ L 8, 12.1.2001, p. 1.

to the amount of the lump sum or flat-rate financing and, in the case of a false declaration regarding the lump sum or flat-rate financing, impose financial penalties up to 50% of the total amount of the lump sum or flat-rate financing.

Such controls are without prejudice to the verification and certification of actual costs required for the payment of grants or part of combined forms of grants consisting in the reimbursement of a specified proportion of the eligible costs."

(72) The following Article 165a is inserted:

"Article 165a
Co-financing rule
(Article 109 of the Financial Regulation)

1. Co-financing requires that part of the cost of an action or of the running costs of an entity is borne by the beneficiary of a grant, or by contributions other than the Community one.

2. In the case of grants taking one of the forms provided for in points (b) or (c) of Article 108a(1), or a combination thereof, co-financing shall only be assessed at the stage of the evaluation of the grant application."

(73) In Article 166(1), the first subparagraph is replaced by the following:

"An annual work programme for grants shall be prepared by each authorising officer responsible. This work programme shall be adopted by the institution and published on the grants Internet site of the institution as soon as possible, if necessary during the previous year, and no later than 31 March of each financial year."

(74) Article 167 is modified as follows:

(a) the subparagraph (b) of the first paragraph is replaced by the following:

"(b) the eligibility, exclusion, selection and award criteria as referred to in Articles 114 and 115 of the Financial Regulation and the relevant supporting documents;"

(b) the paragraph 2 is replaced by the following:

"2. Calls for proposals shall be published on the Internet site of the European institutions and possibly by any other appropriate means, including the *Official Journal of the European Union*, in order to provide maximum publicity among potential beneficiaries. Any modification of the content of the calls for proposals is also subject to publication under the same conditions."

(75) Article 168(1) is amended as follows:

(a) point (d) of paragraph 1 is replaced by the following:

"(d) to bodies identified by a basic act, within the meaning of Article 49 of the Financial Regulation, as beneficiaries of a grant."

(b) the following points (e) and (f) are added

"(e) in the case of research and technological development, to bodies identified in the annual work programme referred to in Article 110 of the Financial Regulation, where the basic act expressly provides for that possibility, and on condition that the project does not fall under the scope of a call for proposals;

(f) for actions with specific characteristics that require a particular type of body on account of its technical competence, its high degree of specialisation or its administrative power, on condition that the actions concerned do not fall within the scope of a call for proposals. These cases shall be duly substantiated in the award decision."

(76) Article 169 is amended as follows:

(a) In paragraph 2, point (c) is replaced by the following:

"(c) the amount awarded and, save in the case of a lump sum or flat-rate financing as referred to in Article 108a (1)(b) and (c) of the Financial Regulation, the rate of funding of the costs of the action or approved work programme."

(b) The following paragraph 3 is added:

"3. Following the publication pursuant to paragraph 2, when requested by the budgetary authority, the Commission shall forward to the latter a report on:

(a) the number of applicants in the past year;

(b) the number and percentage of successful applications per call for proposals;

(c) the mean duration of the procedure from date of closure of the call for proposals to the award of a grant."

(77) The following Article 169a is inserted:

"Article 169a
Information for the applicants
(Article 110 of the Financial Regulation)

The Commission shall provide information and advice to applicants by the following means:

(a) lay down joint standards for application forms for similar grants and monitor the size and readability of the application forms;

(b) supply information to potential applicants in particular by means of seminars and the provision of handbooks.

(c) maintain in the Legal Entity File referred to in Article 64 permanent data for beneficiaries."

(78) In Article 172, the following paragraph 4 is added:

"4. The co-financing principle shall be considered to be respected where the Community contribution is designed to cover certain administrative costs of a financial institution, including, where appropriate, a variable fee constituting a performance-related incentive, in relation to the management of a project or programme forming an indissoluble whole."

(79) The following Article 172a is inserted:

"Article 172a
Eligible costs
(Article 113 of the Financial Regulation)

1. Eligible costs are costs incurred by the beneficiary of a grant which meet all the following criteria:

(a) they are connected to the subject of the grant,

(b) they are indicated in the estimated overall budget of the action or work programme,

(c) they are necessary for the implementation of the action or of the work programme which is the subject of the agreement,

(d) they must be actually incurred by the beneficiary, be recorded in his accounts in accordance with the applicable accounting principles, and be declared in accordance with the requirements of the applicable tax and social legislation,

(e) they must be identifiable and verifiable,

(f) they are reasonable, justified, and comply with the requirements of sound financial management, in particular regarding economy and cost/efficiency,

(g) except for audits, they are generated during the implementation of the action or of the work programme.

2. Subject to the provisions of paragraph 1, and those contained in the basic act, the following costs may be considered as eligible by the authorising officer responsible:

(a) costs relating to a bank guarantee or comparable surety to be lodged by the beneficiary of the grant pursuant to Article 118 of the Financial Regulation;

(b) costs relating to external audits required by the responsible authorising officer either upon the request for financing or upon the request for payment;

(c) value added tax paid, and which cannot be refunded to the beneficiary according to the applicable national legislation;

(d) depreciation costs, provided they are actually incurred by the beneficiary;

(e) administrative expenditure, staff and equipment costs, including the salary costs of personnel of national administrations to the extent that they relate to the cost of activities which the relevant public authority would not carry out if the project concerned were not undertaken."

(80) The following Article 172b is inserted:

"Article 172b
Financing applications
(Article 114 of the Financial Regulation)

1. The arrangements for the submission of grant applications shall be determined by the authorising officer responsible, which may choose the method of submission. Grant applications may be submitted by letter or by electronic means.

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

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

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

(b) the integrity of data must be preserved;

(c) the confidentiality of proposals must be preserved.

For the purposes of point (c), the authorising officer responsible shall examine the content of applications only after the time limit set for submitting them has expired.

The authorising officer responsible may require that electronic submission be accompanied by an advanced electronic signature within the meaning of Directive 1999/93/EC of the European Parliament and of the Council.

2. Where the authorising officer responsible authorises submission of applications by electronic means, the tools used and their technical characteristics shall be non-discriminatory in nature, generally available and interoperable with the information and communication technology products in general use. The information relating to the specifications required for presentation of applications, including encryption shall be made available to the applicants.

Moreover, the devices for the electronic receipt of applications shall guarantee security and confidentiality.

3. Where submission is by letter, applicants may choose to submit applications:

(a) either by post or by courier service, in which case the call for proposals shall specify that the evidence shall be constituted by the date of dispatch, the postmark or the date of the deposit slip;

(b) by hand-delivery to the premises of the institution by the applicant in person or by an agent, for which purposes the call for proposals shall specify the department to which applications are to be delivered against a signed and dated receipt."

(81) In Article 173, paragraph 3 is replaced by the following:

"3. The budget for the action or the operating budget attached to the application shall have revenue and expenditure in balance, subject to provisions for possible variations in exchange rates, and shall indicate the costs which are eligible for financing from the Community budget."

(82) Article 174 is replaced by the following:

"Article 174
Evidence of non exclusion
(Article 114 of the Financial Regulation)

Applicants shall declare on their honour that they are not in one of the situations listed in Articles 93(1) and 94 of the Financial Regulation. The authorising officer responsible may, depending on his risk analysis, request the evidence referred to in Article 134. Applicants shall be required to supply such proof, unless there is a material impossibility recognised by the authorising officer responsible."

(83) The following Article 174a is inserted:

"Article 174 a
Applicants not having legal personality
(Article 114 of the Financial Regulation)

When an application for a grant is submitted by an applicant not having legal personality, in accordance with the second subparagraph of Article 114(2) of the Financial Regulation, the representatives of that applicant shall prove that they have the capacity to undertake legal obligations on behalf of the applicant, and shall offer financial guarantees equivalent to those provided by legal persons."

(84) Article 175 is replaced by the following:

"Article 175
Financial and administrative penalties
(Article 114 of the Financial Regulation)

Financial or administrative penalties, or both, may be imposed on applicants who have made false declarations, substantial errors or committed irregularities and fraud, in accordance with the conditions laid down in Article 134a in proportion to the value of the grants in question.

Such financial or administrative penalties, or both, may also be imposed on beneficiaries who have been found in serious breach of their contractual obligations."

(85) The following Article 175a is inserted:

"Article 175a
Eligibility criteria
(Article 114 of the Financial Regulation)

1. The eligibility criteria shall be published in the call for proposals.

2. The eligibility criteria shall determine the conditions for participating in a call for proposals. Those criteria shall be established with due regard for the objectives of the action and shall comply with the principles of transparency and non-discrimination."

(86) The following Article 175b is inserted:

"Article 175b
Very low value grants
(Article 114(3) of the Financial Regulation)

Very low-value grants are defined as grants which do not exceed EUR 3,500."

(87) In Article 176(3), the following subparagraph is added:

"If no supporting documents were requested in the call for proposals and if the authorising officer responsible has doubts about the financial or operational capacity of applicants, he shall request them to provide any appropriate documents."

(88) Article 178 is modified as follows:

(a) A paragraph 1a is inserted:

"1a. The authorising officer responsible shall, where appropriate, divide the process into several procedural stages. The rules governing the process are announced in the call for proposals.

Where a call for proposals specifies a two-stage submission procedure, only those proposals that satisfy the evaluation criteria for the first stage shall be requested to submit a complete proposal in the second stage.

Where a call for proposals specifies a two-step evaluation procedure, only those proposals that pass the first step, based on the evaluation of a limited set of criteria, shall go forward for further evaluation.

The applicants whose proposals are rejected at any stage shall be informed in accordance with Article 116 (3) of the Financial Regulation.

Each subsequent stage of the procedure must be clearly distinct from the previous one.

The same documents and information shall not be required to be provided more than once during the same procedure."

(b) Paragraph 2 is replaced by the following:

"2. The evaluation committee or, where appropriate, the authorising officer responsible may ask an applicant to provide additional information or to clarify the supporting documents submitted in connection with the application, in particular in the case of evident material errors.

The authorising officer shall keep appropriate records of contacts with applicants during the procedure."

(89) Article 180(2), is modified as follows:

(a) In subparagraph 2, point (a) is replaced by the following:

"(a) Grants for an action of EUR 750,000 or more, when the cumulative amounts of requests of payment is at least EUR 325,000."

(b) In paragraph 3, the following point (d) is added:

"(d) Beneficiaries of multiple grants who have provided independent certification offering equivalent guarantees on the control systems and methodology used to prepare their claims."

(90) The following Article 180a is inserted:

"Article 180a
Forms of grants
(Article 108a of the Financial Regulation)

1. Community grants in the form referred to in point (a) of Article 108a(1) of the Financial Regulation shall be calculated on the basis of eligible costs, which are defined as costs actually incurred by the beneficiary and subject to a preliminary budget estimate as submitted with the proposal and included in the grant agreement or decision.

2. Lump sums as referred to in point (b) of Article 108a(1) of the Financial Regulation shall cover in global terms certain costs necessary for carrying out an action, or for the annual operation of a beneficiary, in accordance with the terms of the agreement and on the basis of an estimate.

3. Flat-rate financing as referred to in point (c) of Article 108a(1) of the Financial Regulation shall cover specific categories of expenditure which are clearly identified in advance either by applying a percentage fixed in advance in conformity with Article 181(4) or by the application of a standard scale of unit cost."

(91) Article 181 is replaced by the following:

"Article 181
Lump sums and flat-rate financing
(Article 108a of the Financial Regulation)

1. The Commission may in a decision authorise the use of the following:

(a) one or more lump sums with a unit value of EUR 25,000 or less, to cover one or more different categories of eligible costs;

(b) flat-rate financing, in particular on the basis of the scale annexed to the Staff Regulations or as approved each year by the Commission for the accommodations costs and daily allowances for mission costs.

This Commission decision shall determine the maximum amount for the total of such funding authorised, by grant or type of grant.

2. Where appropriate, lump sums exceeding a unit value of EUR 25,000 shall be authorised in the basic act which shall lay down the conditions of award and the maximum amounts.

These amounts shall be adjusted every two years by the Commission on the basis of objective means, such as statistical data, as referred to in Article 165(2).

3. The grant decision or agreement may authorise, in the form of flat-rates, funding of the beneficiary's indirect costs up to a maximum of 7% of total eligible direct costs for the action, save where the beneficiary is in receipt of an operating grant financed from the Community budget. The 7% ceiling may be exceeded by reasoned decision of the Commission.

4. The grant decision or agreement shall contain all necessary provisions in order to verify that the conditions for the award of lump sums or flat-rate financing have been respected."

(92) Article 184 is replaced by the following:

"Article 184
Implementation contracts
(Article 120 of the Financial Regulation)

1. Without prejudice to the application of the Public procurement directive, where implementation of the assisted actions requires the award of procurement contracts, beneficiaries of grants shall award the contract to the tender offering best value for money, that is to say, to the tender offering the best price-quality ratio, while taking care to avoid any conflict of interests.

2. Where implementation of the assisted actions requires the award of a procurement contract with a value of more than EUR 60,000, the authorising officer responsible may require beneficiaries to abide by special rules in addition to those referred to in paragraph 1. Those special rules shall be based on those contained in the Financial Regulation and determined with due regard for the value of the contracts concerned, the relative size of the Community contribution in relation to the total cost of the action and the risk. Such special rules shall be included in the grant decision or agreement."

(93) The following Article 184a is inserted:

"Article 184a
Financial support to third parties
(Article 120(2) of the Financial Regulation

1. Provided the objectives or results to be obtained are sufficiently detailed in the conditions referred to in Article 120(2)(b) of the Financial Regulation, the margin of discretion may be considered to be exhausted if the grant decision or agreement also specifies:

(a) the minimum and maximum amounts of financial support that can be paid to a third party and criteria for determining the exact amount;

(b) the different types of activity that may receive such financial support, on the basis of a fixed list.

2. For the purpose of Article 120(2)(c), the maximum amount of financial support that can be paid to third parties by a beneficiary is EUR 100,000, with a maximum of EUR 10,000 per each third party."

(94) In Article 185, the following subparagraph is added:

"The report on budgetary and financial management shall be separate from the reports on implementation of the budget referred to in Article 121 of the Financial Regulation."

(95) In Article 187, "Article 185" is replaced by "Article 121".

(96) In Article 207(1), "Article 185" is replaced by "Article 121".

(97) In Article 209(1), "Article 185" is replaced by "Article 121".

(98) In Article 210, "Article 185" is replaced by "Article 121".

(99) In Article 219(1), "EAGGF Guarantee Section" is replaced by "EAGF".

(100) In Article 225, "Article 185" is replaced by "Article 121".

(101) In Title I of Part II, the title is replaced by the following:

"Title I
(Title II of the Financial Regulation)
Structural Funds, Cohesion Fund, European Fisheries Fund and Agricultural Fund for Rural Development"

(102) In Article 228, "the Structural Funds and the Cohesion Fund" is replaced by "the Structural Funds, the Cohesion Fund, the European Fisheries Fund and the Agricultural Fund for Rural Development".

(103) In Article 229, the following paragraph 7 is added:

"7. The estimates of the amount receivable, as referred to in Article 160(1a) of the Financial Regulation shall be sent to the accounting officer for registration."

(104) In Article 232(1), the reference to "Article 164 (1)" is replaced by "Article 56".

(105) Article 232(2) is amended as follows:

(a) points (a) and (b) are replaced by the following:

"(a) ensuring compliance with the criteria laid down in Article 56(1) and (2) of the Financial Regulation;

(b) stating that, if the minimum criteria laid down in Article 56(1) and (2) of the Financial Regulation cease to be met, the Commission may suspend or terminate implementation of the agreement;"

(b) in point (c), the reference to "Article 53(5)" is replaced by "Article 53c".

(c) point (d) is replaced by the following:

"(d) setting up the financial correction mechanisms referred to in Article 53c of the Financial Regulation and specified in Article 42, in particular as regards recovery by means of offsetting where the action is fully decentralised."

(106) The following Article 233a is inserted :

"Article 233a
Automatic decommitment
(Article 166(3) of the Financial Regulation)

1. In calculating the automatic decommitment provided for in Article 166(3)(a) of the Financial Regulation, the following shall be disregarded:

(i) that part of the budget commitments for which a declaration of expenditure has been made but reimbursement of which has been interrupted or suspended by the Commission at 31 December of year n + 4;

(ii) that part of the budget commitments for which it has not been possible to make a disbursement or a declaration of expenditure for reasons of *force majeure* seriously affecting the implementation of the programme. National authorities claiming *force majeure* must demonstrate the direct consequences on the implementation of all or part of the programme.

2. The Commission shall inform the beneficiary countries and the authorities concerned in good time if there is a risk of automatic decommitment. It shall inform them of the amount involved as indicated by the information in its possession. The beneficiary countries shall have two months from receiving this information to agree to the amount in question or to present observations. The Commission shall carry out the automatic decommitment not later than nine months after the time-limit laid down in Article 166(3)(a) and (b) of the Financial Regulation.

3. In the event of automatic decommitment, the Community financial contribution to the programmes concerned shall be reduced, for the year in question, by the amount automatically decommited. The beneficiary country shall produce a revised financing plan dividing the reduction of the aid between the priorities and measures if relevant. If it does not do so, the Commission shall reduce the amounts allocated to each priority and measure if relevant pro rata."

(107) Article 237 is modified as follows:

(a) In paragraph 1, the first subparagraph is replaced by the following:

"1. Articles 118 to 121, with the exception of the definition, Article 122(3) and (4), Articles 123, 126 to 129, 131(3) to (6), Article 139(2), Articles 140 to 146, Article 148 and Articles 151, 152 and 158(a) shall not apply to procurement contracts concluded or on behalf of the contraction authorities referred to in points (a) and (b) of Article 167(1) of the Financial Regulation."

(b) Paragraph 3 is deleted.

(108) Article 240(3) is modified as follows:

"3. The award notice shall be sent when the contract is signed except where, if still necessary, the contact was declared secret or where the performance of the contract must be accompanied by special security measures, or when the protection of the essential interests of the European Union, or the beneficiary country so requires, and where the publication of the award notice is deemed not to be appropriate."

(109) In Article 241(1), the second subparagraph is replaced by the following:

"Contracts with a value of less than or equal to EUR 10 000 may be awarded on the basis of a single tender."

(110) In Article 242(1), a new point (h) is added:

"(h) For contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires."

(111) Article 243 is amended as follows:

(a) In paragraph 1, point (c) is replaced by the following:

"(c) for contracts with a value of less than EUR 60,000: competitive negotiated procedure within the meaning of paragraph 2."

(b) In paragraph 1, the second subparagraph is replaced by the following:

"Contracts with a value of less than or equal to EUR 10,000 may be awarded on the basis of a single tender."

(112) In Article 244(1), the following points (f), (g) and (h) are added:

"(f) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires;

(g) for contracts in respect of supplies quoted and purchases on a commodity market;

(h) for contracts in respect of purchases on particularly advantageous terms, either from a supplier which is definitively winding up its business activities, or from the receivers or liquidators of a bankruptcy, an arrangement with creditors, or a similar procedure under national law."

(113) In Article 245(1), the second subparagraph is replaced by the following:

"Contracts with a value of less than or equal to EUR 10,000 may be awarded on the basis of a single tender."

(114) In Article 246(1), a new paragraph (e) is added:

"(e) for contracts declared to be secret, or for contracts whose performance must be accompanied by special security measures or when the protection of the essential interests of the European Union or the beneficiary country so requires."

(115) Article 253 is amended as follows:

(a) In paragraph 1, a new point (e) is added:

"(e) where it is in the interests of the Community to be the sole donor to an action, and in particular to ensure visibility of a Community action."

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

"However, in the case of point (e) of paragraph 1, grounds shall be provided in the Commission's financing decision."

(116) Article 258 is replaced by the following:

"Article 258
Delegations by the institutions to interinstitutional offices
(Articles 171 and 174a of the Financial Regulation)

Each institution shall be responsible for budgetary commitments. The institutions may delegate to the Director of the interinstitutional office concerned all subsequent acts, in particular legal commitments, validation of expenditure, authorisation of payments and implementation of revenue, and shall set the limits and conditions for such delegation of powers."

(117) The following Article 258a is inserted:

"Article 258a
Specific rules for the Office for Official Publications
(Articles 171 and 174a of the Financial Regulation)

With regard to the Office for Official Publications (OPOCE), each institution shall decide on its publication policy.

The net proceeds from the sale of publications shall be re-used as assigned revenue by the institution which is the author of those publications, in accordance with Article 18 of the Financial Regulation."

(118) Article 261 is deleted.

(119) In Part II, the following Title VI is inserted:

"TITLE VI
(TITLE VII OF THE FINANCIAL REGULATION)
EXPERTS"

(120) The following Article 265a is inserted.

"Article 265a
External experts
(Article 179a of the Financial Regulation)

1. For values below the thresholds laid down in Article 158(1)(a), external experts may be selected on the basis of the procedure described in paragraph 2 for tasks involving in particular the evaluation of proposals and technical assistance.

2. A call for expressions of interest shall be published in particular in the *Official Journal of the European Union* or the website off the institution in order to ensure maximum publicity among potential candidates and with a view to establishing a list of experts.

   The list drawn up following the call for expressions of interest shall be valid for no more than three years from the date on which the notice is published.

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

3. External experts shall not appear on the list referred to in paragraph 2 if they are in one of the situations of exclusion referred to in Article 93 of the Financial Regulation.

4. External experts appearing on the list referred to in paragraph 2 shall be selected on the basis of their ability to perform the tasks referred to in paragraph 1 and in accordance with the principles of non-discrimination, equal treatment and absence of conflict of interest."

(121) Article 269 is replaced by the following:

"Article 269
Decentralised management of pre-accession aid
(Article 53c of the Financial Regulation)

In connection with the pre-accession aid referred to in Council Regulation (EEC) No 3906/89[14] and Council Regulation (EC) No 555/2000[15], the rules concerning checks laid down in Article 35 shall not affect the decentralised management already in operation with the candidate countries in question."

(122) The following Article 269a is inserted:

"Article 269a
Transitional provisions
(Articles 30a and 95 of the Financial Regulation)

Articles 23a, 23b, and 134a shall apply for the first time as from the 1st of January 2009."

(123) In Article 271, paragraph 1 is replaced by the following:

"1. The thresholds and amounts laid down in Articles 54, 67, 119, 126, 128, 129, 130, 135, 151, 152, 164, 172, 173, 175b, 180, 181, 182, 226, 241, 243, 245 and 250 shall be updated every three years in line with movements in the consumer price index in the Community."

Article 2

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

It shall apply from 1 January 2007.

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

[14] OJ L 375, 23.12.1989, p. 11.
[15] OJ L 68, 16.3.2000, p. 3.

Done at Brussels,

For the Commission
Member of the Commission